

## Financial Challenges to Noncommercial Broadcast Funding - What Is the FCC Doing?

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As Federal funding to public broadcasters faces serious challenge in a Washington looking to cut the budget for all but the most essential government services, and where voluntary contributions to all noncommercial broadcasters have been constrained by the economic issues faced by the entire nation, more and more noncommercial broadcasters are facing tough questions about the future. We've seen colleges and municipalities sell stations that have been community fixtures for decades, and noncommercial groups (including some religious broadcasters) deciding to call it a day and liquidate their holdings. At the same time, the ratings success of many noncommercial broadcasters (both public broadcasters and those owned by religious or other community organizations), especially in the radio world, are showing much success in developing a large listening audience. With noncommercial stations, by law restricted to raising funds without commercial advertising, many are looking for new ways of operating. How are FCC regulations and interpretations reacting to these new realities?

The FCC's *Future of Media Study* (and the resulting *Report on the Information Needs of Communities* that we summarized [here](#)) recognized the importance of the diversity provided to communities by noncommercial broadcasters and, without detailing any proposals, indicated support for the development of new funding sources for those stations. Similar general statements were echoed in the hearing on the report recently held by the FCC in Arizona. But the options of the FCC in pursuing solutions are limited. In a [recent decision](#), a noncommercial entity that operated a number of stations in small rural markets asked for a **waiver of the FCC's underwriting rules** to allow it to air a limited amount of advertising for commercial entities, restricted to the top of the hour, and presented so as to not break up normal programming. The applicant justified the request on the current financial climate that made donations and grants hard to come by, especially in the rural areas where this group operates its stations. While the Commission's staff expressed sympathy for the applicant's financial plight, it stated that it was powerless to waive the Communications Act, which prohibits noncommercial stations from broadcasting "any advertising." Faced with this prohibition, and a fear of opening the floodgates to similar requests, the FCC denied the waiver.

So what options are there short of amending the Communications Act (which, if groups of noncommercial broadcasters and others in the community who favor all types of broadcasting that NCE stations provide joined in, is not beyond the realm of possibility)? One area might be for some clarifications and amendments to the FCC's own rules that interpret and implement the statute. Based on the number of recent fines levied on noncommercial broadcasters for exceeding the limits of the underwriting rules, and from the reactions of noncommercial broadcasters in discussion during various presentations that I have done on complying with the

underwriting rules (see, e.g., our article [here](#) about one such presentation), the rules are not necessarily straightforward, and often lead to confusion. They get especially grey in areas of event-marketing, concert promotion, live appearance and other potential sources of ancillary revenue for noncommercial broadcasters, where such fundraising may have an incidental benefit to commercial groups. Where are the lines drawn as virtually any area of commerce will have some incidental benefit to commercial entities, even if it is at the level of sales of the station's electronic equipment, telephones, office supplies and other materials used to create any message on behalf of a nonprofit entity and to convey it to the listener? Realistic, flexible and understandable rules need to be adopted.

While clarifying the underwriting rules may be helpful in this environment, there have been some troubling developments in the law surrounding fundraising for noncommercial broadcasters. In a [letter of inquiry](#) sent this summer to a noncommercial station involved in an LMA type arrangement with another noncommercial broadcaster, the FCC raised numerous issues about such arrangements. While nothing has been decided in this case, the fact that the letter was publicly released by the FCC raises questions about the continuing use of such arrangements in the noncommercial world. As a policy matter, why these arrangements, with another noncommercial broadcaster, would be troubling is unclear, as the Commission has recognized that any sort of promotion for noncommercial entities is not advertising and not covered by the Communications Act prohibitions. Why should it care if noncommercial broadcasters obtain programming from other noncommercial entities? Many noncommercial licensees, not ready to sell their stations but facing tough economic times, may look at such arrangements as a way to retain the license and the flexibility to resume full independent operations when economic times are more robust. Inflexibility in this area may cause the sale of more stations in the future. We will see what happens as this case develops.

Changing times call for changing approaches to regulation and operations. We will see where the FCC takes these regulations in the coming months, and where noncommercial broadcasters, facing the new reality of today's economic times, decide to push for change in the ways that they can and do they operate.

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