



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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*Developments:* [FM Translator Interference a Hot Topic at the FCC](#)  
[Nationwide EAS Test Report Identifies Issues and Proposes Solutions](#)  
[New On-Air Third-Party Fundraising Flexibility for NCEs](#)

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### Petitions Seek to Change the Process for Resolving FM Translator Interference Complaints

In April 2017, the FCC received two petitions for rulemaking seeking to remake the process for administering and resolving complaints of interference against FM translators. The two petitions—one from the NAB and one from the licensee of an AM station in Philadelphia—are aligned at least in spirit: Each would grant further protections to FM translators as they compete for space with other users of the FM dial. On April 18, 2017, the FCC sought initial comment on the AM broadcaster’s petition, giving interested parties 30 days to comment on it. The FCC has not yet sought comment on the NAB petition.

FM translators have traditionally provided supplemental service in areas where direct reception of a radio station’s primary signal is insufficient. Over the past few years, the FCC has expanded this role by authorizing AM radio stations to use FM translators to rebroadcast their service, and broadcasters also now use FM translators to rebroadcast digital side channels, including many that provide foreign language programming services, weather information, and other niche formats. Not surprisingly, these increases in usage have increased the risk that translators will interfere with full-power FM stations. And because FM translators remain a secondary service, they are obligated to cure any such interference. Meanwhile, the process for

resolving interference conflicts can be time-consuming and expensive, and it can strain Commission's resources.

The NAB's petition proposes ways to make the disposition of interference complaints against FM translators more efficient. It first proposes to amend the FCC's rules to allow translators to move anywhere on the FM dial (instead of only to an adjacent or IF-related channel) to resolve interference, as a minor change. That way, some interference conflicts could be cured by implementing a channel change. Second, the NAB's petition proposes a series of procedural changes to the FM translator interference complaint process:

- (a) The NAB proposes that an actionable complaint be supported by interference complaints from at least six different listeners, with some flexibility on that figure depending on population density in the particular area.
- (b) Complaints would have to be verifiable statements including clear evidence that the complainant is a regular listener to the FM station and unaffiliated with the station.
- (c) Actual interference would be shown from a sufficient number of locations to indicate a consistent problem, and confirmed by an "on/off" test, where practical. That is, the translator would be turned off intermittently to test its effect on the affected FM station.
- (d) An actionable complaint would have to show that the full-power station has reasonably tried to resolve issues regarding the claimed interference with the translator licensee without Commission involvement.
- (e) If an interference complaint is ultimately filed, resolution would be governed by a specific time limit (e.g., 90 days), with additional deadlines for the various interim steps in the process.

Finally, NAB's petition also indicates that NAB is planning to include a published series of best practices designed to help avoid and manage translator interference. Topics will include how to engineer a translator to minimize the risk of interference to full-power stations, and ways to privately manage interference conflicts.

The April 7 petition from the licensee of an AM station in Philadelphia strikes a somewhat more urgent tone than NAB's petition. Here, the facts are made more concrete by an ongoing interference proceeding. Specifically, a full-power FM station located about 50 miles away in southern New Jersey has submitted complaints to the FCC alleging that the FM translator in Philadelphia is interfering with the ability of listeners to consistently tune-in its full-power signal.

For the petitioner, that distance is the rub. According to the petition, the FCC's 25-year-old rules were designed to prohibit FM translators from expanding primary station service areas by using FM translators to carry out-of-market signals into a local area and drive local stations out of business. Today, though, the petitioner says distant full-service stations are increasingly submitting complaints far outside their communities of license against FM translators that are enabling the reception of local AM radio stations and local diverse digital sub-channels. And

that's exactly what it accuses the southern New Jersey FM station of doing in the pending interference proceeding.

To address this issue, the petitioner proposes changes to the FCC's rules to prohibit "distant" FM stations from claiming distant service areas and prevent the removal of local AM and digital sub-channel fill-in translator broadcasts. The petitioner argues that these changes would fit more squarely with the Communications Act, as amended, and localism. The petitioner also suggests that favorable action on its petition would deter full-power FM stations from shopping for unreliable declarations from complainants.

The Commission's May 18 meeting agenda indicates that an announcement will be made about a new FM translator filing window to occur later this year, which means further use of FM translators is certainly in the forecast. FM translator interference issues promise to continue to develop, and we will keep you posted on important developments.

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## FCC Releases Report on 2016 Nationwide EAS Test

The FCC's Public Safety and Homeland Security Bureau (the "Bureau") has released its [Report](#) on the nationwide Emergency Alert System ("EAS") test conducted on September 28, 2016, by the Federal Emergency Management Agency ("FEMA") in coordination with the FCC and the National Weather Service (the "Report"). This was only the second ever nationwide test of the EAS—the first was conducted in November 2011.

The test was intended to assess the reliability and effectiveness of the EAS. The test code was distributed using two different delivery methods (unlike the 2011 test, which only used one). The first method used the traditional, broadcast-based "legacy" structure, which transmits EAS alerts through a pre-established "daisy chain" of broadcast, cable and satellite systems. The second, newer method used FEMA's Integrated Public Alert and Warning System ("IPAWS"), which provides content-rich EAS alerts over a secure Internet gateway directly to EAS Participants. The IPAWS test message specifically included English and Spanish versions of the test alert, high quality digital audio, and text files to be used to create an accessible video crawl.

The Report contends the 2016 test was a success, with 95% of EAS Participants participating (a 25% improvement over the 2011 test)—the vast majority of whom received and retransmitted the "National Periodic Test" code provided by FEMA. Nonetheless, the Report notes several issues that negatively impacted nationwide EAS test performance across all states:

- Almost half of test participants received the test via the legacy daisy-chain network rather than from IPAWS, and these participants were unable to deliver the CAP-formatted digital audio, Spanish, and text files as a result. (CAP-formatted alerts initiated through IPAWS can include audio, video or data files, images, multilingual translations of alerts, and links providing detailed information. EAS Participants can deliver to the public the rich data contained in a CAP-formatted message received directly from the IPAWS Internet feed, but once the alert is rebroadcast over the daisy chain, the CAP data is lost, and EAS Participants receiving the alert for the first

time over the air cannot deliver CAP-based features, such as digital audio or multiple languages, to the public.)

- Some EAS Participants failed to receive or retransmit alerts due to erroneous equipment configuration, equipment readiness and upkeep issues, and confusion regarding EAS rules and technical requirements.
- Some EAS Participant groups—particularly low power broadcast stations—had low participation rates.

To address the first issue, the Bureau recommends that the FCC facilitate the use of IPAWS as the primary source of alerts nationwide, while preserving over-the-air alerting as a redundant, alternate alerting pathway. (Under current procedures, EAS equipment polls the IPAWS server to check for new alerts at regular intervals; if an EAS Participant receives an alert via the broadcast daisy-chain before the new alert arrives via IPAWS, the over-the-air alert is retransmitted and the EAS equipment effectively ignores any later alert from IPAWS.) Some of the test participants that received the test over the broadcast-based “daisy chain” (rather than from IPAWS) experienced poor quality audio or were unable to deliver the Spanish language alert. If the Commission were to allow EAS Participants to check IPAWS for a high quality, IP-based alert whenever they receive an over-the-air alert, these issues could be avoided.

With respect to the second and third issues bulleted above, the Report makes two recommendations of interest to broadcast stations. First, the Bureau suggests that it partner with FEMA, SECCs (State Emergency Communication Committees), and EAS equipment vendors to conduct targeted outreach to EAS Participants that did not participate or underperformed to help educate them on their EAS obligations without the FCC taking any enforcement action. This outreach would be coupled with an effort to use the FCC’s databases to generate an accurate list of all EAS Participants that are required to participate in the EAS.

Second, the Bureau recommends that the EAS Operating Handbook be revised to cite to the Commission’s rules and explain how to access the FCC’s EAS Test Reporting System (“ETRS”) and EAS State Plan information to obtain proper designations, monitoring obligations, and operational area information.

Whether the Report and the Bureau’s recommendation will result in further rulemaking activity by the FCC remains to be seen. No date has yet been established for the next nationwide EAS test.

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## On-Air Third-Party Fundraising Rule Revised for Some Noncommercial Stations; CPB-Funded NCEs Must Still Obtain Waiver; New Public File Requirement for On-Air Third-Party Fundraising

At its April meeting, the FCC adopted a [new Order](#) to implement rules that will provide noncommercial stations with some flexibility to conduct on-air fundraising for certain non-profit

entities, while minimizing any impact on the noncommercial broadcasting service. As you will see below, the flexibility for third party fundraising will apply only to noncommercial stations that do not receive funding from the Corporation for Public Broadcasting (“CPB”). CPB-funded stations will remain subject to the FCC’s longstanding informal waiver process when seeking to conduct on-air fundraising for third parties.

The new rules are relatively straightforward, and here’s what they do:

- Authorize non-CPB-funded NCE stations (“Eligible NCEs”) to conduct on-air third-party fundraising that interrupts regular programming;
- Limit the pool of entities for which such on-air third-party fundraising may be conducted: Eligible NCEs can conduct on-air third-party fundraising only for non-profit organizations that are recognized as tax exempt, non-profit organizations under Section 501(c)(3) of the Internal Revenue Code (the non-profit organizations can be local, regional, national, or international);
- Allow Eligible NCEs to conduct on-air third-party fundraising for a maximum of one percent of their total annual airtime, on a channel-by-channel basis if a station multicasts (for a station that airs a program service 24/7/52, the one percent limit equates to approximately 87½ hours of on-air third-party fundraising);
- Require Eligible NCEs who wish to exceed the one percent maximum to use the FCC’s informal waiver process to request permission to conduct more on-air third-party fundraising;
- Require Eligible NCEs to air disclosures (i) at the beginning and ending of the third-party fundraising programming and (ii) at least once during each hour of the third-party fundraising programming, and (iii) clearly stating that the fundraiser is not for the benefit of the station itself and specifically identifying the non-profit organization that is the intended beneficiary of the fundraising;
- Allow (but do not require) noncommercial stations to accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs, but prohibit NCE stations from receiving “additional consideration” in exchange for conducting or airing third-party fundraising programs;
- Require Eligible NCEs that conduct on-air third-party fundraising to retain in their public inspection files the date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization that benefits from the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the station participated in tallying or receiving any funds for the non-profit group, an approximation of the total funds raised. These records must be placed in the public file on a quarterly basis, on the same schedule as Issues/Programs Lists. (Eligible NCEs that do not conduct any on-air third-party

fundraising in a given quarter will not be required to include any fundraising information in their public file for that quarter.) and

- Require CPB-funded noncommercial stations who wish to engage in time-limited third-party on-air fundraising for specific disasters and other singular catastrophic events (such as hurricanes and tornadoes) to continue to use the FCC's informal waiver process.

Of course, the new rules adopted by the FCC for on-air third-party fundraising are not yet in effect. The effective date will be announced in the future by publication in the Federal Register. An additional notice will be published in the Federal Register announcing approval by OMB (the Office of Management and Budget) of those portions of the rules requiring OMB review.

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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