



Small Entity Compliance Guide

August 5, 2004

FCC 01-306

Ancillary or Supplementary Use of Digital TV Capacity by Noncommercial Licensees

This Guide is prepared in accordance with the requirements of Section 212 of The Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the above-referenced FCC rule. This Guide is not intended to replace the rule, and final authority rests solely with the rule. While we have attempted to cover all parts of the rule that might be especially important to small entities, the coverage may not be exhaustive. In any civil or administrative action against a small entity for a violation of a rule, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be made based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update text. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

**1-888-CALL-FCC (1-888-225-5322)
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2. Internet Links

- Report and Order FCC 01-306
Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees
http://ftp.fcc.gov/Bureaus/Mass_Media/Orders/2001/fcc01306.pdf
- News Release – *FCC Clarifies Rules for Noncommercial Television Stations' Use of Digital Television Channel Capacity*
http://ftp.fcc.gov/Bureaus/Mass_Media/News_Releases/2001/nrmm0111.html
- Fact Sheet – *Public Television Stations in the Digital Age*
<http://www.fcc.gov/cgb/consumerfacts/digitalpublicTV.html>

Compliance Requirements

Broadcast Services

- Noncommercial educational (NCE) television licensees must use their entire digital capacity **primarily** for a nonprofit, noncommercial, educational broadcast service and provide at least one free over-the-air broadcast service (47 U.S.C. § 73.621).
- **Primarily** is considered to mean “substantial majority” of their entire digital capacity.
- NCE television licensees continue to be prohibited from providing advertising on their free over-the-air broadcast service (47 U.S.C. § 399B).
- Additional limitations on the extent to which NCE television licensees can engage in commercial ventures include continued operation within their nonprofit educational mission upon which their tax exempt status is based; the need to preserve viewer and government support; the requirement to pay taxes on income unrelated to the exempt purpose of the organization; and the oversight of stations by responsible bodies.

Ancillary or Supplementary Services

- NCE television licensees may use their excess digital capacity to offer ancillary or supplementary services for remunerative purposes (47 C.F.R. § 73.642; 47 C.F.R. § 73.644).
- Ancillary and Supplementary services are services other than a free video broadcast signal.
- These services include, but are not limited to, computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other service that does not interfere with or derogate an NCE television station’s basic broadcast service (47 U.S.C. § 336(b)).
- NCE television licensees may include advertising in their ancillary or supplementary services to the extent that such services do not constitute broadcasting (Note: Free data or audio services would be considered broadcasting and may not include advertising).

Payment of Fees

- NCE television licensees will be assessed an annual fee on revenues generated by the remunerative use of their excess digital capacity. Fees will be assessed on any ancillary or supplementary services for which the payment of a subscription fee is required to receive such services or for which the licensee directly or indirectly receives compensation from a third party for transmitting materials furnished by such third party (47 U.S.C. § 336(e)(1)(A)&(B)).
- Licensees must report annually by December 1 using form FCC 317 on the use of their digital capacity for the twelve-month period ending on the preceding September 30, and remit fees of five percent of their gross revenues generated by feeable ancillary or supplementary services.
- NCE television licensees providing services subject to a fee must also file annually form FCC 159 with the remittance of fees.

Recordkeeping

- For audit purposes, NCE television licensees are required to retain records for three years that support the calculation of fees due.
- NCE television licensees must maintain documentation sufficient to show that they used their entire digital capacity primarily for a nonprofit, noncommercial, educational broadcast service to demonstrate compliance, support their license renewal application, and to respond to complaints.

Web Link

- Report and Order - FCC 01-306
http://ftp.fcc.gov/Bureaus/Mass_Media/Orders/2001/fcc01306.pdf