

NATIONAL ASSOCIATION OF BROADCASTERS

# Legal Guide

TO BROADCAST LAW  
AND REGULATION ■

1992 SUPPLEMENT

National Association of  
**NAB**  
BROADCASTERS

# **LEGAL GUIDE TO BROADCAST LAW AND REGULATION 1992 SUPPLEMENT**



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## INTRODUCTION TO 1992 EDITION

This booklet supplements the 1988 edition of the NAB's Legal Guide to Broadcast Law and Regulation and covers the period January 1, 1988, to August 10, 1992. It supersedes the 1991 edition of the supplement.

In order to benefit properly from this supplement, the reader must first examine the Main Volume before using this supplement, which primarily reports changes in material contained in the Main Volume.

This supplement was prepared by William S. Green, a retired partner of Reed Smith Shaw & McClay, Washington, D.C., with the assistance of Melissa Stoll, a senior paralegal of that firm, and Karen Livesay of the NAB staff.

Ben Ivins, the NAB's assistant general counsel, contributed the chapters on copyright and cable, and J. Michael Hines and Stephanie M. Loughlin of Dow, Lohnes & Albertson, Washington, D.C., contributed the material on taxation. A special thanks to NAB Deputy General Counsel Barry Umansky for overall editing of this supplement.

In order to increase the usefulness of this supplement to persons seeking additional information regarding a particular subject, case citations and rule references have been provided. An Index, Table of Cases, Appendix of many new FCC application forms and an FCC Filing Fee schedule are also included, as well as an Appendix of FCC Standards for Assessing Forfeitures.

As with any other work of this kind, the reader is reminded that this supplement is merely intended as a guide, and that any legal advice pertaining to a particular problem should be obtained from an attorney. NAB members may also contact the Association's Legal Department at (202) 429-5430.

Henry L. Baumann  
Executive Vice President  
General Counsel

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## **CHAPTER I**

### **Application Fees, Reporting Requirements And Announcements**

#### **A. General Considerations**

##### **1. Ownership Reports**

The responsibility for filing an ownership report begins with the grant of the construction permit. Within 30 days of the grant, the permittee must file a report containing all of the required information listed in the Main Volume.<sup>1</sup> Because of the extended period of time which often intervenes between the initial grant and the application for license, an ownership report must also accompany that application. If the previous report is current and unamended, the permittee may certify by letter that it has reviewed the report and that it is accurate, in lieu of filing a new report.

Thereafter, the report or certification is to be filed and a fee paid on the anniversary of the date on which the station's license renewal application is required to be filed pursuant to the Commission's timetable. (See Table at the end of this chapter and Fee Appendix.) As pointed out in the Main Volume, limited partners must be reported unless the licensee (or permittee) certifies that the limited partner is not materially involved, directly or indirectly, in the management or operation of the station.

##### **2. Agreements**

Some agreements are not required to be filed or kept in the station's public inspection file, but must be made available to FCC personnel upon request. These include time brokerage agreements, subcarrier leasing agreements, time sales contracts with the same sponsor for more than four hours per day and contracts with chief operators. "Time brokerage" agreements among stations must be filed with the Commission and placed in the public file. See Chapter IV.

Contracts with talent, attorneys, performers and labor unions need not be filed or made available for FCC inspection.

### **3. Statements of Program Service**

In Office of Communications of the United Church of Christ v. FCC, 911 F.2d 803 (1990), the Court of Appeals upheld the FCC in accepting the following statement of program service:

(Applicant) intends to offer programming relating to issues of public concern facing the community of \_\_\_\_\_. These issues will be addressed through a variety of non-entertainment and public affairs programming.

While this is the minimum which the Court will accept, many attorneys recommend that a more detailed statement be submitted, if possible. Although the Court's decision dealt with a television application, the rationale and language of the decision would apply to AM and FM as well.

## **B. Applications**

### **1. Applications for New Stations or Changes in Existing Stations**

The Commission has revised extensively the information requirements for Form 301,<sup>2</sup> particularly those dealing with financial ownership and integration qualifications.<sup>3</sup> (See Appendix of Forms for FCC Form 301, February 1992 edition.) **PREVIOUS EDITIONS OF THIS FORM ARE NOT TO BE USED** (Public Notice, May 15, 1992). The Commission now requires that the applicant estimate the total funds "necessary to construct and operate the requested facility for three months without revenue." It also requires the applicant to identify each source of funds, including the name, address and telephone number of the source, the relationship of the source to the applicant and the amount of funds to be supplied by each source. The use of the new Form 301 eliminates the need for filing of a separate Form 155.

In addition to more detailed corporate information, the application also requires a statement indicating the name of each principal of the applicant who would, in the event of the grant of the application on a comparative basis, participate in the management of the station, whether the participation will be full-time (minimum of 40 hours per week) or part-time (minimum of 20 hours per week) and a description of the proposed position and duties.

The new Form 301 also contains questions dealing with engineering information required for the new "post-freeze" AM grants and a certification of compliance with anti-drug regulations.

Also the application requires the applicant to state whether it intends to claim any preference based on:

- a. Minority status
- b. Past local residence
- c. Female status
- d. Broadcast experience
- e. AM daytimer status
- f. Civic activities

**SPECIAL NOTE REGARDING ANTI-DRUG CERTIFICATION:** On December 27, 1991, the Commission released a report and order requiring that all applicants for authority "by whatever name that instrument may be designated" file a certification of compliance with Section 5301 of the Anti-Drug Abuse Act of 1988. 6 FCC Rcd 7551 (1991). A sample certification is enclosed in the Appendix of Forms.

## **2. Request for Extension of Time to Construct**

In August 1988, the Commission eliminated its long-standing Form 701 and substituted Form 307 as the vehicle for seeking extension of construction time.<sup>4</sup> The information to be supplied is generally the same. (See Appendix of Forms.)

## **3. License to Cover Construction Permit**

There have been certain changes in the applications which are to be used for licenses to cover construction permits.

Form 347 is to be used for Low Power TV, TV Translators and TV Boosters.

Form 399-L has been eliminated.

Form 350 is to be used for FM Translators and FM Boosters.

A UHF station which is not in operation, but is assigned to the same allocated channel on which a 1000 watt UHF translator is authorized, must notify the translator station in writing at least 10 days prior to going on the air and must certify that fact to the FCC. (FCC Rule 73.1620(f))

In the application for a license to cover a construction permit (FCC Form 302) and on the first anniversary of the commencement of program tests,

applicants for new broadcast facilities granted as a result of a settlement or other decision in a comparative proceeding must report:

(1) any deviations from comparative proposals relating to integration of ownership and management and diversification of the media of mass communication contained in their application for a construction permit at the time such application was granted; and

(2) any deviations from an active/passive ownership structure proposed in their application for a construction permit at the time such application was granted.

However, these reports are not required in any case in which the order granting the application relieved the applicant of the obligation to adhere to such proposals. (FCC Rule 73.1620(g))

#### **4. Assignment of License or Transfer of Control**

Public notice regarding the filing of an application must be completed within thirty days of the filing.

Newspaper publication must be made in a daily newspaper of general circulation published in the community in which the station is located, or proposed to be located, at least twice a week for two consecutive weeks in a three-week period. If there is no such daily newspaper published in the community, then publication must be made in a weekly newspaper once a week for three consecutive weeks in a four-week period. If there is neither a daily nor a weekly newspaper published in the community, then publication should be made in the daily newspaper, wherever published, which has the greatest general circulation in the community, twice a week for two consecutive weeks in a three-week period. (FCC Rule 73.3580(c)(1)) If the station involved is the only station service operating in the community, or is a non-commercial station, no newspaper publication is required. (FCC Rule 73.3580(e))

#### **5. Applications Regarding Auxiliary Stations**

In 1989, the Commission issued a new Form 313, which contains different paragraphs and questions than the ones used in the Main Volume. Applicants are cautioned not to use the old form, but to use the November 1989 edition. (See Appendix of Forms.)

A separate instructional pamphlet issued by the Commission discusses in detail the requirements of this form. A copy of that pamphlet is included in the Appendix of Forms. It should be consulted prior to filling out the application.



## **6. Applications for Renewal of License**

For a listing of renewal application due dates and license expiration dates, by state, for radio, television and translators, see the Chart at the end of this chapter.

## **7. Call Signs**

In an exhaustive analysis of relevant factors involved in call letter protection, the Delaware Chancery Court in Draper Communications, Inc. v. Delaware Valley Broadcasters Limited Partnership, 505 A.2d 1283 (1985), enjoined the use of the call letters WBOT-TV by a station in Wilmington, Delaware, upon a complaint by WBOC-TV, Salisbury, Maryland. The stations' service contours overlapped in significant population areas. The Court rejected the Wilmington station's argument that the public identifies stations by channel number, not by call letters. The Court noted that the emergence of cable, with different channel locations for broadcast stations, dissipates the public's identification of the TV station with its on the air channel assignment and increases the importance of call letters.

Call signs are awarded on a first-come, first-served basis. When requests to change call signs are pending, the call sign to be relinquished is not available until the effective date of the change. Effective dates for call sign changes are specified in weekly public notices. Prior to the effective date, no applications for the relinquished call sign will be accepted. (Public Notice, May 5, 1992).

## **C. Announcements**

### **1. Station Identification**

Effective midnight April 19, 1992, the Commission adopted new AM technical criteria. 6 FCC Rcd 6273 (1991). These new rules affect station identification requirements. See p. 77 for a full discussion.

### **2. Sponsorship Identification**

In a significant decision, National Assn. for Better Broadcasting v. KCOP, 4 FCC Rcd 4988 (1989), the Commission addressed the sponsorship identification requirements in the context of barter programming. In that case, station KCOP



had made available annually \$300,000 worth of station advertising time in exchange for the rights to 455 showings of "He Man and the Masters of the Universe." A citizens' group claimed that the toymaker and program producer should be identified as sponsors of the program.

Stating that its "concern is solely that the value of what KCOP exchanged for the programming might have been less than the program's worth," the Commission ruled that the station did not have to make the requested sponsor identification.

After analyzing the legislative history, the Commission concluded that Section 317 of the Communications Act did not require it "to engage in a detailed review of the adequacy of a broadcaster's payment in every case in which a program discount is alleged." The Commission ruled that under the facts of the case, a \$300,000 annual figure was not "nominal" or "token" and that the producers had extracted from KCOP "the full, fair market value of the program." Since KCOP "did not purchase the program in question for only a nominal fee," no sponsor identification was required. The Court of Appeals has denied review of this decision. National Assn. for Better Broadcasting v. FCC, 902 F.2d 1009 (D.C. Cir. 1990).

### **3. Sponsored PSAs**

The Commission has reminded broadcasters that Public Service Announcements which are paid for by a sponsor must carry sponsorship identification announcements. PSAs which are broadcast free must carry only the identification of the entity on whose behalf they are carried. 6 FCC Rcd 5861 (1991).

## **D. Fee Collection**

### **1. Overview**

The Commission has established a new fee filing system which requires that a special form (Form 155) be used with each application and which requires that, until new forms are issued, each application contain the pertinent fee type code.<sup>5</sup> Moreover, applications which are feeable are now to be sent to Pittsburgh, PA, not to Washington, DC. (See Appendix B for a schedule of Fees, Codes and Addresses.)

**THE USE OF THE FEBRUARY 1992 FORM 301 ELIMINATES THE NEED FOR SUBMITTING A FORM 155 WITH THAT FORM.**

In order to minimize the possibility of loss or delay involved in sending applications to Pittsburgh, the Commission has established a "back-up procedure" for certain time sensitive applications.

**a. Timely Filed Applications**

For time critical, feeable broadcast and common carrier applications, heretofore filed in Washington, D.C., the Commission will accept as timely filed those applications stamped in by the lockbox bank (Mellon Bank in Pittsburgh, PA), before 12 o'clock midnight on the next business day following the *official* deadline or cut-off date established by the Commission.

For example, if the Commission establishes a deadline date of May 16, all filings received at the Mellon Bank in Pittsburgh, PA, before 12 o'clock midnight on May 17, will be considered as timely filed.

**b. "Back-Up" Filing Procedures**

A back-up filing procedure has been established for *only* time critical, feeable broadcast and common carrier applications, previously filed in Washington, to provide "insurance" against lost or late filings. This procedure can be used *only* if applications are being delivered to Pittsburgh via express mail (U.S. Postal Service) or an established courier service which "normally" may be expected to deliver an application to Pittsburgh by the next business day after placement with the service. This procedure is *not* available to filers who are mailing via first class mail or delivering by any means other than an established commercial courier or express mail.

To receive this protection against loss or lateness, two copies of a filled out fee form (FCC Form 155), one copy of a legible proof of express mailing or courier receipt, one copy of the application/filing, and one copy of the remittance (in that order) must be filed with the Office of the Secretary by 5:30 p.m. on the *official* deadline or cut-off date established by the Commission.

Copies of these "back-up" filings will be retained in storage by the Secretary's Office and can only be accessed by the applicant when an issue concerning a lost or late filing is raised.

**2. Procedure**

**a. Fee and Form 155 Requirement**

Each application or other filing submitted to the Commission for which a fee is prescribed must be accompanied by a remittance in the full amount of the

fee due and FCC Form 155.<sup>6</sup> The filing of an application on FCC Form 301, February 1992 edition need not be accompanied by a Form 155. (As they are updated, other FCC Forms will contain the Form 155 information.)

A single FCC Form 155 may be used when paying multiples of a single type of fee for authorizations that may be requested in one application or request and/or for up to five different authorizations (with different fee codes) that may be requested in the same application or request. Applications subject to fees which are submitted without an FCC Form 155 will be dismissed. Improperly completed FCC Forms 155 may subject the underlying filing to dismissal. Filings subject to a fee that are submitted without a fee, with an insufficient fee, with a fee payment in an improper form, or with a payment instrument that is uncollectible shall be dismissed and the application returned without processing. No application or other filing will be deemed sufficient for processing unless the correct fee is attached.

Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. The additional fee will then be required with the resubmission. The entire fee will be forfeited if the application is not resubmitted to the Commission by the appropriate resubmission deadline. Applicants should attach a copy of the Commission's request for additional or corrected information, or a stamped copy of the original submission, to their resubmission.

#### **b. Form of Payment**

Fee payments should be by check, bank draft or money order payable to the FCC. The Commission discourages applicants from sending cash and will not be responsible for cash sent through the mail. Applicants are required to submit one payment instrument (check, bank draft or money order) and FCC Form 155 with each application or filing. Multiple payment instruments for a single application or filing are not permitted. The FCC may accept multiple money orders as payment for a single application where the fee exceeds the maximum amount for a money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.

The FCC may require payment of fees with a cashier's check when: (a) a person or organization has, on two or more occasions, made payment with a payment instrument on which the Commission did not receive final payment and such failure is not excused by bank error; or (b) the number of expected receipts for a particular filing window or time frame justifies the use of a cashier's check to ensure final payment before the Commission expends resources in processing the submissions.

The FCC will not furnish fee receipts. An applicant may request a date-stamped copy of an application by submitting an extra copy of the filing. Those filing by mail must provide a stamped, self-addressed envelope.

### c. Filing Locations

The locations for fee payments for each form are listed in Appendix B. While applicants are encouraged to check the Appendix prior to filing, the following are the addresses for the most commonly used forms:

#### Commercial TV

##### Forms

301	}	Federal Communications Commission
302	}	Mass Media Services
303-S	}	P.O. Box 358165
	}	Pittsburgh, PA 15251-5165
314	}	Federal Communications Commission
315	}	Mass Media Services
316	}	P.O. Box 358350
	}	Pittsburgh, PA 15251-5350

#### Commercial Radio

##### Forms

##### AM

##### FM

301	}	Federal Communications Commission	Federal Communications Commission
302	}	Mass Media Services	Mass Media Services
303-S	}	P.O. Box 358190	P.O. Box 358195
	}	Pittsburgh, PA 15251-5190	Pittsburgh, PA 15251-5195
314	}	Federal Communications Commission	Federal Communications Commission
315	}	Mass Media Services	Mass Media Services
316	}	P.O. Box 358350	P.O. Box 358350
	}	Pittsburgh, PA 15251-5350	Pittsburgh, PA 15251-5350

### d. Conditionality of Grant

Any FCC grant will be conditioned upon final payment of the applicable fee. If final payment is not made prior to a grant, the application or filing will:

- (a) be dismissed and returned to the applicant;
- (b) lose its place in the processing line; and

- (c) not be accorded retroactive treatment if resubmitted after the relevant filing deadline.

If, subsequent to a grant, the Commission is notified that final payment has not been made, the Commission will:

- (a) automatically rescind that grant;
- (b) notify the grantee of this action; and
- (c) not permit retroactive treatment for the resubmission of the application or filing if the relevant deadline has expired.

Upon receipt of a notification of rescission of the authorization, the grantee must immediately cease any operations initiated pursuant to the grant.

**e. Return or Refund of Charges**

- (a) The full amount of any fee submitted will be returned:
  - (1) when no fee is required;
  - (2) when the FCC determines that an insufficient fee has been submitted within 30 calendar days of receipt of filing, and the filing is dismissed;
  - (3) when the application is filed by an applicant who cannot fulfill a prescribed age requirement;
  - (4) when the Commission adopts new rules that nullify applications already accepted for filing, or a new law or treaty would render useless a grant or other positive disposition of the application;
  - (5) when a waiver is granted; or
  - (6) when an application for new or modified facilities is not timely filed in accordance with the filing window as established by the Commission in a public notice specifying the earliest

and latest dates for filing such applications.

**Note:** Payments in excess of an application fee will be refunded only if the overpayment is eight dollars (\$8.00) or more.

(b) Applicants designated for comparative hearings will be entitled to a grant without payment of the hearing fee or a refund of the hearing fee paid in the following circumstances:

- (1) When only one applicant files a Notice of Appearance and pays the hearing fee, that single remaining applicant will be entitled to a refund of the hearing fee upon request if it is immediately grantable or if all issues specified in the designation order and requiring resolution can be deleted.
- (2) When a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provides for the dismissal of all but one of the applicants, and the single remaining applicant is immediately grantable, no hearing fee is due. However, if the application cannot be granted without resolution of issues specified in the designation order, the applicant must pay the hearing fee. That payment will be refunded upon request if all outstanding issues can be deleted.

However, hearing fees paid pursuant to the above will be retained by the Commission in any case requiring a decision on the merits of an applicant's post-designation amendment or evidentiary showing, whether by Summary Decision or otherwise.

(c) Applicants for first-come, first-served construction permits will be entitled to a refund of the fee, if within fifteen days of the issuance of a Public Notice indicating that there is a previously filed pending application for the same vacant channel, such applicant notifies the Commission that it no longer



wishes the application to remain on file behind the first applicant and any other applicants filed before his or her application, and the applicant specifically requests a refund of the fee paid and dismissal of his or her application. 6 FCC Rcd 5919 (1991).

**f. General Exemptions from Charges**

No fee shall be required for:

(a) Applications filed for the sole purpose of modifying an existing authorization (or a pending application) in order to comply with new or additional requirements of the Commission's rules or the rules of another Federal agency. (However, if the applicant also requests an additional modification, renewal, or other action, the appropriate fee for such additional request must accompany the application. Cases in which a fee will be paid include applications by FM and TV licensees or permittees seeking to upgrade a channel after a rule making.)

(b) Applicants in the Special Emergency Radio and Public Safety Radio Services that are government entities or nonprofit entities. Applicants claiming nonprofit status must include a current Internal Revenue Service Determination Letter documenting this nonprofit status.

(c) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees who certify that the station will operate or does operate noncommercially.

(d) Noncommercial entities requesting Commission authorization in any other mass media service, private radio service or common carrier service otherwise requiring a fee, if that service is used in conjunction with the noncommercial educational broadcast station.

(e) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service under certain specified circumstances.

**g. Adjustments to Charges**

The Schedule of Charges listed in Appendix B will be adjusted by the Commission on October 1, 1993, and every two years thereafter, to reflect the percentage change in the Consumer Price Index.

#### **h. Hot Line**

The Commission maintains a Hot Line for fee inquiries. The number is (202) 632-3337 or 3338.

#### **i. Special Note Concerning Annual Ownership Report Fees**

Because it has received numerous inquiries regarding the fee status of various aspects of "annual" ownership reports (as opposed to those filed in conjunction with initial licensing or license assignments and transfers), the Commission, on June 6, 1990, released a Public Notice clarifying these matters. The following summarizes that Public Notice:

The "annual" ownership report for a single AM, FM or TV broadcast station would consist of: one Fee Processing Form (FCC Form 155); one or more Forms 323s (depending on the number of entities which have an interest in the licensee); and a check covering the required "annual" ownership report fee of \$35.00.

Licensees owning multiple stations with different renewal anniversary filing dates can submit an annual ownership report for each of their stations on the anniversary date of their choice.

Licensees need file only one Fee Processing Form (Form 155) when they submit multiple annual ownership reports at the same time. A single check covering the total required fee should be included with FCC Form 155.

The annual ownership report is filed on an individual station basis and the \$35.00 report fee is calculated thereon. It is the number of annual ownership reports or stations for which a report is filed that determines the total fee due; not the number of FCC Form 323s filed in connection therewith. For example, if the licensee of six (6) radio stations and two (2) television stations files its annual ownership reports at the same time, a total fee of \$280.00 is due, regardless of the number of FCC Form 323s or "no change" letters that may be required to be filed.

The annual ownership report that may be required at the same time that the licensee is filing its renewal application should not be included with that renewal. Different filing requirements and fees apply to these submissions. The annual ownership report must be mailed or delivered in a separate envelope to the Mellon Bank in Pittsburgh.



A letter submission certifying "no change" constitutes a station's "annual ownership report" for that year and is governed by the same fee and filing requirements as an "ownership report."

The Fee Processing Form (FCC Form 155) allows for the use of more than one Fee Type Code. Use Fee Type Code MAR on one line for fees associated with radio stations (both AM and FM), and use MAT on another line for fees associated with television stations.

A fee is charged only for the licensee's submission of an "annual" ownership report. There are no fees for the filing of an ownership report (FCC Form 323) that is required after grant of an original construction permit, when a permittee applies for an initial license, or after the consummation, pursuant to Commission consent, of a transfer of control or license assignment. These ownership reports should be delivered or mailed to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

## **E. Renewal Considerations**

While the basic license renewal themes of the Main Volume remain unchanged, the following are some significant changes:

(1) The filing fee for renewal applications for commercial broadcast stations has been raised from \$30 per station to \$100 per station. (See Appendix B.)

(2) When applying for renewal, applicants should use Form 303-S dated May 1988. The previous version of the form has been superseded and should not be used. (See Appendix of Forms.)

3) The changed Form 303-S requires the recasting of the instructions contained in the Main Volume for the completion of the application. Applicants are reminded to check the appropriate box indicating whether a fee is enclosed. Commercial TV applicants must also answer Question 9.

### **Detailed discussion of questions of Revised Form 303-S**

**Question 1:** This question requires the identification of the applicant. It is suggested that the information correspond exactly to the information appearing on the license which is to be renewed.

**Question 2:** This question requires the identification of the service in which the station operates.

**Question 3:** This question requires the identification of any FM or TV Booster for which renewal of license is also requested.

**Question 4:** This question asks whether the Annual Employment Reports and Annual Ownership Reports have been filed with the FCC during the license term. If the documents have not been filed, or not filed on time, an explanation of the reasons must be submitted.

**Question 5:** The applicant is required to certify that the station is in compliance with the alien ownership restrictions contained in Section 310 of the Communications Act. This law prevents the FCC from granting a license to:

- any alien or representative of an alien;
- any corporation organized under the laws of any foreign country;
- any corporation of which any officer or director is an alien or of which more than one fifth of the capital stock is owned or voted by aliens; or
- any corporation directly or indirectly controlled by any other corporation of which any officer or more than one fourth of the directors are aliens, or of which more than one fourth of the capital stock is owned or voted by aliens.

Any corporation which has many shareholders may have to conduct a stockholder survey in order to complete this question.

**Question 6:** The Commission has broadened the scope of its inquiry into character qualifications. In its Policy Statement and Order, 5 FCC Rcd 3252 (1990), the Commission indicated that "conviction for misconduct constituting a felony will be relevant to our evaluation of...character." Thus, the inquiry includes "all felonies and mass media related antitrust or anticompetitive matters."

Renewal applicants also will be required "to provide information regarding relevant pending adjudication involving fraudulent representations to governmental units, felonies and mass media related antitrust or anticompetitive matters."

At press time, the Commission was in the process of amending the renewal form to reflect these changes, but no specific questions have been promulgated. Broadcasters are cautioned to consult counsel to determine the exact status of the form if they believe there are any matters which should be reported.

**Question 7:** This question pertains to the possible environmental impact of a grant of the renewal application. Renewal applicants are cautioned to examine their operations to determine compliance with environmental regulations, particularly new developments which may have taken place since the filing of the last renewal application. In addition, special attention should be paid to RF radiation matters appearing on pages 36 and 150-152 of the Main Volume and in NAB's A Broadcaster's Guide to FCC RF Radiation Compliance, a copy of which can be ordered by calling (800) 368-5644.

**Question 8:** This question pertains to the placement in the public inspection file of the documents listed on page 33 of the Main Volume. (See p. 61 for a discussion of the location of the public inspection file.)

**Question 9:** This question applies only to commercial TV stations. It pertains to children's TV programming. See Chapter II.

NOTE: Licensees are specifically reminded that a Form 303-S must be accompanied by an anti-drug certification. See Appendix of Forms.

(4) The Renewal Process

(a) Competing Applications and Petitions to Deny

As a result of allegations that the renewal system was being used to obtain payments or benefits from the renewal applicant, the Commission concluded "that there is the clear potential for abuse of our license renewal process." The Commission therefore imposed limitations on payments to competing applicants and petitioners to deny.

The limitations on payment are as follows:

(1) To competing applicants — a prohibition on "all payments to competing applicants (other than the incumbent licensee) for the withdrawal of an application prior to the Initial Decision stage of a comparative hearing. Thereafter, [the Commission] will approve settlements that do not exceed the

withdrawing party's legitimate and prudent expenses for filing and litigating the competing application."

(2) To petitioners to deny — the Commission will allow monetary payments to a petitioner "provided they do not exceed the petitioner's legitimate and prudent expenses in prosecuting its petition." Citizens' agreements will be reviewed on a case-by-case basis. Agreements which call for payments to petitioners (but not to an unrelated party) will "not further the public interest and hence will likely be disapproved." However, this presumption may be rebutted by a public interest showing.

In addition, the Commission has revoked its so-called Cameron Policy, which presumed that the competing applicant will have the use of the incumbent's transmitter site in the event that the renewal is denied. The Commission concluded that retention of that policy "makes it more economically attractive for bogus challengers to file merely to elicit a settlement." 4 FCC Rcd 4780 (1989).

(b) Comparative Criteria

Recognizing the tension which exists between the licensee's expectation of renewal and the challenger's right to a full hearing, the Commission has proposed a "two-step" procedure whereby the incumbent licensee would make an initial showing of its past programming, which the competing applicant would be permitted to rebut. The ALJ would determine then whether the challenger had successfully rebutted the incumbent's presumption of meritorious service. If the challenger is successful in rebutting that presumption, then the issue of preference for past service would become an issue in the hearing.<sup>7</sup> In consideration of this proposal, two facts are of paramount importance to the broadcaster. The first of these is the necessity for community oriented programming; the second is the need for adequate records to document the quality and quantity of that programming.

While the licensee's record as a whole is considered in assessing "renewal expectancy," where a licensee has instituted a dramatic and permanent format change, its programming following that change is more probative of its likely future performance than its programming prior to that change. Monroe Communications Corp. v. FCC, 900 F.2d 351 (D.C. Cir. 1990).

(c) Character Qualifications

The Commission has revised its character qualification policy so that all felony convictions will now be considered in assessing qualifications, because such violations are probative of the party's propensity to disobey the law. However, mitigating circumstances may be considered. Adjudicated violations of antitrust or anticompetitive laws involving any mass medium will also be

considered. The Commission may grant the application subject to the outcome of pending proceedings.<sup>8</sup>

Licenses are reminded that they are required to report to the Commission any adjudications relevant to character qualifications that are issued during the license term. (FCC Rule 1.65(c)) This report must be filed within 90 days of the time the licensee learns of the facts. 6 FCC Rcd 3448 (1991). NOTE: The effectiveness of this section has been suspended, only insofar as licensees (not applicants for new facilities or assignees) are concerned. (FCC 91-244)

(d) Revised Announcements for LPTV and Similar Stations

By a report and order released April 9, 1992, FCC 92-165, the Commission simplified the renewal announcements for LPTV stations. Henceforth, an applicant who files an application for renewal of a LPTV which originates programming may omit the references to a public inspection file. Moreover, such an applicant need not publish an ad in the newspaper as heretofore required. The newspaper publication requirement will, however, apply to LPTV stations which do not originate programming, TV translator, TV booster, FM translator or FM booster stations. 7 FCC Rcd 2284 (1992).

The required broadcast announcements are to be made as close to the standard announcement time as the LPTV's schedule will permit.

## **F. New Applications**

While the details of the new application<sup>9</sup> and the comparative hearing processes are outside the scope of this work, the Commission has adopted several procedures for broadcasters involved in applying for new facilities or seeking to transfer or assign existing stations.

Both the comparative process for new applications and the comparative renewal process are now being reexamined by the Commission. The new application criteria are subject to a rulemaking proceeding initiated on April 10, 1992. 7 FCC Rcd 2664 (1992). These comparative renewal proceedings have been pending for many years.

### **1. Settlements Among Applicants for Construction Permits**

The Commission has limited the dollar amount of payments that can be made to settle competing applications for construction permits for new broadcast stations, or modifications to facilities of existing stations, to legitimate and prudent out-of-pocket expenses. These settlements can be made even after the hearing begins. 6 FCC Rcd 2901 (1991).



Parties seeking approval of a settlement prior to the start of the trial phase must submit: 1) certifications that they have not received and will not receive any money or other considerations in excess of their legitimate and prudent expenses; 2) the exact nature and amount of any consideration paid or promised; 3) an itemized accounting of the expenses for which they seek reimbursement; and 4) the terms of any oral agreement relating to the dismissal or amendment of the application.

These limitations do not apply to bona fide mergers of interest, but the FCC will scrutinize these mergers to prevent abuse. 6 FCC Rcd 2901 (1991).

## **2. Comparative Hearings**

In order to expedite the comparative hearing process, the Commission adopted rules which will: 1) encourage settlements through earlier payment of the hearing fee and provide for settlement conferences before settlement judges; 2) expedite discovery through the use of standardized document production orders and integration statements and improve time limits on discovery; 3) expedite hearings by encouraging written proceedings and establishing time guidelines for the various phases of the hearing and the preparation of the Initial Decision; and 4) expedite appeals through limitation on oral argument and impose time guidelines on the completion of the review process.

The Commission also has modified the so-called Ruarch policy under which settlements can extinguish the continuing validity of integration and divestiture commitments made during the comparative hearing process. The Commission will now permit successful applicants in a "global" settlement (all applicants) to withdraw divestiture and integration proposals where the settlement is entered into by the exchange of exhibits deadline. 6 FCC Rcd 3403 (1991).

The Commission declined to eliminate or alter the Anax doctrine, which permits applicants to exclude limited partners and the owners of non-voting stock from the calculation to determine the comparative credit for integration of ownership and management, as well as for diversity. 6 FCC Rcd 157 (1990).

## **3. Petitions to Deny New Applications, Assignment and Transfer Applications and Abuse of Frequency Allocation Proceedings**

Where a petitioner to deny seeks to dismiss a petition filed against an application for a new station or for the transfer, assignment or modification of an existing facility, each party to the petition must submit a copy of any written agreement relating to the dismissal and an affidavit: (1) certifying that it has not received or paid, and will not receive or pay, any money in exchange for the dismissal of the petition to deny in excess of legitimate and prudent expenses incurred by the petitioner seeking dismissal; (2) disclosing the exact nature and

amount of any money or other consideration paid or promised in connection with the dismissal of the petition to deny; and (3) disclosing the terms of any oral agreement related to the dismissal of the petition to deny.

Any petitioner seeking reimbursement of expenses under the agreement must also submit an itemized accounting of its expenses incurred in preparing, filing and prosecuting its petition for which reimbursement is sought.

As in its treatment of citizens' agreements in the renewal context, the FCC will not enforce private contractual agreements related to programming in citizens' agreements reached in settlement of petitions filed in new licensing, modification and transfer and assignment contexts. The renewal process remains the appropriate setting in which to assert that a licensee has failed adequately to serve community needs.

The Commission will, however, review citizens' agreements reached in exchange for dismissing petitions to deny, or refraining from filing them, for the limited purpose of determining whether they comport with the public interest.

The limitation on payment of expenses applies not only in cases of filing a petition to deny, but also to threats of filing such petitions.

In proceedings involving changes in the FM or TV Table of Allotments, the Commission will limit the amount and type of consideration that may be paid for the withdrawal of an expression of interest to legitimate and prudent expenses incurred in preparing and filing the expression of interest. Currently, parties are required to include an expression of interest in applying for, constructing, and operating the proposed facility if the allotment is made. These expressions have the status of representations to the Commission, as do any assertions contained in pleadings filed with the Commission. Thus, a statement of interest in operating a station made by a party who, in fact, lacks the requisite intent to construct and operate the proposed facility will, henceforth, be considered a material misrepresentation.<sup>10</sup>

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## Endnotes

1. In addition to the listed information, the report must also contain a listing of broadcast stations in which the underlying licensee (or permittee) has an interest.
2. The Commission's decision regarding Technical Assignment criteria, 6 FCC Rcd 6273 (1991), eliminated the exemption previously granted to Class IV stations in the processing of their applications.
3. 4 FCC Rcd 3853 (1989).
4. Form 701 is now used for applications in the common carrier and satellite service and should not be used by broadcast applicants.
5. This requirement for the filing of FCC Form 155 will be eliminated once the Commission publishes its application and reporting forms with the fee type encoded on the form.
6. This requirement for the simultaneous submission of fees with applications or other filing does not apply to the payment of fees for which the Commission has established a billing process.
7. 4 FCC Rcd 6363 (1989).
8. 5 FCC Rcd 3252 (1990).
9. Effective April 5, 1990, the Commission had placed a freeze on the acceptance of applications for new AM stations, except for specially listed circumstances. On March 27, 1992, the Commission announced that it would lift the freeze on April 19, 1992. See Chapter XIII of this Supplement.
10. 5 FCC Rcd 3911 (1990).



**Table I: TV LICENSE RENEWALS**

<u>State</u>	<u>Filing Date</u>	<u>Expiration Date</u>
Alabama	12/02/96	04/01/97
Alaska	10/01/93	02/01/94
Arizona	06/01/93	10/01/93
Arkansas	02/03/97	06/01/97
California	08/02/93	12/01/93
Colorado	12/01/92	04/01/93
Connecticut	12/01/93	04/01/94
Delaware	04/01/94	08/01/94
Florida	10/01/96	02/01/97
Georgia	12/02/96	04/01/97
Hawaii	10/01/93	02/01/94
Idaho	06/01/93	10/01/93
Illinois	08/01/97	12/01/97
Indiana	04/01/97	08/01/97
Iowa	10/01/92	02/01/93
Kansas	02/01/93	06/01/93
Kentucky	04/01/97	08/01/97
Louisiana	02/03/97	06/01/97
Maine	12/01/93	04/01/94
Maryland	06/03/96	10/01/96
Massachusetts	12/01/93	04/01/94
Michigan	06/02/97	10/01/97
Minnesota	12/01/92	04/01/93
Mississippi	02/03/97	06/01/97
Missouri	10/01/92	02/01/93
Montana	12/01/92	04/01/93
Nebraska	02/01/93	06/01/93
Nevada	06/01/93	10/01/93
New Hampshire	12/01/93	04/01/94
New Jersey	02/01/94	06/01/94
New Mexico	06/01/93	10/01/93
New York	02/01/94	06/01/94
North Carolina	08/01/96	12/01/96
North Dakota	12/01/92	04/01/93
Ohio	06/02/97	10/01/97
Oklahoma	02/01/93	06/01/93
Oregon	10/01/93	02/01/94
Pennsylvania	04/01/94	08/01/94

**Table I: TV LICENSE RENEWALS -- cont'd**

<u>State</u>	<u>Filing Date</u>	<u>Expiration Date</u>
Rhode Island	12/01/93	04/01/94
South Carolina	08/01/96	12/01/96
South Dakota	12/01/92	04/01/93
Tennessee	04/01/97	08/01/97
Texas	04/01/93	08/01/93
Utah	06/01/93	10/01/93
Vermont	12/01/93	04/01/94
Virginia	06/03/96	10/01/96
Washington	10/01/93	02/01/94
West Virginia	06/03/96	10/01/96
Wisconsin	08/01/97	12/01/97
Wyoming	06/01/93	10/01/93
Washington, DC	06/03/96	10/01/96
Virgin Islands	10/01/96	02/01/97
Puerto Rico	10/01/96	02/01/97
Guam	10/01/93	02/01/94
American Samoa	10/01/93	02/01/94
Mariana Islands	10/01/93	02/01/94

**Table II: RADIO LICENSE RENEWALS**

<u>State</u>	<u>Filing Date</u>	<u>Expiration Date</u>
Alabama	12/01/95	04/01/96
Alaska	10/01/97	02/01/98
Arizona	06/02/97	10/01/97
Arkansas	02/01/96	06/01/96
California	08/01/97	12/01/97
Colorado	12/02/96	04/01/97
Connecticut	12/01/97	04/01/98
Delaware	04/01/98	08/01/98
Florida	10/02/95	02/01/96
Georgia	12/01/95	04/01/96
Hawaii	10/01/97	02/01/98
Idaho	06/02/97	10/01/97
Illinois	08/01/96	12/01/96
Indiana	04/01/96	08/01/96
Iowa	10/01/96	02/01/97
Kansas	02/03/97	06/01/97
Kentucky	04/01/96	08/01/96
Louisiana	02/01/96	06/01/96
Maine	12/01/97	04/01/98
Maryland	06/01/95	10/01/95
Massachusetts	12/01/97	04/01/98
Michigan	06/03/96	10/01/96
Minnesota	12/02/96	04/01/97
Mississippi	02/01/96	06/01/96
Missouri	10/01/96	02/01/97
Montana	12/02/96	04/01/97
Nebraska	02/03/97	06/01/97
Nevada	06/02/97	10/01/97
New Hampshire	12/01/97	04/01/98
New Jersey	02/02/98	06/01/98
New Mexico	06/02/97	10/01/97
New York	02/02/98	06/01/98
North Carolina	08/01/95	12/01/95
North Dakota	12/02/96	04/01/97
Ohio	06/03/96	10/01/96
Oklahoma	02/03/97	06/01/97
Oregon	10/01/97	02/01/98
Pennsylvania	04/01/98	08/01/98

**Table II: RADIO LICENSE RENEWALS -- cont'd**

<u>State</u>	<u>Filing Date</u>	<u>Expiration Date</u>
Rhode Island	12/01/97	04/01/98
South Carolina	08/01/95	12/01/95
South Dakota	12/02/96	04/01/97
Tennessee	04/01/96	08/01/96
Texas	04/01/97	08/01/97
Utah	06/02/97	10/01/97
Vermont	12/01/97	04/01/98
Virginia	06/01/95	10/01/95
Washington	10/01/97	02/01/98
West Virginia	06/01/95	10/01/95
Wisconsin	08/01/96	12/01/96
Wyoming	06/02/97	10/01/97
Washington, DC	06/01/95	10/01/95
Virgin Islands	10/02/95	02/01/96
Puerto Rico	10/02/95	02/01/96
Guam	10/01/97	02/01/98
American Samoa	10/01/97	02/01/98
Mariana Islands	10/01/97	02/01/98

**Table III: LPTV & TV TRANSLATOR LICENSE RENEWALS**

<u>State</u>	<u>Filing Date</u>	<u>Expiration Date</u>
Alabama	04/01/93	08/01/93
Alaska	12/02/96	04/01/97
Arizona	08/01/97	12/01/97
Arkansas	04/01/93	08/01/93
California	12/01/92	04/01/93
Colorado	02/03/97	06/01/97
Connecticut	02/01/93	06/01/93
Delaware	02/01/93	06/01/93
Florida	04/01/93	08/01/93
Georgia	04/01/93	08/01/93
Hawaii	12/02/96	04/01/97
Idaho	06/03/96	10/01/96
Illinois	04/01/93	08/01/93
Indiana	04/01/93	08/01/93
Iowa	10/01/93	02/01/94
Kansas	08/02/93	12/01/93
Kentucky	04/01/93	08/01/93
Louisiana	04/01/93	08/01/93
Maine	02/01/93	06/01/93
Maryland	02/01/93	06/01/93
Massachusetts	02/01/93	06/01/93
Michigan	04/01/93	08/01/93
Minnesota	12/01/93	04/01/94
Mississippi	04/01/93	08/01/93
Missouri	04/01/93	08/01/93
Montana	04/01/94	08/01/94
Nebraska	08/02/93	12/01/93
Nevada	10/01/92	02/01/93
New Hampshire	02/01/93	06/01/93
New Jersey	02/01/93	06/01/93
New Mexico	04/01/97	08/01/97
New York	02/01/93	06/01/93
North Carolina	04/01/93	08/01/93
North Dakota	12/01/93	04/01/94
Ohio	02/01/93	06/01/93
Oklahoma	06/01/93	10/01/93
Oregon	10/01/96	02/01/97
Pennsylvania	02/01/93	06/01/93

**Table III: LPTV & TV TRANSLATOR LICENSE RENEWALS -- cont'd**

<u>State</u>	<u>Filing Date</u>	<u>Expiration Date</u>
Rhode Island	02/01/93	06/01/93
South Carolina	04/01/93	08/01/93
South Dakota	10/01/93	02/01/94
Tennessee	04/01/93	08/01/93
Texas	06/01/93	10/01/93
Utah	06/02/97	10/01/97
Vermont	02/01/93	06/01/93
Virginia	04/01/93	08/01/93
Washington	08/01/96	12/01/96
West Virginia	02/01/93	06/01/93
Wisconsin	04/01/93	08/01/93
Wyoming	02/01/94	06/01/94
Washington, DC	02/01/93	06/01/93
Virgin Islands	04/01/93	08/01/93
Puerto Rico	04/01/93	08/01/93
Guam	12/02/96	04/01/97
American Samoa	12/02/96	04/01/97
Mariana Islands	12/02/96	04/01/97

On July 28, 1992, the Commission proposed to conform the license expiration dates of TV translators, FM translators and LPTV stations to the license expiration dates of the full power stations in the same state. It also proposed the use of a single renewal form for simultaneous renewal of commonly owned translators, LPTVs and full power stations having the same renewal date. (MM Docket No. 92-168)

**Table IV: FM TRANSLATOR LICENSE RENEWALS**

<u>State</u>	<u>Filing Date</u>	<u>Expiration Date</u>
Alabama	04/01/97	08/01/97
Alaska	12/01/95	04/01/96
Arizona	08/01/96	12/01/96
Arkansas	04/01/97	08/01/97
California	12/02/96	04/01/97
Colorado	02/01/96	06/01/96
Connecticut	02/03/97	06/01/97
Delaware	02/03/97	06/01/97
Florida	04/01/97	08/01/97
Georgia	04/01/97	08/01/97
Hawaii	12/01/95	04/01/96
Idaho	06/01/95	10/01/95
Illinois	04/01/97	08/01/97
Indiana	04/01/97	08/01/97
Iowa	10/01/97	02/01/98
Kansas	08/01/97	12/01/97
Kentucky	04/01/97	08/01/97
Louisiana	04/01/97	08/01/97
Maine	02/03/97	06/01/97
Maryland	02/03/97	06/01/97
Massachusetts	02/03/97	06/01/97
Michigan	04/01/97	08/01/97
Minnesota	12/01/97	04/01/98
Mississippi	04/01/97	08/01/97
Missouri	04/01/97	08/01/97
Montana	04/01/98	08/01/98
Nebraska	08/01/97	12/01/97
Nevada	10/01/96	02/01/97
New Hampshire	02/03/97	06/01/97
New Jersey	02/03/97	06/01/97
New Mexico	04/01/96	08/01/96
New York	02/03/97	06/01/97
North Carolina	04/01/97	08/01/97
North Dakota	12/01/97	04/01/98
Ohio	02/03/97	06/01/97
Oklahoma	06/02/97	10/01/97
Oregon	10/02/95	02/01/96
Pennsylvania	02/03/97	06/01/97

**Table IV: FM TRANSLATOR LICENSE RENEWALS -- cont'd**

<u>State</u>	<u>Filing Date</u>	<u>Expiration Date</u>
Rhode Island	02/03/97	06/01/97
South Carolina	04/01/97	08/01/97
South Dakota	10/01/97	02/01/98
Tennessee	04/01/97	08/01/97
Texas	06/02/97	10/01/97
Utah	06/03/96	10/01/96
Vermont	02/03/97	06/01/97
Virginia	04/01/97	08/01/97
Washington	08/01/95	12/01/95
West Virginia	02/03/97	06/01/97
Wisconsin	04/01/97	08/01/97
Wyoming	02/02/98	06/01/98
Washington, DC	02/03/97	06/01/97
Virgin Islands	04/01/97	08/01/97
Puerto Rico	04/01/97	08/01/97
Guam	12/01/95	04/01/96
American Samoa	12/01/95	04/01/96
Mariana Islands	12/01/95	04/01/96

On July 28, 1992, the Commission proposed to conform the license expiration dates of TV translators, FM translators and LPTV stations to the license expiration dates of the full power stations in the same state. It also proposed the use of a single renewal form for simultaneous renewal of commonly owned translators, LPTVs and full power stations having the same renewal date. (MM Docket No. 92-168)





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## CHAPTER II

### Programming Policies and Practices

#### A. Quarterly Issues/Programs Lists

The importance of the accuracy and completeness of the Issues/Program Lists cannot be overestimated. Under the proposed comparative criteria, these lists would constitute a pivotal part of the licensee's presumption of license renewal expectancy. (See p. 17, supra.)

#### B. Fairness Doctrine — Political Broadcasts

##### Introduction

The Commission has completely revamped its political broadcasting rules and associated procedures. All references in the Main Volume and in the 1991 update are superseded by the material contained in this volume. 7 FCC Rcd 678 (1991); 7 FCC Rcd 1616 (1992); FCC 92-210 (1992); 7 FCC Rcd 4123 (1992).

A detailed discussion of the political broadcasting rules can be found in the NAB's "Political Broadcast Catechism" dated September, 1992. The ensuing discussion highlights the new rules and procedures.

##### 1. Fairness Doctrine

The abolition of the Fairness Doctrine has been upheld by the Court Syracuse Peace Council v. FCC, 867 F.2d 654 (D.C. Cir. 1989), cert. denied, 110 S.Ct. 717 (1990). The Court upheld the FCC's finding that the Doctrine chilled speech, and that the rationale for the Doctrine — the scarcity of facilities — was no longer applicable.

Various efforts in Congress to codify the Doctrine were unsuccessful as of the close of the 101st Congress.

To that extent, the discussion in the Main Volume regarding the applicability of the Doctrine and procedures thereunder, while no longer representing prevailing law, may be used by broadcasters as their own guide in assuring a fair presentation of competing public issues.

The termination of the Fairness Doctrine has affected the following "carryover" policies which had been based on the Fairness Doctrine:

a. **The Ballot Issue Rule.** The Commission held that the repeal of the Doctrine "because of its chilling effect applies to the fairness doctrine's application to ballot issues as well." 7 FCC Rcd 541 (1992). An appeal of this decision is pending.

b. **Political Editorial Rule.** Until further Commission action, broadcasters are still required to provide notification, transcript and reply time when a station editorializes for or against a legally qualified candidate.

c. **Personal Attack Rule.** As of February 14, 1992, the Staff has ruled that "the Commission has not yet decided the precedential applicability of the Meredith decision to the personal attack rule." 7 FCC Rcd 1385 (1992).

## **2. Political Broadcasts**

### **a. Definition of a "Use"**

A "use of a broadcast facility" which triggers equal time obligations and lowest unit charge obligations is a "non-exempt" appearance (by picture of identified or identifiable voice) of a candidate which is controlled, approved or sponsored by the candidate or the candidate's authorized committee once the candidate has become legally qualified. This is an important departure from previous interpretations.

### **b. Definition of "Exempt program"**

Appearances on bona-fide newscasts, news interviews, news documentaries and on the spot coverage of bona fide news events are exempt appearances. The Commission has ruled regarding the exempt status of many programs such as the television network "morning" shows and major syndicated "talk" programs. Broadcasters should check the "exempt" status of these programs before airing the appearances of candidates.

### **c. Pre-clearance and Sponsor ID**

A station may not censor a candidate appearing on a non-exempt program.

Stations may "request" candidates to submit their spots in advance to allow the station to determine whether the ad constitutes a "use" and whether it complies with the sponsor I.D. requirements. If the candidate refuses, the station may advise the candidate that the station will take whatever steps are necessary

to add the appropriate sponsor I.D. to the submitted spot. The additional time for the I.D. need not be provided free.

A proper sponsor I.D. must state that the spot is "paid for" or "sponsored by" the specific entity, e.g., committee, organization, association, etc., paying for the spot. If the spot is not paid for by the candidate, the I.D. must state whether the spot is authorized by the candidate.

All television political spots must contain a visual sponsor I.D. in letters equal to at least four percent of the screen height (twenty scan lines) and on the air for at least four seconds. No audio I.D. is required.

#### **d. The Political File**

A station's political file must contain all requests for political time and their disposition, including the schedule of the time provided or purchased, the dates and times the spots actually aired, the rates charged, the classes of time purchased, and documentation of any rebates provided.

FCC rules require that the file be maintained in an "orderly manner."

Because of the importance to candidates of timely access to political file information, the FCC requires that all required information be placed in the file "as soon as possible." The Commission requires that stations provide some means by which candidates can determine exactly when opposing spots aired. A station may meet this obligation by placing the "information concerning the times ordered by the candidate in the file with a notation that the station will provide immediate assistance and access to its program logs to candidates requesting information" as to the time that scheduled spots actually aired. The file must be currently updated to show that information.

#### **e. Candidate Access**

Only candidates for Federal offices have a right of "reasonable access" to a station's facilities.

Stations are no longer required to sell any advertising time to candidates for state or local offices. However, if a station sells to state or local candidates, equal opportunities, sponsor I.D. and lowest unit charge rules apply, and any "volume discounts" must be made available.

Federal candidates are entitled to reasonable access, including the ability to purchase program-length time consistent with a station's schedule. Stations may not set specific limits on the amount of time which a federal candidate may

purchase (such as one spot per hour), but may decline to meet unreasonable requests for time.

Stations still can refuse to sell advertising time during news programs.

Stations which do not sell political advertising during news programs are not required to create and sell to candidates a "news-adjacency" class of time. If they have such a time slot, or create one, the station must not charge more than the lowest unit rate for the same type of time that otherwise would be offered during the news program itself. If advertising time during news adjacencies is sold as part of a regular program rotation, e.g., a prime time rotator or a 10-11 p.m. slot, candidates may be charged the lowest unit rate which applies to that class of time.

Stations must provide candidates with access to the station to place orders or change copy during the weekend prior to an election if, during the year prior to the election period, the station has provided such weekend access to any commercial advertiser. A station's weekend obligation to a candidate is "proportional" to the weekend access afforded commercial advertisers.

#### **f. Advance Payment**

A station may require Federal candidates to provide advance payment up to seven days before the spot is scheduled to air unless its deadline for commercial advertisers is shorter. In February 1992, the FCC staff elaborated on this issue, based on the general FCC policy that stations cannot discriminate between commercial advertisers and candidates. The staff determined that if a candidate or a candidate's agency has an established credit relationship with the station and the candidate or the agency assumes responsibility for payment, advance payment cannot be required if the station would not so treat commercial advertisers or their representatives under the station's customary payment/credit policies. Thus, stations may still require candidates to pay in advance for spots unless all of the above criteria are met.

#### **g. Lowest Unit Charge**

While the concept of the lowest unit charge appears to be simple on its face, the complexity of current broadcast selling practices has turned the simple concept into a difficult and confusing problem.

Under Section 315(b) of the Communications Act, a broadcast stations's charges for advertising time purchased for candidate uses while campaigning for political office during the last 45 days of a primary campaign or the last 60 days of a general election campaign may not exceed "the lowest unit charge of the station for the same class and amount of time for the same period." Outside

those immediate pre-election periods, the charges to such candidates may not exceed "the charges made for comparable use of such station by other users." Subsection (d) of Section 315 directs the Commission to prescribe rules to implement the statute. The Commission, over the years, has adopted rules, provided general guidance and issued rulings both orally and in writing in response to complaints and requests for declaratory relief.

The current Commission policy emphasizes "disclosure" to candidates of the various options available to them. Licensees are cautioned to exercise great care in preparing disclosure statements, such disclosure being an affirmative obligation of a broadcast licensee. Rates provided outside the 45-day and 60-day "windows" must be disclosed also.

The lowest unit charge complexity has resulted in protracted litigation in various courts in which candidates have contended that stations have overcharged them for broadcast time. In order to bring uniformity of procedure and substance in deciding these controversies, the Commission has preempted state courts from deciding whether stations violated the "lowest unit charge" requirement of Section 315, and determined that there is no private cause of action against stations under federal law for candidates who believe they were overcharged. This FCC preemption encompasses both determinations of liability and the assessment of damages for any violations. At the same time the FCC adopted new complaint procedures for determining these controversies.

Under the FCC's new complaint procedures, candidates who believe they were overcharged must file a complaint with the FCC. If, after a broadcaster has an opportunity to respond, the Commission determines that the candidate has established a *prima facie* case that he or she had been overcharged, it will order discovery into the station's commercial sales practices to determine whether it afforded candidates the lowest unit charge. If the FCC determines that its political rules have been violated, it may order rebates to candidates as well as forfeitures. The FCC established \$12,500.00 as the "base fine" for violation of the lowest unit charge, reasonable access and equal opportunities provisions. 6 FCC Rcd 7511 (1991), rec. den. 7 FCC Rcd 4123 (1992).

### **3. Candidate Debates**

In Chandler v. Georgia Public Telecommunications Commission, 917 F.2d 486 (11th Cir. 1990), cert. denied, 112 S. Ct. 71 (1991), the court ruled that a public television station did not violate the First or Fourteenth Amendment by refusing to invite a Libertarian candidate to participate in a debate in which the Republican and Democratic candidates appeared.



#### **4. Station Liability**

In DeYoung v. Patten, 898 F.2d 628 (8th Cir. 1990), the court ruled that "there is no implied private cause of action (for damages) under the Federal Communications Act to enforce the equal time provision." At press time, there were suits pending in at least three states seeking to obtain damages.

### **C. Children's Television Rules**

On April 9, 1991, the FCC adopted a Report and Order implementing the Children's Television Act of 1990. Following reconsideration, 6 FCC Rcd 5093 (1991), the new rules are as follows:

#### **1. Commercial Limits**

The Children's Television Act requires that the Commission review at renewal time the extent to which television licensees have met the commercial time limits of 10½ minutes on the weekend and 12 minutes during the week.

##### **a. "Children's Programming"**

The FCC has applied the new commercial limits to programs "originally produced and broadcast primarily for an audience of children 12 years old and under." This definition excludes programs originally produced for a general audience that are significantly viewed by children. It also excludes programs intended for a teenage audience.

##### **b. "Commercial Matter"**

The Commission defined "commercial matter" as "air time sold for purposes of selling a product," in keeping with common parlance and generally understood practice. "Commercial matter" includes advertising for services, as well as for products. PSAs sponsored by non-profit organizations and promoting not-for-profit activities will not be considered commercial matter.

The Commission has excluded from the definition of commercial matter air time sold for purposes of presenting educational and informational material, including "spot" announcements, with the only sponsorship mention a "sponsored by" and the visual appearance of a sponsor's standard corporate logo, as long as the logo appears when the sponsor is verbally identified and lasts only as long as the required sponsorship identification. However, the addition of product mentions or advertising to such an identification announcement would constitute commercial matter.



The mention of a sponsor in a program promo will count as commercial time, as will the mention of a product or service related to the program or the sponsor or the mention of a prize furnished by the program sponsor -- so long as some consideration is given, even as part of a program package. A promotional announcement will not be considered commercial matter simply because it includes a mere identification of a product to be used as a prize.

**c. Clock Hour Rule**

The Commission will "count" commercial minutes by clock hour, rather than by program segment. Commercials in adjacent positions immediately outside a program's clock hour will not be attributed to that hour.

Where a half-hour "island" of children's programming appears in the midst of general programming, the hourly limits should be applied on a proportionate basis. The commercial limits are to be prorated and applied to program segments of five minutes or longer duration. The commercial time within an hour of "children's" programming, even where there are two or more separate programs within the hour, can be assigned in any configuration.

**d. Cable**

The commercial limits apply to both television broadcast stations and to cable operators. Cable network programming is included in the time limits for which cable operators will be responsible.

**e. Commercial Limits Record-keeping and Reporting**

Licensees will be required to certify compliance with the commercial time limits at renewal time and explain all instances where they have exceeded the limits. They will further be required to maintain records "sufficient to verify compliance with the commercial limits" and to "substantiate the broadcaster's certification of compliance at renewal time." These records must be made available to the public in the public inspection file.

Stations may keep program logs to meet the record-keeping requirement, but they are not obliged to. Tapes of children's programs, so long as they are made available for viewing by the public, will satisfy the requirement. In addition, the following types of documentation will also satisfy the record-keeping requirement: (1) lists of the number of commercial minutes per hour aired during identified children's programs; or (2) certified documentation that the station and/or network/syndicator, as a standard practice, formats and airs identified children's programs within the statutory limits of commercials, together with a detailed listing of any overages. Documentation must identify the specific programs which the broadcaster believes are subject to the commercial limits.

Broadcasters may rely on network records or other information, so long as such records meet the above standards.

These commercial records must be placed in the station's public file no later than the tenth day of the quarter following the quarter in which the programs are aired.

## **2. Programming Requirements**

Under the terms of the Act, each television broadcast station is required to serve the "educational and informational needs of children" in its overall programming, which is to include "some" programming specifically designed to serve those needs.

### **a. Age Range of "Children"**

The programming obligation applies to programs "originally produced and broadcast for an audience of children 16 years of age and under."

The Commission will not require that licensees target programming to all age groups of the child audience. The Order states that "stations may select the age groups they can most effectively serve."

### **b. Definition of "Educational and Informational Programming"**

The Commission has stated that "programming that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or emotional/social needs, can contribute to satisfying the licensee's obligation to serve the educational and informational needs of children." On reconsideration, it declined to modify that definition.

The Commission will rely on the good faith judgment of the licensee in making these determinations.

### **c. Assessment of Needs**

The Report and Order requires that licensees "assess" the educational and informational needs of children in their communities.

As a permissive guideline only, the Commission adopted four assessment criteria for determining how to meet the educational and informational needs of children. It suggested that a licensee take into account: (1) the circumstances within the community; (2) other programming on the station; (3) programming aired on other broadcast stations within the community; and (4) other programs

for children available in the broadcaster's community of licensee. Licensees would then air programs "intended to meet" the educational and informational needs of children, responding to this assessment. A licensee has no *per se* obligation to monitor other stations or to change its plans based on what another station airs.

The Commission has made it clear that, if a licensee's programming and non-broadcast efforts are meeting the Act's requirements, the Commission would not, either in "renewal review or in the context of a challenge, require an additional elaboration of the licensee's determination of how to serve children's educational and informational needs."

**d. Amount and Type of "Specifically Designed" Programming**

The Commission has declined to establish any minimum amount of "specifically designed" programming that is necessary to be aired to comply with the Act, stating that the amount is "likely to vary according to other circumstances, including, but not limited to, type of programming aired and other non-broadcast efforts made by the station." The legislative history of the Act as well as the Report and Order do indicate that licensees must air "some" educational and informational programming "specifically designed" for children.

The Order specifically states that the Commission is not requiring "regularly scheduled" educational and informational programming, that short segment programming, including vignettes and PSAs, may qualify. Such qualifying programming need not be locally produced and need not be live action.

However, qualifying programming cannot consist solely of short-segment programming, although such programming can contribute to satisfying the programming obligation. The station must air "some" standard-length children's programs in order to fulfill the requirement.

The Commission stated that it is giving licensees "discretion in fulfilling their responsibility under the Act encompasses consideration of financial and technical factors and market size in evaluating compliance."

**e. Non-broadcast Efforts**

The Act states that, in making its renewal review of compliance with the programming standard, the Commission may also consider (1) any special non-broadcast efforts which enhance the educational and informational value of such programming, and (2) any "special effort" to produce or support programming broadcast by another station in the licensee's market that is specifically designed to serve the educational and informational needs of children.

If a station produces or buys children's programs broadcast on another station, both stations may rely on such programming in their renewal applications. The extent of support, measured in both time and money, of another station's programming will determine the weight afforded it. However, non-programming efforts will not entirely eliminate the obligation to provide "some" "specifically designed" educational and informational programming.

**f. Noncommercial Educational Stations**

The Commission has construed the statutory obligation to meet children's educational and informational needs as applying to all broadcasters, including noncommercial educational broadcasters. It has, however, tolled application of specific record-compilation, filing and submission requirements to noncommercial stations. The Commission will require noncommercial stations to maintain documentation sufficient to show compliance at renewal time with the Act's programming obligations in response to a challenge or to specific complaints.

**g. Programming Record-keeping and Reporting**

The Order requires licensees to maintain children's programming records and to make these records part of their public inspection file. The records should contain a summary of the licensee's "most significant" programming response, non-broadcast efforts and support for other stations' programming directed to the educational and informational needs of children. These reports may be updated quarterly (as issues/program reports are required to be) or annually.

Licensees must identify their children's programming records as such, either as part of the issues/program list or as a separate list. The records must indicate the time, date and duration and include a brief description of the program or non-broadcast effort. The records need only contain a general statement regarding the scheduling of short-segment programming, such as PSAs and regularly scheduled programs, and need not provide exact times for each and every airing of these programs. Licensees also need not give the exact time of a short-segment program that airs within a longer program, nor state the origin of a program.

A licensee must submit a "summary of the licensee's programming response and other efforts directed to the educational and informational needs of children" and must keep it in its public file. Licensees need not submit documents identical to those contained in the public file with their renewal applications. Licensees may format the public file information differently when submitting it at renewal. However, the factual information and data submitted to the Commission should be identical to that contained in the public file. Question 9 of the renewal form specifically requires a response regarding a TV station's programming efforts and commercial practices.

### **3. Program-Length Children's Commercials**

The Order defines a program-length commercial (PLC) as a program associated with a product in which commercials for that product are aired.

Thus, most current programming that is based on a toy or other product will not be considered a PLC unless ads for that toy or product are aired within the body of the program or are not separated from the start or close of the program by intervening and unrelated program material.

### **4. Penalties**

The Commission will assess forfeitures for violations of the rules if violations are "willful or repeated." Forfeitures for violations of the programming standard will be considered only at renewal.

Violations of the Act will be considered along with a licensee's overall performance in determining whether it is entitled to a renewal. The Commission may impose reporting requirements, forfeitures, short-term renewals or other sanctions and may take violations into account in determining the weight of a renewal expectancy in a comparative renewal proceeding.

## **D. Broadcasts During Emergency**

By Public Notice of September 27, 1990, the FCC reminded television licensees that:

If a television station broadcasts any emergency information, that is, information which is of timely decisional value to the public in furthering the safety of life and property, it must present the information visually and may present it aurally as well. Stations may use any method of visual presentation which results in a legible message conveying the essential emergency information. Methods which may be used include, but are not necessarily limited to, electronic captioning, manual methods (hand printing), slides or mechanical printing processes. The use of sign language or symbols may be used to supplement, but not supplant, the other methods because not all persons with impaired hearing understand sign language.

The obligation to provide visual displays is incurred whenever emergency information is broadcast. The obligation is not limited to those instances in which the EBS is formally activated, a request is received from a government official, or the information is



specifically identified as an emergency announcement. Furthermore, the obligation cannot be avoided because the emergency information is broadcast during a regularly scheduled program or is characterized as news or public affairs. It is the act of transmitting emergency information that triggers the rule.

## **E. Obscene or Indecent Material**

In October 1988, Congress passed legislation requiring the Commission to promulgate, by January 31, 1989, regulations implementing the ban on indecent programming on a 24-hour-per-day basis. (Section 608, P. L. 100-459) After the Commission announced its intention to enforce the Congressionally mandated ban,<sup>1</sup> the Court of Appeals stayed the enforcement of that ban on January 23, 1989.

Responding to the court remand, and to the Congressional action, in July 1990, the Commission adopted a report concluding that the statutory prohibition of broadcast indecency on a 24-hour basis, as it would be enforced by the Commission, is constitutional.<sup>2</sup>

Based upon data collected in the proceeding, the Commission found that children are in the broadcast audience for both radio and television at all times of day and night, and that alternatives such as time channeling and technological restrictions are insufficient to protect them from exposure to harmful indecent programming.

The FCC also concluded that (1) "children" are appropriately defined as minors 17 and under; (2) the Commission's definition of indecency has been upheld by the courts and will not be changed; and (3) adults have alternative sources of indecent materials. For purposes of broadcasting, the Commission has defined indecency as "language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs."

In 1991, the Court vacated the Commission's decision, holding that Congress "cannot preclude the Commission from creating a safe harbor exception to its regulation of indecent broadcasts." Action for Children's Television v. FCC, 932 F.2d 1504 (1991). Until such time as a new safe harbor goes into effect, the Commission's enforcement authority against indecent broadcast does not extend to material broadcast between the hours of 8 p.m. and 6 a.m. 6 FCC Rcd 7548 (1991).

As this Supplement was going to press, the United States Congress had sent a bill to the President (which he is expected either to sign or simply allow

to become law without his signature) establishing a midnight to 6 a.m. "safe harbor" for commercial stations and most noncommercial stations. The measure, part of the Public Broadcasting Authorization legislation (H.R. 2877/S. 1504), also provides for a 10:00 p.m. - midnight "safe harbor" for noncommercial stations not broadcasting past midnight. The constitutionality of these provisions is expected to be challenged in court.

At this point, it is appropriate to remind broadcasters that it is well established that the First Amendment does not protect obscene speech, and that, therefore, the government may have broad authority to regulate obscenity without reference to First Amendment principles.

## **F. Non-Network Territorial Exclusivity**

As part of its cable television proceedings, the Commission made changes in the "territorial exclusivity" rules pertaining to the enforcement of program exclusivity rules by one television station against another television station (as opposed to a cable system).

The new rule permits broadcast television stations to acquire national exclusivity rights for the exhibition of non-network programming against all other stations. This change also permits broadcast stations to purchase cable syndicated exclusivity on a national basis whenever they have obtained national broadcast exclusivity rights. In particular, the revised rule will permit broadcast "superstations" to obtain full exclusivity rights to programs they present to viewers nationwide through cable service. Where a station determines that it is in its best interest to bargain for and purchase national exclusivity rights, and where the program supplier agrees to sell such rights, no other station will be able to obtain the rights to exhibit such programming. 3 FCC Rcd 5299 (1988).

## **G. Television Violence**

In October 1990 Congress passed legislation providing antitrust immunity to broadcasters and cable operators to enable them to draft voluntary guidelines designed to alleviate the negative impact of violence on television. A further discussion of this subject can be found in Chapter XI of this Supplement.

## **H. Discontinued Policies**

The following additional policy has been discontinued since the publication of the Main Volume.



## **1. TV Colorburst During Black and White Programming**

This policy required that colorbursts be omitted during extended monochrome television transmissions. This requirement, contained in note 8 of Figure 8 of Section 73.699 of the rules, was deleted although the rules recommend that colorbursts be omitted. 4 FCC Rcd 2004 (1989).

### **I. Fines and Forfeitures**

In 1989, Congress increased the dollar amount of forfeitures which the Commission may levy upon the violators of its rule. Broadcasters are cautioned to bear in mind that the Commission has, over the years, imposed forfeitures based on a number of different violation of its rules. See Chapter V of the Main Volume for a detailed discussion of this subject. By a policy statement released August 1, 1991, the FCC established standards for assessing forfeitures. 6 FCC Rcd 4695 (1991). A listing of these forfeiture standards can be found in Appendix C.

### **J. Broadcasting of Hoaxes**

Following a series of incidents involving false reports of news events, the Commission enacted a new rule, 73.1217, barring the broadcasting of "false information concerning a crime or catastrophe," if the licensee knows that the information is false, it is foreseeable that the broadcast will cause "substantial public harm" and such broadcast does, in fact, cause such harm to occur. Any programming "accompanied by a disclaimer" will be presumed not to pose foreseeable harm, if the disclaimer "clearly characterizes the program as fiction" and is presented in a reasonable manner under the circumstances. 7 FCC Rcd 4106 (1992).

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## Endnotes

1. The FCC held that the primary purpose of Congress when mandating the 24-hour prohibition in 1988 was to protect children from exposure to indecent material. The Commission promulgated regulations implementing the statutory requirement, but, when these were challenged, the Court stayed their implementation pending judicial review. Before briefing and oral argument, the Supreme Court, in a case raising analogous issues in the context of indecent telephone transmissions, stated that indecent speech may be regulated if it promotes a "compelling" governmental interest and is "narrowly tailored" to serve that interest. In light of the Supreme Court's opinion, the Commission was granted its request for remand to receive public comment and collect data relevant to application of this test to the broadcast indecency prohibition. 5 FCC Rcd 5297 (1990).
2. In overturning the Commission's 24 hour ban, the Court ruled that the "generic definition of indecency comports with constitutional overbreadth requirements." Action for Children's Television v. FCC, 932 F.2d 1504 (1991).



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## CHAPTER III

### Newsgathering Policies

#### A. Libel and Invasion of Privacy

##### 1. Libel

The decision of the Supreme Court, in Milkovich v. Lorain Journal Co., 110 S.Ct. 2695 (1990), has, for all practical purposes, eliminated the federal constitutional defense of "opinion" in defamation suits. The material contained on pages 76-77 of the Main Volume must be read in light of this recent decision.

Briefly stated, these were the pertinent facts in this case. A newspaper published a column implying that Mr. Milkovich, the coach of a high school wrestling team, had lied under oath during an investigation of a fight in which his team was involved. The coach sued the newspaper alleging that the column had accused him of the crime of perjury. The state courts held that the column represented "constitutionally protected opinion" and that the newspaper was immune from suit.

In reversing the Ohio court, the Supreme Court ruled that so-called "opinion" statements do not represent constitutionally protected speech. The Court stated:

If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the statement, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar."

After reciting a number of existing safeguards to the freedom of speech, the Court ruled:

We are not persuaded that, in addition to these protections, an additional separate constitutional privilege for "opinion" is required to ensure the freedom of expression guaranteed by the First Amendment. The dispositive question in the present case then becomes whether or not a reasonable factfinder could conclude that the statements in the Diadium column imply an assertion that petitioner Milkovich perjured himself in a judicial proceeding. We think this question must be answered in the affirmative.

It should be stressed that the Supreme Court did not rule that the newspaper had defamed the coach. The Court merely ruled that the newspaper could not use the "opinion" defense as a bar to Mr. Milkovich's action.

Because many news reporters and broadcasters have grown accustomed to the proposition that "opinion" can be interposed as a defense in a defamation case, it is important that all personnel become aware of this very important development of law. This Supreme Court ruling does not affect the other traditional defenses to a libel claim.

Following the Supreme Court's decision in Milkovich, a number of courts have applied the newly announced doctrine. Of particular interest to broadcasters is the decision in Unelko Corp. v. Rooney, 912 F.2d 1049 (9th Cir. 1990), cert. denied, 111 S.Ct. 1586 (1991). In that case, the court upheld the grant of summary judgment against a manufacturer who had sued Andy Rooney for stating that the product "didn't work." The Court ruled that the humorous tenor of the Rooney segment on 60 Minutes did not protect the program against libel, but that the manufacturer had failed to meet the Milkovich burden "of showing falsity" of the statement.

In another case, Immuno A.G. v. Moor Jankowski, 18 Med. L. Rptr. 1625 (1991), New York's highest court held that under state law a letter to the editor criticizing the plaintiff's use of animals for research was worthy of particular court protection. "The common expectation of a letter to the editor is not that it will serve as a vehicle for the rigorous and comprehensive presentation of factual matter but as one principally for the expression of individual opinion." The court stated "A citizen troubled by things going wrong should feel free to write to the newspaper and the newspaper should feel free to publish the letter. It is often the only way to get things put right." (internal quotations omitted)

The New York Court also ruled in favor of the Donahue program in a case in which a store owner complained that a guest had made derogatory remarks about the store and had carried a sign asserting that the store "does not deliver." Behr v. Weber, 18 Med. L. Rptr. 2237 (1991).

The Supreme Court of Michigan in a decision addressing the recurrent question of interpretation of words which may have different meanings held "... if technical and common parlance yield different interpretations of the same word, the constitutionally required breathing space affords protection to the writer's choice." Rouch v. Enquirer News, Mich. Sup. Ct. #89799, slip opinion filed July 15, 1992, p. 26.

## **2. Invasion of Privacy**

While a number of newsgathering organizations have self-imposed codes regarding the identification of rape victims, there has been a growing number of suits arising out of the identification of such victims.

In the classic case, Cox Broadcasting Corporation v. Cohn, 420 U.S. 469 (1975), the Supreme Court was faced with a right of privacy action arising out of the identification of a rape victim's name during the reporting of the trial. Georgia law made it a misdemeanor and a basis for civil liability to broadcast a rape victim's name. The Court ruled that the First Amendment barred the state from forbidding the accurate publication of a rape victim's name obtained from judicial records that are maintained in connection with a public prosecution and that themselves are open to public inspection. Freedom of the press provided by the First and Fourteenth Amendments prevents the state from making the broadcast the basis for civil liability in a cause of action for invasion of privacy.

The Court held the interest of privacy fades when the information involved already appears on public record.

In 1989, in The Florida Star v. B.J.F., 109 S.Ct. 2603 (1989), the Supreme Court reversed the award of damages for invasion of privacy to a rape victim whose name was obtained from a police record which had listed her name. Unlike the previous case, there had been no arrest or trial of a suspect — and the newspaper had a policy of not publicizing the names of sexual assault victims. The Court recognized the public policy of protecting rape victims but concluded that:

...where a newspaper publishes the truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order, and that no such interest is satisfactorily served by imposing liability to appellant under the facts of this case.

Following these decisions, the court has ruled that "when police are called, a private disturbance loses much of its private character," Scheetz v. The Morning Call, Inc., 946 F.2d 202 (3rd Cir. 1991),<sup>1</sup> and that

"the First Amendment forbids the imposition of civil liability in a privacy action based upon the truthful publication of matters contained in open judicial proceedings. The news media have a significant role in our system of justice by subjecting trials to public scrutiny in order to ensure that trials are fair.

The First Amendment protects the reporting of private facts when revealed in connection with newsworthy matters. A publication which is factually accurate is not tortious when connected with a newsworthy event, even though it may otherwise be offensive to ordinary sensibilities."

A party filing a defamation action generally cannot prevent the defendant from inquiring into otherwise privileged information material to the case. "... it would be anomalous, indeed, if a plaintiff could significantly lighten the burden of proving falsity by using the statutory privilege as a shield to preclude evidence of truth." Howe v. Detroit Free Press, Mich. Sup. Ct. #9042, slip opinion filed July 14, 1992, p. 22.

## **B. Confidentiality**

The Supreme Court has ruled that a person giving information to a newspaper under a promise of confidentiality could sue that newspaper if the newspaper breaches the confidence. The Court held that "generally applicable laws [promissory estoppel] do not offend the First Amendment simply because their enforcement against the press had incidental effects on its ability to gather and report the news." Cohen v. Cowles Media Co., 111 S.Ct. 2513 (1991).

## **C. Cameras in the Courtroom**

Beginning in July 1991, cameras were permitted in selected Federal courtrooms under a three-year experiment approved by the U.S. Judicial Conference. While almost all states permit some form of broadcast or photographic equipment coverage of their proceedings, this is the first time that such coverage has been permitted in federal courts.

## **D. Unauthorized Interception**

In 1989, the court ruled that the portion of the Federal Wiretap Statute which prohibited the unauthorized interception and recording of communications if made for an "injurious" purpose was unconstitutionally vague. Boddie v. ABC,



Inc., 881 F.2d 267 (6th Cir.), cert. denied, 110 S.Ct. 737 (1990). The provision in question has now been eliminated.

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## **Endnotes**

1. In this case, the plaintiff herself disclosed the allegations of spousal assault to the police and the court concluded that she "could not reasonably expect the information to remain secret."

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## CHAPTER IV

### Commercial Policies and Practices

#### A. Deceptive Advertising Practices

One of the most common deceptive advertising practices deals with so-called "credit repair" services which undertake to restore a person's credit or secure a credit card, promising to refund the required fee if they fail to produce results. A number of such advertisers has refused to make the refunds when they failed to produce the promised results, and the Federal Trade Commission has taken action against such advertisers. In one case, the estimated loss to consumers exceeded one million dollars. Stations should be particularly careful when carrying this type of advertising. Action Credit Systems, Inc., FTC File 872 3107, March 2, 1989.

#### B. Children's Television Advertising

For a discussion of the Commission's regulations dealing with program length commercials and the length of commercial continuity, see pp. 36-41, supra. The following is a brief summary of these requirements. Commercial matter in programs originally produced and broadcast for an audience of children 12 years and under shall be limited to 12 minutes on weekdays and 10.5 minutes on weekends. Sponsored PSAs and promos which do not mention a product do not count as commercial matter. Commercial limits are to be applied on a "clock-hour" basis.

A program length commercial is a program associated with a product in which commercials for that product are aired. Unrelated programming material must be aired between a program featuring a product and a commercial for that product.

The Commission has not changed its rules which prohibit "host selling" and which require a distinct break between program matter and commercials.

For a discussion of the Commission's decision regarding barter arrangement for children's television programs, see p. 41, supra. (KCOP-TV).

### **C. Lotteries, Contests, etc.**

Effective May 7, 1990, the Commission amended its lottery rules to conform to the revisions in the law as a result of the Charity Games Advertising Clarification Act of 1988. As of that date, broadcasters are permitted to advertise lotteries authorized or not otherwise prohibited by the state in which they are conducted if they are conducted by: (a) not-for-profit organizations; (b) governmental organizations; or (c) commercial entities, provided the lottery is clearly occasional and ancillary to the primary business of the commercial organization. Broadcasts of advertisements of state-conducted lotteries will be permitted only if they are allowed by the station's state, and may be on behalf of the home state or any other state which has a state-operated lottery. The "adjacent state" rule has been dropped.

Broadcasts concerning lotteries conducted by governmental organizations, not-for-profit organizations and promotional lotteries will be permitted in any state, whether or not lotteries are authorized in that state, so long as they are lawful in the state in which they are conducted.

A not-for-profit organization is "any organization that would qualify as tax exempt under Section 501 of the Internal Revenue Code of 1986." The same revised regulations apply also to cable. Advertising of gambling casinos, such as those in Las Vegas or Atlantic City, continues to be unlawful.

It should be stressed that, under the new regulations, advertising for a state-operated lottery conducted in a state different from the one in which the station is located will be permitted only if the station is located in a state that already runs its own official lottery.

Under the new law, stations will be allowed to promote lotteries of local government units, and those sponsored by non-profit groups, if permitted under state law. Thus, church bingo games, for example, will be a legitimate subject of advertising on radio and TV under the new federal law, if conducted in a state which permits such games and the advertising of them.

The new federal law permits lottery promotions by commercial businesses when these promotions are conducted as a sideline and the state does not prohibit the ads. Thus, advertising an occasional lottery conducted by the local supermarket would be acceptable so long as such advertising does not violate state law. Care should be taken to control frequent lotteries by the same sponsor. The gaming activities of Las Vegas-type gambling casinos, whose main business is gambling, are specifically excluded from the relaxed regulations and may not be advertised. 5 FCC Rcd 3019 (1990). The FCC recently has fined stations in Las Vegas for carrying promotions for local casinos in which players who won games

at the establishments were afforded more entries into the contest than persons who obtained "free" entries. 7 FCC Rcd 2923 (1992).

Following the 1988 amendments to the lottery laws, the Court ruled that a station located in North Carolina (which does not have a state lottery) near the Virginia border (which has a state lottery) could not be prevented from carrying advertisements for the Virginia lottery. Such a prohibition, the Court ruled "is constitutionally invalid." Edge Broadcasting Co. v. U.S., 732 F.Supp. 633, 646, (E.D. Va 1990). The Appeals Court upheld the decision. It stated that "under the unique circumstances of this case, the government's goal to preserve state lottery policies is not advanced by precluding Power 94 from broadcasting Virginia Lottery announcements." Edge Broadcasting Co. v. U.S., 70 RR 2d 765 (1992). Because of the facts of this case (only 2% of North Carolina residents were affected) and because the opinion is "unpublished," the case may have a limited impact.

Another change in the lottery rules took place, effective June 14, 1989, when the Commission amended its broadcast and cablecast rules (FCC Rule 73.1211 and FCC Rule 76.213) to conform to the newly enacted Indian Gaming Regulatory Act (P.L. 100-497). The new rules now permit the carrying of information under the following circumstances:

1. the game is conducted on Indian lands.
2. the game is owned by an Indian tribe or grandfathered pursuant to Federal law.
3. the game is permitted by law in the state where it is held; and
4. in the case of games where the participants "play against the house" instead of essentially against each other (e.g., blackjack, baccarat, slot machines), the Tribe and the State have entered into a compact to permit such games, and all requirements of the compact have been met.

Congress noted that five states, Arkansas, Hawaii, Indiana, Missouri and Utah, ban all gaming. 4 FCC Rcd 4590 (1989).

The National Indian Gaming Commission has published detailed regulations concerning various forms of games on Indian lands (57 FR 12382, April 9, 1992). Broadcasters should assure themselves that the particular game being advertised meets the specific definitions of these regulations.

Inquiries can be addressed to the National Indian Gaming Commission, (202) 632-7003.

For further information concerning lotteries and contests, consult Lotteries & Contests: A Broadcaster's Handbook available from NAB's Services Department, (202) 368-5644.

#### **D. Time Brokerage-Type "LMAs": The Principle and Its Rules**

In several significant decisions, the Commission's staff expanded the scope of the permissible relationship between independently owned stations in the same market. For example, in Joseph A. Belisle, 5 FCC Rcd 1825 (1990), the staff upheld an agreement between separately owned AM and FM stations whose city grade contours overlap, under which the AM station undertook to provide the FM station between 12 and 24 hours of programming per day. The FM station had the right to reject or preempt programming. The staff concluded that, regardless of the number of hours of programming the FM station chooses to accept from the AM station, the implementation of the affiliation will be legal, as long as the FM station continues to meet all of the Commission's requirements in providing its local service obligations. These include, but are not limited to: retaining the right to reject programs not in the public interest; retaining the right to cut into AM's programming in case of an emergency; broadcasting station identifications; maintaining a main studio within the station's principal community contour; covering local community issues for its issues/programs list; and maintaining the public inspection file.

In a similar vein, the staff approved a "time brokerage" arrangement between two independently owned stations whose contours overlap, whereby a time broker provided programming from 4:00 a.m. to midnight seven days a week for 24 months, with the hours from midnight to 4:00 a.m. being reserved for use of the licensee. One station also acquired an option to purchase the other. Faced with a complaint by a competitor that the arrangement violated the duopoly and premature transfer of control regulations, the staff held that the allegation of unauthorized transfer of control was negated by the licensee's reservation of control over programming, the right of preemption and retention of control over personnel. Roy Russo, 5 FCC Rcd 7586 (1990).

These staff decisions have now been codified by the FCC. On April 10, 1992, it released rules imposing limits on time brokerage agreements among broadcast stations effective August 1, 1992. 7 FCC Rcd 2755 (1992). While these arrangements can take different forms, generally they involve one station owner acquiring rights for sale of all advertising spots on another local station, in the same market and same service, and also acquiring the right to supply programming for that station. The programming may, in some cases, be simulcast from one of the broker's stations. Changing economic conditions,

particularly in AM, have resulted in the emergence of Local Management Agreements (LMAs) incorporating various forms of time brokerage and other similar arrangements. Although these arrangements may provide both parties with economic incentives and advantages, there are restrictions on time brokerage agreements which should be rigorously observed.

Briefly summarized, the new time brokerage joint venture rules are:

1. Filing of Agreements

All time brokerage agreements among stations must be placed in the stations' public inspection files and filed with the FCC. Confidential material may be deleted.

2. Simulcasting

Only 25 percent of programming can be duplicated on two local stations in the same service. This limitation does not apply to cross-service (AM/FM) programming, nor to "same service" stations serving different geographic areas.

3. Multiple Ownership

A brokering station's time brokerage interest is treated as "ownership" under the multiple ownership rules (See Chapter V), if it brokers more than 15 % of the hours per week of another station in the same market.

4. Licensee Responsibility

The licensee must continue to be responsible for what is broadcast on the station. That legal responsibility must remain with the licensee and cannot be transferred or abrogated. The licensee must retain the mechanism for controlling station operations and performance.

While a brokering entity may have an option to acquire a station, that agreement cannot be effectuated without FCC consent, and care must be taken that it is not exercised prematurely. Since such an agreement affects ownership, it must be filed with the Commission.

## **E. Payola**

Payola is the unreported payment to, or acceptance by, employees of broadcast stations, program producers or program suppliers of any money, service or valuable consideration to achieve airplay for any programming.



Section 507 of the Communications Act requires those persons who have paid, accepted or agreed to pay or accept such payments to report that fact to the station licensee before the involved matter is broadcast. In turn, Section 317 of the Act requires the licensee to announce that the matter contained in the program is paid for and to disclose the identity of the person furnishing the money or other valuable consideration.

The seriousness with which the Commission views the practice of payola was stressed by the Public Notice of May 18, 1988, in which the Commission announced a series of indictments resulting from its investigation of the practice. The announcement stated that the Commission rules require that each licensee "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals," information to enable the licensee to comply with the sponsorship identification requirements of section 317 of the Act. The reasonable diligence standard can require a higher duty of care by stations whose formats or other circumstances make them more susceptible to payola. "Thus, for example, the FCC expects stations that report to charting services to demonstrate greater diligence to prevent improper conduct by its principals and employees than would a station with an all news format. It may fall short of 'reasonable diligence' if the licensee of such a reporting station does nothing more than require its employees to execute affidavits stating that they will not violate laws and regulations prohibiting payola." 4 FCC Rcd 7708 (1988).

As discussed in the Main Volume (p. 112), broadcasters are reminded of the seriousness with which the Commission views payola activities.

The Commission called to licensees' attention that a broadcaster's failure to comply with section 317 of the Act and 47 C.F.R., Section 73.1212(b) of the Rules may result in the imposition of administrative sanctions, including monetary forfeiture or initiation of revocation proceedings.

## **F. Special Note Concerning Contests**

The Main Volume (pp. 107 et seq.) stressed the need for assuring that contests are not deceptive and that material facts are disclosed. The deregulation of some aspects of broadcasting has not lessened that responsibility and the FCC has insisted on both fairness and disclosure. Thus, the Commission has fined a station for promoting a contest offering a \$1000 prize when no such prize was given, 6 FCC Rcd 4170 (1991), or announcing "that \$100,000 worth of automobiles would be given away as prizes when, in fact, the prize was one car worth substantially less than that amount." 7 FCC Rcd 3574 (1992). A station in Iowa is facing a \$12,500 forfeiture for broadcasting a contest in which the winner was promised \$10,000 a year for 20 years, but the payment of the prize money was terminated after two years. 7 FCC Rcd 4474 (1992).

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## **CHAPTER V**

### **Other Operating Policies and Practices**

#### **A. The Public Inspection File**

The Main Volume has stressed the importance of (1) maintaining a proper public inspection file and (2) establishing procedures for facilitating public access to the file. The importance of these two factors cannot be over-emphasized. Broadcasters should bear in mind that members of the public have a right to see the documents which are required to be kept in the file, and that much friction with community groups can be avoided by treating persons who wish to examine the file with the same courtesy as would be shown to any business visitor. Members of the public cannot be required to make a prior appointment to see the File. 7 FCC Rcd 3972 (1992).

##### **1. Retention Requirements**

The following table lists the minimum retention requirements for documents which must be maintained in the Public Inspection File.

Document	Radio	TV
Letters From Public	3 Years	3 Years (separated by programming and nonprogramming)
Political Material	2 Years	2 Years
Procedural Manual <sup>1</sup>	Indefinitely	Indefinitely
Renewal Application	Until grant of 2nd renewal application	Until grant of 2nd renewal application
Issues/Programs Report	Until grant of 2nd renewal application following the quarter for which the reports were prepared	Until grant of 2nd renewal application following the quarter for which the reports were prepared
Certification of compliance with renewal announcements	For as long as the underlying application	For as long as the underlying application
Applications for new stations, and FCC correspondence pertaining thereto, including Initial Decision (if any) Final Decision (if any)	As long as application is pending before FCC or court. If application is granted, for 7 years or until grant of the first renewal, whichever is later	As long as application is pending before FCC or court. If application is granted, for 5 years or until the grant of the first renewal, whichever is later
Applications requesting extension of time to construct a new station, applications to transfer or assign the station	Same	Same
Annual Employment Reports	Same as renewal application	Same as renewal application
Ownership Reports	Same as renewal application	Same as renewal application
Engineering material pertaining to former mode of operation	3 Years after beginning operation with new mode	3 Years after beginning operation with new mode
Material pertaining to claim against station or relating to FCC complaint	Until notified in writing that may be discarded	Until notified in writing that may be discarded
Citizens' Agreement	Same as renewal	Same as renewal
Children's Program Report		Until grant of 2nd renewal application
Children's Advertising Certification		Until grant of 2nd renewal application
Time Brokerage Agreements Among Stations	As long as contract is in effect	As long as contract is in effect

This tabulation reflects changes through 7 FCC Rcd 2755 (1992).

## **2. Location of Public Inspection File**

The public inspection file is to be located in the community of license to which the station is licensed or is proposed to be licensed. It may be located at the main studio of the station or at any easily accessible place, such as an attorney's office or a public library. If, prior to July 16, 1987, the Commission permitted the station to locate its main studio outside the community of license, the file may be kept in the main studio, wherever it may be located. 3 FCC Rcd 5024 (1988). While the rule seems to permit maintaining the file at a place other than the main studio in the community of license, stations are cautioned that it is advisable to retain the file at the studio (if the studio is in the city of license) to allow for better maintenance and control.

## **B. Employment Practices**

### **1. Equal Employment Opportunity<sup>2</sup>**

In response to a petition filed by the NAB, the Commission concluded that gathering of information regarding an applicant's gender or race, if done solely for the purpose of preparing reporting information, "will not subject licensees to liability under state or Federal antidiscrimination laws." 4 FCC Rcd 1715 (1989).

It is extremely important that information filed with the Commission, initially or in response to inquiries, be as accurate as possible. In Beaumont Branch of the NAACP v. FCC, 854 F.2d 501 (D.C. Cir. 1988), the court ruled that the FCC was required to hold a hearing on a license renewal application where there was a "pattern of inconsistencies and misstatements that marked the licensee's communications... with the FCC."

The Commission has imposed substantial forfeitures on stations which have not met its criteria for an effective EEO program. Broadcasters are cautioned to examine their procedures and results and to implement changes, where necessary. Group Six Communications Inc., 7 FCC Rcd 1815 (1992), Stations in Louisiana, 7 FCC Rcd 1503 (1992). Of particular importance is the element of "self-assessment" under which the broadcaster periodically reviews the EEO practices to determine their effectiveness. Lanser Broadcasting Corporation, 7 FCC Rcd 4254 (1992).

The Commission has reminded all licensees "that their [EEO] efforts are expected to continue throughout their tenure and not just during the reporting period." Carolina Christian Broadcasting, Inc., 3 FCC Rcd 1907 (1988). Moreover, licensees "should engage in self-assessment periodically throughout the

license term, not just at the end of the term." WINFAS, Inc., 5 FCC Rcd 4902 (1990).

## **2. Minimum Wage**

The Federal minimum wage has been raised since the publication of the Main Volume. On April 1, 1991, the minimum wage was increased to \$4.25 an hour, except for American Samoa and Puerto Rico, where different requirements apply. (29 USC § 206)

In addition, workers under 20 years of age may be eligible for up to 90 days employment at the subminimum training wage, set at 85 percent of the federal minimum wage. The training wage became effective April 1, 1990, and is set to expire on April 1, 1993. The training wage regulations are found in Part 517 of the Labor Department rules and were published in the Federal Register on March 1, 1990.

As noted in NAB Counsel Memo L-9009 (1990), an eligible employee is one who (1) is legally employable by the employer; (2) had been employed by the employer for less than 90 days as of April 1, 1990; and (3) has not worked at the subminimum wage a total of 90 days with the employer or a total of 180 days with all previous employers.

In order to be able to pay the training wage to a worker who has never been employed at that wage, the employer must (1) ensure that the worker meets the employee eligibility requirements discussed above; (2) provide the worker with a copy of a specifically worded notice (the text of that notice can be found in Counsel Memo L-9009 or the March 1, 1990, Federal Register); (3) not pay the training wage in more than 25 percent of the hours worked by all employees each month; and (4) not displace a higher paid worker with a training wage worker.

In order to qualify a worker for a second 90 day period beyond that paid by a previous employer, the current employer must, in addition to the above requirements, (1) not have employed the worker during any part of his/her first 90 day period at the training wage; (2) prepare in writing and maintain a qualified on-the-job training program (no particular format is required); (3) furnish a copy of the training program to each worker during any part of the 90 day period; (4) provide such training to each worker; (5) conspicuously post a notice in the workplace of the types of jobs for which the on-the-job training is provided; and (6) furnish a copy of the notice annually to the Department of Labor.



## **C. Forfeitures**

Effective December 19, 1989, the Commission amended Section 1.80 of its rules governing forfeiture proceedings to reflect the increased dollar amount of forfeitures which may be levied for violation of its rules. 5 FCC Rcd 3708 (1990). This amendment is based on the congressional action which gave the Commission that increased authority. (P.L. 101-239)

Under the new regulation, if the entity subject to forfeiture penalty is a broadcast station licensee or permittee, or an applicant for any broadcast permit, certificate or other instrument of authorization issued by the Commission, the Commission may assess up to \$25,000 per violation for each day of a continuing violation, provided that the total amount assessed for a continuing violation may not exceed \$250,000 for any single act or failure to act. Larger penalties apply to common carriers.

While the Commission's rules provide for the issuance of a Notice of Apparent Liability, an opportunity to respond and for judicial enforcement of an unpaid forfeiture order, broadcasters are put on notice that these proceedings may often be costly and protracted. In one recent case, a station in New Mexico was ordered to forfeit \$10,000 for failing to light its tower in the prescribed manner. 6 FCC Rcd 34 (1990). In another case, the Commission assessed a \$20,000 fine against a television station in Iowa for building its facilities at a site different than the one stated in its CP. 5 FCC Rcd 2940 (1990). The Commission has increasingly used the forfeiture approach in its campaign against indecent programming. Infinity Broadcasting Corporation, 5 FCC Rcd 7291 (1990); Guy Gannett Publishing Co., 5 FCC Rcd 7688 (1990).

In 1992, the Commission published a schedule of standards and criteria to be used in the assessment of forfeitures and of factors to be used in adjusting these criteria upward or downward. Such factors include the history of prior offenses, good faith or voluntary disclosure, ability to pay, etc. (FCC 92-212). Because of the widespread use of forfeitures by the Commission, the "Standards for Assessing FCC Forfeitures" are provided in Appendix C of this publication.

## **D. Tower Painting and Lighting<sup>3</sup>**

Commission licensees are responsible for ensuring that all tower lights function properly. They are also responsible for repainting the tower as often as necessary to maintain good visibility. If they lease the tower, they must ensure that the tower owner maintains the painting and lighting of the tower as required by their station license.

Commission licensees are also required to observe their tower lights once every 24 hours to detect outages or malfunctions. When any top steady-burning light or any flashing obstruction light, regardless of its position on the tower, goes out, licensees must promptly report the outage to the nearest FAA Flight Service Station unless they can correct the problem within 30 minutes. They must notify the FAA again when they have repaired the outage. When any steady-burning side intermediate light goes out, licensees must correct the problem as soon as possible; however, they are not required to notify the FAA. Public Notice, November 21, 1990.

On page 142 of the Main Volume, broadcasters were reminded of their obligations regarding painting and lighting of broadcast towers. The Commission has recently fined a station \$20,000 for failure to light its tower and neglecting to notify the FAA that the tower lights malfunctioned. "Failure to comply with the Commission's antenna rules is an especially serious matter because of the potential dangers to aviation created by such violations." 7 FCC Rcd 3496 (1992).

In affirming a fine against a station which had properly painted its tower, but not the supporting cables, the Commission's staff emphasized that "cables attached to a tower. . . may not obstruct the view of a tower, and if they do, steps must be taken such as painting the cables to enhance the visibility of the tower structure. 7 FCC Rcd 4201 (1992).

## **E. FM Translators**

In November 1990, the Commission significantly amended the FM translator station rules. 5 FCC Rcd 7212 (1990). Under the new rules, the coverage contour of a translator providing fill-in service will be defined congruent with that of the primary station for respective station classes. An FM translator's protected contour will be defined at 1 mV/m. Translators may be owned by either the commercial FM station being rebroadcast or by an independent entity, provided the translator's coverage contour is encompassed by the primary station's coverage contour. Commercial translators providing fill-in service may use any terrestrial means to obtain the primary station's signal and may use aural intercity relay frequencies on a secondary basis. Financial support arrangements are left to the affected parties.

FM translators may not be licensed to a commercial FM station if the translator's coverage contour extends beyond the primary station's coverage contour. Commercial primary stations may provide no financial support beyond technical assistance to such FM translators. Noncommercial FM stations will not be subject to any ownership or financial support restrictions.



The Commission stated that it will be favorably disposed toward waiver requests to permit commercial primary station ownership and financial support of translators, and signal relay by any terrestrial means, including the secondary use of aural intercity relay frequencies, for stations serving "white areas."

For all translators, one or more announcements not to exceed a total of 30 seconds per hour are permitted in order to acknowledge and solicit funds. Emergency warnings of imminent danger remain permissible. The Commission continues to prohibit any other translator-originated programming.

The Commission retained its existing rule prohibiting the use of translators solely to relay signals of a primary station to more distant translator facilities and clarified that licensees may operate multiple FM translators within the same area, upon a showing of need, in order to provide a satisfactory quality of signal.

The Commission also made a number of technical changes. First, all FM translators may operate on any of the 80 non-reserved commercial channels, with the 20 reserved noncommercial educational channels available for noncommercial educational FM translator use. Second, the maximum effective radiated power of a translator is 250 watts. The Commission also established power and antenna height combinations for translators operating beyond a primary station's coverage contour, yielding new maximum permissible 1.0 mV/m coverage contour distances of 7 kilometers for areas east of the Mississippi River and Southern California and 13 kilometers elsewhere. The Commission will favorably consider requests to waive the coverage limitation upon a showing that the service to greater distances will reach only a "white area." For NCE-FM translators, the coverage waiver will regard "white areas" as those areas not served by a full-service public radio station. Finally, the Commission clarified the standards for antennas and adopted protection criteria for interference to FM and TV Channel 6 stations.

Translators already in existence will be "grandfathered" from compliance with the new technical rules until they pose interference problems, at which time compliance will be required. Existing stations must comply with the new service rules within three years.

Although the new FM translator rules have now gone into effect, there are still pending petitions for reconsideration of various aspects of these rules.

## **F. Network Rules**

Effective May 15, 1989, the Commission eliminated the requirements, stated on page 133 of the Main Volume, limiting the duration of a television

network affiliation agreement to two years. A similar provision for radio was eliminated in 1977. 4 FCC Rcd 2755 (1989).

## **G. Spot Representation by TV Networks**

In December 1990, the Commission terminated without action the rulemaking proceedings which examined the question of whether TV networks should be permitted to represent their affiliates in spot sales but granted permanent waivers to three foreign language networks in order to foster foreign language programming. (BC Docket 78-309)

## **H. FIN-SYN and PTAR Rules**

### **1. Financial Interest and Syndication Rules**

Following lengthy proceedings and the issuance of a decision in April 1991, 6 FCC Rcd 3094 (1991), and a modification upon reconsideration in November 1991, 7 FCC Rcd 345, the Commission has put in place a new policy governing the above aspects of network operations.

The former financial interest and syndication rules generally prohibited television networks from acquiring any financial interests in the broadcast of outside produced programs, i.e., programs not solely produced by the network other than the right to exhibit such programs on the network. Those rules also prohibited networks from engaging in the domestic syndication business or from having any ongoing interest in the syndication of programs for non-network broadcast distribution. However, the rules allowed networks to syndicate outside the United States programs that they had solely produced or that had been produced by foreign entities.

The April Report and Order: 1) deleted the restrictions on network ownership and syndication of network programming as to all dayparts and all programs other than prime time entertainment; 2) allowed networks to retain all rights in all "in-house" productions of network programs; 3) permitted networks to produce "in-house" up to 40 percent of their prime time entertainment schedules; 4) allowed networks to acquire all rights, including financial interest, domestic syndication rights and foreign syndication rights, in outside productions on their own or another network, subject to certain safeguards; 5) allowed networks to engage in domestic syndication of all "in-house" productions aired on their network, subject to certain safeguards; 6) allowed networks to engage in foreign syndication of network programs without limitations; and 7) allowed limited network participation in first-run syndication. The Report and Order also established a new definition of "network" and imposed certain reporting requirements.

The November decision on reconsideration basically affirmed the previous decision, while making certain clarifications and technical adjustments. As now in place, the rules apply only to prime time programming; all other programming is exempt and the definition of a network subject to the rules is changed to an entity which provides more than 15 hours weekly of prime time programming to affiliates. Networks are permitted to enter the foreign syndication business without restriction. Networks are able to retain all rights — financial and domestic syndication — in all programs they produce themselves or co-produce with foreign producers. They may have such interests in programs co-produced with domestic parties if the other party initiates the negotiations and is permitted 30 days to withdraw from any agreement. The networks, however, will be limited to filling 40 percent of their prime time schedules with programs they produce or co-produce.

For programs which the networks are permitted to syndicate in the domestic market, networks will be barred from favoring their affiliates or unduly delaying the availability of off-network programs. The Commission will review the new rules after they have been in effect for four years to determine if they continue to be needed.

A network is permitted to engage in co-production with a domestic production company as long as it does not control that company. Networks are prohibited from actively syndicating first-run programs, including those produced in-house and aired outside prime time hours.

At press time, there were several court challenges pending.

## **2. PTAR**

The Prime Time Access Rule remains unchanged, except for technical changes resulting from the amended FIN-SYN rules. Thus, programming distributed by an entity prior to becoming a network, and subsequently produced episodes of a series first exhibited by that entity prior to becoming a network, are not network programming for purposes of the rule.

Furthermore, for thirty-six (36) months after an entity becomes a network, stations owned by or affiliated with that network are exempt from compliance with the requirements of the rule with respect to programming already under contract at the time the entity became a network.

As discussed above, an entity becomes a "network" when it provides its affiliates with 15 hours of prime time programming. 6 FCC Rcd 3094 (1991).

The Prime Time Access Rule applies to the following markets for the period September 1992 to September 1995. (Market rankings in parenthesis).

Atlanta (12)	Los Angeles (2)
Baltimore (21)	Louisville (45)
Birmingham (46)	Memphis (33)
Boston (5)	Miami (13)
Buffalo (38)	Minneapolis-St. Paul (44)
Charleston-Huntington, WV (47)	Nashville (28)
Charlotte, NC (36)	New Orleans (37)
Chicago (3)	New York (1)
Cincinnati (29)	Norfolk-Portsmouth-Newport News- Hampton, VA (42)
Cleveland (10)	Oklahoma City (35)
Columbus, Ohio (31)	Orlando-Daytona Beach-Melbourne (25)
Dallas-Ft. Worth (7)	Philadelphia (4)
Denver (19)	Phoenix (20)
Detroit (8)	Pittsburgh (16)
Grand Rapids-Kalamazoo- Battle Creek (40)	Portland, OR (27)
Greensboro-Winston Salem- High Point, NC (44)	Providence-New Bedford (48)
Greenville-Spartanburg- Asheville, SC (34)	Raleigh-Durham (41)
Harrisburg-York-Lancaster- Lebanon, PA (49)	Sacramento-Stockton (22)
Hartford-New Haven (24)	Salt Lake City (43)
Houston (11)	San Antonio (39)
Indianapolis (23)	San Diego (32)
Kansas City (26)	San Francisco (6)
Little Rock (50)	Seattle-Tacoma (18)
	St. Louis (17)
	Tampa-St. Petersburg (15)
	Washington, DC (9)

The Commission has granted temporary waivers of the rule to permit a 6 p.m. - 10 p.m. PTAR designation for stations on the West Coast. See, e.g., 6 FCC Rcd 5510 (1991).

## **I. Broadcast Station Multiple Ownership Rules**

### **1. New Multiple Ownership Rules and Proposals**

#### **a. Radio**

On March 12, 1992, the FCC adopted a Report and Order in MM Docket No. 91-140 modifying its radio ownership rules as of August 1, 1992. 7 FCC Rcd 2755 (1992). These rules would have permitted one party to have an attributable interest in up to 30 AM and 30 FM stations on a national basis. There was also a graduated relaxation of duopoly rules permitting an entity to

have an attributable interest in more than one station in the same service in the same market.

These rules never came into effect. Following issuance of a stay, the Commission, on August 5, 1992, acted on several pending petitions for reconsideration with resultant changes in both the national and local permissible levels of ownership.

The national rules will permit ownership of up to 18 AM and 18 FM stations (with an increase to 20 AM and 20 FM in two years) and will permit attributable but non-controlling interests in an additional three stations controlled by minority group members or small businesses.

On the local level, the Commission will permit ownership of up to two AM and two FM stations in markets with 15 or more stations. In markets with fewer than 15 stations the Commission will permit ownership of three stations, no more than two of which may be in the same service, provided that the group owner's stations represent less than half of the stations in the market. Though the text of the FCC reconsideration decision was not released at press time, the Commission was expected to define "market size" by counting the number of local, commonly-owned stations involved in the proposed combination/transaction, and adding to that total the number of commercial radio stations the principal community (also known as "city grade") contours (5.0 mV/m for AM; 3.16 mV/m for FM) of which overlap either of the commonly-owned stations' principal community contours.

Applicants in markets with 15 or more stations will be required to demonstrate that the proposed combination will not result in excessive concentration in the local market. A resulting market share of 25 percent or more will raise a prima facie concern that the transaction would lead to excessive concentration. A combination resulting in less than a 25 percent market share will raise no such concern.

Also, the Commission adopted a Further Notice of Proposed Rule Making seeking comment on whether group owners should be allowed to exceed the national ownership limits by some defined number of stations if they establish and successfully implement a broadcast ownership "incubator" program designed to provide management or technical assistance, loan guarantees, direct financial assistance and/or training to small businesses. (FCC 92-361)

There will be no divestiture requirement if the commonly owned stations later exceed the audience cap.

Simulcasting of stations in the same service that serve substantially the



same area will be limited to 25 % of the broadcast hours.

**Time Brokerage.** If more than 15 percent of the station's broadcast hours per week is brokered by another station in the same market, the former is counted as an owned station for the purpose of the ownership rules.

See page 56 for further discussion of time brokerage and other LMAs.

## **b. Television Proposals**

The current rule limits the number and audience reach of television stations in which a person may hold an attributable interest to 12 stations and 25 percent of total television households. It allows ownership of interests in up to two additional stations reaching an additional five percent of total television households, if those stations are minority-controlled. The FCC has released a Notice of Inquiry in MM Docket No. 91-221, seeking comment on the increasing video competition and the need for structural changes in current television ownership restrictions.

At press time there had been no action on the proposals which include increasing the national numerical limitation and elimination of the one-to-a-market rule.

## **2. Proposals for Changes in the Attribution of Ownership**

In a wide ranging rulemaking proposal (MM Docket No. 92-51) the Commission invited comments on a number of proposals including the raising to 10% (from the present 5%) the level at which an interest in a station becomes "attributable" and from 10% to 20% the level of voting stock interest which would constitute an "attributable" interest for passive investors.

Also included in the inquiry are numerous changes in standards of partnership, small and medium companies and numerous investment vehicles.

A significant proposal involves the re-examination of the so-called "security interest" and "reversionary interest" provisions which have guided FCC decisions for many years. The reversionary interest ban (FCC Rule 73.1150) prohibits a seller of a station from requiring a return of the station in case of default or similar event. The "security interest" ban prohibits lenders from acquiring a security interest in the license, as opposed to an interest in the hardware or real estate owned by the station. In a recent decision, Tak Communications, Inc. v. New Bank of New England, 60 U.S.L.W. 2613, (March 23, 1992), the Court rejected the claim by banks that, as creditors, they could assert a security interest in the license of a bankrupt borrower.

### **3. Applicability of Rules to Expanded Band Stations**

In its Report and Order, released October 25, 1991, regarding Technical Assignment Criteria for AM stations, 6 FCC Rcd 6273 (1991), the Commission adopted interim ownership and duopoly regulations for expanded band stations. See p. 132 for a full discussion of these regulations.

## **J. Cross Interest Policy**

Pursuant to the proceedings noted on page 136 of the Main Volume, the Commission adopted a Policy Statement under which interests involving consulting positions, advertising agency representation and time brokerage arrangements will not be considered as covered by the Policy. 4 FCC Rcd 2208 (1989).

## **K. Licensee Participation in Drug Trafficking**

On September 29, 1989, the Commission issued a public notice regarding licensee participation in drug trafficking. 4 FCC Rcd 7533 (1989).

Because of the importance of this document it is reproduced here in its entirety, except for legal citations.

Broadcasters are encouraged to make this policy statement available to their employees.

### **1. Text of FCC Policy on Drug Trafficking**

This public notice clarifies Federal Communications Commission policies regarding the participation of private radio, common carrier, broadcast, and other licensees in drug trafficking.

Eradicating illicit trafficking in narcotics, drugs and other controlled substances today is a major Federal public policy priority. This is evidenced by congressional, judicial and presidential actions and declarations. Last year, for example, Congress passed the Anti-Drug Abuse Act of 1988, which includes a provision (section 5301) permitting judicial denial of federal benefits to persons convicted of drug offenses. The President recently transmitted to Congress his plan for implementing that statute. Drug trafficking is severely affecting the health and safety



of millions of Americans, and the contribution that they could otherwise make to our society. As President Bush recently stated:

All of us agree that the gravest domestic threat facing our nation today is drugs. Drugs have stained our faith in our system of justice. Our courts, our prisons, our legal system are stretched to the breaking point. The social costs of drugs are mounting. In short, drugs are sapping our strength as a nation.

The Commission has no evidence indicating that the incidence of drug trafficking on the part of FCC licensees, or their employees, exceeds that of American society generally. The Commission nevertheless regards drug trafficking as a matter of the gravest concern and intends to apply policies that reinforce both private and government efforts to eradicate drug trafficking.

Accordingly, absent extenuating or mitigating circumstances, the Commission intends promptly to take all appropriate steps, including initiation of license revocation proceedings, where information comes to our attention that FCC licensees or their principals have been convicted of drug trafficking. While our statement today is intended to apply to licensees in all FCC services and is not motivated by a concern regarding any particular service, we note that drug trafficking convictions fall within the scope of conduct the Commission may consider under existing policy in the broadcast area.

In addition, licensees and permittees in all services are advised that the Commission encourages maximum possible effort on their part to stem the national problem of drug trafficking. In this regard, the adoption of drug counseling, drug education, and other similar programs by licensees and permittees is encouraged. Licensees and permittees should also prohibit the use of drugs by employees while at work.

On February 25, 1992, the Commission issued a Public Notice reminding all broadcasters that all applications must now contain a certification that the applicant or its principals (as defined) are not prevented from obtaining the permit pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, under which courts can deny federal benefits to persons convicted of drug offenses. 6 FCC Rcd 7551 (1991).

## **2. Drug Convictions**

In January 1991, the Commission revoked the license of WKSP, Kingstree, South Carolina based on the drug conviction of a principal and the station's failure to report that drug conviction. 6 FCC Rcd 340 (1991), aff'd 6 FCC Rcd 4823 (1991).

## **L. Candor in Responses to FCC**

In May 1990, the Commission adopted a new rule pertaining to truthfulness in responses to FCC inquiries. Because of the increasing number of cases in which the veracity of a response to a Commission inquiry has become a factor, the rule, in highlighted form, is reproduced in its entirety:

### **§ 1.17 Truthful written statements and responses to Commission inquiries and correspondence.**

The Commission or its representatives may, in writing, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to some other matter within the jurisdiction of the Commission. No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

**Note:**—Section 1.17 is limited in application to written matter. It implies no change in the Commission's existing policies respecting the obligation of applicants, permittees and licensees in all instances to respond truthfully to requests for information deemed necessary to the proper execution of the Commission's functions.

## **M. Station Operating Requirements**

### **1. Minimum Hours of Operation**

As a result of the Commission's action pertaining to daytime only stations, those stations and former daytime only stations that have been reclassified as Class II-S or III-S need comply only with the minimum hours requirements for operations between 6 a.m. and 6 p.m. local time. (FCC Rule 73.1740(a)(1)(i))

## **N. Curtailment or Discontinuance of Operation**

A station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington not later than the 10th day of limited or discontinued operation. During such period, the licensee must adhere to the requirements of the license pertaining to the lighting of antenna structures. If operations are restored prior to the expiration of the 30 day period, the FCC must be notified. If the licensee cannot resume operations within the prescribed period an informal written request for additional time must be made to the FCC no later than the 30th day of the curtailed or suspended operation.

If a broadcaster decides to discontinue operations permanently, the FCC must be notified at least two days prior to the permanent discontinuance. Immediately upon termination of operation, the licensee must forward the station license to the FCC for cancellation. (FCC Rules 73.1740 and 73.1750)

## **O. Main Studio Requirement**

In 1987, the Commission eliminated the requirement that a specified percentage of a station's non-network programming originate from a station's main studio or other points within the community of license. In response to requests for clarification of the function of a "main studio" under the new rules, the Commission stated that a station "must maintain a main studio which has the capability adequately to meet its functions...of serving the needs and interests of the residents of the station's community of license. To fulfill this function, a station must equip its main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence." 3 FCC Rcd 5024 (1988).

The Commission and its staff have expanded on the phrase "meaningful management and staff presence" in two decisions issued in the summer of 1991.

In the first case, 6 FCC Rcd 3615 (1991), a station licensed to city A maintained an auxiliary studio in city B, 57 miles away. The station's full-time office manager, located in city B, handled calls from listeners in the city of license and had conducted a telephone survey of 125 listeners in that city. Two full-time employees, a business manager and an account executive "spent time" in the city of license studio. The station maintained that this arrangement constituted compliance with the "meaningful presence" requirement. The Commission, however, ruled that a main studio "must, at a minimum, maintain full-time managerial and full-time staff personnel." The Commission noted that "this is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours... ."

Following the Commission's decision, the staff assessed a forfeiture against a station for failure (among other derelictions) to maintain a "meaningful management and staff presence" at the main studio, where that presence consisted of one part-time person, who did not maintain a presence there during normal business hours. 6 FCC Rcd 4172 (1991)

This articulation of a "minimum" presence may affect a number of small businesses operating with minimum personnel, particularly those planning time brokerage arrangements or other joint ventures as cost-cutting measures.

## **P. Labor Relations**

### **1. Overtime Pay**

In a decision with potentially industry-wide implications, an appellate court has ruled that general assignment reporters, producers, directors and assignment editors of a certain Texas television station are not exempt from Federal overtime provisions, and are, therefore, entitled to time and a half for all hours worked in excess of 40 hours per week. The appellate court decided that the station's employees in the above categories do not fall within the category of executive, administrative or professional and are, therefore, not exempt from the overtime law. However, the decision was very fact specific and made clear that it applied only to the operations of the station in question. Dalheim v. KDFW-TV, 706 F.Supp. 493 (N.D. Tex. 1988), *aff'd* 918 F.2d 1220 (5th Cir. 1990).

### **2. Posting of Worker Notifications**

As a service to broadcasters, we are listing five notices which are generally required to be posted by Federal law. It is suggested (and often required) that these notices be posted in a conspicuous place. There may be additional state required postings.

**Equal Employment Opportunity** — The EEOC requires employers with at least 15 employees to notify employees and job applicants as to the law prohibiting employment discrimination based on race, color, religion, sex, disability, national origin and age, as well as the law mandating equal pay for equal work. In addition, stations which receive federal financial assistance, e.g., non-commercial public stations which receive federal funds or grants) are required to include a notice regarding the law prohibiting disability-based discrimination, and stations which may be federal contractors or sub-contractors have requirements regarding persons with disabilities and veterans. For the EEOC poster covering these areas, call (202) 663-4900.

**FCC Equal Employment Opportunity** — FCC regulations also suggest that licensee EEO programs include notification of employee and applicant rights. NAB's Equal Employment Rights Notice helps provide such notification. Call (800) 368-5644.

**Wage and Hour Notice** — The Wage and Hour Division of the U.S. Department of Labor requires notification of employee rights under the Fair Labor Standards Act. The Division's poster covers such areas as federal minimum wage, the new subminimum training wage and child labor. For this free poster, call the Wage and Hour Division at (202) 523-7043 and ask for WH Publication 1088.

**Polygraph Testing** — Employees and job applicants must be notified regarding prohibitions contained in the Employee Polygraph Protection Act. The notice required by federal law can be obtained free from the Wage and Hour Division at the number above. Ask for WH Publication 1462.

**Job Safety and Health Protection** — Federal law also requires that employees be notified of occupational safety and health regulations. OSHA Publication 2203 provides the required notice. Call (202) 523-9667.

## **Q. Americans With Disabilities Act (ADA)**

In July 1990, Congress enacted the Americans With Disabilities Act (ADA), the employment provisions of which became effective July 26, 1992, for employers of 25 or more employees and will apply, on July 26, 1994, to employers of 15 or more employees. In addition to employment, the ADA generally addresses the obligations of commercial facilities and places of public accommodation to ensure that their goods, services and facilities are accessible to disabled individuals. The public accommodations section of the Act, which applies to all businesses, went into effect in January 1992. Under implementing regulations, broadcast stations which maintain facilities open to the public, such



as places for inspecting the public inspection file or political time file, will have to make these areas and services accessible to disabled individuals. For a full discussion of the applicability of the new law, broadcasters should consult NAB Counsel Memo "Required Access to Stations Under the Americans With Disabilities Act," October 1991, and supplements thereto.

## **R. Station Migration—Operating Rules**

After years of deliberation, the Commission adopted new Technical Assignment Criteria for the AM Broadcast Service. 6 FCC Rcd 6273 (1991). While the voluminous decision makes numerous changes in the technical aspects of the AM medium, it also will affect the operations procedures of stations which are affected by new rules.

As part of its new regulation, the Commission has opened up the 1605-1705 KHz band to stations operating on the present AM band (535-1605 KHz) and will permit, at such time as its rules are implemented, stations to "migrate" to the new band, as part of an effort to reduce interference. Initial eligibility to migrate will be restricted to existing licensees. Some 200 stations will be eligible to move.

For a period of five years following the issuance of a CP for the new station, existing stations will be permitted to operate both their present and new facilities (as an exception to the local and national multiple ownership rules). During this interim period, the dual operator would be barred from selling one facility and operating another. Once a facility is licensed on the expanded band, and the transition period has expired, the "old" facility will fall silent. The existing and expanded stations will be permitted to simulcast. Such simulcasting operation will be required to maintain only one main studio — to be located within the 5 mV/m contour of the lower band operation. When that operation ceases, the main studio will be required to be located within the contour of the higher band operation. During the period of simulcasting, station identification announcements will be permitted to be made jointly. The call letters of both stations may be conformed. The national numerical multiple ownership restrictions will not apply.

## **S. Emergency Broadcast System**

The Commission has proposed to amend the length requirements of the EBS two-tone attention signal to a minimum of eight seconds and a maximum of 25 seconds, 6 FCC Rcd 6739 (1991), but no action has been taken at press time. The agency has also commenced an inquiry proceeding exploring wide ranging changes to the EBS system.

## **T. FM Boosters**

The discussion of FM Boosters contained on page 147 of the Main Volume should be supplemented to indicate that, in 1991, the Commission amended the rules to reflect the applicability of certain international agreements to the siting of these stations. 6 FCC Rcd 6060 (1991).



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## Endnotes

1. This document is hopelessly out-of-date and the Commission is considering revising it. The NAB has been advised by the FCC's General Counsel that "pending these revisions, it is my understanding that the staff will issue no notices of apparent liability or otherwise recommend monetary forfeitures for failure to have a copy of the Manual in public inspections files."
2. For further information concerning EEO requirements, consult **A Broadcasters EEO Handbook** available from NAB's Services Department, (800) 368-5644.
3. For further information concerning towers, consult **Radio and Television Towers: Maintaining, Modifying and Leasing** available from NAB's Services Department, (800) 368-5644.



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## CHAPTER VI

### Cable Television Rules

#### A. Must Carry

Broadcasters are alerted to the fact that the must carry rules discussed on pages 153-157 of the Main Volume are not in effect and that the discussion of the rules is for historical purposes only. These rules were struck down by the Court in Century Communications Corporation v. FCC, 835 F.2d 292 (1987), cert. denied 486 U.S. 1032 (1988). That decision, however, did not affect the A/B switch requirements and the consumer education requirements discussed in the Main Volume. At this writing, the U.S. House and Senate have passed legislation that would restore must carry requirements for cable systems within a station's Area of Dominant Influence ("ADI"); however, a presidential veto has been threatened.

#### B. Non-Duplication and Program Exclusivity

Following protracted proceedings in General Docket 87-24, the Commission revised its program exclusivity rules. The material contained herein supersedes the discussion of this subject contained in Section B.1 of the Main Volume (pp. 159-160). Sections B.2, C and D of the Main Volume (pp. 160-162) remain unchanged.

##### 1. Syndicated Exclusivity

By actions of May 18, 1988, and February 22, 1989, the FCC reinstituted its syndicated television programming exclusivity rules (syndex) for broadcasters. These rules permit, but do not require, TV stations to negotiate for enforceable exclusive distribution rights for syndicated programming.

##### a. Extent of Protection

The syndex rules allow stations *which have the appropriate language in their program contracts and which have provided timely notice to affected cable systems* to enforce syndex rights on cable systems serving communities up to within 35 miles of their city of license reference point. The rules also allow

stations in hyphenated markets to obtain syndex protection on cable systems serving communities within 35 miles of the reference points of each city named in the hyphenated market.

For major television markets, FCC Rule Section 76.51 provides the applicable listing of hyphenated market definitions. For stations in hundred plus markets, the listing of markets contained in the ARB Television Market Analysis for the most recent year at the time when the program contract is executed provides the applicable list of hyphenated markets.

One useful source in determining what communities are within stations' 35 mile zones is *Television Digest's Cable and Station Coverage Atlas*. Syndex notices should *not* be sent to cable systems outside a station's 35 mile zone(s).

The FCC currently is considering rule changes that would expand or eliminate the geographic limitations on syndicated exclusivity. Accordingly, it may be desirable to include a contingency clause in program contracts to take into account any such rule changes, e.g., syndicated exclusivity is granted up to the ADI in the event the FCC changes its rules to allow ADI wide exclusivity.

The syndex rules apply to all programs and program types for which local exclusivity has been obtained for the duration of the contract, regardless of when or whether the local station possessing such rights broadcasts the programs and regardless of whether or not the local cable systems carry the station.

There are three situations in which cable systems within 35 miles of a station's city of license need not provide it with syndex protection. First, cable systems with fewer than 1,000 subscribers are exempt from the syndex rules. Second, no programs on stations that are "significantly viewed" in the area where the cable system is located need be deleted. Third, no programs on stations that place a Grade B signal in whole or in part over a community served by a cable system need be deleted. (While this exception from syndex protection applies when another station's predicted Grade B signal encompasses the cable community in whole or in part, a station asserting syndex rights can restore exclusivity protection if it can demonstrate that the actual Grade B contour of the other station does not, in fact, encompass the cable community. 6 FCC Rcd 3621 (1991)).

#### **b. Necessary Language**

##### **(1) Post-August 18, 1988, Program Contracts**

To enforce syndex protection for programs under contracts executed on or after August 18, 1988, the contract must contain the following language:

[T]he licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Compulsory Copyright License, as provided in Section 76.151 of the FCC rules [or "as provided in the FCC's syndicated exclusivity rules"].

## **(2) Pre-August 18, 1988, Program Contracts**

To enforce syndex protection for programs under contracts executed prior to August 18, 1988, (a) the contract must contain language clearly providing syndex rights and a statement that such rights are being provided contingent on the FCC's changing its rules to allow for enforcement of those rights; or (b) a written acknowledgement must be obtained from the program supplier indicating that the contract was intended to provide syndex rights; or (c) the contract must be amended to include the specific language referenced above that is required for post-August 18, 1988 contracts.

### **c. Notice Requirements**

#### **(1) Notice Deadlines**

The syndex rules impose strict requirements on stations to provide timely notice to cable systems on which they intend to enforce their syndex rights. *Failure to comply with these notice requirements can result in a station's losing its ability to enforce its syndex rights.*

The deadline for providing affected cable systems with notice of a station's syndex rights depends upon when the contract effectively providing such rights was executed.

(i) For contracts executed *on or after* August 18, 1988, affected cable systems must receive notice within 60 days *after the contract was executed*, that is, within 60 days after the last party signing the contract signs it.

(ii) For contracts executed prior to August 18, 1988, which (1) contain language specifically granting syndex rights contingent upon the FCC changing its rules to allow for enforcement of such rights; or (2) required only an acknowledgement from the program supplier that the contract was intended to include syndex rights, the deadline for providing notice was June 19, 1989.

(iii) For contracts executed prior to August 18, 1988, which must be amended to provide for syndex rights, notice to affected cable systems must be received by them *within 60 days after the amendment is executed*.

If a station fails to meet the 60-day deadline, or failed to meet the June 19, 1989 deadline, it must re-execute the contract and notify affected cable systems within 60 days of doing so. Whenever a contract is renewed, a new notice requirement is triggered.

In no event will a cable system be required to provide syndex protection less than 60 days prior to the date it receives a syndex notice regarding such program.

## **(2) Contents of Notices**

Notices to affected cable systems must include:

- (i) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;
- (ii) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought; and
- (iii) The dates on which exclusivity is to begin and end.

The FCC also recommends that the notice include the identity of the appropriate contact person at the station and the geographic zone within which the station has obtained protection.

With respect to the "specific episodes" requirement in item (ii) above, where, for example, a broadcaster contracts for 20 out of a possible 200 episodes of a series, both the name of the series and the identification of each episode by title must be provided. Similarly, where a film package is acquired, each film title must be separately identified. Merely providing a numerical description of the package is not sufficient.

With respect to the "dates on which exclusivity is to begin and end" requirement in item (iii) above, if the contract makes either of these dates dependent on a contingency, a station must provide a second notice to affected cable operators immediately, e.g., by telephone, fax, etc., when the event triggering the contingency occurs. For example, if a contract specifies as its end date "the earlier of after three runs or at the end of two years," the station must notify affected cable systems immediately when the first of those events occurs. Moreover, if for any reason exclusivity for a program for which notice was previously given is lost or modified, a station must notify affected cable systems of that fact, "as soon as possible," e.g., by telephone, fax, overnight mail, etc.

While stations need not provide copies of their program contracts with the notices sent to cable systems, upon receiving such notices, cable operators may require stations to provide copies of those portions of such contracts which are "pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition," together with the signatures of the contracting parties. Accordingly, notwithstanding past practices under which stations have sometimes encountered delays in obtaining written executed program contracts, such documentation will now have to be obtained to assure timely enforcement of syndex rights.

#### **d. Cable System Compliance**

Once a station provides a cable system with proper notice of its program exclusivity rights, it is the obligation of the cable operator to determine what programs, included on signals it is carrying, it must delete. In making this determination, a cable system may rely on programming information contained in newspapers or magazines or on information provided by stations it is carrying, the programming of which is subject to deletion.

If a station receives a request for programming information from a cable system that is carrying it as a distant signal, the station must provide such information by the later of 10 days after receiving the request or 60 days before the programming involved is to be broadcast.

The task of assuring that cable systems comply with requests for syndex protection will be the responsibility of the stations requesting it. Accordingly, it is recommended that stations establish mechanisms for monitoring cable system compliance both at the time contractual exclusivity first commences and periodically thereafter throughout the duration of the contract.

Remedies for repeated or willful noncompliance with syndex requests include FCC imposed sanctions or penalties and/or liability under the copyright laws.

### **2. Network Non-Duplication Rules**

#### **a. Non-Duplication Protection Is Dependent on Network-Affiliate Agreement**

Under the new non-duplication rules, the basis for, and extent of, i.e., whether non-duplication protection is simultaneous or same day, protection is determined by the affiliate's agreement with the network. Thus, an affiliate is only able to assert network non-duplication if, and to the extent, that such



protection is specifically provided for in its network contract and only if it has provided the required notice to affected cable systems.

**b.      Extent of Protection**

The non-duplication rules allow stations to enforce network exclusivity provisions for up to 35 miles of protection for major market stations, 55 miles for small market stations, and within the community served by cable systems to which 100 watt or greater translators are licensed that are within the Grade B contour of their parent stations. Stations licensed to a community in a hyphenated market in one of the top one hundred markets are allowed to contract for non-duplication protection on cable systems in the 35 mile zones of any other station assigned to a named community in the hyphenated market. Stations licensed to a community in a hyphenated market in a "hundred plus" market are allowed to contract for non-duplication protection on cable systems in the 55-mile zones of any other station assigned to a named community in the hyphenated market. (In re Midwest KAAL Corporation, CSR-3570, FCC Mass Media Action Report No. MM-632, released August 4, 1992.) For major television markets, FCC Rule Section 76.51 provides the applicable listing of hyphenated market definitions. For stations in hundred plus markets, the listing of markets contained in the ARB Television Market Analysis, for the most recent year at the time when the network affiliate agreement providing network non-duplication protection is executed, provides the applicable list of hyphenated markets.

Stations can enforce exclusivity for a network program for as long as it is allowed under their affiliate agreements, e.g., same day, same week, etc. Moreover, an affiliate can enforce non-duplication rights on affected cable systems regardless of whether those systems carry the station.

**c.      Exceptions**

- Cable systems need not provide non-duplication protection for one hour following the scheduled completion of a live sporting event broadcast by either the local station or the station to be deleted.

- Cable systems need not delete duplicative network programming carried on a station that is listed as significantly viewed either in the county in which the cable system is located or in the community of the cable system. (See FCC Rule 76.54)

- A cable system located between the 35 mile and 55 mile zones of a smaller market station need not delete duplicative network programming carried on a major market station located within 55 miles of that cable system.

- A cable system otherwise required to provide protection to a translator need not delete the duplicative network programming carried on a station located within 55 miles of the cable system.

- The FCC generally will recognize and give full effect to private agreements between television stations and cable systems providing for different kinds of non-duplication protection, provided such agreements do not violate other FCC rules or stations' public interest obligations.

#### **d. Necessary Language**

Unlike the syndex rules, the FCC does not require any specific language to be included in network affiliate agreements as a prerequisite to enforcing non-duplication rights. Nevertheless, the language granting such rights should be clear and unequivocal.

#### **e. Notice Requirements**

##### **(1) Notice Deadlines**

The non-duplication rules impose strict requirements on stations to provide timely notice to cable systems on which they intend to enforce their non-duplication rights. *Failure to comply with these notice requirements can result in a station's losing its ability to enforce its non-duplication rights.*

Stations must notify affected cable systems within 60 days *after the contract is executed*. Whenever a network contract is renewed a new notice requirement is triggered.

If a station misses these notice deadlines, it must re-execute the network contract and notify affected cable systems within 60 days of doing so. In no event will a cable system be required to provide non-duplication protection less than 60 days prior to the date it receives proper notice.

##### **(2) Contents of Notices**

Non-duplication notices must, *with a major exception explained below*, include the following information:

(a) The name and address of the party requesting non-duplication protection and the station holding the non-duplication right;

(b) The name of the program or series (including specific episodes where necessary) for which protection is sought; and

- (c) The dates on which protection is to begin and end.

The major exception to these "contents of notice" requirements applies to situations where stations are unable, because of the terms of their program or network affiliate contracts, to supply the required information (particularly the program names) at the time they provide their initial notice to cable systems.

The most common instance where this situation will arise is when network affiliates will not know the names of all the programs or series for which protection is being provided under the network agreement. In such situations, the affiliate's initial notice to cable systems must identify:

1) the name of the network(s) which have provided it with non-duplication protection; 2) the time periods by time of day (local time) and days of the week, e.g., XYZ network programming broadcast between 8:00 p.m. and 11:00 p.m. Monday-Friday, for which protection is sought; and 3) the extent and duration, e.g., simultaneous, same day, etc., of non-duplication protection it has obtained.

If a station, after providing a cable system with its initial notice, desires to increase its hours of protected programming, it must again notify that cable system at least 60 days in advance of the date on when the increased protection is to commence.

If, on the other hand, a station subsequently decides, after sending its initial notice, to preempt or otherwise not to carry network programming during the hours specified in its initial notice, or if the station's non-duplication rights are subsequently reduced in any way, it must immediately, e.g., by telephone, telegraph, fax, etc., notify affected cable systems to whom it sent initial notices of the specifics of any such changes.

Finally, if a station decides, after sending its initial notices, to air, on a time-delayed basis, a program that previously was aired during the protected time periods specified in the initial notices, it must immediately notify affected cable systems concerning the specifics of its scheduling changes.

#### **f. Cable System Compliance**

The provisions of the non-duplication rules relating to cable's compliance are essentially the same as those relating to the syndex rules set forth above.

### **3. Additional Details**

A. Stations should focus on whether a program is properly categorized under the new rules as a "network program" subject to the non-duplication rules,

or a "syndicated program," subject to the syndex rules. The rules define a "network program" as "any program delivered simultaneously to more than one broadcast station regional or national, commercial or noncommercial." The rules define a "syndicated program" as "any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming . . . ."

These definitions suggest that a number of widely-distributed programs that have traditionally been thought of as "syndicated programs," but which are "simultaneously delivered to more than one broadcast station" by satellite or other means, may, for purposes of the FCC's program exclusivity rules, be considered "network programs" subject to the non-duplication rules. Proper characterization of such programs, both in program contracts and in notices sent to cable systems, may be important.

For example, a station in a hundred plus market which contracts for a program not aired by one of the major networks, but which is "simultaneously delivered to more than one broadcast station," may be able to claim protection for that program on cable systems within 55 miles (as opposed to 35 miles) of its city of license reference point by characterizing such program as a "network program" subject to the non-duplication rules.

B. In many instances, it appears that notice to affected cable systems may be required long before a program or program series is actually broadcast. Accordingly, it would be advisable to send all notices by certified mail, return receipt requested, or by some other means by which evidence of the date of receipt can be secured, so that your station has evidence that it notified systems in a timely manner.

C. Many stations traditionally have not necessarily concerned themselves with contract formalities, such as having both parties sign an agreement when purchasing syndicated programming. Under the new rules, stations may be required to provide to cable systems a copy of the relevant portions of exclusivity contracts, *signed by both parties*, in order to exercise exclusivity rights.

D. If a cable system requires written proof of exclusivity rights, only pertinent provisions relating to the duration, nature, and extent of the exclusivity agreed to need be provided. Hence, if other terms of the agreement, such as price, need to remain confidential, the exclusivity agreement should be structured so that the provisions that may have to be supplied to cable systems are easily severable.

E. Because the program exclusivity rules generally are designed to protect the rights of broadcasters, it will behoove stations to cooperate with affected cable systems and to assist them in complying with exclusivity requests. In this regard, local stations *may*, though they are not *required* to do so, wish to assist affected cable systems by, for example, supplying them with information concerning distant signal programming subject to deletion and by providing periodic reminders of current or upcoming programming for which they are entitled to protection.

F. In response to concerns that "cherrypicking" would be misused by cable systems to create a composite signal of sports or other programs which would be carried without incurring additional copyright liability, the Commission explained that these concerns were based on a mistaken understanding of Section 76.161, the provision that permits "cherrypicking" as a method of program substitution. The FCC clarified that under this provision, a cable operator may run a substituted program to completion without incurring additional copyright obligations, but the operator must then return to the regularly carried signal even if a program is in progress on that signal.

## **C. Copyright Royalty Distribution**

### **1. U.S. Cable Royalties**

See page 161 of the Main Volume. Note that the telephone number of the Copyright Royalty Tribunal listed on page 162 therein has been changed to (202) 606-4400.

### **2. Canadian Cable Royalties**

Canada's copyright laws provide a mechanism of remuneration to U.S. and other copyright holders of programming retransmitted on distant signals by Canadian cable systems and other program retransmitters. The mechanism calls for the formulation of "collective bodies" to represent different categories of individual copyright owners of programming and to collect and distribute royalties from Canadian cable operators.

While NAB has conducted and participated in meetings with U.S. border broadcasters to advise them regarding the Canadian cable copyright scheme, it has determined not to become involved in representing broadcasters before the Canadian Copyright Board. Individual border television stations have formed a collective named the Border Broadcasters Collective (BBC), the board of which is chaired by Thomas Griesdorn, President and General Manager of Station



WXYZ-TV, Detroit, Michigan. The major networks have joined the Canadian Retransmission Right Association (CRRA).

#### **D. Cable Technical and Operational Requirements**

In the spring of 1992, the Commission adopted new technical and operational requirements for cable systems applicable to all NTSC video signals transmitted from the cable headend to subscriber terminals on all cable channels.

The new rules provide channel boundary requirements, aural standards, visual signal level standards, amplitude characteristic standards, signal level to noise and coherent disturbances ratio requirements -- terminal isolation equipment standards, hum modulation standards, color signal standards, and proof-of-performance requirements. Of particular relevance to broadcasters are the new visual signal level to noise ratio requirements which increase from 36 dB in 1992 to 43 dB by 1995. These requirements will only apply to retransmitted broadcast signals: 1) delivered by a cable system to subscribers within the predicted Grade B contour for those signals; 2) first picked up within the signals' predicted Grade B contours; or 3) first received by a cable system by direct video feed from a TV broadcast station.

The new rules require cable systems to conduct proof-of-performance tests twice a year, to establish a process for resolving subscriber complaints about the quality of television signals being delivered and to advise subscribers about the complaint procedure at least once a year. Resolution of such complaints must be sought, in the first instance, with the local franchising authority before being brought to the Commission.

In its order adopting the new rules, the Commission expressed its expectation that cable operators will "take reasonable efforts and use good engineering practices and proper equipment in the processing of each signal, guarding against any unnecessary degradation in the signal received and delivered to the subscriber." 7 FCC Rcd 2021 (1992).





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## CHAPTER VII

### Noncommercial Educational Broadcasting

#### A. Public Telecommunication Facilities Program

The 1992 closing date for filing applications for planning and construction grants under the Public Telecommunications Facilities Program (PTFP), referred to on page 171 of the Main Volume, was March 5, 1992. The annual announcement of dates for filing applications is generally made in September or October of the preceding year. It is anticipated that the 1993 closing date will be on or about January 16, 1993.

The following priorities have been established in the administration of the program:

- Priority I:* Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area
- Priority II:* Replacement of Basic Equipment of Existing Essential Broadcast Stations
- Priority III:* Establishment of First Local Origination Capacity in a Geographical Area
- Priority IV:* Replacement and Improvement of Basic Equipment for Existing Broadcast Stations
- Priority V:* Augmentation of Existing Broadcast Stations

Persons desiring additional information regarding the administration of the program should call Dennis R. Connors, Director PTFP, (202) 377-5802.

#### B. Instructional Television Fixed Services (ITFS)

Instructional television fixed stations are intended primarily to provide a formal educational and cultural development, in aural and visual form, to students enrolled in accredited public and private schools, colleges and universities.

Such stations may also be used for the additional purpose of transmitting other visual and aural educational, instructional and cultural material to selected receiving locations, including in-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields and other similar endeavors.

During periods when the circuits provided by these stations are not being used for the transmission of instructional and cultural material, they may be used for the transmission of material directly related to the administrative activities of the licensee such as the holding of conferences with personnel, distribution of reports and assignments, exchange of data and statistics and other similar uses.

The Commission's rules provide for specified reservation of time for the above uses, but permit the leasing of excess capacity to non-ITFS users, such as "wireless cable."

An ITFS license will be issued only to an accredited institution, a government organization engaged in education or a non-profit educational organization. (FCC Rule 74.931 and FCC Rule 74.932)

In October 1990, the Commission revised its "wireless cable" rules and, in the course of that proceeding, made important decisions affecting ITFS. The Commission stressed that its effort to facilitate the expansion of wireless cable service as a competitive multichannel source of programming should not be interpreted as diminishing its commitment to the further development of ITFS.

As a result of the new proceeding, new ITFS stations may lease excess capacity as long as they utilize the channel a minimum of 12 hours per week for educational programming during their first two years of operation. Up to four hours per day can be used toward that requirement. Thereafter, a 20-hour minimum will be enforced. The Commission specifically refused to change the ten-year limitation on the length of excess-capacity leases.

Under the new rules, cable operators will be prohibited from future leasing of an ITFS channel if their transmitter is located within 20 miles of any part of the cable franchise area, unless there is another cable system in that franchise area. This prohibition will not apply to sparsely populated rural areas.

The new proceeding also made significant changes in the ITFS technical rules. 5 FCC Rcd 6410 (1990).

Following petitions for reconsideration and associated proceedings, the Commission modified its rules pertaining to ITFS leasing of excess time subject to the following general conditions.

(a) If the time or capacity leased is not to be used for "wireless cable" operations, the licensee must preserve at least 40 hours per week, including at least 6 hours per weekday (Monday through Friday), excluding holidays and vacation days, for ITFS purposes on that channel. The 40-hour preservation may consist of airtime strictly reserved for ITFS use and not used for non-ITFS programming, or of time used for non-ITFS programming but subject to ready recapture by the licensee for ITFS use with no economic or operational detriment of the licensee.

(b) If the time or capacity leased is to be used for "wireless cable" operations, before leasing excess capacity on any one channel, the licensee must provide at least 20 hours per week of ITFS programming on that channel, except as provided in paragraph (e)(3) of this section. All hours not used for ITFS programming may be leased to a "wireless cable" operator.

(c) For the first two years of operation, an ITFS entity may lease excess capacity if it provides ITFS programming at least 12 hours per channel per week, including up to four hours of ITFS usage per day.

(d) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(e) Subject to certain exceptions, no ITFS licensee may lease transmission time or capacity to any cable television company, either directly or indirectly through an affiliate owned, operated, controlled by or under common control with the cable television company, if the ITFS main transmitter station is within 20 miles of the cable television company's franchise area or service area. 6 FCC Rcd 6764 (1991); 6 FCC Rcd 6792 (1991).

## **C. Political Broadcasts**

In Chandler v. Georgia Public Telecommunications Commission, 917 F.2d 486 (11th Cir. 1990), cert. denied, 112 S.Ct. 71 (1991), the court ruled that a public television station did not violate the First or Fourteenth Amendment by refusing to invite a Libertarian candidate to appear in a debate in which the Republican and Democratic candidates participated.

In upholding the right of the educational broadcaster to select the contents of its programming, the court made the following significant statement:

This court has held that the degree of control that a public broadcast licensee can exercise over its broadcast programming consistent with the First Amendment depends on the mission of the communicative activity being controlled. Where the activity does not function as a pure marketplace of ideas, the state is permitted to regulate content in order to prevent hampering the primary function of the activity. Were GPTC a medium open to all who have a message, whatever its nature, GPTC would function as a marketplace of ideas. GPTC, however, is not such a medium. GPTC is "created, designed, and intended for the purpose of providing educational, instructional, and public broadcasting services to the citizens of the State of Georgia." Further, as a public television station, GPTC is under an obligation to serve the public interest. As testimony indicated GPTC employees make editorial decisions on a daily basis determining which programs to air in order to meet the needs and interests of Georgia's citizens. Obviously a decision to broadcast one program excludes, for that time, all other programs. (Internal citations and references omitted)

#### **D. Underwriting Announcements**

Noncommercial stations are cautioned regarding the carriage of donor and underwriting announcements which are actually commercials. The Commission has admonished a noncommercial broadcaster for airing a lengthy announcement describing in detail the "donor's" merchandise and urging the listeners to patronize the establishment. 5 FCC Rcd 7106 (1990).

The Commission has imposed a \$7,500 fine on station WMPR(FM), Jackson, Mississippi for carrying "underwriting" announcements which contained "language promoting the services, facilities or products" of the "underwriter" and included "price information and other inducements for listeners to patronize the commercial entities named." J.C. Maxwell Broadcasting Group, Inc. 7 FCC Rcd 3218 (1992).

#### **E. Exchange of Channels**

In order to help financially hard pressed non-commercial entities, the Commission adopted a policy which permits a licensee of a commercial channel and the licensee of a reserved non-commercial channel within the same band and serving substantially the same market to exchange channels. 3 FCC Rcd 2517 (1988). That policy was upheld by the Court in Rainbow Broadcasting Co. v. FCC, 949 F.2d 405 (D.C. Cir. 1991).

## **F. Children's Programming**

In its original decision on children's TV, 6 FCC Rcd 2111 (1991), the Commission held that the Children's TV Act did not apply to non-commercial stations. However, upon reconsideration, the Commission construed the Act as applying to all broadcasters, including non-commercial/educational broadcasters. The Commission, however, exempted these stations from the detailed record keeping applicable to commercial stations, except that educational stations must "maintain documentation to show compliance at renewal time with the Act's programming obligations in response to a challenge or to specific complaints." 6 FCC Rcd 5093 (1991).



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## **CHAPTER VIII**

### **Tax and Other Business Considerations in the Operation of a Broadcast Station**

The Tax Reform Act of 1986 (TRA '86) was the most sweeping revision of the Tax Code since the 1954 Code was enacted. It significantly affected the manner in which many businesses operate. Now that the dust from TRA '86 has settled, a review of the considerations involved in organizing or acquiring a new business seems appropriate. Of course, it has been six years since TRA '86, and new changes have occurred in the tax law. By new legislation, new interpretations by the IRS, or new decisions by the courts, the tax rules are constantly changing and tax liabilities affected. It is important for all businesses to keep up with these changes. Therefore, this chapter will also highlight the changes in the tax law from 1988 through July 1992. Chart A and Chart D from the Main Volume have been combined and updated, as have Charts B and E.

#### **A. Starting a New Business**

##### **1. Organizing a New Entity**

Various tax and non-tax concerns should be considered in organizing a business and deciding what type of business entity should be formed. These same considerations could also prompt a post-organizational conversion of the business to a different form of entity. There are a variety of special rules that affect the advantages of post-organizational changes, discussion of which is outside of the scope of this chapter.

##### **a. Sole Proprietorship**

The simplest organizational form is the sole proprietorship, which is not a separate entity at all. Thus, one advantage of the sole proprietorship is ease -- there is no separate entity to form or to liquidate. Also, income of the sole proprietorship is taxed directly to the owner at individual tax rates. The primary disadvantage of this form of business organization is that the owner is personally liable for all debts of the business.



#### **b. "C" Corporation**

In contrast to the sole proprietorship, the C corporation, an entity separate from its owners, offers limited liability for its shareholders. ("C" refers to the applicable part of the Tax Code.) Another advantage of this organizational form is flexibility with regard to creating different classes of interests and types of management. The principal disadvantage of the C corporation form of organization is that income of a C corporation is taxed at the corporate level and then taxed again at the shareholder level when dividend distributions are made to shareholders. Furthermore, following the repeal of the General Utilities doctrine by TRA '86, a corporate level tax is also imposed on liquidating distributions of C corporations. Thus, the income of a C corporation is subject to two tiers of tax.

#### **c. General Partnership**

General partnerships, on the other hand, are considered "pass-through" entities for tax purposes. All partnership income is taxed at the partner level, even if it is not actually distributed to the partners. Distributions, however, typically have no tax effect, even in liquidation. Besides a single tier of tax, another benefit of partnership form is that items of income and deduction may be disproportionately allocated among the partners, as long as the allocations have "substantial economic effect." Therefore, the partnership form provides a great deal of flexibility in allocating income, gain and loss among partners. The main disadvantage of a general partnership is that the partners are personally liable for the debts of the partnership (although this liability can be alleviated through the purchase of insurance). Furthermore, management of a partnership may be cumbersome since typically all general partners participate in management.

#### **d. Limited Partnership**

Limited partnerships provide most of the same advantages as general partnerships. There is a single tier of tax, and flexibility in allocating income, gain, loss, etc. among the partners. Unlike partners in a general partnership, however, limited partners in a limited partnership typically have limited liability. Use of a corporation as the general partner of a limited partnership can effectively insulate all partners from personal liability. On the negative side, to ensure their limited liability, the limited partners must generally sacrifice the ability to manage the business.

#### **e. "S" Corporation**

S corporations ("S" refers to the applicable part of the Tax Code) provide the pass-through taxation of a partnership with the limited liability and ability to manage the business that is granted shareholders of a corporation. The benefits

of S corporation status are only available, however, to organizations that satisfy certain eligibility requirements, including limitations on the number and type of shareholders. Furthermore, the shareholders of an S corporation must be careful to ensure that the corporation has only one class of stock. Although differences in voting rights among shareholders will not create a second class of stock, disproportionate distributions to shareholders must be avoided. Thus, an S corporation's flexibility regarding distributions is more limited than that of a C corporation or a partnership.

#### **f. Limited Liability Company**

A new type of business entity which combines aspects of a limited partnership and a corporation is the limited liability company (LLC). An LLC affords its members limited liability but also allows them to take an active role in the management of the business (a degree of flexibility not provided the limited partners in most limited partnerships). The LLC can be structured to be taxed as either a partnership or a corporation, although typically the LLC would be chosen when taxation as a partnership is desired. Currently, only eight states have statutes authorizing the formation of an LLC, so this option is only available to business organizers willing to form a business in those jurisdictions. However, since 1988 when the IRS classified a Wyoming LLC as a limited partnership for federal income tax purposes, interest in LLCs has heightened in state legislatures, and it is likely more states will adopt LLC statutes in the future.

The choice between the various forms of entities depends, of course, on the requirements and desires of the owners of the business. Many other factors come into play besides the ones discussed above. For example, one consideration is the operation of the "at-risk" and passive loss rules, which limit an individual's ability to take certain deductions or recognize certain losses. Whereas partners of a general or limited partnership and shareholders of an S corporation are subject to these rules, shareholders of C corporations generally are not. Accordingly, care should be taken to assess the various advantages and disadvantages of each type of business entity before choosing any organizational form.

### **2. Acquisitions of Existing Businesses**

A major consideration for most new owners is their ability to recover the cost of the various assets acquired with the business, either through depreciation or amortization.

#### **a. Depreciation of Intangible Assets**

For broadcasters as well as other media owners, intangible assets constitute a large portion of the value of their business assets. These assets are

depreciable if: (1) they have an ascertainable value, separate and distinct from goodwill, and (2) they are "wasting assets," i.e., they have a determinable useful life, the duration of which may be estimated with reasonable accuracy.

A case currently before the U.S. Supreme Court may impact on a broadcaster's ability to depreciate certain intangible assets. Newark Morning Ledger Co. v. United States, 945 F.2d. 555 (1991), cert. granted 60 U.S.L.W. 3687 (1992), involves the depreciability of a newspaper chain's paid-subscriber relationships. In Newark Morning Ledger, the U.S. district court held that the subscriber relationships were depreciable because the taxpayer had proven that these relationships had ascertainable values, separate from the residual goodwill value of the newspapers, and limited useful lives. However, the Third Circuit Court of Appeals reversed that decision, finding that income-producing, wasting intangible assets may be nondepreciable "goodwill" as a matter of law. Since the Third Circuit's opinion in Newark Morning Ledger is in acknowledged conflict with other circuits and the Tax Court, the resolution of this issue by the Supreme Court in early 1993 may clarify under what circumstances a broadcaster may depreciate certain intangible assets of its stations, including advertiser relationships.

#### **b. Amortization Under Section 1253**

FCC licenses and network affiliation contracts are not considered depreciable since these contracts are routinely renewed and thus do not have determinable useful lives. However, FCC licenses and network affiliation contracts may be amortized under Section 1253, which governs the tax treatment of certain "franchises." Although the amortization of these assets under Section 1253 has been somewhat controversial, a recent Tax Court case, Jefferson-Pilot Corp. v. Commissioner, 98 T.C. 32 (April 13, 1992), held that a broadcaster was able to amortize under Section 1253 the cost of the FCC licenses it had acquired with its purchase of three radio stations. In addition, two years ago, the Tax Court held in Tele-Communications, Inc. (TCI) that a cable television franchise was amortizable under Section 1253. Thus, the only two cases to consider the application of Section 1253 to assets such as FCC licenses and CATV franchises have held in favor of the taxpayer. The IRS has appealed TCI to the Tenth Circuit on a narrow issue, and it is not known at this time whether the IRS will appeal Jefferson-Pilot. There is no case decision regarding whether a network affiliation agreement may be amortized under Section 1253. The IRS is opposed to its amortization, but broadcasters and their advisors generally conclude that network affiliation agreements qualify under Section 1253.

The value of Section 1253 was diminished by the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) which increased the amortization period of many Section 1253 assets from ten to twenty-five years. OBRA '89 provided that a taxpayer can "elect" to amortize the cost of most franchises acquired after

October 2, 1989 over 25 years; however, there are no details regarding the time or manner in which the election should be made, or whether the election is revocable. To date, no rules have been issued governing the election. As a result, there is no guidance as to whether the election must be made on the initial return, or whether it can be made on an amended return.

### **c. Recent Legislative Proposals**

The uncertainty over taxpayers' ability to depreciate or amortize their intangible assets has prompted some members of Congress to introduce bills that would allow taxpayers to write off the cost of intangible assets, including goodwill and going concern value. There are two proposals currently pending in Congress, both of which would allow amortization of FCC licenses, network affiliation agreements, and other intangible assets. The Senate bill would allow taxpayers to write off the cost of certain intangible property (defined as a "Section 197 intangible") over a 16-year period. "Section 197 intangibles" include governmental licenses such as FCC licenses and cable television franchises, network affiliation agreements, advertisers, subscription lists, and non-competition agreements, as well as intangible assets typically considered nondepreciable, such as goodwill and going concern value. The term does not include film and program contracts unless acquired as part of a trade or business. In general, the Senate bill would apply to property acquired after the date of enactment (subject to a "binding purchase contract" exception); however, the bill contains a retroactivity provision that would allow a taxpayer to apply its terms to assets acquired after July 25, 1991. The second intangibles proposal, the House bill, generally contains the same provisions as the Senate bill except that it provides for a 14-year amortization period for "Section 197 intangibles." Whether any legislation will contain other retroactive elections to apply to earlier tax years is uncertain.

Regardless of whether any legislation is enacted to allow for a uniform depreciation period for intangible assets, the tax value of being able to depreciate or amortize intangible assets should always be considered in planning for the acquisition of a broadcast station. Under existing law, professional appraisals of tangible and intangible assets are needed to make a proper allocation of the purchase price among the various assets acquired and for the appropriate accounting and tax treatment of these assets. Moreover, Section 1060 of the Tax Code (added in TRA '86) imposes reporting requirements on the buyer and seller of the assets of a trade or business. Although the buyer and seller do not have to agree on the value of the assets transferred, each must report to the IRS how they are valuing the assets for tax purposes.



#### **d. Non-Competition Agreements**

Another depreciable asset often involved in the transfer of a business is a non-compete covenant. Although it is not one of the assets of the business, often payment for the non-compete is included in the purchase price of the business. This can create difficulties for the buyer who plans to depreciate the non-compete over its term because the IRS may challenge an allocation of the purchase price to the non-compete, contending that the amount should be allocated to nondepreciable assets such as going concern or goodwill. The prudent course for a buyer receiving a non-compete is to negotiate with the seller for a separate allocation to the non-compete because then it is somewhat more difficult for the IRS to assert the non-compete is part of the value of the business assets. Since the non-compete is treated as ordinary income to the seller, the extent to which the buyer and seller are adverse parties for tax purposes in these negotiations typically will depend upon the difference between tax rates on ordinary income and capital gains.

### **B. The Omnibus Budget Reconciliation Act of 1990**

The following discusses the changes to the taxation of individuals made by the Omnibus Budget Reconciliation Act of 1990 (OBRA '90).

#### **1. Closing the Gap between Individual and Corporate Tax Rates**

One factor involved in choosing between the types of business organizations, e.g., corporation vs. partnership, is the relationship between individual and corporate tax rates. Before TRA '86, the top individual marginal rate was 50 percent; for corporations, however, the top marginal rate was 46 percent. TRA '86 reversed this relationship, reducing the top individual rate to 28 percent and the top corporate rate to 34 percent. Thus, the attractiveness of partnerships and S corporations vis-a-vis "C" corporations increased. For years beginning after 1990, however, the gap between individual and corporate rates has been reduced.

Beginning in 1991, individual ordinary income rates of 15, 28, and 31 percent are in effect. For 1992, the 28 percent rate will apply to taxable income greater than \$21,450 but not over \$51,900 for single taxpayers, greater than \$35,800 but not over \$86,500 for married taxpayers filing jointly, and greater than \$28,750 but not over \$74,150 for single heads of household. Below these income brackets, the 15 percent rate applies; above the brackets, the 31 percent rate applies. The 1991 increase in the top marginal rate for individuals to 31 percent has narrowed the gap between the top corporate rate of 34 percent and the individual rate. Although the corporate rate is still higher, the corporate-

individual rate spread is less significant. As a result, the benefits afforded to an S corporation or partnership, relative to a C corporation, have been reduced.

## **2. Capital Gains Preference Back in Tax Code**

Prior to TRA '86, 60 percent of the gain on the sale of a capital asset held for at least 6 months was excludable from income. Although TRA '86 repealed this 60 percent exclusion, with the enactment of OBRA '90, capital gains again received a tax preference, although it is limited in scope. Beginning in 1991, the maximum tax rate for individual taxpayers on net capital gains is 28 percent. Thus, capital gains are not subject to the top marginal rate of 31 percent. Whether more preferential treatment of capital gains will be placed back in the Tax Code is controversial and unresolved. As under prior law, capital losses may only be used to offset capital gains plus \$3,000 of ordinary income.

As mentioned previously, the relationship between the tax rates on ordinary income and capital gains affects one area that is of interest to buyers and sellers of business -- covenants not-to-compete. Since a non-compete agreement bargained for in the transfer of a business is taxed as ordinary income to the seller and is deductible over its term by the buyer, the greater the difference between ordinary income and capital gains rates, the more likely the buyer and seller will be engaged in extended negotiations over the value of a non-compete. The limited capital gains preference introduced in the Tax Code in OBRA '90 for individuals means that some sellers will no longer be indifferent, as they were for a few years following TRA 1986, when value is allocated to a non-compete covenant. Nevertheless, non-competes can still present a "win-win" situation for the buyer and seller: in order to receive a valuable non-compete, many buyers will be willing to increase the total price they pay to cover the seller's increased tax because of an allocation to a non-compete.

## **3. Other Changes Affecting Individual Taxpayers**

OBRA '90 increased the standard deduction amount for 1992 to \$3,600 for single taxpayers, \$6,000 for married taxpayers filing jointly, and \$5,250 for single heads of household. In 1992, the personal exemption amount for each individual filer and their spouse and dependents, if any, is \$2,300 per person. However, for tax years 1991-95, this exemption amount is subject to a phase-out if the taxpayer's adjusted gross income is above a certain threshold (for 1992, \$105,250 for singles, \$157,900 for joint returns, and \$131,550 for heads of household). For each \$2,500 or fraction thereof above the threshold amount, the taxpayer's allowable exemption is reduced by 2 percent. The standard deduction amount and the thresholds at which rates increase will increase each year by the increase in the CPI.

Also, the treatment of certain itemized deductions was changed as a result of OBRA '90. For tax years 1991-95, certain allowable itemized deductions of taxpayers (such as employee business expenses) will be reduced by 3 percent of their adjusted gross income in excess of \$100,000. No such reduction, however, may reduce these otherwise allowable deductions by more than 80 percent.

Finally, with respect to the alternative minimum tax (AMT), OBRA '90 increased the individual AMT rate from 21 percent to 24 percent for taxable years after 1990. Also, after 1990, charitable contributions of appreciated tangible personal property will no longer be an AMT tax preference item.

### **C. New Estate Freeze Limits**

Estate "freezes" have been a popular estate planning device for years. In a typical estate freeze, a senior family member with, for example, a common stock interest in a business, would recapitalize the business with common and preferred stock. The senior family member would retain the preferred stock, which carried the present fair market value of the business, and transfer the common stock, which had little present value but which carried the appreciation potential of the business, to junior family members at little or no gift-tax cost.

The benefits of certain estate freezing devices were reduced or eliminated, however, by the adoption of "anti-estate-freeze" rules. In 1987, Congress added Section 2036(c) to the Tax Code, which required any post-transfer appreciation in certain transferred property to be included in the transferor's gross estate. Section 2036(c) was widely criticized for being too broad and thus limiting legitimate transfers of family-owned businesses. It was repealed in OBRA '90 and replaced with Sections 2701-2704 of the Tax Code. Unlike Section 2036(c), which focused on the estate tax consequences of an estate freeze, Sections 2701-2704 focus on the gift tax consequences of the transfer and modify the valuation, for gift tax purposes, of certain retained rights in corporations, partnerships, and other types of property used in estate freezes.

### **D. Payroll Taxes and Compensation Benefits For Employees**

#### **1. Definition of "Employee"**

Congress continues to consider legislation regarding the categorization of workers as employees or independent contractors. Generally, classification of workers as employees or independent contractors is based on a facts-and-circumstances "control" test. An employer-employee relationship is deemed to exist if the person contracting for services controls the way in which the service provider performs his services as well as the result of those services. While an



employee's income is subject to payroll taxes which the employer must collect and pay, payments made to an independent contractor are not subject to payroll taxes.

Concern over misclassification of workers (typically misclassification of employees as independent contractors) led the House Ways and Means Committee to schedule public hearings on this issue in July 1992. To date, Congressional interest in this question has not risen to the level that any legislation has been introduced. Broadcasters should be aware, however, that increasingly often the IRS has focused on this issue in audits.

## **2. 401(k) Plans**

The limit on the amount that an employee may contribute to a Section 401(k) plan and exclude from income is adjusted yearly for inflation. For 1992, the maximum contribution is \$8,728. This amount will increase each year by the level of the Consumer Price Index (CPI).

As an alternative to a 401(k) plan, the employer may avoid significant administrative burdens by implementing a simplified employee pension (SEP), which permits an employer to contribute directly to its employees' individual retirement accounts (IRAs), provided that the employer meets certain requirements with respect to those contributions.

## **3. Cafeteria Plans**

"Cafeteria" plans have become a very popular means by which employers provide non-pension benefits to employees, primarily because the nature of a cafeteria plan affords each participating employee flexibility to select benefits which fit the employee's individual needs and it accords with the growing trend of requiring employees to pay for some of the cost of their benefits. A cafeteria plan permits an employee to use pre-tax dollars to select benefits from a "menu" of two or more benefit alternatives, which may include medical expense reimbursement, disability insurance, group term life insurance up to \$50,000, accident or health plan coverage, coverage under a dependent care program, coverage under a group legal services plan, and certain amounts under a 401(k) plan.

# Chart A NON-TAX CONSIDERATIONS IN CHOOSING ORGANIZATIONAL FORM OF BUSINESS

Forms of Business Management	Limited Liability <sup>1</sup>	Centralized Management	Continuity of Existence <sup>2</sup>	Free Transferability of Interests
Sole Proprietorship	Unlimited personal liability. Persons and business assets are both subject to creditors' claims.	Sole proprietor manages business.	No. Terminates with death of sole proprietor.	No "interests" in business, but assets freely transferable.
General Partnership	No.	Usually not.	No. (Although partnership agreement can provide for continuation in the event of death, disability, etc. of partner.)	No. Generally partner must obtain consent of all partners in order to transfer partnership interest.
Limited Partnership <sup>3</sup>	Yes, but only for limited partners of limited partnership. Limited partners liable only to extent of their capital contributions.	Usually. Generally management vested exclusively in general partners.	Typically no, but can continue for term specified in certificate.	Depends on limitations on transfers contained in partnership agreement.
Corporation	Yes. Shareholders' losses generally limited to the extent of their investment in corporation.	Yes. Board of Directors manages the business.	Yes. A corporation has perpetual existence unless Articles of Incorporation provide otherwise.	Yes. Interests freely transferable unless shareholders' agreement provides otherwise.
S Corporation	Yes. Same as a typical corporation.	Yes. Board of Directors manages the business.	Yes. Same as a typical corporation.	Yes, but shareholders' agreement may provide otherwise.

<sup>1</sup>Persons holding interests in a business will want to insulate their personal assets from the debts and claims of the business. This characteristic is known as "limited liability." The importance of this characteristic as a factor in choosing among organizational forms may be greatly reduced or eliminated to the extent that adequate insurance can be purchased by owners to protect against personal liability.

<sup>2</sup>The characteristic of "continuity of existence" refers to whether an organization will continue in existence notwithstanding the death, disability, withdrawal, or bankruptcy of one of its principals.

<sup>3</sup>Limited liability companies can be similar to limited partnerships. Typically, a limited liability company has limited liability for members; the extent to which it has centralized management, continuity of existence, and free transferability of interests depends on the organizational documents of the company.

**Chart B**  
**TAX CONSIDERATIONS IN CHOOSING ORGANIZATIONAL FORMS OF BUSINESS**

<b>Taxed on Income</b>	<b>Deductibility of Losses</b>	<b>Possibility of Allocating Different Types of Income and Deductions Among Owners by Agreement</b>	<b>Liquidation of Business</b>	<b>Owner as Employee</b>	<b>Fringe Benefits</b>
Taxed directly to business owner.	Losses deducted by business owner.	No.	No liquidation; not a separate entity.	Self-Employed.	H.R. 10 (Keogh) plan.
Taxed directly to partners whether or not distributed. Avoids problem of double taxation. Certain items pass through to partners separately without loss of items' character.	Partnership losses may be used by partners (subject to passive loss and at-risk rules).	Yes, if allocation has substantial economic affect.	Normally no tax.	Usually non-employee.	H.R. 10 (Keogh) plan, qualified group legal services plan, employee death benefit, meals and lodging for partner-employees.
Same as for General Partnership.	Partnership losses may be used by partners (subject to passive loss and at-risk rules).	Yes, if allocation has substantial economic affect.	Normally no tax.	Varies.	Basically same as for General Partnership.
Tax on income at corporate level and a second tax on dividends at the shareholder level.	Losses of a corporation do not pass through to shareholders.	No.	Generally taxable (two levels).	Employee.	Qualified retirement plans, deferred compensation, incentive stock option, health insurance, medical reimbursement, disability plan, group life insurance, employee death benefits, qualified group legal services plan, meals and lodging, child and dependent care assistance, cafeteria plan.
Taxed directly to shareholders whether or not distributed.	Losses may be used by shareholders (subject to passive loss and at-risk rules).	No.	Generally taxable.	Employee.	Qualified retirement plan, deferred compensation, incentive stock option, health insurance, employee death benefits, qualified group legal services plan, meals and lodging, child and dependent care assistance, cafeteria plan. Generally subject to same limits as General Partnership.



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## CHAPTER IX

### Satellite Earth Stations

#### A. Local Zoning Approvals

In considering various local ordinances which tended to restrict the erection of satellite receiver dishes, several Federal courts have invalidated the local restrictions where these restrictions effectively precluded the reception of signals. Van Meter v. Township of Maplewood, 696 F.Supp. 1024 (D. N.J. 1988); Village of Elm Grove v. Pye, 724 F.Supp. 612 (E.D. Wis. 1989). There also have been a number of decisions by state courts on this subject.

In 1992, the FCC specifically preempted the zoning ordinance of Deerfield, N.Y., which, the Commission determined, differentiated between satellite antennas and other antennas and unreasonably restricted the use of satellite antennas on lots less than half acre. 7 FCC Rcd 2172 (1992). The town of Deerfield has filed an appeal in the U.S. Court of Appeals for the Second Circuit.

In a land use case involving amateur radio towers, the court has held that the FCC preemption, in regard to that service did not preempt a local ordinance, if the ordinance were properly applied. McMillan v. City of Rocky River, 748 F.Supp. 1241 (N.D. Ohio, 1990). Amateurs are entitled to a "reasonable accommodation," not to an absolute preference. Howard v. City of Burlingame, 937 F.2d 1376 (9th Cir. 1991).

Because land use regulations vary from locality to locality, broadcasters are reminded of the warning contained in the Main Volume that local zoning counsel be consulted on these matters.

#### B. Technical Rules

Effective May 1, 1991, all earth stations used for video transmission will have to include an Automatic Transmitter Identification System (ATIS). The ATIS places an identifier call sign and telephone number in the transmission so that the licensee may be contacted immediately if the transmission interferes with other satellite users.

### **C. Syndicated Exclusivity**

Although the subject of syndicated exclusivity (syndex) is covered at length in Chapter VI, it is to be noted that the Commission specifically declined to impose syndex on program delivery to home satellite earth receivers. "Although we continue to believe that the cable syndicated exclusivity regulations serve the public interest, applications of syndicated exclusivity to the HSD industry is both technically and economically infeasible at this time." 6 FCC Rcd 725 (1991).

### **D. New Registration Procedures**

In a First Report and Order 6 FCC Rcd 2806 (1991), the Commission adopted rules that established a registration program for domestic receive-only earth stations that previously were subject to optional licensing procedures. Applications for registration of domestic receive-only earth stations that may have a significant environmental impact must be accompanied by an environmental assessment.

The term of registration for a domestic receive-only earth station will be 10 years. Stations used for reception of services from other countries will require a license.

STAs will be sparingly granted. Requests based solely on marketing considerations will be denied.

A new Form 493 was adopted, replacing Form 403.



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## CHAPTER X

### Copyright and Trademarks

#### A. "Sound Alike" and "Look Alike"

An emerging area of concern for broadcasters is the question of "sound alike" and "look alike" performers who sound or look like well known personages, and whose voices or appearances are presented on the air without authorization. In the Bette Midler case, Midler v. Ford Motor Co. Inc., 849 F.2d 460 (9th Cir. 1988), and the "Fat Boys" case, Tin Pan Apple, Inc. v. Miller Brewing Co. Inc., 737 F.Supp. 826 (S.D. N.Y. 1990), courts have permitted suits based on such unauthorized uses. Much of this litigation is governed by state law.

#### B. Digital Broadcasting

The emergence of digital audio broadcasting (DAB) and cablecasting has prompted the Commission (Gen. Docket 90-357) and the Library of Congress (55 Fed. Reg. 42,916, October 24, 1990) to institute proceedings to study the implications of this technology. Broadcasters are alerted to these proceedings, from a copyright prospective, because they may have long range implications on the airing of compact discs, digital audio tape and other materials in a digital mode. The recording industry is seeking the recognition of performance rights in sound recordings that would require broadcasters to pay additional royalties, is seeking restrictions on the number of "cuts" from a given album or artist DAB broadcasters could play sequentially, and is attempting to require DAB broadcasters to include digital "subcode" information embedded in recordings in their broadcasts.

#### C. Satellite Home Viewing Act

In 1988, Congress passed the Satellite Home Viewing Act (P.L. 100-667) which established a compulsory license for the distribution of broadcast signals to home dish owners via satellite. The compulsory license expires on December 31, 1994. In addition, the legislation increased the penalties for signal theft and the manufacture of unauthorized descramblers. The legislation established a

method for marketing descramblers and of accounting by cable operators. The license for carrying network programs is applicable only to those homes which are located outside the Grade B contours of the network's affiliated stations and have not been recent subscribers to a cable system which carries the network programs.

The Commission ruled that it would be technically and economically infeasible to apply syndicated exclusivity regulations to the distribution of satellite signals to home satellite dish owners at this time and, therefore, declined to adopt such rules. (Gen. Docket 89-90, FCC 90-431.)

Stations that own programs that are distributed to home dish viewers via satellite should file claims with the Copyright Royalty Tribunal during the month of July following the year their programming was carried. For further details on how to file a claim, contact the CRT at (202) 606-4400, or the NAB Legal Department at (202) 429-5460. While NAB does not represent stations in satellite royalty distributions proceedings, a station group has been formed to do so.

#### **D. Storecasting**

Unlicensed public performances of copyrighted music generally are unlawful. Broadcasters obtain licenses from performing rights organizations such as ASCAP, BMI and SESAC which authorize their stations to broadcast (publicly perform) music. The public performance licenses obtained by stations do not authorize the use of the music included in their signals by businesses for background music ("storecasting"). Thus, businesses that disseminate broadcast station signals in their establishments generally must obtain additional licenses from performing rights organizations unless they qualify for a statutory exemption.

Exemptions to the requirement to obtain public performance licenses include use of music in teaching, state fairs, religious services, in-store record promotions, certain limited non-profit performances, and by relatively small commercial establishments that transmit music included in broadcast signals. The scope of this last exemption for small businesses has been the source of much litigation, and continues to be the most difficult to apply.

The small business exemption only applies to the playing of broadcast stations on a single receiver of a kind commonly used in private homes where there is no direct charge made to see or hear the broadcast and where the broadcast is not "further transmitted" to the public. In interpreting the scope of this exemption, courts have considered such factors as: the square footage of the business; whether a public address or other commercial sound system is used to

disseminate the broadcast signal; the number of speakers connected to the receiving device and the wiring system by which they are connected; and the ability of the business to afford a subscription music service. Generally, courts appear to have been reluctant to recognize the exemption in situations where a business is using more than four speakers covering an area exceeding approximately 1,100 square feet. Some courts also have refused to apply the exemption where the annual sales volume of a business suggests that it could, as a practical matter, afford to subscribe to a commercial background music service.

In a significant departure from prior court rulings, two federal appellate courts issued decisions in 1991 and 1992 upholding the applicability of the exemption with respect to chain stores that acquired home style receiving devices and speakers for use in their stores.<sup>1</sup> One of these courts rejected as irrelevant both the square footage and financial means criteria, while the other court rejected the financial means criteria, but continued to consider square footage in allowing the exemption to apply to stores with more than 2,000 square feet. Both courts appeared to focus primarily on whether the receiving apparatus used, and its configuration, was similar to that commonly used in private homes. The result of these decisions is that the scope of the small business exemption may be considerably broader in Illinois, Indiana, Wisconsin, Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota than in other jurisdictions. Attached as Appendix D is a counsel memo that addresses this issue in greater detail. Businesses that have been contacted by a music licensing organization concerning the need to acquire a performance license who believe they qualify for the small business exemption are advised to contact their attorney.

## **E. Music-on-Hold**

Within the past few years, music licensing organizations have taken the position that businesses which play radio stations on the "hold" function of their telephones must obtain licenses to cover the performance of music that might be played by the station while the caller is waiting for service. The validity of this position has not yet been addressed by the courts. Accordingly, businesses contacted by music licensing organizations regarding the use of radio stations on the hold function of their phone system must decide whether to secure the license, discontinue use of the radio station, or challenge the validity of the need for securing a license.

## **F. Music Licenses For Radio and Television Stations**

Chapter X, Part C, of the Main Volume provides background information on the activities of the radio and television music licensing committees.

In 1991, the Radio Music License Committee ("RMLC") reached an agreement with ASCAP over the terms of new blanket and per program music licenses that will apply to radio stations from January 1991 through December 31, 1995. Major provisions of these agreements include: resolution of the barter issue in connection with stations' arrangements with syndicated music services; rate adjustments; elimination of the network affiliate compensation deduction, unless the station airs 90% or more of the network programs in which commercials are fed; provisions covering time brokerage agreements among stations; and elimination of the highest one-minute-rate formula for all new per-program licenses.

At this writing, the RMLC is continuing to negotiate with BMI over the terms of new blanket and per-program licenses. Stations are now operating under the terms of these licenses that expired in 1991, which are being renewed at 60 day intervals.

Questions concerning music licensing organizations with respect to radio should be directed to Dave Fuellhart, RMLC's executive director, at (410) 866-5594.

Negotiations and litigation over the terms of television music licenses continue to be handled by the All Industry Television Station Music License Committee. The trial in US v. ASCAP (Application of Buffalo Broadcasting Co., Inc.), Civ. 13-95 (S.D.N.Y. 1985) to determine music license fees from 1983 through 1995 concluded in February 1991 and is awaiting a final decision from a federal magistrate. Questions regarding music licensing for television stations should be directed to the All Industry Committee at (202) 308-9040.

## **G. Broadcast Monitoring and Clipping Services**

A \$50 million industry has emerged consisting of companies that often copy the entire broadcast day of television stations and other video services, monitor and catalogue their programs and news segments, and sell, for a profit, summaries of the program contents and/or clips of the programs themselves. The activities of these companies have been successfully challenged by broadcasters and others whose programs have been copied and disseminated on the grounds that they constitute copyright infringement. See e.g., Pacific and Southern Co. Inc. v. Duncan, 572 F.Supp. 1186 (N.D. Ga. 1983), aff'd in part and rev'd in

part, 744 F.2d 1490 (11th Cir. 1984), cert denied 471 US 1004 (1985), 618 F.Supp. 469 (N.D. Ga. 1985), aff'd 792 F.2d 1013 (11th Cir. 1986).

Legislation has been introduced and congressional hearings have been conducted in which the issue of whether some or all of the activities in which clipping and monitoring services engage should be legalized under the fair use doctrine.

Stations which become aware that their copyrighted programming is being copied and/or disseminated by one of these services may wish to consider bringing a copyright infringement action or attempting to negotiate a license agreement with the service.

## **H. Trademark Protection of Call Signs and Slogans**

Section B.7 of Chapter X of the Main Volume provided information relating station's obtaining trademark protection for their call signs, slogans and other station identifiers. Attached in Appendix D are two counsel memos that provide updates on some of the cases dealing with this issue and more detailed information on how to obtain federal registration for a trademark subsequent to passage of the "Trademark Law Revision Act of 1988," Public Law 100-667, November 16, 1988.

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## Endnotes

1. Edison Bros. Stores Inc. v. BMI, 760 F.Supp. 767, (E.D. Mo. 1991), aff'd, 954 F.2d 1419, (8th Cir. 1992), cert. denied, 118 L.Ed.2d 590 (1992); BMI v. Claire's Boutiques, Inc., 754 F.Supp. 1324 (N.D. Ill. 1990), 949 F.2d 1482 (7th Cir. 1991), cert. denied, 118 L.Ed.2d 547 (1992).



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## **CHAPTER XI**

### **Antitrust Considerations**

#### **A. Joint Program Standards**

In October 1990, Congress passed the Television Program Improvement Act providing broadcasters, cable operators and industry representatives with an exemption from the antitrust laws so that they can get together and formulate a set of industry wide standards to curb violence on television programs.

The legislation sponsored by Senator Simon (D-IL) and Representative Glickman (D-KS) suspends the applicability of the antitrust laws for a three-year period to enable the parties to formulate such standards.

At press time, no standards have been proposed or promulgated, but industry leaders are beginning an assessment of how best to respond to the new law. Although questions have been raised regarding a possible conflict with the First Amendment — and whether the legislation provides a sufficient antitrust exemption or insulates the participants from private litigation — no final determination of these issues has been made.

Because broadcasters may be faced with inquiries from community groups regarding this legislation, the Act is reproduced in its entirety.

#### **TELEVISION PROGRAM IMPROVEMENT ACT OF 1990**

[December 1, 1990, Title V, P.L. 101-650, Judicial Improvements Act of 1990, 104 Stat. 5089].

##### **Sec. 501. Television Program Improvement**

(a) Short Title — This section may be cited as the "Television Program Improvement Act of 1990."

(b) DEFINITIONS. — For purposes of this section —

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such

term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition;

(2) the term "person in the television industry" means a television network, any entity which produces programming (including theatrical motion pictures) for telecasting or telecasts programming, the National Cable Television Association, the Association of Independent Television Stations, Incorporated, the National Association of Broadcasters, the Motion Picture Association of America, the Community Antenna Television Association, and each of the networks' affiliate organizations, and shall include any individual acting on behalf of such person; and

(3) the term "telecast" means —

(A) to broadcast by a television broadcast station; or

(B) to transmit by a cable television system or a satellite television distribution service.

(c) EXEMPTION. — The antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the television industry for the purpose of, and limited to, developing and disseminating voluntary guidelines designed to alleviate the negative impact of violence in telecast material.

(d) LIMITATIONS. — (1) The exemption provided in subsection (c) shall not apply to any joint discussion, consideration, review, action, or agreement which results in a boycott of any person.

(2) The exemption provided in subsection (c) shall apply only to any joint discussion, consideration, review, action, or agreement engaged in only during the 3-year period beginning on the date of the enactment of this section.

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## **CHAPTER XII**

### **Functional Listings Of Interest To Broadcasters**

In the following pages are listed the names and telephone numbers of personnel whose activities affect broadcasters.

In addition to FCC listings, included are listings for Congressional Committees and other agency executives.

**ALL WASHINGTON, D.C. TELEPHONE NUMBERS MUST BE PRECEDED BY AREA CODE 202.**

#### **FEDERAL COMMUNICATIONS COMMISSION**

1919 M Street, N.W.  
Washington, D.C. 20554

Chairman	Alfred C. Sikes	632-6600
Confidential Assistant	Elaine Lorentz	632-6600
Chief of Staff	Terry L. Haines	632-6600
Commissioner	James H. Quello	632-7557
Confidential Assistant	Ginger Clark	632-7557
Commissioner	Andrew Barrett	632-7117
Sr. Legal Assistant	Robert Branson	632-7117
Commissioner	Sherrie Marshall	632-6446
Sr. Legal Advisor	Stephenson Kaminer	632-6446
Commissioner	Ervin S. Duggan	632-6996
Senior Legal Advisor	Michele C. Farquhar	632-6996

#### **Administrative Law Judges**

Chief Administrative Law Judge	Joseph Stirmer	632-7680
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### **Managing Director**

Managing Director	Andrew S. Fishel	632-6390
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### **Plans and Policy**

Chief	Robert Pepper	653-5940
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### **Legislative Affairs**

Director	Linda Townsend Solheim	632-6405
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### **Public Affairs**

Director	Lorrie Secrest	632-5050
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### **Review Board**

Chairman	Joseph A. Marino	632-7180
Member	Norman Blumenthal	632-7180
Member	Eric T. Esbensen	632-7180
Member	Marjorie Greene	632-7180

### **Mass Media**

Chief	Roy J. Stewart	632-6460
Deputy Chief	William H. Johnson	632-6460
Deputy Chief	Roderick K. Porter	632-6460
Engineering Asst. Chief	William Hassinger	632-6460

### **Audio Services Division**

Chief	Larry D. Eads	632-6485
Assistant Chief	Stuart A. Bedell	632-6485
Assistant Chief	W. Jan Gay	632-6485
Auxiliary Services	Alan J. Schneider	634-6307
AM Branch	James R. Burtle	254-9579
FM Branch	Dennis Williams	632-6908

### **Video Services Division**

Chief	Barbara A. Kreisman	632-6993
Assistant Chief	James J. Brown	632-6993
Assistant Chief	Stephen F. Sewell	632-6993
Ownership Branch	LeAudrey Alexander	632-7258
Cable Television Branch	Ronald Parver	632-7480
Low Power TV Branch	Keith Larson	632-3894
Supervisory Attorney	Molly M. Fitzgerald	632-3894
Television Branch	Clay C. Pendarvis	632-6357

### **Enforcement Division**

Chief	Charles W. Kelley	632-6968
Assistant Chief	Mary Catherine Kilday	632-7551
Complaints & Investigations Branch	Edythe Wise	632-6860
Equal Employment Opportunity Branch	Glenn Wolfe	632-7069
Political Programming Branch	Milton O. Gross	632-7586
Hearing Branch	Charles Dziedzic	632-6402

### **Policy & Rules Division**

Chief	Douglas W. Webbink	632-5414
Deputy Chief	Kathleen Levitz	632-5414
Law Assistant Chief	Bruce Romano	632-5414
Special Assistant Chief	Andrew Rhodes	632-6530
International Branch	Larry Olson	632-6955
Intl Notifications Group	Jimmy Ballis	254-3394
Legal Branch	David Horowitz	632-7792
Engineering Policy Branch	Gordon Godfrey	632-9660
Allocations Branch	Michael C. Ruger	634-6530

### **Engineering and Technology**

Chief Engineer	Thomas F. Stanley	632-7060
Deputy Chief Engineer	Bruce A. Franca	632-7060
Program Mgmt Staff	Lawrence P. Petak	653-8103
Spectrum Engineering Div	William R. Torak	632-7025

### **Common Carrier Bureau**

Chief	Cheryl A. Tritt	632-6910
Associate Chief	Jill Ross Meltzer	632-6910

### **Field Operations Bureau**

Chief	Richard M. Smith	632-6980
Deputy Chief	Arlan K. Vandoorn	632-7200
Attorney Advisor	Lawrence R. Clance	632-7591
International Advisor	William A. Luther	632-7591

### **General Counsel**

General Counsel	Robert L. Pettit	632-7020
Deputy General Counsel	Renee Licht	632-7020
Assoc General Counsel	Lauren J. Belvin	632-7020
Litigation Assoc General Counsel	Daniel M. Armstrong	632-7112

### **Private Radio Bureau**

Chief	Ralph A. Haller	632-6940
Deputy Chief	Beverly G. Baker	632-6942
Engineer Assistant	Frank R. Netro	632-0278
Legal Assistant	Kent Nakamura	632-0278
Land Mobile & Microwave Division	Richard J. Shiben	632-7597
Deputy Chief	Edward Jacobs	632-7597
Compliance Branch	Carol Foelak	632-7125
Rules Branch	Roz Allen	634-2443
Policy & Planning Branch	Joseph Levin	632-6497



## **FCC Regional and Field Offices**

### **ATLANTA**

**Koger Center-Gwinnett, Suite 310  
3575 Koger Boulevard  
Duluth, GA 30136  
(404) 279-4621**

**FLORIDA, Vero Beach**  
955 154th Avenue S.W.  
Box 1730  
Vero Beach, FL 32961-1730  
Phone: (407) 778-3755

**GEORGIA, Powder Springs**  
P.O. Box 85  
Powder Springs, GA 30073  
Phone: (404) 943-5420

**FLORIDA, Miami**  
Rochester Building, Room 310  
8390 N.W. 53rd Street  
Miami, FL 33166  
Phone: (305) 526-7420

**PUERTO RICO, San Juan**  
Federal Building & Courthouse  
Avenida Carlos Chardon, Rm 747  
Hato Rey, PR 00918-2251  
Phone: (809) 766-5567

**FLORIDA, Tampa**  
Airport Executive Center  
2203 North Lois Avenue  
Room 1215  
Tampa, FL 33607  
Phone: (813) 228-2872

**VIRGINIA, Norfolk**  
1200 Communications Circle  
Virginia Beach, VA 23455  
Phone: (804) 441-6472

**GEORGIA, Atlanta**  
Koger Center-Gwinnett  
3525 Koger Blvd.  
Duluth, GA 30136  
Phone: (404) 279-4621

**BOSTON**  
NFPA Building  
Batterymarch Park  
Quincy, MA 02169  
(617) 770-4023

**MAINE, Belfast**  
P.O. Box 470  
Belfast, ME 04915  
Phone: (207) 338-4088

**NEW YORK, Buffalo**  
1307 Federal Building  
111 W. Buron Street  
Buffalo, NY 14202  
Phone: (212) 846-4511

**MARYLAND, Baltimore**  
1017 Federal Building  
31 Hopkins Plaza  
Baltimore, MD 21201  
Phone: (301) 962-2728

**NEW YORK, New York**  
201 Varick Street  
New York, NY 10014  
Phone: (212) 620-3437

**MARYLAND, Laurel**  
P.O. Box 250  
Columbia, MD 21045  
Phone: (410) 962-2729

**PENNSYLVANIA, Philadelphia**  
One Oxford Valley Office Bldg  
2300 East Lincoln Highway  
Room 404  
Langhorne, PA 19047  
Phone: (215) 752-1324

**MASSACHUSETTS, Boston**  
NFPA Building  
Batterymarch Park  
Quincy, MA 02169  
Phone: (617) 770-4023

**CHICAGO**  
Park Ridge Office Center, Room 306  
1550 Northwest Highway  
Park Ridge, IL 60068  
(312) 353-0373

**ILLINOIS, Chicago**  
Park Ridge Office Ctr., Rm 306  
1550 Northwest Highway  
Park Ridge, IL 60068  
Phone: (312) 353-0373

**MICHIGAN, Detroit**  
24897 Hathaway Street  
Farmington Hills, MI 48335-1552  
Phone: (313) 226-6078

**MICHIGAN, Allegan**  
P.O. Box 89  
Allegan, MI 49010  
Phone: (616) 673-2063

**MINNESOTA, St. Paul**  
Federal Building, Room 693  
316 North Robert Street  
St. Paul, MN 55101  
Phone: (612) 290-3819

### **KANSAS CITY**

Brywood Office Tower, Room 320  
8800 East 63rd Street  
Kansas City, MO 64133  
(816) 353-9035

**COLORADO, Denver**  
165 S. Union Blvd.  
Lakewood, CO 81224  
Phone: (303) 969-6497

**TEXAS, Dallas**  
9330 LBJ Expressway, Rm 1170  
Dallas, TX 75243  
Phone: (214) 767-4827

**LOUISIANA, New Orleans**  
800 West Commerce St., Rm 505  
New Orleans, LA 70123  
Phone: (504) 589-2095

**TEXAS, Houston**  
1225 North Loop West, Rm 900  
Houston, TX 77008  
Phone: (713) 861-2600

**MISSOURI, Kansas City**  
Brywood Office Tower, Rm 320  
8800 East 63rd Street  
Kansas City, MO 64133  
Phone: (816) 926-5111

**TEXAS, Kingsville**  
P.O. Box 632  
Kingsville, TX 78363-0632  
Phone: (512) 592-2531

**NEBRASKA, Grand Island**  
P.O. Box 1588  
Grand Island, NE 68802  
Phone: (308) 382-4721

### **SAN FRANCISCO**

3777 Depot Road, Room 420  
Hayward, CA 94545-1914  
(510) 732-9046

**ARIZONA, Douglas**  
P.O. Box 6  
Douglas, AZ 85608  
Phone: (602) 364-8414

**CALIFORNIA, Livermore**  
P.O. Box 311  
Livermore, CA 94551  
Phone: (415) 447-3614

**CALIFORNIA, San Diego**  
4542 Ruffner Street  
San Diego, CA 92111  
Phone: (619) 467-0549

**CALIFORNIA, Los Angeles**  
Cerritos Corporate Tower  
18000 Studebaker Rd, Rm 660  
Cerritos, CA 90701  
Phone: (213) 809-2096

CALIFORNIA, San Francisco  
3777 Depot Road, Room 420  
Hayward, CA 94545-1914  
Phone: (415) 732-9046

SEATTLE  
One Newport, Room 414  
11410 NE 122nd Way, Suite 132  
Kirkland, WA 98034  
(206) 821-9037

ALASKA, Anchorage  
6721 West Raspberry Road  
Anchorage, AK 99502  
Phone: (907) 243-2153

WASHINGTON, Ferndale  
1330 Looms Trail Road  
Custer, WA 98248  
Phone: (206) 354-4892

HAWAII, Honolulu  
Waipio Access Road  
P.O. Box 1030  
Waipahu, HI 96797  
Phone: (808) 677-3318

WASHINGTON, Seattle  
11410 NE 122nd Way, S.E.  
Bellevue, WA 98036  
Phone: (206) 821-9037

OREGON, Portland  
1782 Federal Office Building  
1220 S.W. 3rd Avenue  
Portland, OR 97204  
Phone: (503) 326-4114

## **CONGRESS**

### **Senate**

Commerce Committee	(202) 224-5115
Communications Subcommittee	(202) 224-9340
Environment Committee	(202) 224-6176
Judiciary Committee	(202) 224-5225
Antitrust Subcommittee	(202) 224-5701
Technology Subcommittee	(202) 224-3407
Small Business Committee	(202) 224-5175

### **House**

Energy & Commerce Committee	(202) 225-2927
Telecommunications Subcommittee	(202) 226-2429
Interior Committee	(202) 225-2761
Judiciary Committee	(202) 225-3951
Economic Subcommittee	(202) 225-2825
Intellectual Property Subcommittee	(202) 225-3926
Small Business Committee	(202) 225-5821

## OTHER LISTINGS OF INTEREST

Board for International Broadcasting  
1201 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 254-8040

Copyright Royalty Tribunal  
1825 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 673-4400

Corporation for Public Broadcasting  
901 E Street, N.W.  
Washington, D.C. 20006  
(202) 879-9687

Department of Justice  
10th & Constitution Ave., N.W.  
Washington, D.C. 20530  
(202) 514-2007

Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210  
(202) 523-7316  
Wage and Hour Division  
(202) 523-7043

Equal Employment Opportunity  
Commission  
1801 L Street, N.W.  
Washington, D.C. 20507-0001  
(202) 663-4900

Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460  
(202) 382-2090

Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C. 20591  
(202) 267-3111

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463  
(202) 376-5140

Federal Trade Commission  
Pennsylvania Ave. at 6th St., N.W.  
Washington, D.C. 20580-0001  
(202) 326-2000

National Labor Relations Board  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20570  
(202) 632-4950

National Telecommunications and  
Information Administration  
14th & Constitution Avenue, N.W.  
Washington, D.C. 20230  
(202) 377-1800

Occupational Safety & Health  
Administration  
200 Constitution Ave., N.W.  
Washington, D.C. 20210  
(202) 523-7162

U.S. Copyright Office  
Library of Congress  
1st & Independence Avenue, S.E.  
Washington, D.C. 20540  
(202) 707-6800

Voice of America  
330 Independence Avenue, S.W.  
Washington, D.C. 20547-0001  
(202) 619-2538

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## CHAPTER XIII

### Important Additional Developments

A number of developments of interest to broadcasters have taken place which, while not supplementary of the material in the Main Volume, are discussed here briefly.

#### A. AM Broadcasting

1. In a massive document, the Commission took final action in its proceeding in Docket 87-267 "Review of the Technical Assignment Criteria for the AM Broadcast Service." 6 FCC Rcd 6273 (1991). While specific operational provisions are listed in Chapter V, the following is a brief summary of the Commission's action.

##### a. Technical standards

The engineering changes (1) increase the first and second adjacent channel protection ratios to reduce adjacent channel interference and to promote the development of receivers with higher audio fidelity; (2) refine the methodology of calculating nighttime coverage and interference to more accurately measure interference effects, which should lead to an improvement in nighttime reception; and (3) in some cases, require 10% interference reduction when modifications are made to AM station facilities, which should gradually reduce the overall presence of interference.

##### b. Migration

This action selectively opens the ten newly available frequencies in the expanded band (1605-1705 kHz) to those existing AM stations which significantly contribute to congestion and interference in the existing band. To effectuate this plan, the Commission (1) adopts an allotment plan for the AM expanded band that is based on wide station separation and low interference levels; (2) ranks competing migration proposals using factors related to the interference reduction and service provided; (3) specifies minimum transmitting antenna efficiency to maximize the utilization of each allotment in the expanded band; (4) offers an eligibility preference to AM stereo broadcasting in the expanded band to ensure



that the competitive benefits offered by the expanded band are more fully realized; and (5) allows dual ownership and operation of existing and expanded band stations for a transitional period of five years, with a corresponding waiver of duopoly and national ownership rules during the permissible period of dual operation.

**c. Additional Actions**

The Commission will additionally (1) permit the issuance of tax certificates in conjunction with voluntary arrangements to reduce interference by discontinuing operation of marginal stations; (2) relax its multiple ownership rules for those proposing changes in facilities that would result in a significant reduction of interference in the existing AM band; and (3) relax the rules pertaining to Travelers Information Stations to allow for the authorization (on a secondary basis) of such stations on any assignable frequency in the AM band.

The freeze on the acceptance of applications was lifted effective April 19, 1992.

As of press time, the Commission has not announced the filing window for filing applications to migrate to the expanded band.

2. On July 28, 1992, the Commission announced its policy on upgrades of daytime only AM stations, pursuant to the 1991 amendment to the Communications Act. That amendment (Section 331(b)) directed the Commission to ensure that a licensee of an AM only station in a community of more than 100,000 that lacks a full-time aural station licensed to that community, and that is located within a Class I station primary service area, be given the opportunity to provide full-time service to that community. Under the policy, the Commission's staff will work out the appropriate procedure. Applications conforming to the staff's guidelines will not be subject to competing applications. (FCC 92-344).

**B. FM Broadcasting**

1. The FCC created a new class of FM channels, to be known as C3. Stations on these channels will be permitted to operate with a maximum of 25,000 watts and antenna height of 328 feet above average terrain. It also permitted certain Class A stations to operate with 6000 watts ERP. 4 FCC Rcd 6375 (1989).

2. The FCC proposed procedures for reclassifying 149 Class A FM stations to Class C3 status. 4 FCC Rcd 4904 (1989). Several stations have now been subject to these proceedings.

3. The Commission affirmed on reconsideration its decision to permit routine authorization of FM stations at nominally short spaced transmitter locations as long as other stations are protected from interference. 6 FCC Rcd 5356 (1991).

4. In 1991, the Commission clarified the procedures regarding consents for power upgrades and made other technical changes. 6 FCC Rcd 3417 (1991).

5. By a Report and Order released July 27, 1992 (FCC 92-328), the Commission has relaxed its "hard look" approach to processing applications to construct commercial FM broadcast stations. The Commission retained current FM filing standards, but will give FM applicants the chance to correct otherwise fatal errors and omissions.

Under the more liberalized approach, applicants will have the opportunity to correct defects. Specifically, three stages were established during which an applicant may amend tender and acceptance information after the close of a filing window. The Commission said it would apply the new rules to all commercial applications for construction permits, filed after the effective date of the new rules. The new rules will be effective upon publication in the Federal Register. The new rules would have no effect on currently pending applications and appeals.

## **C. Television**

1. After years of study the FCC issued its Second Report on ATV (ATV is a term applied to technology "that provides improved audio and video quality." It includes HDTV and EDTV.) 7 FCC Rcd 3340 (1992). Among its numerous conclusions, the Commission decided:

- to limit initial eligibility for ATV frequencies to existing broadcasters; However, it will allow others to apply for ATV allotments and licenses in communities where there are additional channels available;

- to adopt a two-year deadline for broadcasters to apply initially for a paired ATV channel and a three-year deadline for construction of an ATV facility once assigned;
- to consider all allotment issues and issue a draft Table of Allotments in the summer of 1992;
- to use vacant noncommercial reserved channels only when no feasible alternative exists for assigning ATV channels to existing broadcasters and to leave vacant noncommercial allotments without an ATV channel pair only when there is no other practicable way to award an existing broadcaster an ATV channel;
- to maintain the secondary status of low-power television service stations vis-a-vis new ATV operations;
- to notify broadcasters that when ATV becomes and is designated as the prevalent medium, they will be required to "convert" to ATV, i.e., surrender one of two broadcast channels and cease broadcasting in NTSC; and
- to adopt a 100 percent simulcasting requirement at the earliest appropriate point.

2. In August 1991, the FCC released a report and order, 6 FCC Rcd 5148, requiring stations proposing to operate on Channels 14 and 69 to "install necessary precautions and submit evidence that no interference is being caused [to land mobile operations] before they will be permitted to transmit programming on the new facilities." The Commission also called for agreements between the TV and land mobile operators to eliminate interference.

#### **D. General Law**

1. In June 1990, the Supreme Court ruled that the FCC policies of awarding a minority preference in comparative cases and permitting the "distress sales" of stations to minorities were constitutional. The Court ruled that these policies furthered the governmental objective of media diversity. Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990).

2. The Court of Appeals has ruled that the Commission's policy of awarding female preferences in comparative hearings violates the Equal Protection clause of the Fifth Amendment. The court found that there was no evidence that sex preferences established any meaningful link with improved programming. Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992).

3. The Court of Appeals has ruled that the FCC was obligated to "demonstrate why its focus on integration [of ownership and management] is still in the public interest." An unsuccessful applicant had contended that the particular criterion in comparative hearings had outlived its usefulness. Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992) pet. cert. pend. 60 U.S.L.W. 5834 (1992).

4. Following the Bechtel decision, the Commission has initiated a wide ranging reexamination of the criteria it has been using since 1965 in resolving comparative hearings (GC Docket 92-52). The Commission was particularly concerned with applications which "fashion proposals which may not realistically be effectuated."

5. On June 12, 1992, the Commission instituted a broad inquiry into the regulations of the television medium (MM Docket 91-221, FCC 92-209). Among the proposals being considered are:

- a. raising the national ownership limit from 12 stations and 25 % of households to "20 or perhaps 24" and a 35 % household reach;
- b. revising the prohibited market overlap from Grade B to Grade A;
- c. permitting the cross-ownership of one AM, one FM and one TV in a single market; and
- d. changing regulations dealing with network station ownership and operations.

6. On April 1, 1992, the Commission instituted a proceeding dealing with investment in broadcasting (MM Docket 92-51). Among proposals being considered is the raising of the "attribution" benchmark from 5 % to 10 % and the revision of "third party security interest" and "reversionary interest" rules.

7. On March 9, 1992, the Commission issued a "Policy Statement," 7 FCC Rcd 1920, which eliminates "the presumption of spousal attribution and establishes the same attribution standards ... that govern the attribution of media interest for other family relationships." Under the previous policy, the media

interests of one spouse were "presumptively" attributed to the other in counting the number of media interests owned by the spouse. Henceforth, such media interests will not be attributed where such media are independently held and not subject to common influence or control.

8. The Commission's staff has denied the controversial request by a station in Anniston, Alabama to change its community of license to Sandy Springs, Georgia, 6 FCC Rcd 6580 (1991) pet. rev. pend. The Commission's policy regarding applications to change the community of license is designed to stem the flight of stations from small markets to larger communities. 4 FCC Rcd 4870 (1989) pet. rec. den. 5 FCC Rcd 7094 (1991).

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## **APPENDIX A**

### **Appendix of Forms**

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## Appendix of Forms

This appendix contains a number of commonly used applications and reporting forms which have been changed or modified since the printing of the Main Volume.

These Forms are:

<b><u>FCC Form #</u></b>	<b><u>Title</u></b>	<b><u>Current Edition Date</u></b>
155	Fee Processing Form	August 1991
301	Application for Construction Permit for Commercial Broadcast Station	February 1992
301-A	Application for Authority to Operate A Broadcast Station by Remote Control or to Make Changes in a Remote Control Authorization	October 1989
302	Application for New Broadcast Station License	June 1988
303-S	Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station	May 1988
307	Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit	June 1988
313	Application for Authorization in the Auxiliary Radio Broadcast Services	November 1989
313-R	Application for Renewal of Auxiliary Broadcast License	October 1989
323	Ownership Report	February 1990

330	Application for Authorization to Construct New or make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s)	August 1991
340	Application for Construction Permit for Noncommercial Educational Broadcast Station	February 1992
349	Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station	May 1991
395-B	Broadcast Station Annual Employment Report (Instructions February 1989)	March 1992
396	Equal Employment Opportunity Program (8 Point Program)	November 1990

**NOTE:** Applications must be accompanied by the Anti-drug Abuse Certification which can be found at the beginning of this Appendix. FCC Form 301 (February 1992) already includes the required certification.

### ANTI-DRUG ABUSE ACT CERTIFICATION

The applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a, or, in the case of a non-individual applicant (e.g. corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. § 1.2002(b).

☐ Yes

☐ No

Name of Applicant	Signature
.	.
.	.
Date	Title
.	.
.	.

FEDERAL COMMUNICATIONS COMMISSION  
**FEE PROCESSING FORM**

FOR  
FCC  
USE  
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

**SECTION I**

APPLICANT NAME (Last, first, middle initial)

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

CITY

STATE OR COUNTRY (if foreign address)

ZIP CODE

CALL SIGN

OTHER FCC IDENTIFIER

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)	(B)	(C)	
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1) <div><div></div><div></div><div></div></div>	<div><div></div><div></div><div></div><div></div></div>	<div>\$</div>	<div></div>

**SECTION II** — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)	(B)	(C)	
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(2) <div><div></div><div></div><div></div></div>	<div><div></div><div></div><div></div><div></div></div>	<div>\$</div>	<div></div>
(3) <div><div></div><div></div><div></div></div>	<div><div></div><div></div><div></div><div></div></div>	<div>\$</div>	<div></div>
(4) <div><div></div><div></div><div></div></div>	<div><div></div><div></div><div></div><div></div></div>	<div>\$</div>	<div></div>
(5) <div><div></div><div></div><div></div></div>	<div><div></div><div></div><div></div><div></div></div>	<div>\$</div>	<div></div>

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING
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FOR FCC USE ONLY



## INSTRUCTIONS FOR COMPLETING FEE PROCESSING FORM, FCC FORM 155, August 1991

- (1) **"Applicant Name"** - Enter the name (last, first, middle initial) of the applicant as it appears on the original application or filing being submitted with this Fee Processing Form. If company, enter name which is used commercially.
- (2) **"Mailing Address (Line 1)"** - Enter the street address or post office box number to which the applicant wishes correspondence sent.
- (3) **"Mailing Address (Line 2)"** - This line may be used for further identification of the address if additional space is required.
- (4) **"City"** - Enter the name of the city associated with the given street address.
- (5) **"State or Country"** - Enter the appropriate two-digit state abbreviation as prescribed by the U.S. Postal Service. If address is foreign, enter the appropriate country name here.
- (6) **"ZIP Code"** - Enter the appropriate five or nine-digit ZIP Code prescribed by the U.S. Postal Service.
- (7) **"Call Sign or Other FCC Identifier"** - Enter the applicable call or unique FCC identifier, if any, as shown on your attached application or filing. If applying for a service affecting more than one call sign, enter one call sign only.
- (8) **Column (A), "Fee Type Code"** - Enter correct Fee Type Code(s) from the appropriate Fee Filing Guide. Only one Fee Processing Form may be submitted per application or filing. Inaccurate or erroneous Fee Type Codes may result in your application or filing being returned to you without further processing.
- (9) **Column (B), "Fee Multiple"** - Certain applications and filings may request action with respect to more than one station, license, frequency, or party and can be submitted together with one check if they meet specific conditions. This column is used only if a multiple, i.e., two or more, is being applied for. Examples of when this would be used are renewing more than one call sign, frequency, station, or the transfer of control of more than one station. Refer to the appropriate Fee Filing Guide for additional information.
- (10) **Column (C), "Fee Due for Fee Type Code in Column (A)"** - Enter in this block the amount of the fee associated with the Fee Type Code shown in Column (A) (times (X) the fee multiple, if required).
- (11) **"Total Amount Remitted With This Application or Filing"** - Enter the total of lines (1) through (5) of Column (C). This amount should equal the amount of your check or money order. We will not accept multiple checks.

### HOW TO SUBMIT APPLICATIONS AND FILINGS

o Each application or filing should be assembled with the Fee Processing Form, FCC Form 155, stapled to the top of the application with the check placed on top of the Fee Processing Form. **DO NOT STAPLE THE CHECK TO THE APPLICATION OR FEE PROCESSING FORM, FCC FORM 155.** Required copies of applications should be clearly identified as "duplicate copy" and placed behind the original package. **"Stamp and receipt" copies should be placed on top of the original package and CLEARLY identified as return copies.** Extraneous material and extra copies should be avoided at all times. Failure to follow these instructions will delay the processing of your submission.

o Completed applications or filings should be mailed to the proper address shown in the Fee Filing Guide for the particular service for which you are applying or making a filing. **All applications and filings must be properly addressed to the appropriate P.O. box number,** even if hand delivered to the address listed below. Applications received before midnight on a normal business day will receive that day's date as the receipt date. Deliveries made after midnight on Fridays will not be "officially" receipted until the next Monday. Applications received on weekends and government holidays are dated the next regular business day.

o A single check, bank draft or money order made payable to the Federal Communications Commission and denominated in U.S. dollars and drawn upon a U.S. financial institution must be included with each application or filing requiring a fee. No postdated, altered or third-party checks will be accepted. Do not send cash.

o Parties hand delivering applications or filings may receive dated receipt copies by presenting copies of the applications or filings to the acceptance clerk at the time of delivery. **Receipts will be provided for mail-in applications or filings if an extra copy of the application or filing is provided along with a self-addressed stamped envelope. Only one piece of paper per application or filing will be stamped for receipt purposes.**

### REMEMBER

o A separate completed Fee Processing Form is required with each application or filing except in certain circumstances. Please refer to the appropriate Fee Filing Guide for additional information.

o A wrong Fee Type Code or incorrect remittance may result in your application or filing being returned without processing, or result in the dismissal of your application or filing. Please ensure that FEE TYPE CODES are correct and that your check or money order equals the amount shown in the TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING block before submitting your application or filing.

o If you have any questions completing this form, please call the Fees Hotline, 202/632-FEES.

### FCC NOTICE FOR INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

Part 1, Subpart G of the Commission's rules authorize the FCC to request the information on this form. The information requested is required in order to obtain a license or authorization from the Commission. The purpose of the information is to provide a means to link a fee payment to a specific invoice, application or filing. The information will be used by the Commission to maintain data concerning fees paid to the Commission, for internal financial control, audit, and reporting purposes. Information requested on this form will be available to the public. Your response is required to obtain a license or other authorization from the Commission.

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0440), Washington, DC 20503.

### THIS ADDRESS IS FOR HAND CARRY OR COURIER DELIVERY ONLY:

Federal Communications Commission  
c/o Mellon Bank  
Three Mellon Bank Center  
525 William Penn Way  
27th Floor, Room 153-2713  
Pittsburgh, Pennsylvania 15259-0001  
(Attention: Wholesale Lockbox Shift Supervisor)

**Instructions for FCC 301**  
**Application for Construction Permit for Commercial Broadcast Station**  
(FCC Form 301 attached)

**GENERAL INSTRUCTIONS**

A. This FCC form is to be used to apply for authority to construct a new commercial AM, FM or TV broadcast station, or to make changes in the existing facilities of such a station. It consists of the following sections:

- I. GENERAL INFORMATION
- II. LEGAL QUALIFICATIONS
- III. FINANCIAL QUALIFICATIONS
- IV-A. PROGRAM SERVICE STATEMENT
- IV-B. INTEGRATION STATEMENT
- V. ENGINEERING DATA AND ANTENNA AND SITE INFORMATION
- VI. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
- VII. CERTIFICATIONS

An applicant for change in facilities need file only Sections I, V and VII. Do not file Sections II, III, IV-A, IV-B and VI.

B. Many references to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with current broadcast rules in 47 Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 17 "Construction, Marking and Lighting of Antenna Structure"
- (4) Part 73 "Radio Broadcast Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

C. Prepare an original and two copies of this form and all exhibits. This application with all required exhibits should be filed with the Federal Communications Commission in the manner and at the location specified in 47 C.F.R. Section 0.401.

D. Public Notice Requirements:

(1) 47 C.F.R. Section 73.3580 requires that applicants for construction permits for new broadcast stations and major changes in existing facilities (as defined in 47 C.F.R. Sections 73.3571(a)(1) (AM), 73.3572(a)(1) (television), or 73.3573(a)(1) (FM)) give local notice in a newspaper of general circulation in the community to which the station is licensed. This publication requirement also applies with respect to major amendments thereto as defined in 47 C.F.R. Sections 73.3571(b) (AM), 73.3572(b) (television), and 73.3573(b) (FM).

(2) Completion of publication may occur within 30 days before or after tendering of the application. Compliance or intent to comply with the public notice requirements must be **certified** in Section VII of this application. The information that must be contained in the notice of filing is described in Paragraph (f) of 47 C.F.R. Section 73.3580. Proof of publication need not be filed with this application.

E. A copy of this completed application and all related documents shall be made available for inspection by the public, pursuant to 47 C.F.R. Section 73.3526.

F. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. **Defective or incomplete applications will be returned without consideration.** Furthermore, inadvertently accepted applications are also subject to dismissal.

G. In accordance with 47 C.F.R. Section 1.65, the applicant has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

H. Amendments to previously filed applications should be prepared and submitted in triplicate (an original and two duplicate copies), signed in the same manner as the original application, and should contain the following information to identify the application being amended:

- |   |   |
|---|---|
| (1) Applicant's name.                           | (5) Community of license.                                     |
| (2) Service (AM, FM or TV).                     | (6) File number (if known) of application being amended.      |
| (3) Call letters or specify new station.        | (7) Date of filing of application (if file number not known). |
| (4) Channel number (FM or TV) or frequency (AM) |   |

#### INSTRUCTIONS FOR SECTION I - GENERAL INFORMATION

A. The name of the applicant stated in Section I shall be:

- (1) If a corporation, the EXACT corporate name;
- (2) If a partnership, the names of all general partners, and the name under which the partnership does business;
- (3) If an association, the name of the individual(s) authorized to act on behalf of the association, and the name of the association;
- (4) If an individual applicant, the full legal name.

In all other sections of this form, the organization name alone will be sufficient for identification of the applicant.

B. **FEES.** By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, applicants seeking to construct a new commercial AM, FM or TV broadcast station or to make changes in the authorized facilities of such a station are required to pay and submit a fee with the filing of FCC Form 301. However, governmental entities, which include any possession, state, city, county, town, village, municipal organization or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs, are exempt from the payment of this fee. Also exempted from this fee are noncommercial educational broadcast station licensees seeking authority to construct a broadcast station. See 47 C.F.R. Section 1.1112. To avail itself of any fee exemption, the applicant must indicate its eligibility by checking the appropriate box in response to Question 2(B), Section I. FCC Form 301 applications NOT involving the payment of a fee can be hand-delivered or mailed to the FCC's Washington, D.C. offices. See 47 C.F.R. Section 0.401(a).

The Commission's fee collection program utilizes a U.S. Treasury lockbox bank for maximum efficiency of collection and processing. All FCC Form 301 applications, which require the remittance of a fee, must be submitted to the appropriate post office box address. See 47 C.F.R. Section 0.401(b). A listing of the required fee and the address to which FCC Form 301 should be mailed or otherwise delivered is also set forth in the "Mass Media Services Fee Filing Guide," which is obtainable either by writing to the Commission's Form Distribution Center, 2803 52nd Avenue, Hyattsville, Maryland 20781 or by calling Telephone No. (202) 632-FORM and leaving your request on the answering machine provided for this purpose. The Fee Filing Guide also contains a list of the Fee Type Codes needed to complete this application. Payment of any required fee can be made by check, bank draft or money order payable to the Federal Communications Commission, denominated in U.S. dollars, and drawn upon a U.S. financial institution. No postdated, altered or third-party checks will be accepted. DO NOT SEND CASH.

Parties hand-delivering FCC Form 301's may receive dated receipt copies by presenting copies of the applications to the acceptance clerk at the time of delivery. For mailed-in applications, a "return copy" of the application can be furnished provided the applicant clearly identifies the "return copy" and attaches to it a stamped, self-addressed envelope. Only one piece of paper per application will be stamped for receipt purposes.

For further information regarding the applicability of a fee, the amount of the fee or the payment of the fee, refer to the "Mass Media Services Fee Filing Guide."

C. In Section I use the following State abbreviations:

Alabama	AL	Kentucky	KY	Ohio	OH
Alaska	AK	Louisiana	LA	Oklahoma	OK
American Samoa	AS	Maine	ME	Oregon	OR
Arizona	AZ	Marshall Islands	MH	Palau	PW
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federal States of Micronesia	FM	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	U.S. Minor Outlying Islands (etc.)	UM
Georgia	GA	Nevada	NV	Utah	UT
Guam	GU	New Hampshire	NH	Vermont	VT
Hawaii	HI	New Jersey	NJ	Virginia	VA
Idaho	ID	New Mexico	NM	Virgin Islands	VI
Illinois	IL	New York	NY	Washington	WA
Indiana	IN	North Carolina	NC	West Virginia	WV
Iowa	IA	North Dakota	ND	Wisconsin	WI
Kansas	KS	Northern Mariana Islands	MP	Wyoming	WY

## INSTRUCTIONS FOR SECTION II - LEGAL QUALIFICATIONS

A. As used in Section II, the words "party to this application" have the following meanings:

**APPLICANT:** The individual or entity seeking the proposed facilities.

**INDIVIDUAL APPLICANT:** The natural person applying for the facilities in his or her own right.

**PARTNERSHIP APPLICANT:** All partners, including limited partners. However, limited partners in a limited partnership are **not** considered parties to the application **if** the limited partners are not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the applicant so certifies in response to Question 5(a), Section II. Sufficient insulation of a limited partner for purposes of this certification would be assured if the limited partnership agreement:

- (1) specifies that any exempt limited partner (if not a natural person, then its directors, officers, partners, etc.) cannot act as an employee of the limited partnership if his or her functions, directly or indirectly, relate to the media enterprises of the company;
- (2) bars any exempt limited partner from serving, in any material capacity, as an independent contractor or agent with respect to the partnership's media enterprises;
- (3) restricts any exempt limited partner from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business;
- (4) empowers the general partner to veto any admissions of additional general partners admitted by vote of the exempt limited partners;
- (5) prohibits any exempt limited partner from voting on the removal of a general partner or limits this right to situations where the general partner is subject to bankruptcy proceedings, as described in Sections 402 (4)-(5) of the Revised Uniform Limited Partnership Act, is adjudicated incompetent by a court of competent jurisdiction, or is removed for cause, as determined by an independent party;
- (6) bars any exempt limited partner from performing any services to the limited partnership materially relating to its media activities, with the exception of making loans to, or acting as a surety for, the business; and



- (7) states, in express terms, that any exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership.

Notwithstanding conformance of the partnership agreement to these criteria, however, the requisite certification cannot be made if the applicant has actual knowledge of a material involvement of the limited partner in the management or operation of the media-related business of the partnership. In the event that the applicant cannot certify as to the noninvolvement of the limited partners, the limited partners will be considered as parties to this application.

**CORPORATE APPLICANT:** All officers and directors and each owner of or subscriber to stock accounting for 5% or more of the outstanding votes in the corporation. However, where an individual or a single entity holds more than 50% of the applicant's voting stock, and a simple majority is all that is required to control corporate affairs, other stockholders are not considered parties to this application.

Where a corporation is a party to this application by virtue of its ownership or subscription to 5% or more of the voting stock of the applicant, each of the corporate stockholder's directors and "executive" officers (president, vice-president, secretary, treasurer or their equivalents) is considered a party to this application **UNLESS** the applicant submits a statement establishing that an individual director or officer will not exercise authority or influence in any areas that will affect the applicant or the proposed station. The applicant should identify the individual by name and title, describe the individual's duties and responsibilities, and explain why that person should not be attributed an interest in the corporate applicant or considered a party to this application. In addition, a person or entity holding an ownership interest in the corporate stockholder of the applicant is considered a party to this application **ONLY IF** that interest, when multiplied by the corporate stockholder's interest in the applicant, would account for 5% or more of the votes of the applicant. For example, where X owns or subscribes to stock accounting for 25% of the applicant's votes, only those stockholders of corporation X which hold stock accounting for 20% or more have a 5% indirect interest in the applicant ( $.25 \times .20 = .05$ ) and, therefore, are considered parties to this application. In applying the multiplier, any entity holding more than 50% of its subsidiary will be considered a 100% owner.

If any stockholder agreement exists pertaining to cooperative voting accounting for 5% or more of the votes, that block of stock is regarded as if held by a single entity and any stockholder holding 5% or more of the stock in that block is considered a party to this application.

An investment company, insurance company or trust department of a bank is not considered a party to this application **IF** its aggregated holding accounts for less than 10% of the outstanding votes in the applicant **AND IF** the applicant certifies that:

- (1) such entity exercises no influence or control over the corporation, directly or indirectly; and
- (2) such entity has no representatives among the officers and directors of the corporation.

**ANY OTHER APPLICANT:** All executive officers, members of the governing board and owners or subscribers who hold 5% or more of the votes in the applicant.

B. As used in Section II, the words "non-party equity owners in the applicant" have the following meanings:

**PARTNERSHIP APPLICANT:** All holders of equity interests in the applicant that are not considered parties to the application, including all limited partners. In the event there are more than fifty (50) owners of equity interests in the applicant, only those who own 5% or more of the total equity in the applicant are considered non-party equity owners for purposes of Section II.

**CORPORATE APPLICANT:** All holders of equity interests in the applicant that are not considered parties to the application, including all nonvoting stockholders, stockholders with less than 5% voting stock interest and stockholders with less than a majority interest in voting stock where a single entity owns more than 50% of the voting stock. In the event that there are more than fifty (50) stockholders or owners of equity interests in the applicant, only those who own 5% or more of the total equity in the applicant are considered non-party equity owners for purposes of Section II.

**ANY OTHER APPLICANT:** All holders of equity interests in the applicant that are not considered parties to the application.

C. An attributable interest is an ownership interest in or relation to an applicant or licensee which will confer on its holder that degree of influence or control over the applicant or licensee as should subject it to limitation by the

Commission's multiple ownership rules. Parties to the application are holders of attributable interests. Non-party holders of equity interests in the applicant are holders of nonattributable interests. Although these holders of nonattributable interests are not considered parties to the application, Section II information must be provided for them. Moreover, they may have attributable interests in other media that are considered under the Commission's cross-interest policy which seeks to ensure the promotion and maintenance of arms' length competition between stations in the same area. For example, a limited partner in an applicant, which has made the above partnership certification, may have an attributable interest in a newspaper or broadcast station in the same area, or in a station with contours that overlap the applicant's proposed station, or in a cable television (CATV) system that is located within the Grade B contour of a proposed television station. See, generally, 47 C.F.R. Sections 73.3555 and 76.501 as to the relevant contours. If so, the applicant is required:

- (1) to identify the individuals or entities that have an attributable interest in another medium of mass communications in the area;
- (2) to state the nature and extent of the interest in the applicant; and
- (3) to identify the other medium and the nature and extent of the interest held.

In situations in which a marital relationship is involved, the interests held by one spouse are presumptively attributed to the other and both spouses may, unless this presumption is rebutted by an appropriate showing, be considered to be holders of attributable interests and parties to this application.

- D. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit to an alien, the representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any corporation of which any officer or director is an alien or of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or by a corporation organized under the laws of a foreign country. This proscription could likewise apply to any corporation directly or indirectly controlled by another corporation of which (a) any officer is, (b) more than 25% of the directors are, or (c) more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.

Section 310 of the Communications Act has been interpreted with respect to limited partnerships to prohibit equity contributions or voting interests of alien limited partners, which in the aggregate exceed 20% in a broadcast licensee or which in the aggregate exceed 25% in a partnership which holds a controlling interest in a broadcast licensee. The interests held by aliens in a licensee through intervening domestically organized limited partnerships can be determined by multiplication of any intervening insulated interests in the manner set forth above with respect to corporate applicants, except that insulated limited partnership interests exceeding 50% may be multiplied rather than considered as a 100% interest. However, the multiplier is not used in calculating the limited partnership link in the ownership chain UNLESS the applicant is able to certify that the alien partner is effectively insulated from active involvement in the partnership affairs. For example, see Instruction A, above.

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

- E. Commission policies and litigation reporting requirements for broadcast station applicants are directed to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct. In responding to Question 13, applicants are advised that the parameters of the Commission's policies and requirements regarding character qualifications are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990).

#### INSTRUCTIONS FOR SECTION III - FINANCIAL QUALIFICATIONS

- A. All applicants filing Form 301 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.
- B. An applicant for a new station must attest it has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate for three months without additional funds. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net

current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.

C. Documentation supporting the certification of financial qualifications need not be submitted with this application, but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.

D. (1)(a) The applicant must estimate the initial costs of constructing and operating the facility proposed in the application. The estimate for constructing the facility should include, but is not limited to, costs incurred for items listed below. In calculating costs for the items below, determine the costs for the items in place and ready for service, including amounts for labor, supervision, materials, supplies, and freight:

Antenna System (including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting);

RF Generating Equipment (including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger);

Monitoring and Test Equipment (including frequency monitor, modulation monitor, oscilloscope, dummy load, vectorscope, and video monitors);

Program Origination Equipment (including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment);

Acquiring Land;

Acquiring, Remodeling or Constructing Buildings;

Services (including legal, engineering, and installation costs); and

Other Miscellaneous Items (including mobile and STL equipment, non-technical studio furnishings, etc.)

(b) The estimate must also include the costs of operating the proposed facility for the first three months, including the costs of proposed programming, without relying on advertising or other revenues to meet operating costs. To arrive at an estimate of the total costs to be met by the applicant, the total construction costs should be added to the estimated cost of operation for three months.

(2) The applicant must also identify, in the application, its sources of funding for the construction and operation of the proposed facility for the first three months. For each source of funding, the applicant must identify the source's name, address, telephone number, a contact person if the source is an entity, the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by the source. The total amount of funds to be supplied by all the sources listed should equal or exceed the estimated cost of construction and operation computed in accordance with paragraph (1) and stated in the application in response to Question 2, Section III.

The funding sources listed on the application should include, if applicable: existing capital, new capital, loans from banks (identified separately), loans from others (identified separately), profits for existing operations, donations, and net deferred credit from equipment suppliers (identified separately and determined by deducting from the deferred credit the down payment, payments to principal, and interest payments). (Note: If the first equipment payment is due upon shipment, the applicant must include five monthly payments; if due in 30 days, four monthly payments; if due in 60 days, three monthly payments, etc.)

(3) The applicant must also have on hand, at the time it files its application, **BUT NEED NOT SUBMIT WITH THE APPLICATION**, the following documentation:

(a) For the applicant:

A detailed balance sheet at the close of a month within 90 days of the date of the application showing the applicant's financial position.

A statement showing the yearly net income, after Federal income tax, for each of the past two years, received by the applicant from any source.



- (b) For each person identified in response to Question 3, Section III, who has **already** furnished funds, purchased stock, extended credit, or guaranteed loans:

A copy of the agreement obligating the party to furnish funds, showing the amount furnished, the rate of interest, the terms of repayment, and security, if any.

- (c) For each person identified in response to Question 3, Section III, who has **agreed to** furnish funds, purchase stock, extend credit, or guarantee loans, a balance sheet or a financial statement showing:

All liabilities and current and liquid assets sufficient to meet current liabilities;

Financial ability to comply with the terms of the agreement to furnish funds, purchase stock, extend credit, or guarantee loans; and

Net income after Federal income tax, received for the past two years.

Note: If the statement does not indicate current and liquid assets sufficient to meet the proposed commitments, the financial statement must be supplemented by a statement showing how non-liquid assets will be used to provide the funds, and the extent to which such assets have liens or prior obligations against them.

- (d) For financial institutions or equipment manufacturers, identified in response to Question 3, Section III, who have agreed to make a loan or extend credit:

The document by which the institution or manufacturer has agreed to provide the loan or credit, showing the amount of loan or credit, terms of payment or repayment of the loan, collateral or security required, rate of interest to be charged, and special requirements (e.g., moratorium on principal or interest, waiver of collateral, etc.); and

A statement from any parties required to provide special endorsements showing their willingness to provide such endorsements.

- E. It is Commission policy not to approve extensions of time for construction on the basis of financial inability or unwillingness to construct.

#### INSTRUCTIONS FOR SECTION IV-A - PROGRAM SERVICE STATEMENT

Applicants need **only** file a program service statement called for in Section IV-A of this application. See Deregulation of Radio, 84 FCC 2d 968 (1981), reconsideration denied, 87 FCC 2d 797; and Commercial TV Stations, 98 FCC 2d 1076 (1984), reconsideration denied, 60 RR 2d 526 (1986).

#### INSTRUCTIONS FOR SECTION IV-B - INTEGRATION STATEMENT

The applicant's integration statement must identify each principal who will participate in the management of the station, his or her position, duties and hours, and for each principal whether a qualitative credit will be claimed for minority status, past local residence, female status, broadcast experience or civic activity. Any claim for "daytimer" preference must also be stated. An applicant may include its integration statement in this application, but it must file its integration statement with the Commission by the amendment as-of-right date in FM proceedings, or the "B" cut-off date in AM and television proceedings. If an applicant fails to disclose its integration statement by the amendment as-of-right or "B" cut-off date, whichever is applicable, it will receive no credit for integration in the comparative hearing.

#### INSTRUCTIONS FOR SECTION V - ENGINEERING DATA AND ANTENNA AND SITE INFORMATION

- A. An indication as to the specific transmitter make and model is not required on the application. Rather, any subsequent permit authorizing construction will require installation of a type accepted transmitter or one complying with the provisions of 47 C.F.R. Section 73.1660. Applicants for AM facilities are reminded of the maximum rated power limitations for transmitters imposed by 47 C.F.R. Section 73.1665.
- B. Prior to January 4, 1982, parties submitting AM directional antenna patterns pursuant to 47 C.F.R. Sections 73.150 and 73.152 (standard patterns and modified standard patterns) had to submit patterns which were tabulated and plotted using units of millivolts per meter at one mile. Beginning on January 4, 1982, such patterns must be tabulated and plotted using units of millivolts per meter at one kilometer. Applications which are amended should use the units in effect as of the day of submission of the amendment. Applications which were on file prior to January 4, 1982,

need not be amended solely for the purpose of conversion to metric units. Applications which are submitted using the wrong units will be returned unless they are promptly amended to use the correct units. See 47 C.F.R. Section 73.181(f) concerning uses of the metric system with AM stations.

- C. Applicants filing the initial application in response to a Commission allotment to migrate to the AM expanded band need not file the material requested in A.(3), A.(4), B.(1)-B.(3), and C.(3)(a)-(e) of question 15 of Section V-A since the assignment is based on the allotment method instead of the allocation method.
- D. When applying for a FM station construction permit, one of the submissions required by FCC Form 301, Section V-B, is a 7.5 minute series U.S. Geological Survey topographic quadrangle map upon which is marked the transmitter site. The Commission recommends that applicants submit at least one original copy of each appropriate full-scale USGS quadrangle map, if available, with the transmitter site properly marked and labeled.

In order to allow the Commission's processing staff to verify the correctness of the geographic coordinates provided in an FM application, it is necessary for this site map to show along the printed margin of both axes at least two coordinate markings, specifically labeled by the USGS, one on either side of the marked site. Additionally, a scale of kilometers (if available) or miles and all of the identifying map information must be included. The site should be plotted on a full scale map, and all of the contour lines must be clearly visible. Faded, smudged or otherwise illegible maps are unacceptable. Photocopies are acceptable in lieu of actual USGS maps, provided they are clear, dark and legible. It is not necessary to submit an entire map (although this is perfectly acceptable), but only as much as is necessary to fully comply with the requirements described above.

In certain cases it may be inconvenient to provide a full scale photocopy which includes both the site and the margins. This can occur when the site lies toward the center of the map. In this case the following alternative is acceptable. Provide a full scale copy of the section of the map containing the site. This copy must include either four of the standard printed cross-marks or one margin and two cross-marks. Fine lines should be drawn between the marks in such a fashion as to enclose the site. Each of these lines should be labeled with the appropriate latitude or longitude. This full scale map section must include all the information specified in the previous paragraph. In addition, a reduced copy of the entire map must be included to allow the Commission's staff to verify that the lines have been correctly labeled.

- E. The latitude and longitude coordinates for all points in the United States are based upon the 1927 North American Datum (NAD 27). The National Geodetic Survey is in the process of replacing NAD 27 with the more accurate 1983 North American Datum (NAD 83) and updating current topographic maps with NAD 83 datum. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data using two different datums, however, the Commission announced that until further notice, applicants are to furnish coordinates based on NAD 27 datum on all submissions and the Commission will continue to specify NAD 27 coordinates in its data bases and authorizations. In addition, applicants who have already filed applications with coordinates that reflect NAD 83 datum must provide NAD 27 coordinates to the appropriate Commission licensing bureau. See Public Notice, entitled "FCC Interim Procedures for the Specification of Geographic Coordinates," 3 FCC Rcd 1478 (1988). Accordingly, in furnishing the information called for in Section V (e.g., V-A (AM) #4, V-B (FM) #2, V-C (TV) #2), NAD 27 datum should be used.

- F. The following guidance is provided for the questions regarding environmental impact (V-A (AM) #14, V-B (FM) #20, V-C (TV) #20):

- (1) Place an (X) in the appropriate box to indicate whether a Commission grant of the proposed communication facility(ies) may have a significant environment impact as defined by 47 C.F.R. Section 1.1307. Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:
- (a) A facility is to be located in sensitive areas (e.g. an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.
  - (b) A facility whose construction will involve significant change in surface features.
  - (c) The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.
  - (d) The facilities or the operation of which will cause exposure of workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic

Fields, 300 kHz to 100 GHz," (ANSI C95.1-1982), by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.

- (2) If you answer Yes, submit the required Environmental Assessment (EA). The EA includes for antenna towers and satellite earth stations:
- (a) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.
  - (b) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.
  - (c) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.
  - (d) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects, and any alternative sites or facilities which have been or might reasonably be considered.
  - (e) An engineering study based upon OST Bulletin No. 65, October, 1985, entitled (Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" addressing the issue of potential occupational and public hazards caused by the proposed facilities. You must state what steps will be taken to limit the RF radiation exposure to the public and to persons authorized access to the tower.
- (3) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness area, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).
- (4) The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.
- (5) To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.
- (6) An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility (a) for determining whether the facilities in question will have a significant effect on the quality of the human environment and, (b) if it will affect the environment, for invoking the environmental impact statement process.

#### INSTRUCTIONS FOR SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

- A. Applicants seeking authority to construct a new commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time station employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asian or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). This is submitted to the Commission as the Model EEO Program on FCC Form 396-A, which should be filed as part of the application. If minority group representation in the available labor force is less than five percent (in the aggregate), a program for minority group members is not required. However, a program must be

filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant proposes to employ less than five full-time employees, no EEO program for women or minorities need be filed.

B. Guidelines for developing an Equal Employment Opportunity program are set forth in FCC Form 396-A.

**NOTE:** This five-point Broadcast Equal Employment Opportunity Model Program Report (FCC 396-A) is to be utilized only by applicants for new construction permits and by assignees and transferees.

#### **INSTRUCTIONS FOR SECTION VII - CERTIFICATIONS**

A. Applicants for a new AM, FM or TV broadcast station or for a major modification of the authorized facilities of such stations (as defined in 47 C.F.R. Sections 73.3571(a), 73.3573(a), or 73.3572(a), respectively) are required to give public notice of the filing of their applications by publication in a local newspaper and/or by broadcast announcements in accordance with 47 C.F.R. Section 73.3580.

B. An applicant need not have a binding agreement or absolute assurance of the availability of the transmitter site it proposes to utilize. However, the applicant must be able to show that it has obtained reasonable assurance that the proposed site is available to it. The Commission's requirements will be satisfied where an applicant has contacted the property owner or the owner's representative and has obtained reasonable assurance, in good faith, that the proposed site will be available for the intended purpose.

C. The original of this application form must be signed by the applicant. The required copies can be conformed. See 47 C.F.R. Section 73.3513.

**NOTE:** Certification of site availability is required only in applications for authority to construct a new station or to change the site of an existing facility.



Approved by OMB  
3060-0027  
Expires 11/30/94

FCC 301

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FOR  
FCC  
USE  
ONLY

**APPLICATION FOR CONSTRUCTION PERMIT  
FOR COMMERCIAL BROADCAST STATION**

FOR COMMISSION USE ONLY

FILE NO.

**Section I - GENERAL INFORMATION**

1. APPLICANT NAME

MAILING ADDRESS (Line 1) (Maximum 35 characters)

MAILING ADDRESS (Line 2) (If required) (Maximum 35 characters)

CITY STATE OR COUNTRY (If foreign address) ZIP CODE

TELEPHONE NUMBER (Include area code) CALL LETTERS OTHER FCC IDENTIFIER (IF APPLICABLE)

**FOR MAILING THIS APPLICATION, SEE INSTRUCTIONS FOR SECTION 1 - GENERAL INFORMATION B.**

2. A. Is a fee submitted with this application? ☐ Yes ☐ No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112) and go to Question 3.

☐ Governmental Entity

☐ Noncommercial educational licensee

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY									
(1)	<table border="1"><tr><td></td><td></td><td></td></tr></table>				<table border="1"><tr><td>0</td><td>0</td><td>0</td><td>1</td></tr></table>	0	0	0	1	<table border="1"><tr><td>\$</td></tr></table>	\$	<table border="1"><tr><td></td></tr></table>	
0	0	0	1										
\$													

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A)	(B)	(C)	FOR FCC USE ONLY									
(2)	<table border="1"><tr><td></td><td></td><td></td></tr></table>				<table border="1"><tr><td>0</td><td>0</td><td>0</td><td>1</td></tr></table>	0	0	0	1	<table border="1"><tr><td>\$</td></tr></table>	\$	<table border="1"><tr><td></td></tr></table>	
0	0	0	1										
\$													

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED  
WITH THIS APPLICATION

\$

FOR FCC USE ONLY

3. This application is for: (check one box)

☐ AM

☐ FM

☐ TV

(b) Channel No. or Frequency

(b) Principal  
Community

City

State

Section I - GENERAL INFORMATION (Page 2)

(c) Check one of the following boxes:

- ☐ Application for **NEW** station
- ☐ **MAJOR** change in licensed facilities; call sign: \_\_\_\_\_
- ☐ **MINOR** change in licensed facilities; call sign: \_\_\_\_\_
- ☐ **MAJOR** modification of construction permit; call sign: \_\_\_\_\_
- File No. of construction permit: \_\_\_\_\_
- ☐ **MINOR** modification of construction permit; call sign: \_\_\_\_\_
- File No. of construction permit: \_\_\_\_\_
- ☐ **AMENDMENT** to pending application; Application file number: \_\_\_\_\_

**NOTE:** It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

4. Is this application mutually exclusive with a renewal application?

☐ Yes ☐ No

If Yes, state:

Call letters	Community of License	
	City	State

## Section II - LEGAL QUALIFICATIONS

Name of Applicant \_\_\_\_\_

1. Applicant is: *(check one box below)*

- ☐ Individual      ☐ General partnership      ☐ For-profit corporation  
☐ Other      ☐ Limited partnership      ☐ Not-for-profit corporation

2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership, or corporation, describe in an Exhibit the nature of the application.

Exhibit No. \_\_\_\_\_

NOTE: The terms "applicant," "parties to this application," and "non-party equity owners in the applicant" are defined in the instructions for Section II of this form. Complete information as to each "party to this application" and each "non-party equity owner in the applicant" is required. If the applicant considers that to furnish complete information would pose an unreasonable burden, it may request that the Commission waive the strict terms of this requirement with appropriate justification.

3. If the applicant is not an individual, provide the date and place of filing of the applicant's enabling charter (e.g., a limited partnership must identify its certificate of limited partnership and a corporation must identify its articles of incorporation by date and place of filing):

Date \_\_\_\_\_ Place \_\_\_\_\_

In the event there is no requirement that the enabling charter be filed with the state, the applicant shall include the enabling charter in the applicant's public inspection file. If, in the case of a partnership, the enabling charter does not include the partnership agreement itself, the applicant shall include a copy of the agreement in the applicant's public inspection file.

4. Are there any documents, instruments, contracts or understandings (written or oral), other than instruments identified in response to Question 3 above, relating to future ownership interests in the applicant, including but not limited to, insulated limited partnership shares, nonvoting stock interests, beneficial stock ownership interests, options, rights of first refusal, or debentures?

☐ Yes ☐ No

If Yes, submit as an Exhibit all such written documents, instruments, contracts, or understandings, and provide the particulars of any oral agreement.

Exhibit No. \_\_\_\_\_

5. Complete, if applicable, the following certifications:

(a) Applicant certifies that no limited partner will be involved in any material respect in the management or operation of the proposed station.

☐ Yes ☐ No

If No, applicant must complete Question 6 below with respect to all limited partners actively involved in the media activities of the partnership.

(b) Does any investment company (as defined in 15 U.S.C. Section 80 a-3), insurance company, or trust department of any bank have an aggregated holding of greater than 5% but less than 10% of the outstanding votes of the applicant?

☐ Yes ☐ No

If Yes, applicant certifies that the entity holding such interest exercises no influence or control over the applicant, directly or indirectly, and has no representatives among the officers and directors of the applicant.

☐ Yes ☐ No



Section 11 - LEGAL QUALIFICATIONS (Page 2)

6. List the applicant, parties to the application and non-party equity owners in the applicant. Use one column for each individual or entity. Attach additional pages if necessary.

(Read carefully - The numbered items below refer to line numbers in the following table.)

1. Name and residence of the applicant and, if applicable, its officers, directors, stockholders, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and partners.

2. Citizenship.

3. Office or directorship held.

4. Number of shares or nature of partnership interests.

5. Number of votes.

6. Percentage of votes.

7. Other existing attributable interests in any broadcast station, including the nature and size of such interests.

8. All other ownership interests of 5% or more (whether or not attributable), as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in 47 C.F.R. Section 73.3555 and 76.501, including the nature and size of such interests and the positions held.

1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

Section 11 - LEGAL QUALIFICATIONS (Page 3)

7. Does the applicant, or any party to the application, have a petition to migrate to the expanded band (1605-1705 (kHz)) or a permit or license either in the existing band or expanded band that is held in combination with the AM facility proposed to be modified herein?

☐ Yes ☐ No

If Yes, provide particulars as an Exhibit.

Exhibit No.

8. Does the applicant, any party to the application or any non-party equity owner in the applicant have, or have they had, any interest in:

(a) a broadcast station, or pending broadcast station application before the Commission?

☐ Yes ☐ No

(b) a broadcast application which has been dismissed with prejudice by the Commission?

☐ Yes ☐ No

(c) a broadcast application which has been denied by the Commission?

☐ Yes ☐ No

(d) a broadcast station, the license of which has been revoked?

☐ Yes ☐ No

(e) a broadcast application in any pending or concluded Commission proceeding which left unresolved character issues against the applicant?

☐ Yes ☐ No

If the answer to any of the questions in (a)-(e) above is Yes, state in an Exhibit the following information:

Exhibit No.

(1) Name of party having interest;

(2) Nature of interest or connection, giving dates;

(3) Call letters of stations or file number of application or docket; and

(4) Location.

9. (a) Are any of the parties to the application or non-party equity owners in the applicant related (as husband, wife, father, mother, brother, sister, son or daughter) to each other?

☐ Yes ☐ No

(b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of any party to the application or non-party equity owner in the applicant have any interest in or connection with any other broadcast station, pending broadcast application or newspaper in the same area (see Section 73.3555(c)) or, in the case of a television station applicant only, a cable television system in the same area (see Section 76.501(a))?

☐ Yes ☐ No

If the answer to (a) or (b) above is Yes, attach an Exhibit giving full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the file number of such application, and the location of such station or proposed station.

Exhibit No.

10. State in an Exhibit any interest the applicant or any party to this application proposes to divest in the event of a grant of this application.

Exhibit No.

OTHER MASS MEDIA INTERESTS

11. (a) Do individuals or entities holding nonattributable interests of 5% or more in the applicant have an attributable ownership interest or corporate officership or directorship in a broadcast station, newspaper or CATV system in the same area? (See Instruction C to Section 11.)

☐ Yes ☐ No

- (b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of an individual holding a nonattributable interest of 5% or more in the applicant have any interest in or connection with any other broadcast station, pending broadcast application, newspaper in the same area (see Section 73.3555(c)), or, in the case of a television station applicant only, a cable television system in the same area (see Section 76.501(a))?

☐ Yes ☐ No

If the answer to (a) and/or (b) above is Yes, attach an Exhibit giving a full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the file number of such application, and the location of such station or proposed station.

Exhibit No.

CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS

12. (a) Is the applicant in violation of the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments? (See Instruction D to Section 11.)

☐ Yes ☐ No

- (b) Will any funds, credits or other financial assistance for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

☐ Yes ☐ No

If the answer to (b) above is Yes, attach an Exhibit giving full disclosure concerning this assistance.

Exhibit No.

13. (a) Has an adverse finding been made or an adverse final action been taken by any court or administrative body as to the applicant, any party to this application, or any non-party equity owner in the applicant in a civil or criminal proceeding brought under the provisions of any law related to the following:

Any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☐ No

- (b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a) above?

☐ Yes ☐ No

If the answer to (a) and/or (b) above is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c) in the case of adjudicated proceedings, the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) a description of the current status or disposition of the previously reported matter.

Exhibit No.

### SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☐ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount

#### Section IV-A - PROGRAM SERVICE STATEMENT

Attach as an Exhibit, a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area.

Exhibit No.

#### Section IV-B - INTEGRATION STATEMENT

Attach as an Exhibit the information required in 1. and 2. below.

Exhibit No.

1. List each principal of the applicant who, in the event of a grant of the application on a comparative basis, proposes to participate in the management of the proposed facility and, with respect to each such principal, state whether he or she will work full-time (minimum 40 hours per week) or part-time (minimum 20 hours per week) and briefly describe the proposed position and duties.
2. State with respect to each principal identified in response to Item 1. above, whether the applicant will claim qualitative credit for any of the following enhancement factors:
  - (a) Minority Status
  - (b) Past Local Residence  
If Yes, specify whether in the community of license or service area and the corresponding dates.
  - (c) Female Status
  - (d) Broadcast Experience  
If Yes, list each employer and position and corresponding dates.
  - (e) Daytime Preference
  - (f) Civic activities  
If Yes, describe the activities, specify whether in the community of license or service area, and state the corresponding dates.

# Section V-A - AM BROADCAST ENGINEERING DATA

FOR COMMISSION USE ONLY

File No. \_\_\_\_\_

ASB Referral Date \_\_\_\_\_

Referred by \_\_\_\_\_

Name of Applicant \_\_\_\_\_

## 1. Purpose of Application: (check all appropriate boxes)

☐ Construct new station

☐ Make changes in authorized/existing station

Call Sign \_\_\_\_\_

☐ Principal authorized/licensed community

☐ Hours of operation

☐ Frequency

☐ Transmitter location

☐ Power

☐ Filled in compliance with an Allotment Plan to migrate to the expanded band

☐ Main studio location

Allotment Number \_\_\_\_\_

☐ Antenna system (including increase in height by addition of FM or TV antenna)

☐ New antenna construction

☐ Alteration of existing structure

☐ Increase height

☐ Decrease height

☐ Non-DA to DA

☐ DA to Non-DA

☐ Other (Summarize briefly the nature of the changes proposed)

## 2. Principal community to be served:

State	County	City or Town
-------	--------	--------------

## 3. Facilities requested:

Frequency: \_\_\_\_\_ kHz

Hours of Operations: \_\_\_\_\_

Power: Night: \_\_\_\_\_ kW

Day: \_\_\_\_\_ kW

Critical hours: \_\_\_\_\_ kW

Class of Station (A,B,C or D) \_\_\_\_\_

☐ Stereo

☐ Monaural

## 4. Transmitter location:

State	County	City or Town
-------	--------	--------------

Exact antenna location (street address). If outside city limits, give name of nearest town and distance (in kilometers), and direction of antenna from town.

Geographical coordinates (to nearest second). For directional antenna give coordinates of center of array. For single vertical radiator give tower location. Specify South Latitude or East Longitude where applicable; otherwise, North Latitude or West Longitude will be presumed.

Latitude	Longitude
----------	-----------

SECTION V-A -- AM BROADCAST ENGINEERING DATA (Page 2)

5. Is the proposed site the same transmitter-antenna site of other stations authorized by the Commission or specified in another application pending before the Commission? ☐ Yes ☐ No

If Yes, indicate call sign or application file number: \_\_\_\_\_

6. Antenna system (including ground or counterpoise system)

Non-Directional ☐ Day ☐ Night ☐ Critical Hours

Estimated efficiency \_\_\_\_\_ mV/m per kW at one kilometer

If antenna is either top loaded or sectionalized, describe fully in an Exhibit.  
(Include apparent electrical height.)

Exhibit No.

Directional ☐ Day only (DA-D) ☐ Night only (DA-N)  
☐ Same constants and power day and night (DA-1)  
☐ Different constants and/or power day and night (DA-2)  
☐ Different constants and/or power day, critical hours and night (DA-3)

Submit complete engineering data in accordance with 47 C.F.R. Section 73.150 for each Directional antenna pattern proposed.

Non-directional/Directional

If antenna(s) is/are either top loaded or sectionalized, describe fully in an Exhibit. (Include apparent electrical height.)

Exhibit No.

Type of feed circuits (excitation) ☐ Series Feed ☐ Shunt Feed  
☐ Folded Unipole ☐ Other (explain)

TOWERS (In meters, rounded to nearest meter)	1	2	3	4	5	6
Overall height of radiator above base insulator, or above base, if grounded						
Overall height above ground (without obstruction lighting)						
Overall height above ground (include obstruction lighting)						
Overall height above mean sea level (include obstruction lighting)						

If additional towers, attach information exactly as it appears above.

7. Has the FAA been notified of the proposed construction? ☐ Yes ☐ No

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No.

Date \_\_\_\_\_ Office where filed \_\_\_\_\_



# SECTION V-A - AM BROADCAST ENGINEERING DATA (Page 3)

8. List all landing areas within 8 kilometers of antenna site. Give distances and direction to the nearest boundary of each landing area from the antenna site.

Landing Area	Distance (km)	Direction
(a) _____	_____	_____
(b) _____	_____	_____
(c) _____	_____	_____

9. Attach as an Exhibit a description and vertical plan sketch (including supporting buildings, if any) of the proposed structure, giving heights above ground, in meters, for all significant features. Clearly indicate existing portions, noting lighting, and distinguishing between the skeletal or other main supporting structure and the antenna elements. If a directional antenna, give spacing and orientation of towers.

Exhibit No. \_\_\_\_\_

If not fully described above, attach as an Exhibit further details and dimensions, including any other antennas mounted on tower and associated isolation circuits.

Exhibit No. \_\_\_\_\_

Attach as an Exhibit, a plat of the transmitter site clearly showing boundary lines, roads, railroads, other obstructions, and the ground system or counterpoise. Show number and dimensions of ground radials or, if a counterpoise is used, show heights and dimensions.

Exhibit No. \_\_\_\_\_

10. Will the main studio be located within the station's principal community contour as defined by 47 C.F.R. Section 73.24(l)?

☐ Yes ☐ No

If No, attach as an Exhibit a justification pursuant to 47 C.F.R. Section 73.1125.

Exhibit No. \_\_\_\_\_

11. Is there a remote control location or is one to be established in accordance with 47 C.F.R. Section 73.1400?

☐ Yes ☐ No

If yes, submit the following:

State	County	City or Town
Street address (or other identification)		

12. Attach as an Exhibit a sufficient number of aerial photographs taken in clear weather at appropriate altitudes and angles to permit identification of all structures in the vicinity. The photographs must be marked so as to show compass directions, exact boundary lines of the proposed site, and locations of the proposed 1000 mV/m contour for both day and night operation. Photographs taken in eight different directions from an elevated position on the ground will be acceptable in lieu of the serial photographs if the data referred to can be clearly shown.

Exhibit No. \_\_\_\_\_

13. Is the population within the 1 V/m (1000 mV/m) contour less than 300 persons or less than 1.0 percent of the population within the 25 mV/m contour?

☐ Yes ☐ No

If No, attach as an Exhibit a justification pursuant to 47 C.F.R. Section 73.24(g).

Exhibit No. \_\_\_\_\_

14. Environmental Statement. (See 47 C.F.R. Section 1.1301 et seq.)

(a) Would a Commission grant of this application come within 47 C.F.R. Section 1.1307, such that it may have a significant environmental impact?

☐ Yes ☐ No

If you answer Yes, submit as an Exhibit an Environmental Assessment required by 47 C.F.R. Section 1.1311.

Exhibit No. \_\_\_\_\_

If No, explain briefly why not.

(b) Distance from tower(s) to the nearest point of the fence enclosing the tower(s) in meters.

\_\_\_\_\_ Meters

SECTION V-A - AM BROADCAST ENGINEERING DATA (Page 4)

15. Allocation Studies

A. Daytime (For assistance, see 47 C.F.R. Section 73.371)

- (1) For daytime operation, attach as an exhibit map(s) having appropriate scales, showing the 1000, 5, 2 and 0.5 (0.1, if Class A station) daytime contours in mV/m for both existing and proposed operations. On the map(s) showing the 5 mV/m contours **CLEARLY INDICATE THE LEGAL BOUNDARIES OF THE PRINCIPAL COMMUNITY TO BE SERVED.**

Exhibit No.

- (2) Does the daytime 5 mV/m contour encompass the legal boundaries of the principal community to be served?

☐ Yes ☐ No

If No, attach as an Exhibit a justification for waiver of 47 C.F.R. Section 73.24(i).

Exhibit No.

- (3) For daytime operation, for stations on a frequency between 535 kHz and 1605 kHz, attach as an Exhibit an allocation study utilizing Figure M-3 (Figure R-3 47 C.F.R. Section 73.190) or an accurate full scale reproduction thereof and using pertinent field strength measurement data where available, a full scale exhibit of the entire pertinent area to show the following:

Exhibit No.

- (a) Normally protected and the interfering contours for the proposed operation along all azimuths.
- (b) Normally protected and interfering contours of existing stations and other proposed stations in pertinent areas with which prohibited overlap would result as well as those existing stations and other proposals which require study to clearly show absence of prohibited overlap. If prohibited overlap were to occur as a result of the proposal, appropriate justification for waiver of 47 C.F.R. Section 73.37 is to be included.
- (c) Plot of the transmitter location of each station or proposal requiring investigation, with identifying call letters, file numbers, and operating or proposed facilities.
- (d) Properly labeled longitude and latitude degree lines, shown across entire Exhibit.

- (4) For daytime operation, attach as an Exhibit a tabulation of the following:

Exhibit No.

- (a) Azimuths along which the groundwave contours were calculated for all stations or proposals shown on allocation study exhibits required by (3Xa).
- (b) Inverse distance field strength used along each azimuth.
- (c) Basis for ground conductivity utilized along each azimuth specified in (4Xa). If field strength measurements are used, submit copies of the analyzed measurements. If measurement data are taken from Commission records identify the source of the measurements in the Commission's files.
- (d) Calculated distances.

B. Critical Hours (If applicable, see 47 C.F.R. Section 73.187)

- (1) For critical hour operation, attach as an Exhibit map(s) having appropriate scales, showing the 1000, 5 and 0.5 critical hours contours in mV/m for both existing and proposed operations. On the map(s) showing the 5 mV/m contours **CLEARLY INDICATE THE LEGAL BOUNDARIES OF THE PRINCIPAL COMMUNITY TO BE SERVED.**

Exhibit No.

- (2) Does the critical hours 5 mV/m contour encompass the legal boundaries of the principal community to be served?

☐ Yes ☐ No

If No, attach as an Exhibit justification for waiver of 47 C.F.R. Section 73.24(i).

Exhibit No.

- (3) For critical hours operation, attach as an Exhibit an allocation study utilizing Figure M-3 (Figure R-3 47 C.F.R. Section 73.190) or an accurate full scale reproduction thereof and using pertinent field strength measurement data where available, a full scale exhibit of the entire pertinent area to show the following: The 0.1 mV/m groundwave contour pertinent arcs of Class A stations and appropriate studies to establish compliance with 47 C.F.R. Section 73.187 when operation is proposed on a U.S. Class A channel.

Exhibit No.

SECTION V-A - AM BROADCAST ENGINEERING DATA (Page 5)

C. Nighttime. (For assistance, see 47 C.F.R. Section 73.182)

- (1) For nighttime operation, attach as an Exhibit map(s) having appropriate scales, showing the 1000 mV/m and coverage contours (appropriate minimum protected value for proposed class of station, or RSS nighttime interference-free contour; whichever is the greater value) for both existing and proposed operations. On the map(s) showing the interference-free contours, CLEARLY INDICATE THE LEGAL BOUNDARIES OF THE PRINCIPAL COMMUNITY TO BE SERVED.

Exhibit No.

- (2) Does the nighttime 5 mV/m or nighttime interference free contour (which ever is higher) encompass 80% of the principal community to be served (50% for expanded band 1605-1705 kHz stations)?

☐ Yes ☐ No

If No, attach as an Exhibit justification for waiver of, or exemption pursuant to 47 C.F.R. Section 73.24(l).

Exhibit No.

- (3) For nighttime operation, for stations on a frequency between 535 kHz and 1605 kHz, attach as an Exhibit allocation data including the following:

Exhibit No.

- (a) Proposed nighttime limitation to other existing or proposed stations with which objectionable interference could result, as well as those other proposals and existing stations which require study to show clearly absence of objectionable interference.
- (b) All existing or proposed nighttime limitations which enter into the nighttime RSS limitation of each of the existing or proposed facilities investigated under (3)(a) above.
- (c) All existing and proposed limitations which contribute to the RSS nighttime limitation of the proposed operation, together with those limitations which must be studied before being excluded.
- (d) A detailed interference study plotted upon an appropriate scale map if a question exists with respect to nighttime interference to other existing or proposed facilities along bearing other than on a direct line toward the facility considered. (Clipping study)
- (e) The detailed basis for each nighttime limitation calculated under (3)(a), (b), (c) and (d) above.

16. Attach as an Exhibit a map (7.5 minute U.S. Geological Survey topographic quadrangles, if available) of the proposed antenna location showing the following information:

Exhibit No.

- A. Proposed transmitter location accurately plotted with the latitude and longitude lines clearly marked and showing a scale in kilometers.
- B. Heights of buildings or other structures and terrain elevations in the vicinity of the antenna, indicating the location thereof.
- C. Transmitter location and call signs of non-broadcast radio stations (except amateur and citizens band), established commercial and government receiving stations in the general vicinity which may be adversely affected by the proposed operation.
- D. Transmitter location and call letters of all AM, FM and TV broadcast stations within three (3) kilometers of the proposed antenna location.

CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name <i>(Typed or Printed)</i>	Relationship to Applicant <i>(e.g., Consulting Engineer)</i>
Signature	Address <i>(Include ZIP Code)</i>
Date	Telephone No. <i>(Include Area Code)</i> ( )

# Section V-B - FM BROADCAST ENGINEERING DATA

FOR COMMISSION USE ONLY

File No. \_\_\_\_\_

ASB Referral Date \_\_\_\_\_

Referred by \_\_\_\_\_

Name of Applicant \_\_\_\_\_

Call letters (if issued)

Is this application being filed in response to a window? ☐ Yes ☐ No

If Yes, specify closing date: \_\_\_\_\_

Purpose of Application: (check appropriate boxes)

☐ Construct a new (main) facility

☐ Construct a new auxiliary facility

☐ Modify existing construction permit for main facility

☐ Modify existing construction permit for auxiliary facility

☐ Modify licensed main facility

☐ Modify licensed auxiliary facility

If purpose is to modify, indicate below the nature of change(s) and specify the file number(s) of the authorizations affected.

☐ Antenna supporting-structure height

☐ Effective radiated power

☐ Antenna height above average terrain

☐ Frequency

☐ Antenna location

☐ Class

☐ Main Studio location

☐ Other (Summarize briefly)

File Number(s) \_\_\_\_\_

1. Allocation:

Channel No.	Principal community to be served:		
	City	County	State

Class (check only one box below)

☐ A ☐ B1 ☐ B ☐ C3

☐ C2 ☐ C1 ☐ C

2. Exact location of antenna.

(a) Specify address, city, county and state. If no address, specify distance and bearing relative to the nearest town or landmark.

(b) Geographical coordinates (to nearest second). If mounted on element of an AM array, specify coordinates of center of array. Otherwise, specify tower location. Specify South Latitude or East Longitude where applicable; otherwise, North Latitude or West Longitude will be presumed.

Latitude	° ' "	Longitude	° ' "

3. Is the supporting structure the same as that of another station(s) or proposed in another pending application(s)? ☐ Yes ☐ No

If Yes, give call letter(s) or file number(s) or both. \_\_\_\_\_

If proposal involves a change in height of an existing structure, specify existing height above ground level including antenna, all other appurtenances, and lighting, if any. \_\_\_\_\_

SECTION V-B - FM BROADCAST ENGINEERING DATA (Page 2)

4. Does the application propose to correct previous site coordinates?  
If Yes, list old coordinates.

☐ Yes ☐ No

Latitude      °      '      "	Longitude      °      '      "
-------------------------------	--------------------------------

5. Has the FAA been notified of the proposed construction?

☐ Yes ☐ No

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No.

Date \_\_\_\_\_ Office where filed \_\_\_\_\_

6. List all landing areas within 8 km of antenna site. Specify distance and bearing from structure to nearest point of the nearest runway.

Landing Area	Distance (km)	Bearing (degrees True)
(a) _____	_____	_____
(b) _____	_____	_____

7. (a) Elevation: *(to the nearest meter)*

(1) of site above mean sea level; \_\_\_\_\_ meters

(2) of the top of supporting structure above ground (including antenna, all other appurtenances, and lighting, if any); and \_\_\_\_\_ meters

(3) of the top of supporting structure above mean sea level  $[(a)(1) + (a)(2)]$  \_\_\_\_\_ meters

- (b) Height of radiation center: *(to the nearest meter)* H = Horizontal; V = Vertical

(1) above ground \_\_\_\_\_ meters (H)

\_\_\_\_\_ meters (V)

(2) above mean sea level  $[(a)(1) + (b)(1)]$  \_\_\_\_\_ meters (H)

\_\_\_\_\_ meters (V)

(3) above average terrain \_\_\_\_\_ meters (H)

\_\_\_\_\_ meters (V)

8. Attach as an Exhibit sketch(es) of the supporting structure, labelling all elevations required in Question 7 above, except item 7(b)(3). If mounted on an AM directional-array element, specify heights and orientations of all array towers, as well as location of FM radiator.

Exhibit No.

9. Effective Radiated Power:

(a) ERP in the horizontal plane \_\_\_\_\_ kw (H\*) \_\_\_\_\_ kw (V\*)

- (b) Is beam tilt proposed?

☐ Yes ☐ No

If Yes, specify maximum ERP in the plane of the tilted beam, and attach as an Exhibit a vertical elevational plot of radiated field.

Exhibit No.

\_\_\_\_\_ kw (H\*) \_\_\_\_\_ kw (V\*)

\*Polarization



SECTION V-B - FM BROADCAST ENGINEERING DATA (Page 3)

10. Is a directional antenna proposed?

☐ Yes ☐ No

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Section 73.316, including plot(s) and tabulations of the relative field.

Exhibit No.

11. Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.315(a) and (b)?

☐ Yes ☐ No

If No, attach as an Exhibit a request for waiver and justification therefor, including amounts and percentages of population and area that will not receive 3.16 mV/m service.

Exhibit No.

12. Will the main studio be within the protected 3.16 mV/m field strength contour of this proposal?

☐ Yes ☐ No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125.

Exhibit No.

13. (a) Does the proposed facility satisfy the requirements of 47 C.F.R. Section 73.207?

☐ Yes ☐ No

(b) If the answer to (a) is No, does 47 C.F.R. Section 73.213 apply?

☐ Yes ☐ No

(c) If the answer to (b) is Yes, attach as an Exhibit a justification, including a summary of previous waivers.

Exhibit No.

(d) If the answer to (a) is No and the answer to (b) is No, attach as an Exhibit a statement describing the short spacing(s) and how it or they arose.

Exhibit No.

(e) If authorization pursuant to 47 C.F.R. Section 73.215 is requested, attach as an Exhibit a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following:

Exhibit No.

- (1) Protected and interfering contours, in all directions (360 ), for the proposed operation.
- (2) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as the transmitter location.
- (3) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.
- (4) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.
- (5) The official title(s) of the map(s) used in the exhibit(s).

14. Are there: (a) within 60 meters of the proposed antenna, any proposed or authorized FM or TV transmitters, or any nonbroadcast *(except citizens band or amateur)* radio stations; or (b) within the blanketing contour, any established commercial or government receiving stations, cable head-end facilities, or populated areas; or (c) within ten (10) kilometers of the proposed antenna, any proposed or authorized FM or TV transmitters which may produce receiver-induced intermodulation interference?

☐ Yes ☐ No

If Yes, attach as an Exhibit a description of any expected, undesired effects of operations and remedial steps to be pursued if necessary, and a statement accepting full responsibility for the elimination of any objectionable interference (including that caused by receiver-induced or other types of modulation) to facilities in existence or authorized or to radio receivers in use prior to grant of this application. *(See 47 C.F.R. Sections 73.315(b), 73.316(e) and 73.318.)*

Exhibit No.

15. Attach as an Exhibit a 75 minute series U.S. Geological Survey topographic quadrangle map that shows clearly, legibly, and accurately, the location of the proposed transmitting antenna. This map must comply with the requirements set forth in Instruction V (D). The map must further clearly and legibly display the original printed contour lines and data as well as latitude and longitude markings, and must bear a scale of distance in kilometers.

Exhibit No.

16. Attach as an Exhibit *(name the source)* a map which shows clearly, legibly, and accurately, and with the original printed latitude and longitude markings and a scale of distance in kilometers.

Exhibit No.

- (a) the proposed transmitter location, and the radials along which profile graphs have been prepared;

- (b) the 3.16 mV/m and 1 mV/m predicted contours, and

- (c) the legal boundaries of the principal community to be served.

17. Specify area in square kilometers (1 sq. mi. = 2.59 sq. km.) and population (latest census) within the predicted 1 mV/m contour.

Area	sq. km.	Population
------	---------	------------

18. For an application involving an auxiliary facility only, attach as an Exhibit a map (*Sectional Aeronautical Chart or equivalent*) that shows clearly, legibly, and accurately, and with latitude and longitude markings and a scale of distance in kilometers:

Exhibit No.

- (a) the proposed auxiliary 1 mV/m contour, and

- (b) the 1 mV/m contour of the licensed main facility for which the applied-for facility will be auxiliary. Also specify the file number of the license.

19. Terrain and coverage data *to be calculated in accordance with 47 C.F.R. Section 73.3131*

Source of terrain data: (check only one box below)

- ☐ Linearly interpolated 30-second database      ☐ 7.5 minute topographic map

(Source: \_\_\_\_\_)

- ☐
- Other (briefly summarize)

## SECTION V-B - FM BROADCAST ENGINEERING DATA (Page 5)

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 3 to 16 km (meters)	Predicted Distances	
		To the 3.16 mV/m contour (kilometers)	To the 1 mV/m contour (kilometers)
*			
0			
45			
90			
135			
180			
225			
270			
315			

\*Radial through principal community, if not one of the major radials. This radial should NOT be included in the calculation of HAAT.

## 20. Environmental Statement (See 47 C.F.R. Section 1.1301 et seq.)

Would a Commission grant of this application come within Section 1.1307 of the FCC Rules, such that it may have a significant environmental impact? ☐ Yes ☐ No

If you answer Yes, submit as an Exhibit an Environmental Assessment required by Section 1.1311.

Exhibit No.

If No, explain briefly why not.

## CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation, I have examined the foregoing and found it to be accurate and true to the best of my knowledge and belief.

Name (Typed or Printed)	Relationship to Applicant (e.g., Consulting Engineer)
Signature	Address (Include ZIP Code)
Date	Telephone No. (Include Area Code) ( )

<b>Section V-C - TV BROADCAST ENGINEERING DATA</b>	<b>FOR COMMISSION USE ONLY</b> File No. _____ ASB Referral Date _____ Referred by _____
Name of Applicant _____	Call letters (if issued) _____

Purpose of Application (check appropriate box):

- |  |   |
|--|---|
| <input type="checkbox"/> Construct a new (main) facility<br><input type="checkbox"/> Modify existing construction permit for main facility<br><input type="checkbox"/> Modify licensed main facility | <input type="checkbox"/> Construct a new auxiliary facility<br><input type="checkbox"/> Modify existing construction permit for auxiliary facility<br><input type="checkbox"/> Modify licensed auxiliary facility |
|--|---|

If purpose is to modify, indicate nature of change(s) by checking appropriate box(es), and specify the file number(s) of the authorization(s) affected:

- |   |  |
|---|--|
| <input type="checkbox"/> Antenna supporting-structure height<br><input type="checkbox"/> Antenna height above average terrain<br><input type="checkbox"/> Antenna location<br><input type="checkbox"/> Main Studio location | <input type="checkbox"/> Effective radiated power<br><input type="checkbox"/> Frequency<br><input type="checkbox"/> Antenna system<br><input type="checkbox"/> Other (Summarize briefly) |
|---|--|

File Number(s) \_\_\_\_\_

**1. Allocation:**

Channel No. _____	Offset <i>(check one)</i> <input type="checkbox"/> Plus <input type="checkbox"/> Minus <input type="checkbox"/> Zero	Principal community to be served: <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; border: 1px solid black; padding: 2px;">City</td> <td style="width: 33%; border: 1px solid black; padding: 2px;">County</td> <td style="width: 33%; border: 1px solid black; padding: 2px;">State</td> </tr> </table>	City	County	State	Zone <i>(check one)</i> <input type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III
City	County	State				

**2. Exact location of antenna:**

(a) Specify address, town or city, county and state. If no address, specify distance and bearing to the nearest landmark.

(b) Geographical coordinates (to nearest second). If mounted on element of an AM array, specify coordinates of center of array. Otherwise, specify tower location. Specify South Latitude and East Longitude where applicable; otherwise, North Latitude and West Longitude will be presumed.

Latitude      °      '      "	Longitude      °      '      "
-------------------------------	--------------------------------

3. Is the supporting structure the same as that of another station(s) or proposed in another pending application(s)? ☐ Yes ☐ No

If Yes, give call letter(s) or file number(s) or both. \_\_\_\_\_

If proposal involves a change in height of an existing structure, specify existing height above ground level, including antenna, all other appurtenances, and lighting, if any. \_\_\_\_\_

SECTION V-C - TV BROADCAST ENGINEERING DATA (Page 2)

4. Does the application propose to correct previous site coordinates?

☐ Yes ☐ No

If Yes, list old coordinates.

Latitude	°	'	"	Longitude	°	'	"
----------	---	---	---	-----------	---	---	---

5. Has the FAA been notified of the proposed construction?

☐ Yes ☐ No

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No.

Date \_\_\_\_\_ Office where filed \_\_\_\_\_

6. List all landing areas within 8 km of antenna site. Specify distance and bearing from structure to nearest point of the nearest runway.

Landing Area	Distance (km)	Bearing (degrees True)
(a) _____	_____	_____
(b) _____	_____	_____

7. (a) Elevation: (to the nearest meter)

(1) of site above mean sea level; \_\_\_\_\_ meters

(2) of the top of supporting structure above ground (including antenna, all other appurtenances, and lighting, if any); and \_\_\_\_\_ meters

(3) of the top of supporting structure above mean sea level  $[(a)(1) + (a)(2)]$  \_\_\_\_\_ meters

(b) Height of antenna radiation center: (to the nearest meter)

(1) above ground; \_\_\_\_\_ meters

(2) above mean sea level  $[(a)(1) + (b)(1)]$ ; and \_\_\_\_\_ meters

(3) above average terrain. \_\_\_\_\_ meters

8. Attach as an Exhibit sketch(es) of the supporting structure, labelling all elevations required in Question 7 above, except item 7(b)(3). If mounted on an AM directional-array element, specify heights and orientations of all array towers, as well as location of TV radiator.

Exhibit No.

9. Maximum visual effective radiated power \_\_\_\_\_ kW

SECTION V-C - TV BROADCAST ENGINEERING DATA (Page 3)

10. Antenna:

(a) Manufacturer \_\_\_\_\_ (b) Model No. \_\_\_\_\_

(c) Is a directional antenna proposed?

☐ Yes ☐ No

If Yes, specify major lobe azimuth(s) \_\_\_\_\_ degrees True and attach as an Exhibit all data specified in 47 C.F.R. Section 73.685.

Exhibit No. \_\_\_\_\_

(d) Is electrical beam tilt proposed?

☐ Yes ☐ No

If Yes, specify \_\_\_\_\_ degrees electrical beam tilt and attach as an Exhibit all data specified in 47 C.F.R. Section 73.685.

Exhibit No. \_\_\_\_\_

(e) Is mechanical beam tilt proposed?

☐ Yes ☐ No

If Yes, specify \_\_\_\_\_ degrees mechanical beam tilt toward azimuth \_\_\_\_\_ degrees True and attach as an Exhibit all data specified in 47 C.F.R. Section 73.685.

Exhibit No. \_\_\_\_\_

(f) The proposed antenna is: *(check only one box)*

☐ horizontally polarized ☐ circularly polarized ☐ elliptically polarized

11. Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.685(a) and (b)?

☐ Yes ☐ No

If No, attach as an Exhibit justification therefor, including amounts and percentages of population and area that will not receive City Grade service.

Exhibit No. \_\_\_\_\_

12. Will the main studio be located within the station's predicted principal community contour as defined by 47 C.F.R. Section 73.685(a)?

☐ Yes ☐ No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125.

Exhibit No. \_\_\_\_\_

13. Does the proposed facility satisfy the requirement of 47 C.F.R. Section 73.610?

☐ Yes ☐ No

If No, attach as an Exhibit justification therefor, including a summary of any previously granted waiver(s).

Exhibit No. \_\_\_\_\_

14. Are there: (a) within 60 meters of the proposed antenna, any proposed or authorized FM or TV transmitters; or (b) in the general vicinity, any nonbroadcast *(except citizens band or amateur)* radio stations or any established commercial or government receiving stations?

☐ Yes ☐ No

If Yes, attach as an Exhibit a description of the expected, undesired effects of operations and remedial steps to be pursued, if necessary, and a statement accepting full responsibility for the elimination of any objectionable interference *(including that caused by intermodulation)* to facilities in existence or authorized prior to grant of this application. *(See 47 C.F.R. Sections 73.685(d) and (g).)*

Exhibit No. \_\_\_\_\_

15. Attach as an Exhibit a topographic map that shows clearly, legibly, and accurately, the location of the proposed transmitting antenna. This map must comply with the provisions of 47 C.F.R. Section 73.684(g). The map must further display clearly and legibly the original printed contour lines and data as well as latitude and longitude markings, and must bear a scale of distance in kilometers.

Exhibit No. \_\_\_\_\_



16. Attach as an Exhibit a map (*Sectional Aeronautical Chart or equivalent*) which shows clearly, legibly and accurately, and with the original printed latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. 

- (a) The proposed transmitter location, and the radials along which profile graphs have been prepared;  
 (b) The City Grade, Grade A and Grade B predicted contours; and  
 (c) The legal boundaries of the principal community to be served.

17. Specify area in square kilometers (1 sq. mi. = 259 sq. km.) and population (*latest census*) within the predicted Grade B contour.

Area \_\_\_\_\_ sq. km.

Population \_\_\_\_\_

18. For an application involving an auxiliary facility only, attach as an Exhibit a map (*Sectional Aeronautical Chart or equivalent*) that shows clearly, legibly, and accurately, and with latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. 

- (a) The proposed auxiliary Grade B contour; and  
 (b) The Grade B contour of the licensed main facility for which the applied-for facility will be the auxiliary.

(Main facility license file number \_\_\_\_\_)

19. Terrain and Coverage Data (*To be calculated in accordance with 47 C.F.R. Section 73.684.*)

Source of terrain data: (*check only one box below*)☐ Linearly Interpolated 30-second database (Source: \_\_\_\_\_)☐ 7.5 minute topographic map☐ Other (*briefly summarize*)

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 3 to 16 km (meters)	Predicted Distances		
		To the City Grade Contour (kilometers)	To the Grade A Contour (kilometers)	To the Grade B Contour (kilometers)
*				
0				
45				
90				
135				
180				
225				
270				
315				

\*Radial through principal community, if not one of the major radials. This radial should NOT be included in calculation of HAAT.

20. Environmental Statement/See 47 C.F.R. Section 1.1301 et seq.

Would a Commission grant of this application come within 47 C.F.R. Section 1.1307, such that it may have a significant environmental impact?

☐ Yes ☐ No

If you answer Yes, submit as an Exhibit an Environmental Assessment required by 47 C.F.R. Section 1.1311.

Exhibit No.

If No, explain briefly why not.

CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation, I have examined the foregoing and found it to be accurate and true to the best of my knowledge and belief.

Name (Typed or Printed)	Relationship to Applicant (e.g., Consulting Engineer)
Signature	Address (Include ZIP Code)
Date	Telephone No. (Include Area Code) ( )

SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. Does the applicant propose to employ five or more full-time employees?

☐ Yes ☐ No

If Yes, the applicant must include an EEO program called for in the separate Broadcast Equal Employment Opportunity Program Report (FCC 396-A).

SECTION VII - CERTIFICATIONS

1. Has or will the applicant comply with the public notice requirement of 47 C.F.R. Section 73.3580?

☐ Yes ☐ No

2. Has the applicant reasonable assurance, in good faith, that the site or structure proposed in Section V of this form, as the location of its transmitting antenna, will be available to the applicant for the applicant's intended purpose?

☐ Yes ☐ No

If No, attach as an Exhibit, a full explanation.

Exhibit No.

3. If reasonable assurance is not based on applicant's ownership of the proposed site or structure, applicant certifies that it has obtained such reasonable assurance by contacting the owner or person possessing control of the site or structure.

Name of Person Contacted \_\_\_\_\_

Telephone No. (include area code) \_\_\_\_\_

Person contacted: (check one box below)

☐ Owner ☐ Owner's Agent ☐ Other (specify) \_\_\_\_\_

4. The applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 853a, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☐ Yes ☐ No

The APPLICANT hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

The APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. Section 1.65, the APPLICANT has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Name of Applicant	Signature
Date	Title

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT  
AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of the application is in the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to the Commission's rules. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to vary from 72 hours to 302 hours 45 minutes with an average of 192 hours 31 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, can be sent to the Federal Communications Commission, Information Resources Branch, Room 416, Paperwork Reduction Project, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0027), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(a)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Approved by OMB  
3060-0041

Expires 12/31/90

Section I

United States of America  
Federal Communications Commission

**Application for Authority To Operate A  
Broadcast Station By Remote Control or to  
Make Changes in a Remote Control Authorization**

Public reporting burden for this collection of information is estimated to vary from 15 minutes to 2 hours per response, with an average of 18 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060-0041), Washington, DC 20503.

**Instructions**

- A. This form is to be used only by the licensees or permittees of AM Broadcast Stations with directional antennas. This form consists of this Section I and Section II, AM Broadcast Station Directional Antenna Information.
- B. Prepare Original and two copies of this form and all exhibits, and forward all copies to the Federal Communications Commission, Washington, D.C. 20554.
- C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 2.
- D. This application must be executed by applicant, if an individual; by a partner or applicant, if a partnership; by an officer of applicant, if a corporation or association; or by attorney of applicant only under conditions shown in Section 73.3513, Practice and Procedure, in which event satisfactory evidence of disability of applicant or his absence from the Continental United States and authority or attorney to act must be submitted with application.
- E. Before filling out this application, the applicant should familiarize himself/herself with the provisions of Part 73 of the Commission's Rules and Regulations dealing with remote control of the particular type of broadcast station for which this application is being filed.
- F. **Be Sure All Necessary Information Is Furnished and All Paragraphs Are Fully Answered. If Any Portions of The Application Are Not Applicable, Specifically So State. Defective or Incomplete Applications May Be Returned Without Consideration.**

(This Space For Commission Use Only)

1. Name of Licensee or permittee:

2. Mailing address:

Street

City

State

ZIP Code

3. Identification of existing station:

Call Sign (if unassigned, state file number)

Telephone No. (Include area code)

Station location (community of license)

City

State

4. Facilities proposed to be operated by remote control:

**Note:** Only facilities for which station holds an outstanding authorization or for which an application is pending may be specified. (Check all appropriate boxes)

AM Broadcast Transmitter(s):

- ☐ Main DA-D  
☐ Main DA-N  
☐ Main DA-CH

- ☐ Auxiliary DA-D  
☐ Auxiliary DA-N  
☐ Auxiliary DA-CH

5. Request is hereby made for authority to establish a remote control point as follows (this is the point from which the transmitter is controlled):

a. \_\_\_\_\_  
(Street address (or other identification)) (City) (State) (ZIP Code)

b. Airline distance between transmitter and remote control point: \_\_\_\_\_ miles.

c. Is proposed remote control point located at the main studio?

YES ☐ NO ☐

If answered "No" submit as Exhibit No. \_\_\_\_\_

giving reasons for its separate location.

**Section I, Page 2**

**The Applicant** certifies that remote control operation will be in accordance with the Commission's Rules and Regulations.

**The Applicant** hereby waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934.)

**The Applicant** represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

**The Applicant** acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

**Certification**

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

**Willful False Statements Made on This Form Are Punishable by Fine and Imprisonment. U.S. Code, Title 18, Section 1001.**



Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

(Name of Applicant)

By \_\_\_\_\_

(Signature)

Title \_\_\_\_\_

If Applicant is represented by legal counsel, state name and post office address:

**FCC Notice To Individuals Required by The Privacy Act and The Paperwork Reduction Act**

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended.

The principal purpose(s) for which the information will be used is to determine if the benefit requested is consistent with the public interest, convenience, and necessity.

The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to evaluate and render a judgement as to whether to grant or to deny the application.

If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Additionally, failure on the part of a licensee to submit a renewal application when due may result in a monetary forfeiture being issued against such licensee. Therefore, extreme care should be exercised in making certain that *all* necessary information is provided. Your response is required to obtain this authority.

**The Foregoing Notice is Required By The Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C., 552a (e)(3), and the Paperwork Reduction Act of 1980, P.L. 96-511, December 11, 1980, 44 U.S.C. 3507.**

Exhibits furnished as required by this form:

Exhibits	Para. No. of Form	Name of Officer or Employee (1) by Whom or (2) Under Whose Direction Exhibit Was Prepared (Show Which)	Official Title

I certify that I represent the applicant in the capacity indicated below and that I have examined the statement of technical information and that it is true to the best of my knowledge and belief.

Date \_\_\_\_\_ Signature \_\_\_\_\_ Telephone \_\_\_\_\_  
(check appropriate box below) (include Area Code)

- |   |  |
|---|--|
| <input type="checkbox"/> Technical Director               | <input type="checkbox"/> Consulting Engineer |
| <input type="checkbox"/> Registered Professional Engineer | <input type="checkbox"/> Chief Operator      |



## Section II

## AM Broadcast Station Directional Antenna Information

(Not required for stations with approved sampling systems — See Section 73.66 of the Commission's Rules and Regulations.)

1. Submit as Exhibit No. \_\_\_\_\_ a statement describing the stability of the directional antenna system during the one-year period preceding this application. This statement shall include, but shall not be limited to, such information as the nature and degree of any adjustment required, the maintenance procedures followed and the adequacy of the present monitoring system to indicate changes in the operation of the array.

<p>2. Antenna resistance and reactance measurement:</p> <p>Antenna resistance and reactance are to be determined in accordance with the procedure described in Section 73.54(a), (b), (c) and (d) of the Rules</p> <p>Attached as Exhibit No. _____ the information required to be supplied by Section 73.54(e) of the Rules.</p>	<p>3. Operating constants based on data in paragraph 2:</p>																																																								
<p>4. Submit as Exhibit No. _____ the weekly readings of field intensity at each monitoring point specified in the station license for the one-year period preceding this application. (Monthly readings will be acceptable where such readings are authorized.)</p>	<p>RF common point current without modulation for night power in amperes</p> <p>Actual measured common point resistance (in ohms) at operating frequency</p> <p>Night _____ Day _____</p>	<p>RF common point current without modulation for day power in amperes</p> <p>Actual measured common point reactance (in ohms) at operating frequency</p> <p>Night _____ Day _____</p>																																																							
<p>5. Submit as Exhibit No. _____ the values for each of the following: (a) common point current; (b) base currents and their calculated ratios, expressed to at least three significant figures; (c) antenna monitor sample currents or remote base currents and their calculated ratios; (d) phase indications; (e) final amplifier plate voltage; and (f) plate current. These values shall be those observed during the thirty-day period preceding this application, and the values shall be obtained from readings taken at approximately the same time.</p>	<p>Currents and phrases for directional operation:</p> <table border="1"> <thead> <tr> <th data-bbox="758 734 957 883" rowspan="2">TOWER</th> <th colspan="2" data-bbox="957 734 1141 883">Phase Reading In Degrees</th> <th colspan="2" data-bbox="1141 734 1324 883">Antenna Base Current</th> <th colspan="2" data-bbox="1324 734 1517 883">Remote Indication of Antenna Current</th> </tr> <tr> <th data-bbox="957 883 1053 1053">Night</th> <th data-bbox="1053 883 1141 1053">Day</th> <th data-bbox="1141 883 1236 1053">Night</th> <th data-bbox="1236 883 1324 1053">Day</th> <th data-bbox="1324 883 1420 1053">Night</th> <th data-bbox="1420 883 1517 1053">Day</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> <p>6. Submit as Exhibit No. _____ a partial proof of performance consisting of at least 10 field strength measurements on each of the radials established in the latest complete adjustment of the directional antenna system. These measurements shall be made at locations, all within 2 to 10 miles from the antenna, which were utilized in such adjustment, and include on each radial, the point, if any, designated as a monitoring point in the station authorization. Measurements shall be analyzed in the manner prescribed in Section 73.186 of the Rules.</p>		TOWER	Phase Reading In Degrees		Antenna Base Current		Remote Indication of Antenna Current		Night	Day	Night	Day	Night	Day																																										
TOWER	Phase Reading In Degrees			Antenna Base Current		Remote Indication of Antenna Current																																																			
	Night	Day	Night	Day	Night	Day																																																			



**INSTRUCTIONS FOR FCC FORM 302**  
**APPLICATION FOR NEW BROADCAST STATION LICENSE**  
(FCC FORM 302 ATTACHED)

**GENERAL INSTRUCTIONS**

A. This form is to be used in all cases when applying for a Broadcast Station License. It consists of Section I, General Data, and the following sections:

Section II-A, License Application Engineering Data AM Broadcast  
Section II-B, License Application Engineering Data FM Broadcast  
Section II-C, License Application Engineering Data Television Broadcast

B. References to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with current broadcast rules in 47 Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 17 "Construction, Marking, and Lighting of Antenna Structure"
- (4) Part 73 "Radio Broadcast Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

C. Prepare an original and two copies of this form and all exhibits. Number exhibits serially in the spaces provided in the body of the form. Date each exhibit and each antenna pattern. This application with all required exhibits should be filed with the FCC's Washington, D.C. office in accordance with 47 C.F.R. Section 0.401.

D. Generally, applicants seeking a license to cover the facility authorized by, and constructed pursuant to, an outstanding permit are required to pay and submit a fee with the filing of the application. No fees are required, however, with respect to noncommercial educational permittees and licensees. See 47 C.F.R. Section 1.1112. Full payment of a required fee may be made by check, bank draft or money order payable to the Federal Communications Commission. An application submitted with an insufficient payment or with an inappropriate form of payment will be returned, along with the tendered payment, to the applicant without processing. Except for the limited circumstances enumerated in 47 C.F.R. Section 1.1111, an accepted fee payment will be retained by the government irrespective of the subsequent substantive disposition of the underlying application. For further information regarding fees, see 47 C.F.R., Part 1, Subpart G.

E. The name of the applicant must be stated exactly as it appears on the construction permit which is being covered.

F. Each permittee of a commercial AM, FM or TV broadcast station is required to submit at the time it applies for a station license an ownership report (FCC Form 323) or a certification that its current and unamended ownership report on file with the Commission has been reviewed and is accurate. This required ownership report or certification should be mailed separately and addressed to: Chief, Ownership Section, Room 234, Washington, D.C. 20554.

G. Engineering and other data called for by this application which is already on file with the Commission need not be refiled in this application provided: (1) the information is now on file in another application or FCC form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number (if any), the FCC form number, the filing date of the application or other form containing the information, and the page or paragraph referred to; and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form. The incorporated application or other form will thereafter, in its entirety, be open to the public.

H. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or absence from the United States. The attorney shall, in the event he/she signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than knowledge), he/she shall separately set forth his/her reasons for believing that such statements are true.

I. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL ITEMS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

# APPLICATION FOR NEW BROADCAST STATION LICENSE

(Carefully read instructions before filling out Form)

RETURN ONLY FORM TO FCC

Approved by OMB  
3060-0029  
Expires 9/30/90

For Commission Fee Use Only

FEE NO:

FEE TYPE:

FEE AMT:

ID SEQ:

For Applicant Fee Use Only

Is a fee submitted with this application?

☐ Yes ☐ No

If No, indicate reason therefor (check one box):

☐ Nonfeeable application

Fee Exempt (See 47 C.F.R. Section 1.1112)

☐ Noncommercial educational licensee

☐ Governmental entity

## SECTION I - GENERAL DATA

For Commission Use Only

File No.

Legal Name of Applicant	Mailing Address		
	City	State	Zip Code
	Telephone No. (include area code)		

### 1. Facilities authorized by construction permit

This application is for:

☐ Commercial

☐ Noncommercial

☐ AM Directional

☐ AM Non-Directional

☐ FM Directional

☐ FM Non-Directional

☐ TV

Call Letters	Community of License	Construction Permit File No.	Modification of Construction Permit File No(s).	Expiration Date of Last Construction Permit
--------------	----------------------	------------------------------	---	---

### 2. Is the station now operating pursuant to automatic program test authority in accordance with 47 C.F.R. Section 73.1620?

☐ Yes ☐ No

If No, explain.

### 3. Have all the terms, conditions, and obligations set forth in the above described construction permit been fully met?

☐ Yes ☐ No

If No, state exceptions.

### 4. Apart from the changes already reported, has any cause or circumstance arisen since the grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect?

☐ Yes ☐ No

If Yes, explain.

### 5. Has the permittee filed its Ownership Report (FCC Form 323) or ownership certification in accordance with 47 C.F.R. Section 73.3615(b)?

☐ Yes ☐ No

If No, explain.

☐ Does not apply

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

#### CERTIFICATION

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name of Applicant	Signature
Title	Date

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT,  
U.S. CODE, TITLE 18, SECTION 1001.**

#### FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, engineers, and applications examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authorization.

**THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.**

## Section II-A

## License Application Engineering Data - AM Broadcast

Name of Applicant \_\_\_\_\_

PURPOSE OF AUTHORIZATION APPLIED FOR: *(check one)*☐

Station License

☐

Direct measurement of power

## 1. Facilities authorized in construction permit

Call Sign	File No. of Construction Permit <i>(if applicable)</i>	Frequency <i>(kHz)</i>	Hours of operation	Power in kilowatts	
				Night	Day

## 2. Station location

State	City or Town

## 3. Transmitter location

State	County	City or Town	Street address <i>(or other identification)</i>

## 4. Main Studio location

State	County	City or Town	Street Address <i>(or other identification)</i>

5. Remote control point location *(specify only if authorized directional antenna)*

State	County	City or Town	Street address <i>(or other identification)</i>

## 6. Operating constants:

RF common point or antenna current (in amperes) without modulation for night system	RF common point or antenna current (in amperes) without modulation for day system

Measured antenna or common point **resistance** (in ohms) at operating frequency

Night Day

Measured antenna or common point **reactance** (in ohms) at operating frequency

Night Day

## Antenna indications for directional operation

Tower	Antenna monitor Phase reading in degrees		Antenna monitor sample current ratio		Antenna base current	
	Night	Day	Night	Day	Night	Day

Manufacturer and type of antenna monitor: \_\_\_\_\_

## 7. Description of antenna system

(If directional antenna is used, the information requested below should be given for each element of the array. Use separate sheets if necessary. Height figures should not include obstruction lighting.)

Type radiator	Height in meters of complete radiator above base insulator, or above base if grounded.	Overall height in meters above ground <i>(without obstruction lighting)</i>	If antenna is either top loaded or sectionalized, describe fully in Exhibit No. ____

Excitation

☐

Series

☐

Shunt



Geographic coordinate to nearest second. For directional antenna give coordinates of center of array. For single vertical radiator give tower location.

°   '   "	°   '   "
North latitude	West longitude

If not fully described above, attach as Exhibit No. \_\_\_\_\_ further details and dimensions including any other antenna mounted on tower and associated isolation circuits. Also, if necessary for a complete description attach as Exhibit No. \_\_\_\_\_ a sketch of the details and dimensions of ground system.

8. In what respect, if any, does the apparatus constructed differ from that described in the application for construction permit or in the permit?

9. Give reasons for the change in antenna or common point resistance.

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

Name <i>(Please Print or Type)</i>	Signature <i>(Check appropriate box below)</i>	
Address <i>(Include ZIP Code)</i>	Date	
	Telephone No. <i>(Include Area Code)</i>	

☐ Technical Director

☐ Chief Operator

☐ Other *(specify)*

☐ Registered Professional Engineer

☐ Technical Consultant

## Section II-B

## License Application Engineering Data - FM Broadcast

Name of Applicant \_\_\_\_\_

## 1. Facilities authorized in construction permit

Call Sign	Frequency		Antenna height above average terrain
	Effective radiated power in kilowatts		
File No. of Construction Permit <i>(if applicable)</i>	Horizontal	Horizontal maximum *	Horizontal
	Vertical	Vertical maximum *	Vertical
	*Beam tilt antennas only		

## 2. Station location

State	City or Town
-------	--------------

## 3. Transmitter location

State	County	City or Town	Street address <i>(or other identification)</i>
-------	--------	--------------	---

## 4. Main Studio location

State	County	City or Town	Number and Street
-------	--------	--------------	-------------------

5. Remote control point location *(only if authorized)*

State	City or Town	Street address <i>(or other identification)</i>
-------	--------------	---

## 6. Operating constants:

D.C. plate current in last radio stage, in amperes	Applied D.C. voltage in last radio stage, in volts	Efficiency Factor F of transmitter at operating power in percent	Transmitter power output, in kW by indirect method	RF transmission line meter reading
--	--	---	--	---------------------------------------

## 7. Antenna

Antenna make and type No.	Number of Sections	Power gain
---------------------------	--------------------	------------

Height of antenna radiation center above ground and mean sea level:

HORIZONTAL

VERTICAL

\_\_\_\_\_ meters (AGL)

\_\_\_\_\_ meters (AGL)

\_\_\_\_\_ meters (AMSL)

\_\_\_\_\_ meters (AMSL)

Geographical Coordinates of antenna *(to nearest second)*

North latitude

West longitude

Description of antenna supporting structure

Elevation in meters of the top of  
supporting structure above ground  
(including antenna and other  
appurtenances and lighting, if any)

## 8. Transmission line

Make	Type	Description
Size: (nominal inside transverse dimension) in centimeters		Length in meters
		Rated efficiency in percent for this length

9. In what respect, if any, does the apparatus constructed differ from that described in the application for construction permit or in the permit? Attach exhibits to show compliance with all conditions on construction permit.

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

Name <i>(Please Print or Type)</i>	Signature <i>(Check appropriate box below)</i>
Address <i>(Include ZIP Code)</i>	Date
	Telephone No. <i>(Include Area Code)</i>

☐ Technical Director☐ Registered Professional Engineer☐ Chief Operator☐ Technical Consultant☐ Other *(specify)*

## SECTION II-C

## License Application Engineering Data - TV Broadcast

Name of Applicant \_\_\_\_\_

## 1. Facilities authorized in construction permit

Call Sign	Channel No.	File No. of Construction Permit	Frequency Band MHz	Carrier Frequency Visual Aural MHz MHz
Maximum Effective Radiated Power (visual) in dBk: _____ in kW: _____				Antenna height above average terrain Meters _____

## 2. Station location (principal community)

State _____	City or Town _____
-------------	--------------------

## 3. Transmitter location

State _____	County _____	City or Town _____	Street Address (or other identification) _____
-------------	--------------	--------------------	--

## 4. Main Studio location

State _____	County _____	City or Town _____	Number and Street _____
-------------	--------------	--------------------	-------------------------

## 5. Operating constants - Visual transmitter (peak)

Transmitter power output (after vestigial sideband filter, if used, and after multiplexer, if combined) dBk kW		Multiplexer loss in dB, if separate dB	Input to transmission line dBk
Transmission line power loss dB	Antenna input power dBk	Maximum antenna power gain dB	Maximum effective radiated power dBk kW

Does the transmitter comply with 47 C.F.R. Section 73.1660? ☐ YES ☐ NO

If No, describe fully in Exhibit No. \_\_\_\_\_

## 6. Antenna, Transmission Line and Multiplexer

Antenna make and type No. _____	Maximum power gain dB	Average (RMS) horizontal plane power gain dB
Elevation of the top of antenna supporting structure above ground (including antenna and all other appurtenances and lighting, if any) Meters _____	Height of antenna radiation center above ground Meters _____	Height of antenna radiation center above mean sea level Meters _____

Geographical Coordinates of antenna

North Latitude

West Longitude

Is a directional antenna used? ☐ YES ☐ NOIs electrical or mechanical beam tilting employed? ☐ YES ☐ NO

If either a directional antenna or one employing beam tilt is used, and the radiation patterns differ from those on file with the construction permit application, give full details in Exhibit No. \_\_\_\_\_

## Transmission Line

Make _____	Type No. _____	Coaxial or waveguide _____
Size (nominal inside transverse dimensions) centimeters _____	Length Meters _____	Power loss for this length dB _____

## Multiplexer

Make _____	Type No. _____	Loss (if not included in transmitter power output) Visual Aural dB dB
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## 7. Frequency measurements

Measured visual carrier frequency (specify at least to nearest 100 Hz)

\_\_\_\_\_ Hz

Measured aural carrier center frequency (specify at least to nearest 100 Hz)

\_\_\_\_\_ Hz

Give date measurements made and method used or frequency measurement service employed.

## 8. Performance Data

Have equipment performance measurements been taken in accordance with 47 C.F.R. Section 73.1590, demonstrating compliance with the Commission's transmission standards and transmission system requirements, and are those measurements available for submission to the Commission upon request?

☐ YES ☐ NO

If No, explain.

9. In what respect, if any, does the apparatus constructed differ from that described in the application for construction permit or in the permit?

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

Name <i>(Please Print or Type)</i>	Signature <i>(Check appropriate box below)</i>
Address <i>(Include ZIP Code)</i>	Date
	Telephone No. <i>(Include Area Code)</i>

☐ Technical Director☐ Registered Professional Engineer☐ Chief Operator☐ Technical Consultant☐ Other *(specify)*

## INSTRUCTIONS FOR FCC 303-S

### APPLICATION FOR RENEWAL OF LICENSE FOR COMMERCIAL AND NONCOMMERCIAL AM, FM OR TV BROADCAST STATION

#### GENERAL INSTRUCTIONS

A. This form is to be used in applying for renewal of a license for a commercial AM, FM or TV broadcast station. It is also used in seeking the renewal of a noncommercial educational radio or television broadcast station license.

B. References to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with the current broadcast rules, which are contained in 47 Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 17 "Construction, Marking, and Lighting of Antenna Structures"
- (4) Part 73 "Radio Broadcast Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

C. An original and one complete copy of the 303-S renewal application, including all exhibits, must be prepared for each AM, FM or TV broadcast station license to be renewed. The application with all required exhibits should be filed with the FCC's Washington office in accordance with 47 C.F.R. Section 0.401.

D. By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, applicants seeking to renew the license for a commercial AM, FM or TV broadcast station are required to pay and submit a fee with the filing of the application. Licensees of noncommercial educational radio or noncommercial educational television broadcast stations are exempt from payment of this fee. Full payment of the required fee may be made by check, bank draft or money order payable to the Federal Communications Commission. An application submitted with an insufficient payment or with an inappropriate form of payment will be returned, along with the tendered payment, to the applicant without processing. Except for the limited circumstances enumerated in 47 C.F.R. Section 1.1111, an accepted fee payment will be retained by the government irrespective of the subsequent substantive disposition of the underlying application. An application, which requires the payment of a fee or for which an exemption, waiver or deferral from the fee requirement is claimed, shall be sent to: FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C. 20554-1800. For further information regarding fees, see 47 C.F.R., Part 1, Subpart G.

E. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. Defective or incomplete applications will be returned without consideration. Furthermore, inadvertently accepted applications are also subject to dismissal.

F. In accordance with 47 C.F.R. Section 1.65, the applicant has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

#### QUESTION-BY-QUESTION GUIDELINES

**Question 1.** The name of the applicant should be stated exactly as it appears on the station's existing license. The current street address or post office box used by the applicant for receipt of Commission correspondence should be set forth. Any change in the mailing address previously used by the licensee should be promptly communicated to the Commission. See 47 C.F.R. Section 1.5. FCC Form 5072, entitled "Change in Official Mailing Address for Broadcast Station," should be used for this purpose.

**Question 2.** The applicant should identify the AM, FM or TV facility by its call letters, exactly as they appear on the station's existing license. The location of that facility should be described in terms of the specific city or community to which the station is licensed.

**Question 3.** This question should be completed only by a radio or television renewal applicant seeking to continue its authority to operate a FM booster or TV booster station in conjunction with the primary station. The FM or TV booster station should be described in terms of its call letters and the location of the specific community which it serves.



**Question 4(a).** Licensees of noncommercial educational and commercial radio and television broadcast stations are required by Commission regulation (47 C.F.R. Section 73.2080) to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. In conjunction therewith, every station with five or more full-time employees must file an employment report on or before May 31 of each year, identifying the station's staff by gender, race, color and/or national origin in each of eight major job categories. See 47 C.F.R. Section 73.3612.

**Question 4(b).** Each noncommercial educational broadcast station licensee is required to submit a current and complete ownership report (FCC Form 323-E) with its station's renewal application. See 47 C.F.R. Section 73.3615(d). In such cases, the question should be answered affirmatively. However, if the Form 323-E submitted with the station's last renewal application is "up-to-date" and has not been amended, a new ownership report need not be filed with the current renewal application. The applicant should then answer the question negatively and supply the filing date of that report and the call letters of the station for which it was submitted. An "up-to-date" FCC 323-E ownership report is one that is current for **each** question on that report.

A commercial broadcast station licensee is required to submit a current and complete ownership report (FCC Form 323) once each year on the anniversary of the date that its license renewal application is required to be filed. See 47 C.F.R. Section 73.3615(a). Licensees of multiple commercial broadcast stations with different renewal anniversary filing dates may elect a single date to submit information, but the ownership reports may not be submitted more than one year apart. If no changes have occurred, the licensee may submit a written certification to that fact, instead of filing a new Form 323 each year. In addition, where the licensee is a partnership composed entirely of natural persons, the annual reporting requirement does not apply. Similarly, sole proprietorships are exempt from the requirement to file annually.

**Question 5.** Aliens, foreign governments and corporations, and corporations of which less than 80% of the capital stock is owned or voted by U.S. citizens, are prohibited from holding a broadcast station license. Where a corporate licensee is directly or indirectly controlled by another corporation, of which any officer or more than 25% of the directors are aliens or of which less than 75% of that corporation's stock is owned or voted by U.S. citizens, the Commission must consider whether denial of renewal would serve the public interest. Licensees are expected to employ reasonable, good faith methods to ensure the accuracy and completeness of their citizenship representations.

**Question 6.** Commission policies and litigation reporting requirements for broadcast station applicants are directed to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with its rules and policies. The categories of relevant non-FCC misconduct include: (1) misrepresentations to any other governmental unit resulting in criminal or civil violations; (2) criminal convictions involving false statements or dishonesty; (3) certain felony convictions; and (4) adjudicated violations of anticompetitive or antitrust laws that are broadcast related. The parameters of the revised policies and requirements are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986).

For the purposes of this question, the term "parties to the application" includes any individual or entity whose ownership or positional interest in the applicant is cognizable under the Commission's multiple ownership rules. See in this regard Report and Order in MM Docket No. 83-46, 97 FCC 2d 997 (1984), reconsideration granted in part, 58 RR 2d 604 (1985), further modified on reconsideration, 61 RR 2d 739 (1986).

**Question 7.** Each applicant should check the appropriate box to indicate whether a Commission grant of the proposed communications facility(ies) may or may not have a significant environmental impact as defined by 47 C.F.R. Section 1.1307. Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:

- (a) A facility is to be located in sensitive areas (e.g., an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.
- (b) A facility whose construction will involve significant changes in surface features.
- (c) The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.
- (d) The facilities or the operation of which will cause exposure of workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95.1-1982), by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.

If you answer Yes, submit the required Environmental Assessment (EA). The EA includes for antenna towers and satellite earth stations:

- (a) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity white lighting is proposed or utilized within a residential area, the EA

must also address the impact of this lighting upon the residents.

(b) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.

(c) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.

(d) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects; and any alternative sites or facilities which have been or might reasonably be considered.

The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness area, wildlife preserve, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).

The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.

To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility (a) for determining whether the facilities in question will have a significant effect on the quality of the human environment and, (b) if it will affect the environment, for invoking the environmental impact statement process.

**Question 8.** A licensee must maintain certain documents pertaining to its station in a file which is usually kept at the station's main studio or other accessible place in the community of license. The file must be available for inspection by anyone during regular business hours. The documents to be maintained generally include applications for a construction permit and for license renewal, assignment or transfer of control; ownership and employment reports; and quarterly lists of the community issues most significantly addressed by the station's programming during the preceding three months. A complete listing of the required documents and their mandatory retention periods is set forth in 47 C.F.R. Sections 73.3526 and 73.3527.

**Certification.** As indicated above, responses to the questions set forth in FCC Form 303-S constitute representations upon which the Commission relies in considering whether renewal of the subject license would be in the public interest. Upon completion of the application form and the attached exhibits, the certification must be dated and signed.

The original copy of FCC Form 303-S must be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or absence from the United States. The attorney shall, in the event he/she signs for the applicant, separately set forth the reason why the application is not signed by the applicant. See 47 C.F.R. Section 73.3513. Original copies of applications bearing signatures of unauthorized persons or photo or other reproduced copies of signatures are not acceptable.

#### **FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, engineers, and applications examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authorization.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

APPLICATION FOR RENEWAL OF LICENSE FOR  
COMMERCIAL AND NONCOMMERCIAL AM, FM OR TV BROADCAST STATION

For <u>Commission</u> Fee Use Only	FEE NO:	For <u>Applicant</u> Fee Use Only  Is a fee submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No  If No, indicate reason therefor (check one box): <input type="checkbox"/> Nonfeeable application  Fee Exempt (See 47 C.F.R. Section 1.1112)  <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity
	FEE TYPE:	
	FEE AMT:	
	ID SEQ:	
For <u>Commission</u> Use Only: File No.		

1. Name of Applicant			4. Have the following reports been filed with the Commission:  (a) The Broadcast Station Annual Employment Reports (FCC Form 395-B) as required by 47 C.F.R. Section 73.3612? <input type="checkbox"/> Yes <input type="checkbox"/> No  If No, attach as Exhibit No. _____ an explanation.  (b) The applicant's Ownership Report (FCC Form 323 or 323-E) as required by 47 C.F.R. Section 73.3615? <input type="checkbox"/> Yes <input type="checkbox"/> No  If No, give the following information: Date last ownership report was filed _____ Call letters of station for which it was filed _____
Mailing Address			
City	State	ZIP Code	
2. This application is for: <input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV			
(a) Call Letters:	(b) Principal Community: City State		
3. Attach as Exhibit No. _____ an identification of any FM booster or TV booster station for which renewal of license is also requested.			

5. Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments? ☐ Yes ☐ No

If No, attach as Exhibit No. \_\_\_\_\_ an explanation.

6. Since the filing of the applicant's last renewal application for this station or other major application, has an adverse finding been made or final action been taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; broadcast related antitrust or unfair competition; criminal fraud or fraud before another governmental unit; or discrimination? ☐ Yes ☐ No

If Yes, attach as Exhibit No. \_\_\_\_\_ a full description of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers) and the disposition of the litigation.

7. Would a Commission grant of this application come within 47 C.F.R. Section 1.1307, such that it may have a significant environmental impact? ☐ Yes ☐ No

If Yes, attach as Exhibit No. \_\_\_\_\_ an Environmental Assessment required by 47 C.F.R. Section 1.1311.

If No, explain briefly why not.

8. Has the applicant placed in its station's public inspection file at the appropriate times the documentation required by 47 C.F.R. Sections 73.3526 or 73.3527? ☐ Yes ☐ No

If No, attach as Exhibit No. \_\_\_\_\_ a complete statement of explanation.

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

**CERTIFICATION:** I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name	Signature
Title	Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.

**ATTENTION TELEVISION BROADCAST STATION RENEWAL APPLICANTS**

**CHILDREN'S TELEVISION PROGRAMMING AND ADVERTISING PRACTICES**

**SUPPLEMENT TO FCC FORM 303-S**

**NOTE:** On April 12, 1991, the Commission adopted a Report and Order which implemented the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. Sections 303a, 303b, and 394 (Act). See Report and Order, In the Matter of Policies and Rules Concerning Children's Television Programming and Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, MM Docket Nos. 90-570 and 83-670, 6 FCC Rcd 2111, Erratum, 6 FCC Rcd 3535, on reconsideration, 6 FCC Rcd 5093 (1991). The Commission intends to incorporate these changes into FCC Form 303-S. Until such time as this has been accomplished, commercial television renewal applicants whose licenses expire on or after June 1, 1992, are required to answer new Question 9 set forth in this supplement.

OMB Approval  
3060-0110  
Expires 8/31/94



**FOR COMMERCIAL TV RENEWAL APPLICANTS ONLY**

Question 9 (a). Programming directed to the educational and informational needs of children is an identifiable unit of program material that is not a commercial or promotional announcement, that serves the educational and informational needs of children 16 years of age and under, and that furthers the positive development of the child in any respect, including, but not limited to, the child's cognitive/intellectual or emotional/social needs. Applicants for renewal of license of commercial television broadcast stations are required to provide the information requested by Question 9 (a) for the period commencing October 1, 1991.

Question 9 (b) and (c). Commercial television licensees must limit the amount of commercial matter in "children's programming," which is defined for this purpose as programming originally produced and broadcast primarily for an audience of children 12 years of age and under. The new children's television advertising limitations are effective on January 1, 1992.

**FOR NONCOMMERCIAL EDUCATIONAL TV RENEWAL APPLICANTS ONLY**

Noncommercial educational television station licensees have a general obligation to serve children's educational and informational needs in accord with the Children's Television Act of 1990. They are required to maintain documentation sufficient to show compliance at renewal time with the Act's programming obligations in response to a challenge or to specific complaints. However, noncommercial educational television station licensees are exempt from the specific record-compilation, filing, and the renewal submission requirements relating to children's programming which are set forth in this supplement to FCC Form 303-S.



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SUPPLEMENT to      Application for Renewal of License for Commercial and  
FCC Form 303-S      Noncommercial AM, FM or TV Broadcast Station

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9. The following sections apply to commercial television broadcast applicants only:

- (a) Attach as Exhibit No. \_\_\_\_\_ a summary of the applicant's programming response, nonbroadcast efforts and support for other stations' programming directed to the educational and informational needs of children, and reflecting the most significant programming related to such needs which the licensee has aired, as described in 47 C.F.R. Section 73.3526(a)(8)(iii).
- (b) For the period of time covered by this report, has the applicant complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670?

/ ☐ / Yes / ☐ / No

(The limits are no more than 12 minutes of commercial matter per hour on weekdays, and no more than 10.5 minutes of commercial matter per hour during children's programming on weekends. The limits also apply pro rata to children's programs which are 5 minutes or more and which are not part of a longer block of children's programming.)

- (c) If No, submit as Exhibit No. \_\_\_\_\_ a list of each segment of programming, 5 minutes or more in duration, designed for children 12 years old and under and broadcast during the license period which contained commercial matter in excess of the limits. For each programming segment so listed, indicate the length of the segment, the amount of commercial matter contained therein, and an explanation of why the limits were exceeded.



APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION  
PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT

(CAREFULLY READ INSTRUCTIONS ON BACK BEFORE COMPLETING)

For Commission Use Only

File No.

1. Legal Name of Applicant <i>(See Instruction C)</i>		3. PURPOSE OF APPLICATION: <input type="checkbox"/> a. Additional time to construct broadcast station <input type="checkbox"/> b. Construction permit to replace expired permit	
2. Mailing Address <i>(Number, street, city, state, ZIP code)</i>		4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT:	
		File Number	Call Letters
		Frequency	Channel No.
Telephone No. <i>(Include Area Code)</i>		Station Location	
5. OTHER: Submit as Exhibit No. _____ a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc.			
6. EXTENT OF CONSTRUCTION:			
(a) Has equipment been delivered? <input type="checkbox"/> YES <input type="checkbox"/> NO If NO, answer the following: From Whom Ordered <i>(If no order has been placed, so indicate)</i>		(b) Has installation commenced? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, submit as Exhibit No. _____ a description of the extent of installation and the date installation commenced.	
Date Ordered	Date Delivery Promised	(c) Estimated date by which construction can be completed.	
7. (a) If application is for extension of construction permit, submit as Exhibit No. _____ reason(s) why construction has not been completed.  (b) If application is to replace an expired construction permit, submit as Exhibit No. _____ the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).			
8. Are the representations contained in the application for construction permit still true and correct? <input type="checkbox"/> YES <input type="checkbox"/> NO If NO, give particulars in Exhibit No. _____			

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Legal Name of Applicant	Signature
Title	Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT,  
U.S. CODE, TITLE 18, SECTION 1001.

## INSTRUCTIONS

- A. This form is to be used in all cases when applying for additional time to construct a broadcast station or when applying for a construction permit to replace an expired permit. See 47 Code of Federal Regulations (C.F.R.) Sections 73.3534 and 73.3598.
- B. Prepare an original and one copy of this form and all exhibits. Number exhibits serially in the space provided in the body of the form. This application and all required exhibits should be filed with the FCC's Washington, D.C. office in accordance with 47 C.F.R. Section 0.401.
- C. The name of the applicant must be stated exactly as it appears on the construction permit or on the expired construction permit.
- D. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his/her absence from the United States. The attorney shall, in the event he/she signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than knowledge), he/she shall separately set forth reasons for believing that such statements are true.
- E. Completion of construction includes the time required for testing and filing an appropriate broadcast station license application.
- F. Applicants must explain fully: status of construction; reasons for delays in commencement or completion of construction; and detailed steps being taken to remedy delays.
- G. Filing date is determined by date application is received in FCC.
- H. **BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.**

### **FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, engineers, communications industry analysts and applications examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authorization.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

## INSTRUCTIONAL PAMPHLET FOR FCC FORM 313

### Application for Authorization in the Auxiliary Broadcast Services

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060-0028), Washington, DC 20503.

This pamphlet is designed to assist the licensees or permittees of AM, FM and TV broadcast stations in preparing their applications for Remote Pickup (Base, Mobile and Automatic Relay), Aural microwave (STL, Intercity Relay and Booster), Television microwave (Translator Relay, STL, Booster, TV Relay, TV Pickup), and Low Power Auxiliary Stations licensed under the Auxiliary Radio Broadcast Services. International broadcast licensees, TV Translator, and Low Power TV Licensees and other entities (Broadcast Network Entities, Motion Picture Producers, Television Program Producers, Cable Television System Operators) may also be eligible for certain types of Auxiliary broadcast station authorizations. See 47 C.F.R. Part 74 to determine eligibility. Defective and incomplete applications and applications without proper fees attached are subject to return without consideration. Inadvertently accepted applications are also subject to dismissal.

#### GENERAL INSTRUCTIONS

References to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with the current broadcast rules which are contained in 47 Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 17 "Construction, Marking, and Lighting of Antenna Structures"
- (4) Part 73 "Radio Broadcast Services"
- (5) Part 74 "Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

**PREPARE AND FILE AN ORIGINAL AND 2 COPIES** of completed Form 313 with the Federal Communications Commission, 1919 M Street, N.W., Room L-18, Washington, D.C. 20554-1800.

Fill in all appropriate items. DO NOT use "ON FILE."

DO NOT USE THIS FORM TO AMEND PENDING APPLICATIONS. Simply file a letter amending the particular item(s) and submit it to The Secretary of FCC, Washington, D.C. 20554.

By law, the Commission is required to collect charges for certain of the regulatory services provided to the public. Generally, applicants seeking to construct a new auxiliary broadcast station or to make a major change (frequency, antenna system, power, number of mobiles, relocations of station(s) or addition of a base station) to existing authorizations are required to pay and submit a fee with the filing of the application. See 47 C.F.R. Section 1.1112. A listing of the required charges is set forth in 47 C.F.R. Section 1.1104. Full payment of the required fee may be made by check, bank draft or money order payable to the Federal Communications Commission. An application submitted with an insufficient payment or with an inappropriate form of payment will be returned, along with the tendered payment, to the applicant without processing. Except for the limited circumstances enumerated in 47 C.F.R. Section 1.1111, an accepted fee payment will be retained by the government irrespective of the subsequent substantive disposition of the underlying application. Until further notice, an application, which requires the payment of a fee or for which an exemption, waiver or deferral from the fee requirement is claimed, shall be sent to: **FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C. 20554-1800**. Under no circumstances should applications be filed directly with the application processing staffs. For further information regarding fees, see 47 C.F.R., Part 1, Subpart G. Upon written request, applicants qualifying as noncommercial educational broadcasters under Commission rules will be exempt from the payment of fees.

A separate FCC Form 313 must be filed for each proposed station at a permanent or fixed location. In the case of a single remote pickup base station and a group of remote pickup mobile units, the entire system may be included on a single application. If additional base stations will communicate with the same mobile units, separate applications are required to be filed for each base station and one application to cover all mobile units. A separate application is also required for each automatic relay station. In the case of a TV Pickup system license, any number of mobile transmitters to operate in a specific area and frequency band may be included on a single application.

In accordance with 47 C.F.R. Section 74.431(g), a Part 73 broadcast licensee may operate new RPU base or mobile stations for an indefinite period upon filing an application for auxiliary operation, provided that the specific conditions of 47 C.F.R. Sections 74.24 and 74.431(g) are otherwise met.

For Items 2, 3, 8, 9 and 10, use the two letter State abbreviations below for filling in these items.

Alabama	AL	Kentucky	KY	Ohio	OH
Alaska	AK	Louisiana	LA	Oklahoma	OK
American Samoa	AS	Maine	ME	Oregon	OR
Arizona	AZ	Marshall Islands	MH	Palau	PW
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federal States of Micronesia	FM	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	U.S. Minor Outlying Islands (etc.)	UM
Georgia	GA	Nevada	NV	Utah	UT
Guam	GU	New Hampshire	NH	Vermont	VT
Hawaii	HI	New Jersey	NJ	Virginia	VA
Idaho	ID	New Mexico	NM	Virgin Islands	VI
Illinois	IL	New York	NY	Washington	WA
Indiana	IN	North Carolina	NC	West Virginia	WV
Iowa	IA	North Dakota	ND	Wisconsin	WI
Kansas	KS	Northern Mariana Islands	MP	Wyoming	WY

## INSTRUCTIONS FOR COMPLETION OF FORM

**ITEM 1. LEGAL NAME OF APPLICANT** – Enter name exactly as it appears in the Authorization for the broadcast station which will be using the auxiliary stations. If the applicant is an entity, enter the full name.

**ITEM 2. MAILING ADDRESS** – Enter official mailing address.

**ITEM 3. CALL SIGN OF ASSOCIATED BROADCAST STATION(S)** – Enter the broadcasting station's call sign (where more than one broadcasting station is specified, all such broadcasting stations shall be licensed to the applicant and to the same community) with which the auxiliary broadcast facility is to be principally used. Enter the community of license. For networks or producers, enter the primary community of operation.

**ITEM 4. TYPE OF STATION PROPOSED** – Check the box for the type of station proposed. If application is for a single remote pickup base station and a group of mobile units, check both the base and mobile boxes. (See also general instructions.) Check STL ONLY if the link is to transmit program material from the studio to the transmitter. Remote pickup portable units (47 C.F.R. Section 74.431(c)) are considered mobiles for this application.

**ITEM 5. PURPOSE OF APPLICATION** – Check appropriate box(es).



**ITEM 6. NATURE OF PROPOSED CHANGES** – Check appropriate box(es). Enter call sign of auxiliary. If changing one base in a multi-base system, enter the base number. If adding a base, identify the new base station by number.

## ITEM 7. FACILITIES REQUESTED

**(A) Frequency/Bandwidth Emission** – Enter frequency(cies) in megahertz (MHz). Applicants will enter the specific frequency(cies) requested for remote pickup and aural STL stations. For TV auxiliary and Low Power auxiliary stations, applicants will enter the frequency band(s) requested. (See 47 C.F.R. Sections 74.402, 74.502, 74.602 and 74.802 for available frequencies and frequency conditions and restrictions. For Remote Pickup facilities, in particular, see 47 C.F.R. Section 74.402(a).)

**Emission** – Enter combined emission designator. Include maximum channel bandwidth and appropriate type of emission. For example, a typical entry for remote pickup transmitters would be "50F3". If different emissions are to be used on one authorization, all bandwidths/emissions to be used must be listed next to the frequency.

When applying for RPU and aural STL stations it is necessary to specify bandwidth/emissions for each separate frequency requested.

**(B) Power** – Enter transmitting power output in watts. Use only power necessary to provide satisfactory service. If this application is for a system with different power outputs, enter the largest power.

### Maximum Power Limits

<u>Remote Pickup</u>					
Fixed and Mobile	100	W	<u>TV Microwave</u>	<u>Fixed</u>	<u>Mobile</u>
Aeronautical	15	W	470-607 MHz	--	NA
			615-806 MHz	--	NA
<u>Aural Microwave</u>			Band A 2.0 GHz	20	12
944-952 MHz	12	W	Band B 6/7.0 GHz	20	12
17.7-19.7 GHz	10	W	6.425-6.525 GHz	--	12
31.0-31.3 GHz	0.05	W	Band D 12/13.0 GHz	5	1.5
			17.7-19.7 GHz	10	--
<u>Low Power Auxiliary</u>			31.0-31.3 GHz	0.05	0.05
54-72, 75-88 and			38.6-40.0 GHz	--	1.5
174-216 MHz Bands	0.050	W			
470-530 MHz Bands	0.250	W			
Other Bands	1.0	W			

Antenna input power (in watts) is the transmitter power output minus the line loss. If various lengths of line are to be used, indicate the greatest antenna input power (i.e., figure using the least line loss).

Effective radiated power (in watts) is the antenna input power times the power gain of the antenna. Again, if various antennas are to be used, figure using the antenna with the most gain.

Enter all three powers on all applications, except Low Power Auxiliary. Also, use watts, not kilowatts, milliwatts or dbm.

**TV Microwave stations only** – Enter the effective isotropic radiated power (EIRP), in watts, radiated off the transmitting antenna. For a periscope antenna system, this is the anticipated EIRP radiated off its reflector.

**(C) Path Length** – For TV STL, TV Relay and TV Microwave booster stations, provide the path length in both miles and kilometers. Applicants unable to meet minimum path length requirements shall not exceed the EIRP value derived from the equation set out in 47 C.F.R. Section 74.644(b).

**ITEM 8. TRANSMITTING ANTENNA INFORMATION** – Enter the requested information about the transmitting antenna location. If the location of the antenna does not have a street address, describe the location in such a way that it can be located readily. For example, if the station is on a mountain, give the name of the mountain; for antennas at rural locations, indicate the route numbers of the nearest highway intersection and the distance and direction from the nearest town. Example: 1.3 mi N.N.W. of Erie, Pa.

Enter the names of the county and state in which the transmitting antenna structure is actually located. However, enter the name of the city that is closest to the structure even if the city is not in the same county and/or state as the structure.

Enter the geographical coordinates in degrees, minutes and seconds, rounded to the nearest second, for the antenna location. The latitude and longitude should be accurate to plus or minus one second for the antenna location. These coordinates are an important part of the location description. Do not estimate what they might be. Consult a qualified surveyor, if necessary. You **MUST** use coordinates based on North American Datum (NAD) 27.

**ITEM 9. RECEIVE SITE INFORMATION** – Receiver location is the site intended to receive the transmission from Item 8 or mobile stations. If there will be more than one receiver site, indicate "See Exhibit No. \_\_\_\_\_" and provide information for each site on the exhibit and specify the primary site to be used.

(A–E) Enter the address, city, county, state, and latitude and longitude of the receive site (See Instructions for Item 8 above.)

(F) Enter the ground elevation above mean sea level (feet) of the receive site.

(G) Enter the height above ground (feet) to the center of the receiving antenna.

**ITEM 10. REMOTE PICKUP, LOW POWER AUXILIARY AND TV PICKUP ONLY** – Enter primary area of operation (usually community or license or market). Enter coordinates for the center of that area of operation (may be different from Item 9) and the radius of operation in miles and kilometers from those coordinates. If aeronautical operation is planned, enter the maximum planned transmitting altitude in feet and meters. Check appropriate box indicating the maximum number of mobile units intended to be used.

**ITEM 11. ATTACH A DETAILED STATEMENT IF THE FOLLOWING CIRCUMSTANCES APPLY:**

(A) Applicants proposing to operate remote pickup stations on Group "K1" frequencies are required to submit a statement showing what procedures will be taken to insure that interference will not be caused to stations in the industrial radio services.

(B) An applicant for authority to construct any class of station covered in 47 C.F.R. Part 74 or for authority to change the frequency, power antenna height, or antenna directivity of an existing station located in the area of Radio Astronomy and Research Installations, as defined in 47 C.F.R. Section 74.12, is required to submit a statement indicating the date proper notification was made to the observatory, except for Remote Pickup Mobile stations, TV Pickup stations and Low Power stations.

(C) If the proposed transmitting antenna is to be mounted on an AM broadcast tower, or mounted on a new metal tower, 60 feet or greater in height and located within 1 mile of an AM broadcast tower, submit a horizontal sketch with details.

(D) If applicant for a remote pickup station is a network entity or a cable network entity, or if applicant for a low power station is a Motion Picture Producer, Cable TV System Operator, Television Program Producer, Broadcast Network Entity or Cable Network Entity, submit a statement explaining in detail the manner in which the eligibility requirements set forth in 47 C.F.R. Sections 74.2 and 74.832(a) are met.

**ITEM 12. ANTENNA INFORMATION** – If this application is for:

Low Power Auxiliary – Leave Item 12 blank;

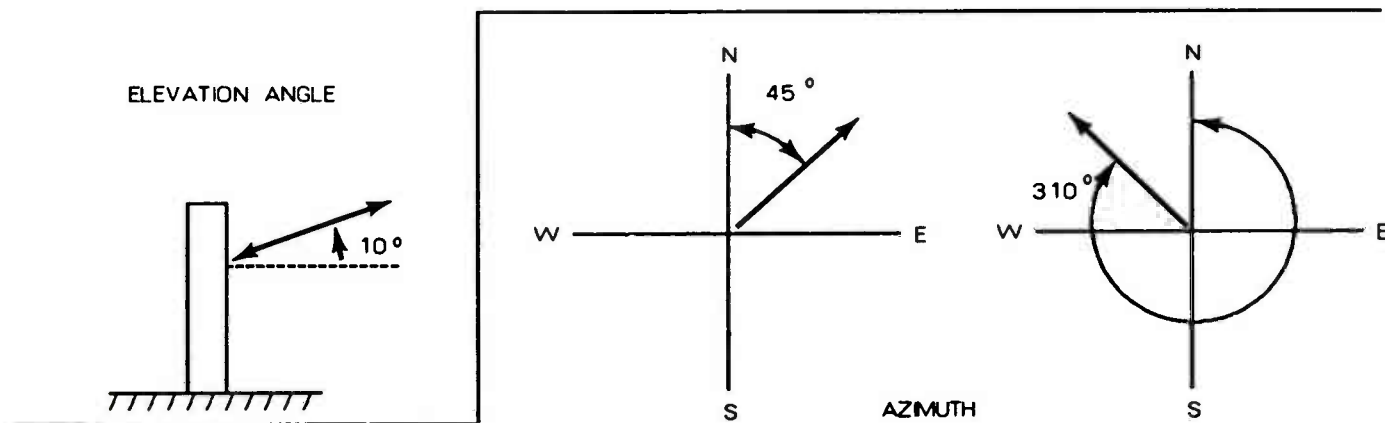
Remote Pickup Base/Mobile system – Enter the base antenna information;

Remote Pickup Mobile system or TV pickup WITH various antennas – Enter information for the antenna with the most gain;

Fixed microwave with more than one transmitter antenna – Enter the requested information for each antenna on an exhibit.

(A) **For all applications** – Enter the manufacturer and model number. Enter the antenna gain in dBi (gain over isotropic source) rounded to 1/10 dB. Indicate polarization by the following: V – Vertical, H – Horizontal, CW – Clockwise (Right-hand), CCW – Counter-clockwise (Left-hand), X – Variable.

**For fixed microwave only** – Enter beamwidth (in the horizontal plan) from manufacturer's specifications (rounded to nearest degree). Enter the elevation angle (rounded to nearest degree), that angle measured in degrees from the horizontal up to the center line of radiation of the antenna. If the antenna looks down (depression angle), indicate with a minus sign. See the following example.



**ITEM 12B.** Enter the overall height (feet) above ground of the supporting structure plus the antenna or antenna tower (or pole).

**ITEM 12C.** Enter the ground elevation above mean sea level (feet) at the transmitting antenna site.

**ITEM 12D.** Enter elevation above ground, as measured to the center of the antenna or reflector (see sketch, Item B, p. 6).

**ITEM 12E.** For all applications specifying a transmitter at a fixed location (Item B), complete the following for Items 12B, C and D. Enter both feet and meters. (Round feet to nearest foot and meters to nearest 1/10 meter.) Obtain figures from sketch, Item 12E, p. 6. Antenna sketch (12E) must be filed for any fixed station application.

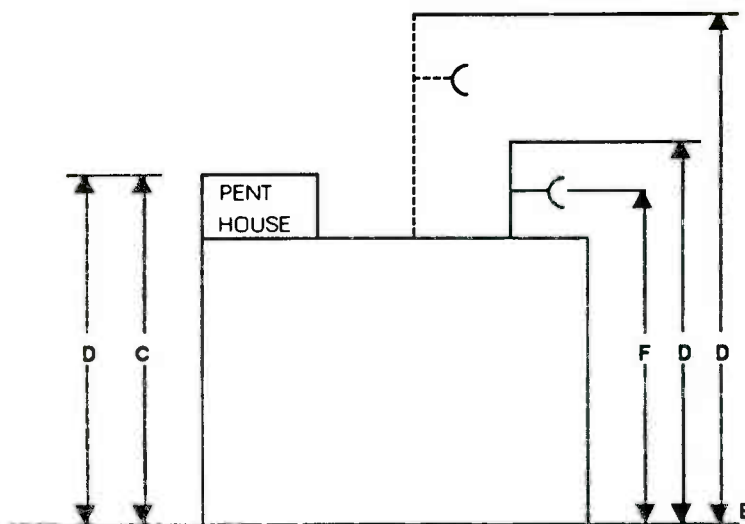
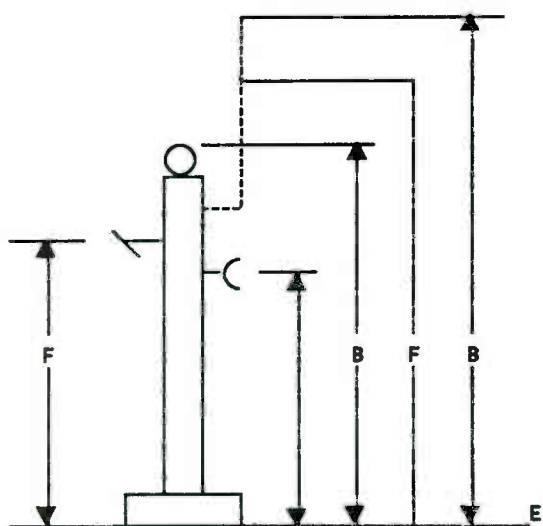
The sketch should be a vertical profile of the antenna support structure. The sketch should show the antenna support structure in its entirety, whether it is a tower, building, or other. If the antenna support structure is to be mounted on a building, include the complete structure, e.g., penthouses and chimneys. The sketch should include:

1. Proposed and existing station antenna installation, including parabolic dishes and passive reflectors. In the case of a periscope configuration where the antenna and reflector are not co-mounted on the same structure include both antenna support structures.
2. All other top-mounted devices, e.g., whip or search antenna(s) or obstruction lighting which contribute to the overall height of the structure.
3. Any Base on which the support structure is mounted.

If a particular site will have two or more antenna support structures associated with this application, e.g., a transmitter/reflector combination using two separate towers in close proximity or two separate buildings, submit a separate sketch for each support structure.

**SKETCH 1:** Applies to antenna mounted on conventional towers, masts, poles, etc.

**SKETCH 2:** Applies to antenna structures mounted on buildings, water or fire towers, etc.



**Sketch 1(B) or Sketch 2(D)** is the total overall height above ground level (OHAGL) of the antenna support structure including all appurtenances. B/D includes all penthouses and chimneys if the support structure is a building as in Sketch 2, and top-mounted obstruction lighting which contributes to the overall height of the support structures as in Sketch 1. Note: B/D includes any base that the tower might be mounted on and any top-mounted devices, such as whip antennas as shown in the dotted portion of Sketch 1. (Enter figure in Item 12B).

**(E)** is the elevation of the ground above mean sea level (AMSL) at the antenna support structure site. (Enter figure in Item 12C).

**(F)** is the center height above ground level (AGL) of the antenna(s) and reflector(s) which should be used when stating the height(s) of these components. (Enter figure in Item 12D).

**(C)** is the overall height above ground level (OHAGL) of the building, if applicable. NOTE that C will not equal D if the antenna tower extends above the topmost point of the building (see dotted portion of Sketch 2).

If a passive repeater or reflector is to be used, include a horizontal sketch with coordinates to show relationship of fixed locations.

**ITEM 12F. AZIMUTH** — Enter the direction of radiation of the main lobe of the transmit antenna by specifying degrees east of true north (rounded to nearest degree). See sketch, p. 5.

**ITEM 13.** Indicate in Item 13A whether the antenna(s) for this station will be mounted on an existing antenna tower (or pole). If not, do not complete Items 13B through 13E; if so, then complete Items 13B through 13E. Enter the name of a licensee using the same tower you propose to use, the name of the radio service in which he is licensed, and his station's Call Sign.

**ITEM 14A.** For remote pickup, low power auxiliary or TV pickup systems (operating with a peak output power greater than 250 mW) enter "Yes" if the transmitting equipment is listed in the latest FCC Radio Equipment List of type accepted equipment for Part 74.

**ITEM 14B.** For aural STL, intercity relay, TV STL, TV relay or microwave booster stations enter "Yes" if the transmitting equipment is authorized under the type accepted or notification procedures of 47 C.F.R. Part 2.

**ITEM 14C.** If the answer to either Question 14A or 14B is No, you must provide a reason for your response. For instance the equipment may be grandfathered in accordance with 47 C.F.R. Sections 74.451(e), 74.655 or 74.851(d). Additionally, TV pickup stations operating with a peak output power not greater than 250 mW need not use type accepted transmitting equipment.

For unlisted transmitters not previously licensed consult 47 C.F.R. Part 2 for information necessary for Type Acceptance or Notification prior to authorizations. (Applications for Type Acceptance or Notification are usually filed by manufacturers to obtain a listing in the Commission's list; however, individuals having the necessary engineering facilities to make the required measurements may do so, and should include a copy of the written approval with the 313 application for the auxiliary service station).

**ITEM 15.** Indicate whether notice of construction has been filed with the Federal Aviation Administration. Refer to 47 C.F.R. Part 17 for requirements and procedures for notification. If the FAA has been notified on Form 7460-1, enter the name of the organization it was filed under, the city of the FAA Regional Office where it was filed, and the date when it was filed.

**ITEM 16.** Enter "Yes" if the local frequency coordination committee has been notified. If the local frequency coordination committee has been notified enter the name of the coordinator and the phone number, including area code, of the person contacted.

**ITEM 17. ENVIRONMENTAL STATEMENT** – The following guidance is provided for the question regarding environmental impact:

(1) Place an (X) in the appropriate box to indicate whether a Commission grant of the proposed communication facility(ies) may have a significant environmental impact as defined by 47 C.F.R. Section 1.1307(a). Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:

- (a) A facility is to be located in sensitive areas (e.g., an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.
- (b) A facility whose construction will involve significant change in surface features.
- (c) The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.

(2) If you answer Yes, submit the required Environmental Assessment (EA). The EA should include the following information for antenna towers and satellite earth stations:

- (a) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.
- (b) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.
- (c) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.
- (d) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects, and any alternative sites or facilities which have been or might reasonably be considered.

(3) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness area, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).

(4) The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.

(5) To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

(6) An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility (a) for determining whether the facilities in question will have a significant effect on the quality of the human environment and, (b) if it will affect the environment, for invoking the environmental impact statement process.

**ITEM 18.** This question relates to NEW TV auxiliary stations ONLY. Briefly describe the primary broadcast-related purpose of the proposed new station.

**ITEM 19.** This question relates to NEW Television Auxiliary stations ONLY.

**ITEM 20.** Enter requested data as directed on the Form.



APPLICATION FOR AUTHORIZATION IN THE AUXILIARY  
RADIO BROADCAST SERVICES

(Carefully read instructions before filling out form.)

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060-0028), Washington, DC 20503.

For <u>Commission</u> Fee Use Only	FEE NO:	For <u>Applicant</u> Fee Use Only  Is a fee submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No  If No, indicate reason therefor (check one box): <input type="checkbox"/> Nonfeeable application  Fee Exempt (See 47 C.F.R. Section 1.1112) <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity
	FEE TYPE:	
	FEE AMT:	
	ID SEQ:	

PREPARE AND FILE AN ORIGINAL AND TWO COPIES

For Commission Use Only

File No.

1. Legal Name of Applicant	2. Mailing Address		
	City	State	ZIP Code
	Telephone No. (include area code)		

3. CALL SIGN OF ASSOCIATED BROADCAST STATIONS

AM \_\_\_\_\_ TV \_\_\_\_\_  
Translator \_\_\_\_\_ FM \_\_\_\_\_  
Low Power \_\_\_\_\_ Booster \_\_\_\_\_

City/Community of License/Operation \_\_\_\_\_ State \_\_\_\_\_

4. TYPE OF STATION PROPOSED (Check appropriate boxes)

- ☐ A. Remote Pickup  
☐ Base ☐ Mobile ☐ Automatic Relay
- ☐ B. Aural Microwave Station  
☐ Intercity Relay ☐ STL ☐ Booster
- ☐ C. TV Microwave Station  
☐ STL ☐ TV Relay ☐ Pickup ☐ Translator Relay ☐ Booster
- ☐ D. Low Power Auxiliary Station

5. PURPOSE OF APPLICATION (Check appropriate box)

- ☐ A. New Station ☐ B. Modification of existing authorization ☐ C. Reinstatement of expired license
- ☐ D. Other (Specify) \_\_\_\_\_

6. NATURE OF PROPOSED CHANGES

Call sign of existing station \_\_\_\_\_ Base Station being modified: No. \_\_\_\_\_

- ☐ Change Frequency ☐ Relocate station ☐ Replace equipment  
☐ Change Antenna System ☐ Add base station (No. \_\_\_\_\_) ☐ Other (specify in Exhibit No. \_\_\_\_\_)  
☐ Change Power ☐ Change Number of Mobiles

**7. FACILITIES REQUESTED** (If more space is needed attach as Exhibit No. \_\_\_\_\_)

**A. Frequency(ies) (MHz)/Bandwidth (kHz) and Emission Type**

1. \_\_\_\_\_ / \_\_\_\_\_  
2. \_\_\_\_\_ / \_\_\_\_\_  
3. \_\_\_\_\_ / \_\_\_\_\_  
4. \_\_\_\_\_ / \_\_\_\_\_  
5. \_\_\_\_\_ / \_\_\_\_\_  
6. \_\_\_\_\_ / \_\_\_\_\_

**B. Power (watts)**

Transmitter Power Output (TPO): \_\_\_\_\_ w  
Antenna Input Power: \_\_\_\_\_ w  
Effective Radiated Power (ERP)  
(Remote Pickup and Aural Microwave): \_\_\_\_\_ w  
Effective Isotropic Radiated Power (EIRP)  
(TV Microwave Stations Only): \_\_\_\_\_ w

C. For TV STL, TV Relay and TV Microwave Boosters stations enter path length \_\_\_\_\_ miles; \_\_\_\_\_ km.

**8. LOCATION OF TRANSMITTING ANTENNA STRUCTURE (Fixed Station)**

A. Number and Street: (or other specific indication)		
B. City:	C. County:	D. State:
E. COORDINATES		
Latitude: (Degrees, Minutes, Seconds) NORTH		Longitude: (Degrees, Minutes, Seconds) WEST

**9. LOCATION OF RECEIVERS (Fixed and Mobile Stations)**

A. Number and Street: (or other specific indication)		
B. City:	C. County:	D. State:
E. COORDINATES		
Latitude: (Degrees, Minutes, Seconds) NORTH		Longitude: (Degrees, Minutes, Seconds) WEST
F. Ground Elevation AMSL (Ft.)		G. Height to Center of Receiving Antenna (Ft.)

**10. MOBILE SYSTEMS INFORMATION**

A. Mobile Area of Operation: City		State:
B. COORDINATES OF THE CENTER AREA		
Latitude: (Degrees, Minutes, Seconds) NORTH		Longitude: (Degrees, Minutes, Seconds) WEST
C. Radius of operation from these coordinates Miles: _____ km: _____		
D. Number of Mobile Units Requested: <input type="checkbox"/> 1-5 <input type="checkbox"/> 6-10 <input type="checkbox"/> 11-19 <input type="checkbox"/> 20-44 <input type="checkbox"/> 45 or more (specify expected maximum) _____		

11. If any of the circumstances in Instruction 11 apply, attach as Exhibit No. \_\_\_\_\_ detailed statements.

12. Supply the following transmitting antenna information (Review instructions!)

A. Manufacturer: \_\_\_\_\_ Model No. \_\_\_\_\_  
Antenna Gain: \_\_\_\_\_ Elevation Angle: \_\_\_\_\_  
Antenna Polarization: \_\_\_\_\_ Beamwidth (3db or 1/2 power points): \_\_\_\_\_

B. Overall height above ground of this antenna: \_\_\_\_\_ FT

C. Give the ground elevation above mean sea level at the antenna site. \_\_\_\_\_ FT

D. Elevation above ground of antenna center of radiation: \_\_\_\_\_ FT

E. Antenna sketch figure \_\_\_\_\_. Passive reflector information attach as Exhibit No. \_\_\_\_\_

F. If this is a directional antenna give azimuth of main lobe: \_\_\_\_\_

13. A. Is the antenna to be mounted on an existing antenna structure? ☐ Yes ☐ No

If Yes, answer items 13B, C, D and E.

☐ Yes ☐ No

B. Will the antenna increase the height of the existing structure?

If Yes, by how many feet?

\_\_\_\_\_ FT

C. Name of current licensee using structure: \_\_\_\_\_

D. Current licensee's radio service: \_\_\_\_\_

E. Current licensee's call sign: \_\_\_\_\_

14. TRANSMITTING EQUIPMENT AUTHORIZATION

A. For remote pickup, low power auxiliary or TV pickup systems, is transmitter type accepted? ☐ Yes ☐ No

B. For Aural STL/intercity relay, TV STL, TV relay or microwave booster stations, is transmitter authorized under the type acceptance or notification procedure? ☐ Yes ☐ No

C. If the answer to either of the above questions (14A or 14B) is "No" give the reason for your response:

☐ Equipment is grandfathered (see 47 C.F.R. Sections 74.451(e), 74.655 and 74.851(d))

☐ TV Pickup station operating with a peak output power not greater than 250 mW

15. Has the FAA been notified of proposed construction on FAA Form 7460-1? (See 47 C.F.R. Part 17) ☐ Yes ☐ No

If Yes, give date filed and FAA Regional Office (City).

16. Is there a Local Broadcast Auxiliary Coordinating Committee in the area of operation? ☐ Yes ☐ No

If Yes, and the Committee has been contacted, give the person(s) contacted and their phone numbers, including area code.

**17. ENVIRONMENTAL STATEMENT** *(See 47 C.F.R. Section 1.1301 et seq.)*

Would a grant of this application be a major action as defined by 47 C.F.R. Section 1.1307(a)?

☐ Yes ☐ No

If Yes, attach as Exhibit No. \_\_\_\_\_ the statement as required by 47 C.F.R. Sections 1.1308 and 1.1311.

**18.** Describe briefly the primary broadcast-related purpose of the requested authorization, attached as Exhibit No. \_\_\_\_\_.

**19.** For television auxiliary stations, state the anticipated percentage of time for which the station will be used \_\_\_\_\_ %  
for secondary uses. *(Secondary uses are transmissions of material at times when the station is not being used to transmit program material to its associated broadcast station.)*

**20.** For television auxiliary licensees, attach as Exhibit No. \_\_\_\_\_ a list of the total number of existing auxiliary authorizations and indicate the combined percentage of time for which these stations are presently used for secondary uses.

THE APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any application with which it may be in conflict. THE APPLICANT acknowledges that all statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

**CERTIFICATION**

I certify that the statements in the application are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

*(DO NOT SIGN UNTIL ALL EXHIBITS HAVE BEEN PREPARED AND ATTACHED)*

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM  
ARE PUNISHABLE BY FINE AND IMPRISONMENT.  
U.S. CODE, TITLE 18, SECTION 1001.**

Signature

Name Typed

Date

For further information FCC should contact:

Name: \_\_\_\_\_

Telephone No.: (      ) \_\_\_\_\_

*Check one box for appropriate classification:*

- ☐ Individual Applicant  
☐ Officer and Member of Corporation  
☐ Member of Partnership  
☐ Official of Government Agency  
☐ Officer of Corporation

**FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, engineers, and applications examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain this authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3)  
AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

**APPLICATION FOR RENEWAL OF AUXILIARY BROADCAST LICENSE (SHORT FORM)**

(USE ONLY IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE SIDE)

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060-0035), Washington, DC 20503.

For Commission Fee Use Only

FEE NO:

FEE TYPE:

FEE AMT:

ID SEQ:

For Applicant Fee Use Only

Is a fee submitted with this application?

☐ Yes ☐ No

If No, indicate reason therefor (check one box):

☐ Nonfeeable application

Fee Exempt (See 47 C.F.R. Section 1.1112)

☐ Noncommercial educational licensee

☐ Governmental entity

1. Name of licensee

2. Mailing address (Number, Street, City, State and ZIP Code)

3. Broadcast station with which auxiliary station is used  
(Call Sign, City, State)

4. (a) Class of Station: \_\_\_\_\_

(b) Auxiliary Call Sign: \_\_\_\_\_

(c) Frequency: \_\_\_\_\_

(d) Operating Power: \_\_\_\_\_

5. This form may be used **ONLY** when there have been **NO** changes in the license application previously filed. If changes are to be made, FCC Form 313 **MUST** be used.

6. Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests renewal of station license in accordance with this application.

The statements in this application are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

Signature \_\_\_\_\_

*(See Instruction 6 on reverse)*

Title \_\_\_\_\_

Date \_\_\_\_\_

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE  
PUNISHABLE BY FINE AND IMPRISONMENT,  
U.S. CODE, TITLE 18, SECTION 1001.**

1. Name of licensee

2. Mailing address (Number, Street, City, State and ZIP Code)

3. Broadcast station with which auxiliary station is used  
(Call Sign, City, State)

4. Auxiliary Call Sign: \_\_\_\_\_

**NOT VALID UNLESS POSTED WITH LICENSE**

**THIS SPACE FOR COMMISSION USE ONLY**

This authorization shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term hereof, nor in any other manner than authorized therein. Neither the license nor the right granted therein shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. This authorization is subject to the right of use or control by the Government of the United States conferred by Section 706 of the Communications Act of 1934, as amended (47 U.S.C. 606).

This certificate, when properly authenticated, serves as a renewal of the referenced radio station license on the same conditions and in accordance with the same provisions for the term ending:



Federal Communications Commission

Effective Date: \_\_\_\_\_



## INSTRUCTIONS

### TYPE OR NEATLY PRINT

1. This form does not need to be filed for remote pick-up, aural, television, or low power auxiliary stations licensed in common with associated television, standard or FM broadcast stations. Licenses for these stations will automatically be renewed when the associated primary broadcast station is renewed. All other licensees, e.g., motion picture producers, cable TV operators, state broadcasting systems, broadcast network entities, cable network entities and international broadcast stations, must file for renewals in accordance with 47 C.F.R. Sections 1.1101 et seq. and 74.1 et seq.
2. This form is to be used in applying for renewal of the following classes of station licenses ONLY when there has been NO change in the information shown on the previously filed license application.

In Item 4(a) of application insert type of station sought to be renewed:

- Part 74 - Subpart D - Remote Pickup Broadcast Stations (Automatic Mobile Relay, Base or Mobile),  
Subpart E - Aural Broadcast STL & Intercity Relay  
Subpart F - TV Auxiliary Broadcast Stations (TV Pickup, TV STL, TV Intercity, TV Translator Relay  
and TV Microwave Booster Stations)  
Subpart H - Low Power Auxiliary Broadcast

By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, applicants seeking to renew the license for a remote pick-up, aural, television or low power auxiliary broadcast station are required to pay and submit a fee with the filing of the application. See 47 C.F.R. Section 1.1112. A listing of the required charges is set forth in 47 C.F.R. Section 1.1104. Full payment of the required fee may be made by check, bank draft or money order payable to the Federal Communications Commission. An application submitted with an insufficient payment or with an inappropriate form of payment will be returned, along with the tendered payment, to the applicant without processing. Except for the limited circumstances enumerated in 47 C.F.R. Section 1.1111, an accepted fee payment will be retained by the government irrespective of the subsequent substantive disposition of the underlying application. For further information regarding fees, see 47 C.F.R., Part 1, Subpart G.

3. In Item 2, insert the licensee's current mailing address.
4. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity, or by the applicant's attorney in case of the applicant's physical disability or absence from the United States. The attorney shall, in the event he or she signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than knowledge), he or she shall separately set forth reasons for believing that such statements are true.
5. Complete all applicable items of this form.
6. Mail to the Federal Communications Commission, Washington, D.C. 20554-1800.
7. A separate FCC Form 313-R must be filed for EACH station authorization being renewed.
8. If the application is received by the Commission before expiration of the license, the licensee may continue operations until notified by the Commission of action on application. Upon expiration, licensee must post with the license a statement certifying that he or she has mailed or filed a renewal application, before expiration, specifying the date of mailing or filing.
9. Do not attach or enclose current license with this form.
10. COMPLETE MAILING ADDRESS ON CARD BELOW.

#### FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain this authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(a)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Federal Communications Commission  
Washington, DC 20554

Official Business  
Penalty for Private Use \$300



Postage and Fees Paid  
Federal Communications  
Commission  
FCC 615

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_



## INSTRUCTIONS

### Ownership Report, FCC Form 323

Public reporting burden for this collection of information is estimated to average 7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3080-0010), Washington, DC 20503.

1. This report is to be filed by AM, FM, International or Television broadcast stations as indicated below (*see 47 C.F.R. Section 73.3615*). If there has been no change since the last filing of this form, a letter may be filed in lieu of a new report, stating that the previously filed report has been examined and is currently accurate.
  - (a) By licensee once a year on the anniversary of the station's renewal application filing date. Where the licensee, however, is a partnership that is composed entirely of natural persons, the annual reporting requirement does not apply. Similarly, sole proprietorships (*i.e., where the station is licensed to an individual(s)*) are not required to file annually.
  - (b) By permittee or licensee within 30 days after the grant of an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment. A permittee is also required to update its initial report or to certify the continuing accuracy and completeness of that report when the permittee applies for a station license.
  - (c) File one copy with the Federal Communications Commission, in accordance with 47 C.F.R. Section 0.401. If information submitted is equally applicable to each listed station, one annual report may be filed for all such stations; otherwise, a separate report shall be filed for each station on the appropriate filing date.
  - (d) The person certifying the accuracy of the information in this report must be the individual licensee or permittee, a general partner in the licensee or permittee partnership, or an appropriate officer in the licensee or permittee corporation or association. If this report is filed for a respondent and not for a licensee or permittee, the person certifying the accuracy of the information must be a general partner in the respondent partnership or an appropriate officer in the respondent corporation or association.
2. Any contract or modification of contract relating to the ownership, control, or management of the licensee or permittee or to its stock must be filed with the Commission, as required by 47 C.F.R. Section 73.3613. Attention is directed to the fact that Section 73.3613 requires the filing of *all* contracts of the types specified and is not limited to executed contracts but includes options, pledges, and other executory agreements and contracts relating to ownership, control, or management.
3. If the licensee or permittee is directly or indirectly controlled by another entity or if another entity has an attributable interest in such licensee or permittee, a separate Form 323 should be submitted for such entity. For successive entities, interests are multiplied. See Instruction 6.
4. Limited partners in a limited partnership need not be reported **IF** the limited partners are not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership **AND** the licensee, permittee or respondent so certifies. A statement assuring this non-involvement must be attached to this report. Sufficient insulation of a limited partner for purposes of this certification would be assured if the limited partnership agreement: (a) specifies that any exempt limited partner (*if not a natural person, its directors, officers, partners, etc.*) cannot act as an employee of the limited partnership if his or her functions, directly or indirectly relate to the media enterprises of the company; (b) bars any exempt limited partner from serving, in any material capacity, as an independent contractor or agent with respect to the partnership's media enterprises; (c) restricts any exempt limited partner from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business; (d) empowers the general partner to veto any admissions of additional general partners admitted by vote of the exempt limited partners; (e) prohibits any exempt limited partner from voting on the removal of a general partner or limits this right to situations where the general partner is subject to bankruptcy proceedings, as described in Sections 402 (4)-(5) of the Revised Uniform Limited Partnership Act or is adjudicated incompetent by a court of competent jurisdiction; (f) bars any exempt limited partner from performing any services to the limited partnership materially relating to its media activities, with the exception of making loans to, or acting as a surety for, the business; and (g) states, in express terms, that any exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership. Notwithstanding conformance of the partnership agreement to this criteria, however, the requisite certification cannot be made if the licensee, permittee or respondent has actual knowledge of a material involvement of the limited partner in the management or operation of the media-related business of the partnership. In the event that the licensee, permittee or respondent cannot certify as to the noninvolvement of the limited partners, the limited partners will be considered to be holders of attributable interests regarding whom full information is required.

5. Under "Remarks," Paragraph 7, Page 2, give full information as to any family relationship (*parent-child, husband-wife, brothers, sisters*), between one or more officers, directors, stockholders, or partners of the licensee or permittee and any other officer, director, stockholder, or partner. In situations in which a marital relationship is involved, the interests held by one spouse are presumptively attributed to the other and both spouses may, unless this presumption is rebutted by an appropriate showing, be considered to be holders of attributable interests regarding whom full information is required. In addition, a permittee or licensee seeking attribution exemption for eligible officers or directors should identify that individual by name and title, fully describe that person's duties and responsibilities, and explain why that individual should not be attributed an interest.

6. The following interests are attributable (*and the holder of the interest is cognizable*) and should be reported in response to Question 8:

If a corporation, all officers and directors and each owner of stock accounting for 5% or more of the outstanding votes in the corporation. (Investment companies, insurance companies or trust departments of banks need be listed only if the aggregated holding accounts for 10% or more of the outstanding votes, provided the licensee certifies that such entities exercise no influence over the corporation, directly or indirectly, and have no representatives among the officers and directors of the corporation).

If a single entity holds more than 50% of the voting stock, and a simple majority is all that is required to control corporate affairs, no other stockholder need be reported.

If any stockholder agreement exists pertaining to cooperative voting accounting for 5% or more of the votes (*listed in response to Question 7*), list the block of stock as if held by a single entity, and also list (*immediately following*) any stockholder holding 5% or more of the stock in that block.

If a partnership, list all partners. (If a limited partnership and Question 5 is answered "Yes," list only general partners and only those limited partners that hold interests considered attributable under Instruction 4, explaining that involvement.)

If the entity for which this report is filed is not the subject licensee, but a minority, non-controlling stockholder or a partner in the licensee, list only those stockholders whose interest, when multiplied by the reporting entity's interest, would account for 5% or more of the votes of the subject licensee; list all partners. Any entity holding over 50% of its subsidiary will be considered as a 100% owner for reporting purposes. E.g., if this report is filed for corporation X which owns stock accounting for 25% of the subject licensee votes, then only those stockholders of X which hold stock

accounting for 20% or more need be listed ( $.25 \times .20 = .05$ ). Also, such an entity need report the directors "executive" officers (*president, vice-president, secretary, treasurer or their equivalents*) and any other officers with a relationship or responsibility to the licensee including a responsibility in determining how the entity's stock in the licensee is voted. Also, for such an entity, Questions 6 and 7 need not be answered. See Instruction 5 above with respect to the attribution exemption showing necessary for officers and directors with duties unrelated to the licensee.

If the stock is held in trust, if the trustee has the sole power to vote the stock and sole or shared power to dispose of the assets of the trust, and if the trustee is an independent person with no familial or business relationship with the beneficiary or grantor, then only the trustee shall be reported as "owner" of the stock. If the grantor or beneficiary shares the power to vote, has the sole power to dispose of the stock, or has the power to replace the trustee at will, that party shall also be listed as an "owner" of the stock.

7. THIS FORM IS NOT TO BE USED TO REPORT OR REQUEST A TRANSFER OF CONTROL OR ASSIGNMENT OF LICENSE OR CONSTRUCTION PERMIT (*except to report a transfer of control or assignment of license made pursuant to prior Commission consent*). The appropriate forms for use in connection with such transfers or assignments are FCC Forms 314, 315 and 316. It is the responsibility of the licensee or permittee to determine whether a given transaction constitutes a transfer of control or an assignment. However, for purposes of example only, and for the convenience of interested persons, there are listed below some of the more common types of transfers.

A transfer of control takes place when:

- (a) An individual stockholder gains or loses affirmative or negative (50%) control. (Affirmative control consists of control of more than 50% of voting stock; negative control consists of control of exactly 50% of voting stock.)
- (b) Any family group or any individual in a family group gains or loses affirmative or negative (50%) control. (*See also Instruction 6.*)
- (c) Any group in privity gains or loses affirmative or negative (50%) control.

The following are examples of transfers of control or assignments of licenses requiring *prior* Commission consent:

- (a) A, who owns 51% of the licensee's or permittee's stock, sells 1% or more thereof. A transfer has been effected.
- (b) X corporation, wholly owned by Y family, retires outstanding stock which results in family member A's

individual holdings being increased to 50% or more. A transfer has been effected.

- (c) A and B, husband and wife, each owns 50% of the licensee's or permittee's stock. A sells any of his stock to B. A transfer has been effected.
- (d) A is the partner in the licensee. A sells any part of his interest to newcomer B or existing partner C. An assignment has been effected.
- (e) X partnership incorporates. An assignment has been effected.
- (f) Minority stockholders form a voting trust to vote their 50% or more combined stockholdings. A transfer has been effected.

- (g) A, B, C, D and E each own 20% of the stock of X corporation. A, B and C sell their stock to F, G and H at different times. A transfer is effected at such time as 50% or more of the stock passes out of the hands of the stockholders who held stock at the time the original authorization for the licensee or permittee corporation was issued.

8. For further information regarding the above, see *Report and Order in MM Docket No. 83-46*, 49 Fed. Reg. 19482 (May 8, 1984), 97 FCC 2d 997, *reconsideration granted in part*, 50 Fed. Reg. 27438 (July 3, 1984), 58 RR 2d 604, *further modified on reconsideration*, 52 Fed. Reg. (January 15, 1987), 61 RR 2d 739 (1986). See also 47 C.F.R. Sections 73.3540 and 73.3541.

United States of America  
Federal Communications Commission  
Washington, D. C. 20554

## Ownership Report

NOTE: Before filling out this form, read attached instructions

Section 310(d) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license/permit or transfer of control (except to report an assignment of license/permit or transfer of control made pursuant to prior Commission consent).

1. All of the information furnished in this Report is accurate as of

19

(Date must comply with Section 73.3615(a), i.e., information must be current within 60 days of the filing of this report, when 1(a) below is checked.)

This report is filed pursuant to Instruction (check one)

1(a) ☐ Annual 1(b) ☐ Transfer of Control or Assignment of License 1(c) ☐ Other

for the following stations:

Call Letters	Location	Class of service

2. Give the name of any corporation or other entity for whom a separate Report is filed due to its interest in the subject licensee (See Instruction 3):

3. Show the attributable interests in any other broadcast station of the respondent. Also, show any interest of the respondent, whether or not attributable, which is 5% or more of the ownership of any other broadcast station or any newspaper or CATV entity in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules.

## CERTIFICATION

I certify that I am \_\_\_\_\_  
(Official title, see Instruction 1)

of \_\_\_\_\_  
(Exact legal title or name of respondent)

that I have examined this Report, that to the best of my knowledge and belief, all statements in the Report are true, correct and complete.

(Date of certification must be within 60 days of the date shown in Item 1 and in no event prior to Item 1 date):

\_\_\_\_\_, 19\_\_\_\_\_  
(Signature) (Date)

Telephone No. of respondent (include area code):

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001.

Name and Post Office Address of respondent:

4. Name of entity, if other than licensee or permittee, for which report is filed (see Instruction 3):

5. Respondent is:

- ☐ Sole Proprietorship  
☐ For-profit corporation  
☐ Not-for-profit corporation  
☐ General Partnership  
☐ Limited Partnership  
☐ Other: \_\_\_\_\_

If a limited partnership, is certification statement included as in Instruction 4?

☐ Yes ☐ No

6. List all contracts and other instructions required to be filed by Section 73.3613 of the Commission's Rules and Regulations. (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee shall respond.)

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration

7. Capitalization (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee, shall respond.)

Class of Stock (preferred, common or other)	Voting or Non-voting	Number of Shares			
		Authorized	Issued and Outstanding	Treasury	Unissued

Remarks concerning family relationships, attribution exemptions and certifications: (See Instructions 4, 5 and 6)



8. List officers, directors, cognizable stockholders and partners. Use one column for each individual or entity. Attach additional pages, if necessary. See Instructions 4, 5, and 6.

Line (Read carefully - The numbered items below refer to line numbers in the following table.)

- |  |   |
|--|---|
| <p>1. Name and residence of officer, director, cognizable stockholder or partner (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List officers first, then directors and, thereafter, remaining stockholders and partners.</p> <p>2. Citizenship.</p> <p>3. Office or directorship held.</p> <p>4. Number of shares or nature of partnership interest.</p> <p>5. Number of votes.</p> | <p>6. Percentage of votes.</p> <p>7. Other existing attributable interests in any other broadcast station, including nature and size of such interest.</p> <p>8. All other ownership interests of 5% or more (whether or not attributable) as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules, including the nature and size of such interests and the position held.</p> |
|--|---|

1	(a)	(b)	(c)
2			
3			
4			
5			
6			
7			
8			

**FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT  
AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this Report is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to assess compliance with the Commission's multiple ownership restrictions. The staff, consisting variously of attorneys and examiners, will use the information to determine such compliance. If all the information requested is not provided, processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to retain your authorization.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 95-579, DECEMBER 31, 1974,  
5 U.S.C. 552(d)(3) AND THE PAPERWORK REDUCTION ACT P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.



## INSTRUCTIONS FOR FCC FORM 330

### Application for ITFS Authorization For:

- New Facilities
- Modification of Existing Facilities
- Receive/Response Stations
- Low Power Relay Stations
- Assignment of License/Transfer of Control of Licensee

(FCC Form 330 Attached)

### GENERAL INSTRUCTIONS

- A. This form is to be used in applying for authority to construct a new Instructional Television Fixed and/or response station(s) and low power relay station(s) or to make changes in an existing station, or for consent to license assignment or transfer of control. This form consists of the following Sections:

- |  |                               |
|--|-------------------------------|
| I. IDENTITY OF APPLICANT, REQUESTED FACILITIES | V. ENGINEERING DATA           |
| II. LEGAL QUALIFICATIONS OF APPLICANT          | VI. RESPONSE STATIONS         |
| III. FINANCIAL QUALIFICATIONS OF APPLICANT     | VII. LOW POWER RELAY STATIONS |
| IV. ITFS SERVICE PROPOSAL                      |                               |

- B. Prepare and submit an original and two copies of this form and all exhibits (plus one extra copy of Sections VI and VII when receive/response and/or low power relay stations are proposed) to:

The Secretary  
Federal Communications Commission  
Washington, D.C. 20554

- C. Number exhibits serially in the spaces provided in the body of the form and **attach all exhibits at the end of the application.**
- D. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. Defective or incomplete applications will be returned without consideration. Furthermore, inadvertently accepted applications are also subject to dismissal.
- E. In accordance with Section 1.65 of the Commission's Rules, the applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.
- F. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his/her absence from the United States. The attorney shall, in the event he/she signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (*rather than his/her knowledge*), he/she shall separately set forth his/her reasons for believing that such statements are true.
- G. Before filling out this application, the applicant should familiarize itself with the Communications Act of 1934, as amended, and Parts 1, 2, 17 and 74 of the Commission's Rules and Regulations.
- H. This application form is to be used by a licensee seeking consent to assign its authorization to a new entity or consent to transfer of control of a corporate licensee. The licensee need only submit and sign Section I of the form. The new entity seeking to acquire the license must submit and sign a separate Section I, with the exception of paragraph 4, as well as Sections II-VII of the form, as applicable.

**NOTE:** All instructions necessary to complete Sections III, VI, and VII are contained in the application form. Instructions to Sections I, II, IV and V are also contained in the application form, except for those additional instructions set forth below:

### SECTION I—GENERAL INFORMATION

- I. The name of the applicant stated herein shall be the exact corporate name, if a corporation; if an unincorporated association, the exact name of the association; if a governmental or public educational agency, the exact name of such agency. The applicant must notify the Commission of any change of address.
- J. A single application should be used for up to four channels, even if from different channel groups, if the associated transmitters are to be located at a common antenna site. Transmitters having different transmitting antenna locations must be filed on SEPARATE applications.

- K. Information called for by this application which is already on file with the Commission need not be refiled in this application provided: (1) the information is now publicly on file in another application or FCC form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number, and call sign (if any), the FCC form number and the filing date of the application or other form containing the information and the page or paragraph referred to; and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application the application or other form referred to in its entirety.

## SECTION II—LEGAL QUALIFICATIONS

- L. As used in this Section, the words "party to this application" mean: (1) in the case of a corporate applicant with outstanding stock, all officers, directors, stockholders of record, persons owning the beneficial interest in any stock, subscribers to any stock, and persons who voted any of the voting stock at the last stockholders meeting; (2) in the case of any other applicant which is not a governmental or public education agency, all executive officers, members of the governing board; and owners or subscribers to any membership or ownership interest in the applicant; and (3) in the case of an applicant which is a governmental or public educational agency, the members of the governing board and chief executive officers thereof.
- M. A "local" licensee (or applicant) is an institution or organization that is physically located in the community, or metropolitan area, where service is proposed. For a college or university, this would include any area where it has a campus. An educational organization will generally be regarded as "local" if the address of the organization's headquarters is located within the area where the facility is sought. An entity created by a state or local government for the purpose of serving formal educational needs will be considered "local" throughout the area within the government's jurisdiction over which its authority is intended to extend. An educational entity located within a state and created by affiliated educational institutions within that state, including hospitals, will be considered "local" in those areas where the member institutions are located.

If the applicant is a nonlocal entity, or if it is a local nonprofit organization formed for the purpose of serving accredited institutional or governmental organizations, a letter written and signed by the administrator or authority responsible for each receive sites' curriculum planning must be submitted. Each letter must indicate that the official has viewed the applicant's program offerings and that such programming will be incorporated in the site's formal educational curriculum. The letter should incorporate a proposed weekly schedule of programming (using page 2, Section IV of Form 330) to indicate the types of programming and hours per week of formal and informal programming the site expects to use. The letter should also discuss the site's involvement in the planning, scheduling and production of programming. The letter must constitute a firm commitment to use the applicant's service. If the official cannot make a commitment without the consent of a higher authority, the official should obtain the consent before submitting its letter. If the applicant is nonlocal, the letter must also confirm that a member of the site's staff will serve on a local program committee, composed of school representatives, which will select and schedule programming received over the system and aid in any local production of programming.

- N. Section 310 of the Communications Act, relating to interests of foreign governments and aliens, provides: (a) The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof. (b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by: (1) any alien or the representative of any alien; (2) any corporation organized under the laws of any foreign government; (3) any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under laws of a foreign country; and (4) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

## SECTION IV—SERVICE PROPOSAL

- O. An applicant seeking more than four ITFS channels in an area, or already authorized for four or more channels in an area, must submit a request for waiver of Section 74.902(c) of the Rules. Such request must include a complete description of how the additional channels will be used to accommodate the applicant's needs and why the applicant's present capacity is insufficient to meet those needs. The waiver burden will be exceedingly high, particularly in areas where a large demand for channels exists. Any request for more than four ITFS channels that does not include a showing in support of a waiver will be summarily dismissed.
- P. Formal or for-credit programming may include programming delivered to nonschool sites, such as businesses or homes. If the entire program service will be delivered to nonschool sites, however, the applicant must submit an exhibit stating the school(s) and degree(s) or diploma(s) for which the formal programming will be offered, including a description of the administration of the course(s). The applicant must submit letters, written and signed by the authorities responsible for the schools' curricula, verifying each of these points. For-credit programming may also include programming offered by hospitals for students to earn medical and allied health degrees and certificates.
- Q. Before a licensee may use excess capacity on its ITFS system for non-ITFS purposes, every channel so used must carry at least 20 hours per week of ITFS service between 8:00 a.m. and 10:00 p.m. from Monday through Saturday, excluding holidays and vacation days. The 20 hours must include at least 3 hours per weekday (Monday-Friday). If the channel is leased to another party and will carry less than 40 hours per week of ITFS service, the lease agreement must provide for the reservation or ready recapture of sufficient additional hours to provide the licensee with control over at least 40 hours per week for ITFS service. The reserved or recapturable time must also occur between 8:00 a.m. and 10:00 p.m. from Monday through Saturday, excluding holidays and vacation days, and must include licensee control over at least 6 hours per weekday. The lease agreement must not require the licensee to pay the lessee or forego revenues or lease payments for hours recaptured within this 40-hour provision or to notify the lessee unreasonably far in advance of any recapture necessary to comply with this 40-hour provision. Furthermore, the licensee must retain the right to adjust to changing needs, although stricter scheduling provisions, more protective of the lessee, may pertain to any recapture by the lessor of additional hours beyond the 40 core hours of airtime.

## SECTION V—ENGINEERING DATA

- R. Temporary Fixed Station. Operation of a temporary fixed station (TFS) is limited to the licensee's geographical area and must be coordinated with other area licensees. Applicants for TFS must specify the call letters or file number of the station requesting the facility. If the application is for both a new station and to utilize a TFS, complete one copy of Section V, page 1 for each proposed operation.
- S. The following guidance is provided for the question regarding environmental impact:
1. Place an (X) in the appropriate box to indicate whether a Commission grant of the proposed communication facility(ies) may have a significant environmental impact as defined by Section 1.1307 of the Commission's Rules. Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:
    - a. A facility is to be located in sensitive areas (e.g., an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.
    - b. A facility whose construction will involve significant change in surface features.
    - c. The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.
    - d. The facilities or the operation of which will cause exposure to workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95. 1-1982), by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.
  2. If you answer Yes, submit the required Environmental Assessment (EA). The EA includes for antenna towers and satellite earth stations:
    - a. A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.
    - b. A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (*if any*) made by zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.
    - c. A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.
    - d. A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects, and any alternative sites or facilities which have been or might reasonably be considered.
  3. The information submitted in the EA shall be factual (*not argumentative or conclusory*) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness area, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).
  4. The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.
  5. To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.
  6. An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility (a) for determining whether the facilities in question will have a significant effect on the quality of the human environment and (b), if it will affect the environment, for invoking the environmental impact statement process.

COMMISSION USE ONLY: File No.

**APPLICATION FOR AUTHORIZATION TO CONSTRUCT NEW OR MAKE CHANGES IN  
AN INSTRUCTIONAL TELEVISION FIXED AND/OR RESPONSE STATION(S),  
OR TO ASSIGN OR TRANSFER SUCH STATION(S)**  
(Read instructions before filling out Form—RETURN ONLY FORM TO FCC)

**SECTION I—GENERAL INFORMATION**

Name and address of applicant (See Instruction I)

Name	Address		
	City	State	ZIP Code

Name and address of person to whom notices and communications should be sent:

Name	Address		
	City	State	ZIP Code

1. Application for: (Check as many as apply)

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> New Station                               | <input type="checkbox"/> Minor Change              | <input type="checkbox"/> Major Change  |
| <input type="checkbox"/> STL                                       | <input type="checkbox"/> Receive/Response Stations | <input type="checkbox"/> Relay Station |
| <input type="checkbox"/> Assignment of license/transfer of control |  |  |

2. Requested facilities for new ITFS Station (See Instruction J):

a. Channel No.(s):	b. Principal area to be served: (Include School District or other descriptive location, where applicable)	c. Other ITFS channel(s) authorized to applicant in area, if any:	
		Channel(s)	Call Letter(s)

3. If requesting authority to make changes in an existing station or authorization:

a. Call letters:	b. Channel No.(s):	c. Principal area served:

d. If this application is for changes in an existing authorization, complete Section I and any other sections necessary to show all substantial changes in information filed with the Commission in prior applications. In the space below, check Sections submitted herewith. As to Sections not submitted herewith, refer to the prior application containing the requested information, in accordance with Instruction K.

Reference (File No./Para. No./Date)

- ☐ Section II  
☐ Section III  
☐ Section IV

Reference (File No./Para No./Date)

- ☐ Section V  
☐ Section VI  
☐ Section VII

Have there been any substantial changes in the information incorporated in this application by reference?

Yes ☐ No ☐

If yes, submit an Exhibit giving full particulars.

Exhibit No.



4. If this application is for consent to an assignment of license or transfer of control of a licensee, submit the following, as an Exhibit:

a. A brief narrative description of the transaction.

Exhibit No.

b. A copy of the contract or agreement for sale of the assets or transfer of control [If there is only an oral agreement, reduce the terms to writing and attach.]

Exhibit No.

c. Station(s) being assigned have had their license(s) renewed through (date(s)): \_\_\_\_\_

THE APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934.)

THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

THE APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

### CERTIFICATION

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

NAME OF APPLICANT

SIGNATURE

TITLE

IF applicant is represented by legal and/or engineering counsel, state name(s) and address(es):

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).**

### FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose(s) for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, analysts, engineers, and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain this authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

**Paperwork Reduction Act.** Public reporting burden for this collection of information is estimated to average 6 hours and 50 minutes per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information Resources Branch, Room 416, Paperwork Reduction Project, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0062), Washington, D.C. 20503.

**SECTION II  
LEGAL  
QUALIFICATIONS**

Name of Applicant

For Commission Use Only

File No.

1. Indicate the legal nature of the applicant:

- ☐ School engaged in the formal education of enrolled students (e.g., public or private school, college or university).
- ☐ Government organization engaged in the formal education of enrolled students (e.g., school board, school district).
- ☐ Nonprofit organization whose purposes are educational and include providing formal education to the entities listed above (e.g., state educational television commission, noncommercial educational broadcast licensee, hospital association, college consortium).

2. Is the applicant "local" in the community served by this application?  
(See Instruction M.)

YES ☐ NO ☐

If no, attach an Exhibit explaining the composition and function of the local program committee, as required by §74.932 of the Commission's Rules. (See Instruction M.)

Exhibit No.

3. Is the applicant (or its members) an accredited entity?

YES ☐ NO ☐

a. If yes, state:

Date accreditation was conferred:

Name of accredited agency or organization:

Accrediting agency/organization is ☐ regional or ☐ state accrediting body.

b. If no, or if applicant is not providing service to itself with the requested facilities, applicant will serve the following accredited entities:

Name of School/Institution	Accreditation Date	Accrediting agency or organization (indicate state-"S" or regional-"R")

These entities must be included in the receive site list in Section VI. Attach as an Exhibit letters from these named schools or institutions demonstrating their intent to utilize the service proposed by the applicant. (See Instruction M.)

Exhibit No.



4. Does the applicant or any party to this application have now, or has applicant or any such party had, any interest in, or connection with, the following:

- a. Any ITFS or noncommercial educational television broadcast station?
- b. Any application pending before the Commission for ITFS or noncommercial educational television broadcast station?
- c. Any license or other authorization from the Commission which has been revoked?
- d. Any interest in, or connection with, any denied and/or dismissed application?

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

If the answer to any of the foregoing parts of this paragraph is yes, show particulars in the table below. Give purpose of each ITFS station listed (e.g., STL; relay).

If revocation, dismissal, or denial, attach explanation as an Exhibit.

Exhibit No.

(1) Name of party having such interest	(2) Nature of interest or connection (giving dates)	(3) Name of other applicant or call letters of station	(4) FCC File Number

5. Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments? (*See Instruction N.*)

Yes ☐ No ☐

6. a. Has an adverse finding been made, or an adverse final action taken by any court or administrative body as to the applicant or any party to this application in a civil or criminal proceeding brought under the provisions of any law related to the following:

Any felony, broadcast related antitrust or unfair competition, criminal fraud or fraud before another governmental agency, or discrimination?

Yes ☐ No ☐

- b. Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a) above?

Yes ☐ No ☐

If the answer to (a) and/or (b) above is yes, attach an Exhibit giving full disclosure concerning persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter.

Exhibit No.

7. Is applicant directly or indirectly controlled by another legal entity?

Yes ☐ No ☐

If yes, attach an Exhibit stating the name of such other legal entity and how such control, if any, exists and the extent thereof.

Exhibit No.

8. Give the following information as to applicant's officers, members of governing board, and stockholders. (Any stockholder(s) that is not a natural person must provide the same information regarding its principals.)

Name and Residence	Office Held	Citizenship	Principal Profession or Occupation	By Whom appointed or elected

9. Are there any contracts or arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future ownership, control, operation, or use of the station, including the use of excess channel capacity for non-ITFS purposes?

Yes ☐ No ☐

If yes, attach as an Exhibit a copy of all such documents, instruments or contracts and state the substance of oral contracts or understandings.

Exhibit No.

NOTE: The applicant must maintain ultimate control over all airtime not subject to lease; any lease agreement cannot exceed the period of the license term.

<b>SECTION III FINANCIAL QUALIFICATIONS</b>	Name of Applicant	For Commission Use Only
		File No.

**NOTE: IF THIS APPLICATION IS FOR A CHANGE IN AN OPERATING FACILITY, DO NOT FILL OUT THIS SECTION.**

1. a. Is this application contingent upon receipt of a grant from the National Telecommunications and Information Administration? Yes ☐ No ☐
- b. Is this application contingent upon the receipt of a grant from a charitable organization, the approval of the budget of a school or university, or an appropriation from a state, county, municipality or other political subdivision? Yes ☐ No ☐

**NOTE:** If either a or b is answered yes, your application cannot be granted until all the necessary funds are committed or appropriated. In the case of grants from the National Telecommunications and Information Administration, no further action on your part is required. If you rely on funds from a source specified in Question b, **YOU MUST ADVISE THE F.C.C. WHEN THE FUNDS ARE COMMITTED OR APPROPRIATED.** This should be accomplished by letter amendment to your application, in triplicate, signed in the same manner as the original application, and clearly identifying the application to be amended.

2. Except as indicated in Question Numbers 1a and 1b above, the applicant certifies that:
- a. It has a reasonable assurance of present commitments from each donor, from each party agreeing to furnish capital, from each bank, financial institution or others agreeing to lend funds, and from each equipment supplier agreeing to extend credit. Yes ☐ No ☐
- b. It can and will meet all contractual requirements as to collateral, guarantees, and capital investments or donations. Yes ☐ No ☐
- c. It has determined that a reasonable assurance exists that all such sources (excluding banks, financial institutions, and equipment manufacturers) have sufficient net liquid assets to meet these commitments. Yes ☐ No ☐
3. The applicant certifies, except as noted above, that sufficient net liquid assets are on hand or available from committed sources to construct and operate the requested facilities for three months without additional funds. Yes ☐ No ☐

**SECTION IV  
SERVICE PROPOSAL**

Name of Applicant

For Commission Use Only

File No.

1. Attach as an Exhibit the applicant's purpose and objective in establishing the proposed station and a statement of proposed program policies.

Exhibit No.

2. Will the applicant's request result in its authorization for more than four ITFS channels in the same area to be served.

Yes ☐ No ☐

If yes, submit as an Exhibit a showing in support of a waiver of §74.902(c) of the Commission's Rules, including call letters and uses of any existing stations, and the availability of other ITFS channels in the area to be served. (See *Instruction O*.)

Exhibit No.

3. Attach as an Exhibit an explanation of the need for the number of channels requested, based on the submitted schedules of weekly service. See paragraph 5, below.

Exhibit No.

4. If the requested facilities will replace an E- or F-channel group currently authorized to the applicant, does the applicant claim that such relocation is necessary to meet increased demand for its services which cannot be accommodated on its present E- or F-channel group facilities?

Yes ☐ No ☐

If yes, attach a narrative justification as an Exhibit, specifically describing the expansion of service and the limitation on such expansion imposed by the grandfathered status of the existing facilities.

Exhibit No.

5. For each channel requested, complete one copy of the chart on page 8 with a proposed weekly schedule of ITFS programming together with a brief description of programs not recognizable by their titles. Indicate by "F" those programs which are delivered to enrolled students for academic credit. Indicate by "L" those programs which are produced by the applicant. (See *Instruction P*.)

6. With respect to each channel, answer the following questions:

Total hours formal education programming for credit for enrolled students on this channel:

Total hours other ITFS service (see §74.931(b)) on this channel:

Will some airtime on this channel be used for non-ITFS purposes?

If yes, total hours which are not accounted for in the chart on page 8 over which applicant will maintain control by reservation or preemption authority (See *Instruction Q*):

1	2	3	4
Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

7. Cite by reference the provision(s) in the lease agreement that empowers the licensee to reserve or recapture airtime for ITFS service:

Specify Channel (One chart per channel): Channel \_\_\_\_\_

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
8:00 AM						
8:30						
9:00						
9:30						
10:00						
10:30						
11:00						
11:30						
12:00 PM						
12:30						
1:00						
1:30						
2:00						
2:30						
3:00						
3:30						
4:00						
4:30						
5:00						
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6:00						
6:30						
7:00						
7:30						
8:00						
8:30						
9:00						
9:30						
10:00						

**SECTION V  
ENGINEERING DATA**

Name of Applicant

For Commission Use Only  
File No.

1. Purpose of authorization applied for: (indicate by check mark.)

- ☐ (a) Construct a new station
- ☐ (b) Utilize a temporary fixed station (see Instruction R)
- ☐ (c) Modify an existing authorization to make changes in the following:
- |   |   |   |
|---|---|---|
| <input type="checkbox"/> 1. Transmitter type or modification              | <input type="checkbox"/> 5. Transmitter location        | <input type="checkbox"/> 9. Low Power Relay Station(s)  |
| <input type="checkbox"/> 2. Transmitter antenna type, gain or directivity | <input type="checkbox"/> 6. Frequency assignment        | <input type="checkbox"/> 10. Channels: <input type="checkbox"/> Add <input type="checkbox"/> Change |
| <input type="checkbox"/> 3. Transmitting antenna height or location       | <input type="checkbox"/> 7. Operating power             | <input type="checkbox"/> 11. Other (describe below)   |
| <input type="checkbox"/> 4. Transmitter control method                    | <input type="checkbox"/> 8. Response/receive station(s) |   |

File number and call of authorization to be modified:

Note: In applications for changes in existing authorizations, only the following items pertinent to the proposed changes need to be completed.

2. Facilities requested:

Note: Use a separate column for each transmitter located at the site specified in Item 3 below. Include only transmitters having a common antenna site in this application. A separate application is required for each different transmitter location.

(a) Transmitter Identification No.	T1	T2	T3	T4	T5 (for modification of existing facilities only)
(b) Channel No. <sup>1</sup>					
(c) Station Purpose <sup>2</sup>					
(d) Signal Source (For relay station only) <sup>3</sup>					
(e) Transmitter Make and Model No. <sup>4</sup>					
(f) Transmitter Rated Output Power <sup>5</sup>					
(g) Proposed Transmitter Operating Output Power <sup>6</sup>					
(h) Transmitting Antenna Make and Model No. <sup>7</sup>					
(i) Transmitting Antenna Type <sup>8</sup>					
(j) Transmitting Antenna Maximum Lobe Gain (dB) <sup>9</sup>					
(k) Transmitting Antenna Overall Height Above Ground (FT) <sup>10</sup>					
(l) Transmitting Antenna Radiation Center Above Ground <sup>11</sup>					
(m) Transmission Losses <sup>12</sup>					
(n) Polarization of Radiated Signals <sup>13</sup>					

<sup>1</sup>Use channel designators shown in Rules for particular frequency band limit proposed, such as A-1, A-2, A-3, etc. (See Rule 74.902)

<sup>2</sup>Specify either "Originating," "Relay" or "STL."

<sup>3</sup>When station is to be used as a Relay station, indicate source of signal, i.e., other instructional TV fixed station, educational or commercial TV station, or other class of station, by entering call or file number and location of station to be relayed.

<sup>4</sup>Use abbreviation of manufacturer's name with model designation.

<sup>5</sup>Specify output power (peak visual) in watts as rated by manufacturer.

<sup>6</sup>Specify proposed operating output power (peak visual). Application proposing operating output power greater than 10 watts (peak visual) must be accompanied by special showing required by Section 74.935(b) of the Rules.

<sup>7</sup>Use abbreviation of manufacturer's name with model designation.

<sup>8</sup>State basic type using general descriptive terms, such as 6-ft. parabola, corner reflector, helix, etc.

<sup>9</sup>State maximum power gain (dB) in horizontal plane with respect to isotropic radiator.

<sup>10</sup>Specify proposed overall height of antenna above ground level in feet.

<sup>11</sup>Specify proposed center of radiation element above ground level in feet.

<sup>12</sup>Line loss (waveguide), combiner, etc.

<sup>13</sup>Specify polarization of radiated signal, such as: horizontal, vertical, left or right-hand circular, etc.



- o. Has each one of the above-listed transmitters been type accepted by the FCC for this service?

Yes ☐ No ☐

If answer is no, attach a complete showing of transmitter details as an Exhibit, including technical specifications and schematic diagram. If this information is presently on file with the FCC by the manufacturer, omit such information from application and check here. ☐

Exhibit No.

3. Proposed transmitter location:

a. City County State

\_\_\_\_\_

Address or other description of location:

Geographical coordinates of transmitting antenna(s) to the nearest second:

North Latitude

West Longitude

\_\_\_\_\_ ° \_\_\_\_\_ ' \_\_\_\_\_ " \_\_\_\_\_ ° \_\_\_\_\_ ' \_\_\_\_\_ "

- b. Will the proposed transmitting antenna supporting structure be shared with another instructional television fixed station or station of any other classification?

Yes ☐ No ☐

If yes, list the call sign and classification of each such station:

- c. Attach as an Exhibit a map or maps of appropriate scale and detail (preferably U.S. Geological Survey Topograph Quadrangles) for the proposed area to be served by this station and shown drawn thereon the following:

Exhibit No.

- (1) Scale of miles.
- (2) Direction of true north.
- (3) Outline of school district or other area intended to be served by proposed system.
- (4) Location of proposed transmitting site, accurately plotted.
- (5) Location of all known radio stations (*except amateur*), such as FM, TV, instructional TV fixed, operational fixed, police, fire, aeronautical, etc., and known commercial or government receiving sites, located within 1000 feet of the proposed site. List all AM stations within 2 miles of the proposed site.
- (6) Location of each receiving, response, or low power relay station intended to be served by this station. Each receiving or response station location should be identified by an individual symbol, such as R1, R2, etc. (for receiving locations), and RT1, RT2, etc. (for each location having response transmitters). Low power relay stations can be identified by LPR1, LPR2, etc.

Note: Where the receiving, response stations, or low power relay station sites for the proposed system are so widely separated geographically that to show them on the same or several maps would result in an unwieldy and voluminous exhibit, it will be acceptable to furnish a reduced composite exhibit consisting of a sketch drawn approximately to scale showing the azimuthal and distance relationship between the transmitting and receiving, response station, and relay, if used. In any event, the sites shall be shown plotted on a map as described above.

- d. Attach, as Exhibits, a map or sketch, drawn to scale, showing the boundaries of all local and county, public and private school districts in and adjoining the area to be served, and the location or locations of the proposed transmitters. Since it is the purpose of the required maps or sketches only to show the geometric configuration of the proposed ITFS system and the pattern of school districts in which separate ITFS systems may be needed, they should not be cluttered with unnecessary details. Main roads may be shown for the purpose of relating the simple map or sketch with maps showing more detail. Major topographic features which affect the choice of transmitting sites, or would serve to contain potential interference, should be indicated.

Exhibit Nos.

- (1) Attach, as Exhibits, separate vertical plan views of the antenna installation of the transmitting and each receiving low power relay station or response station location proposed, showing the ground elevation of the site above mean sea-level, the height above ground of any building or other man-made structure on which the antenna(s) will be mounted, giving separate vertical dimensions for the building or other existing structure which may be used, and the entire height above ground of the tower or mast proposed to be erected to support the antenna(s). Indicate the overall height above ground for each antenna and its geographical coordinates. Each sketch shall be prepared on an 8 1/2 x 11 inch sheet. The reference numbers used above, such as T1, T2, R1, R2, RT1, RT2, etc., should be used to identify the various transmitting, receiving, and response station locations. Low power relay stations should be shown as LPR1, LPR2 etc.
- (2) With each vertical plan view for the transmitting antenna(s), associate a separate 8 1/2 x 11 inch sheet containing a polar diagram of the horizontal relative FIELD pattern and indicate the direction of true north with respect to the proposed antenna orientation. Also label the polar diagram at the appropriate point with the maximum horizontal radiation lobe power gain expressed in dB with respect to an isotropic radiator.
- (3) Receiving antennas that are mounted on buildings which would not increase the overall structure height more than 20 feet may be shown on a single exhibit and labeled as a typical receive site(s) for such designated sites. The geographical coordinates need not be specified on this exhibit.

Exhibit Nos.

NOTE: Receive sites are to be numbered in series clockwise starting from true north.

- e. Attach as an Exhibit a list of all existing and pending cochannel and adjacent channel stations considered for this application.

Exhibit No.

Attach as an Exhibit, a cochannel interference analysis showing that this proposal provides protection to all existing stations and pending applications. (§74.903 of the Rules.)

Exhibit No.

Attach as an Exhibit, an adjacent channel interference analysis showing that this proposal provides protection to all existing stations and pending applications. (§74.903 of the Rules.)

Exhibit No.

- f. If this proposal does not provide protection to an existing station in compliance with §74.903 of the Rules, submit as an Exhibit an agreement between the station licensee and the applicant herein to resolve any objectionable interference caused to the existing station by this proposal.

Exhibit No.

If this proposal does not provide protection to other pending applications, submit as an Exhibit an agreement between the applicant(s) to accept or resolve any mutual or objectionable interference between the proposed operations.

Exhibit No.

4. Remote Control operation:

Will any transmitter listed above be operated by remote control?

Yes ☐ No ☐

## 5. Unattended operation:

Will any transmitter listed above be operated by unattended operation?

Yes ☐ No ☐

If yes, the facilities must be operated in compliance with §74.934 of the Rules.

## 6. Pursuant to Part 77 of the Federal Aviation Regulations, is notification to the FAA required for the construction proposed herein? If yes, the FAA has been notified of certain construction or alteration of antenna structures and Form FAA-7460-1 was filed with the regional office located in:

Yes ☐ No ☐

(City, State)

(date)

## 7. Does this application propose to construct or modify a station in an area where radio use is restricted under §73.1030 of the Rules?

Yes ☐ No ☐

If yes, has the appropriate authority been notified? Give name of authority notified and date of notification.

(Name)

(date)

## 8. Would a Commission grant of this application come within § 1.1307 of the FCC rules, such that it may have a significant environmental impact? (See Instruction S.)

Yes ☐ No ☐

If yes, submit as an Exhibit an Environmental Assessment required by § 1.1311.

Exhibit No.

If no, explain briefly.

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

Name

Address

City, State (include ZIP Code)

Telephone Number (include area code)

Signature

Date

(check appropriate box below)

- ☐ Technical Director
- ☐ Registered Professional Engineer
- ☐ Consulting Engineer
- ☐ Chief Operator

## RECEIVING LOCATIONS AND RESPONSE STATIONS

**1. Name of Applicant:**

## 2. Frequencies:

**Instructions:**

**A. Include on any single page, transmitters of only one frequency and enter the frequency in Item 2.**

**B.** In Column (3), use R1, R2, etc. for receiving-only locations; use RT1, RT2, etc. for locations having response transmitters.

**THIS COLUMN FOR  
COMMISSION USE ONLY**

**File No.** \_\_\_\_\_

**File No**

**Antenna Markings:**

Site Number	Location and Coordinates (for location, give full name of school or bldg.; street address)	Azimuth to ITFS Station	Distance to ITFS Station	Make of Transmitter Type & Power (Response)	Make of Antenna Type & Gain (Receive)
(3)	(4)	(5)	(6)	(7)	(8)

**NOTE:** All schools which appear in Section II, Question 3 must appear in the above chart; if no schools are included above, attach as Exhibit No. \_\_\_\_ an explanation of the administration of exclusively off-campus formal education upon which the applicant relies to establish its eligibility. See Instruction P. (See Section 74.931(a)(1).)

(If additional space is required, use additional letter-size pages with same format and headings as this page, and indicate number of pages in space provided at top of this page.)

SECTION VI RECEIVING LOCATIONS AND RESPONSE STATIONS		1. Name of Applicant:		2. Frequencies:	
<p>Instructions:</p> <p>A. Include on any single page, transmitters of only one frequency and enter the frequency in Item 2.</p> <p>B. In Column (3), use R1, R2, etc. for receiving-only locations; use RT1, RT2, etc. for locations having response transmitters.</p>					
Site Number	Location and Coordinates (for location, give full name of school or bldg.; street address)	Azimuth to ITFS Station	Distance to ITFS Station	Make of Transmitter Type & Power (Response)	Make of Antenna Type & Gain (Receive)
(3)	(4)	(5)	(6)	(7)	(8)
<p>THIS COLUMN FOR COMMISSION USE ONLY</p> <p>File No. _____</p> <p>Antenna Markings: _____</p>					

NOTE: All schools which appear in Section II, Question 3 must appear in the above chart; if no schools are included above, attach as Exhibit No. an explanation of the administration of exclusively off-campus formal education upon which the applicant relies to establish its eligibility. See Instruction P. (See Section 74.931(a)(1).)

## LOW POWER RELAY STATIONS

**1. Name of Applicant:**

## 2. Call Sign of ITFS Station:

**Instructions:**

- (a) include on any single page of this section all transmitters at one location.
- (b) Attach sketch of transmitting and receiving antennas showing pertinent heights.

**THIS COLUMN FOR  
COMMISSION USE ONLY**

**FREQUENCIES: Output channels** \_\_\_\_\_ **Input channels** \_\_\_\_\_

File No. \_\_\_\_\_

Site Number	Location and Coordinates (for location, give name of bldg., if any, street address, etc.)	Make of transmitter, type & power	Make of antenna, type & gain	Antenna orientation & polarization	Antenna: height AGL & AMSL
(3)	(4)	(5)	(6)	(7)	(8)

(If additional space is required, use additional letter-size pages with same format and headings as this page, and indicate number of pages in space provided at top of this page.)



SECTION VII LOW POWER RELAY STATIONS		1. Name of Applicant:		2. Call Sign of ITFS Station:	
Instructions: (a) Include on any single page of this section all transmitters at one location. (b) Attach sketch of transmitting and receiving antennas showing pertinent heights.					
FREQUENCIES: Output channels _____ Input channels _____					
Site Number	Location and Coordinates (for location, give name of bldg., if any, street address, etc.)	Make of transmitter, type & power	Make of antenna, type & gain	Antenna orientation & polarization	Antenna: height AGL & AMSL
(3)	(4)	(5)	(6)	(7)	(8)
<div style="display: flex; justify-content: space-between;"> <div>File No. _____</div> <div>Antenna Markings: _____</div> </div>					



## Instructions for FCC 340

### Application for Construction Permit for Noncommercial Educational Broadcast Station

(FCC Form 340 attached)

#### GENERAL INSTRUCTIONS

A. This FCC form is to be used to apply for authority to construct a new noncommercial educational AM, FM or TV broadcast station, or to make changes in the existing facilities of such a station. It consists of the following sections:

- I. GENERAL INFORMATION
- II. LEGAL QUALIFICATIONS
- III. FINANCIAL QUALIFICATIONS
- IV. PROGRAM SERVICE STATEMENT
- V. ENGINEERING DATA AND ANTENNA AND SITE INFORMATION
- VI. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
- VII. CERTIFICATION

An applicant for change in facilities need file only Sections I, V and VII. Do not file Sections II, III, IV and VI.

B. Prepare and submit an original and two copies of this form, all exhibits, and any subsequent amendments to:

The Secretary  
Federal Communications Commission  
Washington, D. C. 20554

C. Many references to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with current broadcast rules in 47 Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 17 "Construction, Marking and Lighting of Antenna Structure"
- (4) Part 73 "Radio Broadcast Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

D. A copy of this completed application and all related documents shall be made available for inspection by the public, pursuant to 47 C.F.R. Section 73.3527.

E. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. **Defective or incomplete applications will be returned without consideration.** Furthermore, inadvertently accepted applications are also subject to dismissal.

F. In accordance with 47 C.F.R. Section 1.65, the applicant has a **continuing obligation** to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

G. Amendments to previously filed applications should be prepared and submitted in triplicate (an original and two duplicate copies), signed in the same manner as the original application, and should contain the following information to identify the application being amended:

- |  |   |
|--|---|
| (1) Applicant's name.                            | (5) Community of license.                                     |
| (2) Service (AM, FM or TV).                      | (6) File number (if known) of application being amended.      |
| (3) Call letters or specify new station.         | (7) Date of filing of application (if file number not known). |
| (4) Channel number (FM or TV) or frequency (AM). |   |

## INSTRUCTIONS FOR SECTION I - GENERAL INFORMATION

A. The name of the applicant stated in Section I shall be the exact name of the agency, board, institution, organization, corporation or association seeking the authorization. In all other sections of this form, an abbreviated name can be used for identification of the applicant.

B. In Section I use the following State abbreviations:

Alabama	AL	Kansas	KS	Ohio	OH
Alaska	AK	Kentucky	KY	Oklahoma	OK
American Samoa	AS	Louisiana	LA	Oregon	OR
Arizona	AZ	Maine	ME	Palau	PW
Arkansas	AR	Marshall Islands	MH	Pennsylvania	PA
California	CA	Maryland	MD	Puerto Rico	PR
Colorado	CO	Massachusetts	MA	Rhode Island	RI
Connecticut	CT	Michigan	MI	South Carolina	SC
Delaware	DE	Minnesota	MN	South Dakota	SD
District of Columbia	DC	Mississippi	MS	Tennessee	TN
Federal States of		Missouri	MO	Texas	TX
Micronesia	FM	Montana	MT	U.S. Minor Outlying	
Florida	FL	Nebraska	NE	Islands (etc.)	UM
Georgia	GA	Nevada	NV	Utah	UT
Guam	GU	New Hampshire	NH	Vermont	VT
Hawaii	HI	New Jersey	NJ	Virginia	VA
Idaho	ID	New Mexico	NM	Virgin Islands	VI
Illinois	IL	New York	NY	Washington	WA
Indiana	IN	North Carolina	NC	West Virginia	WV
Iowa	IA	North Dakota	ND	Wisconsin	WI
		Northern Mariana Islands	MP	Wyoming	WY

C. A major change in the licensed facilities of an AM station or a major modification of an AM construction permit includes any request for an increase in power (except for Class IV stations on local channels) or for a change in frequency, hours of operation, or station location. See 47 C.F.R. Section 73.3571. A major change or major modification for an FM station operating on a reserved channel includes any change in frequency or community of license or any changes in power, antenna location, and/or height which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. See 47 C.F.R. Section 73.3573. For TV stations, a major change or major modification is any change in frequency or community of license that is in accord with the present allotment contained in the Table of Assignments. See 47 C.F.R. Section 73.3572.

## INSTRUCTIONS FOR SECTION II - LEGAL QUALIFICATIONS

A. As used in Section II, the words "party to this application" have the following meanings:

**GOVERNMENT OR PUBLIC EDUCATIONAL AGENCY, BOARD, OR INSTITUTION:** The members of the governing board and chief executive officers.

**CORPORATE APPLICANT:** All officers and directors, and all persons or entities, who are the beneficial or record owners, subscribers, or holders of the right to vote any capital stock, shall be considered parties to this application. If any corporation or other legal entity owns stock in the applicant, its officers, directors and persons or entities, who are the beneficial or record owners, subscribers, or holders of the right to vote capital stock of that entity, shall also be considered parties to this application.

**ANY OTHER APPLICANT:** All executive officers, members of the governing board and owners or subscribers to any membership or ownership interest in the applicant.

**NOTE:** In the event that the applicant has more than 50 stockholders, stock subscribers, or holders of membership certificates or other ownership interests, only officers, directors and persons or entities, who are the beneficial or record owners, have the right to vote 1% or more of the capital stock, membership or ownership interest, or are subscribers to such interest, shall be considered parties to this application. If any corporation or other legal entity owns 1% or more of an applicant with more than 50 stockholders, its officers, directors and all persons or entities, who are the beneficial or record owners, have the right to vote 1% or more of the capital stock, membership or ownership interest, or are subscribers to such interest in the entity, shall also be considered parties to this application.

- B. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit to an alien, the representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any corporation of which any officer or director is an alien or of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or by a corporation organized under the laws of a foreign country. This proscription could likewise apply to any corporation directly or indirectly controlled by another corporation of which (a) any officer is, (b) more than 25% of the directors are, or (c) more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

- C. Commission policies and litigation reporting requirements for broadcast station applicants are directed to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct. In responding to Question 7, applicants are advised that the parameters of the Commission's policies and requirements regarding character qualifications are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990).

#### INSTRUCTIONS FOR SECTION III - FINANCIAL QUALIFICATIONS

- A. All applicants filing Form 340 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.
- B. An applicant for a new station must attest it has sufficient net liquid assets on hand, or committed sources of funds to construct the proposed facility and operate for three months without additional funds. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities. Applicants requesting financial assistance from the National Telecommunications and Information Administration (NTIA) are encouraged to file this FCC Form 340 well before filing their requests for funds with NTIA.
- C. Documentation supporting the attestation of financial qualifications need not be submitted with this application, but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.
- D. It is Commission policy not to approve extensions of time for construction on the basis of financial inability or unwillingness to construct.

#### INSTRUCTIONS FOR SECTION IV - PROGRAM SERVICE STATEMENT

- A. Applicants need only file a program statement called for in Section IV of this application. See Public Broadcasting Stations (Programming and Reporting Requirements), 98 FCC 2d 746 (1984).
- B. A program service statement is not required if the programming of the proposed station would be wholly instructional. Instructional programming includes all programs designed to be utilized by any level of educational institution in the regular instructional program of the institution. In-school, in-service for teachers and college credit courses are examples of instructional programs.

#### INSTRUCTIONS FOR SECTION V - ENGINEERING DATA AND ANTENNA AND SITE INFORMATION

- A. An indication as to the specific transmitter make and model is not required on the application. Rather, any subsequent permit authorizing construction will require installation of a type accepted transmitter or one complying with the provisions of 47 C.F.R. Section 73.1660. Applicants for AM facilities are reminded of the maximum rated power limitations for transmitters imposed by 47 C.F.R. Section 73.1665(b).
- B. AM directional antenna patterns, submitted pursuant to 47 C.F.R. Sections 73.150 and 73.152 (standard patterns and modified standard patterns), must be tabulated and plotted using units or millivolts per meter at one kilometer. Applications which are amended should use the new standard. Applications which are submitted using the wrong units will be returned unless they are promptly amended to use the correct units.
- C. Applicants filing the initial application in response to a Commission allotment to migrate to the AM expanded band need

not file the material requested in A.(3), A.(4), B.(1)-B.(3), and C.(3)(a)-(e) of Question 15 of Section V-A since the assignment is based on the allotment method instead of the allocation method.

- C. In regard to the FM engineering portion (V-B), references to height and distance must be in meters and kilometers and not feet and miles.
- D. When applying for FM station construction permit, one of the submissions required by Section V-B, is a 7.5 minute series U.S. Geological Survey topographic quadrangle map upon which is marked the transmitter site. The Commission recommends that applicants submit at least one original copy of each appropriate full-scale USGS quadrangle map, if available, with the transmitter site properly marked and labeled.

In order to allow the Commission's processing staff to verify the correctness of the geographic coordinates provided in an FM application, it is necessary for this site map to show along the printed margin of both axes at least two coordinate markings, specifically labeled by the USGS, one on either side of the marked site. Additionally, a scale of kilometers (if available) or miles and all of the identifying map information must be included. The site should be plotted on a full scale map, and all of the contour lines must be clearly visible. Faded, smudged or otherwise illegible maps are unacceptable. Photocopies are acceptable in lieu of actual USGS maps, provided they are clear, dark and legible. It is not necessary to submit an entire map (although this is perfectly acceptable), but only as much as is necessary to fully comply with the requirements described above.

In certain cases it may be inconvenient to provide a full scale photocopy which includes both the site and the margins. This can occur when the site lies toward the center of the map. In this case the following alternative is acceptable. Provide a full scale copy of the section of the map containing the site. This copy must include either four of the standard printed cross-marks or one margin and two cross-marks. Fine lines should be drawn between the marks in such a fashion as to enclose the site. Each of these lines should be labeled with the appropriate latitude or longitude. This full scale map section must include all the information specified in the previous paragraph. In addition, a reduced copy of the entire map must be included to allow the Commission's staff to verify that the lines have been correctly labeled.

- E. The latitude and longitude coordinates for all points in the United States are based upon the 1927 North American Datum (NAD 27). The National Geodetic Survey is in the process of replacing NAD 27 with the more accurate 1983 North American Datum (NAD 83) and updating current topographic maps with NAD 83 datum. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data using two different datums, however, the Commission announced that until further notice, applicants are to furnish coordinates based on NAD 27 datum on all submissions and the Commission will continue to specify NAD 27 coordinates in its data bases and authorizations. In addition, applicants who have already filed applications with coordinates that reflect NAD 83 datum must provide NAD 27 coordinates to the appropriate Commission licensing bureau. See Public Notice, entitled "FCC Interim Procedures for the Specification of Geographic Coordinates," 3 FCC Rcd 1478 (1988). Accordingly, in furnishing the information called for in Section V (e.g., V-A (AM) #4, V-B (FM) #2, V-C (TV) #2), NAD 27 datum should be used.
- F. The following guidance is provided for the questions regarding environmental impact (V-A (AM) #14, V-B (FM) #26, V-C (TV) #20):

- (1) Place an (X) in the appropriate box to indicate whether a Commission grant of the proposed communication facility(ies) may have a significant environment impact as defined by 47 C.F.R. Section 1.1307. Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:

- (a) A facility is to be located in sensitive areas (e.g., an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.
- (b) A facility whose construction will involve significant change in surface features.
- (c) The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.
- (d) The facilities, or the operation of which, will cause exposure of workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95. 1-1982), by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.

- (2) If you answer Yes, submit the required Environmental Assessment (EA). The EA includes for antenna towers and satellite earth stations:



- (a) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.
  - (b) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.
  - (c) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.
  - (d) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility, the nature and extent of any unavoidable adverse environmental effects, and any alternative sites or facilities which have been or might reasonably be considered.
  - (e) An engineering study based upon OST Bulletin No. 65, October, 1985, entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" addressing the issue of potential occupational and public hazards caused by the proposed facilities. You must state what steps will be taken to limit the RF radiation exposure to the public and to persons authorized access to the tower.
- (3) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness area, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).
- (4) The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.
- (5) To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.
- (6) An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility (a) for determining whether the facilities in question will have a significant effect on the quality of the human environment and, (b) if it will affect the environment, for invoking the environmental impact statement process.

#### INSTRUCTIONS FOR SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

- A. Applicants seeking authority to construct a commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time station employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asian or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). This is submitted to the Commission as the Model EEO Program on FCC Form 396-A, which should be filed as part of the application. If minority group representation in the available labor force is less than five percent (in the aggregate), a program for minority group members is not required. However, a program must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant proposes to employ less than five full-time employees, no EEO program for women or minorities need be filed.
- B. Guidelines for developing an Equal Employment Opportunity program are set forth in FCC Form 396-A.

**NOTE:** This five-point Broadcast Equal Employment Opportunity Model Program Report (FCC 396-A) is to be utilized only by applicants for new construction permits, assignees and transferees.

#### INSTRUCTIONS FOR SECTION VII - CERTIFICATION

- A. Applicants for a new noncommercial educational AM, FM or TV broadcast station or for a major change or modification of the authorized facilities of such stations (as defined in 47 C.F.R. Sections 73.3571(a), 73.3573(a), or 73.3572(a), respectively) are required to give public notice of the filing of their applications by publication in a local newspaper and/or by broadcast announcements in accordance with 47 C.F.R. Section 73.3580. Completion of publication may occur within 30 days before or after tendering of the application. Proof of publication NEED NOT be filed with this application.
- B. The original of this application form must be signed by the applicant. The required copies can be conformed. See 47 C.F.R. Section 73.3513.

**FCC 340**

Approved by OMB

3060-0034

Expires 11/30/94

See Page 23 for information  
regarding public burden estimate

**APPLICATION FOR CONSTRUCTION PERMIT FOR  
NONCOMMERCIAL EDUCATIONAL BROADCAST STATION**  
(Carefully read instructions before filing form) Return only form to FCC

For Commission Use Only

File No.

**Section I - GENERAL INFORMATION**

1. Name of Applicant			Send notices and communications to the following person at the address below:		
			Name		
Street Address or P.O. Box			Street Address or P.O. Box		
City	State	ZIP Code	City	State	ZIP Code
Telephone No. (Include Area Code)			Telephone No. (Include Area Code)		

2. This application is for:

☐

AM

☐

FM

☐

TV

(a) Channel No. or Frequency

(b) Principal  
Community

City

State

(c) Check one of the following boxes:

☐

Application for NEW station

☐

MAJOR change in licensed facilities; call sign: \_\_\_\_\_

☐

MINOR change in licensed facilities; call sign: \_\_\_\_\_

☐

MAJOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐

MINOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐

AMENDMENT to pending application; application file number: \_\_\_\_\_

**NOTE:** It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. Is this application mutually exclusive with a renewal application?

☐

Yes

☐

No

If Yes, state:	Call letters	Community of License	
		City	State

## Section II - LEGAL QUALIFICATIONS

Name of Applicant \_\_\_\_\_

1. Applicant is: (Check one box below)

- ☐ (a) governmental or public educational agency, board or institution
- ☐ (b) private nonprofit educational institution
- ☐ (c) Other (specify) \_\_\_\_\_

2. For applicants 1(c) only, describe in an Exhibit the nature and educational purposes of the applicant.

Exhibit No. \_\_\_\_\_

3. For applicants 1(c) applying for a new noncommercial educational television station only, describe in an Exhibit how the applicant's officers, directors and members of its governing board are broadly representative of the educational, cultural and civic segments of the principal community to be served.

Exhibit No. \_\_\_\_\_

4. Describe in an Exhibit how the proposed station will be used, in accordance with 47 C.F.R. Section 73.503 or Section 73.621, for the advancement of an educational program.

Exhibit No. \_\_\_\_\_

5. Is there any provision contained in any by-laws, articles of incorporation, partnership agreement, charter, statute or other document which would restrict the applicant in advancing an educational program or complying with any Commission rule, policy or provision of the Communications Act of 1934, as amended?

☐ Yes ☐ No

If Yes, provide particulars in an Exhibit.

Exhibit No. \_\_\_\_\_

### CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS

6. (a) Is the applicant in violation of the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments? (See Instruction B to Section II.)

☐ Yes ☐ No

(b) Will any funds, credits or other financial assistance for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

☐ Yes ☐ No

If the answer to (b) above is Yes, attach an Exhibit giving full disclosure concerning this assistance.

Exhibit No. \_\_\_\_\_

7. (a) Has an adverse finding been made or an adverse final action taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☐ No

(b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a) above?

☐ Yes ☐ No

If the answer to (a) and/or (b) above is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c) in the case of adjudicated proceedings, the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) a description of the current status or disposition of the previously reported matter.

Exhibit No. \_\_\_\_\_

# Section 11 - LEGAL QUALIFICATIONS (Page 2)

## PARTIES TO APPLICATION

8. Complete the following Table with respect to all parties to this application:

(NOTE: If the applicant considers that to furnish complete information would pose an unreasonable burden, it may request that the Commission waive the strict terms of this requirement with appropriate justification.)

**INSTRUCTIONS:** If applicant is a corporation or an unincorporated association with 50 or fewer stockholders, stock subscribers, holders of membership certificates or other ownership interests, fill out all columns, giving the information requested as to all officers, directors and members of governing board. In addition, give the information as to all persons or entities who are the beneficial or record owners of or have the right to vote capital stock, membership or ownership interests or are subscribers to such interests. If the applicant has more than 50 stockholders, stock subscribers or holders of membership certificates or other ownership interests, furnish the information as to officers, directors, members of governing board, and all persons or entities who are the beneficial or record owners of or have the right to vote 1% or more of the capital stock, membership or ownership interests. If applicant is a governmental or public educational agency, board or institution, fill out columns (a), (b), and (c) as to all members of the governing board and chief executive officers.

Name and Residence Address(es)  (a)	Office Held  (b)	Director or Member of Governing Board		% of: Ownership (O) or Voting Stock (VS) or Membership (M)  (d)
		YES	NO	
		(c)		

Section II - LEGAL QUALIFICATIONS (Page 3)

9. Does the applicant, or any party to the application, have a petition to migrate to the expanded band (1605-1705 kHz) or a permit or license either in the existing band or expanded band that is held in combination with the AM facility proposed to be modified herein?

☐ Yes ☐ No

If Yes, provide particulars as an Exhibit.

Exhibit No.

10. Does the applicant or any party to this application have, or have they had, any interest in:

(a) a broadcast station, or pending broadcast station application before the Commission?

☐ Yes ☐ No

(b) a broadcast application which has been dismissed with prejudice by the Commission?

☐ Yes ☐ No

(c) a broadcast application which has been denied by the Commission?

☐ Yes ☐ No

(d) a broadcast station, the license of which has been revoked?

☐ Yes ☐ No

(e) a broadcast application in any pending or concluded Commission proceeding which left unresolved character issues against the applicant?

☐ Yes ☐ No

If the answer to any of the questions in (a)-(e) above is Yes, state in an Exhibit the following information:

Exhibit No.

- (1) Name of party having interest;
- (2) Nature of interest or connection, giving dates;
- (3) Call letters of stations or file number of application or docket; and
- (4) Location.



### SECTION III - FINANCIAL QUALIFICATIONS

Note: If this application is for a change in an operating facility, DO NOT fill out this Section.

1. Is this application contingent upon receipt of a grant from the National Telecommunications and Information Administration? ☐ Yes ☐ No
2. Is this application contingent upon receipt of a grant from a charitable organization, the approval of the budget of a school or university, or an appropriation from a state, county, municipality or other political subdivision? ☐ Yes ☐ No

NOTE: If either Questions 1 or 2 is answered "Yes," your application cannot be granted until all of the necessary funds are committed or appropriated. In the case of grants from the National Telecommunications and Information Administration, no further action on your part is required. If you rely on funds from a source specified in Question 2, you must advise the F.C.C. when the funds are committed or appropriated. This should be accomplished by letter amendment to your application, in triplicate, signed in the same manner as the original application, and clearly identifying the application to be amended.

3. The applicant certifies, except as noted above, that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without additional funds. ☐ Yes ☐ No

### SECTION IV - PROGRAM SERVICE STATEMENT

Attach as an Exhibit, a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area.

Exhibit No.

NOTE: No program service statement need be filed where the proposed station's programming would be wholly "instructional" as that type of programming is defined in the Instructions to this Section.

# Section V-A - AM BROADCAST ENGINEERING DATA

FOR COMMISSION USE ONLY

File No. \_\_\_\_\_

ASB Referral Date \_\_\_\_\_

Referred by \_\_\_\_\_

Name of Applicant \_\_\_\_\_

1. Purpose of Application: *(check all appropriate boxes)*

☐ Construct new station

☐ Make changes in authorized/existing station

Call Letters *(if issued)* \_\_\_\_\_

☐ Principal authorized/licensed community

☐ Hours of operation

☐ Frequency

☐ Transmitter location

☐ Power

☐ Filed in compliance with an Allotment Plan to migrate to the expanded band

☐ Main Studio location

Allotment Number \_\_\_\_\_

☐ Antenna system *(including increase in height by addition of FM, TV or other antennae)*

☐ New antenna construction

☐ Alteration of existing structure

☐ Increase height

☐ Decrease height

☐ Non-DA to DA

☐ DA to Non-DA

☐ Other *(Summarize briefly the nature of the changes proposed)*

2. Principal community to be served:

State	County	City or Town
-------	--------	--------------

3. Facilities requested:

Frequency: \_\_\_\_\_ kHz

Hours of Operations: \_\_\_\_\_

Power: Night: \_\_\_\_\_ kW

Day: \_\_\_\_\_ kW

Critical hours: \_\_\_\_\_ kW  
*(if applicable)*

Class of Station (A, B, C or D) \_\_\_\_\_

☐ Stereo

☐ Monaural

4. Transmitter location:

State	County	City or Town
-------	--------	--------------

Latitude	Longitude
----------	-----------

# SECTION V-A - AM BROADCAST ENGINEERING DATA (Page 2)

5. Is the proposed site the same transmitter-antenna site of other stations authorized by the Commission or specified in another application pending before the Commission?

☐ Yes ☐ No

If Yes, indicate call sign or application file number: \_\_\_\_\_

6. Antenna system *(including ground or counterpoise system)*

Non-Directional

☐ Day

☐ Night

☐ Critical Hours

Estimated efficiency \_\_\_\_\_ mV/m per kW at one kilometer

Directional

☐ Day only (DA-D)

☐ Night only (DA-N)

☐ Same constants and power day and night (DA-1)

☐ Different constants and/or power day and night (DA-2)

☐ Different constants and/or power day, critical hours and night (DA-3)

Submit complete engineering data in accordance with Section 73.150 of the Commission's Rules for each Directional antenna pattern proposed.

Non-directional/Directional

If antenna(s) is/are either top loaded or sectionalized, describe fully in an Exhibit. *(Include apparent electrical height.)*

Exhibit No.

Type of feed circuits (excitation)

☐ Series Feed

☐ Shunt Feed

☐ Folded Unipole

☐ Other (explain)

TOWERS <i>(In meters, rounded to nearest meter)</i>	1	2	3	4	5	6
Overall height of radiator above base insulator, or above base, if grounded						
Overall height above ground <i>(without obstruction lighting)</i>						
Overall height above ground <i>(include obstruction lighting)</i>						
Overall height above mean sea level <i>(include obstruction lighting)</i>						

If additional towers, attach information exactly as it appears above.

7. Has the FAA been notified of the proposed construction?

☐ Yes ☐ No

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No.

Date \_\_\_\_\_

Office where filed \_\_\_\_\_

# SECTION V-A - AM BROADCAST ENGINEERING DATA (Page 3)

8. List all landing areas within 8 kilometers of antenna site. Give distances and direction to the nearest boundary of each landing area from the antenna site.

Landing Area	Distance (km)	Direction
(a) _____	_____	_____
(b) _____	_____	_____
(c) _____	_____	_____

9. Attach as an Exhibit a description and vertical plan sketch (including supporting buildings, if any) of the proposed structure, giving heights above ground, in meters, for all significant features. Clearly indicate existing portions, noting lighting, and distinguishing between the skeletal or other main supporting structure and the antenna elements. If a directional antenna, give spacing and orientation of towers.

Exhibit No. \_\_\_\_\_

If not fully described above, attach as an Exhibit further details and dimensions, including any other antennas mounted on tower and associated isolation circuits.

Exhibit No. \_\_\_\_\_

Attach as an Exhibit, a plat of the transmitter site clearly showing boundary lines, roads, railroads, other obstructions, and the ground system or counterpoise. Show number and dimensions of ground radials or, if a counterpoise is used, show heights and dimensions.

Exhibit No. \_\_\_\_\_

10. Will the main studio be located within the station's principal community contour as defined by 47 C.F.R. Section 73.24(i)?

☐ Yes ☐ No

If No, attach as an Exhibit a justification pursuant to 47 C.F.R. Section 73.1125.

Exhibit No. \_\_\_\_\_

11. Is there a remote control location, or is one to be established in accordance with 47 C.F.R. Section 73.1400?

☐ Yes ☐ No

If yes, submit the following:

State	County	City or Town
Street address (or other identification)		

12. Attach as an Exhibit a sufficient number of aerial photographs taken in clear weather at appropriate altitudes and angles to permit identification of all structures in the vicinity. The photographs must be marked so as to show compass directions, exact boundary lines of the proposed site, and locations of the proposed 1000 mV/m contour for both day and night operation. Photographs taken in eight different directions from an elevated position on the ground will be acceptable in lieu of the aerial photographs if the data referred to can be clearly shown.

Exhibit No. \_\_\_\_\_

13. Is the population within the 1 V/m (1000 mV/m) contour less than 300 persons or less than 1.0 percent of the population within the 25 mV/m contour?

☐ Yes ☐ No

If No, attach as an Exhibit a justification pursuant to 47 C.F.R. Section 73.24(g).

Exhibit No. \_\_\_\_\_

14. Environmental Statement. (See 47 C.F.R. Section 1.1301 et seq.)

(a) Would a Commission grant of this application come within 47 C.F.R. Section 1.1307, such that it may have a significant environmental impact?

☐ Yes ☐ No

If you answer Yes, submit as an Exhibit an Environmental Assessment required by 47 C.F.R. Section 1.1311.

Exhibit No. \_\_\_\_\_

If No, explain briefly why not.

(b) Distance from tower(s) to the nearest point of the fence enclosing the tower in meters.

\_\_\_\_\_ Meters

SECTION V-A - AM BROADCAST ENGINEERING DATA (Page 4)

15. Allocation Studies

A. Daytime (For assistance, see 47 C.F.R. Section 73.371)

- (1) For daytime operation, attach as an exhibit map(s) having appropriate scales, showing the 1000, 5, 2 and 0.5 (0.1, if Class A station) daytime contours in mV/m for both existing and proposed operations. On the map(s) showing the 5 mV/m contours **CLEARLY INDICATE THE LEGAL BOUNDARIES OF THE PRINCIPAL COMMUNITY TO BE SERVED.**

Exhibit No.

- (2) Does the daytime 5 mv/m contour encompass the legal boundaries of the principal community to be served?

☐ Yes ☐ No

If No, attach as an Exhibit a justification for waiver of 47 C.F.R. Section 73.24(i).

Exhibit No.

- (3) For daytime operation, for stations on a frequency between 535 kHz and 1605 kHz, attach as an Exhibit an allocation study utilizing Figure M-3 (Figure R-3 of the Commission's Rules) or an accurate full scale reproduction thereof and using pertinent field strength measurement data where available, a full scale exhibit of the entire pertinent area to show the following:

Exhibit No.

(a) Normally protected and the interfering contours for the proposed operation along all azimuths.

(b) Normally protected and interfering contours of existing stations and other proposed stations in pertinent areas with which prohibited overlap would result as well as those existing stations and other proposals which required study to clearly show absence of prohibited overlap. If prohibited overlap were to occur as a result of the proposal, appropriate justification for waiver of 47 C.F.R. Section 73.37 is to be included.

(c) Plot of the transmitter location of each station or proposal requiring investigation, with identifying call letters, file numbers, and operating or proposed facilities.

(d) Properly labeled longitude and latitude degree lines, shown across entire Exhibit.

- (4) For daytime operation, attach as an Exhibit a tabulation of the following:

Exhibit No.

(a) Azimuths along which the groundwave contours were calculated for all stations or proposals shown on allocation study exhibits required by (3Xa).

(b) Inverse distance field strength used along each azimuth.

(c) Basis for ground conductivity utilized along each azimuth specified in (4Xa). If field strength measurements are used, submit copies of the analyzed measurements. If measurement data are taken from Commission records identify the source of the measurements in the Commission's files.

B. Critical Hours (If applicable, see 47 C.F.R. Section 73.1871)

- (1) For critical hours operation, attach as an Exhibit map(s) having appropriate scales, showing the 1000, 5 and 0.5 critical hours contours in mV/m for both existing and proposed operations. On the map(s) showing the 5 mV/m contours **CLEARLY INDICATE THE LEGAL BOUNDARIES OF THE PRINCIPAL COMMUNITY TO BE SERVED.**

Exhibit No.

- (2) Does the critical hours 5 mV/m contour encompass the legal boundaries of the principal community to be served?

☐ Yes ☐ No

If No, attach as an Exhibit justification for waiver of 47 C.F.R. Section 73.24(j).

Exhibit No.

- (3) For critical hours operation, attach as an Exhibit an allocation study utilizing Figure M-3 (Figure R-3 of the Commission's Rules) or an accurate full scale reproduction thereof and using pertinent field strength measurement data where available, a full scale exhibit of the entire pertinent area to show the following: The 0.1 mV/m groundwave contour pertinent arcs of Class I stations and appropriate studies to establish compliance with 47 C.F.R. Section 73.187 when operation is proposed on a U.S. Class A channel.

Exhibit No.

SECTION V-A - AM BROADCAST ENGINEERING DATA (Page 5)

C. Nighttime. (For assistance, see 47 C.F.R. Section 73.182)

- (1) For nighttime operation, attach as an Exhibit map(s) having appropriate scales, showing the 1000 and 5 mV/m contours (RSS nighttime interference-free contour if it is greater than 5 mV/m) for both existing and proposed operations. On the map(s) showing the interference-free contours. **CLEARLY INDICATE THE LEGAL BOUNDARIES OF THE PRINCIPAL COMMUNITY TO BE SERVED.**

Exhibit No.

- (2) Does the nighttime 5 mV/m or nighttime free contour (which ever is higher) encompass 80% of the principal community to be served (50% for expanded band 1605-1705 kHz stations) ?

☐ Yes ☐ No

If No, attach as an Exhibit justification for waiver of, or exemption pursuant to 47 C.F.R. Section 73.24(i).

Exhibit No.

- (3) For nighttime operation, (for stations on a frequency between 535 kHz and 1605 kHz) attach as an Exhibit allocation data including the following:

Exhibit No.

(a) Proposed nighttime limitation to other existing or proposed stations with which objectionable interference could result, as well as those other proposals and existing stations which require study to show clearly absence of objectionable interference.

(b) All existing or proposed nighttime limitations which enter into the nighttime RSS limitation of each of the existing or proposed facilities investigated under (3)(a) above.

(c) All existing and proposed limitations which contribute to the RSS nighttime limitation of the proposed operation, together with those limitations which must be studied before being excluded.

(d) A detailed interference study plotted upon an appropriate scale map if a question exists with respect to nighttime interference to other existing or proposed facilities along bearing other than on a direct line toward the facility considered. (Clipping study)

(e) The detailed basis for each nighttime limitation calculated under (3)(a), (b), (c) and (d) above.

16. Attach as an Exhibit a map (7.5 minute U.S. Geological Survey topographic quadrangles, if available) of the proposed antenna location showing the following information:

Exhibit No.

A. Proposed transmitter location accurately plotted with the latitude and longitude lines clearly marked and showing a scale of kilometers.

B. Heights of buildings or other structures and terrain elevations in the vicinity of the antenna, indicating the location thereof.

C. Transmitter location and call signs of non-broadcast radio stations (except amateur and citizens band), established commercial and government receiving stations in the general vicinity which may be adversely affected by the proposed operation.

D. Transmitter location and call letters of all AM, FM and TV broadcast stations within three (3) kilometers of the proposed antenna location.



SECTION V-A - AM BROADCAST ENGINEERING DATA (Page 6)

CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name <i>(Typed or Printed)</i>	Relationship to Applicant <i>(e.g., Consulting Engineer)</i>
Signature	Address <i>(Include ZIP Code)</i>
Date	Telephone No. <i>(Include Area Code)</i> (    )

# Section V-B - FM BROADCAST ENGINEERING DATA

FOR COMMISSION USE ONLY

File No. \_\_\_\_\_

ASB Referral Date \_\_\_\_\_

Referred by \_\_\_\_\_

Name of Applicant \_\_\_\_\_

Call letters (if issued) \_\_\_\_\_

Is this application being filed in response to a window? ☐ Yes ☐ No

If Yes, specify closing date: \_\_\_\_\_

Purpose of Application: (check appropriate boxes)

- |  |   |
|--|---|
| <input type="checkbox"/> Construct a new (main) facility                       | <input type="checkbox"/> Construct a new auxiliary facility                         |
| <input type="checkbox"/> Modify existing construction permit for main facility | <input type="checkbox"/> Modify existing construction permit for auxiliary facility |
| <input type="checkbox"/> Modify licensed main facility                         | <input type="checkbox"/> Modify licensed auxiliary facility                         |

If purpose is to modify, indicate below the nature of change(s) and specify the file number(s) of the authorizations affected.

- |   |  |
|---|--|
| <input type="checkbox"/> Antenna supporting-structure height  | <input type="checkbox"/> Effective radiated power  |
| <input type="checkbox"/> Antenna height above average terrain | <input type="checkbox"/> Frequency                 |
| <input type="checkbox"/> Antenna location                     | <input type="checkbox"/> Class                     |
| <input type="checkbox"/> Main Studio location                 | <input type="checkbox"/> Other (Summarize briefly) |

File Number(s) \_\_\_\_\_

1. Allocation:

Channel No.	Principal community to be served:			Class (check only one box below)
	City	County	State	
				<input type="checkbox"/> A <input type="checkbox"/> B1 <input type="checkbox"/> B <input type="checkbox"/> C3 <input type="checkbox"/> C2 <input type="checkbox"/> C1 <input type="checkbox"/> C <input type="checkbox"/> D

2. Exact location of antenna.

(a) Specify address, city, county and state. If no address, specify distance and bearing relative to the nearest town or landmark.

(b) Geographical coordinates (to nearest second). If mounted on element of an AM array, specify coordinates of center of array. Otherwise, specify tower location. Specify South Latitude or East Longitude where applicable; otherwise, North Latitude or West Longitude will be presumed.

Latitude	°   '   "	Longitude	°   '   "
----------	-----------	-----------	-----------

3. Is the supporting structure the same as that of another station(s) or proposed in another pending application(s)? ☐ Yes ☐ No

If Yes, give call letter(s) or file number(s) or both. \_\_\_\_\_

If proposal involves a change in height of an existing structure, specify existing height above ground level including antenna, all other appurtenances, and lighting, if any. \_\_\_\_\_

SECTION V-B - FM BROADCAST ENGINEERING DATA (Page 2)

4. Does the application propose to correct previous site coordinates?

☐ Yes ☐ No

If Yes, list old coordinates.

Latitude	°	'	"	Longitude	°	'	"
----------	---	---	---	-----------	---	---	---

5. Has the FAA been notified of the proposed construction?

☐ Yes ☐ No

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No.

Date \_\_\_\_\_ Office where filed \_\_\_\_\_

6. List all landing areas within 8 km of antenna site. Specify distance and bearing from structure to nearest point of the nearest runway.

Landing Area	Distance (km)	Bearing (degrees True)
(a) _____	_____	_____
(b) _____	_____	_____

7. (a) Elevation: (to the nearest meter)

(1) of site above mean sea level; \_\_\_\_\_ meters

(2) of the top of supporting structure above ground (including antenna, all other appurtenances, and lighting, if any); and \_\_\_\_\_ meters

(3) of the top of supporting structure above mean sea level  $[(aX1) + (aX2)]$  \_\_\_\_\_ meters

(b) Height of radiation center: (to the nearest meter) H = Horizontal; V = Vertical

(1) above ground \_\_\_\_\_ meters (H)

\_\_\_\_\_ meters (V)

(2) above mean sea level  $[(aX1) + (bX1)]$  \_\_\_\_\_ meters (H)

\_\_\_\_\_ meters (V)

(3) above average terrain \_\_\_\_\_ meters (H)

\_\_\_\_\_ meters (V)

8. Attach as an Exhibit sketch(es) of the supporting structure, labelling all elevations required in Question 7 above, except item 7(bX3). If mounted on an AM directional-array element, specify heights and orientations of all array towers, as well as location of FM radiator.

Exhibit No.

9. Effective Radiated Power:

(a) ERP in the horizontal plane

\_\_\_\_\_ kw (H\*) \_\_\_\_\_ kw (V\*)

(b) Is beam tilt proposed?

☐ Yes ☐ No

If Yes, specify maximum ERP in the plane of the tilted beam, and attach as an Exhibit a vertical elevational plot of radiated field.

Exhibit No.

\_\_\_\_\_ kw (H\*) \_\_\_\_\_ kw (V\*)

\*Polarization

SECTION V-B - FM BROADCAST ENGINEERING DATA (Page 3)

10. Is a directional antenna proposed?

☐ Yes ☐ No

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Section 73.316, including plot(s) and tabulations of horizontally and vertically polarized radiated components in terms of relative field.

Exhibit No.

11. Will the main studio be located within the 70 dBu or 3.16 mV/m contour?

☐ Yes ☐ No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125.

Exhibit No.

12. Are there: (a) within 60 meters of the proposed antenna, any proposed or authorized FM or TV transmitters, or any nonbroadcast *(except citizens band or amateur)* radio stations; or (b) within the blanketing contour, any established commercial or government receiving stations, cable head-end facilities, or populated areas; or (c) within ten (10) kilometers of the proposed antenna, any proposed or authorized FM or TV transmitters which may produce receiver-induced intermodulation interference?

☐ Yes ☐ No

If Yes, attach as an Exhibit a description of any expected, undesired effects of operations and remedial steps to be pursued if necessary, and a statement accepting full responsibility for the elimination of any objectionable interference (including that caused by receiver-induced or other types of modulation) to facilities in existence or authorized or to radio receivers in use prior to grant of this application. *(See 47 C.F.R. Sections 73.315(b), 73.316(d) and 73.318.)*

Exhibit No.

13. Attach as an Exhibit a 7.5 minute series U.S. Geological Survey topographic quadrangle map that shows clearly, legibly, and accurately, the location of the proposed transmitting antenna. This map must comply with the requirements set forth in Instruction D for Section V. Further, the map must clearly and legibly display the original printed contour lines and data as well as latitude and longitude markings, and must bear a scale of distance in kilometers.

Exhibit No.

14. Attach as an Exhibit *(name the source)* a map which shows clearly, legibly, and accurately, and with the original printed latitude and longitude markings and a scale of distance in kilometers:

Exhibit No.

(a) the proposed transmitter location, and the radials along with profile graphs have been prepared;

(b) the 1 mV/m predicted contour and, for noncommercial educational applicants applying on a commercial channel, the 3.16 mV/m contour; and

(c) the legal boundaries of the principal community to be served.

15. Specify area in square kilometers (1 sq. mi. = 2.59 sq. km.) and population (latest census) within the predicted 1 mV/m contour.

Area  sq. km. Population

16. Attach as an Exhibit a map *(Sectional Aeronautical charts where obtainable)* showing the present and proposed 1 mV/m (60 dbu) contours.

Exhibit No.

Enter the following from Exhibit above:

Gain Area  sq. mi.  
Loss Area  sq. mi.

Percent change (gain area plus loss area as percentage of present area)  %.

If 50% or more this constitutes a major change. Indicate in question 2(c), Section I, accordingly.

## SECTION V-B - FM BROADCAST ENGINEERING DATA (Page 4)

Exhibit No.

17. For an application involving an auxiliary facility only, attach as an Exhibit a map (*Sectional Aeronautical Chart or equivalent*) that shows clearly, legibly, and accurately, and with latitude and longitude markings and a scale of distance in kilometers:

(a) the proposed auxiliary 1 mV/m contour; and

(b) the 1 mV/m contour of the licensed main facility for which the applied-for facility will be auxiliary. Also specify the file number of the license. See 47 C.F.R. Section 73.1675. (File No. \_\_\_\_\_)

18. Terrain and coverage data *to be calculated in accordance with 47 C.F.R. Section 73.3131.*

Source of terrain data: *(check only one box below)*☐ Linearly interpolated 30-second database

☐ 7.5 minute topographic map

(Source: \_\_\_\_\_)

☐ Other (briefly summarize)

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 3 to 16 km (meters)	Predicted Distances to the 1 mV/m contour (kilometers)
0		
45		
90		
135		
180		
225		
270		
315		

### Allocation Studies

(See Subpart C of 47 C.F.R. Part 73)

19. Is the proposed antenna location within 320 kilometers (199 miles) of the common border between the United States and Mexico?

☐ Yes ☐

If Yes, attach as an Exhibit a showing of compliance with all provisions of the Agreement between the United States of America and the United Mexican States concerning Frequency Modulation Broadcasting in the 88 to 108 MHz band.

Exhibit No.

SECTION V-B - FM BROADCAST ENGINEERING DATA (Page 5)

20. Is the proposed antenna location within 320 kilometers of the common border between the United States and Canada? ☐ Yes ☐ No

If Yes, attach as an Exhibit a showing of compliance with all provisions of the Working Agreement for Allocation of FM Broadcasting Stations on Channels 201-300 under The Canada-United States FM Agreement of 1947.

Exhibit No.

21. If the proposed operation is for a channel in the range from channel 201 through 220 (88.1 through 91.9 MHz), or if this proposed operation is for a class D station in the range from Channel 221 through 300 (92.1 through 107.9 MHz), attach as an Exhibit a complete allocation study to establish the lack of prohibited overlap of contours with other U.S. stations. The allocation study should include the following:

Exhibit No.

- (a) The normally protected interference-free and the interfering contours for the proposed operation along all azimuths.
- (b) Complete normally protected interference-free contours of all other proposals and existing stations to which objectionable interference would be caused.
- (c) Interfering contours over pertinent arcs of all other proposals and existing stations from which objectionable interference would be received.
- (d) Normally protected and interfering contours over pertinent arcs, of all other proposals and existing stations, which require study to show the absence of objectionable interference.
- (e) Plot of the transmitter location of each station or proposal requiring investigation, with identifying call letters, file numbers and operating or proposed facilities.
- (f) When necessary to show more detail, an additional allocation study will be attached utilizing a map with a larger scale to clearly show interference or absence thereof.
- (g) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire Exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.
- (h) The name of the map(s) used in the Exhibit(s).

22. With regard to any stations separated by 53 or 54 channels (10.6 or 10.8 MHz) attach as an Exhibit information required in 1/ *(separation requirements involving intermediate frequency (i.f.) interference)*.

Exhibit No.

- 23.(a) Is the proposed operation on Channel 218, 219, or 220?

☐ Yes ☐ No

- (b) If the answer to (a) is yes, does the proposed operation satisfy the requirements of 47 C.F.R. Section 73.207?

☐ Yes ☐ No

- (c) If the answer to (b) is yes, attach as an Exhibit information required in 1/ regarding separation requirements with respect to stations on Channels 221, 222 and 223.

Exhibit No.

- (d) If the answer to (b) is no, attach as an Exhibit a statement describing the short spacing(s) and how it or they arose.

Exhibit No.

1/ A showing that the proposed operation meets the minimum distance separation requirements. Include existing stations, proposed stations, and cities which appear in the Table of Allotments; the location and geographic coordinates of each antenna, proposed antenna or reference point, as appropriate; and distance to each from proposed antenna location.



# SECTION V-B - FM BROADCAST ENGINEERING DATA (Page 6)

(e) If authorization pursuant to 47 C.F.R. Section 73.215 is requested, attach as an Exhibit a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following:

Exhibit No.

- (1) Protected and interfering contours, in all directions (360 ), for the proposed operation.
- (2) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as transmitter location.
- (3) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.
- (4) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.
- (5) The official title(s) of the map(s) used in the exhibits(s).

24. Is the proposed station for a channel in the range from Channel 201 to 220 (88.1 through 91.9 MHz) and the proposed antenna location within the distance to an affected TV Channel 6 station(s) as defined in 47 C.F.R. Section 73.525?

☐ Yes ☐ No

If Yes, attach as an Exhibit either a TV Channel 6 agreement letter dated and signed by both parties or a map and an engineering statement with calculations demonstrating compliance with 47 C.F.R. Section 73.525 for each affected TV Channel 6 station.

Exhibit No.

25. Is the proposed station for a channel in the range from Channel 221 to 300 (92.1-107.9 MHz)?

☐ Yes ☐ No

If Yes, attach as an Exhibit information required in 1/. (Except for Class D (secondary) proposals.)

Exhibit No.

26. Environmental Statement (See 47 C.F.R. Section 1.1307 et seq.)

Would a Commission grant of this application come within Section 1.1307 of the FCC Rules, such that it may have a significant environmental impact?

☐ Yes ☐ No

If you answer Yes, submit as an Exhibit an Environmental Assessment required by Section 1.1311.

Exhibit No.

If No, explain briefly why not.

## CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation, I have examined the foregoing and found it to be accurate and true to the best of my knowledge and belief.

Name (Typed or Printed)	Relationship to Applicant (e.g., Consulting Engineer)
Signature	Address (Include ZIP Code)
Date	Telephone No. (Include Area Code)

# Section V-C - TV BROADCAST ENGINEERING DATA

FOR COMMISSION USE ONLY

File No. \_\_\_\_\_

ASB Referral Date \_\_\_\_\_

Referred by \_\_\_\_\_

Name of Applicant \_\_\_\_\_

Call letters *if issued* \_\_\_\_\_

Purpose of Application *(check appropriate box)*:

- |  |  |
|--|--|
| <input type="checkbox"/> Construct a new (main) facility                       | <input type="checkbox"/> Install a new auxiliary antenna                           |
| <input type="checkbox"/> Modify existing construction permit for main facility | <input type="checkbox"/> Modify existing construction permit for auxiliary antenna |
| <input type="checkbox"/> Modify licensed main facility                         | <input type="checkbox"/> Modify licensed auxiliary antenna                         |

If purpose is to modify, indicate nature of change(s) by checking appropriate box(es), and specify the file number(s) of the authorization(s) affected:

- |   |   |
|---|---|
| <input type="checkbox"/> Antenna supporting-structure height  | <input type="checkbox"/> Effective radiated power         |
| <input type="checkbox"/> Antenna height above average terrain | <input type="checkbox"/> Frequency                        |
| <input type="checkbox"/> Antenna location                     | <input type="checkbox"/> Antenna system                   |
| <input type="checkbox"/> Main Studio location                 | <input type="checkbox"/> Other <i>(Summarize briefly)</i> |

File Number(s) \_\_\_\_\_

## 1. Allocation:

Channel No. _____	Offset	Principal community to be served:	Zone
	<i>(check one)</i>		<i>(check one)</i>
	<input type="checkbox"/> Plus		<input type="checkbox"/> I
	<input type="checkbox"/> Minus		<input type="checkbox"/> II
	<input type="checkbox"/> Zero		<input type="checkbox"/> III

Principal community to be served:		
City	County	State

## 2. Exact location of antenna:

(a) Specify address, town or city, county and state. If no address, specify distance and bearing to the nearest landmark.

(b) Geographical coordinates (to nearest second). If mounted on element of an AM array, specify coordinates of center of array. Otherwise, specify tower location. Specify South Latitude and East Longitude where applicable; otherwise, North Latitude and West Longitude will be presumed.

Latitude	Longitude
----------	-----------

3. Is the supporting structure the same as that of another station(s) or proposed in another pending application(s)?

☐ Yes ☐ No

If Yes, give call letter(s) or file number(s) or both. \_\_\_\_\_

If proposal involves a change in height of an existing structure, specify existing height above ground level, including antenna, all other appurtenances, and lighting, if any. \_\_\_\_\_

SECTION V-C - TV BROADCAST ENGINEERING DATA (Page 2)

4. Does the application propose to correct previous site coordinates?

☐ Yes ☐ No

If Yes, list old coordinates.

Latitude                      °                      '                      "	Longitude                      °                      '                      "
---	--

5. Has the FAA been notified of the proposed construction?

☐ Yes ☐ No

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No.

Date \_\_\_\_\_ Office where filed \_\_\_\_\_

6. List all landing areas within 8 km of antenna site. Specify distance and bearing from structure to nearest point of the nearest runway.

Landing Area	Distance (km)	Bearing (degrees True)
(a) _____	_____	_____
(b) _____	_____	_____

7. (a) Elevation: *(to the nearest meter)*

(1) of site above mean sea level; \_\_\_\_\_ meters

(2) of the top of supporting structure above ground (including antenna, all other appurtenances, and lighting, if any); and \_\_\_\_\_ meters

(3) of the top of supporting structure above mean sea level  $[(aX1) + (aX2)]$ . \_\_\_\_\_ meters

(b) Height of radiation center: *(to the nearest meter)*

(1) above ground; \_\_\_\_\_ meters

(2) above mean sea level  $[(aX1) + (bX1)]$ ; and \_\_\_\_\_ meters

(3) above average terrain. \_\_\_\_\_ meters

8. Attach as an Exhibit sketch(es) of the supporting structure, labelling all elevations required in Question 7 above, except item 7(bX3). If mounted on an AM directional-array element, specify heights and orientations of all array towers, as well as location of TV radiator.

Exhibit No.

9. Maximum visual effective radiated power \_\_\_\_\_ kW

SECTION V-C - TV BROADCAST ENGINEERING DATA (Page 3)

10. Antenna:

(a) Manufacturer \_\_\_\_\_ (b) Model No. \_\_\_\_\_

(c) Is a directional antenna proposed?

☐ Yes ☐ No

If Yes, specify major lobe azimuth(s) \_\_\_\_\_ degrees True and attach as an Exhibit all data specified in 47 C.F.R. Section 73.685.

Exhibit No. \_\_\_\_\_

(d) Is electrical beam tilt proposed?

☐ Yes ☐ No

If Yes, specify \_\_\_\_\_ degrees electrical beam tilt and attach as an Exhibit all data specified in 47 C.F.R. Section 73.685.

Exhibit No. \_\_\_\_\_

(e) Is mechanical beam tilt proposed?

☐ Yes ☐ No

If Yes, specify \_\_\_\_\_ degrees mechanical beam tilt toward azimuth \_\_\_\_\_ degrees True and attach as an Exhibit all data specified in 47 C.F.R. Section 73.685.

Exhibit No. \_\_\_\_\_

(f) The proposed antenna is: (check only one box)

☐ horizontally polarized ☐ circularly polarized ☐ elliptically polarized

11. Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.685(a) and (b)?

☐ Yes ☐ No

If No, attach as an Exhibit justification therefor, including amounts and percentages of population and area that will not receive City Grade service.

Exhibit No. \_\_\_\_\_

12. Will the main studio be located within the station's predicted principal community contour as defined by 47 C.F.R. Section 73.685(a)?

☐ Yes ☐ No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125.

Exhibit No. \_\_\_\_\_

13. Does the proposed facility satisfy the requirement of 47 C.F.R. Section 73.610?

☐ Yes ☐ No

If No, attach as an Exhibit justification therefor, including a summary of any previously granted waiver(s).

Exhibit No. \_\_\_\_\_

14. Are there: (a) within 60 meters of the proposed antenna, any proposed or authorized FM or TV transmitters; or (b) in the general vicinity, any nonbroadcast (except citizens band or amateur) radio stations or any established commercial or government receiving stations?

☐ Yes ☐ No

If Yes, attach as an Exhibit a description of the expected, undesired effects of operations and remedial steps to be pursued, if necessary, and a statement accepting full responsibility for the elimination of any objectionable interference (including that caused by intermodulation) to facilities in existence or authorized prior to grant of this application. (See 47 C.F.R. Sections 73.685(d) and (g).)

Exhibit No. \_\_\_\_\_

15. Attach as an Exhibit a topographic map that shows clearly, legibly, and accurately, the location of the proposed transmitting antenna. This map must comply with the provisions of 47 C.F.R. Section 73.684(g). The map must further display clearly and legibly the original printed contour lines and data as well as latitude and longitude markings, and must bear a scale of distance in kilometers.

Exhibit No. \_\_\_\_\_

SECTION V-C - TV BROADCAST ENGINEERING DATA (Page 4)

16. Attach as an Exhibit a map (*Sectional Aeronautical Chart or equivalent*) which shows clearly, legibly and accurately, and with the original printed latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. \_\_\_\_\_

- (a) The proposed transmitter location, and the radials along which profile graphs have been prepared;
- (b) The City Grade, Grade A and Grade B predicted contours; and
- (c) The legal boundaries of the principal community to be served.

17. Specify area in square kilometers (1 sq. mi. = 2.59 sq. km.) and population (*latest census*) within the predicted Grade B contour.

Area \_\_\_\_\_ sq. km.

Population \_\_\_\_\_

18. For an application involving an auxiliary facility only, attach as an Exhibit a map (*Sectional Aeronautical Chart or equivalent*) that shows clearly, legibly, and accurately, and with latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. \_\_\_\_\_

- (a) The proposed auxiliary Grade B contour; and
- (b) The Grade B contour of the licensed main facility for which the applied-for facility will be the auxiliary.

(Main facility license file number \_\_\_\_\_)

19. Terrain and Coverage Data (*To be calculated in accordance with 47 C.F.R. Section 73.684.*)

Source of terrain data: (*check only one box below*)

☐ Linearly interpolated 30-second database (Source: \_\_\_\_\_)

☐ 7.5 minute topographic map

☐ Other (*briefly summarize*) \_\_\_\_\_

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 3 to 16 km (meters)	Predicted Distances		
		To the City Grade Contour (kilometers)	To the Grade A Contour (kilometers)	To the Grade B Contour (kilometers)
*				
0				
45				
90				
135				
180				
225				
270				
315				

\*Radial through principal community, if not one of the major radials. This radial should NOT be included in calculation of HAAT.

SECTION V-C - TV BROADCAST ENGINEERING DATA (Page 5)

20. Environmental Statement (See 47 C.F.R. Section 1.1301 et seq.)

Would a Commission grant of this application come within 47 C.F.R. Section 1.1307, such that it may have a significant environmental impact?

☐ Yes ☐ No

If you answer Yes, submit as an Exhibit an Environmental Assessment required by 47 C.F.R. Section 1.1311.

Exhibit No.

If No, explain briefly why not.

CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation, I have examined the foregoing and found it to be accurate and true to the best of my knowledge and belief.

Name (Typed or Printed)	Relationship to Applicant (e.g., Consulting Engineer)
Signature	Address (Include ZIP Code)
Date	Telephone No. (Include Area Code) ( )



## SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. Does the applicant propose to employ five or more full-time employees?

☐ Yes ☐ No

If Yes, the applicant must include an EEO program called for in the separate Broadcast Equal Employment Opportunity Program Report (FCC 396-A).

## SECTION VII - CERTIFICATION

1. Has or will the applicant comply with the public notice requirements of 47 C.F.R. Section 73.3580?

☐ Yes ☐ No

2. By checking Yes, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☐ Yes ☐ No

The APPLICANT hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

The APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. Section 1.65, the APPLICANT has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).**

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Name of Applicant	Title
Signature	Date

## FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of this application is in the public interest. In reaching that determination, or for law enforcement purposes, it may be necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to the Commission's rules. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to vary from 78 to 302 hours 20 minutes with an average of 171 hours 36 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, can be sent to the Federal Communications Commission, Information Resources Branch, Room 416, Paperwork Reduction Project, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0034), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980 P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.



**Instructions for FCC 349**  
**Application for Authority to Construct or Make**  
**Changes in an FM Translator or FM Booster Station**

(FCC Form 349 attached)

Public reporting burden for this collection of information is estimated to average 35 hours and 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0405), Washington, D.C. 20503.

**GENERAL INSTRUCTIONS**

A. This FCC Form is to be used to apply for authority to construct a new FM translator or booster broadcast station, or to make changes in the existing facilities of such stations. It consists of the following Sections:

- I. GENERAL INFORMATION
- II. ENGINEERING DATA AND ANTENNA AND SITE INFORMATION
- III. LEGAL QUALIFICATIONS
- IV. CERTIFICATION

An applicant for a change in facilities need not file Section III.

B. Many references to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with the current broadcast rules contained in 47 Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 17 "Construction, Marking, and Lighting of Antenna Structures"
- (4) Part 73 "Radio Broadcast Services"
- (5) Part 74 "Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

C. Prepare an original and two copies of this form and all exhibits. The application with all required exhibits should be filed with the Federal Communications Commission in the manner and at the location specified in 47 C.F.R. Section 0.401.

D. By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, applicants seeking to construct an FM translator station or FM booster station or to make a major change in the authorized facilities of an FM translator station are required to pay and submit a fee with the filing of FCC 349. However, governmental entities, which include any possession, state, city, county, town, village, municipal organization or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs, are exempt from this fee. Also exempted from this fee are noncommercial educational FM broadcast station licensees seeking authority to construct an FM translator or booster station provided those stations are owned and operated by the licensee of the station being rebroadcast. A licensee or permittee of an FM translator or FM booster station, which is filing a major change application and which earlier obtained a fee refund because of a NTIA facilities grant, is similarly fee exempt. See 47 C.F.R. Section 1.1112. However, permittees and licensees of FM translator stations that are not owned and operated by the station being rebroadcast, and that are operating on commercial channels, must pay all applicable fees.

To avail itself of any fee exemption, the applicant must indicate its eligibility by checking the appropriate box in response to Question 2(B), Section I. FCC Form 349 applications not involving the payment of a fee can be hand-delivered or mailed to the FCC's Washington, D.C. offices. See 47 C.F.R. Section 0.401(a).

The Commission's fee collection program utilizes a U.S. Treasury lockbox bank for maximum efficiency of collection and processing. All FCC Form 349 applications, which require the remittance of a fee, must be submitted to the appropriate post office box address. See 47 C.F.R. Section 0.401(b). A listing of the required fee and the address to which FCC Form 349 should be mailed or otherwise delivered is also set forth in the "Mass Media Services Fee Filing Guide" which is obtainable either by writing to the Commission's Form Distribution Center, 2803 52nd Avenue, Hyattsville, Maryland 20781 or by calling Telephone No. (202) 632-FORM and leaving your request on the answering machine provided for this purpose. The Fee Filing Guide also contains a list of the Fee Type Codes needed to complete this application.

Payment of any required fee can be made by check, bank draft or money order payable to the Federal Communications Commission, denominated in U.S. dollars, and drawn upon a U.S. financial institution. No postdated, altered or third-party checks will be accepted. DO NOT SEND CASH.

Parties hand-delivering FCC Form 349's may receive dated receipt copies by presenting copies of the applications to the acceptance clerk at the time of delivery. For mailed-in applications, a "return copy" of the application can be furnished provided the applicant clearly identifies the "return copy" and attaches to it a stamped, self-addressed envelope. Only one piece of paper per application will be stamped for receipt purposes.

For further information regarding the applicability of a fee, the amount of the fee or the payment of the fee, refer to the "Mass Media Services Fee Filing Guide."

- E. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies. Include all information called for by this application. If any portions of the application are not applicable, so state. **Defective or incomplete applications will be returned without consideration.** Furthermore, inadvertently accepted applications are subject to dismissal.
- F. In accordance with 47 C.F.R. Section 1.65, the applicant has a **continuing obligation** to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

### INSTRUCTIONS FOR SECTION I - GENERAL INFORMATION

- A. The name of the applicant stated in Section I shall be:
- (1) if a corporation, the EXACT corporate name;
  - (2) if a partnership, the names of all partners, and the name under which the partnership does business;
  - (3) if an association, the name of the individual(s) authorized to act on behalf of the association, and the name of the association;
  - (4) if an individual, the full legal name.
- In all other sections of this form, the organization name alone will be sufficient for identification of the applicant.
- B. In Section I use only those state abbreviations approved by the U.S. Postal Service.
- C. FM translator stations operate for the purpose of retransmitting the signals of an FM radio broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude, in order to provide FM broadcast service to the general public. FM broadcast booster stations operate for the sole purpose of retransmitting the signals of an FM radio broadcast station by amplifying and reradiating such signals without significantly altering any characteristic of the incoming signal other than its amplitude. Only permittees and licensees of primary FM broadcast stations may apply for FM broadcast booster station authorizations. Eligibility for FM translator station authorizations is set out in 47 C.F.R. Section 74.1232. Definition of a major change is set out in 47 C.F.R. Section 74.1233. Applications for FM booster stations and FM translator stations may be filed at any time.

### INSTRUCTIONS FOR SECTION II - ENGINEERING DATA

- A. Directional antenna applicants must provide the following:
- (1) A complete description of the antenna system, including the manufacturer and model number of the proposed directional antenna. For "custom" and composite antennas, you must provide a full description of the design of the antenna.
  - (2) A relative field horizontal plane pattern of the proposed directional antenna. A single pattern encompassing both the horizontal and vertical polarization is required, rather than separate patterns for horizontal and vertical polarization. The plot of the pattern must be oriented such that 0 degrees corresponds to the direction of maximum radiation or, alternatively, in the case of an asymmetrical antenna pattern, the plot must be oriented such that 0 degrees corresponds to the actual azimuth with respect to true North. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas.
  - (3) A tabulation of the relative field pattern of the proposed directional antenna. The tabulation must use the same zero degree reference as the plotted pattern, and must contain values for at least every 10 degrees. In addition, tabulated values of all maxima and minima, with their corresponding azimuths, must be submitted.

- (4) Orientation of the major radiation lobe(s) with respect to true north must be clearly indicated on either the plot or the tabulation.

For further information, see 47 C.F.R. Sections 74.1235 and 73.316(cX1)- (cX3).

B. The following guidance is provided for the questions regarding environmental impact (Section II, Question 18):

- (1) Place an (X) in the appropriate box to indicate whether a Commission grant of the proposed communication facility(ies) may have a significant environmental impact as defined by 47 C.F.R. Section 1.1307. Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:
- (a) A facility is to be located in sensitive areas (e.g., an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.
  - (b) A facility whose construction will involve significant change in surface features.
  - (c) The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.
  - (d) The facilities or their operation will cause exposure of workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95. 1-1982), by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017. NOTE: This paragraph applies only to FM booster and translator stations transmitting with an ERP in excess of 100 watts. See 47 C.F.R. Section 1.1307(b) - Note 1.
- (2) If you answer Yes, submit the required Environmental Assessment (EA). Include in the EA the following information for antenna towers:
- (a) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.
  - (b) A statement regarding the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental impact.
  - (c) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.
  - (d) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects, and any alternative sites or facilities which have been or might reasonably be considered.
- (3) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness area, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).
- (4) The EA shall also be accompanied with evidence of site approval, as obtained from local or federal land use authorities.
- (5) To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA. However, adequate cross-reference to such information shall be supplied.



- (6) An EA does not need to be submitted to the Commission if another agency of the Federal Government has assumed responsibility: (a) for determining whether the facilities in question will have a significant effect on the quality of the human environment and, (b) if it will affect the environment, for invoking the environmental impact statement process.

### INSTRUCTIONS FOR SECTION III - LEGAL QUALIFICATIONS

- A. As used in Section III, the words "party to this application" have the following meanings:

**APPLICANT:** The individual or entity seeking the proposed facilities.

**INDIVIDUAL APPLICANT:** The natural person applying for the facilities in his or her own right.

**PARTNERSHIP APPLICANT:** All partners, including limited partners, having an interest of one percent or more in profits. If any partner is a corporation or other entity, the definitions set forth below will apply.

**CORPORATE APPLICANT:** All officers and directors, and all persons or entities who are the beneficial or record owners or have the right to vote any capital stock, membership or ownership interests of one percent or more, or subscribers to such interests, shall be considered parties to this application. If any corporation or other legal entity owns stock in the applicant, its officers, directors and persons or entities who are the beneficial or record owners or have the right to vote capital stock, membership or ownership interests of one percent or more, or subscribers to such interests of that entity, shall also be considered parties to this application.

**ANY OTHER APPLICANT:** All executive officers, members of the governing board, and owners or subscribers to membership or ownership interests of one percent or more in the applicant.

- B. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit to an alien, the representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any corporation of which any officer or director is an alien or of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or by a corporation organized under the laws of a foreign country. This proscription could likewise apply to any corporation directly or indirectly controlled by another corporation of which (a) any officer is, (b) more than 25% of the directors are, or (c) more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.

Section 310 of the Communications Act has been interpreted with respect to limited partnerships to prohibit equity contributions or voting interests of insulated alien limited partners, which in the aggregate exceed 20% in a broadcast licensee or which in the aggregate exceed 25% in a partnership which holds a controlling interest in a broadcast licensee. The interests held by aliens in a licensee through intervening domestically organized limited partnerships can be determined by multiplication of any intervening insulated interests. See Declaratory Ruling Concerning Citizenship Requirements under Section 310, 103 FCC 2d 511 (1985).

- C. The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.
- D. Commission policies and litigation reporting requirements for broadcast applicants focus on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct. In responding to question 4, applicants are advised that the parameters of the Commission's policies and requirements regarding character qualifications are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990).

For the purposes of this question, the term "parties to the application" includes any individual or entity whose ownership or positional interest in the applicant is cognizable under the Commission's multiple ownership rules. See in this regard Report and Order in MM Docket No. 83-46, 97 FCC 2d 997 (1984), reconsideration granted in part, 58 RR 2d 604 (1985), further modified on reconsideration, 61 RR 2d 739 (1986).

### INSTRUCTIONS FOR SECTION IV - CERTIFICATION

- A. All applicants filing Form 349 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their



financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.

An applicant for a new station must attest it has sufficient net liquid assets on hand, or committed sources of funds to construct the proposed facility and operate for three months, without revenue. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.

Documentation supporting the attestation of financial qualification need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.

It is Commission policy not to grant extensions of time for construction on the basis of financial inability or unwillingness to construct.

- B. Section 325(a) of the Communications Act of 1934, as amended, prohibits the rebroadcast of the programs of a broadcast station without the express authority of the originating station. If the applicant is not the licensee of the primary station, written authority must be obtained prior to filing this application.
- C. An applicant need not have a binding agreement or absolute assurance of the availability of the transmitter site it proposes to utilize. However, the applicant must be able to show that it has obtained reasonable assurance that the proposed site is available to it. The Commission's requirements will be satisfied where an applicant has contacted the property owner or the owner's representative and has obtained reasonable assurance, in good faith, that the proposed site will be available for the intended purpose.

**NOTE:** Certification of site availability is required only in applications for authority to construct a new station or to change the site of an existing facility.

- D. Applicants for new translator and FM booster broadcast stations or for a major modification of the authorized facilities of such stations are required to give local notice in a newspaper of general circulation in the community or area to be served. This publication requirement also applies with respect to major amendments, as defined in 47 C.F.R. Section 73.3573(b). Completion of publication may occur within 30 days before or after tendering of the application. Compliance or intent to comply with the public notice requirements must be certified in Section IV of this application. The information that must be contained in the notice of filing is described in 47 C.F.R. Section 73.3580(g). Proof of publication need not be filed with this application.
- E. The original of this application form must be signed and dated by the applicant. The required copies can be conformed. See 47 C.F.R. Section 73.3513.

#### **FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, analysts, engineers, and applications examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken, or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

**THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(a)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.**

Approved by OMB  
3060-0405  
Expires 3/31/94

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

**FCC 349**

**APPLICATION FOR AUTHORITY TO CONSTRUCT  
OR MAKE CHANGES IN AN  
FM TRANSLATOR OR FM BOOSTER STATION**

FOR  
FCC  
USE  
ONLY

FOR COMMISSION USE ONLY

FILE NO.

**Section I - GENERAL INFORMATION**

1. APPLICANT NAME

MAILING ADDRESS (Line 1) (Maximum 35 characters)

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

CITY

STATE OR COUNTRY (if foreign address)

ZIP CODE

TELEPHONE NUMBER (include area code)

CALL LETTERS OR OTHER FCC IDENTIFIER (IF APPLICABLE)

**FOR MAILING THIS APPLICATION, SEE GENERAL INSTRUCTION D.**

2. A. Is a fee submitted with this application?

☐ Yes ☐ No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112) and go to Question 3.

☐ Governmental Entity

☐ Noncommercial educational licensee

☐ NTIA facilities funding

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

(A)

(B)

(C)

FEE TYPE CODE

FEE MULTIPLE  
(if required)

FEE DUE FOR FEE TYPE  
CODE IN COLUMN (A)

FOR FCC USE ONLY

0 0 0 1

\$

3. This application is for: (check one box)

☐ FM Translator

☐ FM Booster

A. Channel No.

B. Community of license:

City

State

**Section I (Page 2)**

C. Check one of the following boxes:

- ☐ **NEW** Station
- ☐ **MODIFICATION** of Construction Permit (CP)  
(Check this box only if CP is not covered by an operating license)

File No. of Construction Permit: \_\_\_\_\_

- ☐ **MAJOR CHANGE** in licensed facilities; call sign: \_\_\_\_\_
- ☐ **MINOR CHANGE** in licensed facilities; call sign: \_\_\_\_\_
- ☐ **AMENDMENT** of pending application

Application Reference No. \_\_\_\_\_

For amendments to a previously filed application, submit only Section I and those portions of the form that contain the amended information.

4. (a) To the applicant's knowledge, is this application mutually exclusive with a renewal application? ☐ Yes ☐ No

(b) To the applicant's knowledge, is this application mutually exclusive with another application(s)? ☐ Yes ☐ No

If the answer to question 4(a) or 4(b) is Yes, state the following information:

Call letters or File No.	Community of License	
	City	State
(a)		
(b)		

# SECTION II - ENGINEERING DATA AND ANTENNA AND SITE INFORMATION

## 1. Facilities requested:

(a)	Output Channel No.	Transmitter Rated Power Output	Proposed Community(ies) to be served	
		W	City	State

(b) Frequency \_\_\_\_\_ MHz

Primary station (station to be rebroadcast)			
Call Sign	City	State	Frequency MHz

(c) Input Channel No. \_\_\_\_\_ Input Channel Frequency MHz \_\_\_\_\_

If station is to operate via another translator station, indicate call sign and location of final intermediate translator.

Call Sign \_\_\_\_\_ Location \_\_\_\_\_

## 2. Proposed transmitting antenna location:

City	State	County
Address or other description of location:		Geographical coordinates of transmitting antenna to nearest second
		North Latitude _____ West Longitude _____

Attach as an Exhibit a map or maps (such as the Geological Survey topographic quadrangle map) of the area of the proposed transmitting antenna location, showing thereon the following data:

Exhibit No. \_\_\_\_\_

a. Scale in kilometers

b. Proposed transmitting antenna location accurately plotted.

For applicants proposing changes that will result in change of coverage, include in this Exhibit the location of the proposed and existing transmitting antenna sites and the proposed and existing coverage contours. See 47 C.F.R. Section 74.1233(a).

3. Transmitter:	Make	Type No.		Output Power P
				kilowatts
4. Transmission line:			Length	Rated efficiency E for length given (decimal fraction)
			meters	

5. Transmitting antenna ☐ Directional "Off-the-shelf" (submit Manufacturer's patterns & tabulations) ☐ Directional Composite (Multiple Antennae) (submit Manufacturer's patterns & tabulations) ☐ Non-Directional

Manufacturer		Model		Description <sup>1</sup>	
Overall structure height above ground <sup>2</sup>	Elevation of Site <sup>3</sup>	Power gain G <sup>4</sup>		HAAT	
meters	meters	H	V		

Effective radiated power (ERP)

Height of antenna radiation center

(ERP=P X E X G) \_\_\_\_\_ kilowatts (H) \_\_\_\_\_ above above mean sea level \_\_\_\_\_ meters (H)  
 \_\_\_\_\_ kilowatts (V) \_\_\_\_\_ meters (V)

1 Give basic type using general descriptive terms such as half-wave dipole, "bow-tie" with screen, corner reflector, 10 element Yagi, 4 element in-phase array, two stacked 5 element Yagis, etc.

2 Show height to topmost portion of structure in meters, including highest top mounted antenna and beacon if any.

3 Show the ground elevation above mean sea level in meters at the base of the transmitting antenna supporting structure.

4 The multiplier in lobe of maximum radiation relative to a halfwave dipole. Give the actual power gain toward the radio horizon.

# Section II (Page 2)

6. Attach as an Exhibit a vertical plane sketch for the proposed total structure(s), including supporting structure(s), giving height of center of radiation above ground, overall height of structure above ground, including lighting beacon (if any) and height above mean sea level in meters for all significant features for BOTH RECEIVING AND TRANSMITTING ANTENNAS. Also indicate any horizontal separation between receiving and transmitting antennas.

Exhibit No.

7. Will the proposed antenna supporting structure be shared with an AM radio station?

☐ Yes ☐ No

If yes, list the call sign(s) and class of such station(s).

8. Is a directional antenna proposed?

☐ Yes ☐ No

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Sections 73.316(cX1)-(cX3), including plot(s) and tabulations of the relative field. See instructions for Section II - Engineering Data, paragraph (A).

Exhibit No.

9. Are there any terrain features between the proposed transmitting site and the community to be served which would interfere with line-of-sight transmission to any part of the principal community?

☐ Yes ☐ No

If the answer is "Yes", attach as an Exhibit a description of the extent of the area affected.

Exhibit No.

10. Supply terrain and coverage data (to be calculated in accordance with 47 C.F.R. Section 73.313).

Source of terrain data: (check only one box below)

☐ Linearly Interpolated 30-second database (Source \_\_\_\_\_)

☐ 7.5 minute topographic map

☐ Other (briefly summarize)

Radial bearing (degrees True) 1/		Average Elevation of Radial in meters (3 to 16 km) AMSL	Height of Radiation Center above average elevation of radial from 3 to 16 km (meters)	Predicted distance to the protected contours (0.5, 0.7 or 1.0 mV/m) 2/ (kilometers)
Booster	Translator			
0	0			
45	30			
90	60			
135	90			
180	120			
225	150			
270	180			
315	210			
	240			
	270			
	300			
	330			

1/ Additional radiaXs) and related information should be provided when necessary to show interference protection.

2/ Protected contours vary depending on the class of station involved. Commercial Class B FM stations - protected contour 0.5 mV/M; Commercial Class B1 FM stations - protected contour 0.7 mV/M; all other classes of FM stations - protected contour 1 mV/m.

Section II (Page 3)

Based on the figures obtained from the above table, calculate the appropriate coverage contours of the translator station (see 47 C.F.R. Section 73.333) and answer questions 11 and 12.

11. Attach as an Exhibit a map (Sectional Aeronautical Chart or equivalent) that shows clearly, legibly and accurately, and with latitude and longitude markings and a scale of distance in kilometers:

Exhibit No.

- (a) The proposed coverage contour; and  
(b) the protected contour of the licensed primary station to be rebroadcast. (If the primary station is authorized with facilities in excess of those specified by 47 C.F.R. Section 73.211, see Note to 47 C.F.R. Section 74.1231(h)).

12. Based on the above, is the area to be served by the translator or booster station entirely within the primary station's protected contour?

☐ Yes ☐ No

13. Is the applicant specifying a channel that is 53 or 54 channels removed from the channel of any FM radio broadcast station in the area of operations?

☐ Yes ☐ No

If Yes, attach an Exhibit showing compliance with 47 C.F.R. Section 73.207.

Exhibit No.

(Translators will be treated as Class A stations provided, however, that translators operating with 10 watts or less ERP will be treated as Class D stations and will not be subject to IF. frequency separation requirements.)

14. Does the applicant have any interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator station? See 47 C.F.R. Section 74.1232(d).

☐ Yes ☐ No

If Yes, submit an Exhibit, showing the technical need for the additional translator.

Exhibit No.

15. For non-commercial educational applicants intending to operate on reserved channels 201-220, will the proposed operation be within the threshold distance of a TV Channel 6 station as set forth by 47 C.F.R. Section 74.1205(a)?

☐ Yes ☐ No

If Yes, submit an exhibit showing compliance with paragraph (b), (c), or (d) of 47 C.F.R. Section 74.1205.

Exhibit No.

If applicant's compliance is based on 47 C.F.R. Section 74.1205(b) do you certify that you have coordinated your antenna with the affected TV Channel 6 station?

☐ Yes ☐ No

16. For non-commercial educational applicants intending to operate on reserved channels (201-220) and intending to use alternative signal delivery, attach an exhibit showing the distance between the transmitter site of the proposed translator station and the predicted 1 mV/m contour of the primary station.

Exhibit No.

If this distance is greater than 80 km from the predicted 1 mV/m contour of the primary station being rebroadcast or within 160 km of the transmitter site of any authorized full service non-commercial educational station, applicant must include in its Exhibit a showing that an alternative frequency can either be used at the same site as the proposed translator's transmitter location or at another site and the frequency can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour.

NOTE: Applications filed after October 1, 1992, will not need to make this showing.

17. Has the FAA been notified of proposed construction?

☐ Yes ☐ No

If Yes, give date and office where notice was filed: \_\_\_\_\_



## 18. Environmental Statement (See 47 C.F.R. Section 1.1301 et seq.)

Would a Commission grant of this application come within 47 C.F.R. 1.1307, such that it may have a significant environmental impact, including exposure to workers or the general public to harmful nonionizing radiation levels?

☐ Yes ☐ No

If Yes, submit as an Exhibit an Environmental Assessment as required by Section 1.1311. If No, explain briefly why not.

☐ Exhibit No.

## 19. Unattended operation:

Is unattended operation proposed?

☐ Yes ☐ No

(a) If Yes, and this application is for authority to construct a new station or to make changes in the facilities of an authorized station which proposes unattended operation for the first time, the applicant certifies that it will comply with the requirements of 47 C.F.R. Section 74.1234 (FM Translators) concerning unattended operation.

☐ Yes ☐ No

(b) In the space below state the name, address and telephone number of a person or persons who may be contacted in an emergency to suspend operation of the translator should such action be deemed necessary by the Commission.

Name	Address (street or other description)	City	State	Telephone No. (include area code)

## 20. Has the applicant proposed to use equipment that is type accepted or notified in accordance with the provisions of 47 C.F.R. Parts 73 and 74?

☐ Yes ☐ No

If No, and the equipment is to be notified or type accepted under 47 C.F.R. Section 74.1250(c), include the date the equipment was submitted to the FCC Laboratory for approval or the date the manufacturer commenced the notification process.

## CERTIFICATION

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Telephone No. (include area code)

☐ Technical Director

☐ Registered Professional Engineer

☐ Consulting Engineer

☐ Chief Operator

☐ Other (specify)

## SECTION III - LEGAL QUALIFICATIONS

NOTE: Applicants for new stations only:

1. Applicant is (check one of the following):

- |                                     |  |   |
|-------------------------------------|--|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> General Partnership | <input type="checkbox"/> Corporation                |
| <input type="checkbox"/> Other      | <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Unincorporated Association |

If the applicant is a legal entity other than an individual, partnership, corporation or unincorporated association, describe in an Exhibit the nature of the applicant.

Exhibit No.

2. Is the applicant for an FM translator station the licensee or permittee of the commercial primary station being rebroadcast or does the applicant have any person or entity having any interest or connection with the commercial primary station being rebroadcast?

☐ Yes ☐ No

If Yes, will the coverage contour of the translator station extend beyond the protected contour of the commercial primary station being rebroadcast?

☐ Yes ☐ No

NOTE: Applicants who answer Yes to the above questions are prohibited from receiving any support, before or after construction, either directly or indirectly from the commercial primary station being rebroadcast. Interested and connected parties include group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. See 47 C.F.R. Section 74.1232(e).

3. (a) Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments?

☐ Yes ☐ No

(b) Will any funds, credit, or other financial assistance for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

☐ Yes ☐ No

If Yes, provide particulars as an Exhibit.

Exhibit No.

4. (a) Has an adverse finding been made or an adverse final action taken by any court or administrative body with respect to the applicant or parties to this application in a civil or criminal proceeding, brought under the provisions of any law related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☐ No

(b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a)?

☐ Yes ☐ No

If the answer to (a) or (b) is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c) in the case of adjudicated proceedings, the applicant need only provide: (1) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) a description of the current status or disposition of the previously reported matter.

Exhibit No.

**SECTION III - LEGAL QUALIFICATIONS (Page 2)**

5. Has the applicant or any other party to this application had any interest in:

(a) a broadcast application which has been dismissed with prejudice by the Commission?

☐ Yes ☐ No

(b) a broadcast application which has been denied by the Commission?

☐ Yes ☐ No

(c) a broadcast station, the license for which has been revoked?

☐ Yes ☐ No

(d) a broadcast application in any Commission proceeding which left unresolved character issues against the applicant?

☐ Yes ☐ No

If the answer to any of the questions in 4 is Yes, state in an Exhibit the following:

Exhibit No.

- (i) Name of party having interest;
- (ii) Nature of interest or connection, giving dates;
- (iii) Call letters of stations or file number of application or docket number;
- (iv) Location.

## SECTION IV - CERTIFICATIONS

**Note: If this application is for a change in an operating facility, you DO NOT need to respond to Questions 1 and 2.**

1. The applicant certifies that sufficient net liquid assets are on hand or are available from committed sources to construct and operate the requested facilities for three months without revenue. ☐ Yes ☐ No
2. The applicant certifies that: (a) it has a reasonable assurance of a present firm intention for each agreement to furnish capital or purchase capital stock by parties to this application, each loan by banks, financial institutions or others and each purchase of equipment on credit; (b) it can and will meet all contractual requirements as to the collateral, guarantees, and capital investment; (c) it has determined that a reasonable assurance exists that all such (excluding banks, financial institutions and equipment manufacturers) have sufficient net liquid assets to meet these commitments. ☐ Yes ☐ No
3. The applicant, if for a commercial FM translator station with a coverage contour extending beyond the protected contour of the commercial primary station being rebroadcast, certifies that it has not received any support, before or after constructing, directly or indirectly, from the licensee/permittee of the primary station or any person with an interest or connection with the licensee or permittee of the primary station, except for technical assistance as provided for under 47 C.F.R. Section 74.1232(e). ☐ Yes ☐ No  
Exhibit No.
4. For applicants proposing translator rebroadcasts who are not the licensee of the primary station, the applicant certifies that written authority has been obtained from the licensee of the station whose programs are to be retransmitted. If No, this application is unacceptable for filing. ☐ Yes ☐ No

Primary station proposed to be rebroadcast:

Call Sign	City	State	Channel No.
-----------	------	-------	-------------

5. The applicant certifies that it has contacted an authorized spokesperson for the owner of the rights to the proposed transmitter site, and has obtained reasonable assurance that the site will be available for its use if this application is granted. ☐ Yes ☐ No

That person can be contacted at the following address and telephone number:

Name		Mailing Address or Identification	
City	State	ZIP Code	Telephone No. (include area code)

6. For new station and major change applications only, the applicant certifies that it has or will comply with the public notice requirements of 47 C.F.R. Section 73.3580. ☐ Yes ☐ No

**THE ORIGINAL OF THIS APPLICATION FORM MUST BE SIGNED AND DATED BY THE APPLICANT. THE REQUIRED COPIES CAN BE CONFORMED. SEE 47 C.F.R. SECTION 73.3513.**

The APPLICANT hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

The APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. Section 1.65, the APPLICANT has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).**

I certify that the statements in this application are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

Name of Applicant	Signature
Title	Date

# INSTRUCTIONS FOR COMPLETION OF FCC FORM 395-B

## BROADCAST STATION ANNUAL EMPLOYMENT REPORT

### 1. Who Must File

All licensees and permittees of commercial and noncommercial AM, FM, LPTV, TV and International BROADCAST stations.

### 2. What Information Must Be Filed

- a. If the filing concerns a particular reporting unit (see item 5 below) which had fewer than 5 full-time employees during the selected payroll period (see item 4 below), (a) so indicate in Section III of the form; (b) provide the pertinent identifying information asked for in Sections I and II; (c) complete and sign the certification statement in Section IV of the form. Do not provide the substantive information (statistical data) asked for in Sections V-A and V-B.
- b. If the filing concerns a particular reporting unit which had 5 or more full-time employees during the selected payroll period, (a) provide the pertinent identifying information asked for in Sections I and II, and all information asked for in Sections V-A and V-B; and (b) complete and sign the certification statement in Section IV.

### 3. When and Where to File

Send TWO copies of each Annual Employment Report required under these instructions to the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, no later than MAY 31 of each year.

### 4. Reporting Period

The employment data filed on FCC Form 395-B must reflect the employment figures from any one payroll period in January, February or March. The same payroll period should be used in each year's report.

### 5. Reporting Units

The employment data filed on FCC Form 395-B must be filed in duplicate:

- a. For each AM, FM, LPTV, TV and International Broadcast Station, whether commercial or noncommercial; except that a combined report must be filed for an AM and an FM station, both of which are: (1) under common ownership; and (2) assigned to the same principal city or to different cities within the same metropolitan statistical area.
- b. For each Headquarters Office of a multiple station owner report those employees whose primary duties lie in the operation of the individual stations. (A separate Form 395-B need not be filed to cover headquarters employees whose duties relate to the operation of an AM and an FM station covered in a combined AM-FM report under (a) above, if all such employees are included in such combined AM-FM Report).

### 6. Race/Ethnic Categories

- a. White, not of Hispanic Origin - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- b. Black, not of Hispanic Origin - A person having origins in any of the black racial groups of Africa.
- c. Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race.
- d. Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for examples, China, Japan, Korea, the Philippine Islands, and Samoa.
- e. American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

### 7. Job Categories

The following "job category definitions" are provided for your guidance and may be used in completing FCC Form 395-B. A "Comboperson" is to be listed in the job category which represents the work primarily done by that person; a "Comboperson" is to be listed only once. Specific job titles below are not all inclusive or rigid. The proper categorization of any employee depends on the kind and level of the employees' responsibilities.

- a. **Officials and Managers** - Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: Presidents and other corporate officers, general managers, station managers, controllers, chief accountants, general counsels, chief engineers, facilities managers, sales managers, business managers, promotion directors, research directors, personnel managers, news directors, operations managers, and production managers.
- b. **Professionals** - Occupations requiring either college graduation or experience of such a kind and amount as to provide a comparable background. Includes: On-air personnel, correspondents, producers, writers, editors, researchers, designers, artists, musicians, dancers, accountants, attorneys, nurses, publicists, firm buyers, rating and research analysts, systems analysts and programmers, financial analysts, state managers, cinema photographers, senior staff assistants, personnel interviewers, and continuity directors.
- c. **Technicians** - Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes

**DO NOT RETURN THESE INSTRUCTIONS TO THE COMMISSION**



- and junior colleges, or through equivalent on-the-job training. Includes: Engineers, technicians and engineering aides, including: transmitter, studio maintenance and master control engineers, and news camera, news sound, film lab and drafting technicians. Also film editors, projectionists, and software specialists.
- d. **Sales** - Occupations engaging wholly or primarily in direct selling. Includes: Sales account executives, sales analysts, account representatives and sales trainees.
- e. **Office and Clerical** - Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes: Secretaries, production assistants, traffic managers, traffic department employees, telephone operators, junior rating and research analysts, assistant camera technicians, news and feature assistants, billing clerks, mail clerks, messengers, cashiers, typists, key punch operators, bookkeepers, photo lab assistants, librarians, (music, film or other) readers, administrative assistants, tab operators, TVWX operators, PBX operators, printing and duplicating operators, production coordinators, ledger clerks, operations assistants, pages and guides, stock clerks, office machine operators, including computer console operators. (The positions of traffic managers and administrative assistants have been included in the office and clerical category because in most instances they are not truly managerial positions. However, those stations that require managerial functions of either position (director of a full department or special phase of the firm's operation) may include it in the officials and managers category.)
- f. **Craftsperson (skilled)** - Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the process involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: Electricians, machinists, building construction workers, hair stylists, carpenters, painters, make-up artists, wardrobe person, heating and air conditioning mechanics.
- g. **Operatives (semiskilled)** - Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: Chauffeurs, mobile messengers, drivers, apprentice carpenters and painters, scenic artists, film department assistants, material handlers. (Apprentices - persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship, regardless of whether the program is registered with a Federal or State agency.
- h. **Laborers (unskilled)** - Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: Studio grips, property persons, laborers performing lifting, pulling, piling, loading, etc., carwashers, set up helpers.
- i. **Service Workers** - Workers in both protective and nonprotective service occupations. Includes: Cooks, counter and fountain workers, elevator operators, guards and watchpersons, doorkeepers, stewards, janitors, waiters and waitresses.
- 8. Total**
- Include in this column all employees in the Reporting Unit covered in the individual FCC Form 395-B. Consider as "full-time" employees all those working 30 or more hours a week.
- 9. Minority Group Identification**
- a. Minority group information necessary for this section may be obtained either by visual surveys of the work force, or from post-employment records as to the identity of employees. An employee may be included in the minority group to which she or he appears to belong, or is regarded in the community as belonging.
- b. Since visual surveys are permitted, the fact that minority group identifications are not present on the company records is not an excuse for failure to provide the data called for.
- c. Conducting a visual survey and keeping post-employment records of the race or ethnic origin of employees is legal in all jurisdictions and under all Federal and State laws. State laws prohibiting inquiries and record-keeping as to race, etc., relate only to applicants for jobs, not to employees.
- d. FCC Form 395-B provides for reporting American Indians or Alaskan Natives; Asians or Pacific Islanders; Blacks, not of Hispanic origin; Hispanics; Whites, not of Hispanic origin; whenever such persons are employed. The category which most closely reflects the individual's recognition in his community should be used to report persons of mixed racial and/or ethnic origins.
- 10. Networks & Group Owners**
- Broadcast networks will file employment data in their role as group owners and report employees whose primary duties lie in the operation and/or management of the individual broadcast stations.

#### FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, engineers and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to vary from 10 minutes to 1 hour with an average of 53 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0390), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.



**BROADCAST STATION  
ANNUAL EMPLOYMENT REPORT 1992**

Approved by OMB  
3080-0390  
Expires 9/30/93

(For FCC Use Only)

Code No.

**SECTION I**

A. Name of Licensee or Permittee	B. Address
----------------------------------	------------

**SECTION II**

A. TYPE OF RESPONDENT (check ONLY one)

COMMERCIAL BROADCAST STATION		NONCOMMERCIAL BROADCAST STATION		HEADQUARTERS
AM <input type="checkbox"/> AM	TV <input type="checkbox"/> TV	ER <input type="checkbox"/> Educational AM or FM Radio	HQ <input type="checkbox"/>	
FM <input type="checkbox"/> FM	LP <input type="checkbox"/> Low Power TV	ET <input type="checkbox"/> Educational TV		
AF <input type="checkbox"/> Combined AM & FM in same area (must file a combined report)	IN <input type="checkbox"/> International			

B. List call letters and location(s) of included stations. AM station is to be listed first in a combined report. Provide former call letters for each station if changed since last 395-B report.

CURRENT CALL LETTERS	LOCATION(S)	FORMER CALL LETTERS

**SECTION III**

A. PAY PERIOD COVERED BY THIS REPORT (DATE) \_\_\_\_\_

B. CHECK APPLICABLE BOX

- ☐ Fewer than five full-time employees during the selected payroll period (Complete page one only and certification statement and return to FCC)
- ☐ Five or more full-time employees during selected payroll period (Complete all sections of form and certification statement and return to FCC)

**SECTION IV CERTIFICATION**

This report must be certified, as follows: (a) By licensee, if an individual; (b) By a partner, if a partnership (general partner, if a limited partnership); (c) By an officer, if a corporation or an association; or (d) By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).**

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed \_\_\_\_\_ Title \_\_\_\_\_

Print Name \_\_\_\_\_ Date \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_

# SECTION V - EMPLOYEE DATA

## A. FULL-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL (a-j)	MALE					FEMALE				
		WHITE (NOT HISPANIC) (a)	BLACK (NOT HISPANIC) (b)	HISPANIC (c)	ASIAN OR PACIFIC ISLANDER (d)	AMERICAN INDIAN, ALASKAN NATIVE (e)	WHITE (NOT HISPANIC) (f)	BLACK (NOT HISPANIC) (g)	HISPANIC (h)	ASIAN OR PACIFIC ISLANDER (i)	AMERICAN INDIAN, ALASKAN NATIVE (j)
OFFICIALS & MANAGERS											
PROFESSIONALS											
TECHNICIANS											
SALES WORKERS											
OFFICE & CLERICAL											
CRAFT WORKERS (SKILLED)											
OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL											

## B. PART-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL (a-j)	MALE					FEMALE				
		WHITE (NOT HISPANIC) (a)	BLACK (NOT HISPANIC) (b)	HISPANIC (c)	ASIAN OR PACIFIC ISLANDER (d)	AMERICAN INDIAN, ALASKAN NATIVE (e)	WHITE (NOT HISPANIC) (f)	BLACK (NOT HISPANIC) (g)	HISPANIC (h)	ASIAN OR PACIFIC ISLANDER (i)	AMERICAN INDIAN, ALASKAN NATIVE (j)
OFFICIALS & MANAGERS											
PROFESSIONALS											
TECHNICIANS											
SALES WORKERS											
OFFICE & CLERICAL											
CRAFT WORKERS (SKILLED)											
OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL											

## BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT

(To be filed with broadcast license renewal application)

(For FCC Use Only)

Code No.

Call Letters .....

Name of Licensee .....

City and State which station  
is licensed to serve .....

### TYPE OF BROADCAST STATION (Check one)

Commercial Broadcast Station

☐ AM

☐ TV

☐ FM

☐ Low Power TV

☐ Combined AM & FM  
in same area

☐ International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

### SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

Name	Street Address		
City	State	ZIP Code	Telephone No. ( )

### FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, and sex. See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, a license renewal applicant who employs five or more full-time station employees must file a report of its activities to ensure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asians or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). If minority group representation in the available labor force is less than five percent (in the aggregate), equal employment opportunity (EEO) program information for minority group members need not be filed. However, EEO program information must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant employs fewer than five full-time employees, no equal employment opportunity activity information need be filed.

A copy of this report must be kept in the station's public file. These actions are required to obtain license renewal. Failure to meet these requirements may result in license renewal being delayed or denied. These requirements are contained in Section 73.2080 of the FCC Rules (47 CFR 73.2080), and are authorized by the Communications Act of 1934, as amended.

☐ If your station employs fewer than five full-time employees, check the box at left, complete the certification below, return the form to the FCC, and place a copy in your station's public file. You do not have to complete the rest of the form.

**If your station employs five or more full-time employees, you must complete all of this form and follow all instructions.**

☐ If minority group representation in the available labor force is less than 5 percent (in the aggregate) and you choose not to file EEO program information for minority groups, check the box at left and complete the rest of this form with only the information for your program directed towards women.

## CERTIFICATION

This report must be certified, as follows:

- A. By licensee, if an individual;
- B. By a partner, if a partnership (general partner, if a limited partnership);
- C. By an officer, if a corporation or an association; or
- D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(11), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).**

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed
Title
Date
Name of Respondent
Telephone No. (include area code)

## FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the license renewal requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and applications examiners, will use the information to determine whether the license renewal application should be granted, denied, dismissed or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060-0113), Washington, DC 20503.

**THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.**

The purpose of this document is to remind broadcast station licensees of their equal employment opportunity responsibilities and to provide the licensee, the FCC and the public with information about whether the station is meeting these requirements.

## GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

A broadcast station must also encourage applications from qualified minorities and women for hiring and promotion to all types of jobs at the station.

## I. RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME \_\_\_\_\_ TITLE \_\_\_\_\_

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

## II. POLICY DISSEMINATION

A broadcast station must make effective efforts to make management, staff, and prospective employees aware that it offers equal employment opportunity. The Commission considers the efforts listed below to be generally effective. Indicate each practice that your station follows. You also may list any other efforts that you have undertaken.

- ☐ Notices are posted informing applicants and employees that the station is an Equal Opportunity Employer and that they have the right to notify an appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.
- ☐ Our station's employment application form contains a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.
- ☐ We seek the cooperation of the unions represented at the station to help implement our EEO program and all union contracts contain a nondiscrimination clause.
- ☐ Other (specify)

## III. RECRUITMENT

A broadcast station must make efforts to attract qualified minority and women applicants for all types of jobs at the station whenever vacancies occur.

Indicate each practice that your station follows and, where appropriate, list sources and numbers of referrals.

- ☐ When we place employment advertisements with media some of such advertisements are placed with media which have significant circulation or viewership, or are of particular interest to minorities and women in the recruitment area. Examples of media utilized during the past 12 months and the number of minority and/or women referrals are:

	Number of Referrals	
	Minority	Women
_____	_____	_____
_____	_____	_____

- ☐ Recruit prospective employees from educational institutions, including area schools and colleges with minority and women enrollments. Educational institutions contacted for recruitment purposes during the past 12 months and the number of minority and/or women referrals are:

Educational Institution	Number of Referrals	
	Minority	Women
_____	_____	_____
_____	_____	_____

- ☐ Contact a variety of minority and women's organizations to encourage the referral of qualified minority and women applicants whenever job vacancies occur. Examples of such organizations contacted during the past 12 months are:

Organization	Number of Referrals	
	Minority	Women
_____	_____	_____
_____	_____	_____
_____	_____	_____

- ☐ We encourage present employees to refer qualified minority and women candidates for job openings. The number of minority and/or women referrals are:

Minority	Women
_____	_____

- ☐ Other (specify) and the number of minority and/or women referrals are:

Minority	Women
_____	_____

#### IV. JOB HIRES

A broadcast station must consider applicants for job openings on a nondiscriminatory basis. Further, to assure that qualified minorities and women are given due consideration for available positions, it must make efforts to encourage them to apply for job openings.

During the twelve-month period prior to filing this application beginning (Month-Day-Year) \_\_\_\_\_ and ending (Month-Day-Year), \_\_\_\_\_ we hired:

Total hires \_\_\_\_\_ Minorities \_\_\_\_\_ Women \_\_\_\_\_

During this period, for positions in the upper four job categories, we hired:

Total hires, upper \_\_\_\_\_ Minorities \_\_\_\_\_ Women \_\_\_\_\_  
four categories

#### V. PROMOTIONS

A broadcast station must promote individuals on a nondiscriminatory basis. Further, to assure that qualified minorities and women are given due consideration for promotional opportunities, it must make efforts to encourage them to qualify and apply for advancement.

During the twelve-month period prior to filing this application beginning (Month-Day-Year) \_\_\_\_\_ and ending (Month-Day-Year) \_\_\_\_\_, we promoted:

Total promotions \_\_\_\_\_ Minorities \_\_\_\_\_ Women \_\_\_\_\_

During this period, in the upper four job categories, we promoted:

Total promotions, upper \_\_\_\_\_ Minorities \_\_\_\_\_ Women \_\_\_\_\_  
four categories

#### VI. AVAILABLE LABOR FORCE

A broadcast station must evaluate its employment profile and job turnover against the availability of minorities and women in the relevant labor market. The FCC will use labor force data for the MSA in which your station is located, or county data if the station is not located in an MSA, to evaluate your station's equal employment efforts. If you use these data in your evaluation, you need not submit them to the FCC.



This section is optional:

As an alternative to MSA or county labor force data, you may use other data that more accurately reflect the percentages of women and minorities in the labor force available to your station. If such alternative data are used, that data must be submitted on the table below and an explanation attached as to why they are more appropriate.

Percentage in the Labor Force	Women	Blacks not of Hispanic Origin	Asian or Pacific Islanders	American Indians or Alaskan Natives	Hispanics

The above information is for:

☐

M.S.A.

☐

City

☐

County

☐

Other (specify)

## VII. COMPLAINTS

You must provide here a brief description of any complaint which has been filed before any body having competent jurisdiction under Federal, State, territorial or local law, alleging unlawful discrimination in the employment practices of the station including the persons involved, the date of filing, the court or agency, the file number (if any), and the disposition or current status of the matter. Examples of such jurisdiction may include the Equal Employment Opportunity Commission, state and local equal opportunity commissions, or other appropriate agencies.

## VIII. OTHER INFORMATION

You may also describe other information that you believe would allow the FCC to evaluate more completely your efforts in providing equal opportunity in employment at your station. Submission of such information is optional. Among the additional information you may choose to provide are:

Any training programs the station has undertaken that are designed to enable minorities and women to compete in the broadcast employment market including, but not necessarily limited to, on-the-job training and assistance to students, schools or colleges.

Any problems the station has experienced in assuring equal employment opportunity, or attracting qualified minority and women candidates for employment or promotion.

Any efforts the station has undertaken or will undertake to promote equal opportunity in its employment and to encourage applications from minorities and women.



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## **APPENDIX B**

### **Fee Schedule**



# FEDERAL COMMUNICATIONS COMMISSION



## MASS MEDIA SERVICES FEE FILING GUIDE

FOR

- COMMERCIAL TELEVISION STATIONS
- COMMERCIAL AM RADIO STATIONS
- COMMERCIAL FM RADIO STATIONS
- FM TRANSLATOR STATIONS
- TV TRANSLATORS AND LPTV STATIONS
- FM BOOSTER STATIONS
- TV BOOSTER STATIONS
- AUXILIARY SERVICES
- INTERNATIONAL BROADCAST STATIONS
- CABLE TELEVISION SERVICES
- DIRECT BROADCAST SATELLITES

This is an unofficial compilation of the radio services and requests for FCC actions that are subject to fees. The public should consult the Commission's Rules as set out in Title 47 of the Code of Federal Regulations (CFR) for application filing requirements. Further information on fees may be obtained at Part 1, Subpart G of the CFR or in the Commission's official decision implementing the Congressional Schedule of Charges. This decision is published in the FCC Record or may be purchased from the Commission's current copy contractor.

The fee amounts contained in this guide are subject to review in October 1993 and may result in changes to these amounts. The FCC will issue a notice to reflect any changes.

4th Printing, July 1991

## **MASS MEDIA SERVICES**

Parties seeking Commission authority to construct a new broadcast station; to make changes in authorized facilities; to initially obtain, renew or assign a broadcast station license; or to transfer control of a broadcast station license, must submit a written application to the Commission. Generally, the form for such applications is prescribed by the Commission so as to elicit the information necessary for it to determine whether the applicant possesses the qualifications to be or remain a broadcast licensee and whether a grant of the application would serve the public interest, convenience and necessity.

### **COMMERCIAL TELEVISION STATIONS**

A commercial television station is any UHF or VHF station, other than those classified by the FCC as non-commercial educational stations.

### **COMMERCIAL AM/FM RADIO STATIONS**

A commercial radio station is any AM or FM radio station, other than those stations which would qualify as non-commercial educational stations.

### **FM TRANSLATORS**

An FM translator station retransmits the signals of an FM radio broadcast station or another FM broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude for the purpose of providing FM reception to the general public.

### **TV TRANSLATORS AND LPTV STATIONS**

TV translators are stations operated in the broadcast services for the purposes of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public. A low power TV (LPTV) station may retransmit the programs and signals of a TV broadcast station and may originate programming and/or operate as a subscription service.

### **FM/TV BOOSTER STATIONS**

FM broadcast booster stations operate for the sole purpose of retransmitting the signals of an FM radio broadcast station by amplifying and reradiating such signals without significantly altering any characteristic of the incoming signal other than its amplitude. Only permittees and licensees of primary FM broadcast stations may apply for FM broadcast booster station authorizations. Similarly, TV broadcast booster stations provide a means whereby only the permittee or licensee of a full service television broadcast station may retransmit the programs and signals of its primary station to areas of low signal strength in any region within the primary TV station's Grade B contour.

### **AUXILIARY SERVICES**

Auxiliary services are radio frequencies operated in conjunction with AM, FM, or TV stations. These include Remote Pickup stations, TV Auxiliary Broadcast Stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations.

### **INTERNATIONAL BROADCAST STATIONS**

An international broadcast station employs frequencies allocated to the broadcasting service between 5,950 and 26,100 kHz. The transmissions of an international broadcast station, which are licensed to non-governmental entities only, are intended to be received directly by the general public in foreign countries.

### **CABLE TELEVISION SERVICES**

**Cable Television Relay Service (CARS).** A CARS station is used for the transmission of television and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting from the point of reception to a terminal point from which the signals are distributed to the public by the cable system.

**Special Relief Petitions.** On petition for special relief by any interested person, the Commission may waive any provision of the rules relating to cable television systems or issue a ruling on a complaint or disputed question. A fee will be charged for Cable Special Relief Petitions filed according to Section 76.7 of the Rules seeking the imposition of special requirements beyond those provided for in the rules.

**76.12 Registration Statements.** A cable system community unit is required, prior to commencing operations, to provide the Commission with an identification of the system's operator, a description of the television broadcast signals to be carried, and certain other information called for by Section 76.12 of the Rules.

**Aeronautical Frequency Usage Notifications.** A notice filed by the operator of a cable television system, informing the Commission of its intended usage, in accord with Sections 76.610 - 76.617 of the Rules, of frequencies in the aeronautical bands 108 - 137 and 225 - 400 MHz, as well as providing certain other information called for by Section 76.615 of the Rules.

**Aeronautical Frequency Usage Waivers.** A request filed by a cable television system operator seeking a waiver of the distance and/or frequency separation requirements set forth in Section 76.619 of the Rules in order to permit its continuing usage of aeronautical frequencies.

### **DIRECT BROADCAST SATELLITES**

The Direct Broadcast Satellite (DBS) Service permits signals transmitted or retransmitted by space stations to be directly received by the public.



**FEDERAL COMMUNICATIONS COMMISSION**  
**QUICK REFERENCE CHART**  
**FILING APPLICATIONS and PAYMENT OF FEES**  
**for**  
**MASS MEDIA SERVICES**

ALL COMPLETED APPLICATIONS AND FILINGS REQUIRING A FEE SHOULD BE MAILED TO THE FEDERAL COMMUNICATIONS COMMISSION AT A SPECIFIC P.O. BOX ADDRESS IN PITTSBURGH, PENNSYLVANIA. THE SPECIFIC ADDRESS DEPENDS UPON THE SERVICE REQUESTED AND IS LISTED ON THE FOLLOWING PAGES. APPLICATIONS AND FILINGS WHICH ARE PROPERLY ADDRESSED TO THE APPROPRIATE P.O. BOX NUMBER MAY ALSO BE HAND DELIVERED TO THE FOLLOWING ADDRESS:

Federal Communications Commission  
c/o Mellon Bank  
Three Mellon Bank Center  
525 William Penn Way  
27th Floor, Room 153-2713  
Pittsburgh, Pennsylvania 15259-0001  
(Attention: Wholesale Lockbox Shift Supervisor)

A SINGLE CHECK, BANK DRAFT OR MONEY ORDER MADE PAYABLE TO THE FEDERAL COMMUNICATIONS COMMISSION AND DENOMINATED IN U.S. DOLLARS AND DRAWN UPON A U.S. FINANCIAL INSTITUTION MUST BE INCLUDED WITH EACH APPLICATION OR FILING REQUIRING A FEE. NO POSTDATED, ALTERED OR THIRD-PARTY CHECKS WILL BE ACCEPTED. **DO NOT SEND CASH.**

A WRONG FEE TYPE CODE OR INCORRECT REMITTANCE MAY RESULT IN YOUR APPLICATION OR FILING BEING RETURNED WITHOUT PROCESSING, OR RESULT IN THE DISMISSAL OF YOUR APPLICATION OR FILING. PLEASE ENSURE THAT FEE TYPE CODES ARE CORRECT AND THAT YOUR CHECK OR MONEY ORDER EQUALS THE AMOUNT SHOWN ON YOUR FCC FORM 155.

A SEPARATE COMPLETED FEE PROCESSING FORM (FCC 155) IS REQUIRED WITH EACH APPLICATION OR FILING UNTIL SUCH TIME AS APPLICATION FORMS ARE REVISED. PUBLIC NOTICES WILL BE ISSUED AS NEW APPLICATION FORMS BECOME AVAILABLE.

**FOR ASSISTANCE, CALL (202) 632-FEES.**

**COMMERCIAL TELEVISION STATIONS**

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
NEW OR MAJOR CHANGE CONSTRUCTION PERMIT	301	\$2,535.00/application	MVT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
MINOR CHANGE	301	565.00/application	MPT	
NEW LICENSE <sup>1</sup>	302	170.00/application	MJT	
LICENSE RENEWAL	303-S	100.00/application	MGT	
LICENSE ASSIGNMENT	314 (long form)	565.00/station license	MPT	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
	316 (short form)	80.00/station license	MDT	
TRANSFER OF CONTROL	315 (long form)	565.00/station license	MPT	
	316 (short form)	80.00/station license	MDT	
HEARING (New and major/minor change comparative construction permit hearings; comparative license renewal hearings)	N/A	6,760.00/application	MVVT	Federal Communications Commission Mass Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170
CALL SIGN <sup>2</sup>	N/A	55.00/application	MBT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
EXTENSION OF TIME TO CONSTRUCT OR REPLACEMENT OF CONSTRUCTION PERMIT	307	200.00/application	MKT	
SPECIAL TEMPORARY AUTHORIZATION <sup>3</sup>	N/A	100.00/application	MGT	Federal Communications Commission <sup>4</sup> Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165

# DO NOT SEND CASH

## COMMERCIAL TELEVISION STATIONS (continued)

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
PERMIT TO DELIVER PROGRAMS TO FOREIGN BROADCAST STATIONS <sup>5</sup>	308	\$ 55.00/application	MBT	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
PETITION FOR RULEMAKING FOR NEW COMMUNITY OF LICENSE <sup>6</sup>	301/302	1,565.00/petition	MRT	
OWNERSHIP REPORT <sup>7</sup>	323	35.00/station	MAT	Federal Communications Commission Mass Media Services P.O. Box 358180 Pittsburgh, PA 15251-5180

## COMMERCIAL AM RADIO STATIONS

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
NEW OR MAJOR CHANGE CONSTRUCTION PERMIT	301	\$2,255.00/application	MUR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
MINOR CHANGE	301	565.00/application	MPR	
NEW LICENSE <sup>8</sup>	302	370.00/application	MMR	
AM DIRECTIONAL ANTENNA <sup>9</sup>	302	425.00/application	MOR	
AM REMOTE CONTROL <sup>10</sup>	301-A, 301	35.00/application	MAR	
LICENSE RENEWAL	303-S	100.00/application	MGR	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
LICENSE ASSIGNMENT	314 (long form)	565.00/station license	MPR	
	316 (short form)	80.00/station license	MDR	
TRANSFER OF CONTROL	315 (long form)	565.00/station license	MPR	
	316 (short form)	80.00/station license	MDR	
HEARING (New and major/minor change comparative construction permit hearings; comparative license renewal hearings)	N/A	6,760.00/application	MWVR	Federal Communications Commission Mass Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170
CALL SIGN <sup>11</sup>	N/A	55.00/application	MBR	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
SPECIAL TEMPORARY AUTHORIZATION <sup>3</sup>	N/A	100.00/application	MGR	Federal Communications Commission <sup>4</sup> Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
EXTENSION OF TIME TO CONSTRUCT OR REPLACEMENT OF CONSTRUCTION PERMIT	307	200.00/application	MKR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
PERMIT TO DELIVER PROGRAMS TO FOREIGN BROADCAST STATIONS <sup>5</sup>	308	55.00/application	MBR	
OWNERSHIP REPORT <sup>7</sup>	323	35.00/station	MAR	Federal Communications Commission Mass Media Services P.O. Box 358180 Pittsburgh, PA 15251-5180

**DO NOT SEND CASH**  
**COMMERCIAL FM RADIO STATIONS**

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
NEW OR MAJOR CHANGE CONSTRUCTION PERMIT	301	\$2,030.00/application	MTR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
MINOR CHANGE	301	565.00/application	MPR	
NEW LICENSE <sup>11</sup>	302	115.00/application	MHR	
FM DIRECTIONAL ANTENNA <sup>9</sup>	302	355.00/application	MLR	
LICENSE RENEWAL	303-S	100.00/application	MGR	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
LICENSE ASSIGNMENT	314 (long form)	565.00/station license	MPR	
	316 (short form)	80.00/station license	MDR	
TRANSFER OF CONTROL	315 (long form)	565.00/station license	MPR	
	316 (short form)	80.00/station license	MDR	
HEARING (New and major/minor change comparative construction permit hearings; comparative license renewal hearings)	N/A	6,760.00/application	MVVR	Federal Communications Commission Mass Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170
CALL SIGN <sup>2</sup>	N/A	55.00/application	MBR	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
SPECIAL TEMPORARY AUTHORIZATION <sup>3</sup>	N/A	100.00/application	MGR	Federal Communications Commission <sup>4</sup> Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
EXTENSION OF TIME TO CONSTRUCT OR REPLACEMENT OF CONSTRUCTION PERMIT	307	200.00/application	MKR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
PERMIT TO DELIVER PROGRAMS TO FOREIGN BROADCAST STATIONS <sup>5</sup>	308	55.00/application	MBR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
PETITION FOR RULEMAKING FOR NEW COMMUNITY OF LICENSE OR HIGHER CLASS CHANNEL <sup>12</sup>	301, 302	1,565.00/petition	MRR	See Footnote 12
OWNERSHIP REPORT <sup>7</sup>	323	35.00/station	MAR	Federal Communications Commission Mass Media Services P.O. Box 358180 Pittsburgh, PA 15251-5180

**FM TRANSLATORS**

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
NEW OR MAJOR CHANGE CONSTRUCTION PERMIT	349	\$ 425.00/application	MOF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
NEW LICENSE <sup>11</sup>	350	85.00/application	MEF	
LICENSE RENEWAL	348	35.00/application	MAF	
SPECIAL TEMPORARY AUTHORIZATION <sup>3</sup>	N/A	100.00/application	MGF	Federal Communications Commission <sup>4</sup> Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
LICENSE ASSIGNMENT	345, 316	80.00/station license	MDF	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
TRANSFER OF CONTROL	345, 316	80.00/station license	MDF	

# DO NOT SEND CASH

## TV TRANSLATORS AND LPTV STATIONS

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
NEW OR MAJOR CHANGE CONSTRUCTION PERMIT	346	\$ 425.00/application	MOL	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185
NEW LICENSE 13	347	85.00/application	MEL	
LICENSE RENEWAL	348	35.00/application	MAL	
SPECIAL TEMPORARY AUTHORIZATION 3	N/A	100.00/application	MGL	Federal Communications Commission 4 Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185
LICENSE ASSIGNMENT	345, 316	80.00/station license	MDL	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
TRANSFER OF CONTROL	345, 316	80.00/station license	MDL	

## FM BOOSTER STATIONS

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
NEW OR MAJOR CHANGE CONSTRUCTION PERMIT	349	\$ 425.00/application	MOF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
NEW LICENSE	350	85.00/application	MEF	
SPECIAL TEMPORARY AUTHORIZATION 3	N/A	100.00/application	MGF	Federal Communications Commission 4 Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200

## TV BOOSTER STATIONS

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
NEW OR MAJOR CHANGE CONSTRUCTION PERMIT	346	\$ 425.00/application	MOF	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185
NEW LICENSE	347	85.00/application	MEF	
SPECIAL TEMPORARY AUTHORIZATION 3	N/A	100.00/application	MGF	Federal Communications Commission 4 Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185

## AUXILIARY SERVICES

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
MAJOR ACTION 14	313	\$ 85.00/application	MEA	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
LICENSE RENEWAL 15	313-R	35.00/application	MAA	
SPECIAL TEMPORARY AUTHORIZATION 3	N/A	100.00/application	MGA	Federal Communications Commission 4 Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200

# DO NOT SEND CASH

## INTERNATIONAL BROADCAST STATIONS

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
NEW STATION AND FACILITIES CHANGE CONSTRUCTION PERMIT	309	\$1,705.00/application	MSN	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251- 5200*
NEW LICENSE	310	385.00/application	MNN	
LICENSE RENEWAL	311	95.00/application	MFN	
LICENSE ASSIGNMENT OR TRANSFER OF CONTROL	314, 315, 316	60.00/station license	MCN	Federal Communications Commission Mass Media Services P.O. Box 358175 Pittsburgh, PA 15251-5175
FREQUENCY ASSIGNMENT AND COORDINATION 16 17 18	N/A	35.00/frequency hour	MAN	
SPECIAL TEMPORARY AUTHORIZATION 3	N/A	100.00/application	MGN	

\*See 57 CFR 23161 (June 2, 1992)

## CABLE TELEVISION SERVICES

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
CARS CONSTRUCTION PERMIT	327	\$ 155.00/application	MIC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
CARS MODIFICATION	327	155.00/application	MIC	
CARS LICENSE RENEWAL	327	155.00/application	MIC	
CARS LICENSE ASSIGNMENT	327	155.00/station license	MIC	
CARS TRANSFER OF CONTROL	327	155.00/station license	MIC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
SPECIAL TEMPORARY 3 AUTHORIZATION	N/A	100.00/application	MGC	
CABLE SPECIAL RELIEF PETITION	N/A	790.00/petition	MQC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
76.12 REGISTRATION STATEMENT 19	N/A	35.00/statement	MAC	
AERONAUTICAL FREQUENCY USAGE NOTIFICATION 20	N/A	35.00/notification	MAC	
AERONAUTICAL FREQUENCY USAGE WAIVER	N/A	35.00/waiver	MAC	

## DIRECT BROADCAST SATELLITES

TYPE OF APPLICATION	FORM #	FEE AMOUNT	FEE CODE	MAILING ADDRESS
AUTHORIZATION TO CONSTRUCT OR MAJOR CHANGE 21	N/A	\$ 2,030.00/request	MTD	Federal Communications Commission Mass Media Services P.O. Box 358210 Pittsburgh, PA 15251-5210
CONSTRUCTION PERMIT AND LAUNCH AUTHORITY	N/A	19,710.00/request	MXD	
LICENSE TO OPERATE	N/A	565.00/request	MPD	
SPECIAL TEMPORARY AUTHORIZATION 3	N/A	100.00/application	MGD	Federal Communications Commission Mass Media Services P.O. Box 358210 Pittsburgh, PA 15251-5210
HEARING (New and major/minor change comparative construction permit hearings; comparative license renewal hearings)	N/A	6,760.00/application	MVD	



## Footnotes to Quick Reference Chart

- 1 This license covers the facility authorized by, and constructed pursuant to, an outstanding construction permit. A fee will not be charged to obtain a modified station license to reflect a change made that does not require prior authorization from the FCC.
- 2 Requests for new or modified call sign assignments can be made by letter to the Commission in accord with Section 73.3550 of the Rules. A fee is not imposed on stations seeking to modify an existing call sign only to the extent of adding or deleting an -FM or -TV suffix.
- 3 A special temporary authorization (STA) is the authority granted to a permittee or licensee to permit the operation of a radio, television, or microwave broadcast station for a limited period at a specified variance from the terms of the station authorization or requirements of the Commission's Rules applicable to the particular class of station. The STA fee also applies to applicants requesting field test authority, pursuant to Section 73.1515 of the Rules. However, a fee is not imposed on stations seeking to discontinue broadcast operations beyond the initial 30 day period or to extend an existing STA to remain silent.
- 4 STA requests may be made by letter to the Commission in accordance with Sections 73.1635 and 78.33 of the Rules. The appropriate fee and Form 155 must accompany these requests. However, in cases of emergency, STAs can be requested via telephone followed by a written confirmation request. For these emergency STA requests **ONLY**, the FCC will bill the requestor to collect the fee. The written confirmation of the STA request should be sent to the Federal Communications Commission, Office of the Secretary, 1919 M Street, N.W., Washington, D.C. 20554.
- 5 If the applicant holds a valid broadcast station permit or license, an informal application in letter form may be used in lieu of FCC Form 308, in accordance with Section 73.3545 of the Rules. The fee is also required with letter submissions.
- 6 Television broadcast station permittees and licensees can request through a rulemaking proceeding to amend the Television Table of Allotments to specify a new community of license when the amended allotment would be mutually exclusive with the permittee's or licensee's present assignment. Upon approval of the rulemaking petition and the filing of the minor change or license application needed to effect the change in community of license, the permittee or licensee must file this fee **in addition** to the fee required for such minor change or license application. The mailing address for filing the rulemaking fee and the requisite minor change or license application is Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251-5185.
- 7 Once a year on the anniversary of its station's renewal application filing date, commercial radio and television broadcast station licensees are generally required to submit an annual ownership report. The annual ownership report is the FCC Form 323, or the aggregate Form 323s as the case may be, that is submitted on behalf of the individual AM, FM, or TV broadcast station. When the licensee, however, is a partnership that is composed entirely of natural persons or a sole proprietorship (i.e., the station is licensed to an individual(s)) the annual reporting requirement does not apply. Further, if there has been no change since the last filing of FCC Form 323, a letter may be filed in lieu of a new report, stating that the previously filed report has been examined and is currently accurate and complete. This fee, which is similarly calculated on the basis of the number of stations on whose behalf the annual report is filed, is also required with letter submissions.
- 8 A fee is not imposed for requests to determine power by the direct method under Section 73.51 of the Rules or for license modifications which may be made without prior authorization from the FCC.
- 9 A directional antenna is an antenna that is designed or altered for the purpose of obtaining a noncircular radiation pattern. Directional antennas may be employed for the purpose of improving service or for the purpose of using a particular site. This fee must be filed in addition to the fee required for the AM or FM license application.
- 10 When applying for remote control authorization in connection with an application for a construction permit to erect a new AM directional antenna or in connection with an application to make modifications to an existing AM directional antenna, subject to the sampling system requirements of Section 78.68 of the Rules, the fee for remote control authorization is in addition to the fee required for the AM construction permit application.
- 11 This fee is not applicable to any license modification which may be made without prior authorization from the FCC.
- 12 FM broadcast station permittees and licensees can request through a rulemaking proceeding to amend the FM Table of Allotments to specify a new community of license where the amended allotment would be mutually exclusive with the permittee's or licensee's present assignment. Similarly, FM permittees and licensees can petition for rulemaking to modify their authorizations to another class of channel in the same or another community. The permittee or licensee must file this fee **in addition** to the fee required for the minor change or license application needed to effect the change. **The rulemaking fee is payable at the time of filing such minor change or license application.** The mailing address for filing the rulemaking fee and the requisite minor change or license application is Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
- 13 This fee is not required when this form is filed to obtain a modified station license to reflect either a change in the type of TV transmitter antenna or a change in the output power of TV aural or visual transmitter to accommodate a change in the antenna type or transmission line. These changes can be made without prior authorization from the Commission.
- 14 A major action includes applications for a new auxiliary station and for changes in the authorized facilities of an auxiliary station. These changes may include changes in frequency, antenna system, power and number of mobiles; relocation of station(s); addition of a base station system; and replacement of equipment which results in changes to the terms of the station authorization or the Commission's technical rules governing the particular broadcast auxiliary service.
- 15 Auxiliary licenses held by licensees of full service broadcast stations do not require a separate fee when renewed in conjunction with the full service station.
- 16 A frequency hour is a specific hour (or fraction thereof) of the day during which a station may broadcast daily on a particular frequency during a particular season. There are four seasons of varying lengths during the year. There is a tentative and final frequency hour request submitted by each applicant for each season. These requests are coordinated with foreign governments in order to avoid mutual interference.
- 17 A fee is charged for each final frequency hour request submitted for each season. The total fee is determined by adding all of the frequency hours requested and then multiplying that total by the fee per frequency hour. Any fraction of a frequency hour in the total number of frequency hours requested is rounded to the next higher whole number. For example, a station seeking to use 6185 kHz during the hours (time - UTC) 0230 - 1200 and 1830 - 2115 would be requesting a total of 14.25 frequency hours ( $9.5 + 4.75$ ). The total fee charged would be 15 times the fee per frequency hour. If the request was for a 6 month period, the total fee would be twice that amount.



## Footnotes to Quick Reference Chart (continued)

- 18** The fee per frequency hour will also be charged for additional or changed frequency hour requests submitted by applicants after the final request has been submitted or after the season has started. If the additions or changes are requested by the Commission then no fee will be charged.
- 19** A separate 76.12 registration statement is required to be filed for each community unit comprising the cable television system.
- 20** A separate notification is required to be filed each cable television system.
- 21** A major change will be considered as any modification involving a significant, additional use of the orbit/spectrum resource.

FEDERAL COMMUNICATIONS COMMISSION  
**FEE PROCESSING FORM**

FOR  
FCC  
USE  
ONLY

Please read instructions on back of this form before completing it. Section I **MUST** be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

**SECTION I**

APPLICANT NAME (Last, first, middle initial)

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

CITY

STATE OR COUNTRY (if foreign address)

ZIP CODE

CALL SIGN OR OTHER FCC IDENTIFIER (if applicable)

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY									
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**SECTION II**

— To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY									
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ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE. →				<table border="1"><tr><td>TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING</td></tr><tr><td>\$</td></tr></table>	TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING	\$	<table border="1"><tr><td>FOR FCC USE ONLY</td></tr><tr><td></td></tr></table>	FOR FCC USE ONLY					
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## INSTRUCTIONS FOR COMPLETING FEE PROCESSING FORM, FCC FORM 155, March 1991

- (1) **"Applicant Name"** - Enter the name (last, first, middle initial) of the applicant as it appears on the original application or filing being submitted with this Fee Processing Form. If company, enter name which is used commercially.
- (2) **"Mailing Address (Line 1)"** - Enter the street address or post office box number to which the applicant wishes correspondence sent.
- (3) **"Mailing Address (Line 2)"** - This line may be used for further identification of the address if additional space is required.
- (4) **"City"** - Enter the name of the city associated with the given street address.
- (5) **"State or Country"** - Enter the appropriate two-digit state abbreviation as prescribed by the U.S. Postal Service. If address is foreign, enter the appropriate country name here.
- (6) **"ZIP Code"** - Enter the appropriate five or nine-digit ZIP code prescribed by the U.S. Postal Service.
- (7) **"Call Sign or Other FCC Identifier"** - Enter an applicable call sign or unique FCC identifier, if any, as shown on your attached application or filing. If applying for a service affecting more than one call sign, enter one call sign only.
- (8) **Column (A), "Fee Type Code"** - Enter correct Fee Type Code(s) from the appropriate Fee Filing Guide. Only one Fee Processing Form may be submitted per application or filing. Inaccurate or erroneous Fee Type Codes may result in your application or filing being returned to you without further processing.
- (9) **Column (B), "Fee Multiple"** - Certain applications and filings may request action with respect to more than one station, license, frequency, or party and can be submitted together with one check if they meet specific conditions. This column is used only if a multiple, i.e., two or more, is being applied for. Examples of when this would be used are renewing more than one call sign, frequency, station, or the transfer of control of more than one station. Refer to the appropriate Fee Filing Guide for additional information.
- (10) **Column (C), "Fee Due For Fee Type Code in Column (A)"** - Enter in this block the amount of the fee associated with the Fee Type Code shown in Column (A) (times (x) the fee multiple, if required).
- (11) **"Total Amount Remitted With This Application or Filing"** - Enter the total of lines (1) through (5) of Column (C). This amount should equal the amount of your check or money order. We will not accept multiple checks.

### HOW TO SUBMIT APPLICATIONS AND FILINGS

o Each application or filing should be assembled with the Fee Processing Form, FCC Form 155, stapled to the top of the application with the check placed on top of the Fee Processing Form. **DO NOT STAPLE THE CHECK TO THE APPLICATION OR FEE PROCESSING FORM, FCC FORM 155.** Required copies of applications should be clearly identified as "duplicate copy" and placed behind the original package. **"Stamp and receipt" copies should be placed on top of the original package and CLEARLY identified as return copies.** Extraneous material and extra copies should be avoided at all times. Failure to follow these instructions will delay the processing of your submission.

o Completed applications or filings should be mailed to the proper address shown in the Fee Filing Guide for the particular service for which you are applying or making a filing. **All applications and filings must be properly addressed to the appropriate P.O. box number,** even if hand delivered to the address listed below. Applications received before midnight on a normal business day will receive that day's date as the receipt date. Deliveries made after midnight on Fridays will not be "officially" receipted until the next Monday. Applications received on weekends and government holidays are dated the next regular business day.

o A single check, bank draft or money order made payable to the Federal Communications Commission and denominated in U.S. dollars and drawn upon a U.S. financial institution must be included with each application or filing requiring a fee. No postdated, altered or third-party checks will be accepted. Do not send cash.

o Parties hand delivering applications or filings may receive dated receipt copies by presenting copies of the applications or filings to the acceptance clerk at the time of delivery. **Receipts will be provided for mail-in applications or filings if an extra copy of the application or filing is provided along with a self-addressed stamped envelope. Only one piece of paper per application or filing will be stamped for receipt purposes.**

### REMEMBER

o A separate completed Fee Processing Form is required with each application or filing except in certain circumstances. Please refer to the appropriate Fee Filing Guide for additional information.

o A wrong Fee Type Code or incorrect remittance may result in your application or filing being returned without processing, or result in the dismissal of your application or filing. Please ensure that FEE TYPE CODES are correct and that your check or money order equals the amount shown in the TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING block before submitting your application or filing.

o If you have any questions completing this form, please call the Fees Hotline, 202/632-FEES.

### FCC NOTICE FOR INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

Part 1, Subpart G of the Commission's rules authorize the FCC to request the information on this form. The information requested is required in order to obtain a license or authorization from the Commission. The purpose of the information is to provide a means to link a fee payment to a specific invoice, application or filing. The information will be used by the Commission to maintain data concerning fees paid to the Commission, for internal financial control, audit, and reporting purposes. Information requested on this form will be available to the public. Your response is required to obtain a license or other authorization from the Commission.

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0440), Washington, DC 20503.

**This address is for hand carry  
or courier delivery only:**



Federal Communications Commission  
c/o Mellon Bank  
Three Mellon Bank Center  
525 William Penn Way  
27th Floor, Rm. 153-2713  
Pittsburgh, Pennsylvania  
(Attention: Wholesale Lockbox Shift Supervisor)



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## **APPENDIX C**

### **Standards for Assessing Forfeitures**





## APPENDIX

### STANDARDS FOR ASSESSING FCC FORFEITURES

#### I. BASE AMOUNTS FOR SECTION 503 FORFEITURES

<u>Violation</u>	<u>% of Stat. Max.<sup>1</sup></u>	<u>BC/CABLE (\$25,000)</u>	<u>CC (\$100,000)</u>	<u>Other (\$10,000)</u>
Misrepresentation/lack of candor	80%	20,000	80,000	8,000
Construction and/or operation without an instrument of authorization for the service	80%	20,000	80,000	8,000
Unauthorized substantial transfer of control	80%	20,000	80,000	8,000
Violations of rules relating to distress and safety frequencies	80%	20,000	80,000	8,000
False distress communications	80%	20,000	80,000	8,000
Failure to permit inspection	75%	18,750	75,000	7,500
Violations of operator services requirements	75%	n.a.	75,000	7,500
Malicious interference	70%	17,500	70,000	7,000
Failure to respond to Commission communications	70%	17,500	70,000	7,000

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<sup>1</sup> The forfeiture ceilings per violation or per day of a continuing violation contained in section 503 of the Communications Act and the Commission's Rules are \$100,000 for common carriers or applicants, \$25,000 for broadcasters and cable operators or applicants, and \$10,000 for all others. 47 U.S.C. § 503(b)(2); 47 C.F.R. § 1.80. In addition, for continuing violations involving a single act or failure to act, there is an overall limit of \$1,000,000 for common carriers or applicants, \$250,000 for broadcasters and cable operators or applicants, and \$75,000 for all others. *Id.* The base amounts listed are for a single violation or single day of a continuing violation. Unless Commission authorization is required for the behavior involved, a section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or is not operating in the radio control or citizens band radio services can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. § 503(b)(5). Forfeitures issued under other sections of the Act are dealt with separately in Section III below.

<u>Violation</u>	<u>% of Stat. Max.</u>	<u>BC/CABLE (\$25,000)</u>	<u>CC (\$100,000)</u>	<u>Other (\$10,000)</u>
Violation of public file rules	30%	7,500	n.a.	n.a.
Violation of sponsorship ID requirements	25%	6,250	n.a.	n.a.
Violation of requirements pertaining to broadcasting of lotteries or contests	25%	6,250	n.a.	n.a.
Violation of technical logs/time brokerage agreements file requirements	20%	5,000	n.a.	n.a.
Broadcasting telephone conversations without authorization	20%	5,000	n.a.	n.a.
Failure to make required measurements or conduct required monitoring	10%	2,500	10,000	1,000
Violation of enhanced underwriting requirements	10%	2,500	n.a.	n.a.
Failure to provide station ID	10%	2,500	10,000	1,000
Unauthorized pro forma transfer of control	10%	2,500	10,000	1,000
Failure to maintain required records	10%	2,500	10,000	1,000
Miscellaneous violations	5%	1,250	5,000	500

### III. NON-SECTION 503 FORFEITURES

<u>Violation</u>	<u>Statutory Amount</u> <sup>7</sup>
Sec. 202(c) Common carrier discrimination	\$6,000 + \$300/day
Sec. 203(e) Common carrier tariffs	\$6,000 + \$300/day
Sec. 205(b) Common carrier prescriptions	\$12,000
Sec. 214(d) Common carrier line extensions	\$1,200/day
Sec. 219(b) Common carrier reports	\$1,200
Sec. 220(d) Common carrier records & accounts	\$6,000/day
Sec. 223 Dial-a-Porn	\$50,000 maximum/day
Sec. 364/386 Ship radio	\$5,000/day (owner) \$1,000 (master)
Sec. 506 Great Lakes Agreement	\$500/day (owner) \$100 (master)
Sec. 634 Cable EEO	\$200/day

Note: Non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in Section II above.

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<sup>7</sup> Unlike section 503, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. The one exception is section 223 of the Act, which provides a maximum of \$50,000 per day. For convenience, the Commission will treat the \$50,000 per day set forth in section 223 as if it were a prescribed base amount, subject to downward adjustments.



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## **APPENDIX D**

### **Copyright/Trademark Materials**





## Storecasting and the Copyright Law— Understanding The §110(5) Exemption for Small Commercial Establishments<sup>1</sup>

Commercial establishments often provide "piped-in" music for the enjoyment of customers and employees. Some businesses subscribe to background music services like MUZAK, while others use local radio broadcasts for their music programming source. MUZAK comes pre-licensed, but off-the-air "storecasts" infringe the copyrighted music contained in the radio broadcast unless either the business has acquired a performing rights license or it is exempt from the license requirement under a special provision of the Copyright Act the §110(5) exemption for small commercial establishments. Failure to obtain a license, if required, can result in penalties far in excess of the cost of obtaining a license initially.

### Public Performance

As a general rule, unlicensed public performances of copyrighted music are unlawful. Broadcast stations generally obtain licenses from performing rights organizations (ASCAP, BMI, SESAC) before broadcasting (publicly performing) copyrighted music. Similarly, commercial establishments that present on-premises musical diversion for their patrons generally must acquire performing rights licenses. A license generally is required whether the on-premises performance is by live musician, disk jockey, or off-the-air broadcast, and regardless of whether the music is intended as merely background or as featured entertainment. Even though a station has a license to perform the music it broadcasts, that license does not cover further performances by persons receiving the broadcasts. Thus, a retail establishment that uses broadcasts as background music for its customers must independently acquire the right to perform the broadcasted music—by license, or by qualifying for an exemption to the licensing requirement.

There are several exceptions to the

general rule against unlicensed public performances of music. These include exemptions for teaching, state fairs, religious services, in-store record promotions, and certain nonprofit performances. Compared to these straight-forward exemptions, the §110(5) exemption for small commercial establishments is sometimes difficult to apply. As outlined below, the law imposes a number of imprecise requirements (and some explicit requirements) which must be met before the exemption can be claimed.

### The §110(5) Exemption

The exemption applies to small commercial establishments using a single receiving apparatus of a kind commonly used in private homes. The difficulty in applying the exemption arises when one must define exactly what constitutes "equipment commonly used in private homes," or how "small" a commercial establishment must be before it can claim the exemption. The following five factors are generally considered in most cases:

- 1) No charge for the performance
- 2) No further transmission of the performance
- 3) Small size area
- 4) Equipment of a kind commonly used in private homes
- 5) Ability to afford a music subscription service

If a business fails to meet these requirements, it cannot qualify for the exemption and must either acquire a performing rights license, cease using off-the-air music broadcasts, or run the risk of facing a lawsuit for copyright infringement. Some of these requirements are more flexible than others, but all are important. This section sets forth the prevailing interpretations of these requirements.

### 1. No Charge

**Rule:** If a direct charge is made to hear radio or other music broadcasts the exemption does not apply.

This rule applies when music from a broadcast (or otherwise) is being used as entertainment for which admission is charged. For example, a business cannot claim the exemption if it imposes a cover charge to come onto its premises where entertainment by broadcasts containing music is offered.

### 2. No Further Transmission

**Rule:** If the broadcasts received are further transmitted to the public the exemption does not apply.

Further transmission is defined as the communication of a transmission by any device or process whereby sounds are received beyond the place from which they are sent. To illustrate: in a recent case, a radio receiver was located in a commercial establishment owner's private office and, by concealed wiring, the owner "sent" the broadcasts from the office to ceiling speakers located in three separate public areas. A federal district court determined that since the sounds were received beyond the place from which they were sent, even though only in nearby rooms, a further transmission had occurred.<sup>2</sup> However, another court has determined that merely running wires is not a "further transmission" unless the store uses some "device or process" to expand the normal limits of the receiver's capabilities.<sup>3</sup>

Even when the receiver and speakers are not in separate rooms, a further transmission may occur when a broadcast is communicated to a large retail space. The Gap, a chain of clothing stores, was sued for copyright infringement when it played radio broadcasts in its retail stores. The stores used the broadcasts as background music, employing between four and seven speakers covering an area of 2,769

square feet in one store, and approximately 3,500 square feet in another location. In addition to holding that the store's size and type of audio equipment exceeded the "outer limits" of the §110(5) exemption, (see below, rules three and four), the court ruled that the size of the stores and type of equipment used resulted in further transmission to the public when radio broadcasts were played.<sup>4</sup>

The physical layout of the commercial establishment and the positioning of the receiver and speakers can be decisive in determining whether a further transmission has taken place. By keeping the receiver in the same room with the speakers and by limiting the coverage area of the speakers, a business improves its chances of avoiding a further transmission disqualification from the §110(5) exemption.

### 3. Small Size Area

**Rule: The §110(5) exemption applies only to small commercial establishments.**

No precise space limitation is provided in the Copyright Act or in any reported case construing the §110(5) exemption. However, the starting point used by some courts in considering compliance with the small size area requirement has been the Supreme Court's holding in the "George Aiken's Chicken," case.<sup>5</sup> That case involved a fast-food restaurant encompassing 1,055 square feet in total area with a commercial area open to the public of 620 square feet. Aiken used a single radio receiver and four ceiling speakers grouped within a relatively narrow circumference from the receiver to provide background music while his customers waited for carry-out food orders. The Court held that under these facts Aiken had not engaged in a public performance and was not liable for copyright infringement. Subsequently, in 1976, Congress amended the Copyright Act and while rejecting the "no performance" rationale in Aiken, Congress created the §110(5) exemption—specifically referring to the facts of Aiken as the "outer limit" of the exemption.<sup>6</sup>

Several copyright infringement cases have arisen under the 1976 Copyright Act which consider the §110(5) exemp-

tion and its physical size requirements. In many of these cases, Aiken's Chicken was mentioned and size comparisons were made. For example, a hardware store with 13,000 square feet was found to be beyond the "outer limit" of the exemption;<sup>7</sup> a restaurant with only 880 square feet was also found to exceed the size of Aiken and hence was too large to qualify under §110(5).<sup>8</sup> One court, however, has rejected the square footage requirement as irrelevant,<sup>9</sup> while another court has suggested that 2,000 square feet would be approaching the outer limit, but allowed the exemption to apply to stores as large as 3,300 square feet.<sup>10</sup>

While the size of the establishment may be significant to the outcome, other factors, such as the type of receiving equipment, number of speakers, and financial substantiality of the business, may also be considered. Hence, it is difficult to predict the outcome of a case that would involve a commercial establishment only slightly larger in physical size than Aiken's Chicken, but which is factually similar in all other respects or which has other facts more compelling than Aiken's. In a 1985 case a federal district court held that a miniature golf course comprising a public area of 7500 square feet and using six speakers hanging on light poles was within the scope of the exemption because it was open only six months out of the year and rarely generated over \$1,000 per month.<sup>11</sup> In a 1990 case, however, a Jeep dealer using a sound system with four recessed ceiling speakers and four public address horns mounted on exterior light poles was found not to have fallen within the exemption.<sup>12</sup>

In 1992, a federal appellate court completely rejected the square footage criteria, holding that the exemption applies on store-by-store basis to a chain of stores, regardless of square footage, so long as the "home-style" apparatus requirement was strictly adhered to.<sup>13</sup> However, a 7,000 sq. ft. restaurant grossing over \$800,000 annually and using an 11-speaker PA system was found by another court not to fall within the exemption despite the fact that patrons could not always hear the music or could only hear it in certain sections of the restaurant.<sup>14</sup>

### 4. Equipment of a Kind Commonly Used in Private Homes

**Rule: To qualify for the §110(5) exemption, a performance must be rendered by a single receiving apparatus of a kind commonly used in private homes.**

Some augmentation of standard home equipment has been permitted under §110(5). Aiken's Chicken played its receiver through four ceiling speakers grouped within a narrow circumference from the receiver. Congress later described this as the "outer limit" of permissible augmentation. To fit within the exemption, a business may have to show either that its sound system is comparable to Aiken's system, or, if more sophisticated, that it is of a type now commonly found in the home. To illustrate: a system identical to Aiken's, but with a stronger power handling grade of speakers, and a standard receiver paired with a 300 watt power amplifier and graphic equalizer, would probably fail the "commonly used in private homes" requirement. Conversely, a \$200 receiver with digital tuning would be acceptable since such receivers are common today, even though such receivers were not commonly found in private homes at the time Aiken was decided.

In one case, plaintiffs called an expert witness to testify that the radio receiver used by a hardware store was not of a type commonly used in private homes. Because the receiver had paging capability, three sets of speaker terminals, and was capable of driving up to 40 loudspeakers, it failed the requirement. The court noted that the receiver was connected to eight ceiling speakers, and that this was "hardly the type of sound system commonly found at home, even in today's high-tech world."<sup>15</sup>

In another case, a restaurant that ran hidden wires from a \$118 home-style receiver 40 feet to two ceiling speakers placed approximately 30 feet apart was held to be ineligible for the exemption because, taken as whole, this was not a type of receiving apparatus installation commonly found in homes, but was "commercial" in nature.<sup>16</sup> Similarly, another court found a sound system consisting of an amplifier, tuner, audio cassette deck and speakers and wiring originally installed for a public address system to be a commercial sys-



tem even though it was installed by an amateur, contained some components that were commonly found in the home, and did not provide optimal sound.<sup>17</sup> Two federal courts recently have ruled that in a chain operation, the home-style, single receiving apparatus criteria must be applied store-by-store and not to the chain as a whole, but courts in other states have not yet addressed this issue.<sup>18</sup>

Perhaps future courts will approve a wider range of equipment as sophisticated gear becomes more common in private homes. It can be anticipated, however, that systems will continue to be scrutinized in certain respects: amplifier output power; number, size and power handling capability of loudspeakers; receptivity/sensitivity of receiver; sophistication of signal processing equipment; and overall similarity to commercial sound systems. Where it can be shown that the equipment or the installation as a whole is not a type commonly used in private homes, the exemption cannot be claimed.

#### **5. Ability to Afford a Music Subscription Service**

**Rule:** A business may be ineligible for the exemption if it can, as a practical matter, afford a subscription to a commercial background music service.

This requirement reflects many courts' view that it was Congress' intention that the §110(5) exemption should be unavailable to any establishment large enough to be a potential customer of a background music subscription service like MUZAK. Annual sales volume has emerged as one measure of size that some courts consider. To illustrate: in a recent case, a federal district court held that a hardware store's \$2.5 million annual sales volume justified subscription to a commercial background music system.<sup>19</sup> Conversely, another case held that subscription to a commercial background service was not feasible for a miniature golf course with annual receipts under \$5,700.<sup>20</sup> In that case the court indicated that the number of locations will be considered in the size inquiry. The Court named The Gap and Casual Corner chains as large operations whose individual locations apparently were considered

against the backdrop of the larger operation in determining their eligibility for the exemption. However, chain operations are not disqualified per se as large operations: Aiken's Chicken was one of a chain of restaurants in the Pittsburgh area.

While most courts consider annual sales volume a factor, two federal courts encompassing ten states recently rejected consideration of this factor. In a 1992 decision, a U.S. Appellate Court affirmed that a chain of 2500 shops, was eligible for the exemption on a store-by-store basis, and dismissed BMI's argument that the size and financial means of the store or the chain were relevant.<sup>21</sup> In that case, the chain had attempted to comply, on a store-by-store basis, with the exemption by imposing on its stores the following in-store radio usage policy:

1. Only simple, low grade radio-only receivers are to be used.
2. Only two speakers may be attached to a radio receiver.
3. The speakers must be placed within 15 feet of the receiver.
4. Speakers that are built into the walls or ceilings must not be used. Only portable box speakers are allowed.
5. Store managers will be advised that they are not to use tapes, cassettes, or any other type of recording equipment in their stores. They are to play the radio only.<sup>22</sup>

In a 1991 decision, a different federal appellate court also rejected consideration of the financial means criteria, but indicated it would continue considering a store's size.<sup>23</sup> Hence, courts in ten states<sup>24</sup> will no longer consider the financial means criteria. In the rest of the country, the outcome is less clear, making the application of §110(5) to larger enterprises much less certain.

#### **How to Respond**

If an irate business owner calls the station about performing rights licenses, keep a few things in mind. First, as a public relations matter, inform a business owner who has been contacted by ASCAP, BMI or SESAC that the station played no part in contacting them, and that the business does not require any license from the station.

If a business is storecasting without a license and is put on notice (by ASCAP, BMI or SESAC) that a license is required, the proprietor must quickly decide whether the §110(5) exemption applies. If the exemption does not apply, a license should be acquired without delay. Criteria used to determine application of the exemption varies state-to-state. Stores located in states in the Seventh and Eighth Circuits are subject to substantially different criteria than in other states.<sup>25</sup> The Supreme Court has declined to resolve this inconsistent application of §110(5).<sup>26</sup> Because of the diverse application of widely varying criteria, legal counsel should be consulted before taking the position that a license is not required. Courts are unsympathetic to defendants in copyright infringement cases who have refused to acquire licenses under these circumstances. Damage awards can be substantial, including back license fees, plaintiff's attorney's fees and other damages.

If a good argument can be made that the §110(5) exemption does apply, the business proprietor should notify the music licensing organization of its belief that it qualifies for the small commercial establishment exemption. The proprietor should request that the organization explain in writing why the business does not qualify for the exemption. Based on this correspondence, the business proprietor and counsel can determine the appropriate course of action.

#### **License Fees**

ASCAP, BMI and SESAC offer annual blanket licenses for establishments that publicly perform music contained in radio broadcasts. The following rates for retail establishments (e.g.) department stores, carry-out restaurants,<sup>27</sup> grocery stores are currently in effect:

#### **ASCAP**

ASCAP bases its fees on the number of speakers:

- Up to 3 speakers—\$136.50 per year
- Each additional speaker—\$27.50 per year
- Maximum License Fee—\$1,113.00 per year
- Separate rates apply for audio-visual uses

- Special discount rates apply to chain operations having ten or more stores under common ownership

**BMI**

BMI bases its fees on the number of square feet and total floors:

- Up to 1500 sq. feet—\$60 per year
- 1501 to 2500 sq. feet—\$120 per year
- 2501 to 5000 sq. feet—\$240 per year
- Over 5000 sq. feet—\$480 per year
- Each individual floor where music is available is considered a separate premises, but the annual fee per floor after the first floor is \$60 regardless of square footage.
- Special discount rates apply to chain operations with ten or more locations.

**SESAC**

SESAC bases its fees on the total number of square feet:

- Up to 2500 sq. feet—\$40 per year
- Over 2500 sq. feet—\$80 per year

**Footnotes**

<sup>1</sup>This memorandum was written by E. Scott Johnson, Esquire, an entertainment attorney specializing in copyright, trademark and music industry matters with the law firm Ober, Kaler, Grimes & Shriver, Baltimore, MD. Mr. Johnson was assisted by Jane E. Lemley, currently attending the University of Virginia Law School.

<sup>2</sup>*Merrill v. Bill Miller's Bar-B-Q Enterprises, Inc.*, 688 F. Supp. 1172, 1174-75 (W.D. Tex. 1988).

<sup>3</sup>*BMI v. Claire's Boutiques, Inc.*, 754 F. Supp. 1324 (N.D. Ill. 1990), *aff'd*, 949 F.2d 1482 (7th Cir. Ill. 1991), *cert. denied*, 118 L.Ed. 2d 547 (1992).

<sup>4</sup>*Sailor Music v. Gap Stores*, 516 F. Supp. 923 (S.D.N.Y.), *aff'd* 668 F.2d 84 (2d Cir. 1981), *cert. denied*, 456 U.S. 945, 102 S.Ct. 1012 (1982).

<sup>5</sup>*Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 95 S.Ct. 1040 (1975).

<sup>6</sup>H.R. Conf. Rep. No. 1733, 94th Cong., 2d Sess. 87 reprinted in 1976 U.S. Code Cong. & Admin. News 5810, 5816.

<sup>7</sup>*Merrill v. Country Stores, Inc.*, 669 F. Supp. 1164 (D.N.H. 1987).

<sup>8</sup>*Hickory Grove Music v. Andrews*, 749 F. Supp. 1031 (D. Mont. 1990).

<sup>9</sup>*Edison Bros. Stores Inc. v. BMI*, 760 F. Supp. 767, (E.D. Mo. 1991), *aff'd*, 954 F.2d 1419, (8th Cir. Mo. 1992), *cert. denied*, 118 L.Ed. 2d 590 (1992).

<sup>10</sup>*BMI v. Claire's Boutiques, Inc.*, 754 F. Supp. 1324 (N.D. Ill. 1990), *aff'd*, 949 F.2d 1482 (7th Cir. Ill. 1991), *cert. denied*, 118 L.Ed. 2d 547 (1992).

<sup>11</sup>*Springsteen v. Plaza Roller Dome Inc.*, 602 F. Supp. 1113, 1119 (M.D.N.C. 1985).

<sup>12</sup>*BMI v. Jeep Sales and Services Co.*, 747 F. Supp. 1190 (E.D. Va. 1990).

<sup>13</sup>*Edison Bros. Stores, Inc. v. BMI*, 760 F. Supp. 767 (E.D. Mo. 1991), *aff'd*, 954 F.2d 1419, (8th Cir. Mo. 1992), *cert. denied*, 118 L.Ed. 2d 590 (1992).

<sup>14</sup>*Crabshaw Music v. K-Bob's of El Paso*, 744 F. Supp. 763 (W.D. Tex. 1990).

<sup>15</sup>*Int'l Korwin Corp. v. Kowalczyk*, 665 F. Supp. 652, 657 (N.D. Ill. 1987).

<sup>16</sup>*Merrill v. Bill Miller's Bar-B-Que Enterprises, Inc.*, 688 F. Supp. 1172, 1174-75 (W.D. Tex. 1988).

<sup>17</sup>*Hickory Grove Music v. Andrews*, 749 F. Supp. 1031 (D. Mont. 1990).

<sup>18</sup>*BMI v. Claire's Boutiques, Inc.*, 754 F. Supp. 1324 (N.D. Ill. 1990), *aff'd*, 949 F.2d 1482 (7th Cir. Ill. 1991), *cert. denied*, 118 L.Ed. 2d 547 (1992); see also *Edison Bros. Stores, Inc. v. BMI*, 760 F. Supp. 767, (E.D. Mo. 1991), *aff'd*, 954 F.2d 1419, (8th Cir. Mo. 1992), *cert. denied*, 118 L.Ed. 2d 590 (1992).

<sup>19</sup>*Merrill v. County Stores, Inc.*, 669 F. Supp. 1164 (D.N.H. 1987).

<sup>20</sup>*Springsteen v. Plaza Roller Dome, Inc.*, 602 F. Supp. 1113 (M.D.N.C. 1985).

<sup>21</sup>*Edison Bros. Stores, Inc. v. BMI*, 760 F. Supp. 767 (E.D. Mo. 1991), *aff'd*, 954 F.2d 1419, (8th Cir. Mo. 1992), *cert. denied*, 118 L.Ed. 2d 590 (U.S. 1992).

<sup>22</sup>*Id.* at 769-70.

<sup>23</sup>*BMI v. Claire's Boutiques, Inc.*, 754 F. Supp. 1324 (N.D. Ill. 1990), *aff'd*, 949 F.2d 1482 n.13 (7th Cir. Ill. 1991), *cert. denied*, 118 L.Ed. 2d 547 (U.S. 1992).

<sup>24</sup>These states include Illinois, Indiana, Wisconsin, Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

<sup>25</sup>See *supra* note 24.

<sup>26</sup>*BMI v. Claire's Boutiques, Inc.*, 754 F. Supp. 1324 (N.D. Ill. 1990), *aff'd*, 949 F.2d 1482 (7th Cir. Ill. 1992), *cert. denied*, 118 L.Ed. 2d 547 (U.S. 1992); see also *Edison Bros. Stores, Inc. v. BMI*, 760 F. Supp. 767, (E.D. Mo. 1991), *aff'd*, 954 F.2d 1419, 8th Cir. Mo. 1992), *cert. denied*, 118 L. Ed. 2d 590 (U.S. 1992).

<sup>27</sup>Rates for larger restaurants and nightclubs are based on different factors, including type of establishment, seating capacity, number of days and/or nights of operation, price of drinks, whether there is a cover charge, and whether there is a foreground use of music. In some cases, carry-out restaurants are classified with larger restaurants and nightclubs.

L-9112

NAB's Counsel Memos are intended to serve as a source of general information on legal issues of interest to the broadcasting industry. Broadcasters seeking information on how the principles discussed in a Counsel Memo apply to their specific circumstances should seek the advice of their own attorneys.

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## Broadcasters' Service Marks Under the Trademark Law Revision Act of 1988

By Robert W. Sacoff

On November 16, 1989, comprehensive amendments to the Lanham Trademark Act ("the 1989 amendments")<sup>1</sup> became effective, making it easier for broadcasters to select and acquire rights in new service marks (e.g., call signs and advertising slogans) and to protect these by federal registration. Protection of call signs as service marks has been important since the Federal Communications Commission disengaged itself from resolving disputes over them in 1983. Before the 1989 amendments, one could apply for registration only after a mark was in "use in commerce." Now, an application for registration can be filed based on a bona fide intent to use the mark in commerce. This article reviews the new procedures and provides some guidelines for establishing and maintaining rights in broadcasters' service marks.

### Choosing a Service Mark

Broadcasters' service marks typically include their call sign letters and, also, advertising slogans adopted to promote their stations' popularity. Recent Trademark Office *Official Gazettes* disclose illustrative published marks: the call sign, "B104, WBSB-FM"<sup>2</sup>; the program marks "WORKFORCE RADIO" and "COUNTRY CLOCK-IN"<sup>3</sup>. Representative "slogan mark" registrations include: "WCEV WE'RE CHICAGOLAND'S ETHNIC VOICE"<sup>4</sup>; the spoken Spanish words "RADIO CANON" and the sound of a cannon blast<sup>5</sup>; and a sound mark consisting of three short pulses followed by a longer pulse<sup>6</sup>.

Stations also use marks combining a frequency with the acronym FM and/or the station's call letters, such as "FM 107." However, "frequency" marks are typically held to be "merely descriptive," and thus

unprotectable and unregistrable in the absence of acquired distinctiveness, also known as "secondary meaning," based on extensive use and advertising. This is not a simple matter, as one station found out after ten years and one million dollars promoting the term "FM-107" and still being denied protection<sup>7</sup>. Thus, the legal protectability of a service mark should be carefully assessed and not blithely assumed.

New service marks should also be checked to determine whether they will conflict with the prior rights of others in similar marks either registered or unregistered. Comprehensive data is available through commercial trademark search firms. However, trademark searches are not legal opinions, and the raw data needs to be analyzed by an attorney experienced in trademark law in order to clear the proposed mark. The thrust of the analysis is whether the prospective mark is so similar to any prior marks that its use is likely to cause confusion among listeners as to the source or affiliation of broadcasting under the mark. After a mark is cleared and chosen, federal registration should be considered. All the states have their own registration systems as well, which afford inexpensive and quick ways of making a public record of your mark. However, state registration of trademarks or service marks provides virtually no substantive legal benefit.

Federal registration, on the other hand, provides nationwide substantive rights against all other users of similar marks except users and applicants who can antedate your federal application. Federal registration requires the mark to be used in interstate commerce, but broadcasting stations by their very nature meet this requirement.

### Registration Procedures

The first step in obtaining a federal

### In This Issue

- **Broadcasters' Service Marks**—  
New procedures for filing applications for registration.
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trademark registration is to file an application with the U.S. Patent and Trademark Office ("PTO") addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231. Typically, the application for a radio station's call sign mark or an advertising slogan mark would describe the services as "radio broadcasting services in Class 38." A government filing fee of \$175 is required for each class of services for products covered by the application.

In order to receive an official filing date, an application must comply with specific requirements. It must be executed by the owner of the mark, and filed along with the appropriate filing fee. It must identify the specific services for which the mark is used or intended to be used and have a formal drawing of the mark to be registered (a "drawing" of a sound mark consists of a written description of the sounds). If the mark is in use in the ordinary course of business, three specimen advertisements, brochures, signs or letters showing the mark as actually used for the services must be submitted.

If the mark is not in use yet, a bona fide intention to use the mark in commerce must be stated in the application. The term "bona fide intention to use" is a new legal concept in U.S. trademark law. The ability to file an application based on such an intent facilitates a broadcast station's adoption of a new mark, as the broadcaster does not have to use the mark before filing (as required under previous law). A broadcaster intending to introduce a new program or adopt a new program slogan can create rights in the mark by filing an application even while undertaking further market research and advertising development. However, applications filed merely to reserve rights in marks which may or may not be used are not consistent with the bona fide intention requirement.

Six or seven months after filing (due to the PTO's backlog), a trademark examiner reviews the application to determine whether the mark meets the requirements for registration. The most common statutory grounds for refusal are that: (1) the mark does not function as a service mark; (2) the mark is so similar to a registered mark that it is likely to cause confusion, mistake or to deceive when used in connec-

tion with the applicant's services; or (3) the mark is merely descriptive, or deceptively misdescriptive, of the applicant's services. A refusal of registration on any of these grounds is communicated to the applicant's attorney in a written "office action" to which a written response must be filed with the PTO within six months. In such a response, the applicant typically submits legal arguments and supporting evidence in an attempt to convince the examiner to withdraw the objections. Avenues of further appeal exist, if this attempt is unsuccessful, including the Trademark Trial and Appeal Board, and then the U.S. Court of Appeals for the Federal Circuit.

If and when the examiner concludes that all objections and other informalities have been satisfactorily resolved, the mark is published in the PTO's weekly *Official Gazette* for a 30-day opposition period. If no opposition is filed, a certificate of registration is issued approximately 12 weeks later, provided that the file shows that the mark is already in use in commerce.

The statutory definition of "use in commerce" was revised in the 1989 amendments to mean "the bona fide use of the mark in the ordinary course of trade, and not made merely to reserve a right in a mark." In short, genuine commercial use is required and token use does not suffice.

If the application is based on intent-to-use, a notice of allowance is sent to the applicant's attorney after the close of the opposition period. The applicant then has six months to begin use of the mark in commerce, and file a declaration attesting to such use along with the filing fee of \$100 per class and three specimens showing the mark as used.

If the applicant is not able to submit a statement of use within the six months after the notice of allowance, a six-month extension of time can be requested, based on a reconfirmed bona fide intent to use the mark in commerce and payment of a \$100 per class government fee. The filing period can be further extended up to twenty-four additional months thereafter on verified showings of good cause, continued bona fide intent, and payment of additional government fees.

Once a statement of use is filed in an intent-based application, along with the necessary specimens and filing fees, a second official examination is conducted. If all is found to be in order, the registration issues.

### Post Registration

With the purpose of removing "deadwood" registrations of unused marks from

the register, the statute still requires a federal registrant to file an affidavit within the sixth year of registration, stating that the mark is in use in commerce for the services set forth in the registration or that the mark is in non-use due to special circumstances and not due to any intention to abandon the mark. Failure to file this affidavit results in cancellation of the registration at the end of the sixth year. As another "deadwood" provision, the 1989 amendments reduced the term of registrations and renewals from twenty to ten years. However, a registration may be renewed perpetually, every ten years, provided the mark remains in use in commerce.

An optional affidavit may be filed after any five year period of continuous use of a registered mark to make the registration "incontestable." This affidavit must state that there has been no decision adverse to the registrant's right to use the mark or to keep it on the register, that there is no pending proceeding involving such rights, and that there have been five years of continuous use of the mark in commerce for the services stated in the registration.

### Benefits of Federal Registration

A federal registration is not required in order for a mark to be protected, as trademarks and service marks are also protected under the common law of unfair competition based solely on their use in the marketplace. However, a federal registration confers certain benefits not available at common law.

The most significant benefit, under the 1989 amendments, is nationwide constructive use as of the filing date of the application. Under the common law, geographically remote junior users of the same mark may not be infringers and may even have superior rights in their own broadcast areas. Under the 1989 amendments, the federal registrant's mark is deemed to have been used everywhere in the country (even though this is not a reality), thus creating nationwide rights as of the application's filing date.

Service marks are powerful selling symbols and valuable business assets for broadcasters. Their development and protection begins with proper clearance and selection, continues with consideration of whether federal registration may be advantageous (there are situations in which it may not be) and often culminates with federal registration, vigilance for and policing of infringers.

### L-9102

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*NAB's Counsel Memos are intended to serve as a source of general information on legal issues of interest to the broadcasting industry. Broadcasters seeking information on how the principles discussed in a Counsel Memo apply to their specific circumstances should seek the advice of their own attorneys.*



### Footnotes

<sup>1</sup>"The Trademark Law Revision Act of 1988," Public Law 100-667, November 16, 1988.

<sup>2</sup>Ser. No. 74/034,963 by Scripps Howard Broadcasting Co., DBA WBSB-FM, Cincinnati, OH.

<sup>3</sup>Ser. Nos. 74/035,656 and 74/035,659 by Networks, Inc., Linthicum, MD.

<sup>4</sup>Reg. No. 1,499,928 by Migala Communications Corp., Chicago, IL.

<sup>5</sup>Reg. No. 1,260,220 by Amerimex Intl. Media, Inc., El Paso, TX.

<sup>6</sup>Reg. No. 922,585 by Broadcast Plaza, Inc., Hartford, CT.

<sup>7</sup>*Walt-West Enterprises, Inc. v. Gannett Co. Inc.*, 695 1050 (7th. Cir 1982).

<sup>8</sup>The many details of the application process are beyond the scope of this overview article, but readers are referred to the governing statute, the Lanham Trademark Act, 15 U.S.C. secs. 1051 *et seq.*, and the governing rules, Trademark Rules of Practice, 37 C.F.R. secs. 1.1 *et seq.* Naturally, this article does not provide legal advice, which must always be tailored to individual needs and circumstances.





## TRADEMARK PROTECT YOUR CALL SIGN

By James Bikoff, Esq. and Roger Furey,  
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L-9202

Could the following situations happen to you? In 1985, under new ownership, Station WQTR-FM underwent a complete make over. The station secured approval to increase its power output and market coverage. It altered its broadcast format, adopted the slogan "FOXY", and changed its call letters from WQTR to WZFX, thereby incorporating "FX" letters from the "FOXY" slogan. In concert with these changes, the new licensee of Station WZFX-FM embarked on a promotional blitz. Local advertisers were advised of the station's changes; the licensee ordered and distributed flyers, sales brochures, promotional stickers and letterhead bearing the "FOXY" mark; and a billboard advertisement campaign was arranged. The licensee spent over \$11,000 to popularize the "FOXY" mark.

A few months later, a competing radio station began using the same "FOXY" slogan in a promotional campaign of its own, thereby benefiting from the goodwill which Station WZFX-FM had generated with respect to the "FOXY" slogan in the community.

Or, how about this. Station WMEE spent over thirteen years and \$300,000 developing its reputation and goodwill in connection with its call letters in its broadcast community. In 1984, a competing station whose format was essentially identical and whose broadcasting was aimed at the same listening audience as that of Station WMEE changed its call letters to WMCZ.

In another situation, the licensee of Station KQFX acquired all the assets of Station KHFY, including Station KHFY's employment contracts for air personalities, promotional schedule, music contracts, and goodwill—essentially its identity in the community. Its intent was to move the KHFY format to the KQFX facility lock stock and barrel. Obtaining the same call sign, "KHFY",

was essential to the goodwill being acquired, and with approval from Station KHFY, the licensee of Station KQFX applied for the call sign as is required by FCC regulations. In an effort that would have thwarted Station KQFX's plans, a competing station in the community also applied for the "KHFY" call sign, at another of its stations it had held for many years. The FCC grants a preference to the station with the longest continuing license where there are conflicting requests for a call sign.

Two developments in trademark and communications law have made it possible in some instances to avoid these situations before they occur, and, where litigation is required, strengthen a licensee's position. First, the Trademark Trial and Appeal Board held in 1985 that a licensee was the owner of its call sign, and was entitled to federally register it as a trademark.<sup>1</sup> Second, in 1988 Congress passed legislation enabling persons with a *bona fide* intent to use a trademark to apply to register the mark *before* the mark is actually used. This paper will examine the nature and scope of a licensee's rights to exclusive use of call letters, slogans and mascots in its market area in the wake of these developments, and the advantages of federally registering trademarks and copyrights to ensure protection of these rights to exclusive use. It will then detail the procedures whereby federal registration for trademarks and copyrights may be obtained.

### Background of Trademark and Service Mark Protection for Licensees

The purpose of trademarks and service marks is to identify the source of goods or services, such that the public will identify those goods or services as emanating from a particular owner. Registration of a trademark or service mark helps protect against anyone else using a mark substantially similar to the registered mark where confusion would result as to the sponsorship or source of a good or

service. Thus, registration of a service mark by a broadcast licensee will enable it to enforce its right to exclusively use the call letters, slogans or mascots which the licensee uses to identify its broadcasting services. The licensee will be able to protect the goodwill in the community associated with its marks, which it has spent, or will spend, time and money generating.

Originally, the FCC regulated the rights of licensees with respect to use of similar call signs. Prior to 1984, a radio or television licensee could, pursuant to FCC regulations, object to the FCC's approval of another station's call letters, provided both stations were to serve in the same area. In 1984, the FCC revoked this provision, thereby relinquishing its authority to police disputes between licensees with regard to similar call letters.<sup>2</sup>

In 1985, the Patent and Trademark Office stepped into this vacuum created by the FCC. *In re WSM, Inc.*,<sup>3</sup> the Trademark Trial and Appeal Board held that through the adoption and use of its service mark, "WSM", petitioner was the owner of the mark, and was entitled to register it as a federal service mark. The regulatory scheme under trademark law is somewhat different, however, than that under the prior FCC regulations. Under those rules, a competitor could block FCC approval of a station's proposed call letters. Currently, there is no authority under FCC law enabling a licensee to prevent the FCC from assigning a particular call sign. A federal registrant of a call sign as a service mark, however, can immediately seek to enjoin the use of a call sign in its market area, if the call sign is confusingly similar to its registered service marks.<sup>4</sup>

The central issue in *In re WSM* was whether a broadcaster is the owner of the mark (call sign) where the FCC has the authority to approve and revoke the broadcaster's call sign. The Board stated:

...[T]he [broadcaster] obtained whatever rights it has in its service mark by adopting it and using it to identify its broadcasting services. The FCC neither selected the mark for [broadcaster] nor used it to [identify] any services. While the agency may withdraw [broadcaster's] license to broadcast, it cannot, under its rules unilaterally direct [broadcaster] to change its service mark or adopt another one. If the FCC withdraws the broadcast license and [broadcaster] is therefore unable to continue rendering broadcast

services under the mark, the issue of abandonment of the mark would arise, but as long as [broadcaster] uses the mark to identify its services which are lawfully rendered in commerce, [broadcaster] is the owner of its service mark. . . [W]e see a clear distinction between the right to broadcast, which is granted under license from the FCC, and the right to register a service mark, which stems from adoption and use, rather than from a grant or license by the FCC.<sup>5</sup>

This language makes it clear that *use* of the mark rather than its authorization by the FCC is the essential element upon which a licensee's right to exclusive use of a mark in commerce is determined.

Thus, in the KHFY situation described above, if the licensee of Station KHFY owned a federal registration for the mark "KHFY," it could have assigned the service mark registration to the licensee of Station KQFX. Even if the FCC granted use of the "KHFY" call sign to a competing station, the licensee of Station KQFX could have enforced its right to use the "KHFY" mark against the competitor in its market area based upon its federal registration.

As the Trademark Trial and Appeal Board indicated in *In re WSM*, the FCC still may become involved to the extent that the FCC might reject a call sign request or revoke a broadcast license. A trademark owner might then be unable to continue rendering services under the mark and that fact may signal abandonment of a trademark.<sup>6</sup> However, as long as a trademark owner uses the mark to identify its services, within the same class of services, trademark law will regulate a licensee's right to exclusive use of the mark.

### **Advantages of Federal Registration**

Although the user of a service mark or trademark is entitled to a limited amount of protection without federally registering the mark ("common law" protection), there are numerous advantages to securing a federal registration rather than relying upon common law protection of a trademark or service mark. These advantages include the following:

1) *Registration serves as notice to other potential trademark or service mark users.* The first step for most companies prior to adopting, using or applying for registration of a trademark or service mark is the initiation of a "trademark search" to determine whether the mark is available for use and registration. Such a search will turn up existing registrations for the same, or similar, marks. Thus, the federal registration of a trademark or

service mark will serve to deter a portion of the broadcast community from using a confusingly similar mark and will prevent later litigation, because potential users and applicants will be put on notice of use and registration of the mark by the senior user.

2) *Registration serves as prima facie evidence of the registrant's exclusive right to use the mark.* In an infringement lawsuit brought by a federal registrant to stop a junior user of the same or similar mark, the registration of the mark serves as prima facie evidence that the registrant owns the mark.<sup>7</sup> It provides a strong presumption of validity in favor of the registrant, increasing the burden on the junior user to bring forward evidence that the senior user is not entitled to protection.

3) *More substantial remedies are available to the federal registrant.* Under the common law, a licensee may obtain an injunction enjoining another licensee from subsequently using a substantially similar call sign or slogan. In addition, it may be entitled to monetary damages, depending on the applicable state law or the discretion of the court. In the second example above, the licensee of Station WMEE was only able to rely on the common law to enjoin the competing licensee from using the call letters WMCZ. If the licensee had owned a federal registration of its service mark (the call sign) and shown a knowing and willful infringement, in addition to profits, damages and costs, it may have been entitled to treble damages and attorneys fees.<sup>8</sup> Furthermore, if a registered trademark is used continuously for five years, the trademark registration may become "incontestable"—meaning the validity of the mark cannot be questioned except in very limited circumstances.

Thus, ownership of a federal registration may deter infringements, and thereby avoid expensive litigation, because competitors will be less inclined to infringe upon a registered mark, where substantial damages may be awarded.

4) *Federal registrants are entitled to broader territorial protection of their rights to exclusive use.* Under the common law, the first user of a trademark or service mark has priority over a later user of the same or confusingly similar mark in the same area in which the senior user uses the mark. Thus, a senior user could prohibit a subsequent user from using a substantially similar trademark or service mark in the same market area. However, if a senior user sends its goods or services to a different market, its rights are subject to the rights of any existing users of that mark in that market, even though the local user began using the mark after first use by the senior user in the other market.<sup>9</sup>

On the other hand, a senior user who has a federally registered trademark has superior

rights throughout the United States.<sup>10</sup> Those rights may be asserted in the senior user-federal registrant's market area, and in those areas where it demonstrates a likelihood of entry.<sup>11</sup> The entity does not have to be a broadcast service, provided it is a service so related to broadcasting so as to cause confusion in the mind of consumers. This can be an important benefit for owners of multiple licenses in different areas of the country, and providers of services to broadcasting stations.

5) *Plaintiffs in trademark infringement cases may invoke federal jurisdiction.* Once a trademark or service mark is federally registered, an owner suing for trademark infringement may file his complaint in federal courts.<sup>12</sup> Plaintiffs in trademark infringement cases generally prefer to litigate in federal court because of the greater experience of federal judges in trying trademark cases and the speed in which decisions are reached.

### **Increased Benefits Of Registration Due To Recent Changes In The Law**

In addition to these benefits, the passage of legislation in 1988,<sup>13</sup> enabling registrants to apply for a mark before actual use, further compels a licensee to federally register its slogans and call signs. Prior to November 16, 1989, the effective date of the new legislation, an applicant could only apply for a federal registration based upon its use of the mark prior to filing the application. Now an applicant may file its application based either upon actual use of the mark or a *bona fide* intent to use the mark. The filing of any application for registration constitutes constructive notice of an applicant's use of, or intent to use, the mark. Thus, under the "intent to use" registration process, an applicant is afforded nationwide priority rights over anyone who has not used the mark before the application's filing date or filed an intent to use application in the Trademark Office before the applicant, based solely on its *bona fide* intent to use a mark.

These priority rights that may be derived from filing an intent-to-use application could have saved NBC over \$500,000, when, in 1976, the network embarked upon the creation of a new NBC logo. Before it spent an estimated \$750,000 developing the mark, NBC did a trademark search to ensure that there were no conflicting marks being used. In the eight-month interim between the time the results of NBC's trademark search indicated that there were no conflicting marks being used and the completion of the NBC logo, Nebraska Public Television adopted and began using a substantially similar logo. NBC was forced to pay Nebraska Public Television \$500,000 for the right to use the mark. Under the intent-to-use system, NBC could have filed



an application based on a *bona fide* intent to use the mark, thereby acquiring nationwide priority for use of that mark.

On the other hand, it must be noted that although an applicant acquired a nationwide priority *right* to exclusive use of the trademark based upon an intent-to-use application, the applicant may not enforce that right through an infringement suit until it has actually used the trademark. Thus, if a competitor begins to use a substantially similar mark while an intent-to-use application is pending, the applicant will have to be creative in finding ways to prevent the competitor from using the mark. One possible argument for an injunction enjoining the competitor's use of the mark would be interference with prospective economic advantage.<sup>14</sup> A federal registrant may also sue for infringement based upon the registration once it uses the mark and the registration issues.

### Procedures for Federal Registration

Thus, there are now two means for filing a trademark or service mark application. The application may be based upon use or *bona fide* intent to use the mark. The procedures for filing a mark under these systems are as follows:

1) The licensee will first want to initiate a federal trademark search to ensure that there are no other substantially similar registered or pending marks such that the registration may be denied.<sup>15</sup> While this step is not mandatory, it is highly recommended in light of the expenditures that may be wasted should an applicant subsequently discover that the same or a similar mark had been registered or applied for by a different party, and to avoid infringement litigation.

2) Upon successful completion of the search, the next step is to file an application to register the mark. A use applicant must state that it is using the mark, the particular goods or services in connection with which the mark is being used, and the date of the applicant's first use of the mark. An intent-to-use applicant must specify that it has a *bona fide* intention to use the mark and describe the goods or services in connection with which it has a *bona fide* intention to use the mark.<sup>16</sup> Upon submission of either a use or intent-to-use application, an examining attorney at the Patent and Trademark Office ("PTO") will inspect the application for registrability. An application will be refused at this stage if there is a registered mark or pending application which is confusingly similar, or if the mark is deemed to be generic, descriptive or misdescriptive.

3) If the mark is approved by the examining attorney, the mark will be published for opposition.<sup>17</sup> Parties who believe they would

be damaged by registration of the proposed mark then will have 30 days within which to file an opposition to registration.<sup>18</sup>

4) If the application is not opposed, or the applicant prevails against the opposition filed, a certificate of registration will be issued by the PTO.<sup>19</sup> A certificate indicates that the applicant has complied with the law, and that it is entitled to registration of its mark.<sup>20</sup> If the applicant has filed an intent-to-use application, the PTO will issue a "notice of allowance."<sup>21</sup>

5) The intent-to-use applicant must file a statement of use within six months of the issuance of the notice of allowance, which will include the date of the first use of the mark, the goods or services with which the mark is used in commerce and the mode or manner in which the mark was used in connection with the goods.<sup>22</sup> The applicant may obtain a six-month extension of the original six-month period upon written request and up to four additional six-month extensions for good cause.<sup>23</sup> The registration for the mark issues after the intent-to-use applicant first uses the mark in connection with its goods or services and files the necessary statement of use.

The cost of this entire procedure is generally under \$1,000 including the cost of the trademark search, filing fees and attorneys' fees.<sup>24</sup>

Since the legislation allowing "intent-to-use" applications was only recently passed, some questions remain with respect to its implementation. For instance, it is not clear what a licensee must show at a minimum in order to demonstrate a "*bona fide*" intent to use. However, FCC approval to use a call sign for a date certain in the future would constitute substantial evidence suggesting a *bona fide* intent to use a mark. Evidence such as marketing studies and plans or orders for goods bearing a new call sign or logo would also most likely be sufficient. As this area of the law is still subject to judicial interpretation, the licensee would be well-advised to maintain complete records with regard to plans for future use of the mark.

### Copyright Protection for Licensees

In addition to obtaining trademark protection for its call signs, slogans and mascots, a licensee may also obtain copyright protection for call letter logos, slogans and mascots which involve original artwork or designs.<sup>25</sup> Copyright protection automatically exists upon creation of original artwork or designs, but enforcement of the copyright is contingent upon the licensee's registering the claim to copyright with the U.S. Copyright Office.

The protection offered by a copyright differs from that offered by a trademark. While the purpose of a trademark is to identify the source of goods or services, so that the public

will not be confused as to the source of the goods, a copyright is more analogous to a property right. The purpose of a copyright is to prevent anyone else from copying the original artwork or design.<sup>26</sup> A copyright for a mascot or slogan design gives its owner the exclusive right to reproduce the design in copies, distribute copies to the public, and display the mascot design publicly.<sup>27</sup>

As trademarks and copyrights serve different functions, they may co-exist in a single work. For example, assume that Station WZFX uses a fox design as its mascot. Trademark registration of the fox mark would give Station WZFX the right to ensure that the design, as applied to products and services offered by WZFX, is not used by any other party. The station should additionally secure copyright protection so as to be able to fully protect the design against unauthorized reproductions.

A mascot design may be copyrightable so long as the design is original. A definition for the word "original" was intentionally omitted from the Copyright Act "to incorporate without change the standard of originality established by the courts under the present [1909] copyright statute."<sup>28</sup> Case law indicates that there is a distinction between originality and novelty. "Originality means only that the work owes its origin to the author, i.e., is independently created and not copied from other works."<sup>29</sup> Further, "[a]ny 'distinguishable variation' of a prior work will constitute sufficient originality to support a copyright if such variation is the product of the author's independent efforts and is more than trivial."<sup>30</sup>

As indicated above, under the Copyright Act registration is not mandatory—a copyright subsists in an original design from the moment it is created. However, protection of the copyright may not be enforced until registration of a claim to copyright is filed with the United States Copyright Office. Once a copyright is registered, the owner will be entitled to bring a copyright infringement suit in federal court. The copyright owner who prevails in such a suit is entitled to recover the actual damages suffered by the owner as a result of the infringement, or any profits of the infringer that are attributable to the infringement, or statutory damages (provided the registration issued before the infringement occurred), whichever is higher.<sup>31</sup> Registration consists of submitting an application form and a filing fee to the Copyright Office. The process costs approximately \$195,<sup>32</sup> which includes the government filing fee and attorneys' fees.

### Conclusion

For purposes of ascertaining the rights of a licensee with respect to the exclusive use of call signs, logos and mascots, the FCC is no longer involved in the question, except to the

extent that rejection of a call sign or withdrawal of a license could signal abandonment of a trademark right. Thus, you should consider consulting with an attorney experienced in trademark and copyright law to plan your strategy for protecting your rights to exclusive use of your call letters, slogan or mascot, before you select your call letters or embark on a major promotional campaign.

You may wish to arrange for a trademark search to determine whether the mark is available for federal registration. If the trademark or service mark selected is already registered by another company or if an application for the same or similar mark is pending in the name of another company, it still may be possible to use the mark in a geographically separate area, or to negotiate a license agreement whereby you would be entitled to exclusive use of the mark in your market. If the trademark or service mark is not already registered or applied for, a use application may be filed if you have already used the mark in commerce. If the mark has not already been used, you may file an intent to use application. Once the promotional campaign begins and the mark is used in connection with the services, a trademark registration should issue shortly thereafter, and you will be assured of the exclusive right to use the slogan or call letters in connection with your broadcasting services.

You should also consider registering your claim to a copyright in any original designs such as a mascot, thereby triggering your right to prevent others from copying your design.

Station WZFX-FM knew that another party owned a federal service mark registration for the mark "FOXY" before it adopted its "FOXY" slogan. WZFX-FM obtained a license to use the "FOXY" service mark from the Registrant and its license helped it to prevail in the lawsuit it filed against the competing radio station which subsequently began using the "FOXY" mark.

Stations WMEE and KQFX never filed applications for registration of their respective call signs, although WMEE eventually did prevail against WMCZ, and KQFX eventually got the KHFI call sign. However, expensive litigation and exhausting repetitive FCC call sign applications may have been avoided if they had filed their applications before trouble began.

Finally, NBC could have saved \$500,000 in settlement costs if it had been possible to file an intent-to-use application at the time it decided to adopt its new NBC logo.

By federally registering your service marks and/or copyrights, you will potentially save substantial litigation expenses, and you can avoid wasted promotional expenses for a mark as to which you have no enforceable rights to exclusive use. Further, a federal registration will strengthen your bargaining position with

respect to would-be infringers. The costs of securing service mark and copyright registration seem insignificant in comparison to the benefits which result from owning such registrations.

*NAB's Counsel Memos are intended to serve as a source of general information on legal issues of interest to the broadcasting industry. Broadcasters seeking information on how the principles discussed in a Counsel Memo apply to their specific circumstances should seek the advice of their own attorneys.*

## Endnotes:

<sup>1</sup> *In re WSM, Inc.*, 225 U.S.P.Q. 883 (TTAB 1985).

<sup>2</sup> Presently FCC rules state that "[a]pplicants may request call signs of their choice if the combination is available," and that "[o]bjections to the assignment of requested call signs will not be entertained at the FCC." 47 C.F.R. [S]73.3550(g).

<sup>3</sup> 225 U.S.P.Q. 883 (TTAB 1985).

<sup>4</sup> *See Pathfinder Communications Corp. v. Midwest Communications Co.*, 593 F. Supp. 281 (1984).

<sup>5</sup> 225 U.S.P.Q. at 885.

<sup>6</sup> *See In re WSM*, 225 U.S.P.Q. at 885.

<sup>7</sup> 15 U.S.C. [S]1057(b).

<sup>8</sup> 15 U.S.C. [S]1117.

<sup>9</sup> *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90 (1918).

<sup>10</sup> *Dawn Donut Co. v. Hart's Food Stores, Inc.*, 267 F.2d 358 (2d Cir. 1959).

<sup>11</sup> *Mister Donut of America, Inc. v. Mr. Donut, Inc.*, 418 F.2d 838 (9th Cir. 1969); *cf. Dayton-Hudson Corp. v. Dart Drug Corp.*, 221 U.S.P.Q. 288 (1982) (complaint dismissed for failure to state a claim where registrant did not allege likelihood of entry into defendant's territory).

<sup>12</sup> 15 U.S.C. [S]1117.

<sup>13</sup> The Trademark Law Revision Act of 1988; Public Law 100-667.

<sup>14</sup> H. Leeds, *Constructive Use*, Section 8 Affidavit & Renewal Applications Under the Trademark Law Revision Act of 1988, *Trademark Rules of Practice Under the Trademark Law Revision Act*, p. 48.

<sup>15</sup> In addition, the licensee should strongly consider obtaining a common law and state search to ascertain whether any other party is using the same or a similar mark for competing services.

<sup>16</sup> Trademark Manual of Examining Procedure, Section 2.33 (1989).

<sup>17</sup> *Id.* at Section 2.80.

<sup>18</sup> *Id.* at Section 2.101.

<sup>19</sup> *Id.* at Section 2.81.

<sup>20</sup> *Id.* at Section 2.151.

<sup>21</sup> 15 U.S.C. [S]1063(b)(2).

<sup>22</sup> 15 U.S.C. [S]1051(b).

<sup>23</sup> 15 U.S.C. [S]1051(d)(1); 37 C.F.R. [S]2.89.

<sup>24</sup> This estimate does not include filing fees for requested extensions and other unanticipated problems with the application.

<sup>25</sup> *See M. Nimmer*, 1 *Nimmer on Copyright* [S]2.12 ("Although there has been some conflict in the cases, it is clearly the prevailing view that characters per se are entitled to copyright protection.")

<sup>26</sup> *See J. Thomas McCarthy*, 1 *Trademarks and Unfair competition*, [S]6.4 (1984).

<sup>27</sup> *Id.*

<sup>28</sup> *Nimmer*, 1 *Nimmer on Copyright* [S]2.01 (quoting H. Rep. p. 51).

<sup>29</sup> *Id.* at [S]2.01[A].

<sup>30</sup> *Id.* at [S]2.01[B].

<sup>31</sup> 17 U.S.C. [S]504(b) and (c).

<sup>32</sup> Expedited filing fees are higher.

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