

NATIONAL ASSOCIATION OF BROADCASTERS

# Legal Guide

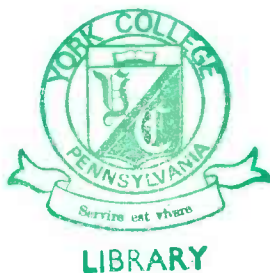
TO BROADCAST LAW  
AND REGULATION

National Association of  
**NAB**  
BROADCASTERS

**NATIONAL ASSOCIATION OF BROADCASTERS**

# **Legal Guide**

**TO BROADCAST LAW  
AND REGULATION**



**THIRD EDITION**

**© COPYRIGHT, NATIONAL ASSOCIATION OF BROADCASTERS, 1988  
WASHINGTON, D.C.  
ALL RIGHTS RESERVED**

**ISBN 0-89324-051-6**

National Association of Broadcasters  
1771 N Street, N.W.  
Washington, D.C. 20036  
(202) 429-5333

KF  
2805  
L44  
1988

# FOREWORD

## NAB Legal Guide

This publication is the third in a series of *NAB Legal Guides* going back to May 1977. The Second Edition was issued in June 1984 and almost immediately fell victim to deregulation at the Federal Communications Commission under former Chairman Mark Fowler. Since 1984, the FCC has completed its deregulation of the television industry, eliminated many prior policies referred to as "regulatory underbrush," made significant changes in its multiple ownership rules, and adopted new must carry rules for television stations. In large part, this revision of the *Legal Guide* was mandated by the significant changes in regulatory policies at the FCC.

The Third Edition of the *Legal Guide* goes far beyond the rules and regulations of the FCC. This *Legal Guide* is designed to give the broadcaster a more comprehensive analysis and understanding of the many rules, regulations, and laws that affect broadcasters in their day-to-day operations. New chapters and sections have been added to cover libel and invasion of privacy, new developments in commercial speech, the Immigration Reform and Control Act of 1986, the minimum wage rules, employment issues beyond FCC regulations, federal tax law as it affects broadcasters, the rules and regulations concerning satellite earth stations, copyright and trademark issues, and antitrust law and what it means to broadcasters.

Because this version of the *Legal Guide* extends well beyond FCC matters, its new title, *NAB Legal Guide to Broadcast Law and Regulation*, reflects its expanded scope. Even though the FCC has made great efforts to advance deregulation, it is still apparent that broadcasters are subject to many laws and regulations—some of the FCC and many others as well. It is our hope here at NAB that this *Legal Guide* will give all broadcasters the ability to make informed decisions concerning legal issues before them.

The *Legal Guide* was written, compiled, and edited primarily by members of



the NAB Legal Department under the supervision of Robert Branson. We are also indebted to many members of the Communications Bar for their help in writing and editing chapters in this work. Specifically, we wish to thank Stan Brown and Susan Marshall of Arent, Fox, Kintner, Plotkin & Kahn for the chapter on employment law; Jana DeSirgh, of Cadwalader, Wickersham & Taft for the chapter on tax law; Ted Henneberry of Howrey & Simon for the chapter on anti-trust law; Erwin Krasnow of Verner, Liipfert, Bernhard, McPherson & Hand for the preface; Ron Lepkowski, former Chief of the FCC's Satellite Radio Branch and currently a private satellite communications consultant for the section on satellites; John Logan, of Dow, Lohnes & Albertson for the section on record retention; John Stewart Jr. of Crowell & Moring for the chapter on copyright issues and section on comparative renewal; and Thomas Walsh for the section on character qualification in FCC application proceedings. We are also indebted to the following persons who provided editorial guidance and valuable assistance in reviewing this publication: Chris Baldwin of the Gannett Co., Inc.; Joseph DeFranco and Charles Bayly of CBS Inc.; Werner Hartenberger and Suzanne Perry of Dow, Lohnes & Albertson; Ed Williams of our Science and Technology Department; and Martha Zornow of the National Association of Public Television Stations.

This publication is intended to serve as a source of general information on legal issues of interests to the broadcasting industry. Broadcasters seeking information on how the principles discussed in this publication apply to their specific factual situations should seek the advice of their own attorneys.

Henry L. Baumann  
Executive Vice President, Legal Affairs  
and General Counsel

---

# PREFACE

---

## A Guide to Using the Guide

You may be tempted to eyeball the table of contents, skimread the preface and then place this volume on a prominent spot on your bookshelf. Don't do it. Letting the *Legal Guide* gather dust is the worst thing you can do. Unless you and the members of your staff regularly use this book, you are cheating yourself and your station—the license for your station is too valuable for you to take a passive approach to complying with the rules, regulations and policies of the Federal Communications Commission and other regulatory agencies.

Despite the sheer volume and complexity of the FCC's constantly changing rules, the Commission doesn't excuse a licensee from compliance merely because the owner or general manager is not aware of or doesn't understand a particular regulation. It also is well-established Commission policy that a licensee is responsible for the acts of all station employees or agents. Thus, every broadcaster must devote substantial amounts of time to the task of keeping track of the FCC's rules and policies—and even more importantly, the Commission's many interpretative rulings.

The task of FCC compliance has become easier in the 1980's as a result of broadcast deregulation—the Commission has dramatically reduced the paperwork requirements imposed on broadcasters, eliminated archaic rules and simplified application procedures. It would be a mistake, however, to let the phrase “deregulation” lull you into concluding that the FCC is paying less attention to the manner in which you comply with the requirements of the Communications Act and serve the public interest. With fewer rules on the books, the FCC is paying closer attention to the ones still in effect—and until Congress amends the Communications Act, the Commission has a statutory mandate to enforce rules governing sponsorship identification, lotteries, obscenity, political broadcasts, etc. The Commission still is required to make a finding that the public interest, convenience and necessity would be served by a grant of your station's renewal application.

Understanding FCC rules and policies is no easy task. Perhaps even more difficult is establishing a sensible management compliance program. The *Legal Guide* is designed to assist you in several ways. First, it summarizes in plain English all of the significant Commission rules and policies with which your station must comply. The text provides a general discussion of key FCC requirements, while the appendices contain supplementary explanatory materials and various forms, directories and memoranda. Second, the headings and subheadings indicate those matters which will be of relevance only to radio or television stations—a special chapter is included for noncommercial educational stations. Unless specifically noted, all of the topics in the table of contents pertain to AM, FM and TV stations. Both the detailed table of contents and the topical index are intended and designed to end laborious searches for information about FCC regulations, reports and applications. Also, since FCC rules and policies change (particularly as new Commissioners are appointed), the *Legal Guide* notes those requirements which are undergoing or about to undergo review.

The *Legal Guide* is intended to be more than a comprehensive explanation of hundreds of FCC rules, agency reports and court decisions. It also is designed to give practical advice to principals, station managers and staff on complying with FCC and other regulations, filling out forms and effectively coping with the bureaucracy which broadcasters face. Chapter XII contains nuts-and-bolts suggestions (including current telephone numbers and addresses) on obtaining information, documents and advice from the FCC.

Here are some specific suggestions on how to use the *Legal Guide*:

**Reporting Requirements.** You should make a list of all deadline dates for the submission of reports and applications by your station. Using the material in the *Legal Guide*, you might develop an annual calendar that will serve as a reminder of various FCC reporting requirements. Chapter I, Section A lists the current Commission reporting and filing requirements. Section B specifies the deadlines for applications to renew the licenses for radio, television, FM translator and TV translator stations. The annual calendar for your station also should include the dates for the broadcast of announcements giving notice of the filing of your station's renewal application and inviting comments from the public (see Chapter I, Section F). Also, for commercial radio stations, the calendar should include the dates for placing Quarterly Issues/Programs Lists in the local public inspection file (see Chapter II, Section A).

**Applications.** Chapter I, Section B describes the most frequently used application forms filed by broadcasters (some of the forms are reprinted in the Appendices) and provides guidance on filling out these forms. Comprehensive instructions on preparing and filing an application for renewal of license is contained in Section F, Chapter I. Section D of Chapter I provides information on the FCC's fee schedule. The FCC policies and procedures on establishing or relocating a main studio are explained in Chapter V, Section E.

**Compliance Checklist.** You should conduct a periodic in-house inspection to make sure that your station's technical plant and operating procedures are in order. Appendix F contains an updated version of the FCC's Field Operations Bureau checklist of Commission regulations that govern AM and FM stations. Chapter V describes the FCC's radio operator rules, required engineering records, station technical specifications, FCC notification requirements, Emergency Broadcast System procedures and other technical requirements. Of special importance is the discussion of the FCC's relatively new standards for RF radiation exposure of the public and station workers. All stations must meet these new exposure standards at renewal time and when changing facilities.

Your engineer should review this material prior to conducting an in-house inspection of the station's technical plant.

Every station should establish a diagnostic and preventive audit process to assure compliance with all FCC rules and policies—a section-by-section review of the *Legal Guide* will be of significant assistance to you in devising an audit process for your station.

**Programming Requirements.** Section C of Chapter I (Announcements), Chapter II (Programming Policies and Practices), Chapter IX (Rules and Regulations for Communications Satellite Earth Stations), Chapter X (Copyright and Trademark Issues), and Chapter XI (Antitrust Considerations) should be viewed by the station's program director. With respect to political broadcasting requirements, we recommend that you and your program director use the pre-election checklist set forth in Chapter II, Section B. Your program director also should review all of Chapter II.

**News Requirements.** Chapter III (Newsgathering Policies and Practices) should be "must reading" for your news director; it includes practical advice on such topics as libel, invasion of privacy, concealed microphones, hidden cameras and investigative reporting. Your news director also should review the sections on (a) Fairness Doctrine, Political Broadcasts and Related Topics (Chapter II, Section B); (b) Obscene, Indecent or Suggestive Material (Chapter II, Section F); (c) Unauthorized Communications and Rebroadcasts (Chapter II, Section I); and (d) Lotteries as Editorial and News Topics (Chapter IV, Section E).

**Advertising Requirements.** Employees involved with sales should review Chapter I, Section C (Announcements), Chapter II, Section B (Fairness Doctrine, Political Broadcasts and Related Topics) and Chapter IV (Commercial Policies and Practices). Chapter IV, Section E (Contests, Promotions, Lotteries and Gambling-Related Sports) contains suggested safeguards concerning the content of broadcast copy dealing with contests and maintenance of contest files, as well as checklists on the elements of a lottery. The appendices to Section F (Payola and Conflicts of Interest) are designed to aid you in identifying potential problems in the area of payola and plugola. They list common practices that fall under the scope of payola prohibitions and suggest guidelines for use in your dealings with record companies and record promoters. These appendices also contain a suggested memorandum that may be circulated to secure information from pertinent employees concerning their outside business interests and activities, and a sample affidavit that might be executed by such station employees. The head of your sales department also should review Chapter XI (Antitrust Considerations) which deals with such topics as combination advertising, joint rate setting, joint sales presentation, and joint collection and dissemination of industry data.

**Record Retention Requirements.** You should periodically review your station's public inspection file to ensure that all of the documents listed in FCC Rule 73.3526 are included. Section A of Chapter V contains detailed suggestions on developing a record retention system and maintaining the local public file. This section also sets forth the records that you must make available to the public and the period of time such records must be retained. You should also provide instructions to all staff members who maintain the file. Appendix S contains a suggested memorandum for distribution to your staff concerning the local public inspection file. Also, Chapter V, Section G contains a list of technical records that you are required by the FCC to maintain.

**Cable Television Rules.** Licensees of television stations should understand the impact on their operations of the FCC's cable television rules governing broadcast signal carriage, nonduplication and carriage of sports events. Chapter VI (Cable Television Rules Governing Broadcast Signal Carriage) contains a discussion of the FCC's cable rules. As noted in Chapter VI, a federal appeals court found that the rules governing broadcast signal carriage violated the First Amend-



ment rights of cable operators. Since NAB is planning an appeal of this decision, a description of the must carry rules is included in this chapter. Each television licensee should adopt a monitoring program designed to assure that cable systems are providing the signal carriage, nonduplication protection and program exclusivity required pursuant to the FCC's cable television rules.

**Noncommercial Educational Stations.** While noncommercial educational (or public) broadcasters are generally subject to the same regulatory and statutory requirements as their commercial counterparts, the FCC imposes unique requirements on noncommercial educational broadcasters. Chapter VII (Regulation of Noncommercial Educational Broadcasters) outlines and discusses the differences between the regulatory treatment of public and commercial broadcasters. Also, this chapter discusses fund-raising rules for noncommercial broadcasters.

**FCC Assistance.** Chapter XII (Functional Listings of Interest to Broadcasters) provides a functional telephone listing of FCC offices to enable you to call the right person on the Commission's staff at the right number on the first try. Since checking with your local field office may save you a long distance call, Chapter XII lists the telephone numbers, as well as the mailing addresses, of the FCC's field offices. In addition, there is a listing of the addresses and telephone numbers of other governmental entities of interest to broadcasters.

**Obtaining Cost-Efficient Legal Advice.** Establishing an effective legal compliance program involves more than being familiar with the *Legal Guide*. There will be situations where the advice of counsel will be needed. Receiving cost-efficient legal service requires that you be actively involved at all stages of the process of selecting and managing your lawyer. You cannot take a "let me know when it's over" or even a "keep me informed" approach. You will have to be involved at all stages, from the initial fee arrangement through the planning and budgetary process through the monitoring of your lawyer's activities. The following 10 suggestions for obtaining high quality legal service are excerpted from *101 Ways to Cut Legal Fees and Manage Your Lawyer: A Practical Guide for Broadcasters and Cable Operators* by Erwin G. Krasnow and Jill MacNiece (Washington, D.C., Broadcasting Publications, 1985).

#### (1) Use a Lawyer Early: An Ounce of Prevention

Two months after the general manager of a radio station in the northeast acquired a controlling interest in the licensee corporation, he was threatened with a fine and possible revocation of the station's license. A competitor had requested that the FCC institute revocation proceedings after discovering that the general manager had consummated the acquisition without asking the Commission for prior approval of his stock purchase, a violation of Section 310 of the Communications Act.

All too often, lawyers are called in after the damage has been done, when a company is on the verge of being sued or of losing valuable licenses. While 11th-hour attention from a good lawyer can limit the damage, it will be too late to keep legal costs low. The most cost-effective service your lawyer can give you is "preventative" or "anticipatory" legal advice; he can identify potential problems and suggest corrective measures to avert unnecessary legal disputes. But remember that the old adage about bankers applies to lawyers as well: "The best time to get acquainted is when you don't need the money." Don't wait for the first hint of a legal problem.

#### (2) Seek a Specialist for Special Problems

Generally, lawyers specialize in one or more areas of the law, such as communications, banking or tax. Many focus on a particular subspecialty. This practice is particularly common in communications, where some lawyers represent only broadcast stations while others deal solely with cable systems or common carriers.

Look for an expert in the particular branch of the law affecting your company. A lawyer who is unfamiliar or only marginally familiar with that area of the law may not do as satisfactory a job as the specialist. Or he simply may refuse to handle the matter in the first place. If he does represent you, he probably will take much longer and be more expensive, and he may give you inappropriate advice or more conservative advice than a specialist.

### **(3) Take an Active Interest in Your Legal Affairs**

Take an active interest in the work that your lawyer is performing for you. Request—and read—all documents your lawyer has produced or received and ask questions about any documents that you do not understand. This will keep you better informed and better able to discuss your legal matters with your lawyer, and your lawyer in turn, probably will provide better legal service because he knows you are carefully monitoring his work.

Many clients insist on approving in advance every pleading, motion, brief or other document. This practice may or may not be necessary, depending on how long your lawyer has worked for you and how confident you are in his abilities. You should, however, review all significant documents, especially those in which factual statements are made concerning your company's operations.

### **(4) Keep Current**

Recent court decisions, agency rulings and new laws can have a major impact on your company and its plans. Keep abreast of business developments in the communications industry and related developments in the law. Read trade journals and attend conferences and seminars. Talk to your colleagues. Contact trade associations and governmental agencies, which should have information about legal developments affecting your industry. Your ongoing legal education will help you to both manage and assist your lawyer. Discuss with your lawyer developments that are of particular interest to you.

### **(5) Assist in Gathering Information and Retaining Records**

Give your lawyer a copy of all records that are relevant to the matter that he is working on for you. If the records are extensive, you can save some of your lawyer's time by also providing an index and a chronological summary of the records. In some situations, your lawyer's ability to assist you will be dependent on the records you keep.

For your own benefit and protection, however, keep a file of the originals of any records you turn over to your lawyer. In addition, ask your lawyer to send you copies of any documents he produces or receives in connection with the matter he is handling for you. The files that you maintain will help you monitor your lawyer's work, and they will ease the transition if you decide to change lawyers.

### **(6) Ask What Else You Can Do**

Find out what you can do on your own or under your lawyer's supervision. This will help to keep down legal fees and will focus your lawyer's time and attention on the more important matters. In fact, many lawyers encourage their clients to prepare drafts of applications and reports.

### **(7) Ask Your Lawyer to Design Forms You Can Use in Routine**

#### **Business Transactions**

Ask your lawyer to design forms that will enable you to handle routine business transactions. You simply fill in the blanks. Also, ask your lawyer to keep you advised about any circumstances or changes in the law that might necessitate revisions in the forms.

### **(8) Find a Company to Share Your Costs**

Look for situations in which other companies could either share costs with you or make a contribution to the payment of your legal fees. If you wish to file



comments in an FCC rulemaking proceeding, ask your lawyer whether any of the firm's other clients share your point of view and have indicated an interest in participating. Many law firms will file comments on behalf of several similarly situated clients, and charge each one for only a portion of the legal fees and costs. You also can reap the benefits of "economies of scale" if your law firm regularly sends its clients memoranda, newsletters or bulletins on recent developments in communications law.

The formation of coalitions is also increasingly popular. The licensees of television stations operating on Channel 6, for example, combined their resources to conduct research and to present their common concerns in an FCC rulemaking proceeding. This tactic also works well in local zoning matters, where several parties will unite to support or oppose a zoning variance. Before you form a coalition, however, you might wish to review Chapter XI on the antitrust laws.

But be careful. Before entering into an agreement to share legal costs with other parties, make sure that there is no conflict among any of your positions. Also make sure that there is a clear-cut division of responsibility for decision-making and for overseeing the work (and fees) of the lawyer.

#### **(9) Take Advantage of Free Legal Help**

Federal, state and local government agencies and trade associations offer legal assistance on some matters either free or at a nominal charge. Seek out and take advantage of these services.

#### *Federal Communications Commission*

The FCC can provide helpful information on many communications matters, including status checks of applications, information about application and reporting requirements, and explanations of rules and policies. In some cases, however, the FCC staff is prohibited from assisting you, especially on a matter pending before an administrative law judge or the Review Board. The FCC's "ex parte" rules discourage telephone calls and personal visits to Commissioners and key Commission staff regarding a contested adjudicatory proceeding (such as a comparative hearing) or a rulemaking proceeding involving competing claims (such as FM or TV channel assignments).

If you are unsure which FCC office has the information you need, call or write:

Consumer Assistance and Small Business Office  
Federal Communications Commission  
1919 M Street, N.W., Washington, D.C. 20554  
(202) 632-7000 or 632-7260

The FCC's business hours are 8:00 a.m. to 5:30 p.m. weekdays. The Commission's TWX number is (710) 732-0610. Contact the FCC Monitoring Watch Officer at (202) 632-6975 for emergency calls after hours, on weekends, and on holidays. (You might need, for example, an expedited ruling on a political broadcast issue during the closing days of a campaign.) The FCC field office nearest you can handle general engineering, interference and operator license questions, and has available all major FCC reporting forms and applications.

The FCC publishes quarterly a general telephone directory containing organizational, functional and alphabetical staff listings. To obtain a copy of this booklet, send 50 cents (check or money order) per directory plus \$1.10 to cover postage and handling charges to: International Transcription Service, 1919 M Street, N.W., Room 246, Washington, D.C. 20036, (202) 296-7322 or (202) 857-3800.

#### *Trade Associations*

The NAB Legal Department issues monthly "Counsel" memos and distributes manuals, guidebooks, and primers on a wide variety of legal topics. Lawyers on the department's staff specialize in such areas of communications law as First

Amendment issues, advertising questions, contests, political broadcasting, and copyright matters and are available to answer questions posed by NAB members.

*The Reporters Committee for Freedom of the Press*

The Reporters Committee for Freedom of the Press offers a 24-hour, toll-free legal hotline for broadcasters, reporters, publishers and media lawyers on Freedom of Information matters, censorship, libel, invasion of privacy, subpoenas for sources, gag orders, courtroom exclusions, arrests and prior restraints. The hot line is staffed by three journalist-lawyers who are assisted by 10 student interns and 150 volunteer lawyers. This number is (800) 326-4243. For further information, contact the Reporters Committee, Room 300, 800 18th Street, N.W., Washington, D.C. 20006, (202) 466-6313.

**(10) Seek Assistance in Litigation From Trade Associations and Other Organizations**

Another way to reduce legal fees, especially in litigation matters, is to seek assistance from trade associations or other national or local organizations to which you belong. These organizations may contribute toward the payment of fees in matters of broad industry concern. In other matters they may file an *amicus curiae* (friend of the court) brief supporting your position.

The Legal Defense and Research Fund of the Reporters Committee for Freedom of the Press provides free legal help to reporters, editors, publishers and media lawyers and cost-free local lawyers to represent them. The Reporters Committee also operates a First Amendment and FOI Clearinghouse and Library Archive as a resource for print and electronic media journalists.

Check to see if the trade association to which you belong will file comments on behalf of your interests in rulemaking proceedings. If it will file comments, ask the association's staff whether your separate comments are necessary.

\* \* \* \* \*

Before using the *Legal Guide*, you should bear in mind several cautions. First, the *Legal Guide* cannot be considered in any way an official publication whose contents have been approved by the FCC. It represents the views and interpretations of the NAB Legal Department on major FCC rules and regulations applicable to broadcast stations as of the date of publication. Second, since the Commission's rules and policies are constantly being revised, you should check to see whether the law may have been changed.

One final caution: The *Legal Guide* cannot, and should not, be used as a substitute for professional advice in particular fact situations. Only by evaluation of specific facts in light of current principles and with the aid of expert advice (namely, a communications attorney and/or consulting engineer) will you be in a position to know definitively whether your proposed conduct is consistent with the FCC's and other federal agencies' rules and policies.



---

# TABLE OF CONTENTS

---

## CHAPTER I: REPORTING REQUIREMENTS, APPLICATIONS AND COMPLIANCE PROCEDURES, ANNOUNCEMENTS, FEES AND RENEWAL CONSIDERATIONS . . . . . 1

A. REPORTING REQUIREMENTS . . . . .	1
1. Annual Employment Report . . . . .	1
2. Ownership Report . . . . .	2
a. Information Required by the New Form 323 . . . . .	2
b. Specific Details Concerning Attributable Parties . . . . .	3
c. Information Not Required by the New Form 323 . . . . .	4
3. Network Television Affiliation Agreements . . . . .	5
4. Stock and Management Consultant Agreements . . . . .	5
5. Changes in Official Mailing Address . . . . .	5
6. Statement of Television Program Service . . . . .	5
B. APPLICATIONS . . . . .	6
1. Authority to Construct a New Broadcast Station or to Make Changes in an Existing Station . . . . .	6
2. Extension of Construction Permit or Replacement of Expired Construction Permit . . . . .	7
3. License to Cover Construction Permit . . . . .	7
4. Assignment of License or Transfer of Control . . . . .	8
a. Forms 314 and 315 . . . . .	8
b. Form 316 . . . . .	8
c. What is Substantial Change? . . . . .	9
d. Amendment . . . . .	10
e. Public Notice Announcement for Transfers and Assignments . . . . .	10
1. Time of Day . . . . .	10
a. Commercial Radio . . . . .	10
b. Commercial TV . . . . .	10
2. Information to be Broadcast . . . . .	10
3. Certificate of Compliance With Assignment or Transfer of Control Announcements . . . . .	11
5. Authorization, Modification, and Renewal of an Auxiliary Broadcast Service Station . . . . .	11
6. Application for Renewal of License . . . . .	12
a. Radio and TV Broadcast Stations . . . . .	12
b. FM and TV Translators . . . . .	17
7. New or Modified Call Sign . . . . .	17
C. ANNOUNCEMENTS . . . . .	18
1. Mechanical Reproduction . . . . .	18
2. Station Identification . . . . .	19

3. Sponsorship Identification Practices .....	19
a. Sponsorship Identification Rule .....	19
b. "Teasers" or "Come-On" Spots .....	20
4. Public Service Announcements .....	20
<b>D. NEW FCC FEE SCHEDULE .....</b>	<b>21</b>
1. Exemptions from Fees .....	21
2. Amount of Charges .....	22
3. Retention and Refund of Charges .....	22
4. Submitting Fees with FCC Forms .....	23
5. Payment Location .....	23
6. Inclusion of Payments with Applications .....	23
7. Cover Letter .....	23
8. Method of Payment .....	23
9. Penalties for Late or Failed Payments .....	23
10. Waivers and Deferrals .....	23
<b>E. COMPLAINTS, CITATIONS, AND COMPLIANCE .....</b>	<b>24</b>
1. FCC Complaints and Investigatory Procedures .....	24
2. Compliance: Checklist of Required Records .....	25
3. FCC Citations for Violation of Technical Rules .....	27
<b>F. RENEWAL CONSIDERATIONS .....</b>	<b>27</b>
1. License Renewal .....	27
a. Overview of Deregulatory Changes .....	28
b. Managing the Renewal Process: Planning Ahead .....	28
1. Public Notice Announcements .....	29
a. Pre-Filing Announcements .....	29
b. Post-Filing Announcements .....	31
c. Exceptions and Miscellaneous Pre- and Post-Filing Information .....	32
1. Text of Announcements if Previously Filed Renewal Application not Granted .....	32
2. Foreign Language Stations .....	32
3. Emergencies Interrupting Scheduled Announcements .....	32
4. Certificate of Compliance .....	33
2. The Public Inspection File .....	33
3. Completing the Renewal Application .....	34
a. Instructions for Answering Questions on the Form .....	34
b. Signing the Application (Certification Section) .....	36
c. FCC Forms Which Accompany the Renewal Application .....	36
d. Radiofrequency Radiation Compliance Certification .....	36
4. The Renewal Process .....	36
a. Petitions to Deny .....	37
1. Procedure .....	37
2. Renewal Standards .....	37
b. Competing Applications and Comparative Hearings .....	38
1. Procedure .....	38
2. Renewal Standards .....	38
c. The Right to Renewal Expectancy .....	39
1. What is "Renewal Expectancy?" .....	39
2. On What Exactly is the "Renewal Expectancy" Based? .....	40

<b>CHAPTER II: PROGRAMMING POLICIES AND PRACTICES</b>	41
<b>A. QUARTERLY ISSUES/PROGRAMS LIST</b>	41
<b>B. FAIRNESS DOCTRINE, POLITICAL BROADCASTS, AND RELATED TOPICS</b>	42
1. The Fairness Doctrine	42
a. In General	42
b. The <i>Cullman</i> Doctrine	43
c. The Personal Attack Rule	44
d. The Political Editorializing Rule	45
2. Political Broadcasts	45
a. The Equal Opportunities Provision: Section 315	45
b. Station-Sponsored Debates	50
c. The "No Censorship" Provision of Section 315	50
d. The Zapple Doctrine: "Quasi-Equal Opportunities"	51
e. Political Broadcasting Rates	52
1. The "Lowest Unit Charge" Rule	52
2. The "Comparable Use" Rule	53
f. Sponsorship ID Requirements	53
3. Access Requirements for Candidates and Independent Political Committees	54
a. Criteria of "Reasonable Access"	55
b. Airtime for Non-Federal Candidates	56
c. Independent Political Committees	57
4. A Pre-Election Checklist	58
<b>C. CHILDREN'S TELEVISION PROGRAMMING</b>	58
<b>D. PRIME TIME ACCESS RULE [TV]</b>	60
<b>E. BROADCASTS DURING AN "EMERGENCY"</b>	61
<b>F. OBSCENE, INDECENT, OR SUGGESTIVE MATERIAL</b>	62
1. Obscene, Indecent, or Offensive Language	62
2. The Revised Indecency Standard	63
3. Obscenity versus Indecency	63
4. Live Coverage	64
5. Taped or Filmed Coverage	64
6. Section 315's "No-Censorship" Provision	64
7. Practical Advice	65
<b>G. DRUG LYRICS</b>	65
<b>H. DISCONTINUED FCC PROGRAM CONTENT AND STATION OPERATION POLICIES</b>	65
1. Alcoholic Beverage Advertising	65
2. AM-FM Program Duplication	66
3. Announcements Concerning Selection of Sports Announcers	66
4. Astrology Advertising	66
5. Call-In Polls	66
6. Combination Advertising Rates and Joint Sales Practices	66
7. Concert Promotion Announcements	67
8. Conflict of Interest	67



9. Contests and Promotions Which Adversely Affect the Public Interest . . . . .	67
10. Distortion of Audience Ratings . . . . .	67
11. Failure to Perform Sales Contracts . . . . .	68
12. False, Misleading and Deceptive Advertising . . . . .	68
13. Foreign Language Programs . . . . .	68
14. Fraudulent Billing . . . . .	68
15. Harassing or Threatening Phone Calls . . . . .	68
16. Horse Race Advertising and Programming . . . . .	69
17. Misuse of Coverage Maps or Ratings . . . . .	69
18. Network Clipping . . . . .	69
19. Promoting the Non-Broadcast Business of a Station . . . . .	69
20. Repetitious Broadcast of Musical Recordings . . . . .	70
21. Use of Sirens and Similar Emergency Sound Effects in Announcements . . . . .	70
 I. UNAUTHORIZED COMMUNICATIONS AND REBROADCASTS . . . . .	70
1. Unauthorized Use of Communications . . . . .	70
2. Rebroadcasting the Transmissions of Other Broadcast Stations . . . . .	71
3. Rebroadcasting Foreign or Non-Broadcast Stations . . . . .	71
4. Rebroadcasting Telephone Conversations . . . . .	72
5. Point-to-Point Communications . . . . .	72
 <b>CHAPTER III: NEWSGATHERING POLICIES AND PRACTICES . . . . .</b>	73
A. "NOT-FOR-ACTUALITY" RECORDING . . . . .	73
B. CONCEALED MICROPHONES . . . . .	74
1. Wireless . . . . .	74
2. Wired Microphones . . . . .	74
C. HIDDEN CAMERAS . . . . .	75
1. In Public and Semi-Public Places . . . . .	75
2. In Private Places . . . . .	75
D. INVESTIGATIVE REPORTING . . . . .	75
E. LIBEL AND INVASION OF PRIVACY . . . . .	76
1. Libel . . . . .	76
a. What is Libel? . . . . .	76
b. Opinion vs. Fact . . . . .	76
c. "Of and Concerning" . . . . .	78
d. Standard of Care . . . . .	79
e. Privileges . . . . .	79
f. Handling Complaints . . . . .	79
2. Invasion of Privacy . . . . .	81
3. Defenses to Invasion of Privacy Claims . . . . .	83

<b>CHAPTER IV: COMMERCIAL POLICIES AND PRACTICES</b>	<b>85</b>
<b>A. RESTRICTIONS ON CONTENT OF COMMERCIALS</b>	<b>85</b>
1. False, Misleading, or Deceptive Commercials	85
a. Licensees Remain Responsible for What Is Broadcast	85
b. FTC Involvement	86
c. FTC Generally Acts Against Advertisers, Not Licensees	86
d. FTC Agreement With FCC to Share Jurisdiction and Information	86
2. The Dissolution of the NAB Codes	86
3. Time Standards and Program-Length Commercials	87
a. Radio	87
b. Television	87
4. "Subliminal Perception" Advertising [TV]	87
5. Advertising of Alcoholic Beverages	88
6. Advertising of Tobacco Products	88
7. Advertising Consumer Credit and Lease Arrangements	89
a. How Do These Regulations Work and What Ads Are Covered?	89
b. How Does Regulation Z Apply to Consumer Credit?	89
c. A Checklist for Open-End Credit Advertisements	90
d. A Checklist for Closed-End Credit Advertisements	90
e. How Does Regulation M Apply to Consumer Leases?	91
f. A Checklist for Consumer Lease Advertisements	91
g. Are Certain Ads Prohibited?	92
h. Are Broadcasters Liable for Violations of These Regulations?	92
<b>B. DECEPTIVE ADVERTISING PRACTICES</b>	<b>92</b>
1. Misleading Sales Promotional Literature	93
2. "Hypoing"	93
<b>C. TIME SELLING AND SCHEDULING POLICIES</b>	<b>94</b>
1. Refusing to Sell Advertising	94
2. Trade and Barter Arrangements	94
3. Time Brokerage	95
<b>D. CHILDREN'S TELEVISION ADVERTISING</b>	<b>96</b>
1. Commercial Limits	96
2. Separation of Program and Commercial Matter	96
3. Host Selling	97
4. Excessive Promotion of Brand Names Within Certain Children's Programs	97
5. False, Misleading, or Deceptive Advertising	97
<b>E. LOTTERIES, CONTESTS, PROMOTIONS, AND GAMBLING-RELATED SPORTS</b>	<b>98</b>
1. Lotteries	98
a. The General Prohibition	98
b. Licensee Responsibility	98
c. Elements of a Lottery	99
1. Prize	99
2. Chance	99
a. Winner Selected by Chance	99

b. Value of Prize Determined by Chance . . . . .	99
c. Tie-Breaking Procedures . . . . .	100
3. Consideration . . . . .	101
a. Payment Necessary to Participate—Substitution of “Reasonable Facsimile” for Proof of Purchase . . . . .	101
b. Purchasers and Non-Purchasers on Equal Ground, Availability of Entry Blanks . . . . .	101
c. Expending a Substantial Amount of Time and Effort as Consideration . . . . .	101
d. Eligibility Requirements . . . . .	102
e. Consideration Must Flow to the Promoter . . . . .	102
d. Summary of Guidelines for Defining a Lottery . . . . .	104
1. Prize . . . . .	104
2. Chance . . . . .	104
3. Consideration . . . . .	104
e. Lottery Exceptions . . . . .	104
1. State-Operated Lotteries . . . . .	104
2. Fishing Contests . . . . .	105
3. Horse Racing, Dog Racing, and Jai Alai . . . . .	105
f. Lotteries as Editorial and News Topics . . . . .	105
2. Advertising Casinos . . . . .	106
3. Contests and Promotions . . . . .	107
a. Licensee Responsibility . . . . .	107
1. Definition of Material Terms of a Contest . . . . .	107
2. Method of Disclosing Material Contest Terms . . . . .	108
b. Problem Contests . . . . .	108
1. Misleading Contests . . . . .	108
2. Contests Adversely Affecting the Public Interest . . . . .	109
3. Rigged Contests . . . . .	110
c. Suggested Safeguards . . . . .	110
1. Content of Broadcast Copy . . . . .	110
2. Contest Files . . . . .	110
d. Tax Consequences of Broadcasting Contests . . . . .	111
e. Sponsorship Identification Requirements . . . . .	111
F. PAYOLA AND CONFLICTS OF INTEREST . . . . .	112
1. Payola, Plugola, and Conflicts of Interest . . . . .	112
2. Promotion of Non-Broadcast Activities . . . . .	115
 <b>CHAPTER V: OTHER OPERATING POLICIES AND PRACTICES . . . . .</b>	 117
A. DEVELOPING A RECORD RETENTION SYSTEM AND MAINTAINING THE LOCAL PUBLIC INSPECTION FILE . . . . .	117
1. General Guidelines . . . . .	117
2. The Importance of Properly Maintaining a Local Public Inspection File . . . . .	118
3. Content of Public File and Specific Retention Requirements . . . . .	119
a. Materials Relating to Applications Filed with the FCC . . . . .	119
b. Ownership Materials . . . . .	120
c. Affiliation Agreements . . . . .	121
d. Citizens Agreements . . . . .	121

e. Annual Employment Reports .....	121
f. FCC Procedural Manual .....	121
g. Political and "Controversial Programming" Information .....	121
h. Issues/Programs Lists .....	122
i. Letters from the Public .....	122
<b>B. EMPLOYMENT PRACTICES .....</b>	<b>122</b>
1. Equal Employment Opportunity Program .....	122
a. Overview of EEO Principles and EEOC Enforcement .....	122
1. Who Is Protected Against Discrimination .....	122
2. Discrimination and How It May Be Proved .....	123
3. Need For Objective Employment Decisions .....	123
4. Scope of An Employer's Liability .....	124
5. Exceptions to the Discrimination Laws .....	125
b. EEO and the FCC .....	126
1. FCC Requirements .....	126
2. The Consequences of Non-Compliance .....	128
2. Immigration Reform and Control Act .....	128
3. Minimum Wage .....	129
a. Minimum Wage Standards .....	129
b. Overtime Pay Standards .....	129
c. Employee Exemptions .....	130
d. Record Keeping Requirements .....	132
<b>C. NETWORK RULES .....</b>	<b>132</b>
1. General Guidelines .....	132
2. Radio Rules .....	133
3. Television Rules .....	133
<b>D. MULTIPLE OWNERSHIP RULES .....</b>	<b>134</b>
1. Attribution Rules .....	134
2. Twelve-Station Rule .....	135
3. Duopoly and One-to-a-Market Rule .....	135
4. Newspaper/Broadcast Cross-Ownership Rule .....	136
5. TV/Cable Cross-Ownership Rule .....	136
6. Cross-Interest Policy .....	136
<b>E. MAIN STUDIO REQUIREMENTS .....</b>	<b>136</b>
1. Establishing the Main Studio .....	136
2. Relocating the Main Studio .....	137
<b>F. RADIO OPERATOR REQUIREMENTS .....</b>	<b>137</b>
1. Duty Operators .....	137
2. Chief Operators .....	138
<b>G. REQUIRED RECORDS .....</b>	<b>138</b>
1. Station Logs and Records .....	138
2. Equipment Performance Measurements .....	139
3. Antenna Resistance Measurements [AM] .....	139
4. Directional Antenna Proof-of-Performance [AM] .....	140
<b>H. STATION TECHNICAL SPECIFICATIONS .....</b>	<b>140</b>
1. Frequency Measurements .....	140
2. Station Power .....	141
3. Field Strength [AM] .....	141

4. Modulation .....	141
5. Minimum Hours of Operation .....	142
6. Tower Lighting and Painting .....	142
I. NOTIFICATIONS .....	142
J. REMOTE CONTROL AND EXTENSION METERING .....	144
K. EMERGENCY BROADCAST SYSTEM .....	144
L. OTHER TECHNICAL REQUIREMENTS .....	145
1. "Tone Clusters" and Other Audio Attention-Getting Devices .....	145
2. Visual Captioning of Emergency Messages [TV] .....	145
M. LOW POWER TELEVISION AND TELEVISION TRANSLATORS .....	146
N. FM TRANSLATORS .....	147
O. FM AND TV BOOSTERS .....	147
1. FM Booster Stations .....	147
2. TV Booster Stations .....	148
P. FM SUBCARRIER OPERATION .....	148
Q. AM CARRIER OPERATION .....	149
R. TV TELETEXT .....	149
S. STEREOPHONIC SOUND .....	150
1. AM Stations .....	150
2. FM Stations .....	150
3. Television (Multichannel Sound) .....	150
T. RADIOFREQUENCY RADIATION REGULATIONS .....	150

## **CHAPTER VI: CABLE TELEVISION RULES GOVERNING BROADCAST SIGNAL CARRIAGE .....**

A. MUST CARRY RULES .....	153
1. Carriage Requirements .....	154
a. Commercial Television Station Eligibility for Must Carry Status .....	154
b. Commercial Signal Carriage Obligations .....	155
c. Manner of Carriage .....	156
d. Payment for Carriage .....	156
e. Asserting Carriage Rights .....	156
f. Mandatory Carriage Requirements for Noncommercial Educational TV Stations .....	157
2. A/B Switch Requirements .....	157
3. Consumer Education Requirements .....	158

<b>B. NONDUPLICATION AND PROGRAM EXCLUSIVITY (SPORTS BLACKOUTS) [TV]</b>	159
1. Network Program Nonduplication Protection	159
a. Cable Systems on Which Stations are Entitled to Protection	159
b. Programs for Which a Station is Entitled to Protection	159
c. Translators	160
d. Notification Requirements	160
e. Same-Day Nonduplication Protection	160
2. Sports Blackout Rules	160
<b>C. CABLE CARRIAGE OF RADIO SIGNALS</b>	161
<b>D. COPYRIGHT ROYALTY DISTRIBUTION</b>	161

## **CHAPTER VII: REGULATION OF NONCOMMERCIAL EDUCATIONAL BROADCASTERS**

<b>A. GENERAL GUIDELINES</b>	163
<b>B. ELIGIBILITY</b>	164
<b>C. PROGRAM SERVICE MUST BE NONPROFIT AND NONCOMMERCIAL</b>	164
1. Announcements on Behalf of Other Non Profit Organizations	165
2. Promotion of Station-Related Goods and Services	165
3. Defining "Donor Announcements"	165
4. Generic Underwriting Credits	166
5. Timing	166
<b>D. FUNDRAISING ACTIVITIES</b>	167
<b>E. POLITICAL ENDORSEMENTS AND EDITORIALS</b>	167
<b>F. USE OF FACILITIES OR SERVICES FOR REVENUE GENERATION</b>	167
1. Vertical Blanking Interval Service	167
2. Teletext	168
3. Subsidiary Communications Authorizations (SCA)	168
4. Subscription Television Services	168
5. Accounting Requirements	169
<b>G. MISCELLANEOUS PUBLIC BROADCASTING ACT REQUIREMENTS</b>	169
1. Open Meetings	169
2. Financial Reports	169
3. Channel 6 Interference from Noncommercial FM Stations	169
4. Changes in Renewal Applications, Programming, and Logging Requirements	170
<b>H. COMMUNITY ADVISORY BOARDS</b>	170



I. OTHER DIFFERENCES BETWEEN NONCOMMERCIAL AND COMMERCIAL LICENSEES .....	170
--	-----

## CHAPTER VIII: TAX AND OTHER BUSINESS CONSIDERATIONS IN THE OPERATION OF A BROADCAST STATION .....

A. GENERAL GUIDELINES .....	173
-----------------------------	-----

B. FORMATION OF BUSINESS ORGANIZATION .....	174
1. Types of Business Entities .....	174
a. Sole Proprietorship .....	174
b. Partnership .....	174
c. Limited Partnership .....	174
d. Corporation .....	175
e. S Corporation .....	175
2. Choice of Organizational Form Following TRA 1986 .....	176

C. STRUCTURE OF THE BUSINESS—GENERAL CONSIDERATIONS .....	176
1. Treatment of Business Start-Up Costs .....	176
2. Debt versus Equity .....	177
3. Use of Different Classes of Ownership Interests .....	177
4. Ownership of Business Assets .....	177
5. Estate Freezing of Business Interests .....	178
6. Buy-Sell Agreements .....	179

D. COMPENSATION BENEFITS FOR EMPLOYEES .....	179
1. Definition of Employee .....	179
2. Employment Agreements .....	180
3. Employee Benefits .....	181
a. Group-Term Insurance .....	181
b. Transportation .....	181
c. Business Meals .....	181
d. Medical Care .....	181
e. Employer Gym .....	181
f. Entertainment .....	181
g. Memberships .....	181
1. Professional Clubs .....	181
2. Country Clubs and Other Social and Athletic Clubs .....	181
h. Non-Taxable Fringe Benefits .....	182
i. Employer-Furnished Transportation Exclusion .....	182
j. Dependent Care Services .....	183
k. Tax-Qualified Retirement Plans .....	183

E. TAX CONSIDERATIONS FOR OPERATING A BUSINESS .....	183
1. Tax Rates .....	183
a. Individual Rate Structure .....	183
b. Corporate Rate Structure .....	184
c. Commentary Regarding Rate Schedules .....	184
2. Accelerated Cost Recovery System ("ACRS") Depreciation .....	184
3. Loans from Businesses .....	185

4. Loans to Businesses .....	185
5. Business Use of Cars .....	185
6. Key Person Insurance .....	185
7. Compensation Arrangements .....	185
8. Repeal of Capital Gains Preferential Treatment .....	186
a. Individuals .....	186
b. Corporate .....	186
9. Investment Tax Credit .....	186
10. Expenses for Business and Entertainment .....	186
a. Meals, Travel, and Entertainment Expenses .....	186
b. Employee Business Expenses and Other Miscellaneous Itemized Deductions .....	187
11. Corporate Liquidations .....	187
12. Accounting Provisions .....	188
a. Limitations on the Cash Method of Accounting .....	188
b. Taxable Years of Partnerships, S Corporations, and Personal Service Corporations .....	188
13. Alternative Minimum Tax .....	189
a. Individuals .....	189
b. Corporate .....	189

## **CHAPTER IX: RULES AND REGULATIONS FOR COMMUNICATIONS SATELLITE EARTH STATIONS .....**

193

<b>A. ACQUIRING EARTH STATION FACILITIES .....</b>	<b>194</b>
1. Site Feasibility Survey .....	194
2. Radiofrequency Radiation .....	195
3. Local Zoning Approvals .....	195
4. FCC Technical Rules .....	195
<b>B. FCC LICENSING PROCEDURES .....</b>	<b>196</b>
1. Requirements .....	196
2. Filing .....	196
3. International Services .....	197
<b>C. AUTHORIZED USE OF EARTH STATION FACILITIES ....</b>	<b>197</b>
1. Uses .....	197
2. Excess Capacity .....	198
3. Scrambling .....	198
<b>D. SATELLITE NEWSGATHERING .....</b>	<b>199</b>
<b>E. OPERATIONAL RESPONSIBILITIES OF EARTH     STATION LICENSEES .....</b>	<b>199</b>

## **CHAPTER X: COPYRIGHT AND TRADEMARK ISSUES .....**

201

<b>A. A BASIC DESCRIPTION OF COPYRIGHT AND     TRADEMARK LAW .....</b>	<b>201</b>
--	------------

1. Basic Copyright Principles .....	201
2. Basic Trademark/Service mark Principles .....	204
<b>B. COPYRIGHT AND TRADEMARK ISSUES FOR BROADCASTERS .....</b>	<b>204</b>
1. Station-Produced Programs .....	204
a. A Station's Rights to Use the Works of Others .....	205
1. Creating New Copyrighted Work—the "Work For Hire" Problem .....	205
2. Using Pre-existing Works of Others .....	205
a. License Agreements .....	205
b. The Fair Use Doctrine .....	206
c. Public Domain Works .....	207
b. The Station's Right to Protect Its Own Program Once It Has Been Created .....	207
1. What Is Necessary in Order to Obtain Copyright Protection? .....	207
2. What Is the Scope of the Station's Copyright Protection? .....	208
a. Cable Retransmissions .....	208
b. Hotel and Apartment House Retransmissions .....	208
c. Non-Profit Translator or Booster Retransmissions .....	208
d. "Passive Carrier" Retransmissions .....	209
e. School Classroom Uses .....	209
f. Public Reception on a Single Receiver .....	209
g. Library and Archival Copying .....	209
h. Fair Use .....	209
i. Works of Others In a "Compilation" Program .....	209
2. Sports Programs and Performance Programs .....	210
3. Commercial Production .....	211
a. Work-For-Hire Issues .....	211
b. Fair Use .....	211
c. Music Rights .....	211
d. Trademark Issues in Comparative Advertising Production .....	212
4. Program Contracts .....	212
5. Television Broadcast Day or Radio Format .....	213
6. Cable .....	213
7. Trademark Protection of Call Signs and Slogans .....	214
<b>C. MUSIC LICENSING .....</b>	<b>215</b>
1. Radio .....	216
2. Television .....	216

## **CHAPTER XI: ANTITRUST CONSIDERATIONS .....**

<b>A. JOINT RATE ACTIVITY AMONG BROADCASTERS .....</b>	<b>219</b>
1. Joint Rate Setting .....	219
a. Agreements Affecting Advertising Rates .....	219
1. Rate Card Levels .....	220
2. Adherence to Rate Cards .....	220
2. Agreements Regarding Solicitation of Particular Accounts .....	220

3. Combination Advertising .....	221
B. JOINT PROGRAM PURCHASING .....	222
C. JOINT ADVERTISING AND PROGRAM STANDARDS .....	222
D. JOINT SALES REPRESENTATION .....	223
E. JOINT LOBBYING EFFORTS .....	223
F. JOINT COLLECTION AND DISSEMINATION OF INDUSTRY DATA .....	223
1. General Principles of Law .....	223
2. Exchange of Credit Information .....	223
G. UNILATERAL CONDUCT BY BROADCASTERS .....	224
 <b>CHAPTER XII: FUNCTIONAL LISTINGS OF INTEREST TO BROADCASTERS .....</b>	 225
A. FEDERAL COMMUNICATIONS COMMISSION .....	225
1. The Commission .....	227
2. Commission Staff .....	227
3. Regional Field Offices .....	228
B. OTHER LISTINGS OF INTEREST .....	228
 <b>APPENDICES .....</b>	 231
 <b>TOPICAL INDEX .....</b>	 441



---

# CHAPTER I

---

## Reporting Requirements, Applications and Compliance Procedures, Announcements, Fees and Renewal Considerations

### A. REPORTING REQUIREMENTS



Prior to the start of each calendar year, the NAB Legal Department sends to member stations a Legal Calendar which serves as a reminder of certain key dates, such as license renewal deadlines and annual ownership report filing deadlines. It assists licensees in developing a system that will serve as a reminder of the Federal Communications Commission (FCC or Commission) reporting requirements listed in this chapter. For example, important deadlines might be noted on an office wall calendar. Also, licensees may find it useful to establish a card file or computer system that briefly explains the reporting requirements for various FCC applications.<sup>1</sup>

#### 1. ANNUAL EMPLOYMENT REPORT

On June 12, 1987, the FCC released a *Report and Order* in Docket 85-350 that slightly alters broadcasters' employment reporting requirements. All broadcast licensees must file a Broadcast Station Annual Employment Report (new FCC Form 395-B) on or before May 31 of each year, which reflects the employment figures from any one payroll period during January, February, or March. (FCC Rule 73.3612.) Licensees with *fewer* than five full-time employees during the selected payroll period should check the appropriate box in Section III, B, as well as complete Sections I, II, and III and certify the correctness of the information on the form. Licensees with five or more full-time employees should complete the

1. For your convenience, we have included in Appendix A, in numerical order, samples of most of the forms discussed in this Chapter. Note that these forms are subject to FCC revision; check with the FCC for the latest edition of all forms. To receive FCC Forms you can call (202) 632-7000.



entire Form 395-B, which requires such licensees to report employment statistics for full-time and part-time employees on separate tables.

Two copies of the Broadcast Station Annual Employment Report must be filed for each AM, FM, and TV station, whether commercial or noncommercial. However, two copies of a "combined" report may be filed for an AM and an FM station if both are: (a) under common ownership *and* (b) assigned to the same principal city or to different cities within the same standard metropolitan statistical area.

See chapter V for a detailed discussion of the Model EEO Program and its reporting requirements.

## 2. OWNERSHIP REPORT

Commercial licensees are required to file an ownership report (Form 323) once each year. (FCC Rule 73.3615.) The only broadcast licensees exempted from this requirement are those who are sole proprietorships or partnerships composed entirely of individuals. Noncommercial stations are required to file a report on FCC Form 323-E within 30 days after a change in the organization, officers or directors, or any transaction affecting the ownership (direct or indirect) or voting rights with respect to the licensee or permittee (or with respect to any stock interest therein) occurs and in conjunction with their license renewal applications. (FCC Rule 73.3615(f).)

Ownership reports must be filed on the anniversary of the station's license renewal application date. If there have been no changes in ownership since the last report was filed, the licensee may simply certify by letter that the information in the last filing remains current. Licensees of multiple stations with differing renewal dates may elect to submit the reports on a single date. However, the reports for any one station cannot be submitted more than one year apart.

While the Office of Management and Budget was reviewing the new Form 323, the annual ownership reporting program was suspended. Due to the length of time that passed since many commercial broadcast station licensees last filed a complete ownership report, non-exempt licensees were required to file a revised report on August 3, 1987. Regular "renewal anniversary" filing dates were resumed on February 1, 1988.

### a. Information Required by the New Form 323

The following information must be reported on the new ownership form:

- Information concerning the officers and directors of a corporate licensee or permittee;
- Information concerning non-passive investors holding *5 percent* or more ownership interest in a licensee or permittee. (Under the FCC's prior rules, the attribution benchmark was only 1 percent);
- Information concerning any family relationship (parent-child, husband-wife, brother-sister), between one or more officers, directors, stockholders, or partners of the licensee, permittee and any officer, director, stockholder, or partner;<sup>2</sup>
- Information concerning general partners of a licensee or permittee if the entity is a partnership;

2. When there is a marital relationship, the interests held by one spouse are presumptively attributed to the other and both spouses may, unless the presumption is rebutted by an appropriate showing, be considered to be holders of attributable interests which require disclosure of full information.

- Information concerning passive investors holding *10 percent* or more ownership interest in a licensee or permittee. (The prior attribution benchmark for passive investors was only 5 percent);
- Information concerning officers and directors of a broadcast licensee when such licensee is engaged in businesses, in addition to its business of broadcasting, and the officer or director's duties and responsibilities are wholly unrelated to the licensee's primary business. In such case, the licensee must request the FCC to waive attribution for that officer or director; and
- Information concerning trustees holding stock in a licensee or permittee if the trustee has the power to vote the stock of a corporation, sole or shared power to dispose of all of the stock and if the trustee is an independent person with no familial or business relationship with the beneficiary or grantor of the trust.<sup>3</sup> Information concerning the grantor or the beneficiary of the trust must be reported if the grantor or beneficiary votes the stock or has the sole power to dispose of the stock, or has the power to replace the trustee or revoke the trust at will, or has a familial or business relationship with the trustee.

The new ownership report form still requires the listing of all contracts relating to ownership, control, or management of the licensee or permittee that must be filed with the Commission.

#### **b. Specific Details Concerning Attributable Parties**

The entities which qualify for passive investor status are investment companies, bank trust departments, and insurance companies. Under the attribution standards, licensees must certify that no passive investor has exerted or has attempted to exert influence or control over station affairs. This certification must be included in each annual ownership report, if applicable. Passive investors are considered to have an attributable ownership interest if they own 10 percent or more of the voting stock. Investment advisors, which retain the power to vote stockholdings, will not be treated as passive investors and must be reported on the new form, assuming they hold a 5 percent or greater interest in the licensee.<sup>4</sup> Pension funds also must be reported and are not eligible for passive investor status because they are increasingly managing their investments and influencing management policies. Also, Small Business Investment Companies ("SBIC's") and Minority Enterprise Small Business Investment Companies ("MESBIC's") are not accorded passive status and must be reported on the new forms if they hold 5 percent or more of the voting stock since these entities are authorized to exercise control over investment properties under certain conditions. However, SBIC's and MESBIC's, or any other non-passive investors, may be relieved from these reporting requirements by structuring their investments to be non-attributable investments, such as non-voting stock holdings or properly insulated limited partnership interests.

3. Likewise, in cases where voting and holding the stock is not identical (for example, bank nominees holding stock as record owners, brokerage houses holding stock in "street names" for the benefit of customers and investment advisors holding stock in their own names for the benefit of clients), information must be reported concerning the party having the right to determine how the stock will be voted. Under the Commission's new attribution rules, such person is considered to own the stock.

4. Investment advisors are commonly broker-dealers who often purchase stock directly for their clients. They are distinguished from investment companies, who are eligible for the passive attribution benchmark, in that the purchases belong directly to their clients. Investment advisors, on the other hand, purchase stock for themselves, and, in turn, sell interests in the investment companies to their clients.

With respect to the officers, directors, shareholders or partners with attributable interests, information must be reported concerning their interests in other broadcast, cable and newspaper entities which meet the FCC's attribution standards. This means that licensees must report their principals' voting interests of 5 percent or more in other broadcast entities, as well as their principals' relationships, as officers and directors, with such broadcast interests. Licensees must also report their principals' interests, whether attributable or not, in other broadcast, cable, and newspaper entities within the same community, substantially the same market, or otherwise "within the geographical limits of the cross-interest policy."

### c. Information Not Required by the New Form 323

Licensees and permittees *do not* have to report the following interests in the new report forms:

- Information concerning non-voting stockholders of a corporate licensee or permittee. Non-voting stockholders are not considered attributable because they offer little or no potential for influence over licensee decisions and programming. The FCC also applies the same logic to holders of warrants, debentures, and other convertible instruments unless or until conversion is effected. Also, holders of debts and lease-back agreements are not considered attributable interests as long as these agreements carry no voting rights with them and the terms of the agreements do not otherwise confer substantial control over management to the lender or lessor;
- Information concerning limited partners in a licensee or permittee which is a limited partnership, regardless of the extent of ownership in the entity held by the limited partners, provided that the relevant partnership agreement complies in all significant respects with the FCC's new attribution standards insulating limited partners, and provided that the licensee or permittee so certifies. In cases where limited partners are involved, the licensee must assess the situation to determine whether or not such limited partners have, in fact, control of the licensee under the FCC's newly articulated standards;
- Information concerning minority interests in a licensee or permittee controlled by a single majority stockholder;
- Information concerning officers and directors of a sister corporation<sup>5</sup> of a broadcast licensee. Such officers and directors are not attributed with ownership of the broadcast licensee by virtue of such status.

In compliance with the new attribution standards, licensees or permittees are required to submit separate ownership reports for any "holding companies" or other entities holding a 5 percent or greater voting interest (as opposed to a 25 percent or greater voting interest under the FCC's prior rules) in a licensee. That separate ownership report form must contain the same information as required of a licensee or permittee. If that entity has a voting stock interest in the licensee or permittee, only those voting interests of that entity that are cognizable after application of the "multiplier"<sup>6</sup> are to be reported. If the entity is a corporation,

5. A sister corporation exists where two or more corporations have common ownership and control by the same shareholders.

6. Under its new rules, the FCC has instituted a "multiplier" to take into account the dilution of interests held through corporate ownership chains. For example, if an individual owns only 8 percent of a corporation, which, in turn, owns 20 percent of a licensee, the individual's interest in the licensee is 1.6 percent and need not be reported. On the other hand, if a corporation owns 50 percent or more of a licensee, the individual's interest would not be diluted through multiplication by the corporation's interest and the individual's interest must be reported.

whether or not its interest in the licensee is by virtue of its ownership of voting stock, with certain exceptions,<sup>7</sup> the officers and directors of the entity must also be reported. The separate report form must also contain information concerning other broadcast, cable, and newspaper interests of all the parties so reported in the form as described above. The filing of intercorporate charts showing the relationship between related corporations is also required, where appropriate.

### 3. NETWORK TELEVISION AFFILIATION AGREEMENTS

All national network television affiliation agreements, including any amendments, supplements, or terminations, must be reduced to writing and filed with the FCC within 30 days of execution. (FCC Rule 73.3613(a).) In an effort to reduce the paperwork burden imposed by the former network agreement rule, the FCC decided in a 1985 *Report and Order* that this requirement should not extend to local or regional network agreements. 101 F.C.C. 2d 516 (1985). In addition, radio stations are no longer required to file such agreements. For television purposes, a "network" is defined as any national entity that provides an interconnected service which offers 15 or more hours of programming a week to 25 or more affiliated stations in 10 or more states. (FCC Rule 73.3613(a)(1).)

### 4. STOCK AND MANAGEMENT CONSULTANT AGREEMENTS

Single copies of agreements that involve the present or future ownership or control of the licensee (for example, stock transfer agreements, stock options and pledges, certain proxies and mortgage or loan agreements restricting the licensee's freedom of operation) must be filed with the FCC within 30 days following execution. In addition, certain management and consultant agreements with independent contractors (for example, persons who are not officers, directors or regular station employees) or that provide for sharing of both profits and losses also must be filed within 30 days. (FCC Rules 73.3613(b) and (c).)



### 5. CHANGES IN OFFICIAL MAILING ADDRESS

A licensee is required to keep the FCC informed of any change in its mailing address, so that the station may be sent documents or other papers without delay. A copy of a form that may be used for this purpose appears in Appendix B. For information regarding a change in studio location, see Chapter V, Section E.

### 6. STATEMENT OF TELEVISION PROGRAM SERVICE

One of the major elements of the FCC "TV deregulation" decision was the imposition of the requirement that stations maintain quarterly issues/programs

7. Officers and directors of a holding company or parent company of a broadcast licensee whose duties and responsibilities are wholly unrelated to the licensee and who wish to be relieved of attribution in a licensee, do not have to be reported in that separate report. In such cases, the licensee need only report the name, title, and a full description of the duties of the officers and directors with an explanation of why such individuals should not be attributed. The Commission has prescribed this insulating mechanism to relieve attribution for officers and directors (and equivalent representatives of non-corporate entities) who have no individual relationship to a licensee or its operation. This insulation mechanism cannot be claimed by officers and directors as a matter of course, but it should be available to officials of holding companies when those officials' duties have no relationship to the activities of a broadcast station owned by a subsidiary corporation.



lists which denote programming that gave a significant treatment to issues the licensee determined to be of public importance in the community of license (see chapter II for a discussion of the quarterly list). As a result, the Television Audit Form (303-C) (including a Statement of TV Programming Service), that was used for selected television station license renewal applicants, was eliminated.

Another related FCC requirement is that an applicant for a broadcast station construction permit is now required to provide merely a brief narrative statement of his proposed programming service in Section IV of the construction permit application (FCC Form 301).

## B

### B. APPLICATIONS

The first step in filling out an application is to determine whether you are using the correct FCC form and, if so, whether it is the most up-to-date version. Appendix A contains a list of broadcast applications and reports that identifies, as of April 1, 1988, the latest edition of each form. Keep in mind that the use of obsolete forms can result in unnecessary delays in processing applications, FCC requests for more information from the applicant, and/or the preparation and submission of data no longer required.

The most common mistakes made by applicants involve omitted or erroneous signatures, dates and numbers of copies of the form which need to be filed. To determine the number of copies necessary for filing with the FCC, check the instructions that appear on that form. Where dates are required on applications, or exhibits, use the same date as, or prior to, the date you provide in the certification portion of the application. Only the "original" of the application or amendment must be signed (FCC Rule 73.3513).

The following is a list and brief description of the most frequently used application forms filed by broadcasters with the FCC. (FCC Rules 73.3511-73.3541.)

#### 1. AUTHORITY TO CONSTRUCT A NEW BROADCAST STATION OR TO MAKE CHANGES IN AN EXISTING STATION

FCC Form 301 is to be used by applicants proposing either to construct a new station or to make major changes in an existing AM, FM, or TV facility. (Use Form 346 for FM and TV translators or low power stations or TV boosters and Form 349-P for FM booster stations.) (FCC Rule 73.3533.) A major change in an AM facility is a change that requires an increase in power or any change in frequency, hours of operation, or station location. (FCC Rule 73.3571(a)(1).) For noncommercial FM stations, a major change is any change in frequency, community of license, or a change in antenna height or location which alters the one millivolt-per-meter contour by 50 percent or more. (FCC Rule 73.3573(a)(1).) For FM commercial and translator stations as well as TV stations, major changes are limited to changes in frequency or community of license. (FCC Rules 73.3572(a)(1) and 73.3573(a)(1).) Major changes in TV translator and low power stations include changes in frequency, transmitting antenna system, antenna height, antenna location (where change exceeds 200 meters), or authorized operating power. However, if any of these changes (except frequency) do not increase the signal range in any horizontal direction, the changes will be considered minor. (FCC Rule 73.3572(a)(1).)

Form 301 requires information about the applicant's citizenship and character, as well as his financial, technical, and other qualifications. Applicants for new stations are required to certify that they are financially able to construct the

facilities and operate the station for three months without reliance on advertising revenues. Along these lines, the FCC recently notified applicants that it will augment its system of randomly checking the financial qualifications of applicants for construction permits. Specifically, FCC staff may question the validity of the financial qualifications of applicants who have a large number of broadcast applications pending. Other information required by Form 301 includes details about the transmitting apparatus to be used, the antenna system, studio location, proposed programming relating to the issues of local public concern, and equal employment policies.

## **2. EXTENSION OF CONSTRUCTION PERMIT OR REPLACEMENT OF EXPIRED CONSTRUCTION PERMIT (FCC FORM 701)**

In a *Memorandum Opinion and Order* released December 17, 1985, the FCC expressed concern over the lengthy amount of time that construction permittees were taking to complete their facilities. Specifically, the FCC pointed to the vast increase in the number of extension applications filed each year. To resolve these problems the FCC adopted two policy changes: (1) recognizing the inherent difficulties involved with the initial construction of broadcast facilities, the FCC increased the period covered by the original construction permit to 24 months for television stations and 18 months for radio stations. 102 F.C.C. 2d 1054 (1985); (2) in an effort to ensure that the public interest will be served by the elimination of undue delay during the construction of broadcast facilities, the FCC decided to strictly adhere to the three criteria mentioned below when making a determination whether to grant an extension.

FCC Form 701 should be used to request an extension of a construction permit or, if the permit has expired, to request that it be replaced by a new permit. Generally, one of three circumstances must exist before the FCC will grant an extension or replacement: (1) construction of the broadcast facilities is complete and testing is underway; (2) construction has not yet ended but there has been substantial progress towards completion; or (3) there has been no progress in the construction due to circumstances beyond the control of the applicant. (FCC Rule 73.3534.)

Form 701 should be filed at least 30 days prior to the expiration date of the construction permit, unless the applicant makes a satisfactory showing to the FCC of sufficient reasons for filing within less than 30 days. If the FCC grants the application, extensions of time will be limited to not more than six months, unless an assignment or transfer has been approved that provides for a longer period of up to a maximum of 12 months from the date of consummation. (FCC Rule 73.3534(d).) Replacement construction permits must be filed within 30 days after the date of expiration and are also limited to a period of six months. (FCC Rule 73.3534(e).)

## **3. LICENSE TO COVER CONSTRUCTION PERMIT**

Once construction is completed, it is necessary to apply for a license on FCC Form 302 ("Application for New Broadcast Station License"), Form 347 (for TV and FM translators and TV boosters), or Form 349-L (for FM boosters). (FCC Rule 73.3536.) Applicants must show compliance with all terms, conditions, and obligations set forth in the original application and the construction permit. Upon completing construction, the permittee of a directional or nondirectional TV station, or a nondirectional AM or FM station, may begin program tests upon sending a notice to the FCC in Washington, D.C., provided that within 10 days thereafter the permittee files Form 302. Permittees of AM or FM directional





stations must file a request for program test authority with their application for license, and must await grant of such authority before beginning program tests. Program test authority should be issued within 10 days. Also, an antenna proof of performance must be filed with the request by an AM station with a directional antenna. (FCC Rule 73.1620.)

A formal license is issued routinely if no new cause or circumstance has come to the attention of the FCC that would make operation of the station contrary to the public interest. Program test authority confers full commercial operating rights, as if the station were regularly licensed, but may be modified or withdrawn if interference or other problems warranting such action develop.

#### 4. ASSIGNMENT OF LICENSE OR TRANSFER OF CONTROL

The FCC must approve, in advance, all transfers and assignments which result in a change of the control of the broadcast station. The application forms discussed below should be filed with the FCC at least 45 days before any prospective transfer or assignment date.

Basically, there are four different application approval forms: FCC Forms 314, 315, 316, and 345. Form 314 must be used to request the FCC's consent to assign the assets associated with a construction permit or broadcast license. Form 315 is used to request FCC approval to transfer control of a corporation holding a construction permit or broadcast license. (FCC Rule 73.3540.) Under certain circumstances (see below) the FCC Form 316 "short form" may be used for these assignments and transfers. Form 345 only applies to transactions involving an FM or TV translator station, a low power TV station, and any associated auxiliary station, such as translator microwave relay stations and UHF translator signal booster stations. The purpose of these forms is to allow the seller to demonstrate to the FCC that he has satisfactorily operated the station and, thus, should be granted approval to sell the license. Additionally, it allows the buyer to demonstrate, prospectively, that he is legally and financially qualified and will operate the facility in the public interest.

##### a. FCC Forms 314 and 315

Forms 314 and 315 share many similarities. Both forms are between 16–22 pages in length, including approximately 5 pages of explicit instructions, and consist of two basic parts—both the seller's (assignor's or transferor's) portion and the buyer's (assignee's or transferee's) portion are divided into legal, financial, programming, and equal employment opportunity sections and have a public notice requirement mandating appropriate local notice (which includes a 30-day public comment period). Generally, if there is no opposition, these applications are granted or denied within 45–50 days.

##### b. FCC Form 316

This form is available to the same applicants who use Forms 314 and 315 *if the proposed transaction will not cause a "substantial change" in the licensee's control*. (See below for an explanation of the term "substantial change.") Additionally, Form 316 is used for involuntary assignments or transfers of control. For example, when an individual or controlling licensee dies or becomes legally disabled, such as in bankruptcy, the FCC should be notified promptly in writing. Within 30 days of death or legal disability, an application on FCC Form 316 must be filed requesting consent to the involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the former owner's interests under the laws of the state having jurisdiction over the estate involved. (FCC Rule 73.3541.) (Warn-

ing: Form 316 is *not used* to cover transfers from the above individuals to the *ultimate beneficiary*.)

### c. What is Substantial Change?

If a change in the ownership, legal structure, sale or transfer of assets will result in a substantial change in the control of the station, the licensee should use one of the long forms (314 or 315). If the change will not be substantial, licensees should save time, energy, and additional costs by completing the short form (316).

Some factors to look for in determining whether the change will be substantial include gained or lost voting power, new controlling parties, new parties who have never been subject to the public comment period, and old parties who have lost controlling interest. The crucial test is the extent of the impact of these ownership changes upon the applicants. In other words, has the licensee's controlling authority shifted significantly? The FCC's rules provide certain situations in which a licensee should file Form 316.

Specifically, the FCC rules state that Form 316 should be filed under the following circumstances:

- Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;
- Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;
- Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;
- Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation;
- Assignment or transfer from a corporation to a wholly owned subsidiary thereof or *vice versa*, or assignment from a corporation to another corporation owned or controlled by the assignor's or transferor's stockholders, without substantial change in their interests; or
- Assignment of less than a controlling interest in a partnership. (FCC Rule 73.3540(f)(1-6).)

To further assist licensees, below are some examples of short form and long form situations.

- An individual owner decides to expand her station into a small business partnership with her husband, but she still maintains majority control; then, to avoid liability, the partnership incorporates. As long as the original owner maintains predominant control, there has not been a substantial change in control but rather a business reorganization. Both transactions could be applied for using the short form.
- A new party acquires a one-third interest while the original partners reduce their interests from one-half to one-third each. Then, one of the original partners withdraws from the partnership and transfers his one-third interest to the second original partner. Neither transaction constitutes a substantial change because control remained with the original parties or party.
- More than 50 percent of the licensee's stock is transferred from one corporation to another, but all parties controlling the license remain unchanged; therefore,

the transfer was one of form which does not involve substantial change of control.

- A proxy contest results in the election of a completely new board of directors. Since the licensee stockholder's ownership or voting rights are not altered there was no substantial change involved.
- A non-profit educational station on the brink of insolvency receives extensive funds from a community organization. This financial agreement authorizes the organization to name a majority of the station's board of directors. Since a majority of control would pass from the station to the organization, a substantial change has occurred. (Non-commercial educational station applicants should file a Supplemental Ownership Report [Form 323-E] when there is less than a 50 percent change in licensee's board of directors; if more than 50 percent cumulative turnover, file the short form 316.)

It should be noted that the FCC has the discretion to require refiling on Forms 314 or 315 if, in its judgment, the short form was used inappropriately. Thus, to avoid delay and possible additional costs in refiling, licensees should decide carefully when choosing which form is correct under the circumstances.

#### **d. Amendment**

If a change occurs after a licensee has filed an application, but before the FCC has granted approval, the licensee may be able to file an amendment to its application. Again, the key consideration is whether a major or a minor change is involved. If a short form could be used to request approval, the change is insubstantial and the licensee should simply file a Form 316, with a relevant cover letter referring to the file number and the date of the original application. Otherwise, the licensee must refile the long form with the relevant cover letter, as described above. The file number will remain the same, but the 30-day period for public comment will have to start again.

#### **e. Public Notice Announcement for Transfers and Assignments**

Each licensee filing an application seeking assignment or transfer of control must publish a notice of the filing in a local newspaper and broadcast a notice over the station at least once daily on four days during the second week following the filing of the application or immediately following notification from the FCC that Public Notice is required. (FCC Rule 73.3580(d)(3).) Television translator stations, low power TV, FM translator stations, FM booster stations and stations in the international broadcast service are exempted from this requirement.

##### **1. Time of Day**

*a. Commercial Radio:* These announcements must be made between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m. For stations which neither operate between 7 a.m. and 9 a.m. nor between 4 p.m. and 6 p.m., these announcements should be made during the first two hours of broadcast operation.

*b. Commercial TV:* These announcements must be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. in Central and Mountain Time zones).

##### **2. Information to be Broadcast**

The notice that is required by FCC Rule 73.3580(d)(3), concerning licensee applications seeking assignment of license or transfer of control, must contain the following information:

- The name of the seller and buyer; the names of all partners, if an applicant is a partnership or the names of all officers and directors and of those persons holding 10 percent or more of the capital stock or other ownership interest if the applicant is a corporation or an unincorporated association.
- The purpose for which the application was filed (i.e., transfer or assignment of control).
- The date when the application was tendered for filing with the FCC.
- The call letters, if any, of the station, and the frequency or channel on which the station is operating or proposes to operate.
- In the case of an application for a construction permit for a new station, the facilities sought, including type and class of station, power, location of studios, transmitter site and antenna height.
- In the case of an application for modification of a construction permit or license, the exact nature of the modification sought.
- In the case of applications for a permit for studios of foreign stations, the call letters and location of the foreign radio broadcast station.
- In the case of an amendment to an application, the exact nature of the amendment.
- A statement that a copy of the application, amendment(s), and related material are on file for public inspection at a stated address in the community in which the station is located or is proposed to be located.<sup>8</sup>

### 3. *Certificate of Compliance With Assignment or Transfer of Control Announcements*

The applicant may certify in the application that he has or will comply with the public notice requirements. (FCC Rule 73.3580(h).)

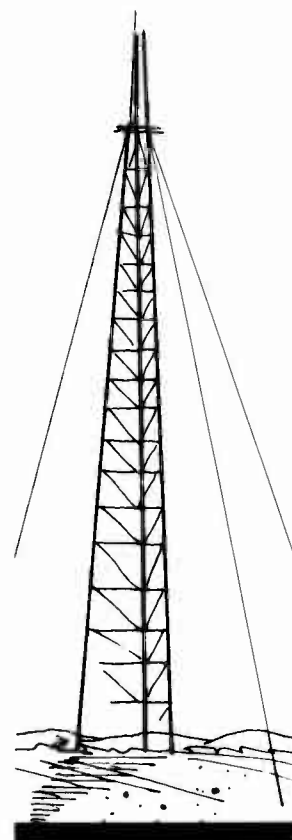
## 5. AUTHORIZATION, MODIFICATION, AND REMOVAL OF AN AUXILIARY BROADCAST SERVICE STATION

FCC Form 313 should be filed by applicants seeking authorization to operate an auxiliary station or to make changes to an authorized auxiliary station. License renewals of auxiliary stations are automatically granted with the license renewals of the associated broadcast stations unless specifically indicated on the renewal forms. Noncommercial broadcast licensees should use Form 313-R for renewal of their auxiliary stations.

The most common deficiency in completing Form 313 is the applicant's failure to provide all of the required information. The following is a list of problem areas, together with suggestions on how to complete Form 313 correctly:

- **Question 8B.** When applying for base/mobile remote pickup stations, specify the highest power of *all* of the units to be covered by the application.
- **Questions 9A and 12C.** When side-mounting antennas for auxiliary stations on the towers of existing broadcast stations, verify geographic coordinates and heights of these towers with the current licenses for the broadcast stations.
- **Questions 12C, D, E and F.** A sketch of the transmitting antenna support struc-

8. See chapter V, Section F for certain exceptions to this rule and the pending reconsideration of entire matter.





ture must accompany the application. The heights shown on the sketch should correspond to the answers to Questions 12C (overall height above ground level), 12D (elevation of ground above mean sea level at antenna site), and 12E (elevation above ground of antenna center of radiation).

- **Question 12C.** Include any top-mounted antennas in computing the overall height of the antenna supporting structure above ground. This answer should specify the height to the very top of the structure.
- **Question 12F.** When the antenna is constructed on the roof of a building, the sketch of the antenna supporting structure should include the height above ground of the roof. This is in addition to supplying the overall height above ground level and the elevation of the antenna center of radiation.
- **Question 14.** If the application is for a TV microwave station, and the transmitter is type accepted or was manufactured before October 1, 1981, you may simply respond "yes" to Question 14B. It is only necessary to provide the manufacturer, type acceptance number, and rated power if the application is for an aural microwave or a low power TV pickup station.
- **Question 15.** When a new antenna supporting structure does not require FAA notification due to the shielding exemption (e.g., existing structures, natural terrain or topographic features of equal or greater height), a statement explaining in detail the basis for this exemption should be included with the Form 313.

Television pickup systems for any number of mobile transmitters will be licensed to operate in a specific area using frequencies within a specific band designated in FCC Rule 74.602(a). Licensees of TV pickup stations should be aware that TV pickup transmitters must be licensed as a group or system, rather than individually, and that applicants must be specific with regard to the frequencies requested. (FCC Rule 74.632(a).) In addition, if the application is for a TV pickup, remote pickup, or low power auxiliary station system, the licensee must specify the mobile number in Question 7B.

Applications for consolidation of individual TV pickup mobile stations into licensed systems will be accepted only at the time that the associated broadcast station files its license renewal application. Form 313 should be used when applying for consolidation, but in lieu of specifying specific transmitter types, applicants must certify that the transmitters used, or to be used, at the requested facility is type accepted or was manufactured before October 1, 1981.

## 6. APPLICATION FOR RENEWAL OF LICENSE

### a. Radio and TV Broadcast Stations

In order to renew a station's license, all broadcast licensees must file the simplified renewal application (Form 303-S).<sup>9</sup> Among other things, this form requires the licensee to list its name and location, to certify whether the Annual Employment Report (Form 395-B) and Ownership Report (Form 323 or 323-E) have been filed as required, and to certify that the licensee has complied with foreign control and ownership restrictions. It also asks whether the station, during

9. On June 18, 1984, the Supreme Court denied the petition for certiorari, filed by Black Citizens for a Fair Media and Henry Geller, which sought a court reversal of the FCC's decision to eliminate the long form audit procedure and allow all stations to file the simplified renewal form. *Report and Order* in Docket No. 80-253, 49 R.R. 2d 740 (1981), *recon. denied*, *Memorandum Report and Order* in BC Docket No. 80-253, 87 F.C.C. 2d 1127 (1981), *appeal sub nom.*, *Black Citizens for a Fair Media v. FCC*, 719 F. 2d 407 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1255 (1984).

## RADIO BROADCAST STATION LICENSE RENEWAL DATES

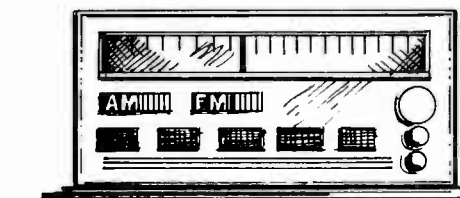
Expiration Date	OCT. 1, 1988	DEC. 1, 1988	FEB. 1, 1989	APR. 1, 1989
Filing Deadline	JUN. 1, 1988	AUG. 1, 1988	OCT. 1, 1988	DEC. 1, 1988
	D.C. MD. VA. W.VA.	N.C. S.C.	FLA. P.R. V.I.	ALA. GA.

Expiration Date	JUN. 1, 1989	AUG. 1, 1989	OCT. 1, 1989	DEC. 1, 1989
Filing Deadline	FEB. 1, 1989	APR. 1, 1989	JUN. 1, 1989	AUG. 1, 1989
	ARK. LA. MISS.	IND. KY. TENN.	MICH. OHIO	ILL. WISC.

Expiration Date	FEB. 1, 1990	APR. 1, 1990	JUN. 1, 1990	AUG. 1, 1990
Filing Deadline	OCT. 1, 1989	DEC. 1, 1989	FEB. 1, 1990	APR. 1, 1990
	IOWA MO.	COLO. MINN. MONT. N. DAK. S. DAK.	KAN. NEB. OKLA.	TEX.

Expiration Date	OCT. 1, 1990	DEC. 1, 1990	FEB. 1, 1991	APR. 1, 1991
Filing Deadline	JUN. 1, 1990	AUG. 1, 1990	OCT. 1, 1990	DEC. 1, 1990
	ARIZ. IDAHO NEV. N. MEX. UTAH WYO.	CALIF.	ALASKA GUAM HAWAII OREGON SAMOA WASHINGTON	CONN. MAINE MASS. N.H. R.I. VT.

Expiration Date	JUN. 1, 1991	AUG. 1, 1991
Filing Deadline	FEB. 1, 1991	APR. 1, 1991
	N.J. N.Y.	DEL. PA.





## TELEVISION BROADCAST STATION LICENSE RENEWAL DATES

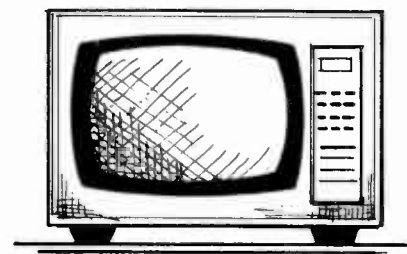
Expiration Date	OCT. 1, 1991	DEC. 1, 1991	FEB. 1, 1992	APR. 1, 1992
Filing Deadline	JUN. 3, 1991	AUG. 1, 1991	OCT. 1, 1991	DEC. 2, 1991
	D.C. MD. VA. W.VA.	N.C. S.C.	FLA. P.R. V.I.	ALA. GA.

Expiration Date	JUN. 1, 1992	AUG. 1, 1992	OCT. 1, 1992	DEC. 1, 1992
Filing Deadline	FEB. 3, 1992	APR. 1, 1992	JUN. 1, 1992	AUG. 3, 1992
	ARK. LA. MISS.	IND. KY. TENN.	MICH. OHIO	ILL. WISC.

Expiration Date	FEB. 1, 1993	APR. 1, 1988	JUN. 1, 1988	AUG. 1, 1988
Filing Deadline	OCT. 1, 1992	DEC. 1, 1987	FEB. 1, 1988	APR. 1, 1988
	IOWA MO.	COLO. MINN. MONT. N. DAK. S. DAK.	KAN. NEB. OKLA.	TEX.

Expiration Date	OCT. 1, 1988	DEC. 1, 1988	FEB. 1, 1989	APR. 1, 1989
Filing Deadline	JUN. 1, 1988	AUG. 1, 1988	OCT. 1, 1988	DEC. 1, 1988
	ARIZ. IDAHO NEV. N. MEX. UTAH WYO.	CALIF.	ALASKA GUAM HAWAII OREGON SAMOA WASHINGTON	CONN. MAINE MASS. N.H. R.I. VT.

Expiration Date	JUN. 1, 1989	AUG. 1, 1989
Filing Deadline	FEB. 1, 1989	APR. 1, 1989
	N.J. N.Y.	DEL. PA.



## FM TRANSLATOR STATION LICENSE RENEWAL DATES

Expiration Date	OCT. 1, 1988	DEC. 1, 1988	FEB. 1, 1989	APR. 1, 1989
	ID.	WA.	OR.	ALASKA SAMOA GUAM HAWAII

Expiration Date	JUN. 1, 1989	AUG. 1, 1989	OCT. 1, 1989	DEC. 1, 1989
	CO.	NM.	UT.	AZ.

Expiration Date	FEB. 1, 1990	APR. 1, 1990	JUN. 1, 1990	AUG. 1, 1990
	NEV.	CALIF.	MAINE VT. NH. MASS. CT. RI. NY. NJ. PA. MD. DEL. WVa. OHIO DC.	VA. NC. SC. GA. FLA. ALA. MISS. LA. ARK. MO. KY. TN. IND. ILL. MICH. WISC. P.R. V.I.

Expiration Date	OCT. 1, 1990	DEC. 1, 1990	FEB. 1, 1991	APR. 1, 1991
	OK. TX.	KS. NEB.	IA. SD.	MN. ND.

Expiration Date	JUN. 1, 1991	AUG. 1, 1991
	WY.	MT.

## TV TRANSLATOR STATION LICENSE RENEWAL DATES

Expiration Date	OCT. 1, 1991	DEC. 1, 1991	FEB. 1, 1992	APR. 1, 1992
	ID.	WA.	OR	ALASKA SAMOA GUAM HAWAII

Expiration Date	JUN. 1, 1992	AUG. 1, 1992	OCT. 1, 1992	DEC. 1, 1992
	CO.	NM.	UT.	AZ.

Expiration Date	FEB. 1, 1988	APR. 1, 1988	JUN. 1, 1988	AUG. 1, 1988
	NEV.	CALIF.	MAINE VT. NH. MASS. CT. RI. NY. NJ. PA. MD. DEL. WVa. OHIO DC.	VA. NC. SC. GA. FLA. ALA. MISS. LA. ARK. MO. KY. TN. IND. ILL. MICH. WISC. P.R. V.I.

Expiration Date	OCT. 1, 1988	DEC. 1, 1988	FEB. 1, 1989	APR. 1, 1989
	OK. TX.	KS. NEB.	IA. SD.	MN. ND.

Expiration Date	JUN. 1, 1989	AUG. 1, 1989
	WY.	MT.

the past license term, has been found guilty of any illegal act and whether the station's file is complete.

Renewal applications (including Forms 313-R for non-commercial auxiliary facilities) must be filed every seven years for radio stations and every 5 years for television stations on or before the first business day of the fourth full calendar month prior to the expiration of the station's license. (FCC Rules 73.1020 and 73.3539.) The next license expiration dates and the deadlines for filing, as of October 15, 1987, are above.

#### **b. FM and TV Translators**

Form 348 should be used to renew the license of an FM or TV translator. FM translators must be renewed every seven years, while TV translators need to be renewed every 5 years. (FCC Rule 74.15.) As with broadcast station licenses, translator renewal forms must be filed by the first business day of the fourth full calendar month prior to the expiration of the station's license. The next translator license expiration periods, as of October 15, 1987, are above.

### **7. NEW OR MODIFIED CALL SIGN**

The procedures for applying for a new call sign or changing an existing call sign are set forth in FCC Rule 73.3550. In the 1980s there have been two sets of changes to these rules. In December, 1983, the FCC eliminated that portion of its rules that mandated FCC resolution of call sign disputes, and liberalized other then-existing call sign rules, including the requirement that call signs be "in good taste." More recently on October 20, 1987, the FCC adopted additional changes to its call sign rules.

The FCC's *Report and Order* in October, 1987, retains the geographic restriction on the assignment of K and W as the first letter of call signs. It also streamlines the first-come-first-served policy to allow a licensee to retain the station call sign when requesting a transfer to another frequency serving substantially the same area.

In addition, the *Report and Order* modifies the "conforming basic call sign rules," to permit the assignment of the same basic call sign to stations, in different services, that are not commonly-owned, as long as the applicant submits written permission from the station already using the call sign. This consent requirement applies nationwide. For example, an AM station in Maine would need to get written permission from a TV station in Florida if it wanted to use the same basic call sign as the TV station. Accordingly, the broadcaster holding the original call letter has control over the use of those letters both in his own market and nationwide. (See *Report and Order* in MM Docket No. 87-11, 63 R.R. 2d 1625 (1987).)

Call signs are assigned by the FCC on a "first-come-first-served" basis. An up-to-date listing of assigned call signs is maintained at the FCC. Information as to the availability of a particular call sign may be obtained by calling the FCC at (202) 634-1923.

Applicants for new stations may not request a new call sign assignment until a construction permit has been granted. Applicants for transfer or assignment of an outstanding construction permit or a license may request a new call sign when the application for transfer or assignment is filed, or any time thereafter. However, if an effective date is desired before the application is granted by the FCC and the transfer is consummated, the request must be accompanied by written consent from the transferor or assignor. Otherwise, the call sign assignment will be made effective after notification to the FCC of the consummation of the transfer. Should the call sign of a station whose construction permit or license

has been transferred conform to that of a commonly-owned station not part of the transaction, the transferee or assignee must either get written consent from the station using the call sign or request a different call sign within 30 days. Failure to do so will result in the FCC selecting an appropriate call sign.

Requests for a new or modified call sign must be made by letter to the Secretary, FCC, Washington, D.C. 20554. Applicants are no longer required to send copies of the request to each AM, FM, and TV station whose community of license is wholly or partially within a 35-mile radius of the applicant's community of license. An original and 1 copy are to be sent to the FCC. At present, there is no filing fee for obtaining or changing a call sign.

As many as 5 call signs, listed in descending order of preference, may be included in a single request. Objections to a requested call sign will no longer be entertained at the FCC. A party wishing to object to a certain call sign will have to assert its rights under civil law in a local forum.<sup>10</sup> Should it be determined by a local forum that a station should not use a certain call sign, the initial FCC action assigning a call sign will not bar a station from receiving a different call sign assignment.

The FCC now will assign only four-letter call signs which begin with the letter "K" if the station is west of the Mississippi River, or the letter "W" if it is to the east. However, the call sign of a new or acquired station may be conformed to the "grandfathered" three-letter call sign of a commonly-owned and, generally, older station. Applicants may request any available combination of letters. Stations in different broadcast services under common ownership may request the same basic call sign regardless of the location of the communities of license. FM or television stations wishing to add or delete the suffix "-FM" or "-TV" from an existing call sign need only send a letter of such request to the FCC.

Applicants for a new or modified call sign may include in their letter a request for a specific effective date for the call sign assignment. Applicants should not, however, rely on securing the desired call sign until notified by the FCC that the request has been granted.

# C

## C. ANNOUNCEMENTS

### 1. MECHANICAL REPRODUCTION

No taped, filmed or recorded program material in which the element of time is of special significance, or in which affirmative effort is made to create the impression it is live, shall be broadcast without an appropriate announcement at the beginning of the program that it is taped, filmed, or recorded. (FCC Rule 73.1208.) The language of the announcement must be clear and in terms commonly understood by the public. Television stations may make the announcement either visually or aurally. Where the time element is not of special significance, the announcement need not be made, but the licensee is prohibited under FCC rules from trying to create the impression that the program is live.

Time is considered of special significance in programs consisting of a speech,

10. The Trademark Trial and Appeal Board in *WSM, Inc.* ruled that the Commission has never held "ownership" of call signs, and that call signs *can* therefore qualify for registration and protection as a "service mark." At least one call sign dispute has been decided in court. In *Pathfinder Communications v. Midwest Communications, Inc.*, a United States District Court barred a station from continuing to use "sound alike" call letters. It ordered the station to get new call letters from the FCC that would not be phonetically similar to those of another station serving the same area. The Court also ordered the station, while it was obtaining a new set of call letters, to announce over the air as part of its station ID, a notice that it was not connected with the other radio station.



news event, or special event. It may also be significant in the case of other programs when the failure to announce the mechanical or "recorded" nature of the program would create, either intentionally or unintentionally, the impression or belief on the part of the audience that the event is occurring simultaneously with the broadcast. This requirement does not apply to taped, filmed, or recorded announcements which are of a "commercial, promotional, or public service nature". (FCC Rule 73.1208(b).)

## 2. STATION IDENTIFICATION

Station identification announcements must be broadcast at the beginning and ending of each day of operation, and hourly, as close to the hour as feasible at a natural break in programming. (FCC Rule 73.1201(a).) Television stations may make the required announcements either visually or aurally.

The official station identification announcement must contain the station's call letters followed by the name of the city of license as specified in the station's license.<sup>11</sup> In addition, the name of the licensee and that station's frequency or channel number may be included between the call letters and the city of license. However, the FCC has specifically stated that no other extraneous matter may be placed directly between the call letters and the city of license. Thus, the announcement, "This is station WBPE, Austin Broadcasting Incorporated, 750 on your AM dial, Central City," would be permissible. Not acceptable would be "WBPE, Austin Broadcasting Incorporated, 750 on your hot AM dial, your number one rocker in Central City." (FCC Rule 73.1201(b).)

FCC Rule 73.1201 also provides that a station may include the name of any additional community or communities with its official station identification. However, the community of license must be named first. No additional FCC authorization is needed to add additional cities to the official station identification. Moreover, it is not necessary that the station be able to demonstrate signal coverage over any additional cities named in the identification.

Except in cases of simultaneous AM-FM broadcasting or rebroadcasting by a satellite station, in making a station identification announcement, the call letters shall be given only on the frequency or channel of the station identified by the announcement. During periods of AM-FM simulcasting, station identifications may be made jointly for both stations. If the FM call letters do not clearly reveal that it is an FM station, the joint announcement shall so identify it. (FCC Rule 73.1201(c)(2).)

When a station's programming is being rebroadcast simultaneously by a satellite station, the originating station may make station identification announcements for the satellite station. In such cases, the station identification announcement shall include the frequency (radio) or channel (TV) of the satellite and the originating station, as well as the call letters and city of license of each. (FCC Rule 73.1201(c)(3)(i)-(ii).)

## 3. SPONSORSHIP IDENTIFICATION PRACTICES

### a. Sponsorship Identification Rule

Section 317 of the Communications Act and FCC Rule 73.1212 provide that whenever a station broadcasts any material for which it has received, or will receive, any money, service, or other valuable consideration, it must fully and fairly

11. In certain situations, the FCC has licensed a radio station to two separate cities (generally "twin" cities). In such situations, the station identification announcement must include the name of both cities in the order that the names are listed on the FCC license.



identify the person or group sponsoring the broadcast. The FCC's sponsorship identification rule and its numerous interpretative rulings are very complicated. In 1975 the FCC reissued a public notice concerning sponsorship identification which is contained in Appendix C to this edition of the *Legal Guide*. Licensees are advised to study carefully the examples cited in the Public Notice in order to comply with FCC guidelines. Failure to identify fully any sponsor who has furnished valuable consideration may be considered as the taking of "payola" and can result in a fine or even imprisonment (see chapter IV for a more detailed discussion of payola). The sponsorship identification rules apply to all commercial matter, including political broadcasts, teaser announcements, and messages paid for by federal, state and local entities, and local public service organizations, as well as trade associations. It also requires an identification of the entity that "furnished" material for broadcast even if it is not aired on a "paid basis." Also, the FCC has cautioned stations that the required identifications must be comprehensible. There have been some complaints that television viewers have encountered some difficulties in reading video-only identifications. Although the FCC has refrained from designating detailed rules in this regard, the licensee's obligation is to provide clear identification.

Stations should be particularly careful in observing the sponsorship identification rules when the broadcast is political or involves a controversial issue of public importance. Stations must exercise reasonable diligence to disclose the true identity of the person or group paying for such broadcasts. Moreover, when a political or controversial matter is involved, the sponsorship identification announcement *must state* that the broadcast material is "paid for" or "sponsored by" that sponsor. (See chapter II and Appendix D for a further discussion of sponsorship identification rules in relationship to political broadcasts.)

#### b. "Teasers" or "Come-On" Spots

A "teaser" is, in essence, a short and succinct announcement utilizing, for example, catch words, slogans, symbols, etc., which are designed to arouse the curiosity of the public as to the identity of the advertiser or product (to be revealed in subsequent announcements). The FCC has ruled that, even where the final advertisement in an advertising campaign fully identifies the sponsor, the law requires that each teaser announcement reveal the identity of the sponsor.



#### 4. PUBLIC SERVICE ANNOUNCEMENTS

Public service announcements (PSAs) are announcements provided by the station, without charge, which promote programs, activities, or services of federal, state or local governments (e.g., armed forces recruiting, sales of U.S. Savings Bonds, etc.), the programs, activities, or service of non-profit organizations (e.g., Red Cross, United Way, etc.), or any other announcements regarded as serving community interests. Announcements on behalf of "for-profit" entities in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals, or employees are not public service announcements.

In November 1980, the FCC terminated its long-pending proceeding on the subject of public service announcements. The FCC had been prompted by several public interest groups to initiate the proceeding aimed at imposing specific obligations on broadcasters for presenting PSAs. The proposed changes included a narrower definition of what constitutes a PSA (an effort to regulate content and subject matter) and required PSAs to be aired at specific times. One group suggested that PSAs be aired on a parity with commercial advertising.

As urged by NAB, the FCC denied the requested changes and issued a *Report*

and Order simply encouraging broadcasters to continue to air PSAs. Therein, the FCC also refused to specify a fixed minimum number of PSAs that a station must broadcast. However, the FCC specifically stated that PSAs may be used to help fulfill the quarterly issues/programs list requirement (see chapter II for a more detailed discussion of the quarterly list). Additionally, the FCC will not distinguish between collective PSAs (e.g., community bulletin board or a grouping of community announcements) and individual announcements.

The FCC has concluded that PSAs do not have to be locally produced in order to serve the local community's interest. The national distribution of a PSA does not necessarily indicate that the announcement is not applicable to local interests. Therefore, it is left to the broadcaster's discretion to determine whether a nationally distributed PSA will serve his or her local community.

## D. NEW FCC FEE SCHEDULE



On April 7, 1986, the Consolidated Budget Reconciliation Act of 1985 (Budget Act) was signed into law by the President. Part of the legislation amended the Communications Act of 1934 by adding a new Section 8, which directs the FCC to assess and collect charges for many of the regulatory services it provides to the public. These charges are based primarily on the FCC's cost of providing specific services.

In implementing the fee legislation, the FCC recently adopted new rules and procedures, which became effective on April 1, 1987. The Schedule of Charges approved by Congress in the Budget Act was, in substantial part, an approximation of the FCC's processing costs. Unlike past fee programs that sought to recover all of the FCC's budgetary costs through fees, the new charges are designed to apportion direct and indirect costs to certain service functions, with certain exceptions. Those programs serving a general public interest function, such as rule making, enforcement activities, and certain radio services used only in public health, safety, and welfare activities, are not assessed a fee. The costs attributable to these exclusions were not factored into the Schedule of Charges to be subsidized by other service categories. Each fee is intended to recover only those costs attributable to providing the specific service to the public.

### 1. EXEMPTIONS FROM FEES

The statutory Schedule of Charges directs the FCC to charge a fee for certain regulatory services provided to commercial AM, FM and TV stations. The legislative history indicates that fees should not be assessed against those stations classified by the FCC as noncommercial educational stations. Therefore, the FCC exempted those stations that would qualify as noncommercial educational stations in accordance with the current rules. Applications by a noncommercial educational AM, FM, or TV station, as well as a qualified interconnection organization, for auxiliary broadcast, other mass media, common carrier, or private radio authorizations used in conjunction with that station or organization (on a noncommercial educational basis) will be exempt from fees.

In addition, the FCC will not require a fee in the commercial radio and TV services for requests for Special Temporary Authority filed under FCC Rule 73.1635; requests for extension and/or replacement of construction permits under FCC Rule 73.3534; requests for remote control authorizations; or modifications that may be made without prior authorization from the FCC.

## 2. AMOUNT OF CHARGES

The FCC has amended its rules to establish procedures for the collection of the charges created by Congress in Section 8(a). (See Appendix E for a listing of the schedule of charges.) As the Appendix indicates, each application to construct a new AM broadcast facility or to make a major change in an existing station will require a fee of \$2,000. These requests are submitted on FCC Form 301. Generally speaking, a major change includes any request for a construction permit for an increase in power (except for Class IV stations on local channels) or any change in frequency, hours of operation or station location.

Each application to construct a new FM broadcast facility or to make a major change in an authorized station will require a fee of \$1,800. These requests also are submitted on FCC Form 301. In general, a major change for FM stations is any change in frequency or community of license.

Each application to construct a new TV broadcast facility or to make a major change in an authorized stations will require a fee of \$2,250. Those requests are also submitted on FCC Form 301. In general, a major change for TV stations is any change in frequency or community of license.

Each application for a construction permit to make minor changes to previously authorized AM, FM or TV facilities will require a fee of \$500. Requests for minor changes to an AM facility, made on FCC Form 301, include, but are not limited to: the installation of a transmitter which has not been authorized for use by a licensed broadcast station; any change in the location, height, or directional radiating characteristics of the antenna or antenna system; any decrease in nominal power of an AM station; and moving the main studio of the AM station to a location outside the principal community contour, or moving the studio from one location outside the principal community contour to another such location. Minor changes to an FM facility (also made on FCC Form 301) include any application, other than for a new or major change (as defined by FCC Rule 73.3573(a) and 73.3572(a)), to modify the facilities of a currently authorized station.

Appendix E also contains the fees applicable to applications for renewal of an AM, FM or TV license (\$30 with FCC form 303-S); applications for a permit to construct a new FM translator or to make a major change in a previously authorized translator (\$375 with FCC Form 346); directional antenna applications (\$375 with FCC Form 302); applications for the assignment or transfer of an AM, FM or TV construction permit (\$500 per license with "long forms" 314 or 315, and \$70 per license with "short form" 316, where applicable); and applications to make a major change in a previous authorization or to certain renewals of remote pickup stations, aural broadcast STLs, intercity relay stations, and low-power auxiliary stations.

In addition, parties filing for new station authorization are required to file a \$6,000 hearing fee with the Notice of Appearance, which is no later than 20 days after the Hearing Designation Order. However, the hearing fee will not be assessed against licensees designated for hearing in a renewal, assignment/transfer, or revocation proceeding. The FCC has concluded that such proceedings are more akin to an enforcement action and, thus, it would be unfair to require a broadcaster to pay a fee to defend himself or herself.

## 3. RETENTION AND REFUND OF CHARGES

Fees will be retained by the government without respect to the FCC's ultimate disposition of the application or filing. However, fees will be returned in certain limited instances, such as when an application is returned for an insufficient fee, when no fee is required for the requested FCC action, or when an overpayment has been made.

#### 4. SUBMITTING FEES WITH FCC FORMS

Appropriate fees will accompany your filing of FCC forms (or non-standard filings), and the FCC staff will determine the adequacy of the fee tendered by reviewing this submission. In certain instances where a single FCC form permits a person to request multiple chargeable actions, the required fee will be the sum of the charge required for each such request. There is no separate "fee form" to accompany the authorization form.

#### 5. PAYMENT LOCATION

Applications and filings accompanied by appropriate fees will be accepted and processed generally at the FCC's offices in Washington, D.C.

#### 6. INCLUSION OF PAYMENTS WITH APPLICATIONS

Full fee payments must accompany a chargeable application or filing when submitted to the FCC. Partial payments or installment payments will not be permitted. Applications without a remittance or an insufficient remittance will be returned to the applicant as unacceptable for processing. These submissions will not be considered as "received" by the FCC for the purpose of conformance with an FCC filing deadline unless the application is resubmitted with the proper fee before the original deadline expires.

#### 7. COVER LETTERS

The FCC *strongly recommends* that cover letters accompany each submission for which a fee is required detailing the number and type of fees being enclosed. This is particularly true for multiple applications filed with a single check under the exception to the "one check one application" rule. That exception permits a single check (or money order or bank draft) to be submitted with multiple applications if they: (a) are filed simultaneously; (b) are on behalf of the same legal applicant; and (c) are requesting the same FCC action, in the same radio service, on the same FCC form.

#### 8. METHOD OF PAYMENT

Fees will be payable by check, bank draft, or money order payable to the FCC. In general, separate payments will be required for each application or filing. However, single payments will be permitted if submitted simultaneously for the same legal applicant, requesting the same FCC actions in the same broadcast services on the same FCC Forms.

#### 9. PENALTIES FOR LATE OR FAILED PAYMENTS

A 25 percent penalty for the amount of the fee not paid at submission will be imposed in certain limited instances: (1) when the FCC grants a deferral request and bills the applicant and (2) an insufficient fee is discovered after processing of the application has begun and the applicant is billed for the deficiency.

#### 10. WAIVERS AND DEFERRALS

Waivers or deferrals of the statutory fees will be granted on a case-by-case basis to applicants who show good cause and where such action will promote the public interest. These requests must be submitted concurrently with the application or filing.





## E. COMPLAINTS, CITATIONS, AND COMPLIANCE

### 1. FCC COMPLAINTS AND INVESTIGATORY PROCEDURES

The FCC receives numerous letters of complaint each month. The FCC disposes of most of these by letter to the complainant, without contacting the broadcast station in question. For those complaints involving political broadcasting questions, the FCC encourages prior, good faith negotiations between licensees and persons seeking broadcast time or having related questions. In the past, such negotiations often have led to a disposition of the request or disputes in a manner which is agreeable to all parties.

In general, the FCC limits its interpretative rulings or advisory opinions to cases in which the specific facts in controversy are before it for decision. For those relatively few complaints that are not disposed of by FCC letters, FCC personnel may appear at the broadcast station to investigate the complaint. Under the FCC's deregulatory philosophy, which has repealed the FCC audit process, activity within the FCC Mass Media Bureau's Enforcement Division has been reduced dramatically. Now only complaints will trigger an investigation. This visit should not be confused with a routine engineering inspection which is discussed in the next subsection. Generally, only serious questions may bring investigators to a station's door.

The FCC monitors station compliance with technical operation and public inspection file requirements. The Field Operations Bureau ("FOB") annually conducts on-site inspections of about three or four percent of all broadcast licensees (including noncommercial broadcasters). The FCC selects those stations to be inspected, giving priority to those who have complaints filed against them. Such inspections will include the review of technical operations and facilities to ascertain their maintenance at the level required by FCC rules and the licensee's authorizations. (See Appendix F for the AM and FM Broadcast Station Checklist used by the FOB.) The inspections also will include review of the licensee's authorizations and the public inspection files. On-site inspections may occur at any time.

During an engineering inspection, local members of the FCC FOB will examine stations for violations of FCC rules. According to FOB records for recent years, the following are the most frequently violated FCC rules (see the next subsection for a more detailed discussion of what the FOB looks for when visiting a broadcast station):

- failure to maintain a complete public inspection file (FCC Rules 73.3526 or 73.3527);
- failure to have a licensed operator on duty (FCC Rule 73.1860) or to designate a commercial radio operator licensee or permittee as the station's chief operator (FCC Rule 73.1870);
- failure to conduct EBS tests (FCC Rule 73.961), to post an EBS checklist at normal duty locations (FCC Rule 73.908) or to properly install or operate the EBS monitor and/or tone generator (FCC Rule 73.932);
- failure to meet specified transmission emission limitations (FCC Rule 73.44) or to operate the station within the limits of frequency tolerance, modulation limits, spurious, or harmonic emissions (FCC Rules 73.1545, 73.1560, and 73.1570);
- failure to post station and operator licenses (FCC Rule 73.1230).

While advance notice of an investigation is not always given, the FOB will often set up an appointment before visiting a station. On some matters prior notice may not be given due to the belief that prior notice may compromise the effec-

tiveness of the investigation. This lack of notice may create some problems for licensee management. You should be aware that FCC investigators need only identify themselves in order to request station materials for inspection. These materials include, of course, the contents of the station's public file. They also include any and all station logs (within the period that these are required to be retained) and annual equipment performance requirements still required.

The scope of the investigation can include interviews with station personnel and inspection or duplication of documents. The questions asked and documents requested should be limited to those pertinent to the FCC's inquiry. Compliance with investigators' time and place requests are advised unless they are unreasonably overburdensome or infringe upon the licensee's legal right not to disclose (for example, self-incrimination, lawyer-client communications, etc.). FCC rules 73.1225 and 73.1226 define FCC inspection rights and identify documents which should be made available.

## 2. COMPLIANCE: CHECKLIST OF REQUIRED RECORDS

Licensees can avoid the trauma of an FCC inspection by performing a periodic in-house inspection which will ensure that a station's technical plant and operating procedures are in accordance with FCC rules *before* the inspector arrives. FCC Rule 73.1225(c) requires that the following technical records be made available to FCC representatives:

### ALL STATIONS

- Equipment performance measurements required by FCC Rule 73.1590.
- Written designations of chief operators and, when applicable, the contracts for chief operators engaged on a contract basis.

### AM STATIONS

- Copy of the most recent antenna resistance or common-point impedance measurements submitted to the FCC.
- Copy of the most recent field strength measurements made to establish performance of directional antennas required by FCC Rule 73.151.
- Copy of partial directional antenna proofs of performance as required by FCC Rule 73.154 and made pursuant to the following requirements:
  - (a) FCC Rule 73.68, sampling systems for antenna monitors;
  - (b) FCC Rule 73.69, antenna monitors;
  - (c) FCC Rule 73.61, AM directional antenna field strength and proof-of-performance measurements.

### COMMERCIAL AND NONCOMMERCIAL TV AND FM STATIONS

- Application for modification of the transmission system made pursuant to FCC Rule 73.169(c).



If the FCC investigators request material not on this list, then you may wish to deny such requests until you consult with your attorney.

FCC investigators are instructed to present their identification and to state the subject matter of their investigation. Although they are not specifically instructed to, investigators are generally cooperative in explaining the relevance of any particular question addressed to management personnel or of a request for a document to the subject matter of the investigation. Investigators also should be willing to discuss the scope of their requests for documents or demands for lengthy interviews with station management if these appear to be unreasonable.

As a practical matter, most inspections tend to be broad in scope, covering practically everything. In addition, during the investigation of a particular matter, an investigator may examine evidence of station misconduct in another field.

Because the judgments you may have to make are not easy and often require legal expertise, you should consider notifying legal counsel immediately upon the arrival of Commission investigators. It is the policy of some licensees not to sign any statement without counsel's knowledge and advice.

You may wish to have your attorney present at any interview with you and/or to consult with your attorney (in person or by phone) before responding to any request for documents. Once again, although there are apparently no specific instructions on the point, investigators should be willing to postpone any interview with station management or request for documents until your attorney can be consulted, if you so request.

This policy, however, does not extend to interviews with station employees. It is limited to licensee "principals"—substantial owners, officers, directors or an employee general manager. The Commission takes the position that licensee ownership or management has no right to be present at an interview with a station employee, and that the licensee's counsel cannot normally advise the employee, because the employee's interest may be in conflict with that of his or her employer. The Commission has even questioned the propriety of a licensee's paying for an attorney who advises the employee in the situation. Accordingly, although investigators may postpone interviews with you or requests for documents until your counsel can be present, investigators will not ordinarily postpone interviews with your employees pending the presence and/or advice of counsel. If counsel is present and the employee indicates that he or she wants that counsel's advice and help, the investigators may ask whom the counsel represents and who is paying for the counsel's service.

NAB has not taken a formal position on the legal correctness or the reasonableness of the Commission's views on this matter. At a minimum, however, you are entitled to advise your employees of their right to counsel of their choice and their right not to sign anything at all or not to sign until a statement has been typed and they have had a reasonable opportunity (usually overnight) to read and reflect upon it. Whether you also should offer to make your own counsel available to them, pay for an attorney of their choice or insist that your own counsel be present at interviews with them (or at least at interviews that take place on station time and station property) are matters that you should discuss with your counsel, taking into account both your right to resist improper inquiries and your duty to cooperate with those that are proper.

After an interview, a statement is prepared summarizing the investigator's interview. The investigator will ask the interviewee to read the statement, make corrections, if necessary, and sign the document. You have a right to refuse to sign the document if you disagree with its contents. The investigator also will sign and date the document. This eliminates any possibility of confusion at a later date as to what occurred during the meeting.

Investigators often request original logs or material to take with them,

because they are more legible. They will give you a receipt. A station manager, however, may elect to copy the material. In fact, it is advisable to make copies of any documents which are given to the investigators. If a response is deemed necessary, the Commission will return the documents to you to aid in preparing your response.

### **3. FCC CITATIONS FOR VIOLATION OF TECHNICAL RULES**

Ordinarily, an FOB inspection is technical and extends to a broad range of matters such as monitor readings, condition of equipment, safety, remote control, EBS systems, modulation, directional antenna performance, local public file, and similar documents. However, in a policy statement released December 16, 1985, the Mass Media Bureau stated that the FOB will also handle certain nontechnical and administrative matters as well.

Now, the FOB has the authority to issue Notices of Apparent Liability (NALs) and Notices of Forfeiture (NOFs), to take action to mitigate or cancel forfeitures when appropriate, and to take action, when necessary, to refer collection matters to the appropriate U.S. Attorney's Office. The FOB's authority will be enforced through a tiered sanction program that involves a three-step process. First, a "Notice of Radio Station Conditions" will be issued for either technical matters that do not amount to an actual rule violation, but have a high probability of becoming a violation if not corrected, or for technical violations that have little potential for adverse effects upon signal quality or other persons. This notice will be sent to the station on Form 790, but the licensee is not required to directly respond other than to correct the discrepancy. An "Official Notice of Violation" will be issued for more serious technical rule violations that are designated by the Mass Media Bureau as not falling into the general categories of Safety, Interference Harm Actual/Potential, or Service Quality violations. Official Notices are issued on Form 793 and require licensee response within 10 days from receipt of the Notice. This Notice should indicate the particulars of the violation. The final action taken by the FOB, short of issuing an actual forfeiture, is the issuance of an NAL for the willful and repeated violation of a specific FCC rule (Form 790 or 793 would be issued). The NAL should indicate what violations have been found and the amount of the apparent forfeiture penalty. Licensees usually have 30 days from the date of the Notice to respond.

While most FOB forfeiture actions will not exceed \$10,000, those that do will be referred to the Mass Media Bureau for appropriate handling. The maximum possible forfeiture is \$20,000. (See Appendix G for a list of violations for which the FOB will issue forfeitures.) The FOB does have the authority to mitigate or cancel forfeitures but the Mass Media Bureau has stated that such action will not be based solely on the fact that the licensee has been cooperative or on promises of future compliance. However, a licensee's inability to pay the amount of forfeiture may be a mitigating circumstance if the licensee can substantially prove financial hardship.

## **F. RENEWAL CONSIDERATIONS**

### **1. LICENSE RENEWAL**

Applying for renewal of a broadcast license is not as complicated as it used to be. For the most part, the process has been reduced to the completion of a postcard-sized form every 5 years for television stations and 7 years for radio



stations. Below are materials which should help take the guesswork out of preparing an application for renewal of a broadcast license. It includes instructions for airing the pre- and post-filing announcements, filling out the renewal application, items to be included in the public inspection file, and providing information on FCC forms. See chapter XII for a listing of FCC phone numbers that may be useful for consultation as you prepare for and file for renewal.

### LICENSE RENEWAL CHECKLIST

When all items on the following checklist have been completed, all requirements for a routine postcard renewal have been satisfied.

- ☐ 1. The renewal application together with a \$30 filing fee was filed on the appropriate date, all applicable questions on the form were answered, and the statements verified. This includes a statement of compliance with the Commission's radiofrequency radiation exposure standards applicable to station workers and the public (see chapter V). If the application was filed late, a written letter of explanation must accompany the form.
- ☐ 2. The Model EEO Program (Form 396) was filed with the renewal application.
- ☐ 3. The pre-filing and post-filing announcements were broadcast properly (see page 29) and, within seven days after all pre- and post-filing announcements were aired, a certificate of compliance with the public notice announcements was placed in the public inspection file. (See page 33 and Appendix H.)
- ☐ 4. The public inspection file is complete and up-to-date, and includes copies of the renewal application and the Model EEO Program, and the Ownership Report (FCC Form 323) required to be filed by all non-exempt licensees. (See page 33.)

#### a. Overview of Deregulatory Changes

All commercial broadcast licensees now receive the "postcard renewal" form (Form 303-S). The old audit form (Form 303-C) has been eliminated. However, the FCC will randomly select 3 or 4 percent of all stations for visits by inspectors from the Field Operations Bureau who, among other things, will monitor compliance with technical standards and ensure that the public inspection file is current and complete.

#### b. Managing the Renewal Process: Planning Ahead

Although many of the administrative burdens associated with the renewal process have been eased, it is wise to begin the process early. NAB will send member stations a license renewal kit several months prior to the date for filing for renewal. Also, the FCC mails application forms and instructions for completing them to stations approximately seven months prior to the expiration of their licenses. (A list of the expiration dates of station licenses is included in Section B of this chapter.) Stations that have not received these FCC materials 2-3 months prior to the renewal filing date should request them from the FCC (call (202)

632-6357 for television stations; (202) 254-9570 for AM stations; (202) 632-6908 for FM stations).

Several steps should be taken in the months before the renewal application is due for filing to avoid last-minute delays that might jeopardize timely fulfillment of all the renewal requirements. The pre- and post-filing announcements must be scheduled, the public inspection file must be reviewed, and licensees should begin gathering information that will be required on the renewal application and other forms which must accompany the renewal application. Of critical importance is the station's response to the question concerning compliance with the FCC's RF radiation exposure standards (see below and chapter V).

If the station is unable to certify on the renewal application that it has complied with certain of the FCC's requirements, exhibits must be attached to the renewal form explaining why the requirements were not met. Preparing these exhibits may take time, and it may be necessary to consult legal counsel. Therefore, it is wise to review the renewal application when it is first received by the station to identify any areas which may require additional information, exhibits, or explanation.

### 1. *Public Notice Announcements*

An applicant who files for renewal of a broadcast station license must broadcast announcements over the station which give notice of filing and invite comments from the public. The FCC requires that the broadcasting of these public announcements take place in the period starting two months before and ending three months after the filing of the renewal application. (FCC Rule 73.3580(d)(4).)

#### a. *Pre-Filing Announcements*

The first pre-filing announcements are broadcast (two months prior to filing the renewal application) which is filed four months prior to the expiration date of the station's license. Air the pre-filing announcements on the first and sixteenth day of these two months. For example, if the station's license is due to expire on April 1, 1987, the renewal application must be filed by December 1, 1986. Broadcast the pre-filing announcement on October 1st and 16th and on November 1st and 16th of 1986. The following chart provides the pre-filing announcement schedule:

License Expires	Pre-Filing Announcement Airls	File Application
February 1	August 1 & 16*; September 1 & 16*	October 1*
April 1	October 1 & 16*; November 1 & 16*	December 1*
June 1	December 1 & 16*; January 1 & 16	February 1
August 1	February 1 & 16; March 1 & 16	April 1
October 1	April 1 & 16; May 1 & 16	June 1
December 1	June 1 & 16; July 1 & 16	August 1

\*Denotes month in the year preceding license expiration.

### Times

For television stations, at least two of the announcements must be broadcast between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time).

For radio stations, at least two of the announcements must be broadcast between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m. For radio stations which operate



neither between 7 a.m. and 9 a.m. nor between 4 p.m. and 6 p.m., at least two prefiling announcements must be broadcast during the first two hours of broadcast operation.

For noncommercial educational stations, the announcements should be broadcast at the same time as commercial stations, except that such stations need not broadcast the announcement during any month during which the station does not operate.

#### TEXT OF THE PRE-FILING ANNOUNCEMENT

ON *(date of last renewal grant)* *(station call letters)* WAS GRANTED A LICENSE BY THE FEDERAL COMMUNICATIONS COMMISSION TO SERVE THE PUBLIC INTEREST AS A TRUSTEE UNTIL *(expiration date)*. OUR LICENSE WILL EXPIRE ON *(date)*. WE MUST FILE AN APPLICATION FOR RENEWAL WITH THE FCC ON OR BEFORE *(first day of fourth full calendar month prior to expiration date)*. WHEN FILED, A COPY OF THIS APPLICATION WILL BE AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST *(period of time covered by the application)*.

INDIVIDUALS WHO WISH TO ADVISE THE FCC OF FACTS RELATING TO OUR RENEWAL APPLICATION AND TO WHETHER THIS STATION HAS OPERATED IN THE PUBLIC INTEREST SHOULD FILE COMMENTS AND PETITIONS WITH THE FCC BY *(first day of last full calendar month prior to the month of expiration)*.

FURTHER INFORMATION CONCERNING THE FCC'S BROADCAST LICENSE RENEWAL PROCESS IS AVAILABLE AT *(address of location of the station's public inspection file)* OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.





### Graphics

When airing pre-filing announcements, television stations must visually show the addresses of both the station and the FCC.

#### *b. Post-Filing Announcements*

Air the post-filing announcement on the first and sixteenth day of the month in which the application is due for filing at the FCC, and continue to run it on the first and sixteenth days of the two succeeding months. Using the previous example, if the license expires on April 1, 1987, the renewal application is due on December 1, 1986. Therefore, the post-filing announcement would be broadcast on December 1st and 16th of 1986, and on January 1st and 16th and February 1st and 16th of 1987. The following chart provides the post-filing announcement schedule (see pp. 13-14 above for a listing of license renewal dates):

License Expires	File Application	Post-Filing Announcement Airs
February 1	October 1*	Oct. 1 & 16*; Nov. 1 & 16*; Dec. 1 & 16*
April 1	December 1*	Dec. 1 & 16*; Jan. 1 & 16; Feb. 1 & 16
June 1	February 1	Feb. 1 & 16; Mar. 1 & 16; Apr. 1 & 16
August 1	April 1	Apr. 1 & 16; May 1 & 16; June 1 & 16
October 1	June 1	June 1 & 16; July 1 & 16; Aug. 1 & 16
December 1	August 1	Aug. 1 & 16; Sept. 1 & 16; Oct. 1 & 16

\*Denotes month in the year preceding license expiration.

### Times

For television stations, at least three announcements must be broadcast between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time); at least one announcement between 9 a.m. and 1 p.m.; at least one announcement between 1 p.m. and 5 p.m.; and at least one announcement between 5 p.m. and 7 p.m.

For radio stations, at least three post-filing announcements must be broadcast between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m.; at least one announcement between 9 a.m. and noon; at least one announcement between noon and 4 p.m.; and at least one announcement between 7 p.m. and midnight. For radio stations which do not operate between 7 a.m. and 9 a.m. or between 4 p.m. and 6 p.m., at least three of the required announcements must be made during the first two hours of broadcast operation. AM-FM combinations which simulcast may broadcast the public notice announcements for both stations simultaneously, referring, if applicable, to different dates for the grants of the licenses.

For noncommercial educational stations, the post-filing announcements should be broadcast at the same time as those for commercial stations, except that such stations need not broadcast the announcement during any month during which the station does not operate. In such instances, the noncommercial station must meet the requirement in the exact order specified, e.g., if four announcements are aired, three must be between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m., and the fourth between 9 a.m. and noon.

### TEXT OF THE POST-FILING ANNOUNCEMENT

ON *(date of last renewal grant)* *(station call letters)* WAS GRANTED A LICENSE BY THE FEDERAL COMMUNICATIONS COMMISSION TO SERVE THE PUBLIC INTEREST AS A PUBLIC TRUSTEE UNTIL *(expiration date)*. OUR LICENSE WILL EXPIRE ON *(date)*. WE HAVE FILED AN APPLICATION FOR LICENSE RENEWAL WITH THE FCC.

A COPY OF THIS APPLICATION IS AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST *(period of time covered by application)*.

INDIVIDUALS WHO WISH TO ADVISE THE FCC OF FACTS RELATING TO OUR RENEWAL APPLICATION AND TO WHETHER THIS STATION HAS OPERATED IN THE PUBLIC INTEREST SHOULD FILE COMMENTS AND PETITIONS WITH THE FCC BY *(first day of last full calendar month prior to the month of expiration)*.

FURTHER INFORMATION CONCERNING THE FCC'S BROADCAST LICENSE RENEWAL PROCESS IS AVAILABLE AT *(address of location of the station's public inspection file)* OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.

### Graphics

When airing post-filing announcements, television stations must visually show the addresses of both the station and the FCC.

### c. Exceptions and Miscellaneous Pre- and Post-Filing Information

#### 1. Text of Announcements if Previously Filed Renewal

##### *Application not Granted*

If you have not received a grant of your previously filed renewal application by the time the next pre- and post-filing announcements are due to be broadcast, you should substitute the following paragraph for the first paragraph of each announcement.

*(Station's call letters)* IS LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION TO SERVE THE PUBLIC INTEREST AS A PUBLIC TRUSTEE.

#### 2. Foreign Language Stations

Stations broadcasting primarily in a foreign language should broadcast the pre- and post-filing announcements in that language.

#### 3. Emergencies Interrupting Scheduled Announcements

If an emergency arises which precludes the airing of the announcement at the scheduled time, the announcement shall be aired on the *day following the ending* of such emergency at the identical time or during the time period which

the rotating order specifies. Commercial radio and television stations that expect to be silent during the announcement periods should promptly notify the FCC so that appropriate measures can be devised to ensure compliance with the Commission's publication requirements.

#### 4. Certificate of Compliance

Within seven days of completion of all the pre- and post-filing announcements, a Certificate of Compliance with the public notice announcement requirements must be placed in the public inspection file. **Stations are no longer required to file this certificate with the FCC.** The certificate sets forth the dates and times which the announcements were broadcast and the text of the announcements, and should be signed by a member of the station staff. (For your convenience, Appendix H contains a sample Certificate of Compliance.)

Licensees who fail to meet the requirements for broadcasting the announcements (e.g., aired the announcements on the wrong date or not in the required time periods, technical malfunction, etc.) must attach a statement to the certificate which explains why the announcements were not aired properly, when the error was discovered, and the corrective measures undertaken by the station. The FCC will advise applicants of suitable corrective measures. Even if one or more announcements were inadvertently aired on the wrong day, it is important that the station broadcast the total number of pre- and post-filing announcements required by the rules, and at appropriate times.

## 2. The Public Inspection File

The renewal application requires stations to certify that the public inspection file is complete and up-to-date. Thus, it is important to review the file well in advance of applying for renewal to make sure it contains all the necessary documents. The following is a checklist of the *major* categories of documents which must be included in the public inspection file (consult FCC Rule 73.3526 (commercial stations) and FCC Rule 73.3527 (noncommercial stations) and chapter V for complete listings):

- ☐ 1. A copy of the license renewal application (Form 303-S), and a copy of the Ownership Report (Form 323).
- ☐ 2. Documents relating to construction permit applications (for major changes and/or new stations); transfer of control or assignment of license; ownership or control of license; TV network affiliation contracts; and management agreements with nonemployees and those with employees which deal with sharing profit and loss.
- ☐ 3. All required information concerning broadcasts made by candidates for public office.
- ☐ 4. A list of chief executive officers of any organization that sponsors or provides material for political or controversial issue programming.
- ☐ 5. Copies of the Annual Employment Report (Form 395 or 395B) filed with the FCC after the latest station license renewal, including all exhibits, letters and documents.
- ☐ 6. "The Public and Broadcasting—A Procedure Manual" (1974 edition).

- ☐ 7. Letters received from members of the public and agreements with citizens groups.
- ☐ 8. The station's quarterly Issues/Programs Lists of issues addressed significantly by station programming which were compiled during the license term (include any Annual Issues/Programs Lists prepared after the last renewal but before July 1, 1984 when the quarterly system was adopted by the FCC). Appendix I contains a sample issues/programs list.

### 3. COMPLETING THE RENEWAL APPLICATION

The postcard renewal form requires stations to answer several yes or no questions, certifying compliance with several of the FCC's substantive rules. Although the simplified renewal form eliminates many of the filing burdens associated with the old Form 303-C renewal application, it is important to remember that the streamlining of the renewal form does not excuse noncompliance with the rules and regulations still in effect. It is, therefore, essential that stations verify the accuracy of all representations made on the renewal form. Certifying erroneous information on the form, though unintentional, may constitute misrepresentation to the FCC, and may jeopardize renewal of the station's license. Answer questions on the postcard form carefully, and verify all answers. Attach the \$30 filing fee, payable to the FCC, to the form. The FCC may return the form if the fee is missing.

Form 303-S is being revised to reflect FCC actions regarding ownership reporting, attribution, litigation reporting and other legal qualifications, the issues/programs list, etc. Until the revision is completed, licensees will continue to use the November 1986 version of Form 303-S.

#### a. Instructions for Answering Questions on the Form

**Question 1:** This question simply requires identification of the renewal applicant by call letters and licensee name and address exactly as they appear on the station's current license. If the address of the station has changed since the last renewal, the FCC must be notified. Change of address forms may be obtained from the FCC.

**Question 2(a):** This question concerns the Annual Employment Report (Form 395-B). Every station with 5 or more full-time employees must file the Annual Employment Report by May 31 each year. A new Annual Employment Report need not be filed with the renewal application, but the public inspection file must contain a copy of each report filed with the FCC since the last license renewal. Be sure all Annual Employment Reports have been timely and properly filed before answering "yes" to this question.

**Question 2(b):** This question concerns the Ownership Report (Form 323). The FCC recently revised Form 323, and most commercial licensees were required to file a new Ownership Report with the FCC by August 3, 1987. Stations which filed the new report may answer "yes" to this question. Licensees who were not required to file the report should answer "n/a." Stations which have not filed the report as required should answer "no," provide the information requested, complete Form 323 and file it with the FCC (be sure to retain a copy for your public file). Beginning February 1, 1988, the Ownership Report needs to be updated annually on the anniversary of the station's license renewal date.

Noncommercial stations which have a current unamended Ownership Report

on file at the FCC may answer "yes" to this question. However, if the report on file with the FCC is incorrect or incomplete, you must file Form 323-E.

**Question 3:** Here licensees are required to certify that the station is in compliance with the alien ownership restrictions contained in section 310 of the Communications Act. This section provides that the FCC may *not* grant a license to:

- any alien or representative of an alien;
- any corporation organized under the laws of any foreign government;
- 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 owned or controlled by many shareholders may have to do a stockholder survey.

**Question 4:** The FCC currently is revising this question to comport with the FCC's Policy Statement on Character Qualifications, released January 14, 1986. Under this Policy Statement, the FCC has emphasized the importance of violations of the Communications Act and the FCC's rules and policies. All such violations have potential bearing on the licensee's character. Such areas include, but are not limited to, misrepresentation to the FCC, abuse of FCC process, deceptive or fraudulent programming, and fraudulent advertising in which the licensee is an active or knowing participant. As to non-FCC misconduct, the FCC's character focus generally has been narrowed to three types of adjudicated misconduct: (1) fraudulent statements to government agencies; (2) certain criminal convictions; and (3) violations of broadcast-related anticompetitive and antitrust statutes. Although the text of the FCC's instructions regarding this question is incomplete at press time, the instructions are expected to follow closely the Policy Statement in determining what violations are to be reported.

Note also that stations generally are no longer required to disclose complaints of discrimination on the renewal application. Instead, this information must be contained in the Model EEO Program (Element X of the old Form 396 and Element VIII of the new Form 396). However, stations with fewer than 5 full-time employees, which are not required to file the Model EEO Program, should therefore include any EEO complaints which have been filed in answering this question on the renewal form.

This question can be tricky because it requires the applicant to investigate the conduct of parties to the application in areas remote from the operation of the station. For example, if a 15 percent shareholder in the station also owns a business which was the subject of an adverse finding on a discrimination complaint, that finding must be reported in the application.

**Question 5:** This question requires the applicant to certify that the public inspection file is complete and up-to-date. (See chapter V.) As noted above, it is crucial that stations review the contents of the public file before answering Question 5. FCC Field Operations Bureau ("FOB") personnel review the public file on routine and unannounced inspections of broadcast stations. Double check the public file to make sure it contains current copies of the items in both the FOB inspector's inventory list and FCC Rule 73.3526 (FCC Rule 73.3527 for noncommercial stations).



### **b. Signing the Application (Certification Section)**

The certification section requires the applicant to attest to the accuracy of all statements made in the application. The application form must be signed and dated. If the licensee is a corporation, the form must be signed by an officer of the corporation. It may *not* be signed by a general manager, station manager or other staff member unless that person is also an officer of the licensee corporation. If the licensee is a partnership, the application must be signed by one of the general partners. If the licensee is neither a partnership nor a corporation, individual owners of the licensee may sign the application.

Approximately three weeks after filing the application, the station should receive a card from the FCC (Form 101-A) acknowledging that the application has been accepted for filing. This card should be posted with the current license to authorize continued operation of the station beyond the expiration date and pending final action on the renewal application. Stations that do not receive this card should contact the FCC's Mass Media Bureau.

### **c. FCC Forms Which Accompany the Renewal Application**

An Equal Employment Opportunity Program (Form 396) must accompany the renewal application. The Annual Employment Report (Form 395-B) is not a renewal-related filing, and should not accompany the renewal application. However, if the station must submit an updated employment profile in response to Section VII of the EEO Program, Form 395-B should be used for this purpose.

Additional copies of Form 396 as well as all other FCC forms and applications may be ordered by calling (202) 632-7272 and asking for the form by number. Information on what form to use may be obtained by calling (202) 632-7000.

### **d. Radiofrequency Radiation Compliance Certification**

Stations must include a statement of compliance with the FCC's new guidelines regarding RF radiation (see chapter V). The FCC includes instructions for certifying that the station is in compliance. The guidelines adopted by the FCC are identical to RF radiation standards established by the American National Standards Institute ("ANSI"). In November 1985, NAB published *A Broadcaster's Guide to FCC Radiation Regulation Compliance*, which can help stations determine whether they are in compliance with the ANSI standard. The guide was sent to all member stations in the December 1985 *Info-Pak*. Copies of the May 1987 revision to the guide can be purchased through the NAB Station Services Department, (800) 368-5644.

## **4. THE RENEWAL PROCESS**

Once an applicant files for renewal several things can happen. The renewal applicant's programming record and its record of compliance with both the Communications Act and FCC regulations become subject to review. At this time members of the public can file petitions to deny and/or competing applications to take the license away from the incumbent. A party can file a competing application without filing a petition to deny. A competing applicant can raise issues about the basic qualifications of the renewal applicant in addition to the standard comparative issues. Thus, an incumbent licensee can lose its license either by being found to have failed to meet its licensee obligations or by having a competing applicant found to be superior under the comparative renewal criteria. NAB has urged Congress to eliminate the comparative renewal process.

The current renewal process permits parties to file petitions to deny and/or competing applications against renewal applicants even if the renewal applicant has fully served its community and complied with the Communications Act and

the FCC's policies and rules. Accordingly, a licensee should take prudent steps to ensure that a prospective applicant has no reason to file against its license. Defending against a competing application could easily cost tens or even hundreds of thousands of dollars. With the elimination by Congress in 1982 of dollar limits on settlement agreement payments, license challengers can now demand large amounts of money in return for agreeing to withdraw their competing applications. NAB has urged the FCC to initiate a rule making proceeding geared to reforming this and other aspects of the comparative renewal process.

## **a. Petitions to Deny**

### **1. Procedure**

The petition to deny is a statutorily authorized process whereby the public can object to the renewal of a broadcast license.<sup>12</sup> The FCC uses this process to ensure that licensees have met their public interest obligations. Anyone who resides within the station's service area can file a petition to deny against a renewal applicant. (FCC Rule 73.3584.) The petition to deny must be filed before the last day for filing mutually exclusive applications (i.e., the end of the first day of the last full calendar month of the expiring license term or, if the renewal application is not timely filed, the 90th day after the FCC has given public notice that it has accepted the late-filed renewal application for filing. If the deadline falls on a non-business day then the cutoff is the close of business of the first full business day thereafter.) The petition must contain specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that the grant of the application would be *prima facie* inconsistent with the public interest, necessity, and convenience requirement. The allegations of fact must be supported by the affidavits of a person or persons with personal knowledge of the facts. In addition, the petitioner must deliver a copy of the petition to the station.

The renewal applicant can respond to the petition to deny by filing an opposition within 30 days after the petition to deny is filed. The renewal applicant can submit its own affidavits at this time. The petitioner then has 20 days to reply to the opposition.

When the FCC determines there are legitimate issues as to whether the license should be renewed, it will designate the renewal application for hearing and will set forth the issues to be decided in hearing. A broadcaster whose application has been designated for hearing should consult its lawyer about matters such as local notice (FCC Rule 73.3594) and discovery.

### **2. Renewal Standards**

A renewal application should be granted provided that 1) the renewal applicant is legally, technically, financially, and otherwise qualified, 2) the applicant has not been found in violation of the law, FCC policies or rules, and 3) grant of the application would further the public interest.

One of the major concerns in license renewal is the "character" qualifications of the licensee. The general basis for FCC evaluation of licensee "character" evolves from Section 308(b) of the Communications Act of 1934, which states that "all applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the FCC by regulation may prescribe as to the citizenship, *character*, and financial, technical, and other qualifications of the applicant to operate the station . . . ." (emphasis added).

12. The FCC has initiated a proceeding to study abuses in the petition to deny process. Specifically, the FCC has proposed that petitioners only be allowed to recoup legitimate and prudent expenses in exchange for withdrawal of their petition to deny. See *Notice of Inquiry* in MM Docket No. 87-314, 2 FCC Rcd 5563 (1987).

If a party has challenged an applicant's character by filing a petition to deny, the FCC must determine, in relation to character (or any other factual matter raised), whether "any substantial and material question of fact is presented."

Historically, the assessment of character took the FCC into broad investigations of such things as whether an applicant was qualified to be a broadcast licensee because he improperly imported horses into the United States or had conducted wrestling matches in violation of state law. An attempt to designate a character issue against an opponent was a standard hearing tactic in comparative cases.

The FCC, in 1981, undertook to reassess the role of the character issue in FCC proceedings. The end result of this inquiry was a broad-based statement on character, adopted by the FCC in late 1985, *Character Qualifications*, 102 F.C.C. 2d 1179 (1985). In this statement, the FCC determined that many areas of conduct previously scrutinized by the FCC will no longer be considered in a character evaluation of a licensee or applicant. The only aspects of character to be considered are those which relate to the achievement of FCC regulatory goals and compliance with FCC rules and procedures. Generally, character assessment will now focus upon truthfulness before the FCC or other government agencies and the proper use of FCC processes. Criminal convictions involving false statements or dishonesty will also be considered relevant to predicting the propensity for truthfulness before the FCC.

The FCC also has indicated that abuse of FCC processes, such as filing by a broadcaster of a "strike application" or "strike petition to deny" (an application or petition filed with the primary purpose of delay), against another broadcaster could result in the denial of the filing broadcaster's application for renewal.

Misconduct by the parent corporation might also affect the character evaluation of a broadcast subsidiary. There is no presumption that misconduct at one station is necessarily predictive of a licensee's ability to operate other stations. The FCC has stated, however, that some behavior may be so fundamental to a licensee's operation that it is relevant to the broadcaster's ability to hold any license.

A licensee will also be held responsible if one of its employees violates FCC regulations in the course of his or her employment. While in the vast majority of cases character has neither been designated as a hearing issue nor, if designated, been dispositive, there have been situations where the determination of a character defect has resulted in the dismissal or denial of an application for a new facility or the denial of a renewal application.

## **b. Competing Applications and Comparative Hearings**

### **1. Procedure**

Competing applications must be filed with the FCC by the end of the first day of the last full calendar month of the expiring license. [Note that if the deadline falls on a non-business day, the mutually exclusive application should be filed before the close of business on the first full business day thereafter]. When a mutually exclusive application for a permit is filed, the FCC will designate a hearing to compare this application with the renewal application. In its "Hearing Designation Order," the FCC will specify the issues upon which evidence must be compiled and upon which the decision to grant the application will be based.

### **2. Renewal Standards**

For comparative renewal applicants, there are three main areas for consideration: 1) the technical issues, i.e. transmitter site location, coverage, compliance with Federal Aviation Administration regulations, 2) standard comparative issues (diversity and best practicable service); and 3) whether the renewal applicant

should be granted a renewal expectancy. Character issues used to be treated as comparative factors, but now they are basic qualification issues. (See discussion of Character above). If a competing applicant can demonstrate sufficient facts to add a separate issue, the renewal applicant's character qualifications can also be considered in the comparative hearing.

At the hearing the competing applicant usually takes full advantage of the FCC's structural comparative factors as set forth in its 1965 *Policy Statement on Comparative Hearings*, 1 F.C.C. 2d 393 (1965). Although these factors were designed for use in a comparative "new" hearing and were not intended for use in the comparative renewal context, the FCC utilizes a modified version of this policy statement. The two main criteria under the 1965 *Policy Statement* are diversification of control of the media of mass communication and the objective of securing "the best practicable service" which includes consideration of proposals for full-time participation in station operation by its owners.

Diversification in this context refers to the lack of other media interests. The ultimate weight given this factor depends on both the degree of ownership interest in other media and the proximity of other media to the community of license. Accordingly, an applicant with no other ownership interests (under the FCC's attribution rules) would receive a comparative preference.

Under the second criterion, the FCC considers the extent to which there is ownership participation in the management and operation of the station. Full-time integration of ownership and management gives an applicant a comparatively greater preference than part-time integration. The value of this factor can be enhanced by certain attributes of the owners. The factors of local residence and minority ownership are treated as enhancement credits and are accorded the same comparative weight. Past participation in civic affairs and past broadcast experience are accorded less weight.

A competing applicant, unburdened by a past history of performance, has great flexibility to propose a "better" operation than yours. If you have 25 percent integration of management and ownership, a new applicant can propose 50 percent or higher. If you own only one other station, a new applicant can win a diversification preference by proposing to own none. If you do 10 hours of public issue programming per week, a new applicant can promise 20. If you have 5 percent minority ownership, a new applicant can propose 25 percent. Out-promising a renewal applicant is easy.

### c. The Right to Renewal Expectancy

There is one major safety net that can assist you in keeping your license when you file a renewal application; it is the "renewal expectancy" you enjoy as a licensee. Only you can enjoy it; a competing applicant cannot. But renewal expectancy is not automatic. You must earn it by your station's performance.

#### 1. What is "Renewal Expectancy?"

It is not an "automatic renewal," nor is it an irrebuttable presumption in favor of the incumbent. Rather, it is a comparative "plus" given on the basis of your broadcast programming record, which is weighed against other comparative factors such as integration of ownership and management, and diversification. A licensee which has rendered "minimal service" to the public will receive no renewal expectancy comparative preference, but a licensee which has rendered "substantial service" will. And a licensee which has given "superior service" will receive a strong preference. The issue of creating a new definition of the level of service necessary to justify a renewal expectancy has been considered by Congress in recent years.



## **2. On What Exactly is the "Renewal Expectancy" Based?**

Generally speaking, the source of a renewal expectancy is "programming responsive to issues facing the community." As with all comparative renewal benchmarks, however, precision is difficult to find, especially where, in the case of renewal expectancies, the law is still developing.

With quantitative standards gone, there are no clear guidelines as to how much or what kind of public interest programming will insure a strong renewal expectancy. Since, however, the first objective is to discourage potential competing applicants from filing against your station, a sound general rule would appear to be: be the best station in your market in some area of public issue programming and be the worst in none. Have some issue programming that you can point to with pride, and none that others can point to with ridicule or contempt.

Remember, a licensee receiving a renewal expectancy under the current case law should stand a good chance at getting renewed.



---

## CHAPTER II

---

# Programming Policies and Practices

### A. QUARTERLY ISSUES/PROGRAMS LIST



In its original radio and television deregulation decisions, the FCC eliminated its daily detailed program logging rules. See *Deregulation of Radio*, 84 F.C.C.2d 968 (1981); *Public Broadcasting*, 98 F.C.C.2d 746 (1984); *Deregulation of Television*, 98 F.C.C.2d 1076 (1984). Initially, radio licensees were required to prepare and retain in their public files an annual list of five to 10 issues which they had deemed important to their community of license. Also, licensees were required to list examples of the programming that they aired which addressed those issues.

Following two court appeals relating to this requirement, the FCC settled on a policy which requires a licensee to prepare lists, on a *quarterly* basis, that enumerate some of the community issues that the station addressed during the preceding three months and that sets forth programming which gave "significant treatment" to those issues. *Deregulation of Radio*, 104 F.C.C.2d 505 (1986); *Deregulation of Television*, 98 F.C.C.2d 1076 (1984).

Licensees should note that the five-issue minimum has been eliminated. Thus, a station that has not dealt with five issues during the past quarter is not necessarily in violation of this requirement. However, the FCC said that a licensee whose lists include at least five issues each quarter would likely be able to demonstrate compliance with the issue-responsive programming obligation. *Deregulation of Radio*, 104 F.C.C.2d 505, note 8 (1986). Moreover, licensees always should remember that these lists will be used as a basis for petitions to deny license renewal and competing applications.

Each list must include the issue, a narrative description of the programming that addressed the issue (including the program's title), and the program's duration and time and date of airing. See Appendix I for a sample quarterly issues/programs list. Programming that meets the significant treatment requirement can

include virtually any non-entertainment programming and may include everything from local or national programs and news reports to public service announcements.

Quarterly lists must be placed in the station's public inspection file by the tenth day following each calendar quarter; thus, January 10, April 10, July 10, and October 10. In addition, the lists must be retained in the public file for the duration of the license period. (See Chapter V for a more detailed discussion of record retention.)

## B

### B. FAIRNESS DOCTRINE, POLITICAL BROADCASTS, AND RELATED TOPICS

In August 1987, the FCC abolished the fairness doctrine and its Cullman doctrine corollary (which may require the granting of free time in certain circumstances), except as these applied to candidate elections and ballot issues. In the Commission's view, the treatment of coverage of political races and ballot issues was not before it at that time. At press time, the Commission was considering whether its August 1987, action should also result in elimination of the personal attack and political editorial rules, the Zapple doctrine and the fairness doctrine for candidate and ballot issues. In the interim, the personal attack and political editorial rules, the Zapple doctrine, and the fairness doctrine (apparently including Cullman) as applied to ballot issues remained in effect.

Additionally, although the Commission was returning new fairness doctrine complaints, it suggested that there would be leave to refile if its action abolishing the general fairness doctrine was reversed by itself on reconsideration, on appeal by the courts, or, presumably, by Congressional codification of the doctrine. Although Congress failed to codify the doctrine in 1987, a renewed codification effort by doctrine supporters is expected in the future.

Given this tentative state of affairs, the editors are including a complete fairness doctrine section in this edition of the *Legal Guide*. Please note that the Commission's fairness doctrine actions have not in any way affected the candidate political advertising and reasonable access rules, or a licensee's bedrock public interest obligation to broadcast issue-responsive programming.

#### 1. THE FAIRNESS DOCTRINE

##### a. In General

The fairness doctrine embodies two basic obligations. First, a broadcaster must devote a significant amount of time to coverage of "controversial issues of public importance." Second, a broadcaster must ensure that its coverage of any given "controversial issue of public importance" is not grossly out of balance; i.e., that a "reasonable opportunity" is afforded in the station's overall programming for presentation of significant contrasting or opposing viewpoints on each issue.

To comply with the fairness doctrine, you must identify controversial issues of public importance in your community. An issue must be both "controversial" and "publicly important." To determine whether an issue is "publicly important," ask yourself if resolution of the issue will have a significant impact on your community. You might use as a guide the attention issues receive from the other news media, governmental bodies and community groups.

To determine whether an issue is also "controversial," you might inquire whether substantial elements of your community are engaged in vigorous debate

over the issue. Sometimes there are important issues not subject to debate. Here again, you may look to the news media, governmental bodies, and community groups to determine whether strong disagreement on the matter exists.

If you discover vigorous debate among substantial elements of your community about a matter of paramount importance to your community, you likely should cover it. However, you are not obliged to cover every controversial issue of public importance within your community. As long as you select a number of the most important issues to cover, and as long as you cover the different significant viewpoints on these issues, you should be in compliance with the fairness doctrine.

Remember that you are required to give reasonably comparable exposure to the significant contrasting viewpoints on a "controversial issue of public importance" covered. Indicators of comparable coverage are the total amount of time presented on each side, frequency of presentation of viewpoints, and audience potential (i.e., scheduling) of broadcasts presenting each side of the issue.

The fairness doctrine is not like the "equal opportunities" rule which applies to political candidates; i.e., you do not have to give "equal time" to present viewpoints on a controversial issue, nor do you have to give access to particular representatives on particular issues. For example, you may address issues yourself in station-presented editorials. However, you must ensure that the audience that hears one side of a controversial issue of public importance also will have a fair opportunity to hear the other significant viewpoints. As in all other matters involving the fairness doctrine, the Commission typically defers to the broadcaster's reasonable and good faith judgment. Ordinarily, the Commission will not involve itself in fairness doctrine questions on its own motion, but only when an aggrieved party files a complaint.

As stated, you should assess the comparability of exposure given to opposing sides of an issue in terms of total amount of time, frequency of presentation and scheduling. The total amount of time allotted to one side should not be disproportionately greater than the total amount of time devoted to another side. In one case the FCC found a 5-1 ratio appropriate; in another a 3-1 ratio was acceptable. What is reasonable depends on the facts of a particular case.

One side should not be heard much more frequently than another side. This problem often arises with spot announcements. If one side is presented through 60 one-minute spots, it may not be reasonable to present the other side in only one 20-minute program, because of the difference in length and frequency of exposure.

Ensure reasonable comparability in the scheduling of presentations of viewpoints on the issue. For example, it would be unfair to broadcast one side of an issue during prime time or drive time, while presenting the other side only during "graveyard" hours.

#### **b. The *Cullman* Doctrine**

A station broadcasting a sponsored spot or program on one side of a controversial issue of public importance thereafter may not refuse to air opposing viewpoint on the issue—thereby leaving the public uninformed—merely because the station could not obtain paid sponsorship for presentation of those positions. This corollary to the fairness doctrine is known as the "*Cullman*" doctrine, named after the case in which the Commission first articulated this principle. However, a broadcaster may attempt to obtain paid sponsorship for time used to respond to a controversial issue. The station is not precluded from obtaining payment for such broadcasts if it is able to do so. Note that the station cannot wait for the "other side" of an issue to come in and ask for time. It is obliged to seek out representatives of opposing views.

### c. The Personal Attack Rule

Under the personal attack rule (FCC Rule 73.1920), if a station broadcasts an attack on the honesty, character, integrity or similar personal qualities of an identified person or group during the presentation of views on a controversial issue of public importance, it must take the following actions within *one week* of the attack:

- notify the person or group attacked of the date, time and identification of the broadcast;
- send a tape, transcript or, if neither is available, as accurate a summary as possible to the attacked party; and
- offer a reasonable opportunity for response.

As noted above, the Commission's personal attack rule defines a personal attack as an attack upon the honesty, character, integrity or similar personal qualities of an identified person or group. Mere mention of a person or group, or even certain types of unfavorable references, do not necessarily constitute personal attacks. Within the meaning of the rule, a personal attack is essentially an accusation of moral turpitude.

The following are examples of statements that *do not* constitute personal attacks:

- the mere imputation of a political motivation to an appointed public official;
- an accusation that a particular individual is "incompetent;"
- an attack on a particular individual's ability or knowledge; or
- criticism of a particular individual's reasoning or conclusions.

In addition, the notification and offer of response provisions of the personal attack rule apply only when a personal attack is made on an identified person or group during the presentation of views on a controversial issue of public importance. The Commission has ruled that this encompasses personal attacks made either during a continuing discussion of such an issue, or those made in relation to a discussion of such an issue. In the latter case, the attack must occur within a reasonable period of time following the discussion of the issue in order for the personal attack rule to be applicable.

The notification and offer of response provisions of the personal attack rule *do not* apply to the following:

- a personal attack on foreign groups or foreign public figures;
- personal attacks occurring during "uses" of broadcast stations by legally-qualified candidates for public office (see the sections below for definition of "use");
- personal attacks made during broadcasts that are not "uses," but that are made by legally-qualified candidates, their authorized spokespersons, or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and
- *bona fide* newscasts, *bona fide* news interviews, and on-the-spot coverage of *bona fide* news events, including commentary or analysis contained in any such programs. Note, however, that the notification and offer of response provisions *do* apply to editorials of the licensee. Also take note that statements not considered personal attacks by the FCC may nonetheless be the potential targets of libel suits.



#### d. The Political Editorializing Rule

The political editorializing rule in many respects parallels the personal attack rule. (FCC Rule 73.1930.) It requires a broadcaster to provide notification, transcript or tape and offer of reply time where a broadcaster editorializes either for or against a legally-qualified candidate for public office.

Where the editorial constitutes an endorsement of a candidate, the notification and offer of reply time is to be sent to the other legally-qualified candidate or candidates for the same office.

Where the editorial constitutes an opposition to a candidate, the notification and offer of response opportunity is to be sent to the candidate who is opposed.

Note that the licensee is not obligated to allow the candidate to personally appear on the air with his or her response if the station does not want to, because such an appearance could give rise to "equal opportunities" rights in opposing candidates. The broadcaster will be in compliance with the rule simply if she offers either the candidate or a representative for the candidate the opportunity to respond to the editorial.

Where an editorial is to be broadcast at any time other than during the period within 72 hours prior to election day, the requisite notification and offer of reply time must be transmitted to the candidate or candidates within 24 hours after the editorial.

Where an editorial subject to the rule is broadcast within 72 hours prior to the date of the election, however, the notification and offer of reply time must be given sufficiently far in advance of the broadcast of the editorial to enable the candidate or candidates, or their spokespersons, to have a reasonable opportunity to prepare a response to the editorial and to present it in a timely fashion.

An "editorial," for these purposes, is comment that represents, or is represented as reflecting, the viewpoint of the licensee of a station. Thus, commentary by newscasters or others would not be deemed to be an "editorial" if the remarks reflect only the commentator's personal viewpoint and are not identified as representing the licensee's viewpoint. However, statements by a station owner, a principal officer, or a manager of the station endorsing particular candidates may be deemed to be a station editorial even if not presented by the station as such.

## 2. POLITICAL BROADCASTS

### a. The Equal Opportunities Provision: Section 315

The "equal opportunities" provision of Section 315 of the Communications Act is commonly (and incorrectly) referred to as the "equal time" provision. Under it, a broadcaster allowing a legally-qualified candidate for public office to "use" a station's facilities must afford equal opportunities to all other opposing legally-qualified candidates for that office, provided a request for equal opportunities is made within seven days of the first prior use.

A "use" of a broadcast facility by a candidate is defined as *any* appearance on the air by a legally-qualified candidate for public office—in the case of TV by either picture or voice or both—where the candidate is either identified or where the candidate is readily identifiable to a substantial degree by the listening or viewing audience. The candidate's appearance is a "use" regardless of what he or she speaks about.

Appearances by candidates in the following types of broadcasts are not considered to be "uses," and therefore are exempt from the "equal opportunities" provision:

- *Bona fide* newscasts,
- *Bona fide* news interviews,





- *Bona fide* news documentaries (if the appearance of the candidate is incidental to the presentation of the subject covered by the news documentary), or
- On-the-spot coverage of *bona fide* news events.

The Commission considers candidate debates, including those sponsored by broadcast organizations, and press conferences to be "on-the-spot coverage of *bona fide* news events." As such, they are not considered "uses" subject to "equal opportunities," as long as they are:

- covered live or broadcast on a delayed basis, but reasonably close in time to the occurrence of the debate or press conference; and
- intended in good faith by the broadcaster to inform the public, and not intended to favor or disfavor any candidate.

In determining whether a particular program is within the scope of one of the specified news exemptions, the basic question is whether the program meets the standard of "*bona fide*." To establish whether such a program is, in fact, a "*bona fide*" news interview, the following considerations, among others, may be pertinent:

- the format, nature and content of the program;
- whether the format, nature and content of the program are based on the broadcaster's good faith journalistic judgment;
- who initiates the program;
- who produces and controls the program;
- when the program was initiated; and
- is the program regularly scheduled.

***Examples of exempt programs:***

- Regularly scheduled news shows such as:  
Today Show  
Good Morning America  
This Week With David Brinkley
- *Bona fide* news interview shows such as:  
Meet The Press  
Face The Nation  
Issues and Answers  
Larry King Show  
Donahue



***Legally-Qualified Candidate for Public Office***

Listed below are a series of questions you should ask about anyone who claims to be a "legally-qualified candidate for public office" under Section 315 of the Communications Act and the FCC's associated rules and policies. This "flow chart," should enable you to separate candidates guaranteed special rights under the political broadcasting laws from other "candidates" not entitled to such treatment.

*Preliminary questions applicable to all candidates:*

Has he or she publicly announced his or her intention to run for nomination or for the public office by a formal declaration of candidacy?

**Yes—go on.**

**No—stop.** Not "legally qualified" as far as the FCC is concerned.

Is he or she qualified under the applicable local, state or federal law to hold the office for which he or she has announced?

**Yes—go on.**

**No—stop.** Not "legally qualified" as far as the FCC is concerned.

You now need to determine what office the person is running for, whether that person is directly seeking the office or just seeking nomination for it and whether there is a ballot, convention or caucus (or some similar procedure) involved.

*Questions applicable to candidates for president or vice president of the United States:*

If seeking *nomination* for the office ...

Has he or she, or proposed delegates, qualified for the primary or presidential ballot?

**OR**

Made a "substantial showing" of *bona fide* candidacy?

**Yes—stop.** Is "legally qualified."

**No—but go on to the "10 State Rule" below.**

If seeking *election* to the office ...

Has the person qualified for a place on the ballot?

**OR**

Publicly committed himself or herself to seeking election by the write-in method, eligible for that under state law, and making a "substantial showing" of candidacy?

**Yes—stop.** Is "legally qualified."

**No—but go on to the "10 State Rule" below.**

*10-State Rule*

Your answers above indicate that the person claiming to be a presidential or vice presidential candidate has not met the FCC's standards for candidacy in your state. The Commission, however, considers a candidate a "national candidate"—meaning that all broadcasters must treat that person as a "legally-qualified candidate"—once such a candidate has qualified under the law in 10 states (or nine states, plus the District of Columbia).

Has the person met the tests above, pertaining to election and/or nomination for president or vice president in 10 states (or **nine** states plus the District of Columbia)?

Yes—stop. Is "legally qualified."

No—stop. Is not "legally qualified" as far as the FCC is concerned.

*Questions applicable to candidates for all public offices other than president and vice president of the United States:*

If seeking *nomination* for the office . . . Through an *election* (i.e., a primary) . . . Has the person qualified for a place on the ballot?

OR

Publicly committed himself or herself to seeking election by the write-in method, is eligible for that **under** state law, and making a "substantial showing" of candidacy?

Yes—stop. Is "legally qualified."

No—stop. Is not "legally qualified" as far as the FCC is concerned.

Through a *convention*, caucus or similar procedure . . .

Is he or she **making** a substantial showing of being a *bona fide* candidate for such a nomination?

AND

Is it less than 90 days before the start of the convention, caucus, etc.?

Yes—stop. Is "legally qualified."

No—stop. Is not "legally qualified" as far as the FCC is concerned.

If seeking *election* to the office . . .

Has the person qualified for a place on the ballot?

OR

Publicly committed himself or herself to seeking election by the write-in method, is eligible for that under state law, and **making** a "substantial showing" of candidacy?

Yes—stop. Is "legally qualified."

No—stop. Is not "legally qualified" as far as the FCC is concerned.

**When are candidates considered to be “opposing candidates”?**

For purposes of the equal opportunities provision, *prior to a primary election*, only the candidates for a particular party’s nomination are considered to be opposing candidates. *After the primary*, the nominees of the respective parties seeking the same office in the general election, as well as any write-in or petition candidates, are considered to be opposing candidates.

Note that if a station sells time to a candidate *during a campaign period* (i.e., once there is a legally qualified candidate), it need not give free time to opposing candidates who request it. The law requires “equal opportunities” for candidates—not “equal time.” This means that the other candidates must be allowed to *purchase* comparable time at an equal rate. (However, *outside campaign periods*, the *Cullman* doctrine may apply requiring a station to provide free time for political spots.) (See page 43 of this chapter.)

In providing equal opportunities, a broadcaster must consider the desirability of the time segment allotted, as well as its length. The time segments offered must afford comparable access to audiences.

Where a station announcer whose voice or image is readily identifiable is also a legally-qualified candidate for public office, the announcer’s legally-qualified opponent is entitled to the same amount of time in comparable time periods to those used by the announcer-candidate. Also, unless the announcer-candidate paid the station for his or her appearances, opposing candidates would be entitled to *free* time under the “equal opportunities” doctrine. However, if the race is for a federal office, free spot time initially provided may be viewed as an illegal “in-kind” corporate contribution to the candidate from the station. Some states may treat giving free spot time to state-level candidates in the same manner. Free time provided to respond to the initial free spot time is unlikely to be considered an illegal contribution. In light of the obvious problems that are created by having staff announcers or other on-air talent become legally qualified candidates for public office, the station facing such a situation has the following options:

- Remove the employee from the air for the duration of his or her candidacy.
- Leave the employee on the air and be fully prepared to afford equal opportunity to any opposing candidate for all appearances of the employee-candidate during the seven days prior to the opponent’s request. There is no obligation on the part of the station to inform opposing candidates of their rights to equal opportunities arising from the employee-candidate’s on-air duties. Of course, as noted above, equal opportunities, if requested under these circumstances, would require that free time be offered to opposing candidates.
- Seek a waiver from the employee-candidate’s opponent(s) to the effect that the opponent(s) waives any equal opportunity rights he or she may acquire as a result of appearances by the employee-candidate during the normal course of his or her station duties, with the understanding that the employee-candidate would make no reference, directly or indirectly, to his or her candidacy during such appearances. The FCC has approved such equal opportunities waivers. It must be understood, however, that opposing candidates are under no obligation whatsoever to agree to such waivers. If you do get a waiver, be sure you get it in writing.

A station need not advise a candidate that time has been sold or given to his or her opponent. It is the candidate’s obligation to derive this information from the station’s political file. A station is required to keep a public record of all requests for time by or on behalf of political candidates, as well as time given free to candidates, together with a record of the disposition and the charges made, if any, for each broadcast. The station should update this political file regularly, and at least once a day during the political season. In the waning days of the



election period, particularly in a hotly contested election, it would be wise for the station to update the file several times each day.

However, if a station chooses to advise a candidate of the sale of time to his or her opposition, it must provide the same information to the candidate's opponents. The licensee is not permitted to discriminate among opposing candidates in any way.

The burden is on the legally-qualified candidate to request that the station afford him or her opportunities equal to those afforded to his or her opponents. Such a request must be made within seven days of the date on which the first prior "use" giving rise to the right of equal opportunities occurred. If the person was not a candidate at the time of such first prior "use," the request must be made within seven days of the first subsequent "use" after he or she became a candidate.

The following "checklist" will help to determine the validity of a particular request for "equal opportunities":

- Requesting candidate is a legally-qualified candidate for public office.
- Candidates are opposing candidates.
- Request is made in response to a "use."
- The "use" did not occur in one of the four news-type programs that are exempt from the "equal opportunities" rule (see pages 45-46 of this chapter).
- The request was made within 7 days of the first prior use by an opposing candidate since the requesting candidate became a legally-qualified candidate.
- The request is for a "use" by the requesting candidate.



### b. Station-Sponsored Debates

In response to petitions from NAB and others, the Commission has authorized broadcasters to sponsor political debates. Even if all competing candidates do not appear on the debate, the broadcast of a debate will be exempt from the equal opportunities requirements (as "on-the-spot" coverage of a "*bona fide* news event"), provided the debates have genuine news value and are not used to advance the candidacy of any particular individual (see preceding subsection, page 46). Also, taped debates need not be aired within 24 hours of their occurrence to qualify for the exception, as long as they are broadcast currently enough so that they are still *bona fide* news.

Specifically, licensees now may air in-studio debates featuring only the most significant candidates. Minor candidates will not be entitled to request other air time even if they are not invited to appear on the station-sponsored debate. A licensee must use its good faith judgment in determining whether a particular candidate is or is not "significant," and in no case may a station exclude a particular candidate for the purpose of harming that individual's candidacy or advancing the candidacy of another person.

### c. The "No Censorship" Provision of Section 315

If a broadcast constitutes a "use" of a station by a legally-qualified candidate for public office, Section 315 of the Communications Act prohibits a station from censoring the broadcast, either directly or indirectly (except where, as noted below, a candidate's use contains "obscene" material or other matter whose broadcast would violate the Federal Criminal Code).

This "no censorship" provision of the Act prohibits a station from refusing to broadcast a "use" by a candidate for any reason connected with the content or format of the broadcast. Thus, even if the proposed broadcast contains libelous



statements, the station is nonetheless prohibited from rejecting the broadcast on that ground. For this reason, the Supreme Court has exempted broadcasters from liability under state libel and slander laws for any defamatory material contained in a broadcast "use".

The "no censorship" provision of the Act also prohibits a station from requiring a candidate to submit an advance script of his or her proposed "use" to the station as a condition precedent to the "use", if the purpose of a script review by the station is content censorship.

On the other hand, a station appropriately may request submission of an advance tape or script to aid in the presentation of the program (e.g., in order to determine the amount of time needed by an announcer to deliver the script over the air, to ascertain whether a broadcast would constitute a "use", to determine whether a paid broadcast carries the proper sponsorship identification announcement, or to ensure that the broadcast is of the agreed-upon length).

The FCC also takes the position that the "no censorship" provision prohibits a station from forcing a candidate to sign a contract for sale of airtime where the contract contains provisions which would have the candidate indemnify the station in the event of a lawsuit against the station by reason of the content of the candidate's broadcast. The Commission views such indemnification clauses with respect to candidate "uses" as constituting an impermissible attempt to inhibit the candidate from exercising his or her own best judgment as to the content of the broadcast "use."

Although the Commission takes a rather strict approach toward enforcement of the "no censorship" provision of Section 315, an FCC staff memorandum submitted by former Chairman Mark Fowler to Congressman Thomas Luken (D-OH) on January 19, 1984, indicates the view of the staff that the "no censorship" provision of Section 315 does not require a broadcaster to carry candidate "uses" if they contain obscene or "indecent" material. Hence, the FCC staff memorandum suggests that a broadcaster who airs a candidate "use" containing obscene or indecent material (which would violate 18 U.S.C. § 1464) would not be immune from criminal or other sanctions as a result of such carriage. This staff position also applies to any other violation of the Federal Criminal Code contained in a candidate spot.

In addition to the equal opportunities provision in Section 315, broadcasters should remember the additional requirements imposed by the "Zapple doctrine," which applies to supporters of political candidates rather than the candidates themselves.

#### **d. The Zapple Doctrine: "Quasi-Equal Opportunities"**

"Quasi-equal opportunities," also referred to as the political party corollary to the fairness doctrine, or the "Zapple doctrine," was established by the Commission in 1970. In contrast to Section 315's equal opportunity provision that applies to a "use" by the actual candidates, the Zapple doctrine applies to supporters of the political candidates. Specifically, it requires a station selling time to supporters or representatives of a candidate during a campaign period, who wish to discuss the campaign issues or criticize an opponent, to afford comparable time to the supporters or representatives of an opponent.

While considered a corollary to the fairness doctrine, the quasi-equal opportunities doctrine, unlike the fairness doctrine—

- does not apply outside campaign periods where there are no legally-qualified candidates for public office (note that the *Cullman* doctrine may apply, which may require broadcasters to provide free time in response to political spots sponsored by candidates' supporters. See page 43 of this chapter);

- does not apply to appearances by candidates' supporters on programs exempt from Section 315 equal opportunity requirements;
- does not require stations to provide free time to the opposing side when the first side paid for its time; and
- does not apply to all candidates or require provision of time to minor or fringe candidates (i.e., it applies to all *major party* candidates only).

#### e. Political Broadcasting Rates

Broadcasters are subject to two provisions limiting the rates that may be charged to candidates: (1) the "lowest unit charge" rule (Section 315(b)(1) of the Communications Act), and (2) the "comparable use" rule (Section 315(b)(2) of the Act). These provisions apply only to:

- legally-qualified candidates for public office;
- "uses" of stations by legally-qualified candidates;
- "uses" in connection with a political campaign (Congress evidently did not want to make the limitations on rates available to a candidate who also is, for example, a department store owner who wants to use his time to advertise a current sale at the store rather than to promote his candidacy); and
- the charges made for use of airtime. (They do not apply to production-oriented services, such as use of a television studio, audio- or videotaping, or line charges and remote technical crew charges when the broadcast is to be picked up outside the station.)

##### 1. The "Lowest Unit Charge" Rule

The "lowest unit charge" rule is in effect during two periods of the campaign:

- during the 45 days preceding the date of a primary or primary run-off election; and
- during the 60 days preceding the date of a general or special election.

During these pre-election periods, a broadcaster may charge legally-qualified candidates seeking to broadcast "uses" no more than the station's "most favored commercial advertisers" would be charged for comparable time, including all discounts, frequency and otherwise (whether on or off the rate card), but without regard to frequency of use—that is, the number of spots purchased—by the candidate. Specifically, during the applicable 45- and 60-day periods, a legally-qualified candidate seeking to "use" a station's facilities may be charged no more than the "lowest unit charge of the station for the same class and amount of time for the same period."

- "Class" of time refers to the rate categories that most stations have, such as rates for fixed-position spots, preemptible spots, run-of-schedule spots, and special discount packages. The way in which "grid card" rates and related pricing schemes are to be treated under the concept of "class" was, at press time, under study by the FCC staff.
- "Amount of time" refers to the length of the period purchased, e.g., 30 seconds, 60 seconds, 5 minutes, 1 hour, etc.
- The "same period" refers to the time of the broadcast day, such as prime time for TV, "drive time" for radio, Class A, Class B and other designated time periods which a station may establish.

**Example:** If a station sells one fixed-position, one-minute spot in drive time to its most favored commercial advertisers for \$15, but offers such advertisers a frequency discount so that 500 such spots cost \$5,000, *i.e.*, \$10 per spot, then the station is prohibited from charging a candidate entitled to "lowest unit charge" any more than \$10 for one fixed-position, one-minute spot in drive time, even where the candidate only wishes to purchase one such spot. Similarly, if a station offers a package rate for the purchase of 500 spots during each of several designated time periods, a legally-qualified candidate need buy only one spot in each of the time periods to qualify for the per-spot package rate.

The "lowest unit charge" rule applies to all legally qualified candidates—both federal and non-federal.

A candidate's advertising qualifies for the "lowest unit charge" if it meets all three of the following conditions:

- 1) the advertising must qualify as a "use" of the station by the candidate;
- 2) the actual use of the broadcast time must occur within the 45 days preceding the date of a primary or primary runoff election or within the 60 days preceding a general or special election (note that the Commission has determined that, in some states, state party caucuses are the functional equivalent of an election); and
- 3) the candidate's appearance must be "in connection with his campaign."

## 2. The "Comparable Use" Rule

The "comparable use" rule applies when the lowest unit charge rule does not. Thus, it applies any time other than (1) during the 45 days preceding the date of a primary or primary runoff election, or (2) during the 60 days preceding the date of a general or special election.

The rule provides that the charges made for the "use" of a station by a legally qualified candidate may not exceed the charges made for comparable use of the station by other advertisers.

Thus, in contrast to the requirements under the "lowest unit charge" rule, a station's frequency discount policies can be applied to candidate "uses" under the "comparable use" rule.

## f. Sponsorship ID Requirements

The Commission's sponsorship identification rule (FCC Rule 73.1212) requires a broadcaster to exercise "reasonable diligence" to ascertain, from employees and others with whom it deals directly, sufficient information to enable it to announce:

- the fact that the broadcast was sponsored, and
- the true identity of the person or entity on whose behalf payment was made or promised for the broadcast. A station is not required to broadcast a "disclaimer" stating that "the preceding was a paid political announcement." Rather, the station must:
- announce that the broadcast was sponsored (by use of the phrase "sponsored by" or the phrase "paid for"), and

- identify the sponsor in such a way as to reveal to the public the true sponsor's identity. Note that under FCC Rule 73.1212(d) of the Commission's Rules, if a film, tape, record or other material is furnished for political or controversial issue broadcasts as an inducement to the station to air the material, a sponsorship identification announcement, as set forth above, would be required even though no monetary "payment" was made (e.g., "The preceding announcement was furnished for broadcast by \_\_\_\_\_.")

A sponsorship identification announcement must be made both at the beginning and at the conclusion of each political or other broadcast in which the program material is used. However, if the broadcast is five minutes or less in duration, only one such announcement is required. It may be made either at the beginning or at the conclusion of the broadcast.

In addition to these FCC regulations, various state and local rules govern political advertising. For example, while FCC rules do not require that a political broadcast identify the chairman, treasurer or other officers of a candidate's campaign committee, state laws generally do require such identification. To comply fully with the law, broadcasters should become familiar with the unique regulations that may apply in their own localities. Summarizing the different rules in 50 states and thousands of municipalities is beyond the scope of this publication.

As a final matter, the Federal Election Commission (FEC) also requires that candidates for federal elective office specify whether each of their advertisements has been authorized by the candidate or his or her *bona fide* campaign committee. The FCC and FEC have published a joint notice describing FEC requirements as they relate to the FCC's sponsorship identification rule. See Appendix D.



### 3. ACCESS REQUIREMENTS FOR CANDIDATES AND INDEPENDENT POLITICAL COMMITTEES

Section 312(a)(7) of the Communications Act gives the FCC the authority to revoke a broadcast license for willful or repeated failure to allow "reasonable access to or permit purchase of reasonable amounts of time for the use of a broadcast station by a candidate for federal elective office on behalf of his candidacy."

Only time that would qualify as a "use" for "equal opportunities" and "lowest unit charge" purposes counts toward fulfillment of a station's obligations under "reasonable access."

Thus, because appearances by candidates on *bona fide* newscasts, *bona fide* news interviews, *bona fide* news documentaries, and on-the-spot coverage of *bona fide* news events are not deemed to be "uses," the time during which a federal candidate appears on any such broadcasts would not count toward fulfillment of the "reasonable access" obligations.

Similarly, unless the candidate himself or herself appears on the air, the time is not considered a "use."

The "reasonable access" provision applies only to *legally-qualified federal* candidates. Under "reasonable access," both commercial and noncommercial broadcast stations are required either: (1) to provide legally-qualified federal candidates with reasonable amounts of free time for "uses," or (2) to permit such candi-



dates to purchase reasonable amounts of time for "uses." *A station is not required to do both, although it may do so if it wishes.* Please note, however, that giving legally-qualified federal candidates free spot advertising time may be treated as an illegal in-kind corporate contribution from the station by the Federal Election Commission.

#### a. Criteria of "Reasonable Access"

In deciding whether a broadcaster's judgment and actions are "reasonable" under the "reasonable access" provisions, the Commission follows these general principles:

- An across-the-board station policy limiting the period of time or length or class of time during which airtime will be sold to legally-qualified federal candidates or the number of spots which will be sold is not permitted.
- The prospective purchaser must be a legally-qualified candidate for federal elective office or intend to become one by the first air date of his or her "uses."
- Airtime must be sold or made available to legally-qualified federal candidates only after the campaign has begun. The starting date of a particular campaign is a question of fact to be determined in the first instance by the broadcaster. If a complaint were filed by a candidate asserting a denial of "reasonable access," the FCC then would review the reasonableness of the broadcaster's determination as to whether the campaign period has begun.
- The obligation to provide "reasonable access" to federal candidates asking to purchase time is not limited to the time periods during which "lowest unit charge" applies.
- Each request for time under "reasonable access" must be examined on its own merits.
- A broadcaster cannot rely on merely generalized assertions about the number of potential multiple requests for time, but must attempt to appraise the actual likelihood of such multiple requests at each stage of the campaign.
- In evaluating individual candidate requests, a broadcaster may consider such factors as the number, length of individual uses, total amount of time, and scheduling of access opportunities (e.g., "uses" by a particular candidate). Thus, if a candidate has had numerous recent access opportunities on a particular station, the station may be less accommodating in offering time than it might be in the case of a candidate who previously has not purchased time. Conversely, at the beginning of a campaign, when a candidate has not previously made any requests for time, no such "weighing" of an individual candidate's other access opportunities can be undertaken. Rather, the FCC has indicated that a broadcaster rejecting a federal candidate's initial access request will be called upon to demonstrate compelling reasons for such rejection.
- In evaluating the reasonableness of a particular "reasonable access" request, a broadcaster should not "second-guess" the "political" wisdom or relative audience-attracting effectiveness of longer versus shorter formats. Such judgments, according to the FCC, should be left to the discretion of the candidate and his or her media advisers.
- Nevertheless, the candidate's request does not dictate how much time, if any, must be afforded. The broadcaster may consider, in balancing the equities involved, other public interest factors, such as the disruption or displacement of regular programming (particularly as this may be increased by a reasonable probability of requests for airtime by other candidates).



- In the overall “weighing” process, a broadcaster must make the offer of airtime as reasonably responsive as possible to the particular candidate’s stated need or purpose in seeking the airtime.
- Moreover, the station will be required to provide federal candidates with what amounts to a reasoned opinion justifying any rejection of a demand for “reasonable access.” This justification should include the extent to which the station has attempted to tailor its offer of airtime to the candidate’s stated needs.

“Reasonable access” means a right to purchase short or longer spots, as well as programs. A broadcaster cannot limit its sales of time to federal candidates merely to spots of a particular type or duration.

Under Section 312(a)(7), a request for “reasonable access” does not have to be honored unless the candidate is willing to pay for the time sought. However, where a federal candidate is requesting “equal opportunities” with respect to a prior “use” by his legally-qualified opponent and such prior “use” consisted of free airtime, the candidate requesting “equal opportunities” also has a right to free time.

A broadcaster must make available to federal candidates program-length time during prime time periods unless unusual circumstances exist. “Prime time”, in this context, means the part or parts of the day in which the audience is likely to be largest. For TV, the 7–11:00 p.m. period is recognized as prime time in the Eastern and Pacific time zones, as is the 6–10:00 p.m. period in the Central and Mountain time zones. For radio, prime time usually means “drive time.”

Commercial stations must make prime time spot announcements available to federal candidates. However, even though a noncommercial educational station normally may broadcast spot promotional or public service announcements, it generally need not make spot times available to political candidates unless spots other than promotional or public service announcements are part of its format. If a commercial station chooses to donate, rather than sell time to candidates, it must afford federal candidates free spot time of the same various lengths, classes and periods as are available to commercial advertisers. However, remember that the Federal Election Commission may construe such a donation as an illegal in-kind contribution.

Section 315(a) of the Communications Act prohibits broadcaster censorship of material that constitutes a “use” by a legally qualified candidate. Thus, noncommercial broadcasters may not reject material submitted by candidates merely because it originally was prepared for broadcast on a commercial station.

Both educational and commercial licensees may suggest the format for appearances by candidates who exercise their “reasonable access” rights. However, candidates need not accept these suggestions. Additionally, they may not be penalized by loss of “equal opportunities,” or the loss of access to airtime under the “reasonable access” provision, if they decline to appear on programs designated by the broadcaster.

## **b. Airtime for Non-Federal Candidates**

The “reasonable access” provision of Section 312(a)(7) of the Communications Act *applies only* to candidates for *federal* elective office. However, in 1971, the FCC ruled that while each broadcaster has a public interest obligation to make the facilities of his or her station “effectively available” to non-federal candidates as well, as noted below, there are certain exceptions.

Under this policy, candidates in state and local elections have no initial right of access to broadcast stations. Individual stations have the responsibility and the discretion to determine which state and local election races are of sufficient interest and importance to warrant coverage. The FCC has stated that it will not

approve a blanket refusal to sell time to non-federal candidates. However, making a good faith determination on which election races to sell or limit the sale of time for, given the number of races and candidates involved and the relative importance of various races, is permissible.

In fulfilling its obligation regarding state and local elections, the station may provide free spot or program time, sell spot or program time, or make some combination of free and paid time available to all candidates in a particular race. Again, check state law to be certain that providing free time is legal under the laws of your state.

### c. Independent Political Committees

Since 1980, there has been increasing activity by independent political committees—i.e., a political committee that has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on his or her behalf. Such independent committees (sometimes referred to as political action committees or “PACs”) lately have been purchasing spot announcements either supporting or opposing the election of legally-qualified candidates, or during non-campaign periods, urging a particular viewpoint on issues that may be viewed as “controversial issues of public importance” under the fairness doctrine. Although the law in this area is still emerging, the following general principles should provide you with guidance in dealing with requests for airtime by independent political committees:

- Broadcast stations are not obligated to sell time to independent political committees. The FCC has ruled that the “reasonable access” requirement of Section 312(a)(7) of the Communications Act provides a personal right of access to federal candidates that does not apply to any other individuals or groups.
- Independent political committees may, under certain circumstances, have a contingent right of access. That is, where candidate A appears in a broadcast “use” sponsored by an independent committee, which “use” would entitle his legally-qualified opponent, candidate B, to equal opportunities, and candidate B does not make a timely request for equal opportunities within seven days of A’s prior “use,” but an independent political committee does make such a request within seven days of A’s “use,” a station must provide equal opportunities to that independent group if its spots also include a candidate “use.”
- Stations need not provide independent political committees with information about past or present programming or advertising broadcast on behalf of other groups or individuals. However, in the case of information which must be retained in the local public inspection file, such as political broadcast records, any member of the public has the right to view the file at the station during the station’s normal business hours.
- Independent political committees are not entitled to “lowest unit charge” for political advertising which they may purchase, since the FCC has ruled that the entitlement to “lowest unit charge” is a right which is personal to a candidate and his or her authorized campaign committees.
- The FCC has determined that, *during campaign periods* (i.e., during periods where there exist legally qualified candidates), the Commission’s “Zapple doctrine” (see page 51 of this chapter) applies. Thus, no free time may be demanded by any individual or entity to respond to paid spots during a campaign period purchased by an independent political committee supporting or opposing the candidacy of any candidate. However, the FCC has determined that during *non-campaign periods* the “Cullman” doctrine (see page 43 of this chapter) applies. Thus, free response time may be demanded under the fairness doctrine to

respond to paid spot announcements purchased during a non-campaign period by an independent political committee that address a controversial issue of public importance.

#### 4. A PRE-ELECTION CHECKLIST

Broadcasters take a number of preparatory steps prior to each primary, general or special election. Here are some reminders:

- Make sure station personnel understand the rules on political broadcasting and have copies of documents required for purchases of time (e.g., the NAB Political Agreement Form, Appendix J).
- Establish a political broadcast file, as part of the public inspection file, and instruct station personnel to permit public access to it on request. This file should include a complete record of all requests for access by or on behalf of candidates, with a notation showing how each request was handled (including charges). The file should be updated daily, and even more frequently if events demand, such as in the last few days of a hotly contested election.
- Determine the lowest unit charges and review rate cards for any inconsistent rates—all candidates in a given campaign must be treated alike.
- Adopt for in-house use by station staff a station policy on access for candidates and their supporters and for ballot issues. Review the rules on mandatory access for federal candidates (*see* page 54 of this chapter). For non-federal elections, formulate a policy designed to make your station facilities “effectively available” to all candidates, based on the importance of the office, public interest in the campaign, the number of candidates and the amount of time likely to be requested. Remember to treat primary, general and special elections as separate events.
- Obtain an up-to-date copy of your state’s laws governing candidate eligibility and the campaign itself.
- Be sure to comply with state as well as federal sponsorship identification requirements.

In general, these are the major problem areas in political broadcasting. For more detailed information and examples, you may wish to consult the NAB *Political Broadcast Catechism*. The *Catechism*’s table of contents and the topical index will help you in finding answers to questions that might arise.

## C

### C. CHILDREN’S TELEVISION PROGRAMMING

The FCC began its study of children’s television programming in the early 1970’s. In 1974 the FCC issued its *Children’s Television Report and Policy Statement* (50 F.C.C.2d 1 (1974)). This 1974 *Policy Statement*, as it is commonly known, provided guidelines for commercial television broadcasters in airing children’s programming and outlined, as well, policy changes regarding television advertising aimed at children.

In the *Policy Statement*, the Commission stated that television stations would be expected to provide diversified programming designed to meet the varied needs and interests of the child audience. The Commission said that television stations should provide a “reasonable amount” of programming designed for children and

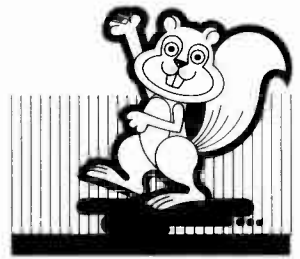
intended to educate and inform, not simply to entertain. Under the *Policy Statement*, the Commission expected each licensee to select the particular areas where the station could make the best contribution to the educational and cultural development of the children in the community—and then to present programming designed to serve those needs. The *Policy Statement* indicated that television stations should carry programs to meet the needs of both pre-school (ages 2–5) and school-aged (ages 6–12) children and should schedule such programs on weekdays as well as weekends. Although the Commission did not prescribe by rule the number of hours per week to be devoted to children's programming or to any specific type of children's programming, it expected television stations to make a meaningful effort in this area.

After conducting a rulemaking proceeding that considered, among other options, mandated hours of educational and age-specific programming, the FCC in December of 1983 adopted a *Report and Order* terminating its 13-year inquiry into children's television programming. The Commission, while reaffirming the obligations of all commercial broadcast television stations to serve the special needs of children, by a 3–1 vote, rejected the option of mandatory programming requirements for children's television. The *Report and Order* stated that the Commission will place "continued stress on the general licensee obligations emphasized in the 1974 *Children's Television Policy Statement*"<sup>13</sup> and re-affirmed the Commission's belief "that the broadcaster's public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience."<sup>14</sup> The *Report and Order*, however, specifically interpreted the *Policy Statement* as not imposing specific program or scheduling requirements (e.g., educational, age-specific, day-specific or day part-specific). The Commission thus will rely on the 1974 *Policy Statement* as a statement of general rather than specific licensee obligations.

The *Report and Order* emphasized that the child audience warrants "special programming attention from licensees," but that broadcasters retain wide discretion in determining what programming they present, what the needs of the child audiences in their markets are and how they will serve those needs. It pointed out that broadcasters *may consider a variety of factors* in determining what programming they should present, e.g., service area demographics, existing children's programming in the market, market size, network affiliation or independent status, prior commitments to locally-produced programs, the availability of television, etc. The FCC also acknowledged that "family" programming (not just programs "designed for children") serve the child audience and may be considered in assessing and serving the needs of children.

While broadcasters' discretion in determining how to serve the child audience was confirmed by the Commission in its *Report and Order*, the Commission made it equally clear that broadcasters "should not be misled into believing that no enforceable obligations remain." The Commission stated that each licensee must be ready to demonstrate at renewal time its attention to the program needs of the child segment of the audience.

Action for Children's Television filed an appeal of the FCC's decision with the U.S. Court of Appeals for the District of Columbia Circuit. In a three-page opinion, the Court, on March 19, 1985, upheld the FCC's termination of its rule making and its rejection of specific programming requirements for children's television. The Court found that the differences between the 1984 *Report and Order*



13. *Children's Television and Advertising Practices*, 96 F.C.C. 2d 634, 655 (1984), *aff'd sub nom. ACT V. FCC*, 756 F.2d 899 (D.C. Cir. 1985).

14. 1974 *Policy Statement*, 50 F.C.C. 2d at 5.



(that found no market failure warranting more intensive regulation of commercial broadcasting) and the Commission's 1974 *Policy Statement* were attributable to changes in the Commission's judgment about how best to serve the public interest—and that the change of view by the FCC was within the agency's discretion.

The Court spoke specifically to only two issues. First, it agreed that the Commission could consider children's programming presented by cable or noncommercial TV in determining the necessity for nationwide rules—and that, by doing so, the Commission was not suggesting that a broadcaster can disregard the needs of those not served by cable. Second, the Court noted that, while the Commission's Order did not impose detailed age-specific requirements on licensees, it did acknowledge a continuing duty, under the public interest standard, on *each* licensee to examine the program needs of its child audience and to be ready to demonstrate at renewal time its attention to those needs. The Court clearly confirmed that broadcasters are to be afforded significant discretion in determining how to serve their child audiences. (See Chapter IV for a discussion of FCC children's television *advertising policies*.)

## D

### D. PRIME TIME ACCESS RULE [TV]

According to the *Prime Time Access Rule* (PTAR), television stations in the 50 largest markets (in terms of average prime time audience for all stations in the market)<sup>15</sup> which are owned or affiliated with a national television network may present, during the four hours of prime time (7 p.m. to 11 p.m. E.S.T. and P.S.T.; and 6 p.m. to 10 p.m. C.S.T. and M.S.T.), no more than three hours of network programs, or programs formerly on a national network (off-network programs), other than feature films or, on Saturdays, feature films. (FCC Rule 73.658(k).)

Certain categories of network and "off-network" programming are not to be counted toward the three-hour limitation; these are generally:

- On nights other than Saturday, network or off-network programs designed for children, public affairs programs or documentary programs.<sup>16</sup>
- Special news programs dealing with fast-breaking news events, on-the-spot coverage of news events or other material related to this coverage, and political broadcasts by or on behalf of legally-qualified candidates for public office.
- Regular half-hour network news programs when immediately adjacent to a full hour of continuous locally produced news or public affairs programming.

15. The 50 largest markets are determined at three-year intervals on the basis of the average of two Arbitron February-March audience surveys occurring approximately two and three years before the start of the three-year period. (For further detail, see FCC Rule 73.658(k), note 1.)

16. As used in this paragraph, the term "programs designed for children" means programs primarily designed for children aged 2 through 12. The term "documentary programs" means programs which are nonfictional and educational or informational, but not including programs where the information is used as part of a contest among participants in the program, and not including programs relating to the visual entertainment arts (stage, motion pictures, or television) where more than 50 percent of the program is devoted to the presentation of entertainment material itself. The term "public affairs" describes programs dealing with local, state, regional, national, or international issues of problems, including, but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, roundtables and vignettes, and extended coverage (whether live or recorded) of public events or proceedings, such as local council meetings, Congressional hearings, etc.



- Runovers of live network coverage of sports events, where the event has been reasonably scheduled to conclude before prime time.
- For stations in the Mountain and Pacific time zones, when network prime time programming consists of a sports or other live program broadcast simultaneously throughout the United States, these stations may schedule programming as though the live network broadcast occupies no more of their prime time than that of stations in the other time zones.
- Network broadcasts of an international sports event (such as the Olympic Games), New Year's Day college football games, or any other network programming of a special nature, other than motion pictures or other sports events, when the network devotes all of its time on the same evening to the same programming, except brief incidental fill material.

The FCC has received numerous requests to eliminate the Prime Time Access Rule. In April, 1987, WUHQ-TV, an ABC affiliate in Battle Creek/Kalamazoo, Michigan, filed a petition with the FCC seeking repeal of PTAR. The petition was dismissed by the Mass Media Bureau on May 22, 1987, and, at the time of this publication, the FCC Commissioners had not ruled on the appropriateness of this staff action. Furthermore, the FCC has not given any indication that it plans to commence any rulemaking proceedings on this matter at this time.

## E. BROADCASTS DURING AN "EMERGENCY"



Under the Communications Act of 1934, radio and television stations are licensed only for broadcasting to the general public (47 U.S.C. § 3(o)). Broadcast of personal messages, sometimes referred to as "point-to-point" communications, is permitted only during emergencies. For an expanded discussion of the Emergency Broadcast System, see Chapter V.

The Commission acknowledges that situations involving "tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules as a result of any of these conditions" may justify an exception to the policy against point-to-point messages. (FCC Rule 73.1250(a).) Additionally, when responsible public officials request, you may air messages to request or dispatch aid or assistance in rescue operations, without FCC authorization. However, immediately after the broadcast of information requested by a public official, the licensee is required to file a report in letter form to the FCC stating the nature of the emergency, the dates, times, and duration of the broadcasts, and a brief description of the material that was transmitted. (FCC Rule 73.1250(e).)

Before commencing such temporary emergency broadcasts, however, a party must first obtain FCC authorization. During extraordinary circumstances such as emergencies that involve a danger to life and property, a national emergency situation, or wartime information necessary to the national defense or security the FCC has authority to grant such construction permits, station licenses, modifications or renewals, without the applicant filing a formal application. The authorization granted is only effective during the period of the emergency or war requiring it and may be cancelled by the FCC without prior notice or right to hearing. (FCC Rule 73.3542.)

If your station is licensed for daytime AM operation only (or even where it may have "lower" power post-sunset and/or nighttime authority), it may remain

on the air at full daytime power after dark to broadcast emergency information "only if regular, unlimited-time service, is nonexistent, inadequate from the standpoint of coverage, or not serving the public need." (FCC Rule 73.1250(f).) This section traditionally has allowed AM stations with lesser nighttime authorization to use their full daytime powers during emergencies. Although the FCC has not ruled specifically on the matter, it would appear that daytimers recently granted lower power nighttime authority also could use their full daytime power in such emergency situations. It is possible the FCC will clarify this in 1988. Commercials may not be aired during otherwise unauthorized nighttime hours. Furthermore, these stations which operate facilities with full time power during emergencies at night must certify, in a letter to the FCC, compliance with the noncommercialization provisions and must also state that the emergency operation was justified by the lack of other available broadcast services. Once again, the FCC must be notified in letter form immediately after the cessation of the emergency broadcast.

Television stations are required to transmit emergency information at least visually, although combined aural and visual transmission is preferred. (FCC Rule 73.1250(h).) However, if information is broadcast under a national, state, or local EBS plan, both visual and aural means must be used.

# F

## F. OBSCENE, INDECENT, OR SUGGESTIVE MATERIAL

### 1. OBSCENE, INDECENT, OR OFFENSIVE LANGUAGE

The broadcast of indecent or obscene material is prohibited by both the Communications Act of 1934 and the Federal Criminal Code. Sections 312 and 503 of the Communications Act give the FCC the authority to order a station to cease and desist from broadcasting indecent or obscene material, revoke a station's license, and/or impose fines of up to \$2000 for each day's broadcast. Section 1464 of the United States Criminal Code provides for the imposition of fines up to \$10,000 and/or a sentence of up to two years imprisonment. In addition, the FCC may simply refuse to renew a station's license if it believes that the licensee has ignored the prohibitions against the broadcast of indecent or obscene material. The FCC has stated that complaints which involve material that may meet the *Miller v. California*, 413 U.S. 15 (1973), standard of obscenity will be referred to the Department of Justice for possible prosecution, but also may be considered by the Commission in the first instance. (The *Miller* standard is discussed below at page 64.) However, the Justice Department has advised the FCC that it will not undertake criminal prosecutions of indecency cases.

In April 1987, the FCC reaffirmed its authority to regulate the broadcast of indecent material and changed its interpretation of the standard by which suspect material will be judged. The former indecency policy, as enunciated in the FCC's 1975 *Pacifica Foundation* decision (56 F.C.C. 2d 94 (1975)), stemmed from a broadcast of George Carlin's "Filthy Words" monologue during afternoon programming. Based on a complaint filed by a man whose young son was in the car with him during the broadcast, the FCC determined that the repetition of certain specific words used in the monologue should lead to a finding of indecency. The FCC emphasized its concern that unsupervised children might be exposed to indecent material. However, the FCC noted at the time that this risk might be diminished if the material was broadcast during late evening hours, for instance after 10:00 p.m. If broadcast during these "safe harbor" hours, the FCC had stated that the material might be justified by claims of serious literary or other value.

More than a decade after the Supreme Court affirmed the FCC's *Pacifica Foundation* decision, the FCC has recently put licensees on notice that broadcasts of allegedly indecent material will be subject to a broader, more encompassing standard.

## 2. THE REVISED INDECENCY STANDARD

In April 1987, in taking action against three broadcast licensees, the FCC stated that it will no longer limit its interpretation of indecency to the "seven dirty words". Instead, the FCC will apply the more general definition of indecency which it initially advanced in the *Pacifica Foundation* case. There, indecency was defined as:

"...language or material that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs . . ."  
—56 F.C.C. 2d 94, 98 (1975).

The FCC has now ruled that material which meets this description will be actionable if there is a reasonable risk that children may be in the audience. Its old automatic 10 p.m. "safe harbor" was swept aside. Public Notice, FCC 87-153, April 29, 1987. While the FCC did not offer a precise definition of what constitutes "children," it relied on Arbitron market data that measured the extent to which teenagers aged 12 to 17 may be in the listening audience during various evening hours. On November 24, 1987, in acting on petitions for reconsideration and clarification of its April action, the FCC stated that it would assume parents could be expected to supervise any children remaining in the audience after midnight, "indicating" that hour was its "current thinking" on the beginning of a new "safe harbor" period during which the risk of children in the audience was minimized. However, the FCC did not state at what hour the "safe harbor" period ended. The FCC emphasized in its November decision that indecent programming cannot be broadcast before midnight if there is a reasonable risk children will be in the audience. FCC 87-365, released December 29, 1987.

Emphasizing the importance of the context in which such material is broadcast, the FCC specifically stated in its April 1987 *Order* that the repetitive use of specific words or phrases is no longer an absolute requirement for a finding of indecency. If a broadcast goes beyond the mere use of expletives, the context in which the material is broadcast will serve as an important factor for determining whether the material is, in fact, indecent. Moreover, the FCC pointed out that claiming indecent material is merely innuendo will not necessarily preclude a violation. It noted that purported innuendo can be rendered explicit by the surrounding circumstances. In its November 1987 action, the Commission made clear that context was critical in all indecency cases regardless of whether innuendo is involved. The Commission stated that context involved a "host of variables," implying that while it would consider the merit of a work in determining whether it was indecent, merit could not automatically preclude a finding of indecency. NAB and other parties appealed the FCC's decision in January 1988. The vagueness of the FCC's new standard will be a key focus of that appeal.

## 3. OBSCENITY VERSUS INDECENCY

While the determination of whether certain material is indecent depends upon the circumstances of each case, the broadcast of obscene material is always

prohibited. The standard applied to obscenity cases, as initially stated by the Supreme Court in *Miller v. California* continues to be the guideline used to judge obscenity. Under this standard, material will be considered obscene if (a) the average person, *applying contemporary community standards*, would find that the work appeals to the prurient interest, (b) it describes or depicts, *in a patently offensive manner*, sexual conduct as defined by state law, and (c) taken as a whole, it *lacks serious literary, artistic, political, or scientific value*. Although the elements that deal with prurient interest and patently offensive manner are to be applied on the basis of local community standards, recent court action has held that the third element—whether the work lacks serious value—is to be viewed through the eyes of a reasonable person applying *national standards*. *Pope v. Illinois*, 55 U.S.L.W. 4595 (U.S. May 4, 1987).

#### 4. LIVE COVERAGE

Indecent material which is broadcast during live programs also is subject to FCC action. However, the FCC will look closely at the circumstances surrounding the broadcast when deciding whether formal action should be taken against the licensee.

In response to a recent complaint concerning the use of expletives during a live radio program, the FCC considered the extent to which the offensive language was used, whether the licensee had any forewarning that offensive language would be used, and the licensee's conduct in response to the language. *Pacific Foundation, Inc. [KPFK-FM], Memorandum Opinion and Order*, 2 F.C.C. Rcd. 2698 (1987). One of the participants of the live program, a member of a local performing arts group, spontaneously used offensive language during the broadcast. The FCC declined to take action against the licensee due to the fact that, after this incident, the program producers withdrew the program and the performing arts group expelled the member. The FCC stated that these actions demonstrated a sufficient amount of "reasonable judgment, responsibility, and sensitivity to the public's needs and tastes . . ." *Id.* at 2700.

#### 5. TAPED OR FILMED COVERAGE

The FCC has been careful not to announce an absolute ban on potentially indecent words spoken in the context of a news event or news coverage. The Commission has emphasized that its decisions will be based on the facts of each case and has stated that "such language could be broadcast—in a news or public affairs program or otherwise—when the number of children in the audience was reduced to a minimum, if sufficient warning were given to nonconsenting adults and if in the context used the language had serious literary, artistic, political or scientific value." *Pacifica Foundation*, 59 F.C.C.2d 893 (1976). The Commission reaffirmed this position in its November 1987 action.

#### 6. SECTION 315'S "NO-CENSORSHIP" PROVISION

The FCC staff has concluded that broadcasters may refuse to run obscene political ads, in large part because obscenity is not "protected speech" under the First Amendment. The FCC staff's view, expressed in a 1984 memorandum, suggests that a broadcaster who airs a candidate's advertising "use," containing obscene or indecent material, would not be immune from criminal or other sanctions as a result of such carriage.



## 7. PRACTICAL ADVICE

When in doubt you may want to consider covering questionable words with a “bleep” (1,000 cycle) tone. This technique will convey to your audience that questionable language was used and may, in certain circumstances, reduce your station’s potential liability for broadcasting the words. Licensees are advised to consult legal counsel if questions arise regarding obscene or indecent material.

## G. DRUG LYRICS

While the broadcast of songs containing “drug lyrics” is a matter of licensee discretion, the Commission has established procedures by which licensees must exercise responsibility and judgment in the screening of songs which may promote drug usage. (See Appendix K for FCC *Memorandum Opinion and Order* on drug lyrics in records.) Some songs contain references to drugs which are simply incidental or which, in substance, warn against the use or abuse of drugs. Such songs would not normally be of concern to the Commission.

If your station’s music format provides for the broadcast of songs which might promote the use of drugs, management should establish screening procedures to ensure that responsible judgments can be made about the appropriateness of broadcasting such songs. One or more members of your station’s staff should attempt to have a reasonably current understanding of “street” or slang references to popular drug terminology.

## H. DISCONTINUED FCC PROGRAM CONTENT AND STATION OPERATION POLICIES

In several decisions over the past few years, the FCC has eliminated a number of regulations and policies affecting program content and other aspects of station operation. These deregulatory actions are based on the FCC’s conclusion that such “underbrush” provisions are either unnecessarily duplicative of other laws and regulations, or are no longer required by the public interest. However, even though the FCC may no longer specifically regulate such matters, many are still the subject of more general Commission policies, rules of other governmental agencies or other federal, state or local laws. Consequently, although the Commission may no longer wish to regulate certain practices specifically, elimination of Commission regulation does not mean that the practices they prohibited have now all become permissible. Also, some of the conduct discussed below may subject a licensee to private legal action under state law.

### 1. ALCOHOLIC BEVERAGE ADVERTISING

The FCC eliminated its former policies concerning the advertising of alcoholic beverages. Now, the FCC will only take action against a licensee convicted of violating a state or local law which restricts or prohibits such advertising. See *Policy Statement and Memorandum Opinion and Order*, MM Docket No. 83-842, 54 R.R. 2d 1043 (1983).





## 2. AM-FM PROGRAM DUPLICATION

The Commission eliminated its restriction on the amount of AM station programming which a commonly-owned, co-located FM station could duplicate. That limitation, which had been based on the assumption that limiting permissible program duplication would foster FM development, was deemed unnecessary in light of the success of the FM service. An FM station, regardless of the size of its market, may now duplicate as much programming of a commonly-owned, co-located AM station as the licensee deems consistent with the public interest. See *Report and Order*, MM Docket No. 85-357, 103 F.C.C. 2d 922 (1986).



## 3. ANNOUNCEMENTS CONCERNING SELECTION OF SPORTS ANNOUNCERS

Heretofore, stations were required to disclose arrangements regarding selection of announcers for broadcasts of sports events. The Commission, however, has determined that this requirement represents an unnecessary intrusion into licensees' business operations and has thus deleted the requirement. Licensees need no longer announce who selects and pays sports announcers. See *Policy Statement and Order*, MM Docket No. 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom.*, *Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).

## 4. ASTROLOGY ADVERTISING

By eliminating its former policy against the advertisement of astrology and similar material for which claims of accuracy are made, the FCC has once again deferred action over misconduct in this area to market and private legal remedies. Thus, licensees must continue to be sensitive to the potential for fraudulent or deceptive advertising. Such advertising is still subject to criminal penalties as well as civil remedies and recourse to the Federal Trade Commission. See *Policy Statement and Memorandum Opinion and Order*, MM Docket No. 83-842, 54 R.R. 2d 1043 (1983).

## 5. CALL-IN POLLS

The Commission deleted its policy whereunder licensees had been required to inform the public if a call-in poll they had taken had not been conducted on a scientific basis, concluding that market forces and licensees' interest in their own credibility would ensure that the public was adequately informed concerning poll results.

## 6. COMBINATION ADVERTISING RATES AND JOINT SALES PRACTICES

The FCC has eliminated its former prohibition against the use of combination rates and other joint sales practices. (The prohibited practices included combination rates between or among co-located, separately-owned stations and combination rates between or among co-located, commonly-owned radio and television stations.) The prohibition was based on the Commission's concern that such practices were anti-competitive.

The Commission has concluded, however, that such matters are better regulated through enforcement of state and federal antitrust laws. But while the FCC no longer proscribes combination rates and other joint sales practices, the use of combination rates, as is the case with other sales practices, is subject to the

limitations imposed by the antitrust laws. See *Second Report and Order*, MM Docket No. 83-842, 59 R.R. 2d 1500 (1986).

Stations must enter joint advertising arrangements cautiously and only after seeking legal advice. See "Combination Advertising" section of Chapter XI, *infra*.

## 7. CONCERT PROMOTION ANNOUNCEMENTS

In the past, Commission policies restricted concert promotion announcements which could mislead the public concerning a station's financial interest in a concert. The FCC has eliminated these restrictions on the grounds that such announcements generally did not injure the public and that misleading announcements could be remedied through FTC and other action. Stations thus have more freedom in formulating promotion announcements for concerts, but nevertheless should ensure that such announcements are not misleading. See *Policy Statement and Order*, MM Docket No. 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom.*, *Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).



## 8. CONFLICT OF INTEREST

This policy imposed on licensees the obligation to exercise special diligence to avoid improper use of licensed facilities by individuals whose private outside interests might conflict with their responsibilities as station employees. The Commission deleted this policy, noting that it essentially duplicated the obligations imposed by the sponsorship identification requirements of the Communications Act. Because these statutory requirements remain unchanged, stations should continue their existing policies designed to avoid instances of "plugola" and "payola". See *Policy Statement and Order*, MM Docket No. 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom.*, *Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).

## 9. CONTESTS AND PROMOTIONS WHICH ADVERSELY AFFECT THE PUBLIC INTEREST

The FCC eliminated its 1966 Policy Statement which had cautioned licensees against contests and promotions which could adversely affect the public interest, such as those that alarmed the public about imaginary dangers; involved hazards to life or health; or created traffic congestion or similar disorder. The lack of explicit FCC regulation in this area, however, does not eliminate the possibility that such promotions might subject a licensee to legal actions under local laws relating to trespass, nuisance or invasion of privacy. Moreover, this action did not affect the continued vitality of Commission requirements that material contest terms be fully disclosed and that contests be conducted as advertised. (See Chapter IV, concerning contests.) See *Policy Statement and Order*, MM Docket No. 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom.*, *Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).

## 10. DISTORTION OF AUDIENCE RATINGS

This policy prohibited licensees' distortion of audience ratings by either furnishing false information to ratings services or improperly influencing those keeping survey diaries. (The Commission eliminated its related policies concerning "hypoing" in 1983.) The Commission concluded that its adjudication of complaints in this area was unnecessary, as ratings services, advertisers and competing stations have adequate incentives and remedies to prevent tampering with survey methodology. Although the Commission will no longer process

complaints in this area, such matters nevertheless will be subject to FTC investigation and court proceedings, the outcome of which may be considered by the FCC at renewal time. See *Policy Statement and Order*, MM Docket No. 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom.*, *Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).

## 11. FAILURE TO PERFORM SALES CONTRACTS

Longstanding Commission policy required licensees to fully perform advertising contracts. In deleting the policy, the Commission found that this policy required it to enforce advertisers' private rights, which the FCC found unnecessary. Stations which fail to perform advertising contracts will remain subject to sanctions, but they will be judicial rather than regulatory. See *Policy Statement and Order*, MM Docket No. 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom.*, *Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).

## 12. FALSE, MISLEADING AND DECEPTIVE ADVERTISING

In the past, Commission policies have required licensees to take particular care to evaluate advertising subject to FTC complaints; to review advertisers' reliability and reputations; and to have a specific internal system directed against the airing of misleading advertising. Noting that the FTC as well as state and federal fraud statutes will continue to protect the public against deceptive advertising practices, the Commission has deleted its own specific policies on the subject. See *Policy Statement and Order*, MM Docket No. 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom.*, *Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).

## 13. FOREIGN LANGUAGE PROGRAMS

Broadcast licensees are no longer subject to specific guidelines for monitoring the content of foreign language programs. Instead, foreign language broadcasts are governed by the same general standards applicable to other programming: licensees are responsible for all material, including foreign language programming, broadcast over their facilities. Licensees should thus continue to take reasonable precautions to ensure that foreign language programs comply with applicable Commission rules and regulations. See *Policy Statement and Memorandum Opinion and Order*, MM Docket No. 83-842, 54 R.R. 2d 1043 (1983).

## 14. FRAUDULENT BILLING

The FCC deleted its former rule which had prohibited licensees from knowingly issuing to advertisers or program suppliers any bills, invoices, or affidavits containing false information or misrepresentations or to draft such documents in a fashion where they easily could be misused by those parties. Even though the FCC no longer regulates such practices, fraudulent billing still may subject licensees to prosecution under federal or state laws or to private litigation by injured parties. See *Second Report and Order*, MM Docket No. 83-842, 59 R.R. 2d 1500 (1986).

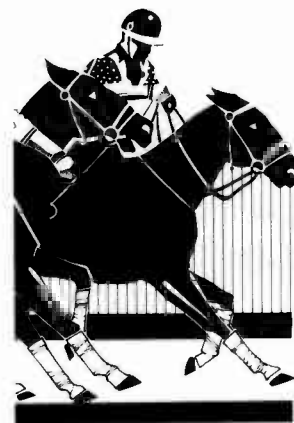
## 15. HARASSING OR THREATENING PHONE CALLS

The FCC will no longer restrict broadcasts which suggest that the audience call particular groups or individuals, even if such broadcasts are made to promote the private interests of the licensee. Instead, it will rely on the threat of

private litigation to curb such abuses. Notwithstanding the lack of direct FCC regulation in this area, licensees should thus be aware that such conduct may subject them to civil actions based on invasion of privacy or nuisance, or criminal sanctions under federal and some state laws. See *Policy Statement and Memorandum Opinion and Order*, MM Docket No. 83-842, 54 R.R. 2d 1043 (1983).

## 16. HORSE RACE ADVERTISING AND PROGRAMMING

The Commission concluded that broadcasts of horse race advertising and programming did not encourage or assist illegal gambling activities, and thus eliminated policies previously applicable to such broadcast. However, the FCC will refer activities which appear to violate criminal laws dealing with illegal transmission of gambling information to appropriate authorities. See *Report and Order*, MM Docket No. 83-842, 56 R.R. 2d 976 (1984).



## 17. MISUSE OF COVERAGE MAPS OR RATINGS

The FCC will no longer investigate complaints concerning a licensee's alleged misuse of coverage maps or audience surveys. The Commission concluded that its adjudication of such complaints was unnecessary, as ratings services, advertisers and competing stations have adequate incentives and remedies to prevent abuses. See *Policy Statement and Order*, MM Docket No. 83-339, 94 F.C.C. 2d 619 (1983). Although the Commission will no longer process complaints in this area, such matters still will be subject to FTC investigations and private litigation.

Licensees should thus use coverage maps in their promotional material which accurately reflect the station's actual current contours. (Common inaccuracies include exaggeration of a station's primary service contour and failure to indicate areas where coverage is subject to loss from interference.) They should also be certain that audience survey results are accurately characterized in terms of, for example, date of survey and statistical confidence levels.

## 18. NETWORK CLIPPING

This practice involves the substitution of local ads or programming for network or syndicated ads or programming, in violation of the supplier's contract. (Network clipping can also involve violation of sponsorship identification requirements if clipped material includes sponsorship identification announcements.) The Commission has deleted its rule and policies prohibiting network clipping, and now leaves such matters to private resolution through civil litigation or enforcement of local laws relating to fraud, racketeering, fair trade and antitrust. See *Second Report and Order*, MM Docket No. 83-842, 59 R.R. 2d 1500 (1986).

## 19. PROMOTING THE NON-BROADCAST BUSINESS OF A STATION

A number of FCC decisions sanctioned licensees for using their stations to promote their non-broadcast businesses. These decisions reflected a concern that such promotions could involve anti-competitive practices and could impair a broadcaster's fulfillment of its public interest obligations. For example, the Commission objected to licensees': (1) advertising their non-broadcast businesses in a manner deemed unfair to non-broadcast competitors; (2) editorializing on matters in which they have a personal interest without disclosing that interest; and (3) otherwise using their stations as a trade weapon.

The Commission has now concluded that, to the extent such practices involve questions under the federal antitrust laws, primary enforcement responsibility



should be with the Department of Justice and the FTC. State antitrust laws often also provide injured parties with rights of redress. Furthermore, to the extent its prohibitions dealt with practices not otherwise regulated, the Commission determined that it should not regulate them either, unless there would be a substantial risk of serious harm to listeners. See *Policy Statement and Order*, MM Docket No. 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom.*, *Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).

## 20. REPETITIOUS BROADCAST OF MUSICAL RECORDINGS

The FCC no longer has a policy against the repetitious broadcast of musical recordings. Instead, decisions to repeat broadcasts of a song or songs, like other programming decisions, are matters which will be left to the discretion of the licensee. See *Policy Statement and Memorandum Opinion and Order*, MM Docket No. 83-842, 54 R.R. 2d 1043 (1983).

## 21. USE OF SIRENS AND SIMILAR EMERGENCY SOUND EFFECTS IN ANNOUNCEMENTS

Under its prior policy, the FCC restricted use of sirens and similar emergency warning sound effects in commercials and other announcements. The Commission deleted this policy, noting that licensees' general obligation to operate their stations in the public interest should preclude any misuse of sound effects which might threaten public safety. See *Policy Statement and Memorandum Opinion and Order*, MM Docket No. 83-842, 54 R.R. 2d 1043 (1983).

# I

## I. UNAUTHORIZED COMMUNICATIONS AND REBROADCASTS

### 1. UNAUTHORIZED USE OF COMMUNICATIONS

Section 705 of the Communications Act of 1934, as amended, (formerly Section 605) prohibits anyone from divulging or making beneficial use of any radio, television, or wire communication unless authorization is granted by the sender (other than a broadcast intended for reception by the general public). Similarly, the U.S. Criminal Code prohibits the willful interception, or attempted interception, of wire, oral or electronic communications, (as defined), and imposes substantial fines and/or imprisonment for doing so.

The provisions of the U.S. Criminal Code were substantially amended by the Electronic Communications Privacy Act of 1986, and the interception of most private electronic communications is now a violation of the Criminal Code. See 18 U.S.C. § 2510 and the related Code sections following.

The Commission staff has stated that public monitoring of police transmissions for personal entertainment does not violate Section 705. However, the Commission has ruled that monitoring police, fire, FAA and, it appears, other public safety communications, "for the purpose of obtaining information as to events worthy of on-the-spot news coverage, to making other beneficial use of such interceptions, and to the divulgence of the content of such transmissions either in verbatim form or in news bulletins" without prior permission of the transmitting agency is a violation of Section 705.

The monitoring of another station's nonbroadcast transmissions, such as its



private ENG-related transmissions, may, depending on the frequencies of the transmission and the use made of the information, violate the U.S. Criminal Code, Section 705, or both.

Rules 97.113 and 97.114(c) prevent amateur stations from engaging in any form of radio broadcasting intended to be received by the public directly (or by intermediate relay stations) or facilitating the regular commercial business affairs of any party. One-way communications by amateurs directly relating to the immediate safety of life or the immediate protection of property are permitted. Messages originated by amateur and Citizens Band radio stations may be rebroadcast at the discretion of broadcast licensees. (FCC Rule 73.1207(c)(3).)

## **2. REBROADCASTING THE TRANSMISSIONS OF OTHER BROADCAST STATIONS**

Rebroadcasting the programs of another broadcast station requires the written consent of the originating station. No Commission authorization is necessary. Copies of the written consent must be kept at the rebroadcasting station and made available to the Commission upon request. They need not be kept in the station's public inspection file. (FCC Rule 73.1207(b).) Stations can only give rebroadcast consent for programs they have produced. A station cannot give rebroadcast consent for its network or syndicated programming.

## **3. REBROADCASTING FOREIGN OR NON-BROADCAST STATIONS**

Generally, the non-delayed rebroadcast of time signals originated by the Naval Observatory and the National Bureau of Standards and the rebroadcast of National Weather Service transmissions is permitted without specific authorization.

Programs originated by foreign broadcasting stations such as the British Broadcasting Corporation (BBC) and Radio Moscow may be rebroadcast without the consent of the Commission or the originating station, except where covered by prior international agreement. (For example, the consent of originating stations should be obtained for the rebroadcast of Canadian and most Latin American programs, and such stations should be identified, as to location and call letters, during the course of the rebroadcast). **Copyright restrictions should also be considered prior to rebroadcast of any foreign broadcast station.**

Programs originated by the Voice of America and the Armed Forces Radio and Television Service may only be rebroadcast by special arrangement among the parties concerned. (See Chapter XII for phone numbers of these organizations.) Permission to retransmit any subsidiary communication transmitted by means of a multiplex subcarrier or the vertical blanking interval of a television signal must first be obtained from the originating station.

Retransmission of messages originated by privately owned *non-broadcast* stations, with the exception of amateur and CB stations, must be authorized by the non-broadcast licensee prior to retransmission. (FCC Rule 73.1207(c).) Included in this rule are transmissions originated by government-owned non-broadcast stations which are operated by governmental agencies (except for those stations specifically identified above).

Common carrier messages may not be rebroadcast except by consent of both the carrier and the originator of the message. Further, the mere monitoring of such transmissions may violate the Electronic Communications Privacy Act of 1986, which amended the U.S. Criminal Code. See 18 U.S.C. § 2510 and the sections of the Code following.

#### 4. REBROADCASTING TELEPHONE CONVERSATIONS

Section 73.1206 of the FCC rules requires licensees to notify parties of their intention to broadcast telephone conversations prior to recording and/or broadcasting any conversation. The notification requirement applies whether or not the conversation is being recorded or broadcast live. The only time prior express notification is not required is when the party "is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast" (e.g., an "open mike" call-in show). FCC Rule 73.1206 provides that "such awareness is presumed to exist only when the other party to the call is associated with the station (such as an employee or part-time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations." The notification must be given before any portion of the conversation is broadcast live or recorded for later broadcast.

The Commission has ruled that a "conversation" begins whenever a party answers the telephone. Therefore, the prior notification requirement is violated when the party called answers the phone by saying "Hello", even though the announcer may immediately inform the party called of his or her identity and the fact that they are being broadcast live or being recorded for later broadcast. Live broadcast use of a telephone conversation prior to informing the other party of the station's intention to broadcast it, even with the intent of and or actually obtaining the party's permission during the broadcast, is unacceptable. Furthermore, the FCC has held that the recording of a telephone conversation for possible future broadcast with the intention of informing the other party of such, either during the conversation or after, but prior to its broadcast, also violates the rule.

"Cash calls" and similar contests that require a contestant to answer a telephone call with a certain phrase require prior notification if the licensee intends to broadcast and/or record the conversation. A licensee's immediate statement along the lines of "Hi, I'm Jack Smith of WBPE and you're on the air" would be insufficient notification, because the party called would have already initiated the conversation by saying "Hello."

In a *Report and Order* released January 26, 1987, the FCC modified its common carrier regulations that require either mutual consent or the use of a beep-tone if a conversation is being recorded, by adding the option of notification being made by the party doing the recording at the beginning of the call. *Report and Order* in Docket No. 20840, 2 F.C.C. Rcd. 502 (1987).

#### 5. POINT-TO-POINT COMMUNICATIONS

Radio and television stations are licensed to broadcast program material intended only for reception by the general public. Except during emergency operations, no station may broadcast a message intended primarily for specific individual because such point-to-point transmissions have been held by the Commission to run counter to the definition of "broadcasting" in Section 3(o) in the Communications Act. Messages in coded form also constitute point-to-point communications and as such should be avoided. Licensees may, however, address a message to a particular individual (e.g., a person in public life) if the message is an integral part of the program format and its meaning is clear to the audience.

The Commission acknowledges that certain emergency situations may justify an exception to the prohibition on point-to-point communications. At the request of responsible public officials a station may air messages to request or dispatch aid in rescue operations. However, immediately after such a broadcast, the licensee must notify the FCC, stating the nature of the emergency, the dates and hours of the broadcasts, and providing a brief description of the material transmitted. (FCC Rule 73.1250(e).)

## Newsgathering Policies and Practices

This chapter contains a discussion of many of the policies and regulations governing broadcast newsgathering activities. In addition, this chapter includes an overview of the law of libel and privacy.

### A. “NOT-FOR-ACTUALITY” RECORDING



Reporters sometimes want to keep a taped record to verify what they heard in a telephone interview. They generally wish to avoid inhibiting interviewees by telling them the conversation is being recorded.

Recording such conversations may or may not be legal in your state. To learn if the recording is legal a very careful reading of federal and state law is required.<sup>17</sup> Such recording should not be undertaken without first consulting with your attorney.

The Federal Criminal Code is less stringent than FCC regulations regarding the recording of telephone conversations that are not for broadcast purposes. The FCC's interstate telephone tariffs permit nonbroadcast recording of long distance calls between states if a beep tone is used, all parties consent or one party announces to the other at the beginning of a call that it is being recorded. However, the U.S. Criminal Code requires only that one party to the conversation give prior consent to recording. You or your employee recording the conversation can be that person. However, the federal criminal law contains an exception which ought

---

17. 18 U.S.C. § 2510, *et seq.*

to put you on your guard. The federal law does not apply if your state has enacted a more restrictive rule or when the recording has been made for what the federal statute describes as "criminal" or "tortious" purposes. Several states have enacted tougher laws that forbid any covert recording without the consent of all parties. Others provide for only one-party consent, but penalize using or divulging the information without obtaining the consent of all parties. State telephone tariffs may also place restrictions on recording. An attorney's examination of the statutes and tariffs alone will not be enough. Your attorney's review also should include the current status of the law on invasion of privacy in your state and the possibility of a civil suit against you.

## B

### B. CONCEALED MICROPHONES

#### 1. WIRELESS

FCC Rule 15.11 governs the use of wireless microphones. The rule is similar to the FCC's all-party consent rule governing the broadcast of live and recorded telephone conversations. It prohibits the use of wireless transmitters for the purpose of overhearing or recording the *private* conversations of others, unless such use is authorized by all of the parties engaging in the conversation. The exception to the rule involves conversations that are not "private".

When the Commission adopted this regulation it specifically allowed the use of wireless microphones when the intercepted conversation is "carried on within earshot of others not engaged in the conversation. Thus, conversations in public and semipublic places or in any other place where persons may reasonably expect their conversations to be overheard would not be protected by the rules." (See *Report and Order*, 2 F.C.C.2d 641, 645 (1966).)

Streets, parks, public buildings, and sports arenas are examples of public and semi-public places. Remember that if an employee of your station is not a party to the conversation, he or she should make sure that the conversation is being picked up where another person would be likely to overhear it, *i.e.*, within earshot, and in a public or semi-public place. However, you must still make certain that recording in such semi-public places would not constitute invasion of privacy in your state.

If the site appears to be private but is not the private home, office or hotel room of any of the participants in the conversation, check with your supervisor or station attorney before proceeding. You may be exposing yourself to a suit for invasion of privacy.

Even when the FCC's exception for public or semi-public conversations does apply, state law might still forbid the pickup or use of dialogue with a wireless microphone.

#### 2. WIRED MICROPHONES

This section covers the use of concealed microphones, which may include the use of parabolic or shotgun microphones, when the participants in a conversation cannot see them and have not consented specifically or by inference to having their words recorded and disclosed.

Federal law *permits* surreptitious interception of a conversation in a public or private place *if one party to the conversation has consented*, unless the interception is being done for a criminal or tortious purpose. But when concealed microphones are used, some states supercede the federal rule and require the consent

of all parties. In other states, use or disclosure after recording also requires consent of all parties, even though the interception itself was legal.

Further, interception and/or disclosure may subject you to an invasion of privacy suit. The advice and guidance of your attorney should be sought.

## C. HIDDEN CAMERAS



### 1. IN PUBLIC AND SEMI-PUBLIC PLACES

Different considerations apply to pictures taken by hidden cameras for news and public affairs purposes as opposed to pictures taken for entertainment programming or for use in commercials.

Covert photography generally may be employed to obtain pictures of what takes place in public and semi-public places for news and public affairs purposes. You should regularly review the privacy case law in your state with your attorney so that you are aware of the limits of your rights in this area. Further, such techniques used for entertainment programs or commercials may well expose you to suit for some form of invasion of privacy. With this caveat in mind, you may surreptitiously photograph events that take place in, for example, public streets, parks and sports arenas. The reasoning behind these general rules is that in some places and situations people should reasonably expect that they will be seen. This also leads to some limitations.

- Care should be taken only to photograph what can be readily seen by others in a public or semi-public place.
- If you find a conspicuous sign in a semi-public place warning against the taking of pictures, or you are verbally warned against photographing, or your hidden camera is discovered and you are asked to discontinue photographing, it would be advisable to comply and avoid a possible claim for invasion of privacy, unless you are acting with the advice of your lawyer.

### 2. IN PRIVATE PLACES

The permissible use of hidden cameras in private places is much more limited. It may be proper to surreptitiously film or video tape in the home, office, hotel room or elsewhere on the premises of a station employee. Secret filming in the home, office or hotel room of an unsuspecting subject could expose you to a suit for invasion of privacy. Consult with your attorney before engaging in any secret filming or video taping in private places.

## D. INVESTIGATIVE REPORTING



Stations and their personnel “cannot induce or encourage the commission of a crime in the process of news coverage.” To do so would amount to deliberate “staging” in the eyes of the FCC with the effect of misrepresenting the circumstances surrounding an event and misleading the public.

Stations engaging in investigative reporting (i.e., the journalistic investigation of matters that may involve a violation of law and the reporting to the public of the results of such investigations) have a responsibility not to violate the law on deliberately “staged” news events. For this reason, the Commission recom-



mends that stations that engage in investigative reporting have written policies on the subject. See *Inquiry Into WBBM-TV's Broadcast on a Marijuana Party, (WBBM-TV)*, 18 F.C.C.2d 124 (1969). These written policies should make clear the general guidelines to be followed by all personnel involved in news and documentary programs and should set forth procedures for implementation. The policies should be distributed to all news employees and other employees likely to be involved. Each station's policy should be tailored to its individual circumstances.

A station is not required to notify law enforcement officials when it or its personnel become aware that a crime is about to be committed, *except* that the FCC suggests law enforcement officers should be called when the crime involves "mugging, robbery, or other violent situations where a participant's life or safety or someone else's significant policy interest is at stake." (See *WBBM-TV*). Broadcasters should review with local legal counsel the implications of the policy they choose to pursue.



## E. LIBEL AND INVASION OF PRIVACY

Multimillion dollar suits against the media by well-known figures have focused national attention on libel and privacy law. In reality, however, it is the unglamorous daily news story or the unplanned off-hand remark of an on-air personality which is most likely to cause problems for a station.

The particulars of libel and privacy law vary from state to state. Qualified counsel should be consulted as to these specifics. This section gives a general outline of the law.

### 1. LIBEL

#### a. What is libel?<sup>18</sup>

A good working definition is that libel is a false statement of fact, made to a third party about another person, which tends to injure that person's reputation. Note the elements of libel:

- false statement of fact
- "published"—that is, made to a third party—for our purposes by an over-the-air broadcast
- about, or "of and concerning" a person who is identifiable from the description in the statement<sup>19</sup>
- defamatory—that is, causing injury, or damages, to the person's reputation, and
- fault on the part of the person making the statement.

#### b. Opinion vs. Fact

The key element is the presence of a false statement of fact. Opinion, as well as mere name-calling or "rhetorical hyperbole", is not libelous—but the line

18. Although defamatory oral statements are sometimes referred to as "slander," this section uses the more familiar term "libel" throughout to refer to both written and oral statements.

19. A corporation or other legal entity may be considered a person for purposes of libel law.

between the opinion in a film review or the name shouted in anger and the false statement of fact is not always easy to draw.

More than a decade ago, in the case of *Gertz v. Welch*, the U.S. Supreme Court stated:

**"Under the First Amendment, there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of the judges and juries but on the competition of other ideas."**

Since *Gertz*, understanding the distinction between fact and opinion has become increasingly important to broadcasters concerned about libel suits. In *Ollman v. Evans*, a U.S. Court of Appeals in 1984 drafted a four-part test which has helped to clarify some of the confusion surrounding the fact/opinion distinction. Even though some courts have not adopted this four-part test, the *Ollman* analysis is gaining popularity. Under this test, the court will: (1) analyze the common usage or meaning of the specific language of the challenged statement itself, i.e., whether a statement has precise meaning or whether the statement is indefinite or ambiguous; (2) consider the statement's verifiability, i.e., is the statement capable of being true or false; (3) consider the full context of the statement; (4) consider the broader context or setting in which the statement is made.

A wise speaker fully sets forth the facts underlying a critical comment and makes clear that his or her opinion is based on stated facts. Because this approach leaves listeners free to draw a different conclusion from the same facts, most courts classify such statements as "pure opinion" and reward the conscientious speaker with full First Amendment protection.

For example, in the statement "the referee is biased—I saw him talking with the coach of one of the teams before the match" the accuser has informed his listeners of the facts behind his suspicions. Therefore, since the speaker has supplied facts underlying his opinion, he may be able to avoid liability. (Obviously, however, if the stated facts are false and derogatory, liability may arise.)

Even if a speaker fails to articulate the supporting facts, most courts will classify a statement as "pure opinion" if it reasonably can be assumed that the listeners were aware of, or had access to, the information.

It should be noted, however, that while courts increasingly afford First Amendment protection to "pure opinion," "mixed opinion"—an opinion which suggests the existence of defamatory facts, because the statement is not supported by stated or assumed facts—generally is without such protection. Statements such as "I guess he couldn't make a go of that business," and "I think he had some physical problems," standing alone, have been judged to suggest the existence of unstated defamatory facts.

Someone who wishes to express a harsh judgment, but does not want to give listeners the impression that he knows more than he reveals, should use colorful language, rather than precise, descriptive terms. Similes, metaphors and vague characterizations have no factual basis and, therefore, cannot be proven true or false. Moreover, such vague language does not lead an audience to believe that the speaker knows more information than he is disclosing.

A suit brought against a radio talk show host illustrates the type of language courts are likely to consider too vague to warrant liability. The defendant had stated on the air that the "inroad of communism must be stopped," referring to the activities of the city police union. The court found that the statement was "too amorphous" to render the radio broadcaster liable for defamation. The court focused on the fact that listeners most likely understood the statement as "mere pejorative rhetoric." If the broadcaster had specifically tied the police union to

the Communist Party, however, the court very well may have found him liable for defamation.

Finally, a speaker can sometimes protect himself or herself against libel claims by conceding limited knowledge. Phrases such as "based on what she said after her last press conference," or "I think so because," imply that the speaker is expressing an opinion, based strictly on the facts stated.

Critical statements presented in the context of an editorial, review or humorous act often will be considered an expression of opinion, rather than a factual assertion. Courts will protect unkind reviews of restaurants, books, films, entertainment and sporting events because the subject of the review is public knowledge. That is to say, members of the critic's audience can read the book, see the film, etc., and draw their own conclusions. Also, because listeners expect exaggerated language in reviews, particularly harsh language usually receives protection.

Statements presented in editorial formats also usually receive protection. While expressing a view in an editorial format does not guarantee immunity from liability, it does increase the speaker's chances of successfully claiming the opinion privilege. By using rhetorical language, an editorial commentator can make clear that he is expressing his opinion, not stating a fact.

Protection for humorous communication depends upon whether the comic merely expresses a harsh judgment based on facts the audience is aware of, or uses his humor to imply defamatory facts. Generally, courts will protect the former but not the latter. However, it is difficult to predict when a humorous presentation will be misunderstood as implying defamatory facts. Context is crucial. Thus, an audience is not likely to misunderstand humor presented in a stand-up comedy routine or slapstick production as a defamatory factual assertion. Dry irony, on the other hand, may create a greater risk of misinterpretation. However, when dry irony is used in a context where the audience expects comedy, and will accept the humor with a measure of skepticism, the risk of defamation liability decreases.

When in doubt as to how a given statement is likely to be treated by the courts, consult qualified legal counsel prior to broadcast.

### c. "Of and Concerning"

As stated above, a false statement of fact must be "of and concerning" a person in order for that person to recover against the station. It is important to note that even false and defamatory statements made about a group of people, with no specific individuals named, could give rise to suits against a station.

When a false and defamatory statement is broadcast about a particular class or group of people, each of the members of the group or any one of them may maintain a suit by showing that they are readily identifiable members of the group that has become libeled or that the libelous statement is "of and concerning" them as individuals.

It is generally the rule that if the group to which the statement refers consists of more than 25 individuals, there is little chance any member of the group will prevail in a suit. This result is based on the view that as the size of a group increases, the likelihood that the libelous statement could be understood to refer to any particular member of the group decreases. It must be noted, however, that the rule of thumb that only claimants from groups of 25 or fewer members are likely to prevail in group libel suits is not the law in every jurisdiction. For example, in Puerto Rico, the law regarding group libel expressly allows for suits by members of "a large group or class" and requires only that they show a reasonable application of the defamatory words to themselves. In Oklahoma, a member of a football team of 60 to 70 players was able to maintain a libel action against a publisher who had accused the whole team of illegally ingesting amphetamines.

#### **d. Standard of Care**

If a libel suit is brought against a station, the standard by which “fault” is judged will vary depending on whether the person complaining is a public official or public figure or a private person, and whether the statement in dispute involves a matter of public concern. The standard of “actual malice”—broadcasting while knowing a statement was false or broadcasting it with reckless disregard of whether it is true or false—will apply to statements about public officials or public figures regarding a matter of public concern. “Negligence” on the part of the station will generally be the standard by which statements about matters of public concern regarding private individuals are judged. Statements which involve issues of purely private concern may in some states result in strict liability—liability without fault—for the station. The mere fact that such statements were broadcast at all would constitute fault.

The standard of fault which applies in a given circumstance is hard to ascertain. Court cases frequently feature major disputes as to whether a given individual is a “public figure.” However, the standard of care by which a station’s actions may be judged in court will not usually enter into a station’s decision on whether to broadcast particular matter. The station’s concern is to get the facts right as broadcast.

#### **e. Privileges**

The broadcast of certain types of information may, depending on the state, be protected by a legal “privilege.” The privilege most frequently available is that for “fair reports” of official proceedings. In most jurisdictions, the fair report privilege will usually apply to reports on what is said during judicial proceedings and congressional and other legislative hearings. The privilege may apply to reports of public meetings of community organizations on matters of public concern. The fair report privilege also may apply to statements made in official documents of various agencies of government. The station’s news report must be fair and accurate, or the privilege may be lost.

To learn the extent of the fair report privilege and any other protections available in your jurisdiction, consult qualified legal counsel. In some states, for example, statements made other than in the courtroom by the police, the district attorney, or others involved in investigating a crime are not privileged—and inaccurate crime stories are a major cause of libel suits.

Finally, remember that truth will generally be an absolute defense to a libel suit.

#### **f. Handling Complaints**

It is important to know the laws of your state regarding use of retractions, and to be familiar with any special privileges given broadcasters. In some states, if a person who feels he or she has been wronged by a station does not request a retraction before suing, the damages recoverable are limited.

An in-house system for the courteous resolution of complaints appears to be one of the best ways to reduce libel suits according to a University of Iowa study. The study, known as the Iowa Libel Research Project, was directed by law professor Randall Benzanson and journalism professors Gilbert Cranberg and John Soloski.

Broadcasters were the targets of about 20 percent of the more than 700 libel suits identified by the study as having been filed nationwide during the 1974–1984 study period, while newspapers were defendants in roughly two-thirds of the cases.



Public officials or public figures brought about 60 percent of the suits against the news media. More than 50 percent of the cases involved stories about the plaintiff's business or professional activities. As a group, the libel plaintiffs tended to be well-educated, financially well-to-do males between the ages of 36 and 64 who are well-established, highly visible members of their communities.

Most of the 164 plaintiffs personally interviewed told University of Iowa researchers they felt the stories in controversy were false. This caused them emotional, not financial harm. Financial damage was usually only alleged by those who owned or managed businesses. About half of those interviewed said they went to a lawyer only after failing to resolve their complaints through direct contact with the media. Herein lies the opportunity to reduce litigation.

The Iowa research shows that when those aggrieved by a story go to the media, the bad treatment they frequently receive is a major factor in the decision to seek an attorney. When they get to the lawyer's offices after such treatment, these plaintiffs are not looking for advice. They are angry and want to sue.

Although the Iowa researchers focused primarily on newspaper operation in their review of complaint handling, their findings appear equally applicable to broadcast news operations. A key observation in the study was that there is often no system of dealing with complaints. News personnel usually have not been instructed on what action to take when a complaint comes in. News organizations tend to view complaints, especially those by public officials, as nothing more than inappropriate, self-serving pressure. Staffers are extremely defensive and not prone to admitting mistakes. Reporters are frequently allowed to handle complaints about their own stories and often fail to pass on any information about these complaints to management.

The Iowa researchers have developed a four-step program to improve relations with the public and reduce the possibility of libel suits:

- Management should insist on courtesy in dealing with complaints, employees should understand the power their organizations have to hurt people, and news personnel should receive human relations training.
- One person with good human relations skills should be made responsible for dealing with complaints.
- Policies and procedures to handle complaints should be established. (Although the Iowa researchers recommend that these policies be written, many media attorneys would disagree.)
- Sitting on a serious complaint should be considered grounds for termination.



This process will not, of course, end all suits. Half the libel plaintiffs do not complain to the media before a suit is filed, and for many, the filing legitimizes their claim of falsity. But these steps can help in many cases. At the very least, they will improve a broadcaster's community relations with all of those contacting the news department—not just potential litigants.

Care must be taken in establishing a complaint system, however. The processes to be followed should be established in concert with the station's attorney, so that actions are not taken which could be damaging to the station if a suit is filed. Many attorneys discourage specific written policies which might be used against a station at a trial. Stations should consult their own attorneys on what course to follow.

Stations should act promptly to advise their libel insurance carriers if litigation seems likely. Corrections or retractions should not be run without consultation with counsel or the insurance carrier. Those stations insured under NAB's Libel Insurance Plan, who seek advice on the way in which a particular complaint should be handled, may contact the insurance program's underwriter, Media/Pro-



Professional Insurance, Inc., 1001 East 101st Terrace, Suite 300, Kansas City, MO 64131, (816) 941-3880. Ask for the "media counsel."

#### **DANGER AREAS FOR BROADCASTERS:**

- **Inaccuracies in reports on crimes, arrests, indictments**
- **Ad lib disc jockey comments**
- **Conclusionary statements by reporters and anchors**
- **Misstatements in promotional announcements or "teasers"**
- **Careless use of generic footage**
- **Republication of libelous statements made by others**

## **2. INVASION OF PRIVACY**

Privacy is primarily a creature of state rather than Federal law. Most states recognize some if not all of the four distinct "torts" or civil wrongs which together comprise the law of privacy. These four causes of action are:

### **a. Intrusion Upon the Seclusion or Solitude of Another**

Intrusion is somewhat akin to traditional trespass. One must intrude upon someone else's privacy (frequently done by intruding upon their property) in a manner both intentional and highly offensive to a reasonable person. Intrusion arises in situations where the media employs use of tape recorders, cameras, microphones and other electronic devices. This section covers what may constitute intrusion by drawing a public versus private premises distinction.

**(1) Public premises**—little expectation of privacy—Reporters and photographers engaged in newsgathering in a public place or a public street are usually deemed not to be invading anyone's privacy. A passive observation such as a photo of a couple romantically involved in a public area does not ordinarily constitute an invasion of privacy. The rationale is that the reporter or photographer is simply observing what others would have seen if they had been passing by at that moment. No expectation of privacy usually exists as to an action exhibited in full view of the general public. It is important to note, however, that even in a public place a person may have a reasonable expectation as to what is viewed as private. Thus, a photo or tape of a woman's dress being blown above her waist by wind could be deemed an intrusion.

**(2) Private premises**—Generally, reporters and photographers are barred from entering private premises such as a person's home, hotel room or land, where the person expects to be secluded from the public eye, without consent. However, courts are split on the issue when reporters accompany law enforcement and administrative officials onto private land to report on activities of legitimate concern to the public. Some courts have allowed reporters to accompany police officers and fire marshals onto private property. In those instances, it has been held that the public "interest" concerning the activity or event observed overrides the interests protected by trespass and privacy laws.

Privacy and trespass laws may also prohibit media from filming in places which may be open to the public but are privately owned, such as restaurants

and grocery stores, without consent. Where a camera crew walked into a restaurant that was in violation of the health code, filming the interior of the restaurant and the patrons inside it, the television station was held liable for the trespass. The court emphasized that eating in a restaurant does not carry with it the obligation to appear on television.

It is important to learn the law of your state regarding this subject area.

#### **b. Public Disclosure of Embarrassing Private Facts, or Unreasonable Publicity Given to Private Life**

For an action involving public disclosure of embarrassing private facts to succeed, the broadcast in question must disclose private, previously unknown facts, which are not of public concern, in a highly offensive manner.

A broadcaster may generally report on anything that is a matter of public record or that may be observed by the public, such as taping in a public place. Information open to public knowledge includes anything of public record such as date of marriage, degree from a university, date of birth, etc. In addition, private facts already made public may be rebroadcast.

Information pertaining to sexual relations, intimate letters, wealth and economic affairs is usually expected to be kept private.

Facts disclosed which are embarrassing, but not highly offensive, do not fulfill the requirements under this theory. An example is tripping on a staircase or turning one's ankle in public. While these may be embarrassing, they are not viewed as highly offensive. A person's whereabouts, such as leaving the country or visiting another state, are not considered private facts.

Matters that are otherwise private may be disclosed to the public if the information includes a public figure or an involuntary public figure and is of legitimate public concern. Private facts about voluntary public figures may not be limited to events or activities that aroused publicity, but may go beyond.

Involuntary public figures, such as victims of crime, are deemed to be of legitimate public interest and facts may be opened up to the public that go beyond the scope of the incident which thrust them into the news. Facts of legitimate public concern about involuntary figures may be broadcast—such as details of a murder trial, even though the defendant is acquitted, and news about a twelve-year-old girl giving birth to a child. This information is regarded as newsworthy. Tort law suggests that it is necessary, when reporting this type of news, that a standard of common decency be observed.

If you have a question as to how a specific factual situation is likely to be treated in your state, consult qualified legal counsel.

#### **c. Publicity Which Places a Person in a "False Light" Before the Public Eye**

For a "false light" action to succeed, the broadcast must be about the person and place him or her in that "false light" in a manner highly offensive to a reasonable person.

This aspect of invasion of privacy is most clearly related to libel, since it deals with falsely portraying a person to the public. There is, however, a distinction between the two. There is no requirement that the publicity which places a person in a false light be defamatory (i.e., damaging to one's reputation), which is a requirement in a libel action. Under this theory of invasion of privacy, the publicity must portray a person as something other than what he/she is.

However, publicity placing someone in a false light often may also be highly defamatory. Thus, a person may bring an action for defamation and invasion of privacy, using this privacy theory as an additional or alternative claim. However, he or she may only recover under one theory for each instance of publicity.

#### d. Appropriation of a Person's Name or Likeness for Commercial Advantage

Such appropriation, without valid consent, is actionable in a court of law. The interest protected by this privacy tort is the right to one's unrestricted use of his own identity. This is often referred to as "right of publicity."

Some states only allow an action under this theory where the defendant has monetarily benefited. Others allow an action where the defendant gained some other value by appropriation, such as treatment as a celebrity. In all states, to recover, there must be a benefit gained. Thus, where a person adopts the same name as a celebrity but does not pass himself off as such, no benefit is derived.

Though a station benefits commercially by use of a person's name or likeness in its news stories, the use is deemed an incidental use and does not subject it to liability. Thus, where a photograph is used in relation to items of public interest, news events or public activities, it constitutes an incidental use. Another example of an incidental use is an autobiography which mentions a person's name.

An example of where the line may be drawn in determining what constitutes incidental use in a television news broadcast may be seen in the famous case of Zacchini and his "human cannonball" performance.

This case arose when a television station's newscast broadcast Zacchini's entire performance at a fair on the news without his consent. The Supreme Court held that the First Amendment did not allow a station to broadcast an entire performance without the performer's consent. It is important to note that the court referred to broadcast of the entire act. Had the station broadcast only a part of the performance, the court might have reached a different conclusion.

A requirement of the misappropriation theory is that a person bringing an action must be able to demonstrate his or her identity in the alleged appropriation. Facial features have been the factor most controlling in determining identity. In addition, recognizable voice characteristics also may be a factor in determining identity.

Muhammed Ali was able to enjoin *Playgirl* magazine from publishing a drawing of a nude boxer in a ring, with the caption underneath it titled "mystery man." The court held that facial features, such as a smile and expression, distinguished the man in the drawing as Ali.

Although facial features have been controlling in determining identifiability, a 1984 case did not require that the identifiable characteristic be a facial representation. In this case a photograph appeared in advertisements in three magazines of a nude woman leading a nude girl through the water. The photograph was taken without consent. The court held that protection against appropriation of one's likeness is not just for those with a publicly identifiable feature. In the case of the two nude females, the rear and sides of their bodies could be seen, but not their faces. The case suggested that self-identification may be a foundation for invasion of privacy.

### 3. DEFENSES TO INVASION OF PRIVACY CLAIMS

#### a. Consent

Consent is a defense to claims of misappropriation of one's likeness or name and intrusion into a person's affairs. If a reporter or photographer can demonstrate that a person consented to allowing him onto their private premises to film or obtain a story that consent will bar recovery. As noted above, it may be important to obtain a property owner's consent, in addition to a law enforcement officer's consent, in obtaining a story on private premises, where a crime has been committed or a fire has occurred. Consent is absolutely necessary when using a person's likeness or name for commercial benefit. Note that whether a child can

consent to be interviewed is a matter of state law which you should review with qualified counsel.

**b. Constitutional Privilege**

A constitutional privilege exists only with respect to the privacy tort claim of false light. A person involved in a newsworthy event or matter of public interest must show that a broadcast station *knew* it reported false statement or *recklessly disregarded* whether or not it was true.

**c. Newsworthy—Public Concern**

It is not necessary to get a person's consent where he or she is either a voluntary or involuntary figure thrust into the public sphere in order to report on items of legitimate public concern involving these figures. The theory is that a voluntary public figure has exposed himself to publicity and cannot expect to have expectations of privacy as to matters involving himself. A public figure is of public interest. An involuntary public figure is also thrust into matters of public concern such as crime and social issues and thus falls into the "newsworthy" category.

## Commercial Policies and Practices

### A. RESTRICTIONS ON CONTENT OF COMMERCIALS

#### 1. FALSE, MISLEADING OR DECEPTIVE COMMERCIALS

A broadcast licensee obtains commercial advertisement copy from agencies or advertisers, and it may prepare commercial copy itself from information supplied by the advertiser. Occasionally, the station itself is the advertiser—such as with promotional announcements and/or station contests. This section outlines the responsibility of the licensee for fraudulent, misleading, or deceptive advertising under these various conditions.

##### a. Licensees Remain Responsible for What is Broadcast

The FCC has reiterated that its 1960 statement stands as the measure of broadcasters' responsibility for what is broadcast:

Broadcasting licensees must assume responsibility for all material which is broadcast through their facilities. This includes all programs and advertising materials which they present to the public. With respect to advertising material the licensee has the additional responsibility to take all reasonable measures to eliminate any false, misleading or deceptive matter . . . . This duty is personal to the licensee and may not be delegated. *Report and Statement of Policy*, 44 FCC 2303 (1960).

The Commission referenced this basic responsibility in the context of deregulating its specific policies that had regulated broadcasters' practices with regard to false





and misleading advertising. See *Policy Statement and Order*, MM Docket 83-842, 57 R.R. 2d 913 (1985), *aff'd sub nom., TRAC v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986). In that "underbrush" deregulatory proceeding, the FCC eliminated three specific policies: those (1) requiring particular care in accepting advertising which is the subject of an unadjudicated FTC complaint, (2) requiring a review of the reliability and reputation of every prospective advertiser, and (3) requiring that every station have a program to protect the public from deceptive advertising.

Now, "[b]roadcast licensees continue to be responsible for all material broadcast through their facility, including advertising, but the method of compliance now will be left to the discretion of licensees." *Id.*

#### **b. FTC Involvement**

The main guidance in the field of deceptive advertising continues to come from the Federal Trade Commission.

False and misleading advertising is unlawful under section 5 of the Federal Trade Commission Act. The FTC may initiate enforcement proceedings upon complaints brought to its attention by the public or upon its own knowledge or investigation. Unlike the FCC, the FTC has the scientific and related expertise to monitor and assess advertising for misleading or deceptive claims.

#### **c. FTC Generally Acts Against Advertisers, Not Licensees**

The FTC has authority to take action against media disseminating deceptive advertising. But the FTC's view is that the most effective way to curb deceptive practices is to hold the advertiser primarily liable since the advertiser is generally the one who designs the advertising message and knows the "facts" contained in the claims made. This regulatory philosophy has the effect of controlling such advertising at its source and makes enforcement easier. It is much easier to go after a single advertiser than it is to bring suit against numerous broadcasting stations which carry the advertising.

Also, section 54(b) of the FTC Act, 15 U.S.C. § 54(b), specifically exempts a "publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates" from misdemeanor liability for the false advertisement of commodities potentially injurious to health, if the station cooperates with the FTC in its investigation by furnishing the name and address of the advertiser who supplied the alleged false advertisement.

#### **d. FTC Agreement With FCC to Share Jurisdiction and Information**

Since 1957, the FTC and FCC have had liaison procedures under which both agencies exchange information and maintain regular staff contact on matters of mutual concern. The agreement provides that the FTC will exercise primary jurisdiction over unfair or deceptive advertising in all media, including the broadcast media. Under the agreement, the FTC will advise the FCC of the issuance of complaints concerning broadcast advertisements and the resolution thereof. The FCC continues to be concerned about FTC-adjudicated violations.

## **2. THE DISSOLUTION OF THE NAB CODES**

On March 10, 1982, NAB *cancelled all* advertising and programming provisions of both the Radio and Television Codes. That action was taken because of the uncertainties created by an initial unfavorable decision in the Justice Department's antitrust suit against NAB concerning the time standards of the TV code.

That lawsuit was settled in late 1982, with NAB agreeing to a court injunction prohibiting NAB from

**“adopting, maintaining, promulgating, publishing, distributing, enforcing, monitoring or otherwise requiring or suggesting adherence to any code . . . or other provision limiting or restricting:**

- (1) the quantity, length or placement of non-program material appearing on broadcast television; or**
- (2) the number of products or services presented within a single non-program announcement on broadcast television.”**

NAB's cancellation of all the advertising provisions of both Codes has remained in effect. Additionally, on January 20, 1983, the NAB Board of Directors formally dissolved the Code Boards of Directors and terminated any and all remaining Code functions.

Because all Code standards, guidelines and operations have been dissolved and terminated, each licensee remains the sole judge of the advertising and programming practices it shall follow in the public interest.

### **3. TIME STANDARDS AND PROGRAM-LENGTH COMMERCIALS**

#### **a. Radio**

In 1983, the FCC, as part of the radio deregulation proceeding, eliminated *all* commercial time standards for commercial radio stations, including the program-length commercial restrictions. Audience selection and other marketplace forces, the FCC believes, will more effectively indicate the commercial time policies that best serve the public.

#### **b. Television**

In June 1984, the FCC also eliminated all commercialization policies for commercial TV, but, in response to a court remand, is reconsidering reimposing commercial time guidelines for children's programs only. (See p. 96.) The 1984 FCC action repealed its commercial time limits and the restrictions against program-length commercials. The FCC based its decision on the relative costs and benefits of relying on marketplace incentives, as opposed to the burdens imposed by the former guidelines, which limited ads to 16 commercial minutes per programming hour. (Note: There were different standards for children's television advertisements. See below.) See *Report and Order* in MM Docket No. 83-670, 98 F.C.C. 2d 1076 (1984).

### **4. “SUBLIMINAL PERCEPTION” ADVERTISING [TV]**

“Subliminal perception” techniques involve televised statements which are of such short duration that most viewers are not consciously aware of perceiving them. An ad might carry, for example, a flashing video statement “buy one now”. Because the message is seen for a very brief moment the message doesn't “register” on the viewer at a conscious level. The Commission has warned stations that the use of subliminal perception techniques is inconsistent with the obligation of a licensee and that broadcasts employing such techniques are contrary to the public interest. (See 44 F.C.C.2d 1016 (1974).)

## 5. ADVERTISING OF ALCOHOLIC BEVERAGES

There are no FCC or other federal regulations which prohibit or govern (with one small exception noted below) the advertising of alcoholic beverages by radio or television stations. Also, the FCC does not direct licensees regarding alcohol advertising or regarding the depiction of the use of alcoholic beverages in dramatic or other types of program matter. However, some state laws restrict alcohol beverages advertisements in some respects, e.g., restrictions against advertising two for one drinks during "happy hour," etc.

The FCC has consistently taken the position that restrictions on broadcast advertising of alcoholic beverages is a matter for legislative determination by Congress. Congress has enacted no law in this regard.

There are federal regulations (Bureau of Alcohol, Tobacco and Firearms or "BATF") against giving the alcoholic content of beer in a radio or television commercial. This advertising restriction follows from BATF's prohibition against listing the alcohol content of beer on the label. (See 27 U.S.C. 205(e),(f).) An exception is provided where state law requires that alcohol content be listed, as is common in states where only 3.2 percent alcohol content beer may be sold to certain age groups. It should be noted this restriction applies *only* to beer commercials.



## 6. ADVERTISING OF TOBACCO PRODUCTS

Congress has specifically banned the advertising of cigarettes and little cigars from "any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission." Any violation of this law is considered a misdemeanor, punishable by fine. (15 U.S.C. § 1335.) As of August 27, 1986, smokeless tobacco products (such as chewing tobacco, snuff, etc.) also may not be advertised over any electronic medium. (See the Comprehensive Smokeless Tobacco Health Education Act of 1986, Pub. L. No. 99-252.)

The definition of cigarettes, for purposes of the law, is "(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A)". A little cigar is defined as "any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1) of this section) and as to which one thousand units weigh not more than three pounds."

The law does not prohibit the broadcast advertising of such tobacco products as pipe tobacco or cigars not defined as little cigars. Although there has been no official ruling by the Justice Department, it is generally understood that this law does not prohibit advertising of cigarette papers or prohibit the incidental use of any tobacco product in television programs by actors, announcers, etc.

It is also generally assumed that it is permissible for a program to mention the name of a cigarette product as part of the program title, as for example the "Virginia Slims Tennis Tournament," as long as such a mention does not constitute a commercial for the product. However, as a cautionary measure, even where appropriate mentions are made of the name of a cigarette, they should be kept

to a minimum. Also, it would appear to be acceptable to air an advertisement for ACME Tobacco Shop as long as ad copy does not mention the store's carrying of prohibited tobacco products.

## 7. ADVERTISING CONSUMER CREDIT AND LEASE ARRANGEMENTS

The Federal Trade Commission enforces the rules and provisions of the Truth in Lending Act. One of the purposes of the Act is to protect consumers by enabling them to make informed choices of consumer credit plans and consumer lease agreements. To this end, *Regulations Z and M* require advertisers to disclose certain crucial information if certain "triggering terms" are mentioned in an advertisement.

### a. How Do These Regulations Work and What Ads Are Covered?

When an advertisement contains any one of a list of terms specified in the Act, the advertisement must include a number of specific disclosures. Certain words "trigger" certain "disclosures." Essentially, the required disclosures reflect the lease and credit terms to which the parties are legally bound at the outset of the transaction. These disclosures must be made clearly and conspicuously in a reasonably understandable form.

Advertisements covered under the Act include commercial messages that offer consumer credit or consumer lease agreements. Consumer credit is any credit extended primarily for personal, family or household purposes. A consumer lease is a lease of personal property to a private individual. Messages inviting, offering or otherwise announcing the availability of credit transactions or lease terms generally to prospective customers are probably covered by the regulation.

### b. How Does Regulation Z Apply to Consumer Credit?

Two different types of consumer credit are regulated: open-end credit and closed-end credit. Regulation Z treats each differently, and, therefore, it is important to distinguish between these two types of credit transactions.

#### *Open-End Credit Defined*

In open-end credit, there is a contractual arrangement between the creditor and the consumer. The creditor must contemplate future transactions. This means that the credit plan must be usable periodically and the creditor must expect that there will be additional business rather than a one-time credit extension. Furthermore, specific approval for each credit extension is unnecessary. The creditor may impose a charge on unpaid balances, and as the customer pays outstanding balances, the amount of credit is again available to the customer. The amount of credit that can be extended is therefore unlimited because credit is generally replenished as earlier advances are repaid. Examples of open-end credit are: gas and bank credit cards, revolving charge accounts at stores, and cash advance checking accounts. This aspect of "unlimited credit" distinguishes open-end credit from closed-end credit. Moreover, any other consumer credit that does not fit the definition of open-end credit should be treated as closed-end credit.

#### *Closed-End Credit Defined*

In closed-end credit, credit is advanced for a specific period of time. The creditor and the consumer agree to the amount financed, the payment schedule and the finance charge. Each time credit is extended the creditor and the customer go through the same process and make a new agreement. However, this does not mean that the creditor must establish a specific credit limit or extend new credit



in a particular case. Typically, closed-end credit arrangements appear in the form of the sale or financing of real estate, automobiles or appliances.

Watch out for arrangements which may seem to be open-end in nature but are really closed-end. Closed-end credit includes both sales credit and loans. For example, under a closed-credit commitment the creditor might agree to lend a total of \$10,000 in a series of advances as needed by the borrower. When a consumer has borrowed the full \$10,000 no more is advanced under that particular agreement, even if there has been repayment of a portion of that debt.

### c. A Checklist for Open-End Credit Advertisements

Examine the advertisement to see if open-end consumer credit is being advertised. If it is, check to see if any of the following triggering terms are included in the language. If they are, you must make the necessary disclosures listed below. Here are some examples of terms that *do not trigger* any disclosures: "charge accounts available"; "just say 'charge it' "; "pay monthly"; "charge some cash."

#### **Triggering Terms:**

1. A statement of when finance charges accrue. For example: "interest charged from date of purchase." This includes any free ride period: "up to 30 days credit if you pay in full each month."
2. A statement of any charge other than a finance charge that may be imposed as part of the plan. For example: "an annual charge of \$5.00 will be assessed to cover billing costs."
3. The fact that the creditor will acquire a security interest in the property purchased under the plan. For example: "secure your credit with a \$100 certificate of deposit." *Caution:* The phrase "the equity in your home becomes spendable with an XYZ line of credit" implies that the creditor will take a security interest in the consumer's home. This phrase triggers the mandatory disclosures.
4. The method of determining the balance on which a finance charge is imposed. For example: "interest will be charged on your average daily balance each month."
5. The periodic rate or annual percentage rate. For example: "less than 5 percent each month."

#### **Necessary Disclosures:**

1. Any minimum, fixed transaction or activity, or similar charge that could be imposed.
2. Any periodic rate that may be applied, expressed as an "annual percentage rate" (APR). Typically, the APR is found by multiplying the periodic rate by the number of periods in a year, but, in some instances (such as "discounted variable rate transactions") the calculation is more complex. If the plan provides for a variable period rate, that fact should be disclosed and special care should be taken in calculating the APR.
3. Any membership or participation fee that may be imposed.

### d. A Checklist for Closed-End Credit Advertisements

Examine the advertisement to see if closed-end consumer credit is being advertised. If it is, check to see if any of the following triggering terms are included in the language. If they are, you must make the necessary disclosures listed below. Here are some examples of terms that *do not trigger* any disclosures: "no down payment"; "pay only 5 percent per month"; "financing available"; "pay weekly."



**Triggering Terms:**

1. The amount or percentage of any downpayment. For example: "only 5 percent down"; "as low as \$100 down"; "total move-in costs of \$800." *Caution:* The phrase "80 percent financing available" implies that a 20 percent down payment is required. Therefore, this phrase triggers the mandatory disclosures.
2. The number of any payments. For example: "50 payments are all you make."
3. The amount of any payment. For example: "pay just \$25 a week"; "payable in installments of \$103"; "\$1,200 balance payable in ten equal installments."
4. The time period of repayment. For example: "seven years to pay"; "48-month payment terms"; "30-year mortgage"; "repayment in as many as 36 monthly installments."
5. The amount of any finance charge. For example: "\$200 financing"; "\$500 total cost of credit"; "\$2.00 monthly carrying charge"; "\$50,000 mortgages, two points to the borrower."

**Necessary Disclosures:**

1. The amount or percentage of down payment. The total down payment as a dollar amount must be stated, but use of the word "down payment" is not required.
2. "The terms of repayment." While the phrase "terms of repayment" generally has the same meaning as the "payment schedule," the advertiser has considerable discretion in the way this information is presented.
3. The annual percentage rate or "APR." The advertisement *must state* that the rate is subject to increase, if that is the case, but the ad need not describe the rate increase, its limits, or how it would affect the payment schedule.

**e. How Does Regulation M Apply to Consumer Leases?**

A consumer lease is for personal, family or household purposes, not for any business-related purposes. The lease must be for a period of more than four months. For instance, renting a car for a weekend is a rental agreement. Leasing a car for one year is a consumer lease. A consumer lease includes an agreement where a customer has an option to buy at the end of the lease. However, where the payments equal or exceed the value of the property at the end of the lease, and the customer does not have to make any further payments in order to own the property, it is not a consumer lease but a credit sale. Furthermore, a consumer lease does not include any agreement where the customer has to pay more than \$25,000.

**f. A Checklist for Consumer Lease Advertisements**

Examine the advertisement to determine whether a consumer lease is being advertised. If it is, check to see if any of the following triggering terms are included in the language. If they are, you must make the necessary disclosures listed below. The following examples *do not trigger* any disclosures: "low monthly payments"; "we lease to anyone"; "lease for less than it costs to buy." If an annual percentage rate is stated as such, it will not trigger any disclosures.

**Triggering Terms:**

1. The amount of any payment. For example: "pay a mere \$120 per month."
2. The number of payments required. For example: "low monthly payments on our year truck lease."

3. A statement that any or no down payment, or other payment, is required at the start of the lease. For example: "lease now and make no payments for one month."

**Necessary Disclosures:**

1. The transaction is a lease.
2. Amount of any payment required or that no payment is required at the start of the lease.
3. The number, amounts, due dates or payments under the lease.
4. Whether the consumer has option to buy, at what time and at what price.
5. Any liabilities consumers may be subject to by the lease.

**g. Are Certain Ads Prohibited?**

The Act prohibits "bait and switch" advertising of both consumer credit and consumer leases. This means that an advertiser cannot promote credit or lease terms that are not available. It may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. This prohibition is not intended to inhibit the promotion of new credit programs, or terms that will be offered for a limited period or that will become available at a future date.

**h. Are Broadcasters Liable for Violations of These Regulations?**

Generally they are not, but be careful! Although broadcasters are not subject to *civil* liability for advertisements not in compliance with the provisions of the Act, the FTC has authority under the Federal Trade Commission Act to take action against any medium which disseminates deceptive advertising. The FTC generally does not pursue the media but, instead, holds advertisers responsible for the content of their copy. Thus, deceptive advertising is controlled at its source.

Nonetheless, the Federal Communications Commission has stated in the past that licensees who broadcast advertisements deemed false, misleading, or deceptive by the FTC call into question their ability to operate in the public interest. Generally, broadcasters must act responsibly with regard to all material which is broadcast through their facilities. This includes taking all reasonable measures to eliminate any false, misleading or deceptive advertising.

For further information on Regulations Z and M, contact the FTC's Advertising Practices Division at 202-326-3175. In addition, the FTC has published a booklet entitled "How to Advertise Consumer Credit," which is available through the U.S. Government Printing Office, Washington, D.C. 20402.

## B

### B. DECEPTIVE ADVERTISING PRACTICES

In the 1980's, the FCC eliminated many of its policies and guidelines in the area of deceptive advertising practices. Included in these proceedings were the former policies concerning misuse of coverage maps, fraudulent billing, failure to perform sales contracts, network clipping, combination advertising rates, and joint sales practices. The FCC has stated that the majority of these problems may be handled more effectively through marketplace remedies. For a more detailed discussion of the regulations and policies eliminated, see Chapter II.

## 1. MISLEADING SALES PROMOTIONAL LITERATURE

While the FCC eliminated its former policies on licensee misuse of ratings information and signal coverage contour maps in its "underbrush proceedings" (see former FCC Rule 73.4035, and *Policy Statement and Order*, 94 F.C.C. 2d 619 (1983)), broadcasters should take steps to avoid costly legal actions or other problems concerning sales promotions. The FCC believes that various commercial entities involved in the purchasing of broadcast advertisements have remedies other than government regulation to prevent ratings distortion. Where fraud exists, the defrauded party may take legal recourse against the offending station. Additionally, competing stations' learning of a station's misuse of ratings data may counteract any impact of such claims by notifying the advertisers and advertising agencies that they dispute the claims being made.

Given these nonregulatory methods of dealing with ratings abuse problems, and due to the commercial nature of the conduct involved, the FCC has decided that *all complaints in this area should be directed to the Federal Trade Commission*. However, the FCC will continue to consider *at renewal time* FTC findings and orders concerning licensee abuse of ratings information. The FCC will also review complaints of such conduct if a court or other agency finds a violation.

The FTC's guidelines on use of ratings data advise against, for example, giving a misleading impression of survey results or making audience claims based on unreliable or obsolete surveys. For several years, the staff of the FTC took the position that a rather full statement of the possible errors and deficiencies in audience measurement data should be made by broadcast stations in their advertisements and sales brochures. More recently, however, the FTC staff has taken the position that a disclaimer will be adequate if it specifically mentions the name of the measurement service, states the exact date of the survey period, and incorporates by reference the various limitations and qualifications which are set forth in the audience measurement report itself.

In compliance with FTC policy, a disclaimer along the following lines might be used whenever you cite ratings data in the station's advertisements and sales literature:

[name of rating service and dates and time of survey cited]. Audience measurement data are estimates only and are subject to the qualifications set forth in the above report.

In addition, care should be taken to comply with restrictions on the use of ratings which are imposed by the rating services themselves. See following section on "Hypoing." Appendix L contains a statement from the FTC regarding deceptive claims of broadcast audience coverage, which sets forth guidelines to be followed in order to avoid such deception.

## 2. "HYPOING"

"Hypoing" is any irregular activity designed to distort survey results, e.g., conducting a special contest, or otherwise varying the usual programming, or instituting unusual advertising or other promotional efforts, designed to increase audiences only during the survey period.

The FCC has determined that continued oversight in this area "in the first instance," i.e., through FCC investigation and adjudication, is not warranted. See *Policy Statement and Order*, 94 F.C.C. 2d 619 (1983). However, these activities are regulated by the Federal Trade Commission. For FTC guidelines, see FTC Statement of July 8, 1965 Regarding Deceptive Claims of Broadcast Audience Coverage, Appendix L.

In determining whether a licensee is operating in the public interest, the FCC will take FTC findings or orders to cease and desist into consideration at renewal time. The FCC expects licensees to make a good faith effort to avoid all distortion or misuse of audience ratings. While all future complaints in this area will be directed to the FTC, the FCC will continue to consider the effect of adverse findings on the licensee's character qualifications.

# C

## C. TIME SELLING AND SCHEDULING POLICIES

### 1. REFUSING TO SELL ADVERTISING

The courts have held that broadcasting stations are not common carriers, and, accordingly, are not required to "permit broadcasting by whoever comes to [their] microphones." *McIntire v. Wm. Penn Broadcasting Co.*, 151 F.2d 597, 601 (3d Cir. 1945). Thus, a licensee generally may refuse to sell time for products or services it finds objectionable or for copy it deems in poor taste. Additionally, a licensee may refuse to do business with parties whose credit is bad or who otherwise don't measure up to reasonable business standards.

Until 1973, it was an open question as to whether stations could refuse to sell time for opinion or editorial advertising. That question was decided in the broadcaster's favor by the U.S. Supreme Court in *CBS v. Democratic National Committee*, 412 U.S. 94 (1973).

Care should be taken to note the exceptions to the general rule. First, it is obvious that stations cannot refuse to sell time to a political candidate in response to a valid Section 315 equal opportunities request. For information on equal opportunities and the "reasonable access" provisions applicable to federal candidates, see Chapter II. In addition, the antitrust laws make it illegal for a station to refuse advertising if the refusal is to monopolize trade or is part of a conspiracy to restrain trade. (Chapter XI contains a more detailed discussion of how the antitrust law affect broadcasters.)

### 2. TRADE AND BARTER ARRANGEMENTS

Under the traditional "time brokerage" agreement, a station sells a significant amount of broadcast time to an outside party who resells the time to others. However, in "barter" or "trade out" arrangements, in return for consideration of various types (cash, services, merchandise, air travel, hotel accommodations, equipment, program material, etc.), the broadcaster gives the other party to the contract the right to sell a certain number of spot announcements on the station, and often in any programming supplied.

In the past, problems have developed with some barter contracts that include a "valid until used" clause. Such contracts state that the spots will remain available until the barter company sees fit to use them. Disputes have arisen when the barter company attempts to use the spots after the initial contract period has expired. The barter companies have claimed that the "term of validity" clause gives a perpetual life to the right to use a spot. Broadcasters, on the other hand, have claimed that once the initial contract period has expired the right to use the spot also expires.

Unfortunately, the courts that have dealt with this issue have not adopted a consistent pattern in resolving these disputes. Some courts have decided the issue in favor of the barter company while other courts have ruled for the broadcaster. Typically, where courts have determined that the contract was unambiguous, they have upheld the indefiniteness of the validity clause. Where the clause



is held to be ambiguous, courts have limited the availability of spots to a reasonable time. Finally, where courts have found that the validity clause is ambiguous and that the availability of spots is not specifically limited in the contract, they have typically limited the period of availability to the duration of the contract.

Due to the uncertain nature of such "valid until used" clauses, broadcasters should contact an attorney both prior to entering a barter-company contract and as soon as any disputes on such a contract arise.

### 3. TIME BROKERAGE

Time brokerage is the sale by a licensee of discrete blocks of air time to a broker who supplies the programming and sells commercial spot announcements during the brokered time period.

Historically, time brokerage has been used to provide specialized programming, particularly foreign language programming. The FCC originally frowned upon the time brokerage concept, expressing concern that time brokerage would allow licensees to abdicate their responsibility to program in the public interest. Stations were required to file all time brokerage contracts with the FCC. In the 1970s the FCC relaxed its stance and required only that the contracts be kept on file at the station and made available for inspection by the FCC upon request. These time brokerage contracts need *not* be placed in the public inspection file.

In 1980, the FCC went further and decided to *encourage* time brokerage as a competitive mechanism enabling the market to respond to audiences otherwise denied specialized programming. The FCC hopes that the use of time brokerage will promote creation of new program services and will broaden employment and entrepreneurial opportunities for minority groups. In this regard, licensees who refer minority job applicants to their time broker may report such references to supplement documentation of their overall EEO efforts.

When negotiating a time brokering arrangement, it is essential, for the protection of the licensee, that certain elementary issues be addressed and included in the brokerage contract:

- Preservation of licensee control over *all* program and commercial content.
- Adherence of the time broker to FCC rules on truth in advertising, sponsorship identification and full disclosure regarding compensatory arrangements.
- Periodic affidavits by time brokers attesting to compliance with FCC rules and policies and station standards regarding program content and continuity acceptance.

Licensees remain ultimately responsible for the programming aired during brokered time, although individual brokers may also be held accountable for violations of the FCC's rules.

Finally, it should be noted that, in the political broadcast context, the FCC has stated that "time brokerage, by its very nature, can be considered a separate "class" subject to different lowest unit charge strictures." However, not all time-brokered programming can be considered a different class. For example, a broadcaster that carries a general audience format, but brokers time for another general format could not establish a different lowest unit charge for each of the two formats. On the other hand, if the broadcaster has a general format and brokers time for specialized minority or foreign language programming, he or she should be able to establish that the audience differences were such that having separate political rates would be reasonable. *Time Brokerage Agreements*, 82 FCC 2d 107 (1980). A broadcaster's good faith determination of a reasonable rate for the sale





of political advertising during brokered time will be honored by the FCC. Because rates charged by brokers may affect your lowest unit charge, it is important that licensees monitor the prices for political spots aired in the brokered portions of the broadcast day.

The side effects of using more time brokerage during your broadcast day could be positive or negative. However, they might just balance out. For example, while some brokerage operations might act to reduce your lowest unit charge for certain classes of time, it may be that you could obtain some EEO benefit from the hiring practices of the broker to which you have sold a block of time.

Time brokering arrangements can have an impact on a station's bottom line by opening up additional sources of revenue. Enhanced program diversity on the station and greater identification with community needs and interests might result by having non-station personnel produce such programs. On the other hand, time brokerage arrangements which are not conceived and executed with particular attention to the FCC's requirements regarding program content and licensee responsibility could have serious adverse consequences for the broadcaster.

## D

### D. CHILDREN'S TELEVISION ADVERTISING

#### 1. COMMERCIAL LIMITS

In its TV deregulation decision, the FCC eliminated commercial time guidelines for television advertising, but made no specific reference to the children's time guidelines of 9 1/2 minutes per hour on weekends and 12 minutes per hour on weekdays. In its Order on reconsideration of the TV deregulation decision, however, the FCC made clear its position that *all* commercial time guidelines had been eliminated in its Order, including those for children's TV advertising.

But in a court appeal by Action for Children's Television (ACT) challenging the deletion of the children's time standards, the Court of Appeals for the District of Columbia Circuit remanded this issue to the FCC for failing to provide sufficient justification for its decision to delete the time limits as they apply to children's television.

In response to that remand, on October 20, 1987, the FCC adopted a Notice seeking comments on what action, if any, it should take to limit the amount of advertising on children's television programs.

The FCC also has included in this inquiry an examination of the implications of children's programs involving toy-based program characters and of children's programs where the audience can use "interactive" toys, both of which ACT has claimed promote the toy products and thus are "commercials." This aspect of the inquiry relates to another court remand, discussed below, which addresses the sponsorship identification requirement in the context of children's television programs.

#### 2. SEPARATION OF PROGRAM AND COMMERCIAL MATTER

The FCC, in its 1974 *Children's Television Report and Policy Statement*, which stands as an expression of FCC policy with regard to children's television (see discussion under Children's Television Programming, Chapter II.C.), said television stations must take special measures to insure that an adequate separation is maintained between program content and commercial messages on children's programs. For example, one technique would be to broadcast an announcement to clarify when the program is being interrupted or is resuming after the commercial "break." Another would be to broadcast some form of visual segment before

and after each commercial interruption, which would contrast sufficiently with both the programming and advertising segments of the program to aid young children in understanding that the commercials are different from the program. These "separation" announcements are often referred to as "bumpers."

The related issue of whether children's programs featuring toy-based characters or "interactive" toys are, in part, "commercials" for those toys has been raised in the FCC's re-examination of commercialization policies for children's television (see 1. above).

### 3. HOST SELLING

The FCC's 1974 *Policy Statement* also adopted a policy of prohibiting television stations from allowing a program host or other personality to promote products in the children's program on which he appears. The FCC's policy is based on a number of factors including: 1) the assumption that host-selling serves to interweave rather than to separate commercials from programs, and 2) the view that it allows advertisers to take an unfair advantage of the trust children place in program hosts.

### 4. EXCESSIVE PROMOTION OF BRAND NAMES WITHIN CERTAIN CHILDREN'S PROGRAMS

Television stations were also advised in the FCC's 1974 *Policy Statement* to exercise special caution with respect to the explicit promotion of products or the prominent display of brand names during the entertainment portion of a children's program. In particular, if the products themselves or commercial brand names are featured prominently in the body of a children's program and are unrelated to any entertainment or like purpose, it is possible that some or all of the time devoted to the products or brand names may constitute advertising (requiring an appropriate sponsorship identification). While emphasizing that "not every use of a brand name or prominent display thereof necessarily constitutes advertising," the Commission offered the following example to illustrate its concern: a children's program set that features a large billboard announcing the "[Brand Name] Candy Corner" under which children are regularly given samples of the brand name candy as prizes.

In Section D 1. above it was noted that the FCC has included within its examination of commercialization policies for children's television the issue of whether programs featuring toy-based characters are, in part, "commercial matter." An issue to be decided is whether these programs "excessively promote" the brand name products on which the program characters are based (or vice versa).

A related issue raised by the Court of Appeals in remanding another case to the FCC is whether some of these toy-based programs which are offered to stations on a barter basis by their toy company-producer require a sponsorship identification under Section 317(a)(1) of the Communications Act. The question is whether sufficient consideration is given to the program producers by the stations for the toy-based program. The FCC, as ordered by the court, will be attempting to devise a workable and legally-supportable standard as to when barter arrangements are sufficiently balanced in benefits to both parties so as not to invoke the sponsorship identification requirements of Section 317(a)(1).

### 5. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING

The FCC's 1974 *Children's Policy Statement* specifically reminds licensees that they are expected to exercise special care in evaluating advertising in pro-

grams designed for children and to refrain from broadcasting any false, misleading or deceptive matter directed to children.



## E. LOTTERIES, CONTESTS, PROMOTIONS, AND GAMBLING—RELATED SPORTS

### 1. LOTTERIES

Broadcasters are approached by advertisers nearly every day with promotional schemes that appear harmless enough at first glance but may very well fit the general description of a lottery. The following section explains the laws and regulations that prohibit the promotion of lotteries and provides a description of the basic elements of a lottery so that broadcasters may easily identify suspect promotions.

In order to provide broadcasters with a more detailed discussion of lotteries (as well as the regulations affecting contests in general), the NAB has published a handy guide, *Lotteries and Contests: A Broadcaster's Handbook*, which includes several practical examples of potential lotteries. The *Handbook* may be purchased from NAB Station Services at (800) 368-5644.

#### a. The General Prohibition

A broadcaster is prohibited by federal law from broadcasting not only lottery promotions or advertisements, but also any information pertaining to a lottery. 18 U.S.C. 1304 (1982). The broadcast of information regarding lotteries also violates FCC regulations. (FCC Rule 73.1211.) The potential penalties imposed by the FCC for violating the federal lottery laws range from a fine to a short-term license renewal or even license revocation.

No matter how slight the reference to a lottery is in an advertisement, the broadcast of that advertisement is prohibited. If the event is in fact a lottery, a veiling or omission of the scheme's details in an advertisement renders it objectionable nonetheless. Furthermore, it does not matter who *sponsors* the lottery. The lottery prohibition includes those conducted by churches, schools, and other public service groups. Thus, a station should not broadcast *any* information which in any way advertises or promotes a lottery. The only exception, as noted below, is where all the proceeds go to a third-party charitable institution which does not serve, in any respect, as a co-promoter of the contest.

It should be noted that, regardless of the legality of a promotional plan under state law, if it is a lottery under federal law, the broadcast of any advertisement would be illegal. However, all state-operated lotteries have been specifically exempted, in most circumstances, from the broadcast lottery prohibition.

#### b. Licensee Responsibility

A broadcaster may face fines or renewal difficulties if the station broadcasts lotteries. Due to the fact that licensees are ultimately responsible for the materials that are broadcast over their stations, it is the licensee's duty to exercise reasonable diligence to insure that broadcast facilities are not used for the dissemination of lottery information or the promotion of lotteries. This means that a broadcaster must take reasonable steps to learn whether a promotion, in its actual operation, is being conducted as a lottery. A licensee cannot escape liability for violations of federal lottery laws by claiming that employees misunderstood station policy or that an advertiser or promoter deliberately chose not to conduct the promotion as originally advertised. Station policies prohibiting the broadcast of lottery information must be effectively enforced by the licensee.

### c. Elements of a Lottery

The traditional elements of a lottery are (1) prize, (2) chance, and (3) consideration. All three must be present to constitute a lottery. If any element is missing in a promotional plan, it is not a lottery under federal law.

#### 1. Prize

A prize is anything of value offered to the contestant. It is irrelevant what the prize is, how little its value may be, or if the prize is in the form of a price discount or refund. If there is no prize, there can be no lottery.

#### 2. Chance

The element of chance may appear in either of two forms. The more common form occurs in the situation where the winner is selected by chance (see the following discussion). Second, the element of chance is present when the value of the prize is not predetermined. However, both forms need not be present in the same promotion for chance to exist.

##### a. Winner Selected by Chance

The element of chance is present in contests or promotions in which the prize is awarded to a person whose selection depends in whole or in part upon chance rather than upon the contestant's skill or other factors within the contestant's control. Generally, if the winner of a contest is determined solely on the basis of the contestant's skill or other factors within the contestant's control, or the entrant is allowed to research the answer to a question, the element of chance will not be present.

For example, chance exists in promotions in which the winner is determined by drawing or wheel spinning; by being the fifth person to call the station; or by being at a given spot in a business establishment when a bell rings. Similarly, future predictions and any type of guessing contests involve chance.

Some promotions—which at first glance appear to be based on skill—have been determined by the FCC to be based on chance. A small segment of the population may have expertise in predicting the final scores of sporting contests, such as the Super Bowl, or guessing the number of votes a candidate will receive, but for the general public the element of chance is paramount.

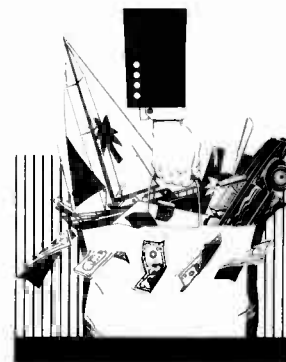
Most baby contests and beauty pageants have been held to involve the element of skill. However, it is important that the criteria upon which the judges base their decision be carefully delineated.

Finally, chance may be present in a contest which initially involved skill. This may occur when a contest operator fails to adopt, announce, or follow appropriate standards for judging the entries or selecting the winner, so that chance actually determines the outcome of a promotion. For example, if a "best slogan" contest is advertised, but the winner is actually selected by a drawing, the element of chance is present.

##### b. Value of Prize Determined by Chance

Even if the winner is not determined by chance, the element of chance will be present in promotions in which the amount of the prize is determined by chance. For example, everyone who purchases a certain product at a local supermarket is entitled to select a prize from a grab bag of prizes ranging in value from a few cents to several dollars. Since everyone is a winner, the winner is not determined by lot or chance, but the value of the prize is determined by chance. Thus, the promotion is a lottery. See *Public Clearing House v. Coyne*, 194 U.S. 497 (1904).

Currently there is no FCC ruling which authoritatively states that offering prizes of similar cash value (such as a grab bag containing spatulas, potato peelers and can openers) is sufficient to eliminate the element of chance or if it is necessary for all participants to be offered identical prizes (as would be the case if all pur-





chasers were to receive a red coffee mug). This is a gray area of the lottery law, and it would be wise for a broadcaster to consult his or her attorney should an issue of this type arise.

*c. Tie-Breaking Procedures*

A promotional plan that initially involves a participant's skill may succumb to the element of chance if tie-breaking procedures are conducted on a random basis. For example, if six contestants tie in a "best slogan" contest that was based on writing skill, but a name is drawn out of a hat to break the tie, the element of chance would arise. Thus, the tie-breaking procedure should involve a further test of skill if the element of chance is to be avoided. However, the fact that a tie-breaking procedure is based on skill will not "purify" a promotion in which the initial winners are based on chance. For example, if a contestant is chosen by a drawing but is then required to answer a history question based on skill before receiving a prize, the contest still would be a lottery.



### CHANCE CHECKLIST

The following examples generally constitute the element of chance:

- Guessing Contests
  - Guess the Number of Beans in a Jar
  - Guess the Score of a Sporting Event
  - Guess the Amount of Money Collected in a Charity Drive
  - Guess the Weight or Measure of an Object
- Wheel-spinning or Fishing for Prizes of Different Values
- Prize if Receipt has a Red Star
- Prize if Bell Rings When Customer Makes a Purchase
- Prize to Every Tenth Purchaser
- Breaking a Tie by Flipping a Coin or Drawing a Name

The following examples generally *do not* constitute the element of chance:

- Winner Selected on the Basis of the Contestant's Skill:
  - Best Slogan, Best Jingle, Best Name
  - Treasure Hunts Based on Deciphering Clues
  - Word Puzzles
  - Answer the Question and Win
  - Beauty Pageants
  - Dance Competitions
- Every Purchaser Receives an Identical Prize, Discount or Refund
- Prize or Discount with No Obligation to Make a Purchase
- Prize or Discount with Purchase if Customer Mentions that he or she heard an Advertisement
- Prize to the First 20 Purchasers (in theory, the contestant can "camp out" at a store to ensure being among the first twenty purchasers —as such, chance is absent).
- Breaking a Tie by an Additional Test of Skill



### 3. Consideration

Of the three elements necessary for a lottery, the element of consideration presents the greatest difficulties. Basically, consideration is any item of value—e.g., money, substantial time, or substantial energy—that a contestant must expend in order to participate in a promotional plan. The FCC has stated that consideration is present in any contest or promotion which requires a contestant to (1) “furnish any money or other thing of value,” (2) “have in [his or her] possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast” by a station, or (3) meet any other requirement which involves a substantial expenditure of time and effort by the contestant. (See FCC Rule 73.1211(b).)

#### a. *Payment Necessary to Participate—Substitution of “Reasonable Facsimile” for Proof of Purchase*

Determining whether or not money is paid to enter a promotion usually presents no problem. However, it is very important to note that in a contest or promotion in which a contestant must make a purchase in order to participate, the purchase price constitutes a payment of money and, therefore, consideration. The United States Supreme Court has ruled that the fact that a purchaser receives the full value for money paid in making a purchase in order to participate in a contest does not eliminate the presence of consideration. *Horner v. United States*, 147 U.S. 449 (1893).

The guideline that possession of a particular product constitutes consideration should be qualified to the extent that if the product is furnished to the contestant at no cost by the sponsor as part of the promotion, possession of the product will not constitute consideration. Additionally, the U.S. Postal Service, which also has the power to enforce certain federal lottery laws, has noted a general exception to this rule in contests which require evidence of purchase with each entry (e.g., submission of box top or label). If a participant may enter a contest by submitting a plain piece of paper which contains the name of the product or some other specified term, or if the entrant may submit a reasonable facsimile of the box top, label, entry blank, etc., consideration may not be present. Facsimiles must be simple to create, and the information to be included thereon must be supplied in the advertisements for the contest. A complete description of the rules of entry also should be included in the contest advertisements.

#### b. *Purchasers and Non-Purchasers on Equal Ground, Availability of Entry Blanks*

Entry slips may be distributed with purchases if the contest provides an alternate means for obtaining an entry blank so that a contestant may participate without making a purchase. The FCC has emphasized that the non-purchaser must not be disadvantaged in any way and that free entry must be available on a basis equal to that enjoyed by contestants who make a purchase. For example, placing entry slips that are freely available to non-purchasers in front of the counter places buyers and non-buyers on equal ground. This may not be the case, however, if entry blanks are placed behind the counter because this may discourage non-purchasers from entering the contest without making a purchase.<sup>20</sup>

#### c. *Expending a Substantial Amount of Time and Effort as Consideration*

Expending substantial time and effort in order to enter a contest is a form of consideration. For example, requiring that an entrant test drive a vehicle in order to enter a car dealer's promotion is consideration.

20. Concerning bottle cap contests (where the inside of bottle caps determine the winner) the FCC has said that the element of consideration is eliminated where a person may obtain, by mail or by visiting a bottling plant's facility six free bottle caps per letter or visit.

Broadcasters can rely on several definitive rulings when determining whether or not consideration is present. For example, the U.S. Supreme Court has ruled that simply listening to or viewing a program does not constitute consideration. *FCC v. American Broadcasting Co.*, 347 U.S. 284 (1954). Also, a federal court of appeals has ruled that the mere act of going to a store solely for the purpose of picking up a card in order to participate in a promotion does not constitute consideration. *Caples Co. v. United States*, 243 F.2d 232 (D.C. Cir. 1957). The U.S. Postal Service has stated that if a participant is required to visit the store to obtain an entry blank and also be present for a subsequent scheduled drawing, consideration would not be present. However, if the participant's presence is required to win, the time of the drawing must be pre-announced and the drawing held on time. If the drawing is delayed or held at an unannounced time, thus requiring the continuous presence of the contestant, a substantial expenditure of time and effort will occur, and consideration will be present. Furthermore, the fact that contestants are required to travel great distances in order to participate may amount to consideration in the form of substantial time and effort. For example, if entry blanks may be obtained at the local supermarket, no consideration is present. However, if contestants are required to attend a drawing in a remote, mountainous area, this would yield a different result.

*d. Eligibility Requirements*

Certain eligibility requirements, by their very nature, constitute consideration. For example, requiring a contestant to be a savings account holder in order to be eligible to participate in a bank promotion is a form of consideration. This is because the deposit of money into a savings institution for an indeterminate period of time is an item of sufficient value. However, other eligibility requirements, such as possession of a driver's license, residing in a particular area, attaining the age of 18, or calling from a telephone which has a certain exchange, do not present problems of consideration.

*e. Consideration Must Flow to the Promoter*

No lottery exists if there is no flow of consideration from the contestant to the contest promoter or co-promoters. This concept is best illustrated by two examples. First, suppose an automobile dealer, as part of a display at a county fair, conducts a drawing and awards the winner a new car. To enter, a person must visit the dealer's display at the fair and fill out a free entry blank. Everyone must purchase an admission ticket to enter the fair, but the automobile dealer will receive none of the revenues from the sale of admission tickets. This contest will not be considered a lottery because even though the contestants must pay to enter the fair, *the consideration does not flow* directly or indirectly to the automobile dealer, who is promoting the drawing.

In another example, suppose that a radio station has broadcast a contest in which the winner will be determined solely on the basis of a random drawing from golf scorecards mailed to the station. Although the contestants must pay a greens fee or country club membership in order to obtain a scorecard and play a round of golf, they paid no money (consideration) to the radio station in order to enter the contest. Thus, the promotion is not a lottery. Note that had the golf course co-sponsored the contest, consideration would flow from the contestants to a promoter, and a lottery would exist. See *Greater Indianapolis Broadcasting Co., Inc. (WXLW)*, 44 F.C.C. 2d 37 (1973).

Remember, if consideration does *not* flow to the promoter or co-promoter (note that participating sponsors are considered "co-promoters") of the promotion, then there is no prohibition against broadcasting it. For example, if a station sponsoring a raffle receives no consideration but rather donates all proceeds to charity, then under the FCC's ruling in *Greater Indianapolis Broadcasting*, there is no lottery. But *all* proceeds must go to the charity. If the promoter keeps a portion of the proceeds to defray costs, i.e., for printing, compensation, prizes, etc., the

FCC says that it is impermissible for broadcasters to conduct or air information about the raffle. Keep in mind also that the charity or third party to whom the consideration flows must *not* be a promoter or sponsor of the promotion or participate in its operation in any way. See *In Re Smith Broadcasting Co., Inc.*, 87 F.C.C. 2d 1132 (1981).<sup>21</sup>

In summary, a licensee should carefully study each promotion before hastily concluding that the *Greater Indianapolis Broadcasting* ruling applies. Remember, if a broadcaster or advertiser is one of numerous co-sponsors, and he or she is entitled to a share of the profits, the exceptions set forth in *Greater Indianapolis Broadcasting* will not apply. If there is doubt as to whether the *Greater Indianapolis Broadcasting* ruling applies to a particular fact situation, a broadcaster should seek advice of counsel.

### CONSIDERATION CHECKLIST

The following examples generally constitute consideration:

- Payment of Entry Fee
- Must Purchase Sponsor's Product
- Must Submit Box Top, Label, or Wrapper to Enter
- Admission Ticket as Entry Blank
- Cash Register Receipts as Entry Blank
- Entry Fee to Play Bingo
- Test Drive Required to Enter
- Prize, Discount, or Refund Awarded After Purchase
- Must Be a Savings Account Holder to Enter
- Must Show a Credit Balance at Contest Promoter's Store to Enter Contest
- Payment to Join a "Pyramid" Club
- "Las Vegas" Nights (real money is exchanged for "play" money that is used for gambling at games of chance; play money winnings are used for bidding in an auction of donated merchandise)
- Prize to Every Tenth Purchaser

The following examples generally *do not* constitute consideration:

- Must Be Present to Win (provided drawing time is known)
- Listening For One's Name to be Called Over the Air.
- Visiting Sponsor's Store to Obtain Free Entry Blank
- Cost of Postage Stamp to Mail Entry Blank
- Cost of Postcard Serving as Entry Blank
- Substitution of a "Reasonable Facsimile" for Box Top, Wrapper, or Label
- Eligibility Requirements:
  - Possession of Driver's License;
  - Possession of Social Security Card;
  - Must be a Particular Age to Enter
  - Possession of Credit Card (so long as no purchase necessary to obtain card and no fee charged by promoter for merely owning the card)
- Bingo Game Without Fee to Enter
- Prize or Discount With No Obligation to Make a Purchase
- Radio or Television Auctions to Raise Money

21. See also letter dated November 4, 1987, to NAB from Complaints and Investigations Branch, Enforcement Division, FCC. This letter provided the above reference clarification regarding promotions where all proceeds go to third party beneficiaries.

#### **d. Summary of Guidelines for Defining a Lottery**

Keeping the previous discussion in mind, it is apparent that determining what is or is not a lottery can be difficult. However, by carefully analyzing a particular promotion, step by step, most lottery problems readily can be resolved. Your analysis should identify all the details of the plan and then determine:

##### **1. Prize—**

Is there a prize? Is anything of value being offered to the contestant? If the answers are yes, then proceed to the next section;

##### **2. Chance—**

(a) Is the winner selected on the basis of chance rather than on the basis of skill or other factors within his or her control?

(b) Is the amount of the prize determined by chance? Does the contestant have the chance of winning any one of a number of prizes of differing values (as is the case with a “grab bag”)?

If the answer to (a) or (b) is yes, proceed to the next section.

##### **3. Consideration—**

Must the contestant expend money or a substantial amount of time or effort in order to qualify for the contest? Do the eligibility requirements for participation constitute consideration? Will consideration flow directly or indirectly to any of the promoters?

If it is determined that all three elements—prize, chance and consideration—are present in a promotional plan, then under no circumstances should the plan be given broadcast time. The only major exception is where the element of chance is resolved before there is any consideration. An example is where a potential customer enters a store, spins a wheel to determine the amount of discount he or she will receive and then is able to select merchandise for purchase. It would be a lottery, however, if there were any pressure placed on the person to buy some merchandise.

#### **e. Lottery Exceptions**

##### **1. State-Operated Lotteries**

A broadcaster may air advertisements, lists of prizes, and other information concerning a *state-conducted* lottery so long as two conditions are met: (1) the licensee must be located in a state which conducts such a lottery;<sup>22</sup> and (2) the lottery information broadcast concerns the lottery in the licensee's home state or in an adjacent state which also conducts such a lottery. 18 U.S.C. 1307 (1982). For example, a station in New York, which conducts a lawful state lottery, can broadcast advertisements concerning the New York state lottery as well as the state lotteries of New Jersey, Pennsylvania, Massachusetts, and Connecticut, since these states are adjacent to New York and also conduct state lotteries. However, if there were no New York state lottery, a New York station could not advertise these other state-conducted lotteries.

For the purposes of Section 1307, “state” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States. “State” does not include Indian reservations,

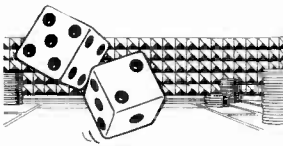
22. It is the licensed location of a station, rather than the actual location of a transmitter or studio, to which the exemption applies.



refrain from a news story announcing where tickets may be purchased or how the winning ticket will be drawn. However, a permissible news feature would include a human interest story about the winner or how the ticket sale proceeds will be distributed. Such information may be broadcast so long as it is not with the intent of advertising or directly promoting a lottery, or results therein.

The FCC has stated that the following types of information may be broadcast, provided that the broadcast is not intended to or does not result in advertising or directly promoting a lottery:

- Editorials concerning the policy issues involved in the enactment into law of a bill establishing a state-sponsored lottery when not used as a sham to avoid the prohibition on direct promotion of a lottery.
- News reports concerning the following:
  - How lottery proceeds will be used, unless the report is a sham to promote a lottery.
  - The relationship of a lottery to the support of education.
  - A legislator's proposals concerning lotteries.
  - Speeches by public officials, such as a statement before a Congressional Committee describing the operation of a state-sponsored lottery and stating that banks were rendering a public service in selling tickets.
  - Human interest stories about winners.
  - Illegal lotteries or other illegal gambling (not tending to aid or facilitate planning or operation) including exposure and descriptions of illegal lotteries, the attitude of law enforcement officials and effects of illegal gambling on society.
- Panel discussions on policy issues involved in the establishment of a state-sponsored lottery with participation by proponents and opponents of the lottery and questions and comments from a studio audience.
- Documentary programs including statements by public officials and citizens favoring or opposing a lottery, description of that lottery, use of the proceeds, and results of opinion polls on the lottery.
- Bona fide interviews with winners, consisting of topics of general interest, such as the number of tickets they purchased, their expectations of winning a prize, their reactions upon learning that they held winning tickets, and what they did or intend to do with prize money. Note that broadcast of such interviews would be improper if, instead of being a part of a licensee's good faith judgment that the information serves the interests of his or her area, it becomes clear by their repetition that the interviews are shams intended as promotional features.
- Editorial advertising by groups which wish to make their views known in areas where the establishment of a lottery is an issue of public importance and concern.



## 2. ADVERTISING CASINOS

The federal requirement that broadcast licensees shall not promote lotteries or information pertaining to lotteries applies as well to advertisements by or on behalf of gambling casinos. It is the opinion of the FCC staff that, under these federal restrictions, any video depiction of or audio reference to gambling activities that take place in a casino are unacceptable in broadcast commercials for hotels with casinos, even though the operation of casinos may be legal under state law.

The FCC staff's interpretation similarly would apply to broadcast commercials for airlines, travel agents, governmental tourism bureaus, etc., depicting specifically identified casino gambling activities or reference to such activities, no matter how brief or fleeting the depiction or reference.



which often run games of chance (such as bingo, blackjack, etc.) the advertising of which is prohibited under the federal lottery laws. Thus, a station which operates in a state that conducts a lottery and borders either Canada or Mexico cannot broadcast information relating to lotteries in those countries. "Lottery", under this section, means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds, in whole or in part, to one or more chance takers or ticket purchasers. This definition does not include the placing or accepting of bets or wagers on sporting events or contests.

## **2. Fishing Contests**

Certain fishing contests have been specifically exempted from the federal prohibitions on broadcasting lotteries. 18 U.S.C. 1305 (1982). However, this exemption only applies where "the fishing contest is a self-liquidating type of undertaking, whose receipts are fully consumed in defraying the actual costs of operation and are not intended or used for any other collateral purpose such as establishment of a fund for civic, philanthropic, or charitable objects, no matter how benevolent or worthy." Any fishing contest conducted for the profit or personal gain of any individual or organization is not exempt from the federal law prohibiting the broadcast of lottery information.

## **3. Horse Racing, Dog Racing, and Jai Alai**

The bettor's handicapping skill and knowledge in placing a wager have been construed as eliminating the element of chance in horse racing, dog racing, and jai alai. Therefore, such competitions may be broadcast and legally advertised without running afoul of the lottery laws. However, prior to September 24, 1984, the broadcasting of horse races, horse race betting advertisements and other horse race information were strictly regulated by the FCC. The primary concern of the Commission was that these broadcasts might directly aid or encourage illegal gambling activities.

In a *Report and Order* effective September 24, 1984,<sup>23</sup> the Commission eliminated all FCC regulations directed at horse race related broadcasts and betting advertisements. The Commission cited the infringement such regulations imposed upon broadcaster's editorial discretion as one reason for their elimination. The other compelling reason was the Department of Justice's opinion that federal statutes proscribing illegal gambling activities were sufficient to regulate such broadcast-related activity. Therefore, the commission will now look to the Department of Justice to enforce these statutes which provide authority to prosecute any person who uses broadcasting to conduct or assist in the conduct of an illegal gambling operation.

Broadcasts involving other sports that have been the focus of gambling activity—such as dog racing and jai alai—are also free from FCC regulation. However, as with horse racing broadcasts, they will be closely scrutinized by the Department of Justice for violations of the above-mentioned federal statutes after elimination of FCC regulations.

## **f. Lotteries as Editorial and News Topics**

The FCC is willing to permit full discussion of the policy issues concerning lotteries in general, establishment of a state-operated lottery, or public debate about proposed lottery legislation. However, the type of information which may be broadcast once a lottery is in operation, or has been established, is severely restricted (except for an existing state-operated lottery). For example, when dealing with an existing lottery, in contrast to a proposed lottery, a broadcaster should

23. *Report and Order* in MM Docket 83-842, 56 R.R. 2d 976 (1984).

The advertising of hotels with casinos may focus upon non-gambling activities and facilities available at the hotel. These could include, for example, restaurants, floor shows, lounges, shops, sports facilities, types of room accommodations, etc.

If the word "casino" is part of the actual name of the hotel, it may be included in broadcast advertising when the full name of the hotel is stated or shown; for example, "Rex's Hotel & Casino".

### 3. CONTESTS AND PROMOTIONS

Whereas lotteries, by their very nature, are illegal to broadcast, simple contests may be broadcast, so long as they are not deceptive. The difference between a lottery and a contest lies in the fact that a lottery contains prize, chance, and consideration, but a contest may contain only one or two of these elements.

Once a broadcaster determines that a promotion does not constitute a lottery, the following guidelines on the broadcast of contests should be followed.

#### a. Licensee Responsibility

The broadcast of contest information can subject a licensee to stiff penalties if such a contest is deceptively conducted. The FCC has shown a strong interest in the manner in which contests and promotions are conducted by broadcast stations. FCC Rule 73.1216 states that:

A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.

Under this rule, a contest includes any arrangement in which a prize is offered for award to the public. A prize can be anything of value: cash, refunds, negotiable instruments, securities, merchandise, services, tickets, trips, recording contracts, personal appearances, etc. Typically, the means of selecting a winner involve ability, skill, knowledge, chance, or similar factors or a combination of such factors. The rule applies to all contests (1) conducted by the licensee and (2) broadcast to the public.

Licensee-conducted contests not advertised to the public are outside the scope of the rule. For example, the rule does not apply to sales contests among station employees because such contests are a private matter between the licensee and its employees.

Broadcast stations that advertise contests for businesses, non-profit groups and others often have no involvement in the actual conduct of the contests. However, even where a licensee's only connection with a contest is to advertise for another, its responsibility is only the same as that for commercial announcements in general. (The higher standards for licensee-conducted contests do not apply.) A licensee should take all reasonable steps necessary to ensure that the content of advertisements aired over its facilities are not false, misleading or deceptive.

#### 1. Definition of Material Terms of a Contest

Under FCC Rule 73.1216, the "material terms" of a licensee-conducted contest are those factors which are significant in defining the operation of the contest. They are the factors which affect the potential contestant's decision whether to participate in the contest and tell him or her how to enter and win. While the

material terms depend on the nature of the contest, in general they will include information about:



- how to enter or participate;
- eligibility restrictions;
- entry deadline dates;
- whether prizes can be won;
- when prizes can be won;
- the extent, nature and value of prizes;
- time and means of selecting winners; and,
- tie-breaking procedures. (FCC Rule 73.1216(b).)

## **2. Method of Disclosing Material Contest Terms**

Material terms should be disclosed by announcements broadcast on the station conducting the contest. They should be stated whenever the station purports to set out the conditions or terms of the contest (whether on the air or in other media), but need not be given in full with brief promotional announcements that do not purport to set out the conditions or terms of the contest.

It is the obligation of the licensee to make certain, from the beginning, that a contest does not mislead the audience. Thus, no contest description should be false, misleading or deceptive with respect to any material term. The information given should be clear and understandable. Video announcements should be: (1) in letters of sufficient size to be readily legible to an average viewer; (2) shown against a background which does not reduce their legibility; and (3) on the screen long enough to be read in full by the average viewer. Similarly, audio announcements should be understandable to the average listener. In addition, the nature of the station's audience should be taken into account. Licensees should, therefore, carefully review promotional material before its use to assure themselves that the material will be understood—and not misconstrued—by the station's audience.

The FCC has consistently imposed heavy fines, issued short-term renewals, and even revoked station licenses where it found that rigged, deceptive, or misleading contests were conducted. In connection with such contests, the FCC has pointed out that a licensee's lack of knowledge of an improperly run contest is no excuse, because licensees are responsible for the acts of their employees and for all material broadcast over their stations. Furthermore, prearranging or predetermining the outcome of a supposedly fair contest with the intent to deceive the public is subject to criminal penalty under Section 509 of the Communications Act. Also, under Sections 312 and 503 of the Act, such conduct may be grounds for a fine or revocation of license.

### **b. Problem Contests**

Problem contests fall into three main categories:

- misleading contests;
- contests adversely affecting the public interest; and,
- rigged contests.

#### **1. Misleading Contests**

A misleading contest is one in which the station misrepresents the terms of the contest or overstates the amount that can be won. The FCC's main concern is that the licensee fully and accurately disclose the material terms of the contest

and conduct the contest substantially as announced. Along these lines, the FCC has imposed sanctions against stations in the past for failing to accurately disclose the full extent of the prize to be awarded. For example, where a station merely announced that the prize consisted of four-day vacations to various resorts, without disclosing that round-trip transportation was not included, the FCC imposed a sanction against the licensee based on the opinion that the average listener would expect such transportation to be an integral part of the prize. According to the FCC, the failure to disclose that the winner would be responsible for the transportation costs was misleading.

The FCC has listed a number of misleading practices relating to licensee-conducted contests which would raise serious questions concerning licensee responsibility. Such practices include:

- disseminating false or misleading information regarding the amount or nature of prizes;
- failing to control the contest to assure a fair opportunity for contestants to win the announced prize;
- urging participation in a contest, or urging persons to stay tuned to the station in order to win, at times when it is not possible to win prizes;
- failing to award prizes, or failing to award them within a reasonable time;
- failing to set forth fully and accurately the rules and conditions for contests on a continuing basis;
- changing the rules or conditions of a contest without advising the public or without doing so promptly;
- using arbitrary or inconsistently applied standards in judging entries;
- providing secret assistance to contestants or predetermination of winners;
- stating that winners are chosen solely by chance, when in fact chance played little or no part;
- broadcasting false clues in connection with a contest; and,
- conducting contests without adequate supervision.

## **2. Contests Adversely Affecting the Public Interest**

On January 18, 1985, the FCC eliminated its specific prohibition against the broadcast of contests that adversely affect the public interest. Prior to this time, the FCC had listed several examples of contests that would be looked upon with disfavor. That list included:

- a contest which required participants to travel to a specified place in a very short time, causing traffic violations and endangering lives;
- a contest which led listeners to choose names at random from the telephone directory and to call the persons listed at all hours of the day and night, causing great annoyance and effectively blocking the use of their telephones for normal purposes;
- the broadcast of "scare announcements" or headlines which either were untrue or were worded in such a way as to mislead or frighten the public; and
- contests which cause the accumulation of hazardous material in locations, so as to block the access to nearby commercial establishments.

Even though the FCC eliminated its *specific* prohibition against these types of contests, it did so with the understanding that such practices will still be regulated



under more general public interest policies. In addition, the FCC noted the existence of alternative remedies for such actions, including civil legal suits for trespass, personal injury, invasion of privacy, and possible criminal proceedings. Thus, despite FCC "deregulation" in this area, it is recommended that licensees who might be tempted to engage in any of the above activities continue to avoid them.

### **3. Rigged Contests**

It is unlawful for a station to broadcast contest information where the outcome of the contest has been predetermined. The broadcast of rigged contests is a violation of Section 509 of the Communications Act, which makes it unlawful for any person with the intent to deceive the listening public to:

- supply to any contestant in a purportedly bona fide contest of intellectual skill any special or secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined;
- by means of persuasion, bribery, intimidation, or otherwise, to induce or cause any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill to refrain in any manner from using such knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined; or
- engage in any artifice or scheme if the purpose of the scheme is to predetermine or prearrange in whole or part the outcome of a purportedly bona fide contest of intellectual knowledge, a purportedly bona fide contest of intellectual skill, or a purportedly bona fide contest of chance.

### **c. Suggested Safeguards**

#### **1. Content of Broadcast Copy**

The FCC has made a number of suggestions pertaining to the proper content of broadcast copy dealing with contests. Such copy should include:

- Complete information on how the public may obtain the rules.
- The beginning and termination dates of the contest.
- How to enter.
- The amount or nature of the prize; if the original prize becomes unavailable, the licensee should try to secure an equivalent prize, and if an equivalent prize cannot be secured, substitute a prize of comparable value. Also, a prize "vacation" in France which does not include air fare and lodging would be misleading.
- If a contest involves the elements of prize and chance, there should be a statement that no purchase is necessary. Care should be taken to avoid overstating a participant's chances of winning.
- Try not to make any changes in the rules or operation of the contest after the contest is underway. If a change of rules is necessary due to circumstances beyond the station's control, the change should be announced at the earliest possible opportunity and the impact of the change should be minimized in order to reduce the possibility of unfairly disadvantaging some contestants.

#### **2. Contest Files**

Because the FCC regularly receives complaints from disgruntled contestants concerning the manner in which contests are conducted, stations may wish to maintain appropriate written records. The following guidelines represent some recommended procedures:



- Each contest or promotion broadcast by the station should have its own file.
- The rules and eligibility requirements should be included in the file.
- Each prize awarded should be recorded in the file. A “receipt-release” form should be signed by the winner at the time the prize is awarded and the release placed in the folder. When awarding prizes worth \$600 or more in a station-sponsored contest, be sure to obtain the winner’s social security number in order to comply with Internal Revenue Service regulations. (See below for additional details on IRS requirements.)
- File any letters of complaint.
- The file should contain copies of all broadcast material pertaining to the promotion.
- Place in the file copies of any layouts, ads, billboards, or other media advertising used to promote the contest.
- The file should contain a notation verifying the days and times on which the rules and regulations were broadcast. A safe rule of thumb is to broadcast a comprehensive rules announcement at least once during each daypart of each day of the contest.
- If the station so desires and the winner is amenable, place in the file an agreement signed by the winner which would permit the station to use the winner’s name.

#### **d. Tax Consequences of Broadcasting Contests**

Whenever a licensee broadcasts a station-run contest in which a prize worth \$600 or more is awarded, the station must file a 1099 MISC federal tax form. In addition, a 1099 MISC form is required for every person who wins *an aggregate* of \$600 or more in station-conducted contests during any year. For example, a 1099 MISC must be filed for a person who wins a \$600 prize and for one who wins two \$300 prizes. Broadcasters must also file a 1096 MISC form, which is a transmittal form containing an itemization of all 1099s. The broadcaster who files 1099 MISC and 1096 MISC tax forms incurs no tax liability, and is simply complying with a law which requires the licensee who conducts a station-run promotion to inform the IRS as to the identity of a contestant who has won a taxable prize. It is important to stress that the broadcaster’s duty to file a 1099 MISC form attaches only to station-sponsored contests, and not to promotions in which the licensee airs a paid advertisement for a non-station affiliated contest promoter. If the broadcaster is required to file a 1099 MISC form, the contestant’s social security number should be obtained prior to awarding the prize, since it is necessary to report the winner’s social security number on the tax form.

A broadcaster may deduct from taxable income the amount of money spent in conducting a station-sponsored contest, such as the money spent to purchase prizes. Internal Revenue Code § 162. So long as such expenses are “ordinary” and “necessary” costs incurred in the course of business, the IRS fixes no dollar limit on deductibility.

#### **e. Sponsorship Identification Requirements**

Most questions concerning sponsorship identification involve the mention or identification of prizes offered in station contests and promotions. Very often, prizes are furnished by local merchants without charge to the station. Whether mention or identification of prizes furnished by local merchants must include appropriate sponsorship identification depends on how the prize is mentioned or

described. If the mention or description goes beyond an identification which is "reasonably related" to use of the item as a prize, an appropriate sponsorship identification must be broadcast (e.g., "prizes furnished by Joe's Appliance Store in return for promotional consideration").

The following examples are illustrative of the situations which arise concerning sponsorship identification:

- A refrigerator is furnished by X for use as a prize on a give-away show, with the understanding that a brand identification will be made at the time of the award. In the presentation, the master of ceremonies briefly mentions the brand name of the refrigerator, its cubic content, and other features describing the prize. No sponsorship identification announcement must be made because the reference to the refrigerator is reasonably related to the use of the refrigerator on a give-away show in which the cost or special nature of the prize is an important feature of this type of program.
- In addition to the identification given in the previous example, the master of ceremonies says: "All you folks sitting there at home should have one of these refrigerators in your kitchen," or "Friends, you ought to go out and get one of these refrigerators." An appropriate sponsorship identification must be broadcast.

Of course, if the station purchases prizes (without any special discounts), the sponsorship identification requirements would not apply. Refer to Chapter I, for a more detailed discussion of the sponsorship identification rule.

## F

### F. PAYOLA AND CONFLICTS OF INTEREST

#### 1. PAYOLA, PLUGOLA, AND CONFLICTS OF INTEREST

##### Payola

It is incumbent upon all licensees to exercise diligence in preventing payola at their stations—a potential for payola exists at every station. Sections 317 and 508 of the Communications Act define "payola" as accepting, paying or agreeing to accept or pay any money, services, or other valuable consideration for the inclusion of any matter in a broadcast without disclosure of the fact before the broadcast to the program producer or the broadcaster. This practice takes many forms, ranging from accepting cash from a distributor or independent promoter of phonograph records for playing certain records on a program to accepting free meals from a restaurant in return for on-the-air use or mention of a product, service or person. Each violation is subject to a fine of not more than \$10,000 or imprisonment of not more than one year, or both.

##### Plugola

The FCC has defined plugola as the promotion or "plugging" on the air of goods or services in which someone responsible for including the promotional material in the broadcast, such as the program director, performer, or even the licensee itself, has a financial interest. Unlike payola, plugola involves an indirect benefit flowing to persons responsible for program selection and is permissible as long as (1) management is aware of the interest; and (2) the performer involved discloses his or her interest, if any. Proper sponsorship identification also is required.

The FCC believes the public is entitled to know of any private financial interests which may have influenced the use or promotion of a product or service. A

broadcaster has a responsibility to reveal to the broadcast audience the extent and nature of its private interest in the goods or services mentioned.

The FCC also expects broadcasters to exercise "reasonable diligence" in learning about the existence of plugola among its employees. However, the FCC refused to go so far as to require licensees to be the "guarantor of disclosure" of every instance of conflict of interest affecting program content.

The Commission has exempted commercials and feature films from its plugola policies. However, for all other programs, including public affairs and news, broadcasters should take special care when plugola might be involved.

Concluding that it will be difficult to devise a rule that covers the important elements of plugola without either going too far in regulating broadcasters or leaving large loopholes, the FCC has stated that it will review future plugola violations on a case-by-case basis. Remember, the FCC's plugola policies stem from two basic notions: (1) that management be made aware of any plugging of goods or services for which there is a financial interest held by the licensee, an announcer or performer, and (2) that the public be made aware of the interests.

### **Suggested Preventive Measures**

To aid you in identifying potential problems in the area of payola, we have listed, in Appendix M, common practices which fall under the scope of payola prohibitions. Appendix N contains suggested guidelines for use in your dealings with record companies and record promoters. Appendix O is a memorandum which may be circulated to secure information from pertinent employees concerning their outside business interests and activities. Many licensees require that an affidavit of the type included in Appendix P be executed at least once a year. Keep in mind that the periodic execution of affidavits may not be enough —the FCC has said the licensee of a station that plays records which are heavily promoted must be extremely sensitive to the risks of improper influence and, accordingly, may not rely solely on the periodic execution of affidavits. However, an affidavit is a handy tool for making sure that employees have read the applicable laws and regulations and have agreed to abide by them. Subject to advice of counsel, stations not now doing so may wish to adopt this or a similar form of affidavit. (Appendices Q and R set forth Sections 317 and 508 of the Communications Act, Appendix C contains the FCC's Sponsorship Identification Rule and an FCC Public Notice on the Applicability of Sponsorship Identification Rules. These appendices should also be studied carefully.)

As with virtually every area of regulation, the station licensee will be held responsible for the conduct or misconduct of its employees. Prudence thus suggests the desirability of establishing and enforcing a comprehensive procedure for guarding against payola at all staff levels. By the same token, however, it must be remembered that overzealous surveillance (e.g., a wiretap of an employee's telephone) can result in criminal and other liability for the employer. In short, payola is an area where a licensee's preventive program must be vigorous and carefully devised.

### **Recognizing Payola: A Short Quiz**

The following questions and answers should serve to suggest guidelines to be followed by all those concerned with the selection and presentation of music and other program matter.

**Question:** If a record company flies a program director and his wife to another city to see its artist in concert, is that considered payola?

**Answer:** "Probably yes." A trip to Las Vegas to see the opening of a particular artist's show in exchange for playing that artist's record or some other improper promotional activity without the licensee's knowledge constitutes payola to the FCC. The same would be true if a record company flies a program director, announcer or music director to another city to see a sporting event or to purchase a new wardrobe.

**Question:** Can a program director accept gifts from record companies for Christmas and if so, is there a value limit on them?

**Answer:** As a general matter, a program director can accept a gift at Christmas time. There is a concern that the more expensive the gift, the greater the inducement to "return the favor" to the record company so that the record company, rather than the program director, becomes the benefactor. In other words, a Christmas gift should be a reasonably priced, as opposed to a luxury, item. Thus, a gift in the \$25 range might be appropriate while one of \$200 could raise questions. However, any gift received by any disc jockey, program director and/or music director should be reported to the station's management.

**Question:** If a radio station should employ a person who owns a record store or an interest in a record store, and this person is on the air, is this illegal?

**Answer:** Each broadcast station should have an affirmative action plan with respect to a playlist and how the playlist is derived. So long as the individual having an interest in a record store has no influence over and does not participate in the selection of the music to be played over the air, there is no question or aura of payola. On the other hand, if the person owning the record store does participate in the selection of music to be played over the station, a strong presumption arises that this individual's objectivity and impartiality may be suspect.

**Question:** Is it permissible for music directors, program directors and disc jockeys to have promotion people buy them lunch or dinner?

**Answer:** A business and/or luncheon meeting is certainly permissible. In today's business world, business luncheons and dinners are commonplace and there is no reason why radio station personnel should be singled out and chastised for such a business practice. This means that a record promotion person is certainly free to invite a disc jockey, music director and/or program director to lunch or dinner without fear of a payola smear. The same is true if the invitation also extends to the spouse of the disc jockey, program director and/or music director. On the other hand, a quick flight to L.A., Chicago, Las Vegas, etc., for a "unique night on the town" is beyond the realm of reasonableness and would, if done in exchange for airplay or other promotion benefit without the licensee's knowledge, constitute payola. Once the luncheon and/or dinner leaves the realm of reasonableness and becomes extraordinary, the payola presumption arises.

**Question:** Are program directors and/or music directors permitted to attend record company seminars and/or meetings?

**Answer:** So long as there is a legitimate business purpose to such a meeting, it is permissible for a program director and/or consultant to attend the meeting. On the other hand, if the purpose of the meeting is simply to frolic in the sun and surf, then the payola cloud hangs overhead. Before any music director and/or program director consents to attend such a record company seminar, he or she should request a written statement from the record company spelling out the busi-

ness purpose of the invitation and the participation in discussions, panels, etc., expected from the invitee. The station music director and/or program director should then respond to the letter confirming the business purpose and the fact that the invitee will in fact be participating in a meaningful business meeting.

## 2. PROMOTION OF NON-BROADCAST ACTIVITIES

While the discussion in the preceding sections has focused on practices affecting competition among broadcast stations, antitrust problems may also arise from a broadcaster's relationship with his or her other non-broadcast business interests. Note that the FCC has eliminated its formal policies concerning promotion of the non-broadcast businesses of a station owner and use of a station for personal advantage in other business activities. However, the Commission may consider adjudicated violations of the antitrust laws as bearings on a licensee's character. There is nothing necessarily illegal or improper about a station licensee or its employees engaging in non-broadcast activities. However, at the same time, broadcast facilities may not be employed as anti-competitive trade weapons against non-broadcast competitors.

One problem area in this regard is the advertisement and promotion of a local business concern which is owned by the broadcast licensee in a manner detrimental to its non-broadcast competitors. Another area of concern arises from what is known as "reciprocal dealing". One type of "reciprocal dealing" situation occurs where a station licensee induces customers to patronize his non-broadcast businesses by offering special discounts for advertisements carried over the broadcast facilities. A licensee should consult its attorney regarding the circumstances in which these practices might violate state or federal law.





## Other Operating Policies and Practices

### A. DEVELOPING A RECORD RETENTION SYSTEM AND MAINTAINING THE LOCAL PUBLIC INSPECTION FILE



#### 1. General Guidelines

Few small businesses are as swamped by record retention requirements as the average broadcast station. Broadcasters must comply with a string of FCC reporting and recordkeeping requirements, including mandates to make many of their records public. Most broadcasters are well aware of the need to keep complete and accurate records, especially about matters which might raise a question at license renewal time. Making sure that all record retention requirements have been met, however, is often a difficult and confusing task.

In order to develop a plan for record retention, the following questions should be considered:

- Does a federal, state or local law or regulation require you to keep the record and, if so, for how long?;
- Do you need the document to preserve your legal rights and, if so, how long?;
- If the recording is not necessary to comply with a law or preserve legal rights, how long will the record be useful in your operation?

When answering the first question, a determination needs to be made as to what the regulation or law requires. Included in the revised 1988 version of the NAB publication, *Record Retention Guide for Radio and Television*, is a sample list of records which are required by the FCC, the Internal Revenue Service, the

## Other Operating Policies and Practices

### A. DEVELOPING A RECORD RETENTION SYSTEM AND MAINTAINING THE LOCAL PUBLIC INSPECTION FILE



#### 1. General Guidelines

Few small businesses are as swamped by record retention requirements as the average broadcast station. Broadcasters must comply with a string of FCC reporting and recordkeeping requirements, including mandates to make many of their records public. Most broadcasters are well aware of the need to keep complete and accurate records, especially about matters which might raise a question at license renewal time. Making sure that all record retention requirements have been met, however, is often a difficult and confusing task.

In order to develop a plan for record retention, the following questions should be considered:

- Does a federal, state or local law or regulation require you to keep the record and, if so, for how long?;
- Do you need the document to preserve your legal rights and, if so, how long?;
- If the recording is not necessary to comply with a law or preserve legal rights, how long will the record be useful in your operation?

When answering the first question, a determination needs to be made as to what the regulation or law requires. Included in the revised 1988 version of the NAB publication, *Record Retention Guide for Radio and Television*, is a sample list of records which are required by the FCC, the Internal Revenue Service, the

Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and other governmental agencies.

When answering the second question, consider the legal right which the record documents or protects. Unless the legal right represented is a "perpetual" one—such as a basic corporate document or a deed to real estate—find out how long the record will be useful in order to preserve your rights.

State statutes have varying limitation periods, depending on the nature of the action. A statute of limitations specifies the period during which a legal action can be brought to enforce a legal right or obligation. After the period expires, no action can be brought to enforce a right or seek damages, regardless of the merits of the claim. However, statutes of limitations usually contain exceptions which extend the period for filing a claim if the existence of the claim was fraudulently concealed.

In many cases the decision to destroy a particular set of records involves a calculated risk. Prudent decisions will have to be made about which records to keep and which to discard. Often these decisions can be made on the basis of (1) the absence of any specific requirement that the document be retained, (2) the likelihood that a question would ever arise, (3) the potential for loss if a claim is made and the document is unavailable, or (4) the availability of the same information in other places.

Employees who maintain the files should be able to determine readily from the schedule which records should be kept and which should be discarded. In larger organizations, it may be efficient to have lower-level clerical employees make this determination, subject to review by their supervisors.

## **2. THE IMPORTANCE OF PROPERLY MAINTAINING A LOCAL PUBLIC INSPECTION FILE**

The FCC requires that certain records be maintained in a local file and be made available to public inspection during regular business hours at either "the main studio of the station, where such studio is located in the community to which the station is licensed, or any accessible place" in the community of license (such as an attorney's office). (FCC Rule 73.3526(d).) This rule is currently subject to a stay and a reconsideration process, insofar as it would require certain stations whose main studios are located outside their communities of license to maintain public files in those communities.

The records that must be made available to the public and the period of time such records must be retained are set forth below. Each station should periodically review its local public inspection file to ensure that all of the required documents are included.

Broadcasters should be aware that recent deregulatory changes have not de-emphasized the importance of the public file. Indeed, in the "radio deregulation" decision, the FCC reiterated the importance of the public inspection file and stressed that "continued reliance on the public file as an index to the general programming responsibilities of licensees does not constitute a significant departure from our present system." The same FCC position has been taken with regard to the local public inspection file requirement for television stations.

In the so-called "postcard renewal" decision, the FCC once again focused attention upon broadcasters' public file obligations. Broadcasters applying for license renewal must certify that their public inspection files are complete and up-to-date, and that required documents have been placed in the file in a timely fashion. In the event of an assignment or transfer of either a license or construction permit, the seller of the station has the responsibility for maintaining the local file until the FCC approves the assignment and the assignment is consummated. When this occurs, the new owner then has the responsibility for main-

taining the local file and must see that all documents required to be maintained before, as well as after, the assignment are in the file. (FCC Rule 73.3526(b).)

Station managers should instruct all staff members who maintain the file that members of the public have an absolute right to inspect the file during normal business hours; that is, if your business office is open from 9:00 a.m. to 5:00 p.m., your public inspection file is "open" as well. During those hours you may require personal identification (names and addresses) of those wanting to inspect the public file, but you may not require them to tell you whether they are affiliated with any organization. You also may not require members of the public to specify the particular documents they wish to inspect. Included in Appendix S is a memorandum suggested for distribution to your station's staff concerning the local public inspection file, as well as a recommended form that you might ask be filled out by persons who want to inspect or reproduce all or a portion of the file.

Stations are required to make copies of materials in the local public file for parties willing to pay the "reasonable costs" of reproduction. FCC Rule 73.3526(f) provides that "[r]equests for machine copies shall be fulfilled at a location specified by the applicant, permittee or licensee, within a reasonable period of time which, in no event, shall be longer than seven days, unless reproduction facilities are unavailable in the applicant's, permittee's or licensee's city of license." Stations have the choice of reproducing the materials themselves or sending them to an independent contractor. Stations must honor all requests made in person. Requests made by mail need not be honored, although a station may do so if it chooses.

### **3. CONTENT OF PUBLIC FILE AND SPECIFIC RETENTION REQUIREMENTS**

Notwithstanding the retention periods set forth below, you should note another FCC rule which requires that many materials placed in the public file be retained until the FCC has taken final action upon the second renewal application following the period in which they were placed in the public file. This rule was adopted by the FCC when broadcast license terms were three years. With the extension of FCC license periods to seven years (radio) and five years (television), it became necessary for broadcasters to keep the documents listed under sections a, b, c, d, and e, below, in the public file for up to 10 years for a television station, and up to 14 years for a radio station. The FCC now has adopted a revision to this requirement. While the text of the rule was not available at the time this volume went to press, the FCC announced that it would require the documents in sections a, b, c, d, and e, below, to be kept for the *longer* of (1) one renewal term (five full years for television, seven full years for radio) or (2) the date of final FCC action on the first renewal application granted after the date that the document in question is tendered for filing with the FCC (or, if not required to be filed with the FCC, the date that the document was first required to be placed in the station's public file).

Also, the FCC may direct a licensee to retain any materials that relate to a pending claim, investigation, or complaint. These materials must be kept in the public file until the claim has been resolved, or until notified by the FCC that they are no longer needed.

#### **a. Materials Relating to Applications Filed with the FCC**

UNDER NEWLY ANNOUNCED RULES ALL OF THESE MUST BE RETAINED IN THE PUBLIC FILE FOR THE LONGER OF (1) ONE COMPLETE LICENSE TERM (SEVEN YEARS FOR RADIO AND FIVE YEARS FOR TELEVISION) OR (2) THE DATE OF FINAL FCC ACTION ON THE FIRST RENEWAL APPLICATION GRANTED AFTER THE DOCUMENT IS



FILED WITH THE FCC (OR, IF NOT REQUIRED TO BE FILED WITH THE FCC, THE DATE THAT THE DOCUMENT WAS FIRST REQUIRED TO BE PLACED IN THE STATION'S PUBLIC FILE).

- Construction permit applications for new stations (FCC Form 301).
- Applications for renewal of license (FCC Form 303-S, and prior form (FCC Form 303)).
- Applications for assignment or transfer of control of license (FCC Forms 314, 315, 316).
- Construction permit applications for major changes in facilities (FCC Form 301). A "major change" for commercial TV or commercial FM is a change in frequency or community of license. For AM stations, a major change is any increase in power or any change in frequency operation or station location.
- Requests for extension of time to complete construction of new station (FCC Form 701).
- Applications involving changes in program service.
- If petitions to deny have been filed against any of the above applications, a statement to that effect, listing the name and address of the person or group that filed the petition.
- All supporting documents to the above applications must also be filed. These include:
  - letters and exhibits;
  - amendments to the applications;
  - correspondence between the FCC and the applicant if it concerns the application;
  - documents incorporated by reference in the application;
  - service contour maps and information showing the main studio and transmitter location.

Needless duplication is not necessary; information that is already contained in earlier materials in the public file may merely be referred to in the subsequent materials, provided that: (1) the subsequent materials sufficiently identify the earlier information so that it can be easily located in the file; and (2) there was no change in the earlier information and the subsequent materials include a statement to that effect.

The FCC may designate other changes as major changes by advising the applicant within 15 days after the application is filed. If this occurs, the application must be placed in the public file.

If the application was one that required the licensee to provide local public notice (e.g. a "long-form" assignment or transfer, renewal or a "major" change in facilities), a certification as to the date, text and, for the broadcast announcements made by renewal applicants, the time of the local public notices must be included in the file.

#### **b. Ownership Materials**

THE FOLLOWING DOCUMENTS MUST BE RETAINED IN THE PUBLIC FILE FOR THE LONGER OF (1) ONE COMPLETE LICENSE TERM OR (2) THE DATE OF FINAL FCC ACTION ON THE FIRST RENEWAL APPLICATION GRANTED AFTER THE DOCUMENT IS TENDERED FOR FILING WITH THE FCC (OR, IF NOT REQUIRED TO BE FILED WITH THE FCC, THE DATE THAT THE DOCUMENT WAS FIRST REQUIRED TO BE PLACED IN THE PUBLIC FILE):

- Ownership Reports (FCC Form 323) for the licensee and for entities holding an interest in the licensee for which a report must be filed;
- All letters and information that have been filed with the FCC concerning ownership;
- Any supporting materials relating to ownership or control of license which are incorporated by reference in Ownership Reports;
- Management agreements with employees which provide for the employee to share profits *and* losses, as well as any agreements giving management authority to people who are not officers, directors or regular employees of the licensee; and
- Contracts or other documents relating to ownership or control of the licensee (e.g., stock pledge agreements, agreements for sale of the station or the stock of a corporate licensee, proxies to vote a licensee's stock that run for more than one year or are given without detailed instruction and similar agreements that could affect ownership and control of the station. This category also includes partnership agreements and corporate organization documents.).

#### c. Affiliation Agreements

Television station affiliation contracts with national networks must be retained for two renewal terms. For purposes of this requirement the term "national network" is defined as any person, entity or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states.

#### d. Citizens Agreements

A copy of every written agreement between the licensee or permittee and a citizen or citizens group. These must be kept for two renewal terms. (As this edition of the *Legal Guide* was going to press, the FCC was reviewing its policies on agency enforcement of these agreements.)

#### e. Annual Employment Reports

FCC Form 395 or Form 395-B. This must be kept for two renewal terms. It is important to include all correspondence and exhibits pertaining to these reports.

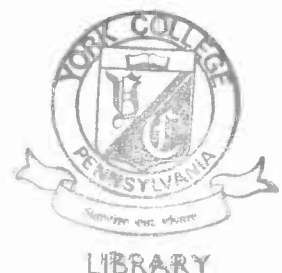
#### f. FCC Procedural Manual

The FCC's procedural manual, entitled "The Public and Broadcasting—A Procedure Manual," appeared in the Federal Register on September 5, 1974. A free copy can be obtained by contacting the FCC at (202) 632-7000. This document must be kept indefinitely.

#### g. Political and "Controversial Programming" Information

This information must be kept on file for two years. It includes:

- Requests for time by political candidates (with a notation of the disposition of the request and the charges made);
- Any free political time granted within 72 hours of an election; and
- A list of chief executive officers of any organization which sponsors or provides material for political programs or programs involving controversial issues of public importance.



### **h. Issues/Programs Lists**

All broadcast stations are required to place in their public inspection files a list containing programs that have provided the station's most significant treatment of certain community issues that were addressed by the station during the preceding 3-month period. These lists must be retained in the station's public file for the term of the license only. These lists should include:

- A discussion of how each issue was treated;
- A description of the programming, listing the time, date, and length of each program;
- The program title;
- The type of programming in which the issue was treated (public affairs programming, documentaries, public service announcements, call-in programming, etc.).

These lists are placed in the public inspection file by the 10th day following the relevant calendar quarter, that is, January 10, April 10, July 10, and October 10 of each year.

### **i. Letters from the Public**

All stations are required to make publicly available, for a period of three years from when they are received, letters and written comments from the public concerning station programming or operations. Exceptions are obscene or defamatory letters, letters where the author specifically has requested that the letter not be publicly available and internal or business correspondence. Letters received by television stations must be divided into "programming" and "non-programming" categories and filed appropriately.

## **B**

## **B. EMPLOYMENT PRACTICES**

### **1. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM**

#### **a. Overview of EEO Principles and EEOC Enforcement**

##### **1. *Who Is Protected Against Discrimination***

Under Title VII of the Civil Rights Act of 1964 and various other federal laws, discrimination on the basis of race or color, religion or creed, sex (including sexual harassment and pregnancy discrimination), national origin, age, physical or mental handicap, or veteran status is prohibited. Most of the federal discrimination laws apply throughout the private sector; however, not all employers are liable for discrimination against veterans and the handicapped. Federal legislation in these areas applies only to certain federal contractors and federally-subsidized employers. Many states have enacted laws protecting the handicapped; however, and these laws are frequently similar or identical to the federal laws. Most of these federal laws are administered and enforced by the Equal Employment Opportunity Commission (EEOC), a federal agency with offices in Washington, D.C. and throughout the country.

Due to the rules of the FCC, broadcasters are held to a higher EEO standard than most other private employers. Under FCC rules, non-discrimination is not enough. Licensees are required to take specific, systematic and positive steps of affirmative action on behalf of women and minorities. Unlike most other businesses, broadcasters must comply with EEO requirements, not only as a matter

of federal law, but also because the FCC reviews station compliance as part of the license application and renewal process.

## **2. Discrimination and How It May Be Proved**

The law prohibits not only blatant, intentional discrimination, but also the discriminatory impact of employment practices. In fact, intent is irrelevant in many cases. An employment practice that has a substantial adverse impact on women, blacks or other minorities is discriminatory, and therefore illegal, unless it can be justified as a job-related business necessity.

Statistics are often used by the EEOC to compare an employer's actual work force and hiring practices to an "ideal" model based on the local labor market. By this method, the EEOC can attempt to show adverse impact. For example, suppose that the population of the metropolitan area in which a station is located is comprised of 70 percent whites and 30 percent blacks and the number of men and women in this area is equal. In certain cases where a discrimination charge is filed against the station, the EEOC will look for a reflection of this breakdown in the station's work force at every level. Thus, it will be expected that 30 percent of managers, professionals, engineers, technicians and sales persons are black, as well as 30 percent of clerical employees, operatives, laborers and service workers. In the same vein, 50 percent of these positions will be expected to be filled with women. Any less than that might be used as evidence that the station uses discriminatory employment practices.

Statistics may also be used by the EEOC to compare hiring rates, promotion rates, discharge rates, etc. of employees within a company. The EEOC has issued Guidelines on Employee Selection Procedures, and these guidelines provide for an "80 percent rule." This rule means that if a company's selection rate for a protected group is less than 80 percent of the rate for the group with the highest selection rate at the company, the company's selection procedure is considered to have an adverse impact. Finally, statistics can convert an individual discrimination claim into a class action, in which an employee claims that an employer has discriminated against not just him or her, but all members of the protected class to which he or she belongs.

Of course, statistics may also be used to an employer's advantage to prove its employment practices are not discriminatory. It is essential, however, that the statistics used to back a company's employment decisions be relevant, complete and correct, as little or no weight will be given to irrelevant, segmented or manipulated statistics. Additionally, even where a selection procedure has a statistical adverse impact on a protected group, it may still be lawful if the employer can show that it is justified by business necessity. Finally, statistics often have less importance when only small numbers are involved, such as in smaller market stations.

## **3. Need For Objective Employment Decisions**

Employment decisions must be based on an individual's job-related characteristics and qualifications, and nothing more. Subjective considerations have little place in the employment process; they lead to arbitrary, if not discriminatory practices, and serve as signs of discrimination. The touchstone must be objectivity. As a result, an employer may not hire an individual just because, for example, he or she is good-looking, likes football, or attends the same church as the station manager, if someone else is otherwise better qualified.

False notions and assumptions about women, minorities, older workers and others (e.g., women are not serious about their careers; blacks are unreliable employees; or older employees are slow-witted) have no place in a healthy employment environment. Employment decisions must be made only on the basis of the objective qualifications and characteristics of each individual, and not on the basis





of generalizations and stereotypes about the group of which the individual is a member. All personnel decisions—from hiring to termination—should be based upon individual job performance. Moreover, a station should always ensure that its employment environment is free of prejudice arising from false stereotypes. A station's personnel should avoid inappropriate comments based on racial or sexual stereotypes, and station management should receive training to sensitize them to the consequences of such comments.

Some jobs, however, by their very nature require skills that are difficult to objectively define or measure. News personalities, for example, must be evaluated on personal appearance and on-air "personality," as well as on their journalism skills. Thus, stations have a right to adopt reasonable appearance standards for male and female on-air talent. It is essential, however, that such standards be applied equally to men as well as to women—although the specific criterion may be different for men and women.

In this regard, broadcasting stations commonly rely on consultant reports and ratings as the basis for program changes and personnel reassignments. The courts have generally accepted the fact that these reports, if done in accordance with industry standards, are common in the industry, and they acknowledge and accept that popularity is a major criteria in the selection of newscasters. Thus, with regard to on-air personalities, courts have often relied on consultants' reports in dismissing discrimination suits.

One of the most important things an employer can do to avoid a discrimination charge is to be consistent in its employment practices. Inconsistent treatment of individual employees, particularly employees of different sex or race, is a major source of discrimination lawsuits. A broadcast station should scrutinize assignments to make sure that women and minorities receive the same opportunities to obtain favorable assignments as white males. For instance, it is important to distribute among on-air talent desirable assignments, such as lead-in stories, and less attractive duties, such as teasers. The use of equal co-anchors—male and female, or black and white—could also be a key factor in the dismissal of a discrimination claim. A station that enforces dress and make-up requirements for women must do the same for men. Obviously, as noted earlier, the specific requirements may be different for men and women; what is important is that equivalent standards be applied to both sexes.

Finally, it is important that a station pay the same wages to male and female employees for equal work when equal skill, effort and responsibility are involved, and when the jobs are performed under similar working conditions. On the other hand, there is nothing wrong with paying salaries to employees that bear a direct relationship to the prior broadcasting experience they possess at the time of hire.

#### **4. *Scope of An Employer's Liability***

The discrimination laws frequently make an employer responsible for discriminatory acts or conduct of individuals other than the employer. Under current law, a station is liable for the acts of its supervisory and management employees, even if the supervisor's conduct is contrary to established station policy, and even if management is unaware of the supervisor's illegal acts. As a result, it is essential that supervisors be made aware of their EEO obligations, and that they be warned of the consequences of any breach of those obligations.

For certain kinds of conduct, particularly sexual harassment, a station may be legally responsible for the acts of co-workers and non-employees if the station (1) had knowledge or should have had knowledge of the improper conduct, and (2) failed to take prompt corrective action. While the EEOC offers no explanation as to when an employer "should know" of harassing conduct, it is safe to say that an employer should never take a harassment complaint lightly. If it has any indication that harassment is occurring, the employer should investigate promptly.



An employer may not escape liability for discrimination by showing that someone else is to blame. If a broadcaster obtains employees from an employment agency or a union that practices discrimination, the station normally will bear ultimate responsibility, even though it is the agency or union hiring hall that is doing the discriminating. Consequently, a station which advertises through an employment agency should ensure that the agency does not list its ads in a discriminatory manner, and a station using the services of a union hiring hall should make sure that the union does not discriminate. As an employer, a station may not insulate itself from liability because it is expected to monitor the acts of others as they relate to its employees.

These principles also apply to consultants, advertisers, and even audiences. If a station uses a consultant to evaluate on-air talent, for example, it must be careful to retain a firm which uses well-recognized and objective survey techniques that conform with industry standards. A consultant that allows its conclusions to be influenced by racial or sexual stereotypes could subject the station which hired it to legal liability. A station should also scrutinize its advertisers for discriminatory bias. While no one will question the need for a man to demonstrate the use of a shaving cream, an advertiser's request that all ads broadcast during sports events be read by males may cause the station problems. Finally, while audience preference may be a valid basis for evaluating on-air talent, a desire to satisfy viewers is not always a defense to a discrimination charge. For example, a station which considers only female applicants for a news anchor position to "soften" the image of the news, or which terminates an older anchor because it wants "younger demographics," could be setting itself up for a discrimination charge.

### **5. Exceptions to the Discrimination Laws**

The major exception to the discrimination laws is for employment criteria that are job-related, i.e., necessary to the performance of a position. If a selection criterion is clearly job-related, it will not constitute illegal discrimination, even though it may have an adverse impact on women and minorities. If a station bases its employment decisions on objective criteria, it will do much to minimize its risk of liability. Seemingly objective criteria, however, such as height requirement or a high school diploma requirement, may have a disproportionate impact on a protected group and therefore be subject to challenge. It is therefore essential that all criteria be job-related.

The EEOC requires that any selection procedure which has an adverse impact must be "validated" to establish that it is truly job-related. To validate a selection procedure, an employer must conduct a study to illustrate a statistical correlation between the procedure's measurement of skills, abilities and aptitudes for the job, and successful performance of the job. With few exceptions, a company will often have to use the services of a professional to "validate" a selection procedure adequately. Because validation is such an expensive process, most small to medium size stations will not have the resources to validate a selection procedure. However, if a written test is utilized, it is particularly important that it be validated. Most written tests are sold commercially. Hence, if a station intends on purchasing such a test, it should be sure that the test has previously been validated by the company producing the test. Of course, where a selection procedure does not exclude protected group members at a disproportionately high rate, proof of job-relatedness is not required.

Under very restricted circumstances, it is not discriminatory to limit a position to persons of a particular sex, age, religion or national origin, if one of those factors is a bona fide occupational qualification (BFOQ) for the job. The BFOQ exception is exceedingly narrow and never applies to race or color. Virtually the only circumstance in which the EEOC finds sex to be a BFOQ is where gender-based employment decisions are necessary for the purpose of preserving genuineness, such as selecting an actor to perform a male role and an actress to perform

a female role. Although male and female co-anchors have become a common format in the news, it is unlikely that courts would accept as a BFOQ defense the station's desire to hire a female co-anchor. Similarly, a station which considers only female applicants to replace a female co-anchor is likely to be found in violation of the discrimination laws.

There are other exceptions to the discrimination laws in the context of particular types of discrimination. For example, an employer is not required to accommodate an employee's religious practices or mental or physical handicap if the accommodation would cause the company undue hardship. It is also not unlawful to pay different salaries to male and female employees for work that is otherwise equal, if the differential is based on factors other than sex.

## **b. EEO and the FCC**

### **1. FCC Requirements**

The FCC has determined that stations that discriminate on the basis of race, color, sex, religion, or national origin are not operating in the public interest. As a result, the FCC requires all licensees to have an EEO policy that prohibits discrimination on the basis of those characteristics, and to establish and effectuate an EEO program that encourages positive steps to recruit, hire and promote women and minorities.

The FCC reviews broadcasters' EEO records on a periodic basis. If a licensee's record is inadequate, the FCC may take various actions, including denial of a license renewal. The FCC also has an arrangement with the EEOC under which the EEOC notifies the FCC of action on discrimination complaints filed with the EEOC against broadcasters. The purpose of this arrangement, called a "Memorandum of Understanding," is to permit the FCC to hold up a station's license renewal or take other action warranted by the station's EEOC situation. Accordingly, the development and implementation of an effective EEO program is of crucial significance to each and every broadcaster.

In order to evaluate a licensee's compliance with its EEO requirements, the FCC requires that certain reports be filed. All broadcast employers who employ five or more full-time employees must fill out completely and file an Annual Employment Report (Form 395-B)<sup>24</sup> by May 31 of each year. Stations with fewer than five full-time employees are not required to fill out the form completely, but must return the form after indicating that it hires fewer than five full-time employees. The Annual Employment Report presents a profile of the station's staff in terms of race, sex and other protected categories. In addition, broadcasters who employ or propose to employ five or more full-time employees, and who apply for a license for a new station or request consent to acquire an existing license or control of an existing licensee, are required to file a Five-Point Model EEO Program (Form 396-A); and all broadcasters who employ five or more full-time employees are required to file a Eight-Point Model EEO Program (Form 396) when they apply for a renewal of their license.<sup>25</sup> For all stations, this EEO program must be designed to assure equal employment opportunity for women. The program also must be designed to do the same for other protected group members if minorities, in the aggregate, represent 5 percent or more of the available labor force in a station's area. Although licensees with less than five full-time employees are not required to file a written EEO program, they nevertheless are encouraged to design and implement such a program.

24. The Commission in June 1987 adopted a new Form 395-B for broadcasters to replace the prior Form 395. A sample Form 395-B is included in Appendix A.

25. The Commission also adopted a new FCC Form 396 in June 1987 to replace the prior Form 396. A sample Form 396 is included in Appendix A.

In reviewing a licensee's records at renewal time, the FCC uses a two-step approach to determine whether the station's EEO efforts are satisfactory. The first step involves the examination of a station's entire record, including the station's EEO program (and any EEO complaints set forth in its EEO Program Report Form 396), the composition of the local labor force and a station's staff (as set forth in its annual Form 395-B) and any other information the Commission deems pertinent. With respect to a station's staff, the FCC applies the following specific guidelines:

- For stations with 11 or more full-time employees, the Commission imposes a "50/50" standard. This means that minority groups and women each must be employed at a ratio of 50 percent of their civilian labor force availability,<sup>26</sup> with respect to all full-time jobs and at a ratio of 50 percent of their labor force availability with respect to full-time jobs in the FCC Form 395-B upper-four job categories. These job categories include officials and managers, professionals, technicians and sales workers.
- For stations with 5 to 10 full-time employees, the Commission imposes a "50/25" standard, which means that minority groups and women each must be employed at a ratio of 50 percent of their civilian labor force availability with respect to all full-time jobs and at a ratio of 25 percent of their labor force availability in the upper-four job categories.

The Commission goes to the second step if its initial evaluation indicates that a station's efforts and EEO program are less than satisfactory. Indications of such inadequacies include findings that its EEO program is inadequate, that the station has engaged in discrimination and/or that its EEO profile is deficient. In this event, the station will be contacted by the FCC staff and asked for more information. The request will concern the specific aspects of the station's EEO practices that appear to be deficient. In order to avoid any further sanction, the station will need to demonstrate that its EEO program is thorough and that it has engaged in good faith efforts to remedy any EEO deficiencies, or that the deficiencies are a result of factors beyond the station's reasonable control—for example, a low turnover rate that provides little opportunity for hiring women and minorities.

It is important to note that the Commission reviews the station's entire record at renewal time. Therefore, even if a station meets or exceeds the FCC's processing guidelines, its license renewal might still be contested on EEO grounds. The Commission's numerical guidelines are merely a convenient tool used to evaluate a station's EEO performance in a noncontested situation. The fact that a station meets the guidelines is evidence, but not proof, that the station has not engaged in discriminatory practices. Similarly, the fact that a station does not meet the guidelines is not proof that the station is guilty of discrimination.

26. The availability of women and minorities in the work force is determined by examining the Metropolitan Statistical Area ("MSA") in which the station is licensed. If the station is not licensed to a community with an MSA, the FCC will look to the statistical data for the county in which the station is licensed. If the licensee supplies an appropriate explanation as to why MSA or county data does not accurately reflect the available labor force, the FCC may use alternate labor force data provided by a licensee. The FCC believes that alternative labor force data may be appropriate in cases where (1) the distance of the station from areas with significant minority population in the MSA is great, (2) commuting from those areas to the station is difficult (such difficulties may be based on distance as well as other factors, such as lack of public transportation) or (3) recruitment efforts directed at the MSA minority labor force have been fruitless. The submission of alternative labor force data is optional. However, if the licensee chooses to submit such data, it is his or her burden to justify the use of the alternative figures.

## 2. The Consequences of Non-Compliance

If the FCC determines that the station's deficiencies are the result of discriminatory practices and/or an inadequate EEO program, or if it is otherwise found that a station has engaged in discrimination, there is a variety of actions the FCC might take, including warning the licensee to rectify specific deficiencies in its EEO program; holding the station's license renewal in abeyance pending receipt of additional information or establishing specific goals and timetables for the hiring of women and minorities; imposing a "short-term" license renewal conditioned on the licensee taking specific actions to remedy its EEO deficiencies; or designating a license renewal application for hearing in order to determine whether the station's discriminatory conduct is so serious that its license should not be renewed. In short, the ramifications of non-compliance can vary widely, from extra filing and reporting requirements at one extreme to loss of a license at the other.

While the FCC review and investigation of the EEO practices of broadcast stations normally occur at license renewal time, aggravated or egregious EEO problems can trigger a mid-term investigation, leading to action against a station (in the extreme, license revocation) during the normal five or seven-year license period. Accordingly, it is essential that a station's EEO program be pursued actively throughout the license period, and not only just prior to renewal time.

As a final note, the key to successful compliance with the FCC's EEO requirements is to strive constantly to exceed the minimum standards set forth in the processing guidelines. Exceeding the numerical guidelines will assist a station in demonstrating the good faith of its EEO efforts should other discrimination problems arise. Equally important, if a station exceeds the guidelines, it will avoid the risk that one or two women or minorities might resign just prior to renewal time, leaving its EEO profile deficient, and possibly subjecting it to a time-consuming and perhaps troublesome FCC investigation.

## 2. IMMIGRATION REFORM AND CONTROL ACT

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act. This law prohibits an employer from knowingly hiring, recruiting, or referring for a job an alien not authorized to work in the United States. As a result, *all* employers are required to verify the identity and employment eligibility of *all* employees hired since November 6, 1986. Employers are required to verify this information by completing the Immigration and Naturalization Service (INS) Employment Eligibility Verification Form (INS Form I-9).<sup>27</sup> Part I of the form is to be completed by the employee; Part II is to be completed by the employer.

Employees must produce documents that establish employment eligibility and identity. Documents that provide such information include a U.S. passport, or an unexpired foreign passport which contains an employment authorization stamp. The following documents issued by the INS also establish both employment eligibility and identity: certificates of U.S. citizenship or naturalization, resident alien or temporary resident cards or an alien registration card with photograph.

Documents that establish *identity* only include a U.S. driver's license containing a photograph or other school identification card with a photograph, a U.S. military card or draft record, an identification card issued by a federal, state or local government agency, a military dependent's identification card, Native American tribal documents, a U.S. Coast Guard Merchant Mariner card, or a Canadian driver's license.

27. See Appendix T for sample Immigration and Naturalization Services Employment Eligibility Form I-9.



Additional documents are acceptable for individuals under the age of 16 who are unable to produce one of the foregoing documents.

If an employee produces a document that establishes identity only, he or she must also produce a document that establishes employment eligibility or authorization. Acceptable documents that establish employment eligibility or authorization include a Social Security card, a U.S. birth certificate, a certificate of birth abroad issued by the State Department, an unexpired reentry permit or refugee travel document, an employment authorization document issued by INS, a native American tribal document, or a U.S. citizen or resident citizen identification card.

Employers must complete the I-9 form within three business days of an individual's first day of work. The forms must be kept for three years after the date of hire or one year after the date of termination, whichever is later. While employers do not have to certify the authenticity of the documents, the employer must examine the documents and verify that each document "reasonably appears on its face to be genuine."

Additional information can be obtained from the Immigration and Naturalization Service at (800) 777-7700.

### 3. MINIMUM WAGE

The Fair Labor Standards Act (FLSA or Act) is administered by the United States Department of Labor's Wage and Hour Division. Basically, the FLSA addresses the following matters for *all* broadcasters:

- minimum wage standards
- overtime pay standards
- employee exemptions
- recordkeeping requirements.

#### a. Minimum Wage Standards

Since January 1, 1981, employers have been required, by *federal law*, to pay a minimum wage of \$3.35 an hour to employees. However, broadcasters should examine their state laws carefully before implementing any minimum wage requirements, because state laws may also regulate the minimum amount an employee is to be paid. If the state law provides for higher wage than the federal law, then the state standard prevails.

#### b. Overtime Pay Standards

Federal law requires broadcasters to pay employees one and one-half times their regular rate for all hours worked in excess of 40 per week. The FLSA does not limit the number of hours an employee can work per day or per week. The only requirement is that an employee be paid at least the minimum wage for the first 40 hours of work and then time and one-half for any hour worked in excess of 40 per week. The Act defines a workweek as seven consecutive 24-hour periods. It may begin on any day and at any hour.

Employees do not need to be paid solely on an hourly basis, although that is probably the simplest method used for computing overtime pay. In addition to the fixed hourly rate method, employees can be paid a fixed salary for a forty-hour week, a fixed salary for a fixed workweek, or a fixed salary for a fluctuating workweek. It is important to remember that even salaried employees may be entitled to overtime pay.





### c. Employee Exemptions

The FLSA contains exemptions from the minimum wage and overtime pay requirements for individuals employed in bona fide executive, administrative, or professional capacities or as outside salespeople. The duties and responsibilities of the job and the salary an employee receives determine an employee's exempt status.

Employees will qualify for the "executive" exemption if they meet all of the following tests:

- their primary duty is the management of the business or one customarily recognized department in it;
- they customarily and regularly direct the work of two or more employees;
- they have the authority to hire, fire, and promote;
- they customarily and regularly exercise discretionary powers;
- they devote at least 80 percent of time to the above duties; and
- they receive a minimum salary of \$155 per week.

A shorter test exists for higher salaried employees. They will be exempt from the minimum wage and overtime pay requirements if they earn at least \$250 a week, their primary duty is the management of the business or a department within it and they customarily and regularly direct the work of two or more employees.

Employees will qualify for the "administrative" exemption if they meet all of the following tests:

- their primary duty is office or non-manual labor directly related to management policies or general business operations of the station;
- they customarily and regularly exercise discretion and independent judgment, with the authority to make an independent choice in significant matters;
- they regularly assist a bona fide executive or administrative employee or perform special assignments with only general supervision;
- they devote at least 80 percent of their time to the above duties; and
- they receive a minimum salary of \$155 a week.

A shorter test also exists for higher paid administrative employees. They will be exempt from the minimum wage and overtime pay requirements if they earn at least \$250 a week, perform office or non-manual labor directly related to the management policies or general business operations of the station, and customarily and regularly exercise discretion and independent judgment.

Employees will qualify for the "professional" exemption if they meet all of the following tests:

- their primary duty is either work requiring knowledge of an advanced type in a field of science or learning, usually obtained through a prolonged course of specialized instruction, or work that is original and creative in character in a recognized artistic field that demands invention, imagination, or talent;
- they consistently exercise discretion and judgment;
- they perform work that is predominantly intellectual and varied, rather than routine mental, manual, mechanical or physical;

- they devote at least 80 percent of their time to the above duties; and
- they earn at least \$170 a week.

The shorter test exists for the higher paid professional employee as well. They will be exempt from the minimum wage and overtime pay requirements if they earn at least \$250 a week and their primary duties consist of work requiring knowledge of an advanced type in a field of science or learning or invention, imagination, or talent in a recognized field of artistic endeavor.

Finally, employees will qualify for the "outside salesman" exemption if:

- they are regularly and customarily engaged away from the station in making sales or obtaining new customers and contracts for service; and
- they perform not more than 20 percent non-exempt work per week. For example, if non-exempt employees work a 40-hour week, an outside salesperson cannot spend more than 8 hours on non-selling work per week.

Section 13(b)(9) of the FLSA exempts radio and television announcers, news editors, and chief engineers in small markets from the overtime pay requirements of the Act if the studio is located:

- (a) in a city or town of 100,000 population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census except where such city or town is part of a standard metropolitan statistical area,<sup>28</sup> as defined and designated by the Bureau of the Budget, which has a total population in excess of 100,000; or
- (b) in a city or town of 25,000 population or less which is part of such an area but is at least 40 airline miles from the principal city of such area.

The Labor Department has defined announcer as "an employee who appears before the microphone or camera to introduce programs, read news announcements, present commercial messages, give station identification and time signals and present other similar routine on-the-air material." An announcer may also "operate the studio control board, give cues to the control room for switching programs, make recordings, make the necessary preparations for the day's programs, play records, or write advertising, promotional or similar type copy."

A news editor is "an employee who gathers, edits, and rewrites the news. He may also select and prepare news items for broadcast and present the news on the air."

A chief engineer is "an employee who primarily supervises the operation, maintenance, and repair of all electronic equipment in the studio and at the transmitter and is licensed by the FCC."

28. The term "standard metropolitan statistical area" ("SMSA") has been dropped from the vocabulary of the census, and new definitions for metropolitan areas have been adopted. Under the new approach, metropolitan areas are no longer defined as SMSAs, but are classified as metropolitan statistical areas ("MSAs"), primary metropolitan statistical areas ("PMSAs") and consolidated metropolitan statistical area ("CMSAs"). Unfortunately, the FLSA has not been amended to reflect these definitional changes. In addition, the Department of Labor has not announced a clarification of the reference to SMSAs in the statute.

#### d. Record Keeping Requirements

All employers must keep records. With respect to employees subject to both the minimum wage and overtime pay provisions, the following information on employees is required:

1. Name (same as used in Social Security records);
2. Home address (including zip code);
3. Date of birth (if under 19);
4. Sex and occupation;
5. Time of day and day of week on which the employee's workweek begins;
6. Regular hourly pay rate for any week when overtime is worked;
7. Hours worked each workday and total hours worked each week;
8. Total daily or weekly straight-time earnings;
9. Total overtime pay for the workweek;
10. Additions or deductions from wages;
11. Total wages paid during each pay period;
12. Date of payment and the pay period covered by payment.

Employers are not required to keep items 6-10 above on persons with executive, administrative, professional or outside sales exemptions.

Additional information can be obtained from the NAB publication *Broadcasters' Wage & Hour Guide*.

## C

### C. NETWORK RULES

#### 1. GENERAL GUIDELINES

The FCC requires television licensees to file network affiliation agreements in certain situations. When required, the initial filing should consist of a written instrument containing all of the terms and conditions of the station's affiliation with the network. It is not sufficient merely to refer to other papers or documents (i.e., contracts, agreements, or understandings) which are not provided in the initial filing.

Documents involved in any subsequent renewal of or change in a particular contract previously filed also need to be filed within 30 days of execution. However, the earlier filed instrument need not be resubmitted. The FCC also requires notification by the station if its network affiliation is cancelled or terminated. Finally, the FCC requires the filing of transcription agreements or contracts for the supplying of film or tape for television stations which specify option time. Other agreements for the supplying of film or tape for television, and contracts granting the right to broadcast music (e.g., ASCAP, BMI), need not be filed.

The FCC prohibits a station from obtaining the right to the exclusive use of a network service in its market area. Specifically, a broadcast station is prohibited from entering into an arrangement with a network which hinders another station serving substantially the same market from broadcasting the network's programs that it does not air or which hinders another station serving a substantially different area from broadcasting any network program. A station may obtain "first call" rights within a station's primary service area (for radio) or its community of license (for television), but other stations must remain free to seek permission to air uncleared programs.

## 2. RADIO RULES

The FCC has repealed all of its network radio rules except the one discussed above dealing with territorial exclusivity. For example, radio licensees are no longer required to file network affiliation agreements. The FCC has also repealed the "small market policy," which had limited the number of permissible affiliations in small markets with a single network.

The FCC's *Statement of Policy on Network Radio*, notes the licensee's non-delegable duty to choose independently all programming for broadcast (e.g., retaining the right to reject network programming). The FCC urged stations to consider the public interest benefits of diversity in selecting non-local programming sources; economic considerations should not be the sole determinant of which source, if any, the licensee chooses to use. Licensees, the FCC stated, also should not enter into excessively long-term contracts.

Networks, in turn, should not infringe on the licensee's ability to choose programs from other sources (including other networks), and should not seek to influence station non-network rates. Networks also should make their programming as widely available as possible: (1) by offering uncleared units to other stations; (2) by trying to have other stations present programs when "wild-spotting" results in broadcast of only the commercial content; (3) by re-examining policies governing affiliation with stations some distance from existing affiliates; and (4) by reviewing cases where affiliates that present little or no network programming prevent other stations from securing an affiliation.

## 3. TELEVISION RULES

While the FCC eliminated the network agreement filing rule for radio, television licensees are still required to file agreements between themselves and national networks with the FCC. See *Report and Order* in MM Docket 85-5, 101 F.C.C. 2d 516 (1985). The FCC based this distinction on the limited number of national networks available to television stations as opposed to radio stations. However, the FCC decided that regional and other non-national television networks are similar to radio networks (i.e., the amount of programming that they provide is not substantial as is the case with national television networks), and that, therefore, these agreements need not be filed.

The rules governing network practices in television prohibit agreements that: (1) bar stations from affiliating with two or more networks; (2) extend beyond a two-year period (plus six months advance time); (3) include any option time provisions;<sup>29</sup> (4) do not permit affiliates to reject any or all network programming; or (5) permit the networks to control station non-network rates or to represent the station in the sale of non-network time.

The television rules also prohibit a network from syndicating programs presented over the network or having a financial interest in programs that it does not solely produce. (Networks may engage in foreign syndication of programs that they solely produce.) The television rules seek to make network programs more equally available to independent stations in certain three-station markets (i.e.,

29. An option time provision is any contract, arrangement, or understanding, express or implied, between a station and a network organization which prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network seeks to utilize the time.

those with two VHF network affiliates and one or more independent VHF stations).<sup>30</sup>

In addition, the present networking rules governing television deal with network ownership of stations in certain communities and "dual network" operations. No license can be granted to a network organization for a television broadcast station in any locality where there are so few stations, or the existing stations are of such unequal desirability (in terms of coverage, power, frequency, or other related matters) that competition would be substantially injured from such licensing. Also, a network organization is prohibited from maintaining more than one network of television broadcast stations, unless the dual networks are not operated simultaneously, or if there is no substantial overlap in the territory served by the group of stations comprising each network.

## D

### D. MULTIPLE OWNERSHIP RULES

The FCC has a number of policies directed toward limiting concentration of control of mass media, including the "12 station," "duopoly," "one-to-a-market," "newspaper/broadcast cross-ownership," and "TV/cable cross-ownership" rules. (FCC Rule 73.3555.)

The discussion of the multiple ownership rules in this section provides a general overview. To determine whether a particular factual situation complies with the FCC's policies on multiple ownership, it may be necessary to obtain the advice of counsel.

#### 1. ATTRIBUTION RULES

The attribution rules determine whether a specific ownership or positional interest in a licensee should be counted in implementing the multiple ownership rules. The owner of a sole proprietorship and each partner of a partnership hold attributable ownership interests. The interest of a limited partner, however, is exempt from attribution if that partner is not materially involved in the management and operation of the media-related activities of the partnership and the licensee so certifies.

In a corporation, officers, directors and shareholders generally hold attributable interests. "Passive investors," such as bank trust departments, mutual funds and insurance companies are not deemed to possess an attributable ownership interest unless their stock holdings are at least 10 percent. Interests of minority stockholders in a corporation in which a single shareholder owns more than 50 percent of the voting stock are exempt from attribution irrespective of the percentage of shares owned by that minority stockholder. In addition, interests held in the licensee in the form of non-voting stock, warrants, debentures and other convertible interests are not attributable to the owner. If the ownership interest of an individual or entity is separated by intervening corporations, a "multiplier" is used in determining the attribution in the vertical ownership chain. (See Chapter I.)

30. In a 1984 tentative decision, the FCC proposed to abolish its financial interest rule, which prohibits the television networks from acquiring commercial interests in independently produced programming. It also proposed to narrow much of its prohibition against network syndication. The limited syndication rules it proposed to retain are aimed at preventing warehousing (*i.e.*, the withholding of prime time entertainment programming from syndication), because of a concern that such "warehousing" could place independent stations at a disadvantage. It is far from clear, however, whether or when the tentative decision will be implemented.



Under the current rule, the FCC generally will not be concerned with non-reportable voting ownership interests of less than 5 percent (except under its cross-interest policy as explained later in this section). However, discrete ownership interests generally will be attributable if (a) the sum of the interests held by "passive investors" is equal to or exceeds 10 percent, (b) the sum of the interests held by non-passive investors is equal to or exceeds 5 percent, or (c) the sum of both passive and non-passive investors is equal to or exceeds 10 percent. (FCC Rule 73.3555, note 2(i).)

## 2. TWELVE STATION RULE

The "12 station" rule establishes an absolute limit on commercial broadcast station ownership. No party may have an interest in more than 12 commercial broadcast stations in each service—that is, a total of 36 stations of which no more than 12 may be AM, no more than 12 may be FM, and no more than 12 may be TV (excluding satellite stations). However, if at least two of the stations in a particular service are "minority controlled," an individual (or entity) may own up to and including 14 stations in that service. (FCC Rule 73.3555(d)(1)(i).) For the purposes of this rule, "minority controlled" means that more than 50 percent of a station is owned by a member or members of a minority group. (FCC Rule 73.3555(d)(3)(ii).) In addition, the FCC places further limits on TV station ownership. An individual (or entity) may not have a cognizable interest in TV stations which have an aggregate national audience reach exceeding either 25 percent, or 30 percent if at least 5 percent of the aggregate reach of its stations is contributed by minority-controlled stations. "National audience reach" means the total number of TV households in the stations' Arbitron ADI markets divided by the total number of TV households in the nation. However, UHF stations will be attributed with only 50 percent of the TV households in their ADI markets. (FCC Rule 73.3555(d)(3).)

## 3. DUOPOLY AND ONE-TO-A-MARKET RULE

The "duopoly" rule prohibits any party from owning two or more stations in the same service if there is a prohibited amount of contour overlap. For example, two AM stations may not be commonly owned if their 1.0 mV/m daytime groundwave contours overlap. For FM stations, the duopoly yardstick is the 1.0 mV/m contour, and for TV stations, the Grade B contour is used. (FCC Rule 73.3555(a).)

The so-called "one-to-a-market" rule prohibits an individual or entity from having an attributable interest in both a radio station (AM or FM) and a TV station if the AM's 2.0 mV/m or the FM's 1.0 mV/m contour encompasses the entire community of license of the TV station, or if the TV's Grade A contour encompasses the entire community of license of the AM or FM station.

However, there is an exception for UHF and radio stations. The FCC will consider, on a case-by-case basis, applications for the common ownership of one or more radio stations and a UHF television station in the same market. FCC Rule 73.3555, note 4; *see also Report and Order* in BC Docket 79-233, 51 R.R.2d 401 (1982). Note that there is no prohibition with regard to ownership of an AM-FM combination in the same market.

The FCC has started a proceeding to relax the duopoly and one-to-a-market rules. *Notice of Proposed Rule Making* in MM Docket No. 87-7, 2 F.C.C. Rcd. 1138 (1987). As of the date of this publication, the FCC had not acted on this proposal.

#### 4. NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE

Common ownership of a radio or television station and a daily newspaper (i.e., published at least four times weekly) is prohibited if the contour of the AM (2.0 mV/m), FM (1.0 mV/m), or TV (Grade A) encompasses the entire community in which the newspaper is published.

In enacting this rule, the FCC decided against requiring broadcast/newspaper cross-ownership divestiture in all but the most egregious cases. *Second Report and Order* in Docket 18110, 50 F.C.C.2d 1046 (1975). Specifically, the FCC ordered limited divestiture under its “newspaper/broadcast” rule only for the 16 newspaper/broadcast combinations considered to be the most serious cases of common ownership and monopoly, i.e., where communities were served only by one newspaper and broadcast station (or stations) under common ownership. The *Order*, was upheld, in its entirety, by the United States Supreme Court. At press time, the FCC has been asked to eliminate or modify this restriction. (See Petition for Amendment of the Commission’s Rules for Newspaper-Broadcast Cross-Ownership Policy, RM-6155.)

#### 5. TV/CABLE CROSS-OWNERSHIP RULE

As part of the Cable Communications Act of 1984, Congress codified the FCC policy that prohibits the ownership of a “reportable interest” in both a cable system and a TV broadcast station if the television station places a Grade B contour over any part of the service area of the cable system. 47 U.S.C.A. § 533 (West Supp. 1987). Also, no cable television system may carry the signal of any television station if the cable system directly or indirectly owns, operates, controls or has an interest in a national television network. (FCC Rule 76.501(a)(1).)

#### 6. CROSS-INTEREST POLICY

While not a multiple ownership rule, the FCC’s “cross-interest” policy may prohibit individuals from having “meaningful” interest in two broadcast stations, or a daily newspaper and a broadcast station, or a television station and a cable system in the same area or market even if those interests are not attributable. Meaningful interests have included employment relationships, consulting positions, joint ventures, time brokerage arrangements, sales representatives, advertising agencies and non-attributable equity interests. The Commission determines whether a particular combination of interests are proscribed on a case-by-case basis.

The FCC has also begun a proceeding to examine the need for the cross-interest policy or whether it should be applied on an *ad hoc* basis. *Notice of Inquiry* in MM Docket No. 87-154, 2 FCC Rcd. 3699 (1987). At press time, the FCC had not acted on this matter.



### E. MAIN STUDIO REQUIREMENTS

#### 1. ESTABLISHMENT OF THE MAIN STUDIO

Each radio and television station is required to establish and maintain a “main studio” within its principal community contour (“city grade” or 5 mV/m for AM, 3.16 mV/m for FM, and 74 dBu or 5.01 mV/m for TV channels 2–6, 77 dBu or 7.08 mV/m for Channels 7–13, 80 dBu or 10.0 mV/m for channels 14–69.) The FCC recently eliminated its requirement that a majority of each station’s non-network programming (defined as more than 50 percent of the minutes on the air, not the

number of separate programs), must originate from the main studio. Accordingly, there are no longer any specific guidelines as to the amount of programming that must be locally originated. This requirement does not, however, affect your obligation to your community of license to provide issue-responsive programming and provide a record of this programming in your quarterly issues/programs lists. *Report and Order* in MM Docket No. 86-406, 2 FCC Rcd. 3215 (1987).

## 2. RELOCATING THE MAIN STUDIO

Although a broadcaster need not get specific FCC authorization for all main studio moves, the FCC always must be notified promptly after any change in the location of a station's main studio. Even a change to another location within the community of license requires notification to the FCC in Washington, D.C.

Relocation from any location to a location within the city grade contour is permitted without prior authority, subject only to the notification requirement. Relocation to a place outside the city grade contour may not be effectuated without the FCC's prior consent, with the following exceptions:

An FM station that is commonly owned with an AM station may locate its FM main studio at the AM transmitter site, but only if the AM main studio is at the transmitter site and only if both the AM and FM stations are licensed to the same community. This exception does not permit location of the FM main studio at an FM transmitter site outside the community of license, unless the transmitter and studio of the sister AM station are at the same location. Regardless of whether either of these two exceptions apply, the FCC still must be notified of where the station's main studio is located and must be notified at the time of any changes to the main studio location.

Radio and television stations locating their main studios outside of the political boundaries of the community of license must maintain their public inspection file in the community to which the station is licensed. The public file should be available for public inspection at any time during regular business hours. For example, the public file can be maintained in your lawyer's office or at the public library. [Note that this requirement is on reconsideration before the FCC. In the interim, stations that had their main studios located outside the boundaries of the community of license, prior to adoption of the new rules, can continue to maintain the public file at the main studio. The FCC has stayed enforcement of the new public file requirement for these licensees pending its reconsideration.] In the event a station locates its main studio outside its community of license it must maintain a "local" or a "toll-free" telephone number for residents of the community of license wishing to call the station.

## F. RADIO OPERATOR REQUIREMENTS

### 1. DUTY OPERATORS

The Communications Act of 1934 requires that all broadcast station transmitters be operated under the immediate supervision and control of a person holding an FCC commercial operator license or permit. All entries in technical station logs must be made by a licensed operator. Any class of radiotelephone or radiotelegraph operator permit will suffice, including a Restricted Radiotelephone Operator Permit, obtained without an examination, unless it is specifically endorsed as not being valid for broadcast operation. (FCC Rule 73.1860.)

Although the licensed operator may be on duty at a remote control point rather than at the transmitter itself, completely unattended operation of broadcast transmitters, even with automatic transmission systems, is not permitted.



A licensed operator must be on duty at the transmitter or fixed remote control or automatic transmission system control location at all times when a station is on the air. The repair and maintenance of broadcast transmitters does not require any kind of FCC operator permit. Broadcast auxiliary stations may be operated and maintained without any operator permit. Station licensees, however, are responsible for the proper operation of broadcast and auxiliary service facilities and should be selective in the qualifications of maintenance personnel.

## 2. CHIEF OPERATORS

All broadcast stations, AM, FM and TV alike, must have a Chief Operator, who must be designated as such in writing. (FCC Rule 73.1870.) A copy of the designation must be posted at the station or posted with the license.

A Chief Operator must be available at all times. Accordingly, a substitute or alternate Chief Operator must be designated in the event of illness, vacation, or other absence of the Chief Operator.

The Chief Operator and any alternate must have an FCC operator permit, which may be any class of radiotelephone or radiotelegraph operator permit, including a Restricted Radiotelephone Operator Permit, except if the license or permit is endorsed as not valid for broadcast use.

The Chief Operator may be a full-time or part-time employee. That decision is up to the licensee, provided that the Chief Operator works enough hours to perform the required duties. In addition, FM stations and nondirectional AM stations operating with 10 kw or less may elect to hire Chief Operators by contract, rather than on an employment basis. Agreements with contract operators must be in writing and kept available for FCC inspection in the station's files.

The principal duty of the Chief Operator is to make sure that the station's technical operation is in compliance with the FCC's rules and the terms of the station's license. Specific obligations include:

- Inspecting the transmission system, and calibrating and adjusting monitors and remote control systems as required. Inspection of transmission systems and other facilities (which used to be required on a weekly basis) now may be made at the discretion of the licensee, but the licensee remains responsible for compliance with the FCC's technical requirements at all times. (FCC Rules 73.1580 and 73.1870.)
- Generally supervising required entries in technical logs and records, including reviewing specifically the station's technical log and other technical records once a week, and noting any discrepancies and corrective action taken. The Chief Operator also should sign the records after reviewing them and note the date of each review of any records not entered personally.
- Making or supervising periodic measurements of the field strength of AM stations, as required by FCC rules and the terms of AM station licenses.

For further information regarding operator licenses, consult the *NAB Engineering Handbook*, available through NAB Station Services.



## G. REQUIRED RECORDS

### 1. STATION LOGS AND RECORDS

The FCC has eliminated its rules that required separate program, operating, and maintenance logs. While stations wishing to keep more records than the FCC



requires are free to do so, only certain information now must be recorded on what the FCC calls the station log. (FCC Rule 73.1820.)

The station log of technical information must include the following:

- Readings of transmitter parameters only if required on the station authorization or FCC rules. (Directional AM stations lacking FCC-approved sampling systems are required to take readings more often than other stations.)
- The receipt or transmission of any test or alert of the Emergency Broadcast System (EBS).
- Records of any malfunction of antenna lights, including the time of reporting it to the Federal Aviation Administration ("FAA") and of repairing it. (FCC Rule 17.49.)
- Records of the time, date and nature of repairs to the transmission system.
- Any other records required by the FCC or included on the individual station's license.

The Commission also expects licensees to maintain any records required by the Engineer-in-Charge of the local FCC District (who may impose special requirements in the event of deficient operation or interference with another station).

Records such as Transmitter Technical Comment Log Books and Engineering drawings and specifications must be kept indefinitely. Blueprints and tracing for technical equipment should be kept until obsolete. Station logs are required to be kept for two years.<sup>31</sup>

## 2. EQUIPMENT PERFORMANCE MEASUREMENTS

AM, FM, and TV stations are no longer required to make *audio* proof-of-performance measurements of all main and alternate main (or auxiliary) transmitters. Radiofrequency ("RF") measurements must be made when significant transmission system modifications, repairs, or replacements are made. AM stations also are required to measure harmonic and spurious emissions annually. (FCC Rule 73.1590.)

Any qualified individual may conduct transmission system measurements. Records must be kept of the data from the measurements, along with a description of the instruments and procedures used, the date the measurements were made, and the signature of the person who made the measurements. Results of measurements must be retained in the station's *private* files (not required to be open for public inspection) for two years and must be furnished to the FCC upon request.

NAB booklets entitled *Audio Frequency Proof-of-Performance Measurements Test Forms* (E-508) and *Test Procedures* (E-713) are available from the NAB Science & Technology Department. They contain sample audio proofs and a set of recommended test procedures.

## 3. ANTENNA RESISTANCE MEASUREMENTS [AM]

The license of every AM station specifies an antenna resistance, which is one of the elements used in the formula to determine the power level at which the station is operating when power is measured by the direct method (the normal method of measurement).

31. Before throwing out any records that may be important, you may want to consult your lawyer and/or engineer.



A station's antenna resistance may change for any number of reasons. One of the most common is a change in the tower structure, including the mounting of an additional antenna (even as small as a land mobile or remote pickup antenna) on the tower.

Whenever the antenna resistance changes, the licensee must begin determining power by the indirect method. It then must redetermine the resistance and report the results to the FCC if the resistance has varied by more than 2 percent from the value on file. The antenna resistance determination requires a discrete series of measurements over a band of frequencies, which then must be plotted on a graph. (FCC Rule 73.54.) A person with technical experience generally is needed, although no FCC operator permit is required.

#### 4. DIRECTIONAL ANTENNA PROOF-OF-PERFORMANCE [AM]

Directional AM stations from time to time must measure, in different directions and distances from the transmitter, the field strength of their signals to establish that the directional pattern of their signal is in fact what it is supposed to be under the terms of their licenses. There are two kinds of RF proof-of-performance measurements:

- *Complete proof:* This is the most comprehensive proof. It is required for a new station or for major changes or adjustments in an existing station. (FCC Rules 73.151 and 73.186.) It involves measurements on several radials at distances specified in the rules.
- *Partial proof:* This series of tests is less comprehensive. It primarily is intended for comparison with the last full proof to determine if any changes have occurred. It requires only 10 measurements on each radial at wider-spaced distances. (FCC Rule 73.154.)

Periodic partial RF proof-of-performance measurements are required for directional AM stations operating under certain conditions. They must be done for remote control operation, where a partial proof must accompany an application for remote control authority, unless the station has an approved sampling system. Also, when antenna components, sampling systems or antenna monitors are changed or replaced, a proof also may be required. FCC Rules 73.61, 73.68 and 73.69 spell out those situations where proofs are required and the type of proof required in each instance.



## H. STATION TECHNICAL SPECIFICATIONS

### 1. FREQUENCY MEASUREMENTS

Stations are required to maintain their frequency within the following tolerances:

- AM:  $\pm 20$  Hz
- FM:  $\pm 2$  kHz
- Class D (10-watt) Noncommercial FM: 3 kHz
- TV:  $\pm 1$  kHz (visual & aural); Aural  $\pm 1$  kHz from visual
- Low Power TV: 0.02 percent (up to 100 watts); 0.002 percent (above 100 watts) (FCC Rule 74.761).

A licensee may measure the frequency of its station by any means and as often as it wishes. However, the licensee is responsible for the station remaining within the tolerances specified above at all times. Lack of knowledge of a deviation is not an excuse for non-compliance. (FCC Rules 73.1540 and 73.1545.)

Common ways to measure frequency are by retaining an outside professional measuring service, measuring with a frequency counter or using a calibrated frequency monitor. (Frequency monitors at one time were mandatory but now are optional.)

The standard reference source for frequencies is a signal from the National Bureau of Standards transmitted on stations WWV, WWVB, WWVH and WWVL. Thus, any instrument used by a licensee to measure frequency should be calibrated against one of these stations or some other reliable frequency source. It is particularly important that a frequency monitor of the type formerly used by all stations be calibrated carefully and often, because it is likely to be less stable than a more elaborate professional measuring instrument.

## 2. STATION POWER

The transmitter output power of a broadcast station must be maintained as close as possible to the licensed value, but must in all events remain within the following limits (FCC Rule 73.1560):

- AM: 90-105 percent
- FM: 90-105 percent
- TV: 80-110 percent

TV stations may maintain aural power at any minimum level they choose, but at not more than 22 percent of visual power.

AM licensees must be careful to maintain power at the actual power level specified in their licenses, which may be less than the "nominal" power. For example, the license for a "1 kw" station may specify an actual power limit of 940 watts, to protect other stations from interference. Many AM stations operate at a variety of power levels to accommodate different modes of operation (such as pre-sunrise, post-sunset and various directional patterns).

## 3. FIELD STRENGTH [AM]

AM stations that operate with directional antennas are subject to limits on the strength of their signal in specified directions (known as "radials") from their transmitters. These limitations are spelled out on the station license.

All directional stations are required to measure field strengths at monitoring points specified in their licenses. Stations having approved sampling systems may establish their own appropriate measurement schedule. Stations not having approved sampling systems must make a set of monitoring point measurements at least once every three months. (FCC Rule 73.61.)

## 4. MODULATION

Broadcast stations must limit modulation as follows (FCC Rule 73.1570):

- AM: 125 percent positive, 100 percent negative. (*Note: The 125 percent is an absolute ceiling that may never be exceeded at any time on any peak. Automatic Transmission Systems (ATS) must maintain this limit.*)
- FM: 100 percent (up to 110 percent for stereo FM stations transmitting subsidiary subcarrier services) (FCC Rule 73.1570(b)(2)).

- TV: *aural*—100 percent—(stereo stations have special modulation specifications (FCC Rule 73.682(c)).  
*visual*—See FCC Rule 73.682(a)(9) and Figures 6 and 7 of FCC Rule 73.699.

## 5. MINIMUM HOURS OF OPERATION

All commercial broadcast stations must operate a minimum number of hours a week. (FCC Rule 73.1740.) For AM and FM stations, Sundays are exempt from the requirements. The required minimums are:

- Daytime AM: At least 2/3 of the authorized hours of operation between 6 a.m. and 6 p.m.
- Fulltime AM and FM: At least 2/3 of the hours between 6 a.m. and 6 p.m., plus 2/3 of the hours between 6 p.m. and 12 midnight. In 1987 the Commission ruled that “daytimers” obtaining night-time authority of less than 250 watts would not be required to meet the 2/3 requirements for operation between 6 p.m. and midnight.
- TV: After 36 months of operation, at least two hours per day and 28 hours per week, not including test patterns or audio-only programming.

## 6. TOWER LIGHTING AND PAINTING

Most station licenses require painting and lighting of the radio tower in a specified manner. The FCC recently called attention to inadequacies of certain licensee’s fulfillment of their tower lighting and painting requirements. (See FCC Public Notice 718, released Nov. 27, 1987). Painting requirements specify alternate bands of signal white and aviation orange in a certain pattern. (FCC Rules 17.23 and 17.39–17.42.) These rules specify color bands equal to approximately one-seventh the height of the tower with a maximum vertical length of 100 feet and a minimum vertical length of 1-1/2 feet. The top and bottom bands must be aviation orange.

Lighting specifications may require some fixed and some flashing red beacons, or high intensity flashing strobe lights. Where fulltime strobe lights are used, painting is not required.

If a station’s tower is less than 200 feet tall and is located far enough from the nearest aircraft landing area, it may be possible to have painting and lighting requirements removed from its license. The Antenna Survey Branch of the FCC’s Field Operations Bureau may be contacted for further information. As a general rule, the FCC concurs with any relief granted by the FAA.

If more than one station shares a common tower, the licensees of all users will have painting and lighting conditions. It is permissible, however, for all the users to delegate responsibility for painting and lighting to one licensee. Such agreements must be in writing and kept available for FCC inspection upon request. (FCC Rule 73.1213.)

A publication entitled *Radio and Television Towers—Maintaining, Modifying and Managing* is available from the NAB Station Services Department to assist stations with the requirements applicable to towers, including the physical factors involved with AM directional arrays.

# I

## I. NOTIFICATIONS

Certain disruptions in normal operation and certain events during the construction of new and changed facilities require notice to the FCC. They include:

- Change of location of a *main studio*. See page 137.
- Establishment or change of any *remote control point*. See page 144.
- Change of *mailing address*. (FCC Rule 1.5.)
- *Tower lighting failure*: The failure of the light at the top of a tower or of any flashing beacon on a tower must be reported within 30 minutes of discovery to the nearest FAA Flight Service Station or other FAA office (not the FCC). (FCC Rule 17.48(a).) The notification must include identification of the light that failed and when repair is expected.
- *Failure of required monitors or meters*: Where a required meter (including plate voltage, plate current, antenna current, output power meters and directional AM antenna monitors) fails and cannot be repaired or replaced within 60 days, the Engineer-in-Charge of the local FCC Radio District must be notified. (FCC Rule 73.3549.) While the meter is out of service, an alternate means of measuring the required parameter must be used. If an AM antenna monitor is out of service, field strength measurements at monitoring points must be taken every seven days.
- *Minimum hours of operation*: If a station goes off altogether or is unable to maintain the minimum required hours of operation due to causes beyond licensee control (see page 142), notification must be given to the FCC in Washington, D.C. on the tenth day, and the FCC also must be notified when normal operation resumes. Within 30 days of non-complying operation, a written request must be made to the FCC in Washington, D.C. for authority to remain silent or to operate for fewer than the required hours, as may be necessary.
- *Discontinuation of Operations*: Any stations seeking to permanently discontinue operation must notify the FCC at least two days before cessation of operations.
- *Equipment and Program Tests*: During the construction of new or changed broadcast facilities, a station may begin *equipment tests* after giving notice to the FCC in Washington, D.C. (FCC Rule 73.1610.) Equipment tests involve the transmission of test signals only, not regular programming.

When equipment tests have been completed and any necessary proof-of-performance has been completed successfully, *program tests* may begin. (FCC Rule 73.1620.) Program tests involve the transmission of regular station programming.

*Nondirectional AM and FM and all TV stations* may begin program tests upon giving notice to the FCC in Washington, D.C. An application for license to cover construction permit must be filed within ten days after program tests begin (FCC Form 302).

*Directional AM and FM stations* may not begin program tests until they file an application for a license to cover construction permit, request program test authority in that application and receive an affirmative response from the FCC. An application for a license by a directional AM station must include an antenna proof. An FM construction permit may contain a condition requiring the submission of similar data. Program test authority permits a station to broadcast normal programming, and remains valid unless and until modified or revoked by the FCC. The FCC has the right to modify or revoke program test authority without the right to a hearing. (The FCC usually takes this action only in event of an unusual or severe interference condition.)

# J

## J. REMOTE CONTROL AND EXTENSION METERING

When a transmitter is operated by direct control, the operator on duty must be able to observe the required monitoring and metering. (FCC Rule 73.1860.) The operator must be able to make necessary adjustments from the normal duty operator position. If the transmitter is located at a distance from the station's studios, the transmitter may be controlled from one or more remote locations (including, but not limited to, the main studio). (FCC Rules 73.1400 and 73.1410.) Nondirectional AM and all FM and TV stations may establish remote control points wherever they like, as long as they are under the control of the licensee and protected from access by unauthorized persons, and provided that all required control functions can be accomplished at each control point. The FCC in Washington, D.C., must be notified of the location of each point unless station staff is concurrently on duty at the main studio. Directional AM stations must apply to the FCC for authority to operate by remote control.

In the event of failure of the remote control system, the transmitter must be operated manually. If meter readings are lost or detected as inaccurate, and if the malfunction cannot be corrected within three hours, the station must cease using the remote control system.

Extension metering may be used when the operator on duty cannot readily observe the transmitter, but the transmitter is in the same building where an operator is on duty (for example, where the studio and transmitter are on different floors of the building). (FCC Rule 73.1550.) With extension metering, each required transmitter parameter is displayed by a separate meter at the extension location, which is hard wired to the transmitter itself. No prior consent from or notification to the FCC is required for such installation and use.

The *NAB Engineering Handbook* contains more detailed information regarding these and other technical requirements.

# K

## K. EMERGENCY BROADCAST SYSTEM

FCC Rules 73.901–73.962 govern the Emergency Broadcast System (“EBS”). To participate effectively in the EBS and to meet the FCC’s requirements, all broadcast stations should retain the following materials:

- EBS Checklist. There are two types of EBS checklists—one for participating stations and another for non-participating stations. Those stations in possession of an EBS authorization are designated as participating stations and are to remain on the air during a national-level EBS activation. Non-participating stations go off the air after transmitting the EBS attention signal and sign-off announcement. The EBS checklist summarizes instructions and procedures that stations should follow during national, state and local EBS tests and activations;
- FCC Special Instruction Card (to be posted at AP/UPI teletype machines);
- EBS Authenticator List—Red Envelope (issued every January 1 and July 1 and effective only for the current six-month period);
- State EBS Plan (including the State Relay Network and Operational Area maps indicating monitoring assignments);
- Local Operational Area EBS Plan;
- FCC EBS Rules and Regulations (FCC Rules 73.901–962); and
- List of State and Operational Area chairmen.



All materials listed above can be obtained from the Management Planning and Program Evaluation Office, FCC, Washington, D.C. 20554, (202) 632-3906.

In addition, all radio and TV licensees must:

- **INSTALL** an EBS encoder and decoder at a normal duty station for the purpose of generating and receiving EBS tests and activations (co-located stations need only have one set of equipment and 10-watt educational FM and LPTV stations need only have a decoder);
- **CONDUCT** a weekly on-the-air EBS test at random times and days between the hours of 8:30 a.m. and local sunset, unless an actual EBS alert was transmitted during the week. (FCC Rule 73.961(d).)
- **MONITOR** at least one other broadcast station (preferably the station designated in the state or local EBS plan) to receive that station's national, state and local EBS tests and activations;
- **LOG** (in the station log or record) transmission and receipt of all EBS tests and activations;
- **ENSURE** that station personnel are familiar with national, state and local EBS procedures—as described in the FCC's Rules, Checklist and state and local EBS plans; and
- **INVESTIGATE** any failure to receive the *weekly* EBS test.

EBS can be used successfully if all broadcasters understand the rules concerning the system's operation.

## L. OTHER TECHNICAL REQUIREMENTS



### 1. "TONE CLUSTERS" AND OTHER AUDIO ATTENTION-GETTING DEVICES

In response to numerous inquiries, the FCC issued a Public Notice on July 2, 1976, concerning the propriety of transmitting audio tones to gain attention of listeners and viewers for important news bulletins, local weather announcements and other situations that may call for the interruption of regularly scheduled programming but do not warrant the activation of the state or local Operational Area Emergency Broadcast System (EBS). The FCC stated that it has no objection to the use of such tones provided they are removed from the audio tones used for EBS interstation signaling (853 and 960 Hz) and not "presented, tested, announced or promoted in a way that confusion with the EBS would be created in the minds of the public."

The Notice stated that, in keeping with the FCC's policy against the use of broadcast frequencies for strictly point-to-point communications, any use of such tones for receiver control purposes must be *secondary* to the basic purpose of informing the general public using conventional receivers. This means that the use of audio tones as an attention-getting device must be of primary benefit to the general public, and of only incidental benefit to persons with special circuitry receivers designed to activate upon transmission of the particular audio tones employed.

### 2. VISUAL CAPTIONING OF EMERGENCY MESSAGES [TV]

Television stations must provide aural announcements and companion visual captioning of EBS messages as a service to the deaf. (FCC Rule 73.1250(h).) Tele-

vision licensees may use any method of visual presentation that results in legible messages conveying the essential information. Licensees broadcasting primarily in a foreign language are required to transmit emergency information visually in both English and the foreign language. Simultaneous transmission of visual and aural emergency information is not required, but if the visual notification is delayed, it should not be unreasonably delayed so that a hearing-impaired person would not have time to take reasonable and constructive precautions with regard to that emergency.

Where EBS has not been activated, only visual captioning need be provided. The FCC concluded that aural transmission of non-EBS warnings by TV stations is not necessary because the blind may receive this information via radio. However many blind people *do listen* to TV program audio for news, weather, public affairs and entertainment programs. While not required by FCC rule, it is suggested that TV stations also provide aural warnings in all emergency situations.

## M

### M. LOW POWER TELEVISION AND TELEVISION TRANSLATORS

In 1982, the FCC established a low power television (LPTV) service to provide new broadcast programming and ownership opportunities. The service is designated to operate on a secondary, non-interference basis to full-service TV stations and is authorized to retransmit the programs and signals of broadcast stations as well as provide original and/or subscription programming. (FCC Rule 74.701(f).) However, low power stations do not qualify for mandatory carriage on cable systems. (See Chapter VI on cable carriage rules.)

In addition, TV translators are authorized to retransmit or “translate” the programs and signals of a television broadcast station to areas of poor reception. See FCC Rules 74.731 et. seq. In so retransmitting the signal of the “primary” station, the TV translator may not alter any characteristic of the original signal other than its frequency and amplitude. Unlike television stations, TV translators are limited in their origination of visual and aural materials “to emergency warnings of imminent danger, to local public service announcements and to seeking or acknowledging financial support deemed necessary to the continued operation of the stations.” FCC Rule 74.731(f). These announcements acknowledging and/or soliciting support and PSAs are limited to thirty seconds each and no more than once per hour.

Except for compliance with technical standards designed to minimize radio frequency interference, the LPTV service is largely unregulated. This FCC approach is based on its belief that market forces should dictate such operational aspects as programming in a new service whose viability is still undetermined. The standards imposed to ensure the avoidance of interference focus upon channel assignments that protect the Grade B contours of existing broadcast stations, as well as the limited contour configurations of and TV translator stations. (FCC Rule 74.707.) In addition, the rules specify that the service is secondary to existing or future broadcast services, as well as certain land mobile uses, existing cable relay microwave service systems, and the output channel of a multipoint distribution (MDS) or Instructional Television Fixed Service systems. (FCC Rule 74.703.)

Many of the program content and operating policies which apply to broadcast stations also apply to stations. For instance, the broadcast of obscene material and lotteries is prohibited. Low-power stations also have fairness doctrine obligations<sup>32</sup> and must provide reasonable access for legally-qualified candidates

32. But see Chapter II for a discussion of the fairness doctrine.

for federal elective office, in relation to the station's origination capacity. In addition, stations are subject to copyright laws and must have rebroadcast consent from originating stations and program sources.

In light of the imposition of "window periods," the process of filing low power station applications has been streamlined. Applicants generally have five working days to file once the window is publicly announced. Applications either will be placed on a proposed grant list or grouped for a "lottery" with other mutually exclusive and acceptable applications filed during that window. In addition, applicants are no longer required to certify financial qualifications. The FCC has decided that adherence to the strict one-year construction period will adequately deal with any financially unqualified applicants. However, applicants are required to certify the availability of a site on Form 346.

## N. FM TRANSLATORS



FM translators provide the public with direct reception of an originating (primary) station by retransmitting or "translating" the signals of an FM radio station to areas that cannot receive satisfactory service. (See FCC Rules 74.1200, et. seq.)<sup>33</sup> FM translators are also used to provide service to unserved or "white" areas. The FM translator station may not alter the signals of the primary station except for changes in frequency and amplitude. The signal delivery to the FM translator station must come from means other than by a microwave system or from a satellite, i.e. off-air signal pickup only. An FM translator station may also retransmit the signals of another FM translator; however, such translators may not be operated solely for the purpose of relaying FM radio signals.

Because FM translators are considered a "secondary" service, the FCC provides no interference protection or guarantee of service. FM translators, however, must not cause interference to regular broadcast stations.

Generally, FM translators are limited in power. For FM translator stations located east of the Mississippi River, Zone I-A, or in California, south of the 40th parallel, transmitter power output is limited to one watt. Other FM translators are limited to a transmitter power output of 10 watts.

FM translators, generally, are prohibited from originating local programming. However, FM translators are permitted to provide no more than 30 seconds per hour of local origination, including requests for donor support and acknowledgment of contributions made by an entity toward defraying the costs of installing, operating and maintaining the translator station. Advertising messages also are allowed, subject to the overall thirty second per hour time limit. See *FM Translator Rules and Policies*, 55 RR 2d 1247 (1984).

## O. FM AND TV BOOSTERS



### 1. FM BOOSTER STATIONS

Licensees of FM broadcast stations may be authorized to operate booster facilities in order to more efficiently serve their licensed areas. On July 16, 1987,

33. Note: The licensee of the primary station cannot own or financially support the construction or commencement of operation of an FM translator outside the 1 mV/m field strength contours of that station and within the predicted 1 mV/m contours of another commercial FM station assigned to a different community of license.

the FCC modified the FM booster station rules in order to allow licensees to increase the power used to operate their booster facilities. *Report and Order* in MM Docket No. 87-13, 2 FCC Rcd. 4625 (1987).

Under the new rules, (FCC Rules 74.1201-1284), booster stations may be used to serve those areas that the primary station cannot reach directly or efficiently. However, the predicted service contour of the booster stations may not extend beyond the predicted service contour of the primary station. Further, in order to ensure that a substantial amount of the primary service is not inadvertently displaced or subject to interference, the effective radiated power (ERP) of booster stations will be limited to 20 percent of the maximum permissible ERP of the primary station.

## 2. TV BOOSTER STATIONS

Under the rules also adopted July 16, 1987, licensees of full-service television stations may be authorized to operate TV booster facilities. See *Report and Order* in MM Docket No. 87-13, 2 FCC Rcd. 4625 (1987). The FCC has stated that, by using booster facilities, TV licensees will be better able to serve those areas within their Grade B contours that have lacked full service.

TV booster facilities will be subject to the technical specifications set forth for TV translators and LPTV stations, including the existing limits on output power. (FCC Rule 74.735.) However, TV booster stations will not be permitted to extend a full-service station's Grade B contour or predicted service area. In addition, booster facilities may not be used to establish a point-to-point relay system.

## P

## P. FM SUBCARRIER OPERATION

FM stations are permitted to use subcarrier technology to take full advantage of the capacity of the spectrum bandwidth for which they are licensed. A subcarrier is created by modulating that portion of the total channel bandwidth not used for the main audio service of the station. Subcarrier technology is used to create stereo sound on FM stations, but also may be used for other purposes, including audio, data or slow-scan video services. Subcarrier signals other than standard stereo cannot be received by ordinary FM receivers but, rather, require special receivers tuned to the subcarrier channel desired.

In May 1983, in BC Docket No. 82-536, the FCC eliminated most restrictions on the use of FM subcarriers. No prior authorization from the FCC is needed for subcarrier transmissions, unless the activity involved is legally classified as common carriage (see below). In all other respects, the former regulation requiring application for a subsidiary communications authorization (SCA) has been eliminated. There are no specific technical standards for subcarrier operation, except a total bandwidth limitation of 99 kHz, standardization of stereo sound, a limit of 20 percent modulation for all non-stereo subcarriers taken together, and a prohibition against interference to any other radio station or service. There are no longer any geographical restrictions on subcarrier operations. (FCC Rule 73.319(c).)

Licensees of both commercial and noncommercial educational FM stations are permitted to use their subcarriers to offer commercial services in either a broadcast or non-broadcast mode. In addition, broadcasters may provide the services themselves or lease capacity to others. However, if the activity involved is legally classified as common carriage, the broadcaster must obtain prior authority from the FCC's Common Carrier Bureau and also may have to obtain state authoriza-



tion to operate. If the activity is private in carriage, only notice must be given to the FCC's Private Radio Bureau.

## Q. AM CARRIER OPERATION



It is possible to transmit data not discernible by users of ordinary receivers on AM stations as well as FM stations, by methods such as phase modulation of the AM carrier or by subaudible tones.

In 1984, the FCC eliminated the restrictions on AM carrier operations. Previously, carrier operations were limited to utility load management purposes and remote control telemetry. However, the FCC now allows any operations (non-broadcast or broadcast) that do not interfere with the main broadcast channel operation or the signals of other broadcast stations as long as the station is broadcasting programming at the same time. See *Report and Order* in MM Docket No. 83-1322, 100 F.C.C.2d 5 (1984).

AM carrier operation requires no prior authority from the FCC, although the same common carriage and private carriage rules apply to AM stations under FCC Rule 73.127 as apply to FM stations (see previous section). An exciter for AM carrier operation need not be type accepted and will not void the type acceptance of a station's transmitter if it is designed for use with that transmitter and the transmitter is not modified electrically or mechanically when the new exciter is installed. (FCC Rule 73.1690(e)(6).)

## R. TV TELETEXT



Teletext is a means for transmitting data signals via a TV station using the vertical blanking interval (VBI) of the picture (the black line that is visible when the vertical hold on a receiver is out of adjustment). It can be used to transmit any kind of information, from electronic print displays of news and sports scores to computer software and paging services. In November 1984 the FCC amended its teletext rules by eliminating all restrictions as to the permissible uses of the VBI. See *Report and Order*, MM Docket No. 84-168, 101 F.C.C.2d 973, *recon. denied*, *Memorandum Opinion and Order*, MM Docket No. 84-168, 58 R.R.2d 819 (1985). Accordingly, broadcast licensees may use their discretion to provide any type of service which transmits data, processed information, or any other communications in either analog or digital form.

In the absence of specific teletext system standards, the FCC has imposed broad operating limits, such as the maximum intensity of the signal and a restriction against interference with the main program service of the host TV station or with any other station. (FCC Rule 73.682(a)(21).) In addition, teletext currently may be transmitted only on lines 10-18 and 21 of the vertical blanking interval. Line 19 is reserved for the VIE color reference signal. Line 20, field 1 is available for teletext but is in general use by the TV networks and rating services for source identification. Line 21 is widely used to transmit closed captions for the hearing-impaired, but is otherwise available for teletext or data services.

Licensees may provide teletext services themselves or may lease their facilities to others without prior FCC approval. In addition, noncommercial stations may use their teletext facilities for commercial purposes in order to develop alternative sources of financing. However, where teletext operations are deemed common or private carriage, the same prior application or notification requirements that apply to FM station's subcarriers also apply to television station's teletext use.



The FCC has declined to require cable television systems to carry teletext offerings by broadcast stations. In addition, the FCC does not restrict cable systems from offering their own teletext services.

## S

### S. STEREOPHONIC SOUND

#### 1. AM STATIONS

AM stations may offer stereophonic audio service to the public without prior authority from or notice to the FCC. There are minimum technical requirements for AM stereo. (FCC Rule 73.128.) AM stereo exciters must be type accepted by the FCC's Equipment Authorization Branch prior to use—an authorization is generally obtained by the manufacturer rather than by the station licensee.

#### 2. FM STATIONS

FM stations also may offer stereophonic audio service to the public without prior authority from or notice to the FCC.

In contrast to AM stereo, there is a single uniform FM stereo system that uses a 19 kHz subcarrier for a pilot light and synchronization signal and centers a stereo subcarrier channel at 38 kHz.

#### 3. TELEVISION (MULTICHANNEL SOUND)

The FCC has adopted very general technical rules that allow the television aural baseband to be used for television sound, second language programming and any other broadcast or non-broadcast uses. (FCC Rule 73.682(c).) The rules also provide "pilot tone" protection to a single system called the Broadcast Television Systems Committee ("BTSC") multichannel sound system. (See FCC Report OST-60 for details of the BTSC system.)

The new rules:

- allow for marketplace competition in multichannel sound (MTS) services;
- permit noncommercial educational stations to use their non-public subcarriers commercially;
- encourage non-broadcast use of subcarriers, such as paging, but require coordination with the appropriate FCC bureaus if the service is construed as common carriage; and
- do not apply the fairness doctrine or equal opportunities provision of the Communications Act to subcarriers that require special equipment to be received.

## T

### T. RADIOFREQUENCY RADIATION REGULATIONS

In 1985, the FCC concluded a proceeding which determined that human exposure to radiofrequency (RF) radiation is an environmental concern which should be considered in the FCC's licensing process. Since January 1, 1986, the FCC has required applicants for new or changed facilities and license renewals to certify whether their stations comply with FCC guidelines on human exposure to RF radiation. These guidelines, based upon the RF exposure standards developed by

the American National Standards Institute (ANSI), apply to exposure of both the general public and station workers. (FCC OST Bulletin No. 65, June 1985.)

All AM, FM, and TV stations, experimental stations, LPTV and TV translators, and satellite uplink facilities are required to certify compliance by answering the license renewal or construction permit question, "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?" The FCC recently exempted broadcast auxiliary facilities (and certain other communications operations) from this requirement. (*Second Report and Order* in Gen. Docket No. 79-144, 2 FCC Rcd. 2064 (1987).) However, on December 1, 1987, the FCC proposed to apply its RF certification standard to FM booster facilities.

Broadcasters, as well as other communications representatives, as part of a campaign for an overall *reduction* in government regulation of RF radiation exposure, have supported these new FCC rules and, similarly, are urging the Environmental Protection Agency (EPA) to establish a national standard for RF radiation exposure. The EPA—the expert agency on biological effects of RF energy—has started a proceeding to set such a standard. It is expected that the EPA will adopt a standard in the near future. Broadcasters are urging uniformity because, in the absence of clear and ideally preemptive federal standards, many state and local authorities are establishing their own sets of requirements for RF radiation exposure, and many have been more stringent than current scientific evidence would seem to support.

Even if a licensee does not have any immediate plans to modify its facilities—and even where license renewal may be several years away—the FCC has reserved the right to make case-by-case evaluations (and, in some cases, on-site inspections) whenever a complaint is registered concerning radiation exposure. The NAB Legal Department has put together an RF radiation regulatory compliance guidebook, *A Broadcaster's Guide to FCC RF Radiation Regulation Compliance* for stations which explains, in detail, the FCC rules and how to comply. The guidebook includes a complete copy of the FCC Technical Bulletin explaining the rules and also contains a question and answer section written specifically for station managers. The guidebook was sent to all NAB members during November 1985, and copies of a May 1987 updated version are now available for purchase from NAB Station Services at 800-368-5644.

Generally, checking station compliance may involve up to a three-part process. Licensees should begin their inquiry by referring to the charts in the FCC's Technical Bulletin (OST No. 65) and NAB's guidebook that predict RF energy levels at various distances from the antenna. The FCC has said that if compliance appears certain from a review of these charts, a broadcaster can, in good faith, certify compliance. However, if a licensee is uncertain about the applicability of these charts to its situation, the Chief Engineer or a contract engineer may use the charts or refer to the technical formulas also found in the bulletin. Finally, if the charts and formulas do not show compliance, or the results are uncertain, a licensee may want a qualified engineer to measure actual field strengths.

For most stations that find a general population exposure problem, achieving compliance may merely mean that a fence is required around the tower so that access to the area is restricted. If levels above the ANSI standard are found around the base of the tower, a fence around that perimeter, plus warning signs (also available from NAB Services), should be sufficient. If high RF energy levels are produced at one or more locations above ground level, compliance may require limiting "climbing" access to the tower and posting warning signs. In some cases, compliance might require a change in antenna or in antenna height and, in some extreme cases, a change in transmitter location.

In addition to general population exposure concerns, licensees must take precautions to protect station employees or contract workers who perform any of

their duties in the vicinity of the station's antenna. Extra caution must be taken when workers are maintaining or painting the tower, changing lights, or operating under emergency situations. Also, based upon the circumstances of each case, a station may have to reduce the power to a TV or FM antenna or switch to an auxiliary tower or antenna when workers are near the main antenna elements. The same cautions apply to AM broadcasters as well. As another example, when the facility is located on an antenna farm and a neighboring tower's employees are working in the area, cooperation between stations will be required.

As a general reminder, when certifying compliance, the emphasis, as always, should be on avoiding misrepresentations. When a station certifies compliance, it pledges to comply for the term of its license, both for general population and worker exposure. If, for example, the licensee is lax in enforcing its procedures restricting access to its tower or antenna, the original certification then becomes a misrepresentation. In addition, such misrepresentations may arise even where the requirements are met initially, but later changes in antenna site characteristics or employee work activities negate compliance. The penalties for misrepresentation to the FCC are harsh and a station that misrepresents compliance may be fined heavily or have its renewal denied.

Although stations should consult NAB's guidebook and the Commission's Technical Bulletin on the matter for precise interpretation, below is a set of typical "worst case" examples of the distance from the antennas where levels at or above the ANSI standard may be expected.

#### DISTANCES TO ANSI EXPOSURE LIMITS

##### AM Stations

ANSI Limit = 100 mW/cm<sup>2</sup>

ERP	Distance (ft)
1kW	10
5kW	17
10kW	23
25kW	30
50kW	40

##### TV Stations

ANSI Limits:

VHF = 1 mW/cm<sup>2</sup>

Ch. 14 = 1.58 mW/cm<sup>2</sup>

Ch. 69 = 2.68 mW/cm<sup>2</sup>

	ERP	Distance (ft)
VHF	100kW	150
	316 kW	266
UHF		Ch. 14    Ch. 69
	1000kW	378    292
	2000kW	532    414
	5000kW	840    653

##### FM Stations with

Circular Polarization

ANSI Limit = 1 mW/cm<sup>2</sup>

ERP	Distance (ft)
1kW	28
3kW	46
10kW	78
25kW	129
50kW	187
100kW	269

## Cable Television Rules Governing Broadcast Signal Carriage

The FCC administers complex rules governing the carriage of commercial television broadcast signals by cable television systems. These rules, which are set forth in Part 76 of the FCC's rules, govern deletion of network programming (network non-duplication rules), and carriage of sports programming (sports blackout rules) by cable systems under certain circumstances. They also require cable operators to offer their subscribers input selector ("A/B") switches and to provide information to subscribers concerning what they need do to receive local broadcast signals not carried by the cable system. This chapter summarizes these rules<sup>34</sup> as well as Copyright Office rules relating to royalties that cable systems must pay to carry certain broadcast signals.

### A. MUST CARRY RULES

From 1965 to 1985, the FCC's "must carry" rules required all cable systems to carry all "local" stations. In 1985, a federal court found that those rules violated the First Amendment rights of cable operators and programmers but left open the possibility that more limited rules might pass constitutional muster.



34. Part 76 of the rules also formerly included provisions that governed the mandatory carriage of certain local television broadcast signals ("must carry" rules). On December 11, 1987, a federal appeals court found that those rules violated the First Amendment rights of cable operators. At this writing, NAB and others are appealing this decision. Accordingly, a description of the must carry rules is included in this section. You should contact NAB or consult with your legal counsel for an updated status on the must carry rules. In the past, the FCC also had rules that required cable systems to provide syndicated program exclusivity protection. At this writing, the Commission is considering reimposition of rules that would provide such protection.

In late 1986, the FCC released new "interim" must carry rules, and related A/B switch and cable consumer education rules, further modified in the Spring of 1987, which went into effect on June 10, 1987. On December 11, 1987, a federal court found the new interim must carry rules also violated the First Amendment rights of cable operators, but did not invalidate the A/B switch or consumer education requirements. At this writing an appeal of that portion of the decision invalidating the must carry provisions is pending. The following is a description of both the must carry rules which were invalidated and the A/B switch and consumer education rules which are still in effect.

The must carry rules adopted by the FCC had three distinct components. The first specifies the qualifications that stations must meet to be *eligible* for must carry status and imposes on cable systems various signal carriage obligations. It is these rules that the Court struck down and which are being appealed. The second component of the rules requires cable systems to make available to subscribers so-called "A/B switches" (or "input selector devices") that enable viewers to switch between cable and over-the-air reception of television signals (by way of an indoor or outdoor antenna) without disconnecting their cable hookups. The third component of the rules requires cable system operators to "educate" their subscribers concerning: (a) the use, operation, and availability of A/B switches, (b) the new limits on local television signals that must be carried, and (c) the possibility that antennas may be needed to receive signals formerly received via cable. While the A/B switch offering requirement is scheduled to lapse on June 10, 1992, the consumer education requirements have no automatic "sunset."

## 1. CARRIAGE REQUIREMENTS

### a. Commercial Television Station Eligibility for Must Carry Status

To be eligible for must carry on a cable system, a commercial television station must be "qualified." All domestic full-service commercial television broadcast stations and satellite stations are eligible to be qualified stations. Commercial subscription, translator, and low power television stations, as well as stations that are "distant" for copyright purposes, are not eligible to be qualified stations, though a cable operator *may* carry any of these types of stations if it chooses to do so.

To be a qualified station, the following *mileage*, *minimum viewership* and *signal quality* requirements must be met:

#### (1) Mileage Requirements

A station must be licensed to a community that is within 50 miles of the cable community, as measured from the principal cable headend to the reference point of the station's city of license. (Reference points are listed in FCC Rule 76.53.) For cable systems with multiple headends, the cable operator must specify in "good faith" which facility is the principal headend. The FCC carefully will consider allegations that a headend was designated as "principal" to avoid or minimize signal carriage obligations.

#### (2) Minimum Viewership Requirement

A commercial station also must demonstrate that it achieves an average share of total viewing hours of at least 2 percent and a net weekly circulation of at least 5 percent in *non-cable homes* in the *county* where the cable system is located. New commercial stations are exempt from these requirements for one year from the date they begin operation under program test authority. Commercial stations which commenced operation as of July 19, 1985, but before June 10, 1987, are exempt from this requirement until June 10, 1988. Stations subject to the view-



ing standard must show compliance with the standard during the previous television viewing survey season (i.e., April–June, July–September, October–December, and January–March). The surveys must be conducted by an independent professional survey organization using recognized survey techniques. Stations are not required to reconfirm compliance with the viewing standard. However, a cable system may nullify a station's must carry eligibility at any time after one year from the time a station demonstrates compliance with the viewing standard by showing, through appropriate surveys, that the television station no longer complies with the standard.

### (3) Signal Quality Requirements

Stations must deliver to the principal cable headend a "good quality" signal, which is defined as a TASO (Television Allocation Study Organization) "Grade 2" picture or a minimum UHF station signal of  $-45$  dBm and a minimum VHF station signal of  $-49$  dBm. Stations are permitted to furnish cable operators with, or compensate them for, equipment necessary to achieve these signal quality levels. Alternative delivery methods, such as landlines or microwave, also may be used to meet this signal quality requirement.

### b. Commercial Signal Carriage Obligations

The number of commercial television signals that a cable system must carry depends upon the system's channel capacity. Cable systems with 20 or fewer "usable activated channels" (channels engineered at the cable headend for the provision of services "generally available" to residential subscribers) are not required to carry any commercial stations. Cable systems with more than 20 usable activated channels but less than 29 such channels need carry no more than seven *qualified* commercial stations. Cable systems with more than 29 channels must use approximately 25 percent of their capacity to carry qualified commercial stations. The following chart provides a list of the number of qualified stations that must be carried by a cable system with a given number of channels.

Cable Channels	TV Signals	Cable Channels	TV Signals	Cable Channels	TV Signals
21–29	7	72–65	16	98–101	25
30–33	8	66–69	17	102–105	26
34–37	9	70–73	18	106–109	27
38–41	10	74–77	19	110–113	28
42–45	11	78–81	20	114–117	29
46–49	12	82–85	21	118–121	30
50–53	13	86–89	22	112–125	31
54–57	14	90–93	23	above 125	25% of capacity
58–62	15	94–97	24		

Establishing qualified status does not necessarily *entitle* a station to carriage. If the number of qualified stations exceeds the number of stations a cable system is required to carry under the rules, the system operator may choose from among such stations which ones it will carry.

Cable systems are also not required to carry "duplicating network affiliates," which are defined as commercial stations that carry the programming of the same network at least 14 hours per week during the hours of 6:00 p.m. and 11:00 p.m.

When two or more such affiliates are qualified stations, a cable system may choose which one it will carry. Likewise, if both a parent station and its satellite station qualify for carriage, the cable system may carry either the parent or its satellite. The rules relating to carriage of duplicating network affiliates and parent/satellite stations apply even if the result is that a cable system ends up carrying fewer commercial stations than it would otherwise be required to carry, as reflected on the above chart.

### c. Manner of Carriage

Stations carried to satisfy a cable system's must carry obligation must be carried in their entirety, without material degradation, and as part of the system's lowest priced, separately available tier of service. The price for this tier of service must include the cost of any device necessary to receive this tier, and the tier must be accessible on any additional receiver connections that a subscriber may purchase. (If additional connections are provided without charge, the must carry tier need not be made available. A rulemaking petition is pending that requests a rule change which would require that the must carry tier be made available on these additional connections even if such connections are provided without charge.) A cable operator may put a must carry signal on a higher tier if subscribers are notified and offered free converters necessary to obtain the signal. Multichannel sound, teletext, and other ancillary services carried in the aural baseband carrier or vertical blanking interval need not be carried.

### d. Payment for Carriage

Cable systems are prohibited from accepting payments, either directly or indirectly, from qualified stations that are carried in fulfillment of system's must carry obligations, except that qualified stations may pay costs associated with delivering the requisite good quality signal to the cable headend. Stations being carried in fulfillment of a cable system's must carry obligation may *not* pay to obtain "on-channel" on more desired "cable channel" rights.<sup>35</sup>

Any station, qualified or unqualified, may pay a cable system for carriage or on-channel rights if it is not carried in fulfillment of the cable system's must carry obligations. If desired by both parties, the payment may take the form of remuneration for any copyright fees which the cable system is required to pay as the result of such carriage.

### e. Asserting Carriage Rights

Stations bear the burden of establishing their right to be carried on a given cable system. A station seeking mandatory carriage rights may be required by the cable system operator to submit to it a request in writing, accompanied by sufficient evidence to demonstrate compliance with the mileage, viewing, and signal quality requirements. A cable system, in turn, must identify, upon request, those stations which it is carrying in fulfillment of its must carry obligations.

Upon receipt of a demand for mandatory carriage, a cable system must respond in writing within 15 days. If carriage is denied, the response must state the reasons for the denial. If a dispute concerning carriage continues to exist, a ruling on the matter may be sought from the FCC. Forfeitures and penalties may be levied against cable systems only if carriage was denied in "bad faith" or if the cable system fails to comply with an FCC order requiring carriage.

35. Because the must carry rules are no longer in effect, any station currently may compensate a cable operator for carriage or for channel position.

#### **f. Mandatory Carriage Requirements for Noncommercial Educational TV Stations**

The following special provisions apply to the mandatory carriage of noncommercial educational television stations (NCES):

- While NCESs are subject to the 50-mile and signal quality requirements, they are *not* subject to the minimum viewing standard;
- NCESs are not subject to the duplicating network affiliate exemption. Thus, for example, a cable system which is obligated to carry eight stations but is only carrying five non-duplicated commercial stations would be required to carry up to three PBS-affiliated qualified stations;
- NCESs are counted when determining whether a cable system has satisfied its must carry obligations. For example, when a cable system is required to carry seven signals and carries six qualified commercial stations and one qualified NCES, it has satisfied its must carry obligations.
- NCES translator stations operating with five or more watts of output power are eligible for must carry status in the same manner as full power NCESs. However, cable systems need not carry both the parent NCES and its satellite or translator stations;
- Cable systems with fewer than 54 activated channels (including those with fewer than 20 channels) are required to carry at least one qualified NCES. Systems with more than 54 channels are required to carry at least two such stations. NCESs carried as part of this requirement are included in the number of qualified signals that a cable system must carry. For example, a cable system with 22 channels that is carrying six commercial qualified stations and one NCES qualified station has met its must carry obligations.

## **2. A/B SWITCH REQUIREMENTS**

The “interim” must carry rules are premised, in part, on the FCC’s notion that cable subscribers either do not have, or do not understand that they have, the capability of obtaining over-the-air reception of television stations without disconnecting their cable hook-ups. To remedy this situation, cable systems are required:

- for new subscribers (i.e., those subscribing after June 10, 1987), to offer to sell or lease, and to install free of charge, A/B switches at the time of initial hook-up or by February 29, 1988.<sup>36</sup> (If the subscriber chooses to purchase or lease the switch elsewhere, the cable system must install it free of charge);
- for existing subscribers (i.e., pre-June 10, 1987 subscribers) who do not have switches, to offer to install one by February 29, 1988.<sup>37</sup> Switches may be purchased or leased from the cable system or elsewhere and an installation fee may be charged.

The offer to sell or lease a switch must be repeated annually until June 10, 1992. When a cable operator installs a switch for a subscriber who has an existing antenna, the operator must connect the antenna to the switch.

36. The FCC has stayed the February 29, 1988, deadline as a result of the Court decision overturning the must carry rules.

37. The FCC has stayed the February 29, 1988, deadline as a result of the Court decision overturning the must carry rules.

A/B switches and the installation of switches are subject to a number of technical requirements. External “stand-alone” switches as well as switches built into television receivers must meet minimum isolation requirements. Switches that use an independent power source must be capable of maintaining the required isolation in the event of power failures. Cable operators installing switches must include coaxial cables between the switch terminal and lead wires to ensure that interference does not result from the direct coupling of cable signals across unshielded wiring. Cable operators installing switches may advise customers of the risk of lightning strikes associated with antennas that are not effectively grounded, and may offer to inspect and install, for a fee, antenna grounding systems.

Cable systems are also responsible for detecting and eliminating excessive radiofrequency emissions and signal leakage resulting from the use of A/B switches in connection with their systems.

Cable systems serving communities that do not receive Grade B service from any full service television station or NCEs translator with 5 watts or more output power, and which are not located in a county in which at least one station is significantly viewed, are exempt from the A/B switch requirements.

### 3. CONSUMER EDUCATION REQUIREMENTS

By February 29, 1988,<sup>38</sup> and on an annual basis thereafter, a cable system must provide subscribers with the following information in writing:

- the system may not be required to carry all local broadcast signals available off the air and, after June 10, 1992, it will not be required to carry any broadcast signals;
- an antenna and an A/B switch may be necessary to receive broadcast signals not carried by the system;
- a description of the function and purpose of the switch, how it can be obtained and how to avoid interference resulting from improper installation, and the name and phone number of someone at the system who can respond to questions about the switch; and
- a list of all stations, identified by call letters and channel numbers, that the system does not carry but which place a Grade B contour over the community or which are “significantly viewed” in the county in which the cable system is located.

The precise wording of this information is left to the systems. As of June 10, 1987, cable operations must give this information to new subscribers at the time of installation.

Cable systems serving communities that are not within the Grade B contour of any full service television station or NCEs translator with 5 watts or more output power and which are not located in a county where at least one station meets the significant viewing test, are exempt from the consumer education requirements.

38. The FCC has stayed the February 29, 1988, deadline as a result of the Court decision overturning the must carry rules.

## B. NONDUPLICATION AND PROGRAM EXCLUSIVITY (SPORTS BLACKOUTS) [TV]



### 1. NETWORK PROGRAM NONDUPLICATION PROTECTION<sup>39</sup>

#### a. Cable Systems on Which Stations are Entitled to Protection:

- *Top-100 market stations* are entitled to protection on all cable system community units comprising all or part of a cable system with 1,000 or more subscribers which are located within the station's 35-mile market zone and which carry the station.
- *Smaller (100-plus) market stations* are entitled to protection on all cable system community units comprising all or part of a cable system with 1,000 or more subscribers which are located within a 55-mile radius zone measured from the market's reference point (namely, the 35-mile "primary zone" plus 20 miles) and which carry the station.

#### b. Programs for Which a Station is Entitled to Protection:

- Generally, programs supplied by a national or regional, commercial or noncommercial television network and transmitted by a cable system simultaneously with the local station's broadcast of the programs must be accorded nonduplication protection, upon proper notification, if:
  - For *top-100 market stations*, the cable system community unit is located within the 35-mile zone of the local station but not within the 35-mile zone of the station whose network programming is to be deleted, or
  - For *smaller (100-plus) market stations*,
    - The cable system community unit is located within the 35-mile zone of the local station, but not within the 35-mile zone of the station whose network programming is to be deleted, or
    - The cable system community unit is located outside the local station's 35-mile "primary" zone but within its 55-mile "secondary" zone and is not within either the 35- or 55-mile zone of the station (including both top-100 and 100-plus market stations) whose programming is to be deleted.
- Exceptions:
  - If the local station broadcasts the program in black and white, a cable system need not provide protection when the station to be deleted broadcasts the program in color.
  - Cable systems need not provide nonduplication 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.)
  - The FCC generally will recognize and give full effect to private agreements between television stations and cable systems providing for different kinds of nonduplication protection, provided such agreements do not violate other

39. As of this writing, the FCC is considering changes to the network nonduplication rules, including changes to mileage and time limitations, who can invoke the rules, and exemptions from the rules.



FCC rules or stations' public interest obligations. For example, an agreement to black out distant significantly viewed signals would not be enforced. (See FCC Rule 76.92(g).)

**c. Translators:**

- Translators of 100 watts or higher power are entitled to nonduplication protection on cable systems located in the translator's community of license if the station which the translator is retransmitting places a Grade B contour over the cable community and if the reference point of the station to be deleted is more than 55 miles from the cable community.
- A cable system located in whole or in part within the specified zone of any television broadcast station or within the secondary zone of a smaller market station is not required to delete the duplicated network programming of a 100-watt or higher power station that is licensed to the cable system's community.

**d. Notification Requirements:**

A station is not entitled to network nonduplication protection unless it gives written notice to cable systems on which it desires protection. Appendix U provides a sample network nonduplication request form.

- The notice must include the following information:
  - The day, date, and beginning and ending times of the program(s) to be protected.
  - The day, date, and beginning and ending times of the program(s) to be deleted.
  - The call letters and channel numbers of the station(s) on which the duplicated programming is carried.
- A station must notify a cable system of its request for nonduplication protection:
  - At least monthly, no later than six days before the calendar month for which protection is requested, or, in the alternative,
  - Weekly, no later than the Monday preceding the calendar week (Sunday through Saturday) for which protection is requested.
  - Changes in monthly notification requests must be submitted six days prior to the broadcast of the program to be protected.
  - In the event of changes which render non-duplication protection unnecessary, the station requesting protection must notify the affected cable system as soon as possible.

**e. Same-Day Nonduplication Protection:**

When, pursuant to a grant of special relief, a station (usually located in the mountain time zone) is entitled to same-day, rather than simultaneous, nonduplication protection, the following limitations apply:

- Nonduplication protection need not be provided if it would leave available for cable retransmission the programs of only one network.
- A cable system need not delete a program retransmitted in prime time if the station requesting protection broadcasts the program in whole or in part outside the prime time period for the time zone involved.

**2. SPORTS BLACKOUT RULES**

A cable system located in whole or in part within the 35-mile specified zone of a broadcast station may not carry a live broadcast of a sports event that is



taking place in the community to which the station is licensed if the sports event is not also being broadcast by a station carried by the cable system which was entitled to mandatory carriage under the FCC's former must carry rules. This requirement does not apply to cable systems having fewer than 1,000 subscribers.

If no television station is licensed to the community in which the sports event is taking place, the applicable specified zone is that of the television station licensed to the community with which the sports event or local team is identified or, if neither is identified with a particular community, the nearest community to which a television station is licensed.

Cable systems are not required to delete sports broadcasts from stations lawfully carried by the system prior to March 31, 1972.

### Notification Requirements

- The request must be made by the holder of broadcast rights to the event or its agent. A station that holds broadcast rights to a local team's games need not have the rights to broadcast each particular game in order to request protection. For example, a station holding broadcast rights to the games of a local baseball team, but which is not permitted to broadcast weekday night home games, may request that local cable systems not carry the local weekday night games on distant signals. However, protection would not be available to other stations in the same community which hold no broadcast rights to the local team's games.
- Requests to delete sports broadcasts must include the following information:
  - For deletion of programs from signals normally carried by the cable system:
    - Name and address of the requesting station;
    - The date, time, and expected duration of the sports event; and
    - The call letters of the station from which the deletion is to be made.
  - For deletion of programs from signals not regularly carried by the cable system:
    - The name and address of the requesting station;
    - The date, time, and expected duration of the event.
- Time of notification:
  - As to regularly scheduled events, notice must be received by the cable system no later than the Monday preceding the calendar week (Sunday through Saturday) during which the program deletion is to be made.
  - As to events not regularly scheduled or revisions to prior notices, notice must be received by the cable system within 24 hours after the time it is known that the telecast is to be deleted, but no later than 24 hours before the event is to be broadcast.

## C. CABLE CARRIAGE OF RADIO SIGNALS

The FCC has no rules governing cable carriage of radio signals. Generally, radio signals which are carried are listed on the semi-annual Statement of Account Forms that cable operators must file with the Copyright Office.



## D. COPYRIGHT ROYALTY DISTRIBUTION

Under the Copyright Act of 1976, cable systems have a compulsory license which allows them to carry distant television signals without the permission of,



or direct payments to, the television stations being carried. The compulsory license requires that cable systems pay royalty fees into the U.S. Treasury each year based upon semi-annual statements of account that they must file with the U.S. Copyright Office. Smaller cable systems pay a flat fee or a percentage of their revenues regardless of how many broadcast stations they carry, but for larger cable systems, the amount of the royalty fees depends on the number and type of distant signals carried.

The Act gives the Copyright Royalty Tribunal (CRT)<sup>40</sup> two functions with respect to these royalties: (1) to adjust the rates every five years for inflation and whenever necessary to reflect changes in the cable television rules of the FCC; and (2) to distribute the collected funds to the owners of the retransmitted broadcast programs.

To be potentially eligible to receive royalties for a given year, television stations must have been carried as a distant signal by at least one cable system during the year in question. In addition, television stations must file royalty claims with the CRT between July 1 and July 31 of each year in order to be eligible to receive royalties for the previous calendar year; for example, royalty claims for distant cable carriage in 1987 must be filed with the CRT between July 1, 1988 and July 31, 1988. Claims must include 1) the full legal name of the claimant, station call letters, licensee and parent corporation (if applicable); 2) address; 3) period for which claim is made; 4) a general statement of the types of copyrighted works for which the claim is being made; and 5) an example of cable carriage for which the claim is made. For further details on how to file a claim, contact the CRT at (202) 653-5175 or the NAB Legal Department at (202) 429-5430.

The NAB has served as a representative of many television stations which have authorized NAB to represent them in the CRT proceedings. Royalties collected by NAB from the CRT are distributed by NAB only to those stations that have filed claims with the CRT, have authorized NAB to represent them and have completed the necessary NAB programming questionnaires. Stations also have the option of representing themselves before the CRT.

40. The CRT is a small federal agency created by the Copyright Act of 1976 ("Act"). Its commissioners are appointed by the President.

---

## CHAPTER VII

---

# Regulation of Noncommercial Educational Broadcasters

### A. GENERAL GUIDELINES



As a general rule, noncommercial, (i.e., “educational” or “public”) broadcasters are subject to the same regulatory and statutory requirements as their commercial counterparts. They are required to adhere to the same technical rules, maintain station logs, file most of the same reports, maintain a local public inspection file containing essentially the same data, and obtain prior FCC authorization to construct or modify their facilities or to transfer control or assign their licenses. They are also required to operate in the public interest and file renewal applications at the same time as commercial stations. Competing applications may be filed against those renewal applications as may petitions to deny. These stations also are subject to the same equal opportunities, political and personal attack rules and are required to comply with the fairness doctrine (see Chapter II for a discussion of recent developments concerning the fairness doctrine). Notwithstanding this similarity in regulatory and statutory treatment of noncommercial and commercial broadcasters, there are many unique requirements imposed on public broadcasters. Most of these provisions relate to the requirement that public broadcasters provide a nonprofit, noncommercial service; although some derive from public broadcasting’s receipt of financial assistance from the Corporation for Public Broadcasting (CPB). Set forth below are the unique requirements imposed on public broadcasters, followed by a brief outline of the other differences between the regulatory treatment of public broadcasters and commercial broadcasters.

# B

## B. ELIGIBILITY

Under FCC Rules 73.503 and 73.621, noncommercial educational stations:

will be licensed **only** to **nonprofit** educational organizations upon a showing that the **proposed** stations will be used **primarily** to **serve** the educational needs of the **community**; for the **advance-**ment of educational programs; and to **furnish** a nonprofit and **non-**commercial . . . broadcast service.  
47 CFR §73.621.

Pursuant to these rules, four classes of eligible licensees have developed: (1) educational institutions, such as colleges, school boards and similar *bona fide* instructional institutions; (2) nonprofit, educational organizations, such as nonprofit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code; (3) state public television or telecommunications authorities which operate statewide public television networks; and (4) municipal corporations where there is no independent educational organization responsible for the municipality's educational program. Religious organizations are eligible to hold noncommercial licenses only where the operation of the station is part of the educational, as distinguished from the religious, aspects of the organization's activities. In order to assure that this requirement is met, the Commission requires that religious organizations operate or be associated with a school in the station's community of license. The FCC also reviews the programming proposals of religious applicants to ensure that they are proposing an educational service. It will also look at the programming proposals of nonprofit organizations for similar reasons. While the FCC requires that these programs be educational, it takes a relatively broad view of that term. Cultural, artistic and other programs—not merely instructional programming—are included within the definition of educational programming.

# C

## C. PROGRAM SERVICE MUST BE NONPROFIT AND NONCOMMERCIAL

The Communications Act of 1934, as amended, and FCC rules, specifically prohibit noncommercial stations from broadcasting announcements which promote the sale of goods and services of for-profit entities in return for consideration paid to the station. For the purposes of these rules, "consideration" means anything of value provided to the licensee, its principals or employees, including programming material and funds, and services or goods used for programming (e.g., studio equipment, props for sets, costumes, etc.). These rules, however, permit contributors of funds and other things of value to the station to receive on-air acknowledgements.

In order to give public broadcasters flexibility in exploiting revenue sources, the Commission has not defined in detail the specific types of announcements that public broadcasters may use other than to prohibit them from being promotional. Public broadcasters are given discretion to determine when and under what conditions, credit is promotional. However, concerning abuses of discretion, the FCC has said that "information brought to the attention of the Commission



regarding such practices will be scrutinized and licensees . . . engaged in [such activity] will be sanctioned.”<sup>41</sup>

Both express and implied agreements to broadcast promotional announcements for consideration are forbidden and the FCC will look at the circumstances surrounding the transaction to determine whether an implied agreement exists. For example, when an announcement promoting goods or services of a for-profit entity is closely preceded or followed by a donation from that entity, the FCC may inquire as to whether the “donation” was actually consideration for the announcement. On the other hand, an announcement acknowledging the free or discounted use of commercial premises for remote broadcasts, fundraising activities and other purposes would not be prohibited. Of course, any use actually conditioned on promotion of the commercial enterprise by the licensee is prohibited.

When no consideration is received, or anticipated, licensees may broadcast any promotional announcement they believe is in the public interest. Public broadcasters may make announcements concerning community events and may promote participation in various activities, even if run by a profit-making entity.

## **1. ANNOUNCEMENTS ON BEHALF OF OTHER NONPROFIT ORGANIZATIONS**

These rules do not apply to announcements made on behalf of nonprofit organizations, including announcements promoting fundraising activities. Therefore, stations may broadcast promotional announcements (this includes promoting program-related products) for such nonprofit organizations as the Heart Fund, United Way, etc. A station may not, however, substantially alter or suspend regular programming in order to engage in fundraising activities on behalf of any entity other than itself. *Memorandum Opinion and Order* in Docket No. 21136, 97 F.C.C. 2d 255 (1984).

## **2. PROMOTION OF STATION-RELATED GOODS AND SERVICES**

Because noncommercial broadcasters may promote goods, services and activities of non-profit entities, they may promote their own goods, services and activities, whether or not they are program-related. Such announcements, however, are subject to the general FCC policy prohibiting a licensee from using its facilities primarily for its private economic interest rather than the public interest. Thus, incessant announcements promoting the sale of goods for the station's benefit could pose a problem. On the other hand, where the product is program-related in a substantive sense, such as a study guide transcription, or book to be used in conjunction with the program, the public interest value of the product would minimize the risks of sanctions for these types of announcements. The same is not necessarily the case with respect to items such as toys, dolls, posters, etc. It should also be noted that selling by hosts of children's programming is generally not permitted.

## **3. DEFINING “DONOR ANNOUNCEMENTS”**

Noncommercial broadcasters may air donor acknowledgements or enhanced underwriting announcements in exchange for private contributions. Noncommercial broadcasters, however, may not air “advertisements”. An advertisement is

41. Public Notice 86-161 (April 11, 1986).

defined as a promotional announcement for a for-profit entity for which the station receives remuneration.<sup>42</sup> The key distinction between donor acknowledgements and advertisements is that the former merely *identify* private contributors, whereas the latter *promote* the products, services or facilities of private contributors.

However, as indicated above, what constitutes a "donor announcement" is left to the good faith discretion of the public broadcaster. The FCC will act only where the licensee acts unreasonably. Donor announcements may not include qualitative or comparative language, nor may they include calls to action. However, the FCC does allow the broadcast of specific brand or trade names and product or service listings. See *Memorandum Opinion and Order* in Docket No. 21136, 97 F.C.C.2d 255 (1984).

At one time, public broadcasters could identify contributors by name only. Inclusion of any other information was considered promotional, not merely identificational. Today, however, Congress and the FCC, in an effort to stimulate funding for public broadcasters, allow public broadcasters to include the following information in donor acknowledgements:

- a logogram or slogan that identifies, but does not promote, the donor;
- the donor's location and phone number;
- value neutral descriptions of the donor's product line or service; and
- the donor's trade name(s), product or service listings that aid in identifying the donor. See *Public Notice* FCC 86-161 (April 11, 1986).

#### 4. GENERIC UNDERWRITING CREDITS

Where a program is sponsored by a few major contributions and numerous minor contributions, public broadcasters may specifically identify the major contributors and generally acknowledge the others, provided such announcement contains a statement advising the public that a complete list of contributors is maintained and available from the station or program distribution entity, e.g., PBS, etc. Such an underwriting credit might read: "Major funding for this program has been provided by XYZ, Inc. and ABC Company. A number of small grants have been made by various businesses, groups and individuals. A list of all contributors is available from this station." A determination of the substantiality of contributions should be based on the proportion which such contributions bear to the total cost of producing the program in question.

#### 5. TIMING

Underwriting credits, acknowledgements of contributions, and other announcements may not interrupt regular programming. Thus, it is permissible to broadcast acknowledgements and announcements at the beginning and end of programs, between identifiable segments of long programs, or, in the absence of identifiable segments, during station breaks in programming that do not disrupt the flow of programming. 47 U.S.C.A. § 399A (Supplement 1986); see also *Memorandum Opinion and Order* in Docket No. 21136, 97 F.C.C.2d 255 (1984).

42. The Communications Act also defines advertisements to include political announcements and announcements supporting or opposing a candidate for office.

## D. FUNDRAISING ACTIVITIES



Except for the prohibition against interrupting programming for fundraisers for others and the restriction on underwriting credits, the FCC has imposed no limits on a public broadcaster's own fundraising activities. It may devote as much time to pledge weeks and auctions as the station deems appropriate. The FCC's view is that marketplace forces will preclude abuses by public stations and that excessive fundraising activity will prove counterproductive. *Memorandum Opinion and Order* in Docket No. 21136, 97 F.C.C.2d 255 (1984).

## E. POLITICAL ENDORSEMENTS AND EDITORIALS



In 1984, the U.S. Supreme Court held that the portion of Section 399 of the Public Broadcasting Act prohibiting noncommercial stations from editorializing violates the First Amendment. Noncommercial stations now may air editorials. See *FCC v. League of Women Voters of California*, 468 U.S. 364 (1984), but they may not support or oppose any candidate for political office. Further, the tax code limits the ability of public television stations to engage in direct or grass-roots lobbying.

## F. USE OF FACILITIES OR SERVICES FOR REVENUE GENERATION



While the underlying regulations which govern the use of noncommercial broadcast facilities for alternative revenue generation have remained basically unchanged, recent authorizations now allow public licensees to put their facilities to new uses. For example, Section 399B of the Public Broadcasting Act permits public broadcasters to provide facilities and services in exchange for remuneration, so long as those uses do not "interfere with the provision of public telecommunications services by such station." 47 U.S.C.A. § 399B (Supp. 1986). Also, noncommercial airwaves may be used for expanded vertical blanking interval service (VBI), teletext, subsidiary communications authorizations (SCA), and in some instances, subscription television.

### 1. VERTICAL BLANKING INTERVAL SERVICE

In a *Report and Order* released January 24, 1985, the FCC decided that expanded use of the VBI by noncommercial television stations not only will enhance revenues but is in the public interest and that the authority to do so should be broad. *Report and Order* in MM Docket No. 84-168, 101 F.C.C.2d 973 (1985). The FCC revised Rule 73.621 to allow the transmission of data-processed information or any other communication in either analog or digital mode as well as paging services. These services are considered ancillary to regular programming, and as such are not subject to the direct approval of the FCC. Therefore, noncommercial licensees may enter into agreements with third parties for these services without the prior approval of the FCC. However, the agreements must be in writing and a copy must be kept for inspection at the request of the FCC.

As for those services merely related to common carrier or private telecommunications, the FCC held that these services are ancillary to the broadcast

license, further authorizations for the use of the technical facilities is unnecessary. However, due to the distinctive nature of common carrier services, licensees who wish to offer such services over their VBI must receive prior FCC approval according to Parts 21 or 22 of the FCC's rules. Furthermore, those licensees who wish to use their VBI for the purpose of private carrier services must get prior approval, according to Parts 90 and 94. These requirements apply equally to both public and commercial television licensees.

## 2. TELETEXT

On the same day the FCC released its *Report and Order* on VBI use, it also decided that public broadcasters could provide teletext services. *Memorandum Opinion and Order* in BC Docket No. 81-741, 101 F.C.C.2d 827 (1985). Based on findings similar to those in the VBI decision, the FCC stated that teletext transmissions are ancillary to broadcasting and, as such, can further the public interest. Also, although noncommercial licensees need not receive prior approval for teletext use of their technical facilities, they must, if they are going to offer common carrier service, obtain prior approval from the FCC and perhaps the State Public Utility Commission as well, depending on the nature of the common carrier service offered.

## 3. SUBSIDIARY COMMUNICATIONS AUTHORIZATIONS (SCA)

In 1983, the FCC amended its rules to permit noncommercial FM stations to use their subsidiary communications authorizations for remunerative purposes. (FCC Rules 73.293 and 73.295.) While public radio stations use their subcarrier capacities for many purposes, they are frequently used to provide radio reading services to the blind. (FCC Rule 73.593.)

In May, 1986, the Association of Radio Reading Services filed a petition for rule making asking the FCC to require mandatory offering of reading services by public radio stations. In response to this request, the FCC issued a *Notice of Inquiry* in January 1987. While the FCC has indicated that it disfavors mandating that noncommercial stations be required to provide these services, a determination on the issue is pending.

When SCA use would be classified as a common carrier, the same regulatory requirements applicable to VBI and teletext use also apply.

## 4. SUBSCRIPTION TELEVISION SERVICES

While the Commission found that offering VBI and teletext services on a for-profit basis did not violate the provisions of Section 399B of the Act (which precludes certain use of public broadcasting facilities if such use would interfere with the provision of public broadcast service), it could not reach a similar conclusion with respect to whether public television stations should be allowed to provide subscription television services (STV). *Report and Order* in BC Docket No. 82-441, 97 F.C.C.2d 411 (1984). Although the FCC acknowledged the possible financial benefits of STV, it recognized that "pay" public telecommunications may violate the Communications Act and be inconsistent with public broadcast policy. The FCC acknowledged, however, that there may be instances when STV services may be consistent with a station's duties and responsibilities as a public television licensee. Therefore, waivers to this general policy may be granted on a case-by-case basis.





## 5. ACCOUNTING REQUIREMENTS

Where a public broadcasting licensee uses its facilities for revenue generation by making it available to others, the station is required to comply with the CPB-developed accounting procedures designed to identify these revenues and associated costs.

## G. MISCELLANEOUS PUBLIC BROADCASTING ACT REQUIREMENTS



### 1. OPEN MEETINGS

Any public broadcast station that receives any funds from CPB is required, as a condition of receiving that money, to hold open public meetings of its governing body (*i.e.*, Board of Directors, Board of Trustees), any advisory bodies and any committees of either the governing or advisory body. No one attending the meeting may be required to register his or her name or provide any other information.

These bodies may hold closed sessions to consider matters relating to (a) individual employees (not general employment practices), (b) proprietary information, (c) litigation and other matters requiring the confidential advice of counsel, (d) commercial or financial information obtained from another person on a confidential or privileged basis, or (e) the purchase of property or services whenever the premature exposure of information concerning such purchase may compromise the licensee's position. Where a meeting is closed, the licensee is required, within a reasonable period of time, to make available to the public a written statement explaining the reasons for closing the meeting.

### 2. FINANCIAL REPORTS

Any public broadcasting station that receives funds from CPB is required, as a condition of receiving those funds, to make available for public examination copies of the financial reports required by CPB and any audits or other information regarding station finances submitted to CPB.

### 3. CHANNEL 6 INTERFERENCE FROM NONCOMMERCIAL FM STATIONS

On June 20, 1985, the FCC adopted standards to protect TV Channel 6 broadcast stations from harmful interference caused by noncommercial FM stations. Television stations operating on Channel 6, which use the frequency band from 82 to 88 MHz, had complained of interference from noncommercial educational (NCE) FM stations operating on the adjacent frequencies of 88 to 92 MHz.

The new standards incorporated in FCC Rule 73.525 include a specific methodology for establishing the boundaries of an area predicted to receive interference and for determining the number of people living within that area. The rules also indicate the adjustments to be made to the predicted interference area, depending upon individual circumstances. Thus, the procedure requires adjusting the facilities permitted NCE-FM stations so that the amount of predicted interference to TV Channel 6 stations is limited, based on specific situations. These rules affect noncommercial FM stations at the lower end of the reserved FM band more severely than those at the upper end of the band.



#### **4. CHANGES IN RENEWAL APPLICATIONS, PROGRAMMING, AND LOGGING REQUIREMENTS**

As with commercial television and radio licensees, the FCC has revised the programming policies and reporting requirements for public broadcasters. Specifically, the FCC will no longer impose formal ascertainment obligations on public broadcast licensees. The FCC also eliminated the long form audit renewal application and Form 303-N. In addition, the FCC has abolished its program log requirements and substituted an issues/program list obligation similar to that for commercial licensees.

## **H**

### **H. COMMUNITY ADVISORY BOARDS**

Public broadcast stations, other than those licensed to a state or public agency, are required, as a condition of receiving funds from CPB, to have community advisory boards review the programming goals of the station, the service provided by it, and other significant policy decisions concerning the station. The composition of the advisory board must reasonably reflect the population make-up of the community served by the station and the various economic, cultural and other groups within that community. The advisory board must meet at regular intervals and the members of the board are expected to attend the meetings. As the name indicates, these boards are advisory only, and ultimate responsibility for decisions at the station still rests with the licensee.

## **I**

### **I. OTHER DIFFERENCES BETWEEN NONCOMMERCIAL AND COMMERCIAL LICENSEES**

Other differences between the regulatory treatment of noncommercial and commercial licensees are as follows:

- The multiple ownership rules do not apply to public broadcasters.
- Public television broadcasters are not subject to minimum operating schedules or minimum power requirements.
- The provision of the FCC's rules relating to lowest unit charge for political candidates is inapplicable, because public broadcasters are precluded from charging candidates for the use of time. However, public broadcasters are permitted to charge for program production expenses incurred in connection with the candidate's use. Similar to the rules for commercial broadcasters, the lowest unit charge requirement does not apply to production costs.
- Public broadcasters are required to maintain essentially the same local public inspection files as commercial stations. See Chapter V. In addition, a public broadcaster's file should include the list of contributors in any generic underwriting credit.
- Noncommercial stations need not broadcast the announcements concerning the filing of broadcast applications required by FCC Rule 73.3580, if they are not operating during the month the notice must be broadcast. The newspaper publication requirements of FCC Rule 73.3580 are applicable to new applicants for

broadcast stations and to broadcasters who are not operating during the month when the public notice is required to be broadcast.

- Public broadcasters use different forms for applications for construction permits, applications for licenses to cover construction permits, renewal applications and ownership reports.
- Public broadcasters are not required to place correspondence concerning programming in their public inspection file.
- The prime time access and financial syndication rules do not apply to public broadcasters.
- Under the FCC's former interim must carry rules, *Report and Order* in MM Docket No. 85-349, 1 FCC Rcd. 864 (1986), *Memorandum Opinion and Order* in MM Docket No. 85-349, 2 FCC Rcd. 3591 (1987), noncommercial educational stations benefit from somewhat broader rights of mandatory carriage by their local cable systems. (As discussed in Chapter VI, the Court of Appeals concluded that these new rules violate the First Amendment rights of cable operators. See Chapter VI). All cable systems, regardless of how many usable activated channels they have, must carry at least one noncommercial educational television station. Any cable system with 54 or more channels must carry two noncommercial educational television systems. Moreover, to the extent that a cable system has not used its full "must carry quota" for the carriage of local broadcast television stations, it must carry all qualifying local public television stations. Finally, public television translator stations with 5 watts or more of power licensed to a cable operator's community of license are also eligible for must carry status.
- Noncommercial educational television and radio stations are also eligible for Public Telecommunications Facilities Program (PTFP) funding administered by the National Telecommunications and Information Administration (NTIA). PTFP is a competitive, matching grant program for the financial support of public television and radio facilities which matches local dollars with federal support for construction, repair and replacement of broadcast facilities.
- Noncommercial FM translators may be owned by the primary noncommercial station, regardless of whether the translator is located within or beyond the station's 1 mV/m contour. The same policy applies to noncommercial educational television translators.



---

## CHAPTER VIII

---

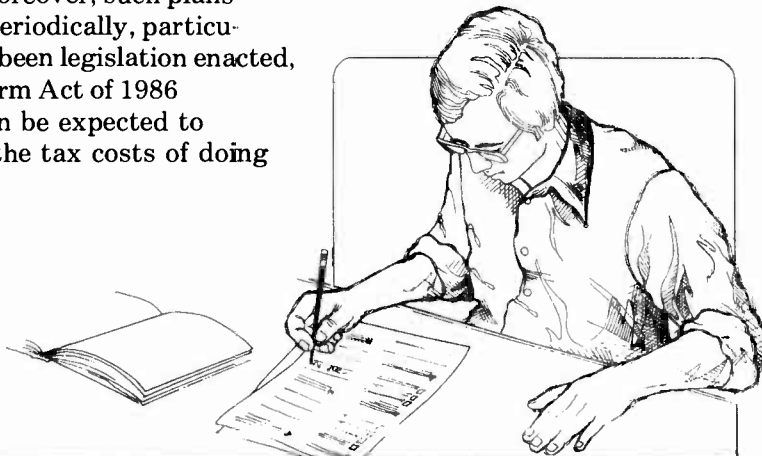
# Tax and Other Business Considerations in the Operation of a Broadcast Station

### A. GENERAL GUIDELINES

A

The operation of a broadcast station is the operation of a business. Although it may differ from other types of business entities because of the licensing and other regulatory requirements, the operation of a broadcast station, like any other business, involves the purchase and sale of assets, the compensation of employees and the acquisition and disposition of ownership interests. The choices made in the formation and management of stations affect the present and the future financial well-being of both owners and employees, and of their families.

Any planning for business interests must take into account and balance a wide variety of tax and non-tax considerations in order to achieve the maximum financial benefits. Moreover, such plans should be reviewed periodically, particularly when there has been legislation enacted, such as the Tax Reform Act of 1986 (TRA 1986), that can be expected to affect significantly the tax costs of doing business.



The principal focus of this section of the *Legal Guide* is on the tax and non-tax considerations that are most pertinent in forming, operating, and disposing of interests in a broadcast station; it also looks at the array of tax-free or tax-favored compensation benefits available. For this purpose, those provisions of TRA 1986 that can be expected to affect most significantly the broadcast industry are highlighted. This Chapter does not reflect changes in the tax law subsequent to TRA 1986.

Tax savings, through tax planning, means that there will be more money within the business for future investment and expansion or for distribution to owners and to employees. This section, however, can only introduce some of the significant issues and planning options. Moreover, no planning technique is optimal under all circumstances. Broadcast station owners, therefore, are advised to consult with tax and financial advisors. Expert planning should allow owners of interests in such business to maximize the financial benefits for themselves, their families, and their employee.

## B

### B. FORMATION OF BUSINESS ORGANIZATION

#### 1. TYPES OF BUSINESS ENTITIES

The basic forms of business organization are sole proprietorship, partnership, limited partnership, corporation, and the so-called "S corporation."

##### a. Sole Proprietorship

This is the simplest form of doing business, from both a tax and a non-tax standpoint. No new legal entity comes into existence for purposes of operating the business. Rather, an individual simply segregates a portion of his or her assets to the operation of the business.

##### b. Partnership

A partnership is an association of two or more persons (including certain legal entities that are treated as "persons" under the federal tax laws) to carry on a business as co-owners for profit. Under the tax laws, a partnership is a conduit or pass-through entity (i.e., taxation generally occurs at the partner rather than at the partnership level). It is advisable, although not necessary, that there be a written partnership agreement.

##### c. Limited Partnership

A limited partnership is a partnership formed by two or more persons consisting of one or more general partners and one or more limited partners. A certificate of limited partnership must be executed by two or more persons to form a limited partnership and the certificate must be filed in the appropriate state office. A limited partner is not liable for the obligations of the partnership unless he or she also owns a general partnership interest or takes active part in the management and control of the affairs of the business. A limited partnership is a pass-through entity for most tax purposes.



### d. Corporation

A corporation is a separate legal entity, created under the laws of a state upon the filing of Articles of Incorporation. For tax purposes, it is also considered to be a separate taxpaying entity. Those persons (or entities) owning interest in a corporation are called shareholders (or stockholders). A corporation may have more than one class of stock (e.g., common and preferred) and each class may afford different shareholder rights and privileges.

### e. S Corporation

An S corporation (formerly called a "subchapter S corporation") is a corporation, incorporated under state law, which meets the qualifications, under the federal tax laws, for such organizations (e.g., one class of stock, limited number of stockholders) and for which an election of such status is filed with the Internal Revenue Service (IRS). An S corporation is very similar to a partnership for tax purposes in that it is generally a conduit or pass-through entity. Therefore, shareholders are taxed directly on their portion of S corporation income (or loss).

Chart A

#### NONTAX CONSIDERATIONS IN CHOOSING ORGANIZATIONAL FORM OF BUSINESS

Business Organizations	Limited Liability*	Centralized Management	Continuity of Existence**	Free Transferability of Interest
Sole Proprietorship	No. Unlimited personal liability. Personal as well as business assets are both subject to creditors' claims.	Yes. Sole proprietor manages business.	No. Terminates with death of sole proprietor.	Yes.
Partnership	No.	Sometimes. The partnership may be operated by a managing partner or a managing committee if the agreement so provides.	No, but 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	Yes, but only for the limited partners.	Generally, management vested exclusively in general partners.	No, but can continue for term specified in certificate.	Yes, but only limited partnership interests, may be freely assigned.
Corporation	Yes. Shareholders' liability generally limited to the extent of their investment in corporation.	Yes. Board of Directors manages business.	A corporation has perpetual existence unless Articles of Inc. provide otherwise.	Interests freely transferable, unless shareholders' agreement provide otherwise.
S corporation	Yes, same as with regular corporation.	Yes. Board of Directors manages business.	Yes, continues until dissolution unless there is transfer of stock to ineligible shareholders.	Yes, but shareholders' agreement may provide otherwise. Also, there are limitations on the type of shareholders allowable (for example, a corporation may not be a shareholder).

\*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 forms, may be greatly reduced or eliminated entirely to the extent that adequate insurance can be purchased by owners to protect against personal liability.

\*\*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.

## 2. CHOICE OF ORGANIZATIONAL FORM FOLLOWING TRA 1986

Five TRA 1986 changes should be considered in weighing the choice of the form of the business (e.g., corporate vs. non-corporate form) at the start-up phase, or in deciding whether to make a post-organizational conversion of the business to a different form of entity:

- **COMPARISON OF RATES.** Top individual rates are generally lower than the top corporate rate. In other words, corporations generally will be required to pay more taxes than individuals.
- **REPEAL OF CAPITAL GAINS DEDUCTION.** The top capital gains rate for individuals is 28 percent, as compared with the former top rate of 20 percent. (See below for corporate rate.) Therefore, it may be less advantageous, under TRA 1986, to tie up property in a corporation for a long period of time.
- **TAX ON LIQUIDATION.** Repeal of the *General Utilities* doctrine makes asset sales and distributions to shareholders, pursuant to liquidations, taxable to the corporation. Now, both the corporation and its shareholders are taxed on liquidating distributions.
- **ALTERNATIVE MINIMUM TAX.** A tough new corporate alternative minimum tax has replaced the old add-on tax.
- **SWITCH TO ACCRUAL METHOD OF ACCOUNTING.** New limitations on the use of the cash basis of accounting have been introduced.

In light of (1) the top corporate rate being higher than the top individual rate, (2) the repeal of the net capital gains deduction, and (3) the repeal of the *General Utilities* doctrine, formation as an S corporation or, in some cases, as a general or limited partnership may be preferable to the regular corporate form. Corporations already in existence may wish to consider electing S corporation status, if they are eligible to do so.

# C

## C. STRUCTURE OF THE BUSINESS—GENERAL CONSIDERATIONS

### 1. TREATMENT OF BUSINESS START-UP COSTS

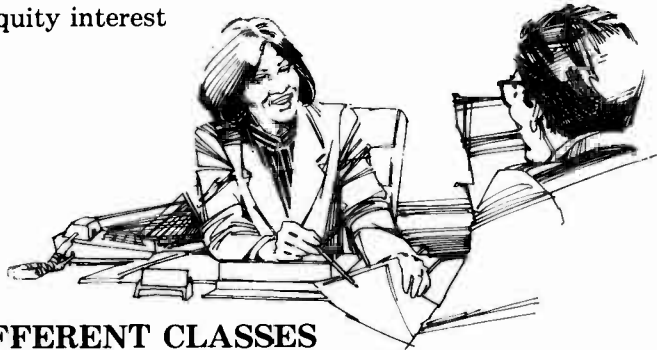
Although so-called “start-up” costs are not generally deductible currently (other than those deductible as interest, taxes, or research and developmental costs), such costs, at the taxpayer’s election, may be deducted ratably over a period of at least 60 months, beginning with the month in which the business begins. Otherwise, such costs must be capitalized over what may be a longer period. Costs to which this 60-month provision applies are those paid or incurred in connection with: (i) investigating the creation or acquisition of an active trade or business, (ii) creating an active trade or business, or (iii) engaging in any activity for profit

before the day on which the active trade or business begins, in anticipation of the activity becoming an active trade or business (i.e., pre-opening costs). Furthermore, the costs must be of the type that would be currently deductible if paid or incurred in connection with the expansion of an existing business in the same field as the one entered into by the taxpayer.

Generally, any expenses incurred or paid prior to a broadcast station's receiving its license to operate may not be deducted currently, but rather must be amortized over the 60-month period.

## 2. DEBT VERSUS EQUITY

Interest payments on debt are deductible generally to a corporation; dividends are not. The use of debt, therefore, may reduce corporate taxes. However, if the ratio of debt to equity is too high, this can result in the loss of the corporate characteristic of limited liability (for shareholders). Courts may look through the corporation, to the individual shareholders, for payment of the corporation's debts in circumstances in which the corporation is too leanly capitalized. Also, the IRS has the authority to determine whether an interest in a corporation is to be treated as debt or as an equity interest in the corporation.



## 3. USE OF DIFFERENT CLASSES OF OWNERSHIP INTERESTS

Use of more than one class of corporate or partnership ownership interest (e.g., common and preferred stock) may be particularly advantageous to satisfy certain management or estate planning objectives of business owners. Corporations and limited partnerships provide the most flexibility generally for this purpose.

The control and management of a business also can be organized through devices affecting voting rights, such as shareholders' agreements, voting trusts and proxies, or through creating binding restrictions upon the transfer of ownership interests.

## 4. OWNERSHIP OF BUSINESS ASSETS

In the initial structuring of a business, it may be desirable for tax and other business reasons (e.g., improvement of credit status for the business where the assets are leveraged) to keep real estate and equipment out of the business, and to have such assets held in individual or partnership ownership by the owners of the business or by their family members. If this is not done at the outset, it may be possible to do so later by way of a sale-leaseback arrangement, as, for example, where the business sells the property to one or more of these such owners (or to an entity controlled by them), who in turn leases it back to the business.

So long as the arrangement is not a sham, has the elements of an arms-length transaction, and makes economic sense, it should withstand IRS scrutiny.

## 5. ESTATE FREEZING OF BUSINESS INTERESTS

The owner of an interest in a business should consider ways of "capping" the value of his interest for purposes of future estate tax liability; this is particularly true where continued appreciation will expose his estate (or the estate of his surviving spouse) to federal estate tax at high rates. These mechanisms can be built into the organizational structure of the business either initially or at a later time. The owner may consider "freezing" the value of his interest at its present level and making gifts of the appreciation potential to junior family members at low gift tax cost. Generally, the freeze involves restructuring the capital of the business by creating different classes of stock or partnership interests. In addition to providing intra-family tax savings, a freeze can implement, if desired, an orderly management transition to junior family members or to valued employees. The freeze may be used for business interests held in either the corporate or the partnership form.

Chart B

### TAX CONSIDERATIONS IN CHOOSING ORGANIZATIONAL FORM OF BUSINESS

	<b>General Partnership</b>	<b>Limited Partnership</b>	<b>Corporation</b>	<b>S Corporation</b>	<b>Sole Proprietorship</b>
Formation	Generally tax free	Generally tax free	Generally tax free	Generally tax free	Generally tax free
Tax on Income	Taxed directly to partners whether or not distributed. Avoids problem of double taxation. Specifically treated income items pass through partners without loss of items character.	Generally, same as for General Partnership.	Taxed on income at corporate level and a second tax on dividends at the shareholder level. Some corporations are taxed as personal holding companies and can be taxed on excess accumulated holdings.	Taxed directly to shareholders whether or not distributed.	Taxed directly to the business owner.
Losses Pass Through to Business Owner	Partnership losses may be used by partners (subject to at-risk and new passive loss rules).	Partnership losses may be used by partners (subject to at-risk and new passive loss rules).	Losses of a corporation do not pass through to shareholders.	Losses may be used by shareholders.	Losses pass through to business owner.
Possibility of Allocating Different Types of Income and Deductions Among Owners By Agreement	Yes, if allocation has substantial economic affect.	Yes, if allocation has substantial economic effect.	No.	No.	No.
Liquidation of Business	Normally no tax	Generally no tax	Generally taxable	Generally no tax	N/A
Owner As Employee	Usually non-employee	Usually non-employee. Same as with general partnership.	Employee. Compensation deductible to corporation to the extent it is reasonable.	Employee	Non-employee

In the typical corporate freeze transaction, the senior family member will exchange his or her common stock for common and preferred stock in a tax-free exchange. The preferred stock carries the present fair market value of the business and the common stock carries the appreciation potential. The common stock may then be given to junior family members at no or at a low gift tax cost. The senior family member (and his or her spouse) retains the preferred stock, which guarantees a stream of income during lifetime (including through retirement). The scenario for partnerships is the same, generally, except that different classes of partnership interest are used. In all cases, proper valuation of the different classes of stock or partnership interest is critical.

## 6. BUY-SELL AGREEMENTS

A buy-sell agreement is a contract providing for the sale of ownership interests upon the happening of a specified event, such as the death, disability, or retirement of one of the parties. The agreement can be in the form of a cross-purchase agreement (e.g., A and B agree that the survivor of them must buy the interest of the first to die) or, if the business is in corporate form, a stock redemption agreement (e.g., the business will purchase the interest of a deceased owner). Funding with life and disability insurance is generally used. Such agreements help to provide for the orderly transfer of ownership interests and to keep control of the business with the remaining owners. (In the case of S corporations, they can be used to prevent transfers to disqualified shareholders). In addition, they create a market at a fair price, for ownership interests that otherwise might not be readily saleable, and they peg the value of the interests for estate tax purpose.

## D. COMPENSATION BENEFITS FOR EMPLOYEES

In addition to salaries and bonuses, there are many compensation techniques that can be used to benefit employees. Many of these are tax-free to the employee or are tax-favored (i.e., taxation of the value of the benefit is deferred).



### 1. DEFINITION OF EMPLOYEE

Under the federal tax laws, significant tax consequences turn upon the characterization of an individual's relationship with a business. For example, different administrative and reporting duties of the individual and the business follow from the nature of the relationship. So, too, do the type of tax-free or tax-favored benefits that may be available to the individual. Under the federal tax laws, as a general rule, the employer/employee relationship provides the greatest array of tax-free or tax-favored available benefits. This is particularly true where the employer is a corporation.

**An individual may be an owner, an employee or an independent contractor. Moreover, these relationships are not necessarily exclusive. An individual, for example, may be both an employee and an owner of a business unless, of course, the business is formed as a sole proprietorship.**

The word "employee," for federal tax law purposes, has the same meaning as it does under general common law principles. Generally, an employer/employee relationship exists when the person for whom services are performed has the right



to control and direct the individual who performs the services, not only as to the result to be accomplished but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer, not only as to what shall be done but also as to how it shall be done.

The right to discharge is an important factor indicating that the person possessing the right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and equipment and a place to work to the individual who performs the services, and the training of such person.

## 2. EMPLOYMENT AGREEMENTS

An employment agreement is a binding contractual document reflecting the legal rights and duties between an employer and an employee. A complete employment agreement, at least for an executive-level or highly-compensated employee, generally will contain much more than simply a formula for determining the annual salary amount and the term of employment. Additional matters bearing upon compensation, such as disability pay, deferred compensation arrangements, and retirement and death benefits, will also be covered. The employer will want assurance, for example, that the employee will perform certain assigned duties and that he or she will not compete with the employer upon the termination from service. All of these items, plus other items desired by the parties, are included in a well-drafted employment contract.

The following is a checklist of items frequently included in employment agreements:

- *salary*—including details regarding the amount of the salary, payment schedule (weekly, bi-monthly, etc.) and the adjustment formula for subsequent years.
- *bonuses*—describing terms and conditions precedent to payment of a bonus, and the formula for determining the amount of the bonus.
- *deferred compensation arrangement*—describing terms by which a certain percentage or amount of the employee's compensation will be deferred to some specified period of time in the future (e.g., upon completion of active employment).
- *disability and death benefits*—detailing the employee's rights, or rights of the employee's designated beneficiary to payments of compensation on account of the employee's disability or death.
- *benefit plans*—including eligibility of the employee to participate in various available benefit plans, including equity participation plans (e.g., stock options; stock appreciation rights).
- *expense account or expense reimbursement provisions*—describing the terms and conditions of an expense account arrangement or, if the employee is expected to make the initial outlay for certain business expenses (e.g., travel and entertainment expenses), the details of the reimbursement plan. If the employee is required to spend his or her own funds but is not to be reimbursed, the employment agreement should make this obligation clear in order to facilitate the deduction of the employee's expenses for federal income tax purposes.
- *covenant not to compete*—detailing the terms of any agreement restricting the employee from entering into competition with the employer after the term of his or her service has ended. The degree to which a non-competition covenant will be enforced by the courts depends upon general common law principles. As a general rule, however, the terms of the covenant must be reasonable with respect to both duration and geographic scope, in order to be enforceable.

### 3. EMPLOYEE BENEFITS

#### a. Group-Term Insurance

Employer-paid group term insurance, up to the amount of \$50,000 per employee of a corporation, is not taxable to the employee and is deductible by the employer. Following TRA 1986, highly-compensated employees are taxed with respect to discriminatory plans but only on the "discriminatory excess."

#### b. Transportation

Employer-paid business travel expenses are not taxable to the employee and are deductible by the employer. A spouse's employer-paid travel expenses are taxable to the employee unless the spouse's travel serves a bona fide business purpose.

#### c. Business Meals

Meal expenses directly connected or associated with business are not taxable to the employee and are deductible by the employer, but TRA 1986 stipulates that only 80 percent of those expenses can be deducted. Also following TRA 1986, stricter substantiation and business-connection requirements have been imposed. Expenses for meals (and facilities used in connection with such meals) furnished on the business premises of the employer for its convenience are not taxable to the employee and are 80 percent deductible by the employer.

#### d. Medical Care

An employee's gross income does not include amounts paid—directly or indirectly—as reimbursement for expenses incurred, under self-insured plans, for medical care for either the employee or the employee's family, except for amounts paid to highly-compensated individuals under a discriminatory self-insured medical reimbursement plan; such amounts are included in the highly-compensated employee's income to the extent that they constitute "excess reimbursement".

#### e. Employer Gym

Expenses incurred for an employer gym are not taxable to the employee and generally are deductible by the employer. However, the employer's deduction will be denied if the use of the gym is restricted to persons who are officers, certain shareholders (i.e., those holding a 10 percent or more interest in the employer), or who are highly compensated.

#### f. Entertainment

Generally, entertainment expenses are not taxable to the employee and are deductible by the employer only if directly related to business; moreover, following TRA 1986, only 80 percent of the expenses for entertainment is deductible.

#### g. Memberships

##### 1. Professional Clubs

Expenses for such membership are not taxable to the employee and are deductible by the employer (subject to the 20 percent disallowance, described above, if used for entertainment purposes).

##### 2. Country Clubs and Other Social and Athletic Clubs

Expenses for such membership are not taxable to the employee and are deductible by the employer if they are primarily used in furtherance of the employer's



business (subject to the 20 percent disallowance, described above, if used for entertainment purposes).

#### **h. Non-Taxable Fringe Benefits**

The following categories of fringe benefits may be excluded from an employee's gross income: (1) no-additional cost services (e.g., free stand-by flights by airlines to their employees; phone services to phone company employees); (2) qualified employee discounts (e.g., reduced sales prices of products and services sold by the employees); (3) working condition fringe benefits (e.g., use of a company car for business purposes; subscription to a trade journal) and (4) de minimis fringe benefits (e.g., use of a copying machine for personal services; supper or cab fare because of overtime; and inexpensive holiday gifts). Additionally, the value of any on-premises athletic facilities provided and operated by the employer is not a taxable fringe benefit to the employee. These benefits may be extended to retired and disabled former employees and to spouses and dependent children of employees. Certain nondiscrimination tests must be met.

#### **i. Employer-Furnished Transportation Exclusion**

An employee may exclude the value of "qualified transportation" (e.g., in a company-owned vehicle) between the employee's residence and place of employment. This exclusion is available if the transportation is provided under a written nondiscriminatory plan and the value of the transportation is in addition to, and not in lieu of, any compensation otherwise payable to the employee. (*Note:* Check IRS Guidelines.)

Chart C

#### **TAX-FAVORED OR TAX-FREE EXHIBIT COMPENSATION BENEFITS**

<b>Benefit</b>	<b>Corporation</b>	<b>S Corporation</b>	<b>Partnership</b>	<b>Sole Proprietorship</b>
<b>Tax-Favored Group Term Life Insurance</b>	Yes	No	No	No
<b>Tax-Free Medical Reimbursement</b>	Yes	No	No	No
<b>Group Legal Service Plan</b>	Yes	Yes	Yes	Yes
<b>Educational Assistance Programs</b>	Yes	Yes	Yes	Yes
<b>Dependent Care Programs</b>	Yes	Yes	Yes	Yes
<b>Tax-Free Disability Insurance</b>	Yes	No	No	No
<b>Moving Expense Deduction</b>	Yes	Yes	Yes	Yes

#### j. Dependent Care Services

The value of child or dependent care services provided by an employer pursuant to a written nondiscriminatory plan will not be included in the employee's gross income.

#### k. Tax-Qualified Retirement Plans

Tax-qualified pension or profit-sharing plans (so-called "Section 401(k) plans") and employee stock ownership plans provide substantial employer/employee benefits. Principal among these benefits are tax exemption for the fund that is established to provide these benefits, deductibility by the employer to the extent of qualified contributions made to the fund, deductibility by the employee for the allowable elective contributions the employee makes to the fund on his or her own behalf, and special tax treatment with respect to the payment of benefits from the fund. TRA 1986, however, reduced some of these benefits. TRA 1986 generally limits an employee's annual elective (employee) contributions to plans involving cash or deferred elections. The maximum salary reduction limit for a Section 401(k) savings plan has been reduced from \$30,000 to \$7,000. Companies will be required to vest employees interest in at least five years, rather than 10 years (as under prior law) and to expand coverage of pension and health benefits to more employees.

### E. TAX CONSIDERATIONS FOR OPERATING A BUSINESS



One of the basic objectives of owners of businesses is to reduce the incidence of any taxation at the business level (as, for example, where the business is organized in corporate form) and to take money or other property out of the business at the lowest overall tax cost. Accomplishing this involves at least two key components. The first of these is expert knowledge of the tax laws, including the changes brought about by TRA 1986. The second involves planning, not only with respect to distributions and business accounting principles, but also the maximum utilization practicable of available business deductions, exclusions and credits. TRA 1986 substantially changed many of the tax rules affecting the operation of a business. These new provisions are highlighted.

#### 1. TAX RATES

##### a. Individual Rate Structure

Starting in 1988, rates of 15 percent and 28 percent will be in effect. The 28 percent rate will apply to taxable income above \$17,850 for single taxpayers, \$29,750 for married taxpayers filing jointly, and \$23,900 for single heads of household. The standard deduction amount, for 1988 and thereafter, will be \$3,000 for single taxpayers, \$5,000 for married taxpayers filing jointly, and \$4,400 for single heads of household. The personal exemption amount, for taxable years beginning in 1989, for each individual, individual's spouse and dependent will be \$2,000. For

1987 and 1988 only, the personal exemption amount will be \$1,900 and \$1,950, respectively.

Beginning in 1988, two provisions will raise the marginal tax rate to as high as 33 percent for higher-income taxpayers. While most married couples filing jointly would pay a 15 percent rate on their first \$29,750 of taxable income (\$17,850 for single taxpayers and \$23,900 for single heads of household), higher-income taxpayers would lose the benefit of the 15 percent rate on a graduated scale. Thus, an increasing amount of income within a specified range would be taxed at 28 percent as income rises. This would impose a five percent surtax on taxable income within the range, effectively creating a 33 percent marginal tax rate on this range of income.

As with the phase-out of the 15 percent rate, beginning in 1988 the benefit of the personal exemption will be phased out in the same fashion, starting at the income levels at which the 15 percent rate is totally eliminated for higher-income individuals. For example, in the case of married individuals filing joint returns in 1988, the personal exemption phase-out will begin at taxable income of \$149,250. Higher-income taxpayers will incur an additional 5 percent surtax on taxable income until the tax benefit of each personal exemption is negated.

### **b. Corporate Rate Structure**

Following TRA 1986, the top corporate rate has been reduced from 46 percent to 34 percent. TRA 1986 also provides for a graduated three-bracket rate structure. TRA 1986 limits the benefit of the lower rate to smaller corporations by beginning the phase out of the graduated rate schedule at \$100,000 of taxable income. This results in a phase out of the graduated rates between \$100,000 and \$335,000 of taxable income. Thus, corporations with more than \$335,000 of taxable income will pay a flat rate of 34 percent. Corporations that have a taxable year beginning before and including July 1, 1987, will pay a tax for that year under a blended tax rate. A calendar year corporation, for example, will have a top tax rate of 40 percent in 1987.

### **c. Commentary Regarding Rate Schedules**

Despite the reduction in corporate tax rates, these rates still are greater than the individual rates. Consideration should be given to operating a business in the form of pass-through entity in order to avoid the corporate level of taxation. Eligible closely-held corporations already in existence, for example, should weigh the long-term benefits (despite some short-term tax costs) of electing S corporation status. Further, newly-forming smaller businesses may have fewer incentives to incorporate (except in the form of an S corporations). This is because the tax rates for small businesses, in many instances, will be reduced only slightly, but many significant tax breaks will be eliminated. Sole proprietorships, S corporations, and partnerships, on the other hand, generally will benefit as a result of the steep drop in individual rates.

## **2. ACCELERATED COST RECOVERY SYSTEM ("ACRS") DEPRECIATION**

For most real property (e.g., buildings) and personal property placed in service after 1981, ACRS has been used to depreciate business property. This system basically allows taxpayers more rapid write-offs for their investments than they had been entitled to for property placed in service prior to that year.



Although TRA 1986 reduced the benefits of ACRS, assets used in the broadcast industry (other than transmitting towers) generally should receive even more favorable treatment under the provisions of TRA 1986 because the allowable deductions will be even more front-loaded.

### 3. LOANS FROM BUSINESSES

Although loans from businesses to owners (or to favored employees) were once a viable means for taking money out of a business at favorable repayment terms and at very low interest rates, their utility for this purpose has been sharply curtailed, if not eliminated. Interest-free and below-market loans generally are re-characterized as arm's-length transactions in which the lender is deemed to make a loan to the borrower at a statutory interest rate and the borrower is deemed to pay such amount back to the lender as interest. The deemed interest may be included in the income of the lender and may be deductible by the borrower. Also, the deemed interest, depending upon the particular circumstances surrounding the loan, may be characterized as compensation, if the loan is by an employer to an employee, or as a dividend, if the loan is by a corporation to a shareholder.

### 4. LOANS TO BUSINESSES

Loans to a business by an owner of the business can provide the business with needed working capital that might not be available from an institutional lender. If the loan is interest-free or at below-market rates, rules similar to those discussed above apply, except that the parties reporting the interest income and deductions are reversed.

### 5. BUSINESS USE OF CARS

Following TRA 1986, there are new cost recovery limitations on cars used for business. The maximum amount that can be deducted annually is: \$2,560 for year one; \$4,100 for year two; \$2,450 for year three; and \$1,475 for each succeeding recovery year. An employee must include in income the value of the personal use of an employer-owned car.



### 6. KEY PERSON INSURANCE

Where a business has one or more key employees whose death or disability can be expected to cause loss to the business or trigger financial obligations, there is a need to protect against such losses as early on in the formation of the business as is possible. One method of accomplishing this, which also has the advantage of simplicity, is to obtain "key person" life and/or disability insurance (provided that the business has an insurable interest in such individual under applicable state law).

### 7. COMPENSATION ARRANGEMENTS

Compensation to an employee is deductible by the employer to the extent that it is reasonable. "Reasonableness," in turn, depends upon the facts and circumstances in each situation and takes into consideration the entire compensation package, including retirement benefits, fringe benefits, expense account reimbursement, as well as bonuses. A so-called "hedge provision" in the employ-

ment agreement or, for a corporate employer, a by-law provision may provide that an employee must reimburse the employer to the extent of compensation for which a deduction is disallowed.

## **8. REPEAL OF CAPITAL GAINS PREFERENTIAL TREATMENT**

### **a. Individuals**

Capital gains are to be taxed like other income and are no longer subject to preferential tax treatment. Under prior law, 60 percent of the gain on the sale of a capital asset held for at least six months was excludable. Thus, a 50 percent taxpayer, in effect, would pay a maximum 20 percent rate on his or her net capital gains.

For 1987, the top rate on capital gains is 28 percent, even though other income might be taxed at rates as high as 38.5 percent. Beginning in 1988, and thereafter, higher-income taxpayers, who are subject to losing the benefits of the 15 percent bracket and the personal exemption, could face a marginal tax rate of as much as 33 percent on capital gains, due to the 5 percent surtax.

Although the preferential treatment for capital gains is being eliminated, the concept of capital gains is being retained in full in order to facilitate any future return to preferential treatment; also, as under prior law, capital losses will be allowed only to the extent of capital gains plus \$3,000 of ordinary income.

### **b. Corporate**

The alternate tax rate of 28 percent for corporate net capital gains has been eliminated. The tax rate will be 34 percent for capital gains included as income on or after that date. As under prior law, capital losses are allowed in full only against capital gains.

## **9. INVESTMENT TAX CREDIT**

Under prior law, the investment tax credit subsidized as much as 10 percent of the cost of investments in new equipment and machinery used in business. TRA 1986 repealed this credit for all otherwise eligible property placed in service after 1985, except for property covered by transition rules. For tax years beginning after June 30, 1987, credits for transition property and for credit carryovers (i.e., unused investment tax credits carried forward from pre-1986 tax years) are to be reduced by 35 percent.

## **10. EXPENSES FOR BUSINESS AND ENTERTAINMENT**

### **a. Meals, Travel, and Entertainment Expenses**

Under prior law, expenses for meals, travel and entertainment were deductible in full if they were incurred in furtherance of a trade or business or for the production of income. The taxpayer claiming the deduction had to establish that the expenditures were "ordinary and necessary" in nature. Also, for many types of meal and entertainment expenses, they either had to be directly related to the active conduct of or associated with the active conduct of the taxpayer's business. TRA 1986 does not modify these requirements. Rather, it limits the total amount of the deduction for otherwise allowable business meals and entertainment (including ticket costs) to 80 percent. TRA 1986 also increases the requirements for the deductibility of business meals to conform with current rules for the deductibility of entertainment expenses. Under these rules, business meals are deductible only if (a) business is discussed before, during, or after the meal, and (b) the meal



has a clear purpose directly related to the active conduct of the taxpayer's trade or business. Also, deductions are no longer allowable for the costs of attending conventions or seminars other than for business purposes.

Certain expenses are not subject to the 80 percent limit on deductibility. These include: (a) items taxed as compensation to the recipient; (b) expenditures for which the taxpayer receives reimbursement (the 80 percent limitation is applied to the party reimbursing the taxpayer); (c) recreational expenses paid on behalf of the employee; (d) items made available to the general public; and (e) banquet expenses in 1987 and 1988 for meals served at business gatherings, such as seminars or meetings.

#### **b. Employee Business Expenses and Other Miscellaneous Itemized Deductions**

Employee business expenses may be deducted only as itemized expenses (i.e., "below-the-line deductions"). Moreover, these itemized employee business expenses, along with other miscellaneous itemized deductions, are subject to a floor of 2 percent of the taxpayer's adjusted gross income. Expenses of producing income or maintaining income-producing property (except rental or royalty property) other than interest and taxes, will be subject to the 2 percent floor. Otherwise allowable travel, meals, and entertainment expenses (i.e., to the extent of the 80 percent limitation) will be aggregated and subject to the 2 percent floor.

## **11. CORPORATE LIQUIDATIONS**

Amounts distributed in complete liquidation are usually treated as full payment in exchange for stock, and the shareholder's gain or loss is determined by comparing the amount distributed with the cost (or other basis) of the stock. The distribution is entitled to capital gains treatment; as discussed above. However, although TRA 1986 has not eliminated the concept of capital gains, the net capital gains deduction has been repealed.

As a general rule, gain or loss is recognized by a liquidating corporation on the distribution of property in complete liquidation as if the property were sold to the distributee at its fair market value. This is a complete reversal of the prior rule that provided generally for nonrecognition of gain or loss at the corporate level on corporate liquidations.

Following TRA 1986, gain or loss now will be recognized by a corporation making a liquidating distribution of its assets to its shareholders (as if the corporation had sold the assets at fair market value) and also on liquidating sales of its assets (as when the corporation sells its assets and distributes the sale proceeds to its shareholders). These rules also apply to "deemed" liquidations where the corporate purchaser of a controlling stock interest in a corporation elects to treat the purchase of stock as a purchase of assets.

There are exceptions to the new liquidation rules. First, a corporation will not recognize gain or loss upon the distribution of its assets in liquidation to a parent corporation that owns 80 percent or more of the stock of the distributing subsidiary corporation. Second, a corporation will not recognize gain or loss upon the distribution of its assets in a liquidation that is part of a tax-free incorporation or a tax-free reorganization or division.

Some relief from the repeal is also provided for certain small, closely-held corporations. Such corporations will not recognize gain or loss upon a liquidating distribution or sale of assets if the liquidation is completed before January 1, 1989. However, this exception still requires recognition of gain or loss on ordinary income assets and capital assets held for less than six months after 1986. Partial relief, in the form of a phase-out, is provided for otherwise eligible closely-held corporations whose values are between \$5 million and \$10 million.

Consideration should be given to the desirability (and eligibility) of electing S corporation status in order to avoid a future double tax upon liquidation. However, a corporate tax cost may still be exacted following such an election; a corporate level tax generally will be imposed at the corporate level upon any gain that arose prior to the election, either upon the sale or the distribution of its assets if such sale or distribution occurs within ten years after the date on which the S corporation election took effect.

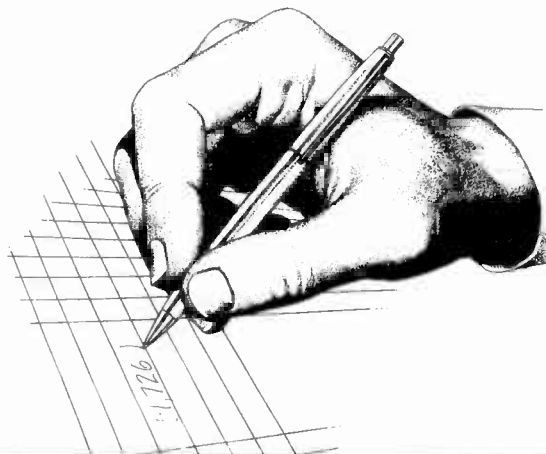
## 12. ACCOUNTING PROVISIONS

### a. Limitations on the Cash Method of Accounting

Under prior law, a taxpayer generally could use any method of accounting that clearly reflected income and that was regularly used in maintaining the taxpayer's books and records. TRA 1986 provides that for tax years beginning after December 31, 1986, the cash method of accounting can no longer be used by a corporation (as distinguished from an S corporation), by any partnership that has a C corporation as a partner, or by any tax shelter. Exceptions to this general prohibition are provided for certain entities (other than tax shelters), including entities with average annual gross receipts of \$5 million or less (based on the average of the prior three taxable years).

### b. Taxable Years of Partnerships, S Corporations, and Personal Service Corporations

TRA 1986 significantly changed the current rules regarding the adoption of, or change in, the taxable year of partnerships, S corporations, and personal service corporations. A partnership must use the same tax year as that of the partners owning the majority interest in the profits and capital. If such a majority does not have the same tax year, the partnership is required to adopt the tax year of all of its principal partners. If neither of these first two situations applies, the partnership must adopt a calendar year. S corporations and personal service corporations must use a calendar year. Somewhat ameliorating the "harshness" of this rule for some taxpayers is that a partner (in a partnership) or a shareholder (in an S corporation that was an S corporation as of the beginning of 1986), who otherwise would be required to include more than 12 months of income in a single taxable year, may include such excess in income ratably over a period of four taxable years.





### 13. ALTERNATIVE MINIMUM TAX

#### a. Individuals

Under prior law, individuals were subject to an alternative minimum tax (AMT) which was payable, in addition to all other tax liabilities, generally to the extent that it exceeded the individual's regular tax liability. The purpose of the AMT, as it was originally enacted, was to ensure that taxpayers having "economic" income, did not avoid paying at least some tax, even though they were able to reduce substantially or eliminate entirely their taxable income, as computed under the regular tax, by availing themselves of certain deductions. The tax is imposed at a flat rate on alternative minimum taxable income minus allowable AMT deductions plus the sum of preference items.

TRA 1986 modified significantly the AMT for individuals. At least initially, these changes will "catch" some higher-income taxpayers who have invested in certain kinds of tax shelters or who take substantial advantage of other tax benefits. The minimum tax rate is increased from 20 to 21 percent and the exemption amount (\$40,000 for married taxpayers filing jointly and \$30,000 for single taxpayers) is phased out for higher-income taxpayers. TRA 1986 also tightens the computation of certain present-law tax preference items (e.g., accelerated appreciation of certain real or personal property) and adds more types of tax benefits back to income as tax preference items, in computing the AMT. Over time, the AMT should become less significant for many taxpayers because of the tough new restrictions placed on tax shelter losses in computing the regular tax.

#### b. Corporate

TRA 1986 has repealed the corporate add-on minimum tax and replaced it with an alternative minimum tax ("AMT") similar to the individual minimum tax. The AMT rate is 20 percent of the AMT income exceeding \$40,000. The \$40,000 exemption is reduced (but not below zero) by 25 percent of the amount over which AMT income exceeds \$150,000. In addition to the preference items subject to the minimum tax under prior law, TRA 1986 adds several new preference items. The most significant of these new preference items is likely to be that one-half of the excess of pre-tax book income of the taxpayer over other AMT income (i.e., business untaxed reported profits) is a preference item.



Chart D

## NONTAX 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	No. Unlimited personal liability. Persons and business assets are both subject to creditors' claims.	Yes. Sole proprietor manages business.	No. Terminates with death of sole proprietor.	Yes.
Partnership	No.	Sometimes.	No, but partnership agreement can provide for continuation in the even of death, disability, etc. of partner.	No, generally partner must obtain consent of all partners in order to transfer partnership interest.
Limited Partnership	Yes, but only for limited partners of limited partnership. Limited partner liable only to extent of their capital contributions.	Yes. Generally, management vested exclusively in general partners.	No, but can continue for term specified in certificate.	Yes, but only for limited partnership interest, which may be freely assigned.
Corporation	Yes. Shareholders' losses generally limited to the extent of their investment in corporation.	Yes. Board of directors manage business.	Yes. A corporation has perpetual existence unless Articles of Inc. provide otherwise.	Yes. Interests freely transferable, unless shareholders' agreement provide otherwise.
S Corporation	Yes.	Yes. Board of Directors manages business.	Yes.	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 forms, may be greatly reduced or eliminated entirely 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.

Chart E

## TAX CONSIDERATIONS IN CHOOSING ORGANIZATIONAL FORM OF BUSINESS

Formation, Organization	Sole Proprietorship	General Partnership	Limited Partnership	Corporation	S Corporation
Generally tax free	Generally tax free	Generally tax free	Generally tax free	Generally tax free	Generally tax free
Taxed on Income	Taxed directly to the business owner	Taxed directly to partners whether or not distributed. Avoids problem of double taxation. Specifically treated income items pass through to partners without loss of items' character.	Generally, same as for General Partnership.	Tax on income at corporate level and a second tax on dividends at the shareholder level.	Taxed directly to shareholders whether or not distributed.
Deductibility of Losses	Losses pass through to business owner	Partnership losses may be used by partners (subject to at-risk rules).	Partnership losses may be used by partners (subject to at-risk rules) and new passive loss rules.	Losses of a corporation do not pass through to shareholders.	Losses may be used by shareholders (subject to at-risk rules).
Possibility of Allocating Different Types of Income and Deductions Among Owners By Agreement	No	Yes, if allocation has substantial economic affect.	No	No	No
Liquidation of Business		Normally no tax		Generally taxable	Generally taxable
Owner As Employee		Usually non-employee		Employee	Employee
Fringe Benefits		H.R. 10 (Keogh) plan, qualified group legal services plan, employee death benefit, meals and lodging for partner-employees.		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.	Qualified retirement plan, 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. Limits imposed on fringe benefits for tax years beginning after December 31, 1982.



# Rules and Regulations for Communications Satellite Earth Stations

Satellite communications have had a significant impact on the broadcasting industry. Prior to the wide availability of domestic satellites in the mid-1970s, program distribution was generally accomplished over terrestrial networks, which allowed little flexibility in the choice of programming offered to affiliates. News and special events were covered on film or tape, which then generally had to be flown to a network news center.

Today, stations have a variety of satellite facilities from which to choose. Networks use satellites to distribute their basic programming, and both networks and individual stations are using satellites for remote newsgathering. Satellites have also provided program directors of radio stations with a wide range of program material for broadcast. Cable systems have grown, in part, because of the large number of additional program channels distributed throughout the country by satellite. Even home "satellite dish" viewers can view directly at least some of this satellite programming.

This growth in satellites has also led to new technical problems of interference as more and more satellites have had to be placed closer together in orbit. On the one hand, the regulations applicable to receive-only earth stations are continually being trimmed down such that now little more than compliance with technical provisions and frequency coordination is required. On the other hand, interference considerations place increasingly greater responsibilities on the operators of transmitting earth stations. This chapter briefly reviews the general considerations that surround the choice and licensing of earth station facilities as well as the uses to which a broadcast station owner can put them.



## A. ACQUIRING EARTH STATION FACILITIES

Because more program suppliers are using satellites to distribute their material, most broadcast stations already have at least one earth station antenna. Broadcasters use satellite facilities for a wide variety of purposes. These include: (a) reception of regular video and/or audio program network feeds, (b) newswire services distributed by satellite, (c) reception of occasional sporting or other special event programming, (d) reception of remote news feeds, (e) reception of commercials distributed by satellite, (f) origination of video or audio program material for distribution by satellite, and (g) other communications services, including voice and data, related to station operations.

Like other types of equipment used in broadcast operations, there are a wide variety of earth station facilities available, and the range of capabilities and costs vary greatly. Earth station costs can range from a few thousand to tens of thousands of dollars for commercial quality receive-only stations to hundreds of thousands of dollars for transmitting earth stations. Facility choice will depend on the nature of the service to be provided and generally should be based on providing high technical quality at reasonable cost. However, station owners should also take into account several regulatory considerations, discussed below, when selecting earth station facilities.

There are currently *two frequency bands* used by domestic satellites, C-band and Ku-band. C-band uses 3700–4200 MHz to receive signals from the satellite and 5925–8425 MHz to transmit to the satellite. The majority of communications satellites currently operating use this band. As a result, there is more program material available in C-band. On the other hand, larger antennas (5 to 9 meters in diameter) are needed for C-band and there are potential interference problems with terrestrial microwave stations which use C-band frequencies.

There are fewer Ku-band satellites currently in service. For domestic satellites, the downlink frequencies are 11.7–12.2 GHz, and the uplink frequencies are 14.0–14.5 GHz. However, there are no terrestrial microwave stations operating on these frequencies on a primary basis. For international satellites, the downlink may also be in the 10.7–11.7 GHz band, which is shared with terrestrial facilities. Although propagation losses are higher on Ku-band than on C-band, Ku-band satellites tend to be higher in power, and earth station antennas thus may be smaller (e.g., 4 to 5 meters). The relatively smaller size of Ku-band earth stations may be significant in efforts to comply with local zoning regulations.

### 1. SITE FEASIBILITY SURVEY

Once the station owner decides on the capabilities and services desired, it is necessary to perform a site feasibility study for the proposed earth station facilities. For *Ku-band* facilities, such a site survey will generally involve making certain that a site is available with a good line-of-sight to the desired satellites, satisfying local zoning regulations, and making certain that the site has the necessary access, utilities, and other technical facilities. For *C-band*, however, the station owner will also have to do an *interference survey* to assure that the reception at the site will not suffer from interference caused by terrestrial microwave stations, and, if transmit capability is desired, that the transmitting earth station will not cause interference to microwave reception.

It is advisable to take into account at this stage the possibilities (1) that the FAA may have to review the antenna structure if the antenna is more than 20 feet higher than an existing structure, and (2) that environmental considerations may be necessary if the construction or operation of the station is a “major environmental action” as defined in Part 1 of the FCC Rules.



## 2. RADIOFREQUENCY RADIATION

Radiofrequency radiation may also be a concern for transmitting earth stations. Generally, the only potential radiation hazard in earth stations lies in the space between the antenna reflector and the antenna feed, and in the cylinder pointing into space beginning with the surface of the antenna. However, as long as these spaces are inaccessible to the public, which they usually are, problems with current federal guidelines are unlikely, insofar as public exposure is concerned. (Worker exposure is, under the circumstances, the primary area of regulatory focus.) The licensee of a transmitting earth station will generally be expected to mark such areas with warnings and install fences or other barriers to ensure that members of the public cannot inadvertently enter such spaces or be able to reach the reflector surface. (See Chapter V for a more detailed discussion of RF radiation concerns.)

## 3. LOCAL ZONING APPROVALS

Some communities have made it difficult for earth station operators to site transmitting earth stations because of aesthetic concerns and public fears of radiation. (It should be noted that the nonionizing radiation of communications equipment is far different and far less hazardous than the ionizing radiation from nuclear power plants, etc.) In the absence of a federal nonionization energy exposure standard from the Environmental Protection Agency, broadcasters may find difficulties in getting local approval.

With respect to aesthetic considerations, the FCC has issued a limited preemption rule that prohibits local zoning regulations that discriminate between earth station and other antennas, unless certain tests are met. However, it will still be up to the individual owner to use this ruling through local counsel in zoning disputes, because the FCC does not intend to get involved in individual proceedings.

## 4. FCC TECHNICAL RULES

When purchasing earth station antenna facilities, broadcasters should take into account several FCC technical requirements. Under newly proposed FCC rules, all transmitting antennas will have to conform to strict *sidelobe standards*, and manufacturers will have to provide the operator with a detailed set of verified measurements to be able to demonstrate to the FCC compliance with these standards. The station owner should be certain that any claim that an antenna is "compatible with two-degree spacing" is based on such a detailed set of measurements that conform to these proposed verification requirements.

The owner should also consider the *power limits* that will be imposed on "small" antennas to ensure that they are "two-degree compatible." FCC technical rulings place various limitations on antennas that are considered "small," i.e., less than 9 meters in diameter at C-band and less than 5 meters in diameter at Ku-band. Such limitations are usually expressed in terms of maximum power densities allowed to be transmitted. While the power or power density limits currently being applied by the FCC do not generally restrict narrowband transmissions, such as audio, they can significantly reduce video transmission quality. As a result, broadcasters should make sure that acceptable signal quality will be achieved over the facilities being considered when licensing the earth station.

Finally, it is likely that the earth station licensee will be required, under the proposed rules, to conduct an on-site measurement of the installed antenna. The earth station licensee, without obtaining a rule waiver or some other special FCC authorization, may not be able to transmit from the earth station if the on-site

measured antenna pattern does not meet technical standards. Thus, the owner should secure in its purchase agreement a provision identifying the antenna manufacturer's liability in such a circumstance.

## B

### B. FCC LICENSING PROCEDURES

Receive-only earth station licenses are issued by the FCC to protect these facilities from interference from terrestrial microwave stations if the frequency coordination procedures specified in Part 25 of the FCC's rules are successfully completed. However, because there are no primary terrestrial stations in the 11.7-12.2 GHz Ku-band downlink, the FCC does *not license receive-only* earth stations in the *Ku-band*.

#### 1. REQUIREMENTS

At C-Band, a major cost in obtaining a license is the cost of the frequency coordination study, usually done by a private consulting firm specializing in this area. The coordination procedure insures that there will be no interference from existing terrestrial microwave stations. The periodic payment of a retainer or other fee to the consulting firm will ensure that no new terrestrial station is proposed in the future that may interfere with the receiving earth station.

Since no construction permit is needed, the receive-only earth station can be constructed at any time. However, no interference protection is recognized by the FCC or by terrestrial operators until the coordination procedure is completed and a license application is filed with the FCC.

A construction permit is currently required for all *transmitting earth stations* (both Ku- and C-Band). While equipment may be ordered and delivered on-site and the concrete base of the earth station antenna may be poured before the issuance of a construction permit, further construction is *not allowed until the construction permit is issued*.

Generally, the construction permit is issued simultaneously with the earth station license, subject to the condition that construction is completed within 180 days of the grant of the station authorization. Frequency coordination is required only for C-band transmitting earth stations and must be completed before the application can be filed.

Special consideration of potential interference to other satellites is also necessary *if* the antenna diameter is less than 9 meters at C-band and less than 5 meters at Ku-band. The FCC has recently established *power density criteria* under which smaller antennas can be routinely licensed for narrowband (e.g., audio) transmissions. Power levels for routine licensing have also been established for transmission of full transponder signals, such as television signals. Broadcasters should carefully consider these limitations before acquiring a small antenna because power restrictions may cause operational problems in achieving good transmission quality of video programming.

#### 2. FILING

There is currently no single standard *FCC form* for new earth station license applications, although the FCC is proposing to adopt such a form (Form 493) in its CC Docket No. 86-496 proceeding. Until that proceeding is completed, the application procedure is governed by FCC's *Public Notice* of June 18, 1987 (DA B7-7B2), titled "Application Filing Requirements for Domestic Satellite Earth Station Authorizations." Several other notices have been issued to clarify various aspects of the FCC's licensing procedures. Copies of these notices can be obtained from

the FCC's Satellite Radio Branch ((202) 634-1624). In order to avoid delays in the processing of applications, the guidelines set forth in that notice should be strictly followed.

Under current procedures, an application has to be filed and approved before an earth station is re-sold (for example, with the sale of a radio station and its facilities) and the license is assigned to the buyer (where Form 702 is used) or before control of the corporation holding the earth station license is changed (where Form 704 is used). While such applications for receive-only earth stations are no longer placed on public notice, some time is necessary for the FCC to process these applications. One approach taken by some companies in circumstances involving only the transfer or assignment of receive-only earth stations is to turn in the licenses the day before closing on the transaction and to re-file for a new station license the day after closing. However, this procedure may be costly now that FCC filing fees have been imposed. This problem is expected to be eliminated in the future if the FCC adopts its proposal to replace the "licensing" of receive-only earth stations with a "registration" program designed to protect the site from terrestrial interference.

### 3. INTERNATIONAL SERVICES

International services formerly were provided only by Comsat and authorized international common carriers over INTELSAT facilities. But today, specialized INTELSAT television earth stations and transborder services are now being licensed on a regular basis, and separate international satellite systems have recently been approved by the FCC. As a technical matter, the licensing procedures for such facilities are similar to those for domestic satellite earth stations. However, regulatory provisions addressing these types of earth stations are somewhat different and, in the case of separate international satellite systems, not yet completely defined. Transmission or reception of transborder satellite services is also routinely authorized. In all of these cases, broadcasters should check the latest FCC decisions because of the rapidly changing requirements in this area (FCC International Facilities Division (202) 632-7265).

## C. AUTHORIZED USE OF EARTH STATION FACILITIES



The earth station license specifies the authorized scope of operations. Such authority may be limited by terms and conditions attached to the license, and the station owner should carefully read the license document issued by the FCC to ensure that the technical parameters of the station are accurately reflected in the license. Generally, transmitting earth station licenses permit transmission of the specified type of emission on any frequency within the band for which frequency coordination has been successfully completed, as well as to any domestic satellite in that band for which the earth station owner has arranged access with the satellite or transponder owner. However, license modifications may be necessary to add a new emission designator, transmitter, or antenna. Proposals presently being considered by the FCC may, however, eliminate the need for such modifications.

### 1. USES

Broadcasters' use of satellite services is primarily to receive (or transmit) program material for the broadcast station or to obtain information distributed by satellite for use in preparing broadcast material, usually news programs. Broad-

casters also can use satellite communications for voice, data and teleconferencing as any other businesses do. As noted below, these activities are generally unregulated, and a broadcaster may use its earth station facilities for any business endeavor within the technical limits of its authorized scope of operations as specified in the earth station license. This chapter, however, will focus on only the programming aspects.

One of the most common uses of satellite communications is the distribution of commercial network and public broadcasting programming to affiliated stations. NBC uses Ku-band facilities; the other networks use C-band satellites.

More recently, ad hoc networks, often regional ones, have begun distributing programs to stations. Sports networks affiliated with particular teams have also been established for home and away-game coverage, especially as fed to cable systems. Special feeds can also be arranged to cover news events, special events, etc.

Satellites are also providing the means to exchange programming on an *international* basis. While coverage of remote news, sporting and other special events has traditionally been provided by international satellite systems, today other regular programming is being distributed and received on an international basis. Licensing of special-purpose earth stations to use directly INTELSAT satellites for international program transmission has become routine. However, the entity holding the earth station license still must be a common carrier, rather than the broadcaster itself. (For example, a broadcaster would use the earth station facilities of Comsat or of another common carrier, often found at teleports.)

## 2. EXCESS CAPACITY

Once a broadcast station has earth station facilities, it can share excess capacity or lease for profit the excess capacity to other potential users of satellite communications. While other broadcasters would be likely and compatible choices, there are no restrictions on the leasing of excess capacity to other entities whether for broadcast-related or for other communications services.

Additionally, if the earth station is engaged in regular operations, it can also lease subcarriers for audio or data transmissions. And, a television station, for example, may wish to lease an audio subcarrier for radio coverage of special events.

There is no direct FCC regulation of such activities. Receive-only earth stations on user premises are considered to be "customer premise equipment" and are not subject to common carrier regulations. With respect to transmitting earth stations, the only activities defined by the FCC as non-common carrier activities not subject to its authority are non-profit cost-sharing of services or facilities, and the joint use of antennas and the lease of space and utilities for the installation and operation of transmitters. Other profit-making offerings have been deregulated under a "forbearance" theory which has eliminated any need for FCC approval of the services offered or the rates charged. Such operations are still subject, in theory, to a complaint process, although the FCC has indicated that any complainant would face a very high burden of proof in prosecuting any such complaint. Care also should be taken in setting up profit-making ventures with foreign entities, because a common carrier earth station licensee, even if not regulated under traditional common carrier provisions, is still subject to the same foreign ownership restrictions as a broadcast station licensee.

## 3. SCRAMBLING

Scrambling has proven to be a controversial issue. While a programmer may scramble its signal to protect against unauthorized reception, several issues have arisen as a result of the proliferation of backyard terminals. Current issues involve the interception of network programming intended only for broadcast affiliates,



as well as the interception of other satellite programming. These issues involve copyright protection and compulsory licenses. Legislation has been introduced in Congress which, if adopted, may affect the scrambling of broadcast services.

## D. SATELLITE NEWSGATHERING



A satellite newsgathering vehicle (SNV) is similar in concept to other forms of electronic newsgathering vehicles, except that the SNV is in fact a transportable earth station that uses a satellite to relay the programming back to the studio.

While such vehicles can be quite expensive (e.g., on the order of \$750,000 for a C-band facility), there are several ways to acquire an SNV other than purchase. A number of companies lease them, and cooperatives, such as networks or CONUS, may help a station finance them. However, if the SNV is *leased*, the broadcast station owner should be careful to clearly establish whether the broadcaster or the SNV operator will be the licensee, because it will be the licensee who will be responsible to the FCC and subject to sanctions if any interference is caused to other operators.

SNV's are available for both C-band and Ku-band. At C-band, the antenna is usually 4.5 meters and at least an abbreviated frequency coordination procedure is required before transmissions can be conducted from any particular location. Smaller antennas, on the order of 2.3 meters in diameter, are currently being used at Ku-band. It should be noted that recent FCC rulings impose power limits on television transmissions from such SNV stations that may have a significant impact on picture quality.

The FCC has established special licensing procedures for SNV's. Coordination of each transmitting location is required at C-band, although the process can be streamlined when necessary. Notification to the FCC engineer in charge of the appropriate radio district is also required. Regular licensing procedures are being proposed in the new Part 25 rule making, similar to the type of licenses issued for temporary fixed terrestrial stations.

SNVs are being blamed for much, if not most, of the interference that is being caused to other satellite services. As a result, the FCC is considering rules and regulations that would require SNV licensees to take special care in setting up the SNV to avoid interference to terrestrial stations and to satellites. An FCC advisory committee has made a series of recommendations on proper operating procedures to avoid interference to other satellite users which are being considered in the FCC Part 25 rulemaking proceeding. If adopted, the rules would require each SNV licensee to conduct measurements of the receiving antenna gain pattern before transmitting a test signal, as part of a standardized line-up procedure. Transmission would not be allowed if the measured receive pattern exceeded the required standard by more than a couple of dB. Complete measurements of SNV antenna performance would be required on an annual basis. (See Appendix V for a discussion of Department of Transportation regulations regarding SNV.)

## E. OPERATIONAL RESPONSIBILITIES OF EARTH STATION LICENSEES



There are no operator requirements for earth stations, although the pending FCC rule making would place greater responsibilities on transmitting earth station licensees to follow certain procedures to avoid causing interference. *Station owners*



*should keep in mind that interference has been and will continue to be the major operational and regulatory issue facing satellite communications.* The current rulemaking proceeding in FCC Docket No. 86-496 is addressing these issues.

The FCC Industry Advisory Committee made several other recommendations to the FCC. These recommendations have been incorporated in the proposed rules. One set of procedures would require ensuring proper frequency and polarization before transmissions are conducted at full power. Network control centers operated by satellite will oversee the initial line-up of transmissions. In addition, these centers will monitor all transmissions over the satellite and act as a clearinghouse to resolve any interference problems that may arise. C-band video transmissions, for which special identification signals are being proposed, will also have to be located at the center of transponders to minimize interference to narrowband emissions.

Many of these proposed rules reflect current practices and are intended to place all transmitting earth station licensees on notice of what likely will be expected of them in the future. The FCC is also proposing specific sanctions in order to enforce the proposed rules in the event interference occurs. As a result, station licensees should ensure that their own operating procedures are sufficient to avoid interference incidents caused by their facilities.

## Copyright and Trademark Issues

This chapter outlines general principles of copyright and trademark law, and describes how the general principles apply in areas of particular concern for broadcasters, including program and commercial production, cable carriage, and call sign protection.

### A. A BASIC DESCRIPTION OF COPYRIGHT AND TRADEMARK LAW



While television and radio stations, in broadcasting their programming, are prodigious users of copyrighted material, they often fail to focus on copyright law and related questions. And although these issues have always been important to broadcasters, identifying the scope of their rights and the scope of their protection under copyright law has become increasingly important as more and more alternative program delivery methods have come on the scene. Knowledge about copyright and trademark law can both keep broadcasters out of expensive trouble and provide a basis for taking advantage of rights that can be turned into a source of added revenues.

#### 1. BASIC COPYRIGHT PRINCIPLES

The basic purpose of the copyright law is to promote the “useful arts” by giving creators the right to prevent others from using their work without paying for it. The copyright law does not protect ideas, but only the creator’s particular expression of those ideas. Therefore, a creator or author can seek copyright protec-

tion only for something that has been reduced to concrete form, by being “fixed in any tangible medium of expression,” such as a manuscript, film or tape.

### The Five Basic Exclusive Rights.

Ownership of copyright, as with any other property, means the right to exclude others. Ownership includes five specific exclusive rights:

- The right to *perform* the work publicly.
- The right to copy or *reproduce* the work.
- The right to *distribute* copies of the work.
- The right to prepare modified or different versions of the work, called *derivative* works.
- The right to *display* the work publicly.

Broadcasting a program or copyrighted audio or audiovisual work is a “public performance” of that work, since it involves a transmission to members of the public. A cable retransmission of the same broadcast to subscribers is a separate public performance, with the cable operator rather than the originating station doing the performing. The playing of broadcast programs in a large commercial establishment over a commercial sound system would be a public performance by the store owner. The playing of a broadcast program on a receiver in a private home, with only members of the family or the normal circle of social acquaintances present, is a performance, but not a “public performance.” (A television program would be “displayed” rather than “performed” if individual stills from the program were broadcast nonsequentially.)

The broadcast of a program or other work is not a “distribution” or publication of that work. Distribution occurs only when copies of the work are sold, rented, loaned or offered to the “public.”

All of the exclusive rights belong to the creator of a work initially, but they can be transferred by assignment or by license. Each of the rights can be transferred separately, and a transfer can be limited in any number of ways (e.g. “U.S. distribution rights” or “broadcast rights in Pittsburgh for three years”). The transferee or exclusive licensee becomes the copyright owner of the particular right, within the limits of the transfer.

In general, a broadcaster’s copyright ownership of a program it has created arises as soon as that program is “fixed” (e.g., taped). No other steps are required for the station to begin protecting and exploiting its work. Compliance with the legal formalities is prudent, however, and will be necessary in order to pursue certain legal remedies that might not otherwise be available.

### Copyright Formalities

#### (1) Copyright Notice

A copyright notice must have three parts: (1) the symbol “©”, the word “copyright” or the abbreviation “copr.”, (2) the year in which the program is first *published* (i.e., distributed, not broadcast), and (3) the name of the copyright owner. For video programs longer than 60 seconds, the notice should be placed with the title or credits, or at the end, so that it is visible to viewers. For both audio and video programs, the copyright notice should also be physically attached to the cassette, tape reel or other container.

Although a valid notice is not strictly necessary in order to have an enforceable copyright, it puts others on notice that a copyright will be claimed, and may deter unauthorized use. In addition, infringements that occur without notice of a copyright interest are not subject to the full range of damages and other remedies

for non-innocent infringements. And if no notice has been provided on *any* distributed copies, the owner may lose the copyright altogether if a registration is not filed within five years after the first publication.

## **(2) Copyright Registration**

Registration requires filing a form, a \$10 fee, and one or two copies of the particular program with the U.S. Copyright Office in Washington, D.C. Additional information about the federal copyright registration process is provided in the Copyright Office publication included as Appendix W.

Registration of a work is not strictly necessary for the validity of the copyright. Registration is, however, a prerequisite to filing an infringement lawsuit under current law. Timely registration can also preserve a copyright interest in a program that was published without copyright notice, as described above.

In some circumstances, even if a station is confronted with the problem of unauthorized use of a program it has created, registration can be postponed until just before a lawsuit is actually filed. But if the unauthorized user claims the program as its own and registers it before the station does, the prior registration by that competing party can create problems.

## **(3) Recordation of Transfers**

If a station becomes the owner of a program through a transfer of copyright ownership or the grant of an exclusive license from the original copyright owner, it can record the transfer document with the Copyright Office for a small fee. Recordation can provide priority over some competing claimants. It is also a prerequisite to bringing an infringement suit if ownership of the copyright interest is based on the transfer. Like registration, however, recordation is not strictly required for copyright validity and can be accomplished just prior to filing a lawsuit.

### *Limitations on Exclusive Rights*

Although the Copyright Act grants the five exclusive rights to the creator of any work, it also carves out a number of limitations on those rights. For example, a broadcast station's exclusive right to perform its own news programs publicly is subject to the "compulsory license" that allows cable systems to retransmit that program for a small fee. There are also a number of special privileges granted to schools, libraries, record companies, juke box owners, horticultural societies, public broadcasting stations, and a variety of other copyright users. Some of the limitations relevant to broadcast programs are discussed below.

An important limitation on the exclusive rights of all copyright owners is the "fair use" doctrine. This doctrine attempts to balance the interest of the public and other authors in having access to information against the general interest in promoting creativity by allowing the creators to limit unauthorized use. The factors that determine whether a use of a copyrighted work is a "fair use" (and thus does not require permission from or payments to the copyright holder) include:

- The purpose and character of the use, including whether the use is commercial or educational;
- The nature of the copyrighted work being used;
- The amount or importance of the portion used;
- The effect of the use on the potential market for the copyrighted work.

A description of how these factors might be applied in particular circumstances is given below.

## 2. BASIC TRADEMARK/SERVICE MARK PRINCIPLES

The basic purpose of trademark law is to allow the seller of a product or service to protect the goodwill that comes from being identified as the source of that product or service. Trademark law does not prohibit someone else from offering the identical service; instead, it prohibits a seller from attempting to “palm off” its service as that of its competitor. Trademark law is concerned with protecting investments in advertising, protecting a developed reputation for quality, and preventing public confusion or deception.

The right to protect a particular trademark (for products) or service mark (for services) arises from its use in commerce. The strength of the protection provided depends on what kind of mark or name it is: generic, descriptive, suggestive, arbitrary or “fanciful,” or something in between. For example, exclusive use of the identifier “The Radio Station” for radio broadcast services would not be subject to protection, because it is the generic term for the service. On the other hand, protection has been provided for the term “Automatic Radio” when used to identify air conditioners and ignition systems sold by the Automatic Radio Manufacturing Company. Even where a name is descriptive of the product or service, the owner can obtain protection against its use by others if he can prove that it has developed “secondary meaning” through its use in commerce—i.e., that the public associates the name only with the owner’s product or service, not with all products or services that meet the same description.

In the broadcast area, call signs, slogans, program titles, station logos, company names, and frequencies or channel numbers are used to designate broadcast services in the marketplace. The protectibility of these various identifiers is discussed in Section B(7) below.

Trademark protection is part of a constellation of legal rights falling under the general heading of unfair competition law. The use by a competitor of a service mark similar to one a station has been using may give rise to a variety of claims under both state and federal law. Remedies for service mark infringement under federal trademark law, to which the discussion in this chapter is limited, will generally be available if the plaintiff establishes a prior right to the service mark and shows that the defendant’s mark creates a likelihood of confusion among the station’s potential audience.

Trademark registration is somewhat more significant than copyright registration, since an early registration can give the registrant substantial rights against competing users who have not registered the same mark, or who register later. Although trademark registration is not a prerequisite to an infringement suit, a properly perfected federal registration can make a service mark “incontestable” in a lawsuit against an infringer. A basic description of the federal trademark registration process is provided in the Patent and Trademark Office publication included as Appendix X.

# B

## B. COPYRIGHT AND TRADEMARK ISSUES FOR BROADCASTERS

### 1. STATION-PRODUCED PROGRAMS

Both television and radio stations face copyright issues when they produce their own programs, such as news programs, public affairs programs, talk shows, or music video shows. In doing so, a station needs both to avoid infringing the copyrights of others and to protect its own copyright interests in the program it has created.



Infringements can occur when a station copies the works of others or creates "derivative" works by modifying pre-existing material or including it in a program-length "compilation" of material from a variety of sources. When the program is broadcast by a television station, besides engaging in a public performance of the works, the station may be "publicly displaying" copyrighted pictures, artworks or graphic works included within the program. If tapes of the program are sold, rented, traded, or given away for use elsewhere, the station may be involved in the "distribution" of copyrighted works of others. It is important to recognize that each of these various activities may be a separate potential infringement of another's copyright.

#### **a. A Station's Rights to Use the Works of Others**

##### **1. Creating new copyrighted work—the "work for hire" problem**

Even when a station creates its own program material, there can be a question about who owns the copyright. The general rule is that if the program material is created by an employee of the station working within the scope of his or her employment, the station owns the copyright. A problem may arise, however, where the station, for example, uses a report by a freelance reporter in a news program, or produces a talk show under an agreement with an independent contractor host.

If an independent contractor is specifically commissioned to do all or part of a program, the station will own the copyright in the material created by the independent contractor if there is a signed written agreement which states explicitly that it is intended to be a "work for hire" under the U.S. Copyright Law. It is advisable for such an agreement also to spell out the ownership rights that vest in the station, and to include a contingent assignment of any copyright interests that might later be determined to be retained by the independent contractor.

Even if the individual creating program material for the station is not a regular employee, and even if the agreement with the individual does not include the necessary "work for hire" language, there is some chance that the station could later claim copyright ownership of the material the individual created. It is better, however, for a station to avoid potential disputes by including the necessary "work for hire" language in any agreement with a non-employee to produce program material.

##### **2. Using Pre-existing Works of Others**

Often, in the course of creating a program, a station uses pre-existing works of others. For example, music may be played, a video clip may be shown, or a work written by someone other than station employees or "work for hire" contractors may be read. The problem is clear enough when the use is verbatim, but there is also a risk of potential infringement liability if the station includes material that is "substantially similar" to copyrighted work in which the station has no rights. In order to avoid liability, the station should have authority, either direct or indirect, for the proposed use. In the absence of direct authority, making diligent inquiry as to the copyright status of the work to be used and maintaining an appropriate "errors and omissions" insurance policy are prudent measures.

Three situations in which a station can claim a right to use pre-existing copyrighted work are (a) the station has obtained permission from the copyright owner, (b) the "fair use" doctrine applies, and (c) the work has entered the "public domain".

##### **a. License Agreements**

The best way to avoid problems is to get advance written permission from the copyright owner for the proposed use. Indeed, exclusive licenses must be in writing to be valid at all. Oral authorization to broadcast copyrighted material as part of a program can protect the station from a subsequent infringement claim, but cannot be used by the station to prevent others from using the same material.

It is also important for the station to get all of the rights it needs. As described above, there are several distinct rights included within a copyright, and a station will be guilty of copyright infringement if, for example, it duplicates or distributes program material it was only authorized to broadcast. Moreover, a copyright owner may limit the rights it transfers in a number of ways, including the duration of the license, the geographical scope of an exclusive license, or the media for which the license is granted. Spelling these out in advance avoids uncertainty and potential liability later.

It is important to obtain warranties and indemnifications, as well as copyright licenses, to protect against the possibility that parties do not have the authority to grant the rights they are purporting to assign. A license agreement or release form should therefore include warranties by the granting party that it possesses all of the rights it is licensing, as well as the right to assign those rights, and appropriate guarantees that the station will be indemnified if the "licensed" use turns out to be an infringement.

#### *b. The Fair Use Doctrine*

The fair use doctrine allows a station to use copyrighted material without obtaining permission or paying compensation. Whether material can be used under the fair use doctrine depends on four basic factors: the character of the use, the nature of the work, the amount being used, and the effect of the use on the work's potential market. These factors must be balanced, applying the circumstances of each particular case. There is no rule that certain uses are or are not fair use. In general, however, if the use is commercial, it is presumed not to be a fair use.

"Criticism, comment, and news reporting" are potential fair uses of copyrighted material. In addition, the fair use doctrine generally favors the activities of a "second author", that is, someone who uses copyrighted material as a stepping stone to creating new material, rather than simply reselling someone else's work.

In general, station news programs can qualify as the type of program that may take advantage of the fair use doctrine if the other factors balance in favor of the use. However, as a station's program, or even segments within a program, begin to resemble entertainment rather than "criticism, comment and news reporting," it becomes more difficult for the fair use defense to be established.

Following are examples of activities that radio or television broadcasters may encounter, with a discussion of some of the considerations that would go into balancing the four fair use factors in each case:

- *Reading verbatim news reports from the local newspaper on air.* This activity would be difficult to justify as a fair use, especially if the whole article or the most significant portions of the article are read verbatim. Although news reporting is a favored activity, the use could be seen as directly affecting the market for newspaper subscriptions and as having the purpose of avoiding the cost of a news staff or a wire service subscription. It should be noted, however, that the facts and historical events reported by newspaper are not copyrightable. Only the particular expression of those facts and any "substantially similar" version of that expression can be protected.
- *Reading a syndicated column, such as "Dear Abby," as part of a daily on-air feature.* This would be even more unlikely to be a fair use. Unlike news reporting, it would be difficult to show that the purpose of the use is something other than commercial entertainment.
- *The airing of movie clips as part of a newscast movie review.* This is probably a fair use, as long as the clips are not so substantial as to affect the market for the full-length movie, or to take on the character of a performance of the film for entertainment rather than critique purposes.

- *The showing of clips of other stations' broadcasts of sports games as part of a daily sportscast.* Without the consent of the other station, this use may be questionable. Clips that are brief, are from a game that took place on the same day, and do not include another station's announcers or camera work may be more apt to be considered a fair use. At least one court, however, has suggested that the use of clips of games without consent may be an infringement. The use of sports clips in a "highlights of the month" feature, because it moves away from the current news reporting function and begins to resemble entertainment, may be more difficult to justify under the fair use doctrine.

**c. Public Domain Works**

Works are not protected by copyright if they have fallen into the "public domain." Five categories of such public domain works are as follows:

- *Works for which copyright protection has expired.* Federal copyright protection is for a limited term. The term of protection under current law is generally 75 years for works created by corporations. Longer terms may apply for copyrights created by individuals. Depending on whether copyrights were properly renewed under the old copyright law, however, some material first published less than 75 years ago may already be in the public domain.
- *Works for which copyright protection was forfeited.* This category includes works that were published without the proper copyright notice, and for which the defect was not cured by a copyright registration filed within five years after that publication.
- *Copyright works for which copyright protection has been abandoned.* This requires proof of an intention to abandon the work, for example by showing that the original owner destroyed all its own copies of the work or widely distributed the work on an unrestricted basis with no copyright notice attached to it.
- *U.S. Government works.* Neither the government nor its employees, while working within the scope of their employment, can obtain copyright protection for works they have created. Thus, government reports and films, court opinions, and a variety of other government publications may be used without compensation or permission.
- *Facts and historical events.* No one can copyright facts. Only the expression or description of those facts can be protected.

**b. The Station's Right to Protect Its Own Program Once It Has Been Created**

**1. What is necessary in order to obtain copyright protection?**

The only absolute requirement for a station to acquire a copyright in a program it has created is that the program be *fixed* in a "tangible medium of expression" that would allow it to be reproduced. Typically, a radio broadcast program is fixed by being taped; a television program by being taped or filmed. For a live program, a copyright will be created if the program is taped simultaneously with its broadcast. A program could also be "fixed" through a written script that would permit the program to be reconstituted at a later time.

It is not necessary for the station to retain the tape or script of its program for the entire term of the copyright in order to maintain copyright protection. But unless some sufficiently detailed record of the program is retained, the station may not be able to prove infringement after its tape has been erased or reused. In an infringement action, the allegedly infringing work must be shown to have been copied directly, or at least to be "substantially similar" to the original work.

Moreover, a “complete copy” of the program or work must be deposited with the Copyright Office as part of a pre-lawsuit registration. While this deposit copy may be made from the infringing copy, a potential defendant’s copy may not often be accessible.

Beyond the fundamental requirement of fixation, an appropriate copyright notice should be affixed to the tape of any program that is “published”. This will prevent the program from entering the public domain if registration with the Copyright Office occurs more than five years after first publication. While registration is a prerequisite to filing an infringement lawsuit, if a station places the copyright notice on all copies after publication, it need not register each program unless and until an infringement suit becomes necessary. (Registration and deposit of a single program in a series, such as a station news program, cannot serve to protect other programs in the series.)

The broadcast of a program is not a “publication,” but it is acceptable to use the year of broadcast in the copyright notice on the initial program, and to change the date to a later year if and when the program is published (through distribution of copies) at a later time.

Beyond the copyright formalities, it is important to assert ownership rights in a program promptly and consistently. If, upon learning of any infringing use, a station does nothing, it runs the risk of later being unable to protect its copyright interest where there a lawsuit.

## **2. What is the scope of the station’s copyright protection?**

Once the station has created a program and it has been “fixed”, the station owns the exclusive right to (1) perform the program publicly (by broadcast or otherwise), (2) copy the program, (3) distribute copies of the program, (4) prepare adaptations or derivative works based on the program, and (5) “display” the program publicly, for 75 years. These rights apply to all media and all markets in the U.S. In general, U.S. copyright ownership will also be honored in foreign countries, to the extent of the rights granted to domestic copyright owners in those countries. These broad rights, however, are subject to a number of limitations.

### **a. Cable Retransmissions**

The cable “compulsory license”, which is discussed further in Section B(6) below, allows cable systems generally to retransmit any broadcast program without obtaining authorization from the copyright owners of the programs being retransmitted, so long as the cable system pays a statutory license fee to the Copyright Office. The issue of whether multichannel multipoint distribution systems (MMDS), satellite distributors, and other non-wired distribution systems are “cable systems” entitled to this compulsory license is currently being considered by the Copyright Office and is the subject of litigation.

### **b. Hotel and Apartment House Retransmissions**

Broadcast programs may also be retransmitted to hotel guests and apartment residents, provided no direct charge is made to see or hear the retransmission, and the hotel or apartment house is located within the “local service area” of the originating station. The “local service area” is defined for television as being, in general, within 35 miles of the station’s community of license, and for radio as being within the station’s FCC-specified primary service contours.

### **c. Non-Profit Translator or Booster Retransmissions**

Government-owned and other non-profit translators and boosters may retransmit programs to the public without payment, as long as the recipients of the service are not charged any fees other than those necessary to defray the actual reasonable costs of operating the facility. Because the FCC now allows TV translators and primary station-owned TV and FM boosters to rebroadcast television



and radio signals received by means other than off-the-air reception (including satellite), non-profit translators can rebroadcast virtually any signal, no matter how distant. Under FCC rules, government-owned and non-profit translators must still obtain retransmission consent from the stations they re-broadcast; for-profit translators must obtain both retransmission consent and copyright licenses or clearance.

d. *"Passive Carrier" Retransmissions*

Broadcast programming can be transmitted by satellite and other common carriers, as long as the carrier has no control over the content of the original broadcast and offers the retransmission to all potential subscribers. This exemption allows satellite carriers to distribute, without copyright liability, the signals of the "superstations" to cable systems nationwide.

e. *School Classroom Uses*

Broadcast programs can be performed in schools, but only where the programs are used "in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction." It does not permit the performance of broadcast programs for entertainment purposes.

f. *Public Reception on a Single Receiver*

Reception of a television or radio signal in a public space is a public performance of the copyrighted programs being received. Such public reception is exempt from copyright liability as long as (1) the reception is on "a signal receiving apparatus of a kind commonly used in private homes," (2) no direct charge is made to see or hear the transmission, and (3) the transmission is not further transmitted to the public. This exemption allows small commercial establishments open to the public to provide television or radio broadcast programming for their customers. If the establishment is too large, or uses a commercial-type sound system, adds multiple speakers (e.g., more than four), or uses satellite receiving equipment or decoders, the exemption does not apply.

g. *Library and Archival Copying*

Libraries and archives operating without commercial purpose and whose collections are open to the public are entitled to make one copy of any work and to make it available to the general public.

h. *Fair Use*

To determine whether any particular use of a station's programs qualify as fair use, the four fair use factors discussed above must be balanced in light of the particular circumstances. The videotaping of broadcast programs in private homes for other than commercial purposes is a permissible fair use of broadcast programs. Any commercial use, however, is presumptively not a fair use. Videotaping off-air news programs and offering excerpts for sale to people or institutions mentioned in news stories has been held to infringe the station's copyright in the stories.

i. *Works of Others In a "Compilation" Program*

If the station's program is a compilation of copyrighted works, some of which are owned by others, then the station's right to protect its program is limited to the portions that it owns itself. For example, if a news program uses a clip or report created by a news service and provided to the station under a limited license, another station's infringing use of only that portion of the news program may be enforceable only by the news service, not by the station in whose program it was originally broadcast. Similarly, where a license to use music videos in a station-produced music video program is a non-exclusive license limited to performing rights, the station could not sue any other station for broadcasting the same music videos. If the station's entire music video program was broadcast by another



station, the originating station's copyright claims would be limited to protecting the portions of the program that it created itself (e.g., the work of any on-air talent, and the compilation, or the selection and ordering of the music videos).



## 2. SPORTS PROGRAMS AND PERFORMANCE PROGRAMS

In general, performers, such as parade participants or sports teams, are not engaged in "authorship" when they perform, and do not have a copyright ownership interest as a result of their live performances. There may, of course, be an underlying copyrighted work involved. Where, for example, an orchestra performs a copyrighted musical work, a station broadcasting the performance must have a copyright license for its own public performance (i.e., the broadcast) of that music. The orchestra, while it may have "related" property rights, has no copyright ownership interest in the live performance.

In broadcasting such a performance, the television station may be engaged in a separate act of authorship by virtue of the work of the commentators, camera crew, directors and audio engineers who produce the program. Thus, if the telecast or radio broadcast involves creative work and is "fixed," the station acquires a new and separate copyright interest in the program.

Sports teams and other performing groups have rights other than copyright, such as the common law "right of publicity" and the ability to control access to the stadium or concert hall, which enable them to exploit the value of their performance. While broadcast stations may be able to assert a First Amendment right of access to newsworthy events or locations, such as an accident site or a hearing, they are not assured access to sports or entertainment events. For example, a television station was found to have violated the right of publicity of a "human cannonball" performer by broadcasting his entire 15 second "act" as part of the station's daily newscast. In another case, a court refused to prohibit a station from broadcasting a parade on grounds of copyright infringement, despite the fact that another station had been granted "exclusive rights" to broadcast it, because the parade itself could not be copyrighted. Each station's telecast of the parade would be a separate copyrightable program. The court left open the possibility, however, that the station without "exclusive rights" could be found liable for unfair competition, along the same lines as the human cannonball case.

The basis for protection of a performance event may make an important difference in what kinds of rights (and revenues) are available to the station after the initial broadcast. In another parade case, for example, a freelance producer was able to sell his footage of a parade, over objections by the parade's organizers, for use in a motion picture. Absent any contractual limitations on the station, if it owns the copyright in its telecast or radio broadcast version of a live event, it has the exclusive right to exploit that program in any other way.

Exploitation rights to sports games, especially those involving professional and major collegiate sports leagues, are often expressly covered by contract. In exchange for the broadcast rights, the teams or leagues typically require the station to assign its copyright interests, or at least split copyright ownership, in the broadcasts of the games. If a contract does not so provide, then the station may retain the entire copyright in the game programs, or, at the least, the station and team might be joint owners, each entitled to 50 percent of the revenues from any exploitation of the copyrighted game broadcast program.

If the creative work in producing a broadcast is done by someone other than station personnel (for example, where a sports team buys station time to air games the team produces itself), the station would not own the copyright in it. But in all other circumstances, stations should be aware, when negotiating with sports teams or the promoters of other live events, that it is the station that will own the copyright in the program initially, and that any assignment of rights by the station to the promoter or team should be compensated.

### 3. COMMERCIAL PRODUCTION

While the copyright issues for commercial matter produced by stations are much the same as those discussed in Section A above, the emphasis is somewhat different for commercial production than for program production.

#### a. Work-for-hire Issues

Typically, advertising material is created by the agency or the advertiser. Even where a station does production work, the advertiser or agency often actively supervises and directs the work. In such circumstances, copyright will often be held by the advertiser or agency under the “work-for-hire” rules.

If a station does the principal creative work to develop a campaign for a client, working independently and subject only to the ultimate acceptance, rather than active supervision and direction, of the client, the station would be in a position to claim copyright ownership of the commercials it has produced. If, for example, a station creates a campaign for an advertiser for use on the station that is so successful the advertiser later decides to use it elsewhere, the station might have the right to be compensated for any additional use, either through a license arrangement providing for royalty payments geared to the amount of further use, or through a one time payment for the outright assignment of the copyright to the advertiser.

Stations will often agree, instead, that spots they create for a client advertiser will become the advertiser’s property. But if a station’s relationship with a particular advertiser allows it to be more aggressive, and if compensation cannot be obtained through an agreement, a range of copyright remedies would be available to the station, including injunctions against further use, as well as damages.

For example, a newspaper that had created an advertising layout for an advertiser recently sued a competing newspaper for copyright infringement after the competitor had published the same layout at the advertiser’s request. Although the advertiser would also presumably have been liable as a contributory copyright infringer, the first newspaper sued only its competitor. This case illustrates both the potential advantages for a station that perfects its copyright ownership of commercial material it has created, and the risks a station may encounter in broadcasting commercial matter provided by an advertiser, as to which the advertiser neither owns the copyright nor has provided an adequate warranty and indemnification.

#### b. Fair Use

Unlike station-produced news programs, there is typically no question that the nature of the use for advertising material is purely commercial. For this reason, it is unlikely that any unauthorized use of another’s copyrighted material in producing a commercial will be considered a fair use.

#### c. Music Rights

The blanket licenses provided to radio and television stations by ASCAP, BMI and SESAC cover only the performance of music by the stations. If a station records music as part of its production of a spot, it would be engaged in reproduction of the musical work (called “synchronization” when the music is recorded on a video program or spot). To avoid copyright infringement liability, a station may need to obtain a synchronization rights or reproduction rights license from the owner of the music, in addition to its blanket performance license. Stations using stock music from one of the commercially available music library services should be sure to obtain a reproduction rights license (although such a license may be implied by the circumstances of the transaction). Use of other music (such

as popular recorded music) will require clearance, and possibly payment of a small synchronization rights fee.

A station doing production work may be liable for infringement even if the spot is being produced under the direction of an agency or advertiser. Where the station actually commits the infringing act, for example copying copyrighted music as part of a commercial spot, it will be liable as an infringer. Moreover, the station may be liable as a contributory infringer if the advertiser makes additional copies and distributes those copies, violating two more of the copyright owner's exclusive rights. Even if a station engaging in infringing activities does not know, and has no reason to know, that its actions are infringements (for example, because of the absence of a proper copyright notice), it may still be found liable for the infringement.

#### **d. Trademark Issues in Comparative Advertising Production**

One special issue that may be raised in commercial production is the permissible use of trademarks and service marks, as opposed to copyrighted material. In particular, a station may be faced with a question about the use of competitors' trademarks in comparative advertising spots.

In comparative advertising, there is typically no "palming off" attempted; rather, the point of the advertising is to distinguish the advertiser's own product from its competitors', and trademark infringement is unlikely to be found. Where the use of competitors' trademarks or service marks raises a reasonable likelihood of confusion, however, such use could be an infringement. To avoid this danger, comparative advertisers sometimes include a legend specifying that the competitor's trademark is a registered trademark of the competitor company.

Another area of concern in comparative advertising is trade disparagement. That is, rather than using a competitor's trademark in order to confuse the public into thinking that the trademark identifies the advertiser's own products, the advertiser might improperly use its competitor's trademark in the course of suggesting that it represents a defective or inferior product. The Federal Trade Commission has expressed concern that blanket prohibitions on disparagement might improperly restrict truthful comparative advertising. But false, misleading or untruthful disparagement continues to be subject to potential FTC sanctions, and to private lawsuits.

### **4. PROGRAM CONTRACTS**

Much television and radio programming is bought from program syndicators rather than created by broadcast stations themselves. While stations often pay little attention to the provisions of the standard syndicator's contract form that relate to copyright, a mistake in the copyright clauses can later destroy much of the value of the product.

The basic objective with respect to copyright language in program contracts is for the station to get everything it needs. First, the station should determine which of the five exclusive rights it is buying: performance, display, copying, distribution or adaptation rights. In most cases, of course, television or radio public performance rights (i.e., the right to broadcast) are all that will be required.

Second, the station should be concerned with the extent of the exclusivity it is obtaining. Exclusive performance rights, for example, can be limited to specific media, a particular geographic area, and a specific period of time. A television station may want or need exclusivity as against not only other full power commercial television stations, but also non-commercial television, low power television, cable local originations, satellite transmitters, or even movie theaters. Although not currently customary (and although the increasingly prevalent barter syndicators may have an incentive not to license competing users), licensing to some of

these alternative media may become more viable in the future. A station may find that, when a new local competitor begins delivering the same program, the station has no copyright remedy because its contract did not grant exclusive rights as against that other medium. Where simple contracts for network one-time sports events, for example, have granted only "local broadcast rights," stations have sometimes been surprised to find all or part of the same program coming into their markets via cable program services or "cable networks" and even broadcast network clips authorized by the program distributor.

There is no copyright limit on the permissible geographical extent of exclusivity. There is an FCC rule, however, that prohibits the purchase of exclusive rights against television stations located more than 35 miles away. The FCC has proposed to modify or eliminate this restriction. If the limit is deleted, stations may begin, to the extent permitted by the antitrust laws, to purchase exclusive rights even against stations in other markets. This may be desirable where, for example, the purchasing station has extensive cable carriage.

Broadcasters who purchase exclusive performance rights in programs become the actual copyright owners of the programs, to the extent of those rights. If another station in the market were to broadcast the same program, the "exclusively licensed" station could sue the other station for infringement of its own copyright. This provides an additional remedy, over and above a breach of contract right against the syndicator.

## 5. TELEVISION BROADCAST DAY OR RADIO FORMAT

When a television broadcast station creates a "broadcast day," consisting of a combination of programs owned by itself and others, it creates a new copyrightable collective work that is separate from the individual works. When a radio broadcaster creates a format, using music and other program elements, it also creates a new, separate copyrightable work. These works are called "compilation" works.

As with other copyright works, the only absolute requirement for claiming copyright in a broadcast compilation is that the compilation be fixed in a tangible medium of expression. This can be accomplished directly, through audio or videotape, or indirectly, through a detailed program log and playlist. The use by television stations of a "slow tape logger," which does not produce a tape adequate for a verbatim replay of the entire broadcast schedule, has been found to be adequate for copyright fixation purposes. Stations should be aware that videotaping or audio taping any copyrighted program components of their broadcast schedules that are owned by others can constitute an infringement if such copying has not been authorized. "Fixing" the broadcast schedule compilation through a program log does not constitute such a violation.

For syndicated radio program services, it is largely the selection, ordering, and "packaging" of music that is being sold. A station's ASCAP, BMI and SESAC blanket licenses cover the performance of music included in such services, but if a station performs a copyrighted format without authorization, it potentially infringes the compilation copyright of the syndicator.

Copyright notice can be applied to a station's broadcast day compilation by broadcasting the notice at sign-off, and by affixing the notice to the program log or tape that is used to fix the compilation.

## 6. CABLE

A cable system engages in a public performance of a program when it retransmits that program to the public. For cable services such as HBO, the cable system obtains a license directly from the program distributor. But for broadcast stations,



the Copyright Act grants cable systems a "compulsory" license. This license generally allows any cable system to retransmit any broadcast station it is permitted by FCC rules to carry, upon payment of royalties to the Copyright Office. The royalty payment system is described in more detail in the "Guide to Cable Copyright Royalty Calculations," included as Appendix Y. The royalties are distributed by the Copyright Royalty Tribunal to copyright owners, including broadcast stations. The distribution process, and the means by which broadcast stations can claim a portion of the royalties, are described in Chapter VI.

The cable compulsory license is limited. It does not permit non-simultaneous retransmissions (except by cable systems outside the contiguous 48 states), any copying or distribution of broadcast programs, any alteration of the programs the cable system retransmits, or any deletion or substitution of commercials in or adjacent to such programs. If a cable system violates any of the conditions of the compulsory license, it can be sued for copyright infringement.

If, for example, a cable system fails to file its semi-annual Statement of Account, or to pay the royalties it owes for the carriage of a station, owners of programs retransmitted on the station can sue for infringement and, among other remedies, can be awarded either (1) their actual damages plus the cable system's profits resulting from the infringing retransmission, or (2) "statutory" damages. These statutory damages range from \$100 to \$50,000 for each infringement (i.e., each retransmission of each program), depending upon the willfulness of the infringing conduct.

If a station has a license to broadcast a syndicated program, and that program is retransmitted into the station's market by a cable operator in a manner that violates its compulsory license, the Copyright Act treats the local station as the owner of the program for purposes of suing the cable system for infringement.

Special enforcement remedies are also available to television and radio stations against cable systems that clip or modify programs or delete or substitute commercials. In addition to the owner of the program, the distant signal station on which the altered program appeared and any station into whose market the system is bringing the distant signal can sue for infringement, even if the altered program is not licensed to any station in the market. Remedies for such non-owner stations, however, are limited to an injunction and their costs and attorneys' fees.



## 7. TRADEMARK PROTECTION OF CALL SIGNS AND SLOGANS

The principal thrust of federal and state trademark laws is to protect the goodwill represented by a recognized trademark or service mark from misappropriation by a competitor who adopts a mark similar enough to cause a likelihood of confusion among consumers. Broadcast station call signs, slogans, logos, program titles and other identifiers are entitled to such protection as service marks.

In deciding whether there is a sufficient likelihood of confusion to enjoin a competitor's use of a similar call sign, slogan or other service mark, courts will consider seven factors: (1) the degree of similarity between the marks; (2) the similarity of the programming services offered by the two stations; (3) the area and manner of concurrent use of the marks by the two stations; (4) the degree of care likely to be exercised by listeners and viewers; (5) whether the service mark is a "strong" mark (that is, whether the mark is arbitrary or suggestive as opposed to descriptive or generic, or, if it is descriptive, the extent to which it has developed a "secondary meaning" strongly identifying the particular source of the service); (6) the degree of any actual confusion; and (7) the intent on the part of the alleged infringer to "pass off" his mark as that of another.

If the owner of a station obtains federal service mark registration of, for example, a slogan it has begun to use in one broadcast market, it gains priority over



later station users of the same slogan in any U.S. broadcast market it later enters. Conversely, a station can suddenly be barred from using the slogan it has used in its own market for years because someone else had already registered it based on even earlier use elsewhere. For this reason, a trademark search should be performed whenever a company is considering a substantial investment in a new slogan or other identifier.

### Call signs

The FCC no longer regulates directly broadcaster's use of confusingly similar call signs. However, in part because of this "deregulation", the Trademark Office has decided to allow stations to register their call signs as "service marks." Both radio and television stations have successfully enjoined the use by competitors of similar call signs, in both state and federal courts. For example, an Indiana radio station using the call letters "WMEE" obtained an injunction against the use of the call letters "WMCZ" by another station in its market, and a Maryland station, "WBOC-TV," successfully barred the use of the call letters "WBOT-TV" by a station in Philadelphia. In the latter case, in addition to some signal overlap, there was extensive cable carriage of both stations in Delaware. The court noted that call letters are especially important in cable television markets, because channel numbers are not as meaningful an identifier for cable viewers.

### Slogans

Station slogans or other identifiers will receive greater protection to the extent they are either arbitrary, fanciful or suggestive, or, if merely descriptive, can be shown to have developed a strong "secondary meaning" among the local audience through long use and heavy promotion. For example, if a radio station with the call sign "KIKN" used a slogan such as "Kick'n Country," it would be more likely to receive protection than if it used a slogan such as "Your Country Music Station." Merely descriptive marks may be refused federal registration, and are less likely to be protected by an injunction against a confusingly similar mark. The same would hold true for program titles, company names and other identifiers.

### Frequency or Channel Identifiers

One particular problem that has arisen for broadcast stations is in the use of frequency or channel number slogans. For example, a court allowed a station broadcasting on 107.5 MHz to use the slogan "FM 107," even though another station in the market, broadcasting on 106.7 MHz, had been identifying itself as "FM 107" for eight years. Another station operating on 98.5 MHz was permitted to identify itself as "99 FM," where a competing station in the market had been using the same slogan for three years. Courts have been reluctant to protect whole-number identifiers that accurately describe a station's approximate location on the radio dial, and have found that listeners identify the station whose music or programming they prefer by association with the station's call sign or other identifier. The use of a hybrid frequency identifier, such as "Kick'n 99", can be protected, even though the user has no right to exclusive use of "99". In filing a service mark registration for such a hybrid mark, the applicant typically "disclaims" use of the frequency number standing alone.

## C. MUSIC LICENSING

Under Section 106 of the U.S. Copyright Act, a station "performs" copyrighted music when it broadcasts it. In order to avoid a claim of copyright infringement



ment, a station must get permission from the copyright owner to perform the music. Permission to broadcast copyrighted music may be obtained directly from the copyright owner or, more commonly, from a music licensing organization. Most stations obtain permission from one or more of the music licensing organizations in the United States: American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or Society of European Stage Authors and Composers (SESAC).

## 1. RADIO

Radio broadcasters have had license agreements with ASCAP since 1935. Initially, this agreement required broadcasters to pay 5 percent of their net receipts plus an amount based on their rate card. In 1940 the initial license expired, and ASCAP demanded a 70 percent increase in fees. In response, many broadcasters protested by forming a new licensing organization—BMI. SESAC, the smallest of the three organizations, is a private music licensing company. Today, most licensing is done by these organizations.

There are two basic types of music licensing agreements for radio stations: blanket licenses and per-program licenses. Both the blanket license and the per-program license permit the station to broadcast all music compositions which the society has in its repertory. Under a blanket license a station pays a percentage of all its revenue to the licensing organization. However, under a per program license the station pays a higher percentage of the revenue from those periods in which music from the licensing organization is used. It may be advantageous for a primarily all-news or all-talk station to use a per-program license. ASCAP, BMI and SESAC offer the blanket license while only ASCAP and BMI offer the per-program license.

The All-Industry Radio Music License Committee, comprised of 11 broadcasters from small and large stations, negotiates music license agreements for radio with ASCAP and BMI. SESAC will only negotiate with individual broadcasters and not with the committee. The committee is entirely voluntary and funded from contributions by radio stations.

The latest ASCAP and BMI license agreements were negotiated in 1986 and 1987, respectively, by the All Industry Radio Music License Committee. They are effective for five years, and the fees for each are established annually on the 1st of April. Broadcasters then pay a percentage of the fee each month. New stations should contact either ASCAP, BMI, or SESAC before going on the air.

## 2. TELEVISION

The All Industry Television Music Licensing Committee (“Committee”), which is a voluntary organization funded by contributions from television stations, negotiates music license agreements on behalf of television stations with ASCAP and BMI. (SESAC deals with stations directly.) These licenses cover performance rights to music contained in prerecorded (non-network) television programs and require stations to pay a percentage of their adjusted gross revenues. If the Committee is unable to negotiate the terms of a license with ASCAP, the unresolved issues are decided by a New York federal court under the terms of an anti-trust consent decree entered into by ASCAP in 1950.

Stations are currently paying ASCAP an interim blanket license fee based upon their pro rata share of an annual \$60 million fee mandated by the Court, with the understanding that the formula could be adjusted retroactively based upon the results of ongoing litigation. Rates for BMI blanket licenses are currently fixed at 68 percent of a station’s ASCAP fee.

Until recently, music licensing organizations have only agreed to negotiate blanket licenses. They also require stations to purchase the rights to their entire inventory even though stations only use a fraction of their music. The Committee has repeatedly, but thus far unsuccessfully, attempted, through court actions and by proposed legislation, to require that stations be allowed to purchase only the music rights they need directly from program producers or syndicators (so-called "source licensing"). Recently, ASCAP has offered television stations the option of securing music licenses on a per-program basis for an interim period. As of this writing, such an option must be exercised by February 12, 1988. BMI has also agreed to offer licenses on a per-program basis for an interim period, but no "opt in" deadline has been established. The issue of providing per-program licenses on a more permanent basis is the subject of ongoing litigation concerning license fees that is currently scheduled for trial in late February 1988.

Questions or concerns regarding music licenses for television should be directed to the Committee by calling (212) 308-9040.



## Antitrust Considerations

Outlined in this chapter are general principles of antitrust law. In addition, this chapter describes how the general principles apply in areas of particular concern for broadcasters, including joint rate setting, combination advertising, joint program purchasing, joint lobbying, and exchange of credit information.

### A. JOINT RATE ACTIVITY AMONG BROADCASTERS

#### 1. JOINT RATE SETTING

##### a. Agreements Affecting Advertising Rates

A fundamental principle of antitrust law is that it is illegal for competitors to agree with each other as to the price at which they offer their products or services to their customers. The word “agreement” is used in its broadest sense. Thus, by no means is the word “agreement” limited to formal undertakings, such as written contracts. For antitrust purposes, an agreement may be an informal, tacit understanding under which two parties have accepted a common approach or plan. Indeed, an illegal agreement may be found to exist where competing broadcast stations merely discuss generally their practices regarding advertising rates and then subsequently adopt parallel policies.

Because of the extreme sensitivity and potential dangers in this area, station personnel should avoid discussing—even generally—advertising rates and practices, including discounts, credit terms and other terms of sale, with employees of competing stations. The reason for this policy is that such discussions can easily be misconstrued and could lead to very serious consequences. For example, even the relatively innocuous exchange of views between competing station managers





that “it would be great if advertising rates could be increased for everyone”—if subsequently followed by these stations’ issuance of new, higher rate cards—could be found to be the basis of an illegal price-fixing arrangement.

Competitively sensitive subjects in the area of advertising rates and practices include both (1) the particular level of rates on a station’s rate card, and (2) the station’s adherence to its published rates.

### **1. Rate Card Levels**

A station’s published rate card sets forth the price or range of prices an advertiser pays for the purchase of time. Each station must determine independently the levels of rates on these cards. Any understanding with a competing station as to how such rates will be set is absolutely prohibited by the antitrust laws.

This rule is not limited merely to the specific dollar figures appearing on the card. For example, a more limited understanding between competitors concerning minimum rates for a particular time slot is equally illegal, even though there is no agreement as to the range of higher rate levels. Similarly, even a general understanding that each station will increase its rates in the near future, although specific amounts are not discussed, can violate the antitrust laws.

A station manager also must be alert for instances of indirect fixing of advertising rates through third parties. Because national sales representatives have substantial input in establishing certain rate levels for local stations, such organizations may be in a position to “coordinate” improperly the setting of rates by “competing” stations. A station manager must be on guard to avoid such situations, for any knowing participation in an arrangement, effectuated through intermediary sales representatives, by which the rate cards of competing stations may be “brought into line,” still constitutes illegal price-fixing.

### **2. Adherence to Rate Cards**

In many markets, it is common practice for one or more stations to sell at a discount from published rates to certain advertisers. While a station independently may determine to eliminate such off-card selling, it is unlawful for competing stations mutually to agree to discontinue such practices and to adhere to their respective rate cards.

Under antitrust theory, discount sales of published rates are merely another form of competition whereby stations vie for major accounts. Any agreement to adhere to rate cards eliminates entirely this type of competition. Accordingly, any understanding between competing stations to eliminate off-card selling practices is, under antitrust enforcement policy, as suspect as an agreement to fix rate levels.

In this connection, station personnel also should avoid discussions of discounting and off-card rate practices with employees of competing stations.

## **2. AGREEMENTS REGARDING SOLICITATION OF PARTICULAR ACCOUNTS**

Agreements by competing stations to allocate potential advertising accounts among the participating stations constitute another illegal practice, closely related to price-fixing arrangements. Such practices include an understanding under which one station agrees not to solicit or pursue the business of particular advertisers (perhaps those located in a certain town) in return for a promise by the other station not to compete for other designated accounts. The effect of such an arrangement is to eliminate competition between or among the stations with respect to particular advertisers and to enable the stations to dictate rates. Each station then has the power to set whatever rate it can extract from its assigned advertiser accounts, free from the operation of competitive market forces. Thus,

such an agreement allocating accounts between competing stations is just like a price-fixing arrangement and constitutes a violation of the antitrust statutes.

Similarly, any agreement among stations to refuse to do business with a particular advertiser and thereby exclude them from the market is prohibited by the antitrust laws. While a station may freely choose the advertisers with whom it may do business, such decisions must be made independently, and not in concert with other stations.

### 3. COMBINATION ADVERTISING

Until recently, FCC regulations flatly prohibited broadcast stations serving substantially the same area from offering combination advertising rates. The FCC has now eliminated its longstanding ban on the joint sale of advertising time, leaving the regulation of such activity to the antitrust laws. (See Chapter II for details on this element of deregulation.) Regardless of the repeal of the FCC regulations, it should be emphasized that the ability of competing stations to offer advertising in combination is still constrained by the antitrust laws. Stations should enter joint advertising arrangements cautiously and only after seeking legal advice.

The fundamental requirement is that the combination advertising arrangement foster competition in the market for sale of advertising time and *not* be employed as a means to fix prices or otherwise restrain competition. Any joint advertising arrangement must conform to the following general guidelines in order to pass antitrust scrutiny:

- The combination rate offered must be *voluntary*. Advertisers must be granted the option to purchase advertising from one station without being forced to purchase corresponding time from other stations;
- Each station, moreover, must be free to set its own rates, and no station should in any way be coerced into joining into a combination rate arrangement;
- The joint sales arrangement must be pro-competitive. Generally, if a combination advertising rate either enables a "new product" to be marketed more efficiently, enables a station to compete for business for which individually it could not otherwise compete, or allows stations which appeal to differing audiences to operate more efficiently by selling air time jointly, the combination rate would be considered pro-competitive. For example, a radio station and TV station might offer a combination rate for advertising time during a simulcast of a program.

Under the antitrust laws, the legality of joint sales arrangements among independently-owned broadcast stations must be considered on a case-by-case basis and depends not only on the nature of the arrangement itself, but on a number of other factors, including:

- The number of stations in the market;
- The size, format and demographics of the stations;
- The percentage of a station's time being offered in combination;
- The percentage of the advertising held by the station in a market;
- The percentage of time available in the market;
- The extent to which stations already compete for advertising dollars;
- The relationship of the combination rate to the individual selling rate; and
- How the advertising time will be sold if offered in combination.

The greater the direct competition existing between stations for sale of advertising time, the greater the risk that a joint advertising arrangement might be challenged. Similarly, the higher the percentage of a station's total advertising time sold in combination, the greater the risk of antitrust challenge.

## B

### B. JOINT PROGRAM PURCHASING

In addition to competition for the sale of advertising time, local stations also compete with one another in purchasing program materials for broadcast to the public. Many of the same considerations discussed previously with respect to advertising practices apply equally in this area.

Thus, the decision of whether or how much to bid on a particular program must be made independently by a station, without consultation with its competitors. Any tacit agreement or understanding between stations that affects this decision would be an antitrust violation.

For example, an understanding between two stations in a market that one station will not attempt to pirate away programs carried the previous year by the other station would be an improper arrangement. Similarly, any agreement between the stations that neither one will bid more than a certain amount for a particular program again would be illegal.

As with advertising rates and practices, station personnel should avoid discussions with their competitors dealing with proposed bids for program materials. Again, such discussions can be readily misconstrued and provide the basis for a charge of illegal collusion.

Antitrust law, in general, is a complex area, and licensees should note that there may be legal ways of achieving appropriate business objectives without violating the antitrust laws. Stations are advised to contact competent antitrust counsel before entering into discussions on sensitive subjects such as advertising rates and terms.

## C

### C. JOINT ADVERTISING AND PROGRAM STANDARDS

The same principles which apply to a station's sale of advertising or purchasing of programming apply equally in the area of standard setting. Agreements between stations which serve artificially to increase the demand for advertising or affect advertising rates are prohibited by the antitrust laws. Agreement among stations limiting the amount of commercial time offered or the number of commercial interruptions present serious antitrust risks. In order to avoid an antitrust challenge by the government or by advertisers, stations should determine their advertising standards independently, based on their own policies and practices.

Similar precautions should be taken with respect to standards regarding program content or advertising restrictions. Stations certainly may adopt public interest policies, but should do so independently, so as to prevent any appearance of agreement among stations concerning particular advertising.

Broadcasters' joint participation in setting *technical standards*, however, is perfectly legal and appropriate so long as the standard setting process incorporates "open-to-all" and due process procedures and is not used to gain an unfair advantage over a competitor. There are several industry associations, like Electronic Industries Association ("EIA") and NAB, which have conducted industry-wide

technical standard setting under procedures that are designed to avoid antitrust risks.

## **D. JOINT SALES REPRESENTATION**

**D**

The FCC has also repealed its regulations prohibiting sales representatives from selling advertising time in combination on two separately owned stations. The FCC's rationale for replacing the regulations is that there may well be certain circumstances under which such joint sales might allow advertisers to reach a more diverse audience or reduce administrative expenses. Again, the circumstances under which joint advertising sales is legitimate is narrowly limited by the antitrust laws. Stations should be kept informed when sales representatives are selling their advertising time in combination, and should seek the advice of counsel to avoid the risk of a legal challenge.

## **E. JOINT LOBBYING EFFORTS**

**E**

Lobbying efforts jointly undertaken by a group of stations is a constitutionally protected and legitimate activity under the antitrust laws. Though an agreement among broadcasters to ban certain advertisements, for example, might be a violation of the antitrust laws, a joint effort to encourage the legislature to ban such advertisements would be legal and appropriate. While undertaking such joint legislative efforts, station managers must avoid exchanging rate information or agreeing with competing stations as to any conduct unrelated to lobbying efforts.

## **F. JOINT COLLECTION AND DISSEMINATION OF INDUSTRY DATA**

**F**

### **1. GENERAL PRINCIPLES OF LAW**

Stations may jointly collect and disseminate industry data and financial information on an aggregate basis so long as it is not used jointly to set advertising rates or exclude other stations or certain advertisers from the market. The dissemination of historical aggregate industry data benefits all stations in their planning and marketing and, thus, actually increases competition in the broadcast market. Stations should be careful, however, not to exchange current rate information with other stations in order to avoid even the appearance of collusion or price-fixing.

### **2. EXCHANGE OF CREDIT INFORMATION**

Stations may also exchange information regarding the creditworthiness of advertisers, so long as no information is exchanged regarding rates or credit terms. The Department of Justice has recently recognized that the exchange of credit information can serve the pro-competitive purpose of reducing costs and improving the quality of information about potential customers. The department, however, has only approved those exchanges which are limited strictly to credit information and which are designed to avoid collusion and rate-setting.

In order to avoid antitrust risks, any exchange of credit information among stations should be voluntary and should be open to any station wishing to participate. Stations should only exchange information about advertisers' creditworthiness, such as whether certain accounts have been prompt or slow in payment, whether certain accounts are past due, etc. Importantly, stations may not exchange information regarding rates or credit terms, nor use the credit information exchange to facilitate any agreement regarding rates or credit terms or practices. Nor should the credit information exchange facilitate a boycott or joint refusal to deal with any particular advertisers, nor to allocate advertisers among the participating stations. Simply stated, the exchange of information must not restrict or interfere with any station's exercise of independent judgment in setting its own credit terms and in dealing with advertisers.

## G

### G. UNILATERAL CONDUCT BY BROADCASTERS

Though antitrust concerns arise most frequently with respect to joint action among independently owned stations, individual stations (or stations under common ownership) which exercise significant market power within a defined economic market may run afoul of the antitrust laws based only on their unilateral independent conduct. As a rule of thumb, the Department of Justice currently uses a market share of 35 percent to indicate the potential for anti-competitive conduct by one entity. Therefore, a station with a 35 percent or greater market share cannot use its dominance to control prices or remove other stations from competition for particular advertising. Such a situation is most likely to occur when a large station occupies a dominant position in a small market. In that situation, for example, the station must not use its dominant position to coerce an advertiser to not purchase advertising from another station or another media.

Similarly, if by offering a combination advertising rate, two or more commonly-owned stations are able to dictate prices in the market or exclude other stations or advertising media from competing in that market, the stations run a substantial risk of violating the antitrust laws.



---

## CHAPTER XII

---

# Functional Listings of Interest to Broadcasters

### A. FEDERAL COMMUNICATIONS COMMISSION



Broadcasters who need to contact the FCC often do not know whom to call. To enable broadcasters to call the right person at the right number on the first try, we have prepared the following FCC functional telephone listings.

FCC business hours are 8:00 a.m. to 5:30 p.m., EST (or, in summer, EDT). The area code for all listed FCC Washington offices is 202. The FCC Monitoring Watch Officer is on duty to handle emergency calls after hours, on weekends and on holidays. The number to call during these hours is 632-6975. Stations having TWX service also can communicate with FCC staff via teletypewriter message. The FCC TWX number is 710-732-0610.

The FCC has established the Consumer Assistance and Small Business Office to assist members of the public (including licensees) in dealing with the FCC. Accordingly, if you are unsure which FCC office has the information you need, do not hesitate to call or write to:

Consumer Assistance and Small Business Office  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554  
(202) 632-7000

Keep in mind as you use this list that there are many matters on which the FCC can provide helpful information, but, in many cases, is prohibited by law from doing so. Most help will be given on status checks of applications, application requirements and deadline and timetable questions. Generally speaking, the FCC's *ex parte* rules discourage telephone calls involving a contested adjudicatory or rulemaking proceeding. Contested proceedings are those that involve competing claims (e.g., FM or TV channel assignments, comparative hearings).

If your question concerns an interpretation of Commission rules, especially in an area where the decision is left to the discretion of the licensee, the Commission staff will give hints or guidelines on how to resolve the problem, but seldom, if ever, a definitive answer. Remember, the staff cannot predict how the Commissioners would rule on a particular problem. Generally, the advice given will be very conservative and will consist of informal interpretations based on the outcome in similar situations in the past.

Additionally, note that a check with your field office may save a long distance call. Field offices are listed in section A3 of this Chapter. The local office can handle general engineering, interference and operating license questions, and has available all major FCC reporting forms and applications.

Of course, the NAB Legal Department always is available to provide general assistance and information. Normal NAB business hours are 9:00 a.m. to 5:00 p.m., EST (or, in summer, EDT). Call (202) 429-5430.

The following is a list of phone numbers for various offices at the FCC. For a more complete listing, individual copies of the FCC Telephone Directory may be purchased directly from the FCC at the following address:

FCC Telephone Directory  
International Transcription Services, Inc.  
Suite 140  
2100 M Street, N.W.  
Washington, D.C. 20037  
(202) 857-3800

Unless otherwise specified, the offices listed below are located at the following address:

Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

The offices which are marked with an asterisk (\*) are located at the following address:

Federal Communications Commission  
2000 L Street, N.W.  
Washington, D.C. 20554

Those offices which are marked with two asterisks (\*\*) are located at the following address:

Federal Communications Commission  
2025 M Street, N.W.  
Washington, D.C. 20554

The FCC Engineering and Technology Laboratory also houses offices of interest to broadcasters. Those offices—marked “(Eng.)”—are located at the following address:

Federal Communications Commission  
Authorizations and Evaluation Division  
7435 Oakland Mills Road  
P.O. Box 429  
Columbia, MD 21045

## 1. The Commission

	Room	Phone
Chairman Dennis R. Patrick	814	632-6600
Commissioner James H. Quello	802	632-7557
Commissioner Patricia Diaz Dennis	832	632-6996
Commissioner Vacant	826	632-6446
Commissioner Vacant	844	632-7117

## 2. Commission Staff

Office of Managing Director	852		632-6390
The Secretary	222		632-6410
Office of Plans and Policy	202		653-5940
Office of Congressional and Public Affairs	202		632-5050
News Media Division	258		632-5050
Consumer Assistance & Small Business Division	254		632-7000
Review Board	211	*	632-7180
Office of Administrative Law Judges	224	*	632-7680
Office of General Counsel	614		632-7020
Office of Engineering and Technology	7002	**	632-7060
Program Management Staff	7002	**	632-7060
Spectrum Engineering Division	7130	**	632-7025
Propagation Analysis Branch	7130	**	632-7025
Frequency Allocation Branch	7102	**	632-8108
Frequency Liaison Branch	7322	**	653-8141
Authorization & Evaluation Division	(Eng.)		(301) 725-1585
Engineering Evaluation Branch	(Eng.)		(301) 725-1585
Equipment Authorization Branch	(Eng.)		(301) 725-1585
Sampling & Measurements Branch	(Eng.)		(301) 725-1585
Technical Standards Branch	7122	**	653-6288
Mass Media Bureau	314		632-6460
Audio Services Division	302		632-6485
AM Branch	344		254-9570
FM Branch	332		632-6908
Auxiliary Services Branch	7310	**	634-6307
Enforcement Division	8202	**	632-6968
Complaints & Investigations Branch	8210	**	632-7048
Equal Employment Opportunity Branch	7218	**	632-7069
Fairness/Political Programming Branch	8202	**	632-7586
Hearing Branch	7212	**	632-6402
Policy & Rules Division	8010	**	632-5414
Legal Branch	8002	**	632-7792
Engineering Policy Branch	8112	**	632-9660
Policy Analysis Branch	8308	**	632-6302
Allocations Branch	8322	**	634-6530
Video Services Division	702		632-6993
Television Branch	700		632-6357
Low Power Television Branch	712		632-3894

Distribution Services Branch	702	632-9356
Cable Television Branch	242	632-7480
Ownership Section	234	632-7258
<b>Common Carrier Bureau</b>	500	632-6910
Enforcement Division	6206 **	632-4890
Formal Complaints & Investigations Branch	6216 **	632-4890
Informal Complaints & Public Inquiries Branch	6202 **	632-7553
Tariff Division	518	632-6387
<b>Field Operations Bureau</b>	734	632-6980
Enforcement Division	744	632-7090
Investigations & Inspections Branch	744	632-6345
Enforcement Documentation Branch	752	632-7278
Engineering Division	740	632-7593
Equipment and Standards Branch	740	632-7593
<b>Private Radio Bureau</b>	5002 **	632-6940

### 3. Regional Field Offices

Atlanta Regional Director  
Massel Building, Room 433  
1365 Peachtree Street, N.E.  
Atlanta, GA 30309  
(404) 347-7070

Boston Regional Director  
NFPA Building  
Batterymarch Park  
Quincy, MA 02169  
(617) 770-4325

Chicago Regional Director  
Park Ridge Office Center,  
Room 306  
1550 Northwest Highway  
Park Ridge, IL 60068  
(312) 353-0368

Kansas City Regional Director  
Brywood Office Tower, Room 320  
8800 East 63rd Street  
Kansas City, MO 64133  
(816) 926-5179

San Francisco Regional Director  
211 Main Street, Room 537  
San Francisco, CA 94105  
(415) 974-0702

Seattle Regional Director  
One Newport, Room 414  
3605 132nd Avenue, S.E.  
Bellevue, WA 98006  
(206) 764-3324



## B. OTHER LISTINGS OF INTEREST

U.S. Government Information  
(202) 655-4000

Armed Forces Radio & Television  
Service  
601 N. Fairfax Street  
Alexandria, Virginia 22314  
(703) 274-4824

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

Bureau of Alcohol, Tobacco  
& Firearms  
1200 Pennsylvania Avenue, N.W. 20004  
(202) 566-7777

Copyright Royalty Tribunal  
1111 20th St., N.W. Suite 450  
Washington, D.C. 20036  
(202) 653-5175

Corporation for Public Broadcasting  
1111 16th St., N.W.  
Washington, D.C. 20036  
(202) 293-6160

Department of Justice  
10th & Constitution Ave., N.W.  
Washington, D.C. 20530  
(202) 633-2000

Department of Labor  
200 Constitution Ave., N.W.  
Washington, D.C. 20210  
(202) 523-6666

Equal Employment Opportunity  
Commission  
2401 E St., N.W.  
Washington, D.C. 20507  
(202) 634-6922

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

Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463  
(202) 523-4089

Federal Trade Commission  
Pennsylvania Ave. at 6th St., N.W.  
Washington, D.C. 20580  
(202) 523-3598  
Advertising (202) 724-1499

Food and Drug Administration  
5600 Fishers Lane  
Rockville, MD 20857  
(301) 443-1544

Government Printing Office  
Superintendent of Documents  
Washington, D.C. 20402  
Publications Information  
(Orders and Inquiries) (202) 783-3238

House of Representatives  
Subcommittee on  
Telecommunications and Finance  
House Office Building Annex No. 2,  
Room H2-316  
Washington, D.C. 20515-6119

National Telecommunications and  
Information Administration  
Room 4890, H.C. Hoover Building  
Washington, D.C. 20230  
(202) 377-1840

Occupational Safety and Health  
Review Comm.  
1825 K Street, N.W.  
Washington, D.C. 20006  
(202) 634-7943

Senate Subcommittee on  
Communications  
Hart Senate Office Building, Room 227  
Washington, D.C. 20510-6125

U.S. Copyright Office  
Library of Congress  
1st and Independence Avenue, S.E.  
Washington, D.C. 20540  
Public Information (202) 287-8700

U.S. Trademark Office Information  
1755 Jefferson Davis Highway  
Arlington, Virginia 22202  
(703) 557-3551

Voice of America  
330 Independence Avenue, S.W.  
Washington, D.C. 20547  
(202) 485-6231





# APPENDICES



---

# TABLE OF CONTENTS

---

## APPENDIX

### A

#### FEDERAL COMMUNICATIONS COMMISSION

##### MASS MEDIA APPLICATION AND REPORT FORMS

301—Application For Construction Permit For Commercial Broadcast Station	235
302—Application For New Broadcast Station License	269
303-S—Application For Renewal Of License For Commercial and Noncommercial AM, FM or TV Broadcast Station (Postcard Renewal Form)	277
313—Application For Authorization In The Auxiliary Broadcast Services	279
313-R—Application For Renewal Of Auxiliary Broadcast License (Short Form)	281
314—Application For Consent To Assignment Of Broadcast Station Construction Permit Or License	283
315—Application for Consent To Transfer Of Control Of Corporation Holding Broadcast Station Construction Permit Or License	301
316—Application For Consent To Assignment Of Radio Broadcast Station Construction Permit Or License Or Transfer Of Control Of Corporation Holding Radio Broadcast Station Construction Permit Or License	321
323—Ownership Report	323
323-E—Ownership Report For Noncommercial Educational Broadcast Station	327
395-B—Annual Employment Report	329
396—Equal Employment Opportunity Program (10 Point Program)	333
396-A—Model EEO Program (5 Point Program)	339
701—Application For Extension Of Construction Permit Or To Replace Expired Construction Permit	343

### B

#### CHANGE IN OFFICIAL MAILING ADDRESS FOR BROADCAST STATION

345

### C

#### FCC SPONSOR IDENTIFICATION RULE AND FCC PUBLIC NOTICE ON APPLICABILITY OF SPONSORSHIP ID RULES

347

### D

#### FCC/FEC PUBLIC NOTICE ON SPONSORSHIP IDENTIFICATION AND CANDIDATE AUTHORIZATION NOTICES

355

<b>E</b>	<b>MASS MEDIA SERVICES FEE FILING GUIDE .....</b>	<b>359</b>
<b>F</b>	<b>FCC AM &amp; FM BROADCAST STATION CHECKLIST .....</b>	<b>367</b>
<b>G</b>	<b>STATEMENT OF POLICY FOR FIELD ISSUANCE OF MONETARY FORFEITURE AND OTHER ACTIONS IN BROADCAST RADIO SERVICES .....</b>	<b>375</b>
<b>H</b>	<b>MODEL CERTIFICATE OF COMPLIANCE .....</b>	<b>381</b>
<b>I</b>	<b>SAMPLE QUARTERLY ISSUES PROGRAMS LIST ...</b>	<b>383</b>
<b>J</b>	<b>NAB AGREEMENT FORM FOR POLITICAL BROADCASTS .....</b>	<b>385</b>
<b>K</b>	<b>FCC MEMORANDUM REGARDING RECORDS ON DRUGS .....</b>	<b>387</b>
<b>L</b>	<b>FEDERAL TRADE COMMISSION STATEMENT REGARDING DECEPTIVE CLAIMS OF BROADCAST AUDIENCE COVERAGE .....</b>	<b>389</b>
<b>M</b>	<b>EXAMPLES OF PAYOLA .....</b>	<b>391</b>
<b>N</b>	<b>SUGGESTED GUIDELINES FOR DEALINGS WITH RECORD COMPANIES AND RECORD PROMOTERS .....</b>	<b>393</b>
<b>O</b>	<b>SUGGESTED MEMORANDUM TO EMPLOYEES REGARDING PAYOLA .....</b>	<b>395</b>
<b>P</b>	<b>EMPLOYEE AFFIDAVIT REGARDING KNOWLEDGE OF LAW PROHIBITING PAYOLA ACTIVITIES .....</b>	<b>397</b>
<b>Q</b>	<b>ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST .....</b>	<b>399</b>
<b>R</b>	<b>DISCLOSURE OF CERTAIN PAYMENTS .....</b>	<b>401</b>
<b>S</b>	<b>MEMORANDUM TO STAFF REGARDING CONTENTS OF PUBLIC INSPECTION FILE AND SUGGESTED FORMS FOR PUBLIC INSPECTION AND RECORD REPRODUCTION .....</b>	<b>403</b>
<b>T</b>	<b>EMPLOYMENT ELIGIBILITY VERIFICATION .....</b>	<b>407</b>
<b>U</b>	<b>CABLE NETWORK EXCLUSIVITY REQUEST FORM .....</b>	<b>409</b>
<b>V</b>	<b>USE OF HEAVY STATION VEHICLES FOR REMOTE BROADCASTS .....</b>	<b>411</b>
<b>W</b>	<b>COPYRIGHT REGISTRATION PROCEDURES BOOKLET .....</b>	<b>415</b>
<b>X</b>	<b>TRADEMARK REGISTRATION PROCEDURES BOOKLET .....</b>	<b>419</b>
<b>Y</b>	<b>GUIDE TO CABLE COPYRIGHT ROYALTY CALCULATIONS .....</b>	<b>435</b>



**FEDERAL COMMUNICATIONS COMMISSION  
Mass Media Application and Report Forms\***

<u>FCC FORM #</u>	<u>TITLE</u>	<u>CURRENT EDITION DATE</u>
301	Application For Construction Permit For Commercial Broadcast Station	October 1986
301-A	Application For Authority To Operate A Broadcast Station By Remote Control Or To Make Changes In A Remote Control Authorization	July 1985
302	Application For New Broadcast Station License	December 1984
303-S	Application For Renewal Of License For Commercial and Noncommercial AM, FM or TV Broadcast Station (Postcard Renewal Form)	October 1987
308	Application For Permit To Deliver Programs To Foreign Broadcast Stations	August 1983
309	Application For Authority To Construct Or Make Changes In An International, Experimental Television, Experimental Facsimile, Or Developmental Broadcast Station	April 1985
310	Application For An International, Experimental Television, Experimental Facsimile, Or A Developmental Broadcast Station License	February 1977
311	Application For Renewal Of An International, Experimental Television, Experimental Facsimile, Or A Developmental Broadcast Station License	June 1985
313	Application For Authorization In The Auxiliary Broadcast Services	April 1987
313-R	Application For Renewal Of Auxiliary Broadcast License (Short Form)	April 1986
314	Application For Consent To Assignment Of Broadcast Station Construction Permit Or License	February 1987

\* This list includes all forms relating to broadcast services. Only the most widely used forms are part of this Appendix.

**FEDERAL COMMUNICATIONS COMMISSION  
Mass Media Application and Report Forms**

<u>FCC FORM #</u>	<u>TITLE</u>	<u>CURRENT EDITION DATE</u>
315	Application For Consent to Transfer Of Control Of Corporation Holding Broadcast Station Construction Permit Or License	January 1987
316	Application For Consent To Assignment Of Radio Broadcast Station Construction Permit Or License Or Transfer Of Control Of Corporation Holding Radio Broadcast Station Construction Permit Or License	June 1987
323	Ownership Report	December 1986
323-E	Ownership Report For Noncommercial Educational Broadcast Station	September 1987
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)	May 1987
330-P	Application For Authority To Construct Or Make Changes In An Instructional Television Fixed And/Or Response Station(s) And Low Power Relay Station(s)	October 1982
330-R	Application For Renewal Of Instructional Television Fixed Station And/Or Response Station(s) And Low Power Relay Station(s) License	July 1985
340	Application For Authority To Construct Or Make Changes In A Noncommercial Educational Broadcast Station	May 1985
341	Application For A New Noncommercial Educational Broadcast Station License	January 1983
345	Application For Consent To Assignment Of Broadcast Translator Station Construction Permit Or License	October 1987
346	Application For Authority To Construct Or Make Changes in A Low Power TV, TV Translator, OR FM Translator Station	May 1987

**FEDERAL COMMUNICATIONS COMMISSION  
Mass Media Application and Report Forms**

<u>FCC FORM #</u>	<u>TITLE</u>	<u>CURRENT EDITION DATE</u>
347	Application For TV, Low Power TV, Or FM Translator Station License	June 1987
348	Application For Renewal Of TV Or FM Broadcast Translator Station License	February 1985
349-L	Application For An FM Booster Station License	October 1977
349-P	Application For Authority To Construct Or Make Changes In An FM Booster Station	October 1977
349-R	Application For Renewal Of FM Booster Station License	November 1977
395-B	Annual Employment Report	December 1987
396	Equal Employment Opportunity Program (8 Point Program)	January 1988
396-A	Model EEO Program (5 Point Program)	January 1988
701	Application For Extension Of Construction Permit Or To Replace Expired Construction Permit	April 1985



Federal Communications Commission  
Washington, D.C., 20554

Approved by OMB  
3060-0027  
Expires 2/28/89

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. PROGRAM SERVICE 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 and VI.

- B. Prepare and submit an original and two copies of this form, all exhibits, and any subsequent amendments to:

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 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.

- D. Public Notice Requirement:

- (1) Section 73.3580 of the Commission's Rules requires that applicants for construction permits for new broadcast stations and major changes in existing facilities (as defined in Section 73.3571(a)(1) [AM], 73.3572(a)(1) [television], or 73.3573(a)(1) [FM] of the Rules) 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 Sections 73.3571(b) [AM], 73.3572(b) [television], and 73.3573(b) [FM] of the Rules.
- (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 requirement 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 Section 73.3580 of the Rules. 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 Section 73.3526 of the FCC Rules.

- 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 Section 1.65 of the Rules, the applicant has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

FCC 301 Instructions  
August 1987



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. 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	Maryland	MD	Pennsylvania	PA
Arkansas	AR	Massachusetts	MA	Puerto Rico	PR
California	CA	Michigan	MI	Rhode Island	RI
Colorado	CO	Minnesota	MN	South Carolina	SC
Connecticut	CT	Mississippi	MS	South Dakota	SD
Delaware	DE	Missouri	MO	Tennessee	TN
District of Columbia	DC	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Trust Territory of the	
Georgia	GA	Nevada	NV	Pacific Islands	TT
Guam	GU	New Hampshire	NH	Utah	UT
Hawaii	HI	New Jersey	NJ	Vermont	VT
Idaho	ID	New Mexico	NM	Virginia	VA
Illinois	IL	New York	NY	Virgin Islands	VI
Indiana	IN	North Carolina	NC	Washington	WA
Iowa	IA	North Dakota	ND	West Virginia	WV
Kansas	KS	Northern Mariana Islands	CM	Wisconsin	WI
				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 3(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, 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 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. 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. Holders of attributable interests are parties to this application. Individuals or entities holding nonattributable interests in the applicant (e.g., limited partners that are certified by the applicant as not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership or nonvoting stockholders) are not considered parties to this application. However, 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, Sections 73.3555 and 76.501 of the Commission's Rules 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 the absence of such interests, those holding nonattributable interests in the applicant need not be identified. In these circumstances, however, the applicant is required to certify that no such individual or entity has an attributable interest in another medium of mass communications in the same area, as described above. Further, 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 regarding whom full information is called for in Section II.

- C. All applicants 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 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 limited partner is effectively insulated from active involvement in 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.

- D. Commission policies and litigation reporting requirements for broadcast applicants have been revised with a view 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).

#### 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 certify that 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. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net current 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 qualification need not be submitted with this application but must be made 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

Applicants need **only** file a program service statement called for in Section IV 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 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 Section 73.1660 of the Commission's Rules. Applicants for AM facilities are reminded of the maximum rated power limitations for transmitters imposed by Section 73.41 of the Rules.

- B. Prior to January 4, 1982, parties submitting AM directional antenna patterns pursuant to 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 Section 73.181(f) concerning uses of the metric system with AM stations.
- C. When applying for 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.

- D. 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 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 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 Section 73.2080 of the Commission's Rules. 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 Form. 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 fewer than five full-time employees, no EEO program for women or minorities need be filed.
- B. Guidelines for developing an Equal Opportunity Program are set forth as a separate Model EEO Program.

**NOTE:** This five point Model EEO Program is to be utilized only by applicants for new construction permits, 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 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 Section 73.3580 of the Commission's Rules.
- 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 Section 73.3513 of the Commission's Rules.

**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.



United States of America  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Approved by OMB  
3060-0027  
Expires 2/28/89

**APPLICATION FOR CONSTRUCTION PERMIT FOR  
COMMERCIAL BROADCAST STATION**  
(carefully read instructions before filling form)  
Return only form to FCC

For Commission Use Only

File No.

**Section I—GENERAL INFORMATION**

1. Name of Applicant

Street Address or P.O. Box

City State ZIP Code Telephone No. (Include Area Code)  
( )

Send notices and communications to the following named person at the address below:

Name

Street Address or P.O. Box

City State ZIP 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 block below)

☐

Individual

☐

General partnership

☐

For-profit corporation

☐

Other

☐

Limited partnership

☐

Not-for-profit corporation

Exhibit No.

## 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.

NOTE: The terms "applicant" and "parties to this application" are defined in the Instructions for Section II of this form. Complete information as to each "party to this application" 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. 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 4 below with respect to all limited partners actively involved in the media activities of the partnership.

- (b) Does any investment company (as defined by 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 II – Page 2

## LEGAL QUALIFICATIONS

4. List the applicant and, if other than a natural person, its officers, directors, stockholders and partners with attributable interests. 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 media interests subject to the multiple ownership restrictions of Sections 73.3555 and 76.501 of the Commission's Rules, 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 Sections 73.3555 and 76.501 of the Commission's Rules, including the nature and size of such interests and the positions held.

1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

## Section II — Page 3

## LEGAL QUALIFICATIONS

5. Does the applicant or any party to this application have, or have they had, any interest in:

(a) a broadcast application pending 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

Exhibit No.

If the answer to any of the questions in (a) — (e) above is Yes, state in an Exhibit the following information:

- (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.

6. (a) Are any of the parties to this application related (*as husband, wife, father, mother, brother, sister, son or daughter*) either to each other or to individuals holding nonattributable interests of 5% or more in the applicant?

☐ 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 this application 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) 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.

Exhibit No.

7. 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.

## OTHER MASS MEDIA INTERESTS

8. (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 B* to *Section II*.)

☐ 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.

## Section II — Page 4

## LEGAL QUALIFICATIONS

## CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS

9. (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 C* 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  
Exhibit No.

If the answer to (b) above is Yes, attach an Exhibit giving full disclosure concerning this assistance.

10. (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 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 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.



## Section III

## FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

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

## 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.

Section V-A <b>AM BROADCAST ENGINEERING DATA</b>	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
- ☐ Frequency      ☐ Hours of operation
- ☐ Power      ☐ Transmitter location
- ☐ Main studio location outside boundaries of principal community—not at transmitter location
- ☐ Antenna system (including increase in height by addition of FM or TV antenna)
- ☐ New antenna construction
- ☐ Alteration of existing antenna 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

## 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 - Page 2

## AM ENGINEERING DATA

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

Exhibit No.

If antenna is either top loaded or sectionalized, describe fully in an Exhibit.  
(Include apparent electrical height.)

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.

Type of feed circuits (excitation)

☐

Series Feed

☐

Shunt Feed

☐

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 (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  
Exhibit No.

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Date \_\_\_\_\_

Office where filed \_\_\_\_\_

8. List all landing areas within 8 kilometers of antenna site. Give distances and direction to nearest boundary of each landing area from the antenna site.

Landing Area	Distance (km)	Direction
(a) _____	_____	_____
(b) _____	_____	_____
(c) _____	_____	_____

## Section V-A - Page 3

## AM ENGINEERING DATA

9. Attached 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.

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.

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 boundaries of the principal community to be served or at the transmitter location?

☐ Yes ☐ No

Exhibit No.

If No, attach as an Exhibit a justification pursuant to Section 73.1125 of the Commission's Rules.

11. Is there a remote control location?

☐ 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

Exhibit No.

If No, attach as an Exhibit a justification pursuant to Section 73.24(g) of the Commission's Rules.

14. 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

Exhibit No.

If you answer Yes, submit as an Exhibit an Environmental Assessment required by Section 1.1311.

If No, explain briefly why not.

## Section V-A - Page 4

## AM ENGINEERING DATA

## 15. Allocation Studies

## A. Daytime (For assistance, see Section 73.37 of the Commission's Rules.)

- (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 I 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

Exhibit No.

If No, attach as an Exhibit a justification pursuant to Section 73.24(j) of the Commission's Rules.

- (3) For daytime 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:

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.
- (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.

Exhibit No.

- (4) For daytime operation, attach as an Exhibit a tabulation of the following:

- (a) Azimuths along with the groundwave contours were calculated for all stations or proposals shown on allocation study exhibits required by (3)(a).
- (b) Inverse distance field strength used along azimuth.
- (c) Basis for ground conductivity utilized along azimuths specified in (4)(a). If field strength measurements are used, the measurements must be either submitted or be properly identified as to location in Commission's files.

## (B) Critical Hours

- (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

Exhibit No.

If No, attach as an Exhibit justification pursuant to Section 73.24(j) of the Commission's Rules.

- (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:

Exhibit No.

The 0.1 mV/m groundwave contour pertinent arcs of Class I stations and appropriate studies to establish compliance with Section 73.187 of the Commission's Rules when operation is proposed on a U.S. Class I channel.



## Section V-A – Page 5

## AM ENGINEERING DATA

C. Nighttime. (For assistance, see Section 73.182 of the Commission's Rules.)

- (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 contour (RSS nighttime interference-free contour if it is greater than 5 mV/m) encompass the legal boundaries of the principal community to be served?

☐ Yes ☐ No  
Exhibit No.

If No, attach as an Exhibit justification or exemption pursuant to Section 73.24(j) of the Commission's Rules.

Exhibit No.

- (3) For nighttime operation, attach as an Exhibit allocation data including the following:

- (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.
- (e) The detailed basis for each nighttime limitation calculated under (3) (a), (b), (c) and (d) above.

Exhibit No.

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:

- 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 – Page 6

AM ENGINEERING DATA

## 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 (Typed or Printed)

---

Date

---

Signature

---

( )  
Telephone No. (Include Area Code)

---

Relationship to Applicant (e.g., Consulting Engineer)

---

Address (Include ZIP Code)

<b>Section V-B FM BROADCAST ENGINEERING DATA</b>	<b>For Commission Use Only</b> 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 box(es))

- |  |   |
|--|---|
| <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 below the nature of change(s) and specify the file number(s) of the authorizations 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"/> Class<br><input type="checkbox"/> Other (summarize briefly) |
|---|---|

File Number(s) \_\_\_\_\_

## 1. Allocation:

Channel No.	City	Principal Community to be served: County	State	Class (check only one box below)
				<input type="checkbox"/> A <input type="checkbox"/> B1 <input type="checkbox"/> B <input type="checkbox"/> C2 <input type="checkbox"/> C1 <input type="checkbox"/> 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 -- Page 2

## FM ENGINEERING DATA

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 the 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, and 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)

Exhibit No.

8. Attach as an Exhibit sketch(es) of items 7(a), 7(b)(1) and 7(b)(2) above. If mounted on an AM directional-array element, specify heights and orientations of all array towers, as well as location of FM radiator.

9. Effective Radiated Power:

(a) ERP in the horizontal plane \_\_\_\_\_ kw (H\*)

\_\_\_\_\_ kw (V\*)

- (b) Is beam tilt proposed?

☐ Yes ☐ No

Exhibit 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.

\_\_\_\_\_ kw (H\*) \_\_\_\_\_ kw (V\*)

\* Polarization

## Section V-B - Page 3

## FM ENGINEERING DATA

10. Is a directional antenna proposed?

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Section 73.316(d), and if applicable Section 73.213(c), including plot(s) and tabulations of horizontal and vertical radiated components in dBk and relative field.

☐ Yes ☐ No  
Exhibit No.

11. Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.315(a) and (b)?

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.

☐ Yes ☐ No  
Exhibit No.

12. Will the main studio be within the boundaries of the principal community to be served?

If No, attach as an Exhibit justification to 47 C.F.R. Section 73.1125.

☐ Yes ☐ No  
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  
Exhibit No.

(c) If the answer to (b) is Yes, attach as an Exhibit a justification, including a summary of any 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.

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 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 V. 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 \_\_\_\_\_



## Section V-B—Page 4

## FM ENGINEERING DATA

Exhibit No.

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:

(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 73.313)

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 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 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  
Exhibit No.

If you answer Yes, submit as an Exhibit an Environmental Assessment required by Section 1.1311.

If No, explain briefly why not.

Section V-B - Page 5

FM ENGINEERING DATA

## 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 have found it to be accurate and true to the best of my knowledge and belief.

---

Name (Typed or Printed)

---

Date

---

Signature

---

( )

Telephone No. (Include Area Code)

---

Relationship to Applicant (e.g., Consulting Engineer)

---

Address (Include ZIP 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(es))

- |  |   |
|--|---|
| <input type="checkbox"/> Construct a new (main) facility<br><input type="checkbox"/> Modify existing construction permit for main facility<br><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><br><input type="checkbox"/> Modify licensed auxiliary facility |
|--|---|

If purpose is to modify, indicate nature of change(s) 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 (check one)	Principal Community to be served:			Zone (check one)
		City	County	State	
	Plus <input type="checkbox"/>				I <input type="checkbox"/>
	Minus <input type="checkbox"/>				II <input type="checkbox"/>
	Zero <input type="checkbox"/>				III <input type="checkbox"/>

## 2. Exact location of antenna.

(a) Specify address, town or city, county and state. If no address, specify distance and bearing relative 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 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-C - Page 2

## TV ENGINEERING DATA

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 the 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 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, labeling 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—Page 3

## TV ENGINEERING DATA

## 10. Antenna:

(a) Manufacturer \_\_\_\_\_ (b) Model No. \_\_\_\_\_

(c) Is a directional antenna proposed?

☐ Yes ☐ No  
Exhibit 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.

(d) Is electrical beam tilt proposed?

☐ Yes ☐ No  
Exhibit No.

If Yes, specify \_\_\_\_\_ degrees electrical beam tilt and attach as an Exhibit all data specified in 47 C.F.R. Section 73.685.

(e) Is mechanical beam tilt proposed?

☐ Yes ☐ No  
Exhibit 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.

(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. Section 73.685(a) and (b)?

☐ Yes ☐ No  
Exhibit No.

If No, attach as an Exhibit justification therefor, including amounts and percentages of population and area that will not receive City Grade service.

12. Will the main studio be within the boundaries of the principal community to be served?

☐ Yes ☐ No  
Exhibit No.

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125.

13. Does the proposed facility satisfy the requirement of 47 C.F.R. Section 73.610?

☐ Yes ☐ No  
Exhibit No.

If No, attach as an Exhibit justification therefor, including a summary of any previously granted waiver(s).

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 governmental 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 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.



## Section V-C - Page 4

## TV ENGINEERING DATA

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:

- (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 \_\_\_\_\_

Exhibit No.

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;

- (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

☐

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 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 - Page 5

## TV ENGINEERING DATA

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  
Exhibit No.

If you answer Yes, submit as an Exhibit an Environmental Assessment required by Section 1.1311.

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 have found it to be accurate and true to the best of my knowledge and belief.

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

( )  
\_\_\_\_\_  
Telephone No. (Include Area Code)

\_\_\_\_\_  
Relationship to Applicant (e.g., Consulting Engineer)

\_\_\_\_\_  
Address (Include ZIP 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 Model EEO Program (FCC 396-A).

## Section VII

## CERTIFICATIONS

1. Has or will the applicant comply with the public notice requirement of Section 73.3580 of the Commission's Rules?

☐ 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  
Exhibit No.

If No, attach as an Exhibit, a full explanation.

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)

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

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.

## Section VII – Page 2

## CERTIFICATIONS

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 Section 1.65 of the Commission's Rules, the **APPLICANT** has a continuing obligation to advise the Commission, through amendments, or 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.**

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

**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 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.

**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.**

United States of America  
Federal Communications Commission  
Washington, D.C. 20554

Approved by OMB  
3060-0029  
Expires 9 30 87

**APPLICATION FOR NEW BROADCAST STATION LICENSE**  
(Carefully read instructions before filling out Form—  
**RETURN ONLY FORM TO FCC)**

For Commission Use Only

File No.

**SECTION I General Data**

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

☐ FM

☐ 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 Section 73.1620 of the Commission's Rules?**

☐ 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 changes already reported, has any cause or circumstance arisen since the grant of the underlying construction permit which would cause any statement or representation contained in the construction permit application to be now incorrect?**

☐ YES ☐ NO

If Yes, explain.

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 all exhibits are a material part hereof and are incorporated herein.

**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

WILLFUL FALSE STATEMENTS MADE  
ON THIS FORM ARE PUNISHABLE  
BY FINE AND IMPRISONMENT. U.S.  
CODE, TITLE 18, SECTION 1001.

FCC 302  
December 1984



## Section II-A

## License Application Engineering Data - AM Broadcast

Name of Applicant \_\_\_\_\_

PURPOSE OF AUTHORIZATION APPLIED FOR: (check one)

☐ Station LicenseAnswer Items  
1-9☐ Direct measurement of power

1, 2, 6, 7, 8 and 10

## 1. Facilities authorized in construction permit

Call Sign	File No. of Construction Permit	Frequency	Hours of operation	Power in kilowatts	
				Night	Day

## 2. Station location

State	City or town
-------	--------------

## 3. Transmitter location

State	County	City or town	State address (or other identification)
-------	--------	--------------	--

## 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 (or other identification)
-------	--------------	---

## 6. Operating constants:

RF common point or antenna current without modulation for night power in amperes	RF common point or antenna current without modulation for day power in amperes
Actual measured antenna or common point <i>resistance</i> (in ohms) at operating frequency	Actual measured antenna or common point <i>reactance</i> (in ohms) at operating frequency
Night Day	Night Day

## Antenna monitor indication for directional operation

Tower	Phase reading in degrees		Antenna base current		Antenna monitor sample current ratio	
	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 feet of complete radiator above base insulator, or above base if grounded.	Overall height in feet above ground (without obstruction lighting)	If antenna is either top loaded or sectionalized, describe fully in Exhibit No. _____
---------------	--	--	---

Excitation

☐ Series☐ Shunt

## Section II-A, Page 2

## License Application Engineering Data - AM Broadcast

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. Antenna resistance measurement

Attach as Exhibit No. \_\_\_\_ the following:

- |   |  |
|---|--|
| (a) Qualifications of persons taking measurements.  | (d) Manufacturer's name of each calibrated instrument used and manufacturer's rated accuracy.                            |
| (b) Schematic diagram showing clearly all components of coupling circuits, point of resistance measurements, location of antenna ammeter, connection to and characteristics of all tower lighting isolation circuits, static drains, and any other fixtures, lines, etc. connected to or supported by the antenna, including other antennas, and associated circuits. | (e) Date, accuracy, and by whom each instrument was last calibrated.   |
| (c) Full description of method used to make measurements.   | (f) Table of complete data taken.  |
|   | (g) The graph drawn of 10 to 12 readings in a band 50 to 60 kilohertz wide with the operating frequency near the center. |

9. In what respect, if any, does the apparatus constructed differ from that described in the application for construction permit or in the permit?

10. 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.

Date \_\_\_\_\_

Name \_\_\_\_\_  
(Please Print or Type)

Telephone No. (Include Area Code) \_\_\_\_\_

Signature \_\_\_\_\_  
(Check appropriate box below)

Address (Include ZIP Code) \_\_\_\_\_

☐ Technical Director☐ Registered Professional Engineer☐ Chief Operator☐ Technical Consultant☐ Other (specify) \_\_\_\_\_

## 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
File No. of construction permit	Effective radiated power in kilowatts	
	Horizontal _____ Horizontal maximum _____	Horizontal _____ meters
	Vertical _____ Vertical maximum _____	Vertical _____ meters

## 2. Station location

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	Street Address
-------	--------	--------------	----------------

## 5. Remote Control point location

State	City or town	Street Address (or other identification)
-------	--------------	--

## 6. Operating constants:

D.C. plate current in last radio stage, in amperes	Transmitter power output, in kW by indirect method	Applied D.C. plate voltage of last radio stage, in volts	RF transmission line meter reading
--	--	--	------------------------------------

## 7. Antenna

Antenna make and type No.	Number of Sections	Power gain
Height in meters of antenna radiation center above ground and mean sea level:		meters
Geographical Coordinates of antenna (to nearest second)		
North latitude	West longitude	

Description of antenna supporting structure	Overall height in meters above ground of antenna supporting structure (without obstruction lighting)
---	--

## 8. Transmission line

Make	Type	Description
Size: (nominal inside transverse dimension) in centimeters	Length in meters	Rated efficiency in percent for this length

9. Have equipment performance measurements been taken in accordance with Section 73.1590 of the Commission's Rules, demonstrating compliance with the Commission's transmission standards and transmission system requirements, and are these measurements available for submission to the Commission upon request?

If No, explain.

☐ YES☐ NO

10. In what respect, if any, does the apparatus constructed differ from that described in the application for construction permit or in the permit.

## Section II-B Page 2

## License Application Engineering Data - FM Broadcast

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 \_\_\_\_\_

\_\_\_\_\_  
Name (Please Print or Type)

\_\_\_\_\_  
Telephone No. (Include Area Code)

\_\_\_\_\_  
Signature (Check appropriate box below)

\_\_\_\_\_  
Address (Include ZIP Code)  
\_\_\_\_\_

☐ Technical Director

☐ Registered Professional Engineer

☐ Consulting Engineer

☐ Chief Operator

☐ 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 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	Street address
-------	--------	--------------	----------------

## 5. Operating constants

Visual transmitter (while transmitting black)			
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

## 6. Antenna and Transmission Line

Antenna Make and Type No.	Maximum power gain dB	Average (RMS) horizontal plane power gain dB
Antenna supporting structure		
Overall height of antenna system above ground ft.	Height of radiation center above ground and mean sea level ft.	
Geographical coordinates of antenna (to nearest second)		
North latitude      °      '      "	West longitude      °      '      "	

If directional antenna is used, give full details including horizontal and vertical plane radiation patterns, as Exhibit No. \_\_\_\_.

Is electrical or mechanical beam tilting employed?

☐ YES☐ NO

If Yes, describe fully in Exhibit No. \_\_\_\_, including horizontal and pertinent vertical radiation patterns.

## Transmission line

Make	Type No.	Coaxial or waveguide
Size (nominal inside transverse dimensions) inches	Length ft.	Power loss for this length dB
Multiplexer		
Make	Type No.	Loss Visual      Aural dB      dB

## 7. Frequency measurements

The carrier frequencies have been measured. Describe in Exhibit No. \_\_\_\_, giving date, method used or frequency measuring service employed, and the results obtained.



## Section II-C, Page 2

## License Application Engineering Data - TV Broadcast

## 8. Performance Data

Have equipment performance measurements been taken in accordance with Section 73.1590 of the Commission's Rules, demonstrating compliance with the Commission's transmission standards and transmission system requirements, and are those measurements available for submission to the Commission upon request?

If No, explain.

☐ YES

☐ NO

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.

Date \_\_\_\_\_

Name \_\_\_\_\_  
(Please Print or Type)

Telephone No. \_\_\_\_\_  
(Include Area Code)

Signature \_\_\_\_\_  
(Check appropriate box below)

Address \_\_\_\_\_  
(Include ZIP Code)

☐ Technical Director

☐ Registered Professional Engineer

☐ Chief Operator

☐ Technical Consultant

☐ Other (specify)



FCC 303-S  
October 1987

United States of America  
Federal Communications Commission  
Washington, D.C. 20554

Approved by OMB  
3060-0110

APPLICATION FOR RENEWAL OF LICENSE FOR COMMERCIAL AND NONCOMMERCIAL AM, FM OR TV BROADCAST STATION

1. Name of Applicant _____		Mailing Address _____	
Call Letters _____	City _____	State _____	ZIP Code _____

2. Have the following reports been filed with the Commission:

(a) The Annual Employment Reports (FCC Form 395) as required by Section 73.3612 of the Commission's rules?  
☐ Yes ☐ No  
 If No, attach as Exhibit No. \_\_\_\_\_ an explanation.

(b) The applicant's Ownership Report (FCC Form 323 or 323-E) as required by Section 73.3615 of the Commission's rules?  
☐ Yes ☐ No If No, give the following information:  
 Date last ownership report was filed. \_\_\_\_\_  
 Call letters of the renewal application with which it was filed. \_\_\_\_\_

3. 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.

4. Since the filing of the applicant's last renewal application for this station or other major application, has an adverse finding been made, a consent decree been entered or final action been approved by any court or administrative body with respect to the applicant or parties to the application concerning any civil or criminal suit, action or proceeding brought under the provisions of any federal, state, territorial or local law relating to the following: any felony; lotteries; unlawful restraints or monopolies; unlawful combinations; contracts or agreements in restraint of trade; the use of unfair methods of competition; fraud; unfair labor practices; or discrimination?  
☐ Yes ☐ No If Yes, attach as Exhibit No. \_\_\_\_\_ a full description, including identification of the court or administrative body, proceeding by file number, the person and matters involved, and the disposition of litigation.

5. Has the applicant placed in its public inspection file at the appropriate times the documentation required by Section 73.3526 or 73.3527 of the Commission's rules?  
☐ 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.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Name of Applicant \_\_\_\_\_

By Signature \_\_\_\_\_

Title \_\_\_\_\_

WILLFUL FALSE STATEMENTS MADE ON THIS FORM  
ARE PUNISHABLE BY FINE AND IMPRISONMENT,  
U.S. CODE, TITLE 18, SECTION 1001

Question-by-Question Guidelines (FCC Form 303-S)

- 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.
- Every station with five or more full-time employees must file an employment report on or before May 31 of each year. That report is to be available locally for public inspection.  
 A current and complete ownership report should be submitted with the licensee's renewal application and the question answered affirmatively. However, if the ownership report submitted with a station's last renewal application is "up-to-date" and has not been amended, a new report need not be filed with the current renewal application. The applicant should answer the question negatively and should supply the call letters of the station and the filing date of the renewal application with which the ownership report was submitted. An "up-to-date" ownership report is one that is current for each question on that report.
- Aliens, foreign governments and corporations, and corporations of which any officer or director is an alien or 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.
- This question is limited to adverse actions and judgments adjudicated or entered into within the preceding license term. Reportable activities consist of judgments or decrees, including settlement, consent, and like agreements, where the misconduct occurred either in the operation of the station for which renewal is requested or in the conduct of the other broadcast and non-broadcast activities of the renewal applicant and parties to that application, such as all partners and all corporate officers, directors, and stockholders with a 10% or more ownership interest in the applicant.
- A licensee must maintain certain documents pertaining to its station in a file which should be 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 include applications for a construction permit and for license renewal, assignment or transfer of control; ownership and employment reports; and annual lists of local problems and responsive programming broadcast in the preceding twelve months. A complete listing of the required documents and their mandatory retention periods is set forth in Rules 73.3526 and 73.3527.

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, accountants, 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 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.



Approved by OMB 3060-0028 Expires 10/31/89  Federal Communications Commission Washington, D.C. 20554  <b>APPLICATION FOR AUTHORIZATION IN THE AUXILIARY RADIO BROADCAST SERVICES</b>  (Carefully read instructions before filling out form.)		<b>DO NOT WRITE IN THIS BOX</b>  File No. _____  1. LEGAL NAME OF APPLICANT _____ _____ _____  2. MAILING ADDRESS (Street) (24 characters) _____ _____ City (20 characters) _____ _____ State _____ Zip Code _____	
3. CALL SIGN OF ASSOCIATED BROADCAST STATIONS AM _____ TV _____ Translator _____ FM _____ Low Power _____  Community of License/Operation City (20 characters) _____ State _____		4. TYPE OF STATION PROPOSED (Check appropriate boxes) <input type="checkbox"/> A. Remote Pickup <input type="checkbox"/> B. Aural Microwave Station <input type="checkbox"/> Base <input type="checkbox"/> Mobile <input type="checkbox"/> EBS <input type="checkbox"/> Automatic Relay <input type="checkbox"/> Inter City Relay <input type="checkbox"/> STL <input type="checkbox"/> C. TV Microwave Station <input type="checkbox"/> D. Low Power Auxiliary Station <input type="checkbox"/> STL <input type="checkbox"/> TV Relay <input type="checkbox"/> Pickup <input type="checkbox"/> Translator Relay	
5. PURPOSE OF APPLICATION (Check appropriate box) <input type="checkbox"/> A. New Station <input type="checkbox"/> B. Reinstatement of expired license <input type="checkbox"/> C. Modification of existing authorization			
6. NATURE OF PROPOSED CHANGES <input type="checkbox"/> Change Frequency <input type="checkbox"/> Relocate station      Call sign of existing station _____ Base Number _____ <input type="checkbox"/> Change Antenna System <input type="checkbox"/> Add base station system <input type="checkbox"/> Change power <input type="checkbox"/> Replace equipment <input type="checkbox"/> Other (give as Exhibit No. _____ an explanation) <input type="checkbox"/> Change number of mobiles			
7. A. If this application is a Remote Pickup or Low Power Auxiliary Station System is transmitter type accepted? <input type="checkbox"/> Yes <input type="checkbox"/> No B. If this application is a TV Pickup, Remote Pickup, or Low Power Auxiliary Station System specify mobile number.      _____			
8. FACILITIES REQUESTED (If more space is needed attach as Exhibit No. _____) A. Frequency(ies) (MHz) (Use 17 characters for each line.) _____ B. Power (Watts) Transmitter Power Output (TPO) _____ Antenna Input Power _____ Effective Radiated Power (ERP) _____ C. Emission _____			
9. DETAILS OF STATION AT A FIXED LOCATION A. Transmitter location (44 characters) County (20 characters) _____ City (20 characters) _____ State _____ North Latitude _____ West Longitude _____ B. Receiver Location (44 characters) County (20 characters) _____ City (20 characters) _____ State _____ North Latitude _____ West Longitude _____			
10. Give the mobile area of operation. City _____ State _____ A. Coordinates of the center area: _____ B. Radius of operation from these coordinates: miles: _____ km: _____			



11. If any of the circumstances in instruction 11 apply, attach as Exhibit Nos. \_\_\_\_\_ detailed statements.

12. Supply the following antenna information (Review instructions)

A. Manufacturer (20 characters)

Model No.

Antenna Gain

Antenna Polarization

Beamwidth (3db or 1/2 power points)

Elevation Angle

B. If this is a directional antenna give azimuth of main lobe.

C. Overall height above ground of antenna structure.

D. Elevation of ground above mean sea level at antenna site.

E. Elevation above ground of antenna center of radiation.

F. Antenna sketch figure \_\_\_\_\_. Passive reflector information attach as Exhibit No. \_\_\_\_\_.

13. Will an antenna be mounted on an existing antenna structure?

☐ Yes ☐ No

If Yes, give the call sign and licensee's name.

14. A. If the application is for Aural Microwave station or lower power TV pickup station specify the following:

Equipment Manufacturer (28 characters)

Type No. (14 characters)

Output Power

B. If this application is for TV Microwave station is the transmitter type accepted or was the transmitter manufactured before October 1, 1981?

☐ Yes ☐ No

15. Has the FAA been notified of proposed construction? (See Part 17 of FCC Rules)

☐ Yes ☐ No

If Yes, give date and office where notified.

16. Environmental Statement: Would a grant of this application be a major action as defined by Section 1.1307(a) of the Commission's Rules such that it may have a significant environmental impact?

☐ Yes ☐ No.

If Yes, attach as Exhibit No. \_\_\_\_\_ an Environmental Assessment required by Section 1.1311.

If No, attach as Exhibit No. \_\_\_\_\_ an explanation.

17. Describe briefly the primary broadcast-related purpose of the requested authorization, attach as Exhibit No. \_\_\_\_\_.

18. 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.)

19. 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.

#### 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, accountants, 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 authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 95-579, 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 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, completed, 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)

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Signature

WILLFUL FALSE STATEMENTS MADE ON THIS FORM  
ARE PUNISHABLE BY FINE AND IMPRISONMENT.  
U.S. CODE, TITLE 18, SECTION 1001.

Name Typed

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 313—Page 2

April 1987


FCC 313-R  
April 1986United States of America  
Federal Communications CommissionApproved by OMB  
3060-0035  
Expires 3/31/88**APPLICATION FOR RENEWAL OF AUXILIARY BROADCAST LICENSE (SHORT FORM)**  
(USE ONLY IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE SIDE)

1. Name of licensee	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 3 on reverse)  Title _____ Date _____  <b>WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT, U.S. CODE, TITLE 18, SECTION 1001.</b>
2. Mailing address (Number, Street, City, State and ZIP Code).	
3. Broadcast station which auxiliary station used. (Call Sign, City, State)	
4. (a) Class of Station: (b) Auxiliary Call Sign: _____ (c) Frequency: _____ (d) Transmitter Mfr. and Type Number: _____	
(e) Operating Power: _____	

FCC 313-R  
April 1986**NOTICE OF RENEWAL OF AUXILIARY RADIO BROADCAST LICENSE**  
FCC RECORD COPY — FIELD

1. Name of licensee	<b>THIS SPACE FOR COMMISSION USE ONLY</b>  The license for the reference radio station has been renewed on the same conditions and in accordance with the same provisions for the term ending:          Date Granted _____
2. Mailing address (Number, Street, City, County, State, and ZIP Code)	
3. Broadcast station with which auxiliary station used. (Call Sign, City, State)	
4. Auxiliary Call Sign:	

FCC 313-R  
April 1986United States of America  
Federal Communications Commission**CERTIFICATE OF RENEWAL OF AUXILIARY RADIO BROADCAST LICENSE**

1. Name of licensee	<b>NOT VALID UNLESS POSTED WITH LICENSE</b>  <b>THIS SPACE FOR COMMISSION USE ONLY</b>  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 606 of the Communications Act of 1934, as amended.  This certificate, when properly authenticated, serves as a renewal of the reference radio station license on the same condition and in accordance with the same provisions for the term ending.  Federal Communications Commission    Date: _____
2. Mailing address (Number, Street, City, State, and ZIP Code)	
3. Broadcast station with which auxiliary station used. (Call Sign, City, State)	
4. Auxiliary Call Sign:	

## INSTRUCTIONS

## TYPE OR NEATLY PRINT

1. This form may 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 (other side) insert type of station sought to be renewed:

- Part 74 —Subpart D - a. Remote Pickup Broadcast Stations (Automatic Mobile Relay, Base or Mobile).  
 b. Low Power Broadcast Auxiliary.  
 Subpart E - - Aural Broadcast STL & Intercity Relay  
 Subpart F - - TV Auxiliary Broadcast Stations (TV Pickup, TV STL, TV Intercity and TV Translator Relay Stations).

2. In Item 2, insert the licensee's current mailing address.
3. 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.
4. Complete all applicable items in the three sections of this form (on the other side).
5. Mail to Federal Communications Commission, Washington, D.C. 20554.
6. A separate FCC Form 313-R must be filed for EACH station authorization being renewed.
7. 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.
8. Do not attach or enclose current license with this form.
9. 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. 552a(e)(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 \_\_\_\_\_

Federal Communications Commission  
Washington, D.C. 20554

Approved by OMB  
3060-0031  
Expires 6/30/89

Instructions For FCC 314

Application For Consent To Assignment of Broadcast Station Construction Permit or License

(FCC Form 314 attached)

**GENERAL INSTRUCTIONS**

- A. This FCC Form is to be used to apply for authority to assign a broadcast station construction permit or license. It consists of the following Sections:

- I. GENERAL INFORMATION: ASSIGNOR (PART I); ASSIGNEE (PART II)
- II. ASSIGNEE'S LEGAL QUALIFICATIONS
- III. ASSIGNEE'S FINANCIAL QUALIFICATIONS
- IV. ASSIGNEE'S PROGRAM SERVICE STATEMENT
- V. ASSIGNEE'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
- VI. CERTIFICATION: ASSIGNOR (PART I); ASSIGNEE (PART II)

The assignor will fill out Part I of Section I and Part I of Section VI.

The assignee will fill out Part II of Section I; all of Sections II and III; Section IV, as appropriate; Section V; and Part II of Section VI.

- B. Prepare and submit an original and two copies of this form and all exhibits 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 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. Public Notice Requirement:

- (1) Section 73.3580 of the Commission's Rules requires that applicants for consent to assign a construction permit or license give local notice in a newspaper of general circulation in the community in which the station is located. Local notice is also required to be broadcast over the station. However, if the station is the only operating station in its broadcast service which is located in the community involved, publication of the notice in a newspaper is not required. This publication requirement also applies with respect to major amendments thereto as defined in Section 73.3578(b) of the Rules.
- (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 VI of this application. The information that must be contained in the notice of filing is described in Paragraph (f) of Section 73.3580 of the Rules. 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 Section 73.3526 of the Rules.

- 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 Section 1.65 of the Rules, the applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

FCC 314 Instructions  
February 1987

## SECTION I INSTRUCTIONS

- A. The name of the assignor must be stated exactly as it appears in the authorization to be assigned.
- B. The name of the assignee, shall be the exact corporate name, if a corporation; if a partnership, the names of all partners and the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his office, and the name of the association. In other sections of the form, the name need be only sufficient for identification for the assignee.
- C. (1) State whether the station has commenced its initial program tests, as defined in Section 73.1620 within the past 12 months. If the answer to this question is "yes," state whether the initial construction permit was granted as a result of comparative hearing. If so, submit, as a separate Exhibit to the application, the showing required by Section 73.3597 of the Rules.
- (2) If this application is for assignment of a construction permit for an unbuilt station, see Instructions for Section III, Subpart C.
- D. The contract or agreement between the assignor and assignee, as required to be submitted in Section I of the application, must specifically show (1) assignee will have complete control over all necessary physical property and its use and unlimited supervision over the programs to be broadcast (See Section 73.1150 of the Rules); (2) consideration, whether monetary or otherwise, and whether paid or promised; (3) all other terms and conditions involved in the assignment (See Section 73.3613 of the Rules), including a statement that the instrument submitted covers the entire arrangement between the parties (if it does not, all other pertinent legal instruments must be submitted); (4) assignment is subject to consent of the Commission.
- E. 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	Maryland	MD	Pennsylvania	PA
Arkansas	AR	Massachusetts	MA	Puerto Rico	PR
California	CA	Michigan	MI	Rhode Island	RI
Colorado	CO	Minnesota	MN	South Carolina	SC
Connecticut	CT	Mississippi	MS	South Dakota	SD
Delaware	DE	Missouri	MO	Tennessee	TN
District of Columbia	DC	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Trust Territory Of The Pacific Islands	TT
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	North Mariana Islands	CM	Wyoming	WY

## SECTION II INSTRUCTIONS

- A. As used in the Section II, the words "party to this application" have the following meanings:

INDIVIDUAL APPLICANT: The applicant

PARTNERSHIP APPLICANT: All partners, including limited partners. 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 owner interest, 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 any capital stock, membership or owner interest, or subscribers to such interest, of that entity shall also be considered parties to this application.



In the event the applicant has more than 50 stockholders, all officers and directors and all persons or entities who are the beneficial or record owner or have the right to vote 1% or more of the capital stock, membership or owner interest, or subscribers to such interest shall be considered parties to this application. However, if such entity is a bank, insurance company, or investment company (as defined by 15 U.S.C. §80a-3) which does not invest for purposes of control, the relevant stock, membership or owner interest is 5% or more. 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 or have the right to vote 1% or more of the capital stock, membership or owner interest, or subscribers to such interest in the entity, shall also be considered parties to this application. However, if such entity is a bank, insurance company or investment company (as defined by 15 U.S.C. §80a-3) which does not invest for purposes of control, the relevant stock, membership or owner interest is 5% or more.

**ANY OTHER APPLICANT:** All executive officers, members of the governing board and owners or subscribers to any membership or ownership interest in the applicant.

- B. As used in Section II, questions 5(b) and (c), the term "interest" refers to a cognizable interest within the meaning of Sections 73.35, 73.240, 73.636 and 76.501 of the FCC Rules.
- C. All applicants must comply with Section 310 of the Communications Act of 1934, as amended. Specifically, Section 310 proscribes issuance of a license or 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 and voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a license or a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.
- D. 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.

### SECTION III INSTRUCTIONS

- A. All applicants filing Form 314 must be financially qualified to effectuate their proposals. An applicant for consent to assign a broadcast station construction permit or license must attest it has sufficient net liquid assets on hand or committed sources of funds to consummate the transaction and operate the facilities for three months. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on the party's balance sheet, with net current assets being the excess of current assets over current liabilities.
- B. 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.
- C. If the transaction proposed by this application is for the assignment of a construction permit for an unbuilt station, as defined in Section 73.3597(c) of the Rules, the documentation required by that section must be submitted with this application as a separate Exhibit.

### SECTION IV INSTRUCTIONS

- A. AM and FM applicants need only file a program service statement called for by Question 1 in Section IV of this application.
- B. The television applicant need file the program service statement called for by Questions 2 through 5 in Section IV of this application which includes an ascertainment of community needs. Before preparing the Ascertainment, the applicant should carefully review the "Primer on Ascertainment of Community Problems by Broadcast Applicants," 27 FCC 2d 650, 36 Federal Register 4092, March 3, 1971.
- C. As explained in Section IV for television applicants, Types of Programs are defined as follows:
  - (1) News Programs include reports dealing with current local, national and international events, including weather and stock market reports, and commentary, analysis or sports news when it is an integral part of a news program.
  - (2) Public Affairs Programs are programs dealing with local, state, regional, national or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, round-tables and vignettes and extended coverage (whether live or recorded) of public events or proceedings, such as local council meetings, congressional hearings and the like.
  - (3) A Public Service Announcement is any announcement (including network) for which no charge is made and which promotes programs, activities or services of federal, state or local governments (e.g., recruiting, sales of bonds, etc.) or the programs, activities or services of nonprofit organizations (e.g., UGF, Red Cross blood donations, etc.) and other announcements regarded as serving community interests, excluding time signals, routine weather announcements and promotional announcements.

- (4) All Others (excluding entertainment and sports) include all other programs which are not intended primarily as entertainment (e.g., music, drama, variety, comedy, quiz, etc.). Do not include play-by-play and pre- or post-game sports related activities and separate programs of sports instructions, news, or information (e.g., fishing opportunities, golfing instructions, etc.).

D. As explained in Section IV for television applicants, Commercial Matter includes commercial continuity (network and non-network) and commercial announcements (network and non-network) as follows:

- (1) Commercial Continuity is the advertising message of a program sponsor.
- (2) A Commercial Announcement is any other advertising message for which a charge is made, or other consideration is received.
  - (a) Included are:
    - (i) "bonus spots"
    - (ii) "trade-out spots"
    - (iii) Promotional announcements by a commercial broadcast station for, or on behalf of, another commonly owned or controlled broadcast station serving the same community. See Report and Order in Docket No. 20588, 59 FCC 2d 594, 41 Fed. Reg. 22055 (1976).
    - (iv) Promotional announcements of a future program where consideration is received for such an announcement or where such announcement identifies the sponsor of the future program beyond mention of the sponsor's name as an integral part of the title of the program (e.g., where the agreement for the sale of the time provides that the sponsor will receive promotional announcements, or when the promotional announcement contains a statement such as (TOMORROW SEE — (NAME OF PROGRAM) BROUGHT TO YOU BY — (SPONSOR'S NAME)).
  - (b) Other announcements including but not limited to the following are not commercial announcements:
    - (i) Promotional announcements, except as defined above.
    - (ii) Station identification announcements.
    - (iii) Announcements of taped, filmed or recorded material.
    - (iv) Public service announcements.
    - (v) Announcements made pursuant to Section 73.1212(d) of the FCC Rules that materials or services have been furnished as an inducement to broadcast a political program involving the discussion of controversial public issues.
    - (vi) Announcements made pursuant to the local notice requirements of Section 73.3580 ("Local Notice of Filing of Applications") and Section 73.3594 ("Local Notice of Designation for Hearing") of the Rules.

#### SECTION V INSTRUCTIONS

- 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 Section 73.2080 of the Commission's Rules. 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, 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), a program for minority group members need not be filed. In such case, a statement so indicating must be submitted with this application. 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, but a statement of explanation must be submitted.
- B. Guidelines for developing an Equal Employment Opportunity program are set forth in FCC Form 398-A (Model EEO Program).

NOTE: This five-point Model EEO Program is to be utilized only by applicants for new construction permits, assignees and transferees.

#### SECTION VI INSTRUCTIONS

Section VI consists of two parts: Part I is the certification requirements to be completed by the assignor; Part II is the certification requirements to be completed by the assignee.

Commission Use Only

File No.

United States of America  
Federal Communications Commission  
Washington, D.C. 20554

Approved by OMB  
3060-0031  
Expires 6/30/89

## APPLICATION FOR CONSENT TO ASSIGNMENT OF BROADCAST STATION CONSTRUCTION PERMIT OR LICENSE

(Carefully read instructions before filling out form — RETURN ONLY FORM TO FCC)

## Section I

## GENERAL INFORMATION

## Part I — Assignor

## 1. Name of Assignor

Street Address

City

State

Zip Code

Telephone No.  
(include area code)

## 2. Authorization which is proposed to be assigned

(a) Call letters

Location

(b) Has the station commenced its initial program tests within the past twelve months?

☐ YES ☐ NO

If yes, was the initial construction permit granted after comparative hearing?

☐ YES ☐ NO

If yes, attach as Exhibit No. \_\_\_\_\_ the showing required by Section 73.3597.

## 3. Call letters of any Remote Pickup, STL, SCA, or other stations which are to be assigned:

## 4. Is the information shown in assignor's Ownership Reports (FCC Form 323 or 323-E) now on file with the Commission true and correct as of this date?

☐ YES ☐ NO

If No, attach as Exhibit No. \_\_\_\_\_ an Ownership Report supplying full and up-to-date information.

## 5. Attach as Exhibit No. \_\_\_\_\_ a copy of the contract or agreement to assign the property and facilities of the station. If there is only an oral agreement, reduce the terms to writing and attach.

## 6. State in Exhibit No. \_\_\_\_\_ whether the assignor, or any partner, officer, director, member of the assignor's governing board or any stockholder owning 10% or more of the assignor's stock: (a) have any interest in or connection with an AM, FM or television broadcast station; or a broadcast application pending before the FCC; or (b) has had any interest in or connection with any dismissed and/or denied application; or any FCC license which has been revoked.

The Exhibit should include the following information: (i) name of party with such interest; (ii) nature of interest or connection, giving dates; (iii) call letters or file number of application; or docket number; (iv) location.

## Section I (page 2)

## GENERAL INFORMATION

## Part I—Assignor

7. Since the filing of the assignor's last renewal application for the authorization being assigned, or other major application, has an adverse finding been made, a consent decree been entered or adverse final action been approved by any court or administrative body with respect to the assignor or any partner, officer, director, member of the assignor's governing board or any stockholder owning 10% or more of assignor's stock, concerning any civil or criminal suit, action or proceeding brought under the provisions of any federal, state, territorial or local law relating to the following: any felony; lotteries; unlawful restraints or monopolies; unlawful combinations; contracts or agreements in restraint of trade; the use of unfair methods of competition; fraud; unfair labor practices; or discrimination? ☐ YES ☐ NO

If Yes, attach as Exhibit No. \_\_\_\_\_ a full description, including identification of the court or administrative body, proceeding by file number, the person and matters involved, and the disposition of litigation.

## Section I

## GENERAL INFORMATION

## Part II — Assignee

## 1. Name of Assignee

Street Address (or other identification)

City

State

Zip Code

Telephone No.  
(Include area code)2. Does the contract submitted in response to Question 5, Part I of Section I embody the full and complete agreement between the assignor and assignee? ☐ YES ☐ NO

If No, explain in Exhibit No. \_\_\_\_\_.

## Section II

## ASSIGNEE'S LEGAL QUALIFICATIONS

## 1. Assignee is:

☐ an individual☐ a general partnership☐ a limited partnership☐ a corporation☐ other

## 2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership or corporation, describe in Exhibit No. \_\_\_\_\_ the nature of the applicant.

## CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS

YES NO

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? ☐ ☐(b) Will any funds, credit, etc., for construction, purchase or operation of the station be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents? ☐ ☐

If Yes, provide particulars as Exhibit No. \_\_\_\_\_.



## Section II (page 2)

## ASSIGNEE'S LEGAL QUALIFICATIONS

- |   | YES                      | NO                       |
|---|--------------------------|--------------------------|
| 4. (a) Has an adverse finding been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to the following: any felony, antitrust, unfair competition, fraud, unfair labor practices, or discrimination? | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in 4.(a)?  | <input type="checkbox"/> | <input type="checkbox"/> |

If the answer to (a) or (b) above is Yes, attach as Exhibit No. \_\_\_\_\_, a full disclosure concerning the persons and matters involved, identifying the court or administrative body and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and disposition or current status of the matter. Information called for by this question which is already on file with the Commission need not be refiled provided: (1) the information is now on file in another application or FCC form filed by or on behalf of the assignee; (2) the information is identified fully by reference to the file number (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 assignee states, "No change since date of filing."

### ASSIGNEE'S LEGAL QUALIFICATIONS

TABLE I. PARTIES TO APPLICATION

- INSTRUCTIONS:** If applicant is an individual, fill out column (a) only. If applicant is a partnership, fill out columns (a), (b) and (d), state as to each general or limited partner (*including silent partners*) (a) name and residence, (b) nature of partnership interest (i.e., *general or limited*), and (d) percent of ownership interest. If applicant is a corporation or an unincorporated association with 50 or fewer stockholders, stock subscribers, holders of membership certificate or other ownership interest, 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 owner interest 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 owner interest except that if such entity is a bank, insurance company or investment company (as defined by 15 U.S.C. §80a-3) which does not invest for purposes of control, the stock, membership or owner interest need only be reported if 5% or more

Name and Residence (Home) Address(es)	Nature of Partnership Interest or Office Held	Director or Member of Governing Board		% of: Ownership (O) or Partnership (P) or Voting Stock (VS) or Membership (M)
		YES	NO	
(a)	(b)	(c)		(d)

### ASSIGNEE'S LEGAL QUALIFICATIONS

## PARTIES TO APPLICATIONS

FCC 314 (Page 6)  
February 1987

## Section II (page 4)

## ASSIGNEE'S LEGAL QUALIFICATIONS

YES NO

5. (b) Does the applicant or any party to this application, own or have any interest in a daily newspaper or cable television system? ☐ ☐
- (c) Does the applicant or any party to this application have an ownership interest in, or is an officer, director or partner of, an investment company, bank, or insurance company which has an interest in a broadcast station, cable system or daily newspaper? ☐ ☐

If the answer to questions 5(b) or (c) is Yes, attach as Exhibit No. \_\_\_\_\_, a full disclosure concerning persons involved, the nature of such interest, the media interest and its location.

## OTHER BROADCAST INTERESTS

6. Does the applicant or any party to this application have any interest in or connection with the following?

- (a) an AM, FM or TV broadcast station? ☐ ☐
- (b) a broadcast application pending before the FCC? ☐ ☐

7. Has the applicant or any party to this application had any interest in or connection with the following:

- (a) an application which has been dismissed with prejudice by the Commission? ☐ ☐
- (b) an application which has been denied by the Commission? ☐ ☐
- (c) a broadcast station, the license which has been revoked? ☐ ☐
- (d) an application in any Commission proceeding which left unresolved character issues against the applicant? ☐ ☐
- (e) If the answer to any of the questions in 6 or 7 is Yes, state in Exhibit No. \_\_\_\_\_, the following information: ☐ ☐

- (i) Name of party having such interest;
- (ii) Nature of interest or connection, giving dates;
- (iii) Call letters of stations or file number of application, or docket number;
- (iv) Location.

8. (a) Are any of the parties to this application related to each other (as husband, wife, father, mother, brother, sister, son or daughter)? ☐ ☐
- (b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of any party to this application have any interest in or connection with any other broadcast station or pending application? ☐ ☐

If the answer to (a) or (b) above is Yes, attach as Exhibit No. \_\_\_\_\_, 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.

## Section II (page 5)

## OWNERSHIP AND CONTROL

YES NO

9. Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?

☐ ☐

If Yes, provide particulars as Exhibit No. \_\_\_\_\_ .

10. Do documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained?

☐ ☐

If No, attach as Exhibit No. \_\_\_\_\_ a full explanation.

## Section III

## ASSIGNEE'S FINANCIAL QUALIFICATIONS

1. The applicant certifies that sufficient net liquid assets are on hand or are available from committed sources to consummate the transaction and operate the facilities for three months.
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 the 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 collateral, guarantees, and capital investment; (c) It has determined that all such sources (excluding banks, financial institutions and equipment manufacturers) have sufficient net liquid assets to meet these commitments.

☐ ☐☐ ☐



## SECTION IV

## ASSIGNEE'S PROGRAM SERVICE STATEMENT

## FOR AM AND FM APPLICANTS

1. Attach as Exhibit No. \_\_\_\_\_ a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area.

## FOR TELEVISION APPLICANTS

2. Ascertainment of Community Needs.

A. State in Exhibit No. \_\_\_\_\_ the methods used by the applicant to ascertain the needs and interests of the public served by the station. Such information shall include (1) identification of representative groups, interests and organizations which were consulted and (2) the major communities or areas which applicant principally undertakes to serve.

B. Describe in Exhibit No. \_\_\_\_\_ the significant needs and interests of the public which the applicant believes its station will serve during the coming license period, including those with respect to national or international matters.

C. List in Exhibit No. \_\_\_\_\_ typical and illustrative programs or program series (*excluding Entertainment and News*) that applicant plans to broadcast during the coming license period to meet those needs and interests.

3. State the minimum amount of time, between 6:00 a.m. and midnight, the applicant proposes to normally devote each week to the program types listed below (*see definitions in instructions*). Commercial matter, within a program segment, shall be excluded in computing the time devoted to that particular program segment, e.g., a 15-minute news program containing three minutes of commercial matter, shall be computed as a 12-minute news program.

	HOURS	MINUTES	% of TOTAL TIME ON AIR
NEWS	_____	_____	_____
PUBLIC AFFAIRS	_____	_____	_____
ALL OTHER PROGRAMS ( <i>Exclusive of Sports and Entertainment</i> )	_____	_____	_____
LOCAL PROGRAMMING	_____	_____	_____

4. State the maximum amount of commercial matter the applicant proposes to allow normally in any 60-minute segments: \_\_\_\_\_
5. State the maximum amount of commercial matter the applicant proposes to allow normally in a 60-minute segment between the hours of 6 p.m. to 11 p.m. (5 p.m. to 10 p.m. Central and Mountain Times): \_\_\_\_\_
- (a) State the number of hourly segments per week this amount is expected to be exceeded, if any: \_\_\_\_\_
6. State in Exhibit No. \_\_\_\_\_, in full detail, the reasons why the applicant would allow the amount of commercial matter stated in Question 4 and 5 above to be exceeded.

## SECTION V

## ASSIGNEE'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

YES NO

1. Does the applicant propose to employ five or more fulltime employees?

☐ ☐

If the answer is Yes, the applicant must include an EEO program called for in the Model EEO Program. (FCC Form 396-A).

## SECTION VI

## Part I — Assignor

## ASSIGNOR'S CERTIFICATION

1. Has or will the assignor comply with the public notice requirement of Section 73.3580 of the Rules? ☐ YES ☐ NO

The **ASSIGNOR** acknowledges that all its statements made in this application and attached exhibits are considered material representations, and that all of its exhibits are a material part hereof and are incorporated herein.

The **ASSIGNOR** represents that this application is not filed by it for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with Section 1.65 of the Commission's Rules, the **ASSIGNOR** has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT**  
**U.S. CODE, TITLE 18, Section 1001**

I certify that the assignor's 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 Assignor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

## SECTION VI

## Part II — Assignee

## ASSIGNEE'S CERTIFICATION

The **ASSIGNEE** 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 **ASSIGNEE** acknowledges that all its statements made in this application and attached exhibits are considered material representations, and that all of its exhibits are a material part hereof and are incorporated herein.

The **ASSIGNEE** represents that this application is not filed by it for the purpose of impeding, obstructing or delaying determination on any other application with which it may be in conflict.

In accordance with Section 1.65 of the Commission's Rules, the **ASSIGNEE** has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.  
U.S. CODE, TITLE 18, SECTION 1001.**

I certify that the assignee's 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 Assignee

\_\_\_\_\_  
Signature

\_\_\_\_\_  
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 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, accountants, 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.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 95-579, DECEMBER 31, 1974, 5 U.S.C. 552(e)(3) AND THE PAPERWORK REDUCTION ACT P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.





Federal Communications Commission  
Washington, D.C. 20554

Approved by OMB  
3060-0032  
Expires 6/30/89

# Instructions For FCC 315

## Application For Consent To Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License

(FCC Form 315 attached)

### GENERAL INSTRUCTIONS

- A. This FCC form is to be used to apply for consent to transfer of control of corporation holding a broadcast station construction permit or license. It consists of the following Sections.

- I. GENERAL INFORMATION: TRANSFEROR (PART I); LICENSEE (PART II); TRANSFEREE (PART III)
- II. TRANSFEREE'S LEGAL QUALIFICATIONS
- III. TRANSFEREE'S FINANCIAL QUALIFICATIONS
- IV. TRANSFEREE'S PROGRAM SERVICE STATEMENT
- V. TRANSFEREE'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
- VI. CERTIFICATION: TRANSFEROR (PART I); LICENSEE (PART II); TRANSFEREE (PART III)

The transferor will fill out Part I of Section I and Part I of Section VI.

The licensee will fill out Part II of Section I and Part II of Section VI.

The transferee will fill out Part III of Section I; all of Sections II and III; Section IV, as appropriate; Section V; and Part III of Section VI.

- B. Prepare and submit original and two copies of this form and all exhibits 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 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. Public Notice Requirement:

- (1) Section 73.3580 of the Commission's Rules requires that applicants for consent to transfer of control of a corporation holding a broadcast station construction permit or license give local notice in a newspaper of general circulation in the community in which the station is located. Local notice is also required to be broadcast over the station. However, if the station is the only operating station in its broadcast service which is located in the community involved, publication of the notice in a newspaper is not required. This publication requirement also applies with respect to major amendments thereto as defined in Section 73.3578(b) of the Rules.
- (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 requirement must be certified in Section VI of this application. The information that must be contained in the notice of filing is described in Paragraph (f) of Section 73.3580 of the Rules. 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 Section 73.3526 of the Rules.

- F. Replies to questions in this form and the applicants' 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 applicants' 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.

FCC 315 Instructions  
January 1987

- G. In accordance with Section 1.65 of the Rules, the applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

### SECTION I INSTRUCTIONS

- A. (i) The name(s) of the transferor(s) must be stated as it (they) appears in Ownership Reports on file with the Commission; (ii) the name of the licensee must be stated exactly as it appears in the construction permit or license held by the corporation in which control is to be transferred; (iii) the name of the transferee, shall be the exact corporate name, if a corporation; if a partnership, the names of all partners and the name under which the partnership does business; if an unincorporated association, the name of the executive officer, his office, and the name of the association. In other sections of the form, the name need be only sufficient for identification of the transferee.
- B. (1) State whether the station has commenced its initial program tests, as defined in Section 73.1620, within the past 12 months. If the answer to this question is "yes," state whether the initial construction permit was granted as a result of comparative hearing. If so, submit as a separate Exhibit to the application the showing required by Section 73.3597 of the Rules.
- (2) If this is an application for transfer of control of an entity holding a construction permit for an unbuilt station, see Instructions for Section III, Subpart C.
- C. The contract or agreement between the transferor and transferee, as required to be submitted in Section I of the application, must specifically show (1) transferee will have complete control over all necessary physical property and its use and unlimited supervision over the programs to be broadcast (See Section 73.1150 of the Rules); (2) consideration, whether monetary or otherwise, and whether paid or promised; (3) all other terms and conditions involved in the transfer (See Section 73.3613 of the Rules), including a statement that the instrument submitted covers the entire arrangement between the parties. If it does not, all other pertinent legal instruments must be submitted; (4) the transfer is subject to consent of the Commission.
- D. 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	Maryland	MD	Pennsylvania	PA
Arkansas	AR	Massachusetts	MA	Puerto Rico	PR
California	CA	Michigan	MI	Rhode Island	RI
Colorado	CO	Minnesota	MN	South Carolina	SC
Connecticut	CT	Mississippi	MS	South Dakota	SD
Delaware	DE	Missouri	MO	Tennessee	TN
District of Columbia	DC	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Trust Territory Of The Pacific Islands	TT
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	CM	Wyoming	WY

### SECTION II INSTRUCTIONS

- A. As used in Section II, the words "party to this application" have the following meanings:

INDIVIDUAL APPLICANT: The applicant

PARTNERSHIP APPLICANT: All partners, including limited partners. 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 owner interest, 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 any capital stock, membership or owner interest, or subscribers to such interest, of that entity shall also be considered parties to this application.

In the event the applicant has more than 50 stockholders, all officers and directors and all persons or entities who are the beneficial or record owner or have the right to vote 1% or more of the capital stock, membership or owner interest, or subscribers to such interest shall be considered parties to this application. However, if such entity is a bank, insurance company, or investment company (as defined by 15 U.S.C. §80a-3) which does not invest for purposes of control, the relevant stock, membership or owner interest is 5% or more. 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 or have the right to vote 1% or more of the capital stock, membership or owner interest, or subscribers to such interest in the entity, shall also be considered parties to this application. However, if such entity is a bank, insurance company or investment company (as defined by 15 U.S.C. §80a-3) which does not invest for purposes of control, the relevant stock, membership or owner interest is 5% or more.

**ANY OTHER APPLICANT:** All executive officers, members of the governing board and owners or subscribers to any membership or ownership interest in the applicant.

- B. As used in Section II, questions 5(b) and (c), the term "interest" refers to a cognizable interest within the meaning of Sections 73.35, 73.240, 73.636 and 76.501 of the FCC Rules.
- C. All applicants must comply with Section 310 of the Communications Act of 1934, as amended. Specifically, Section 310 proscribes issuance of a license or 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 and voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a license or a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.
- D. 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.

### SECTION III INSTRUCTIONS

- A. All applicants filing Form 315 must be financially qualified to effectuate their proposals. An applicant for consent to transfer of control of a corporation holding a broadcast station construction permit or license must attest that it has sufficient net liquid assets on hand or committed source of funds to consummate the transaction and operate the facilities for three months. 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.
- B. 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.
- C. If the transaction proposed by this application is for the transfer of control of a corporation holding a construction permit for an unbuilt station, as defined in Section 73.3597(c) of the Rules, the documentation required by that section must be submitted with this application as a separate Exhibit.

### SECTION IV INSTRUCTIONS

- A. AM and FM applicants need only file a program service statement called for by Question 1 in Section IV of this application.
- B. The television applicant need file the program service statement called for by Questions 2 through 5 in Section IV of this application which includes an ascertainment of community needs. Before preparing the Ascertainment, the applicant should carefully review the "Primer on Ascertainment of Community Problems by Broadcast Applicants," 27 FCC 2d 650, 36 Federal Register 4092, March 3, 1971.
- C. As explained in Section IV for television applicants, Types of Programs are defined as follows:
  - (1) News Programs include reports dealing with current local, national and international events, including weather and stock market reports, and commentary, analysis or sports news when it is an integral part of a news program.

- (2) Public Affairs Programs are programs dealing with local, state, regional, national or international issues or problems, including but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, round-tables and vignettes and extended coverage (whether live or recorded) of public events or proceedings, such as local council meetings, congressional hearings and the like.
  - (3) A Public Service Announcement is any announcement (including network) for which no charge is made and which promotes programs, activities or services of federal, state or local governments (e.g., recruiting, sales of bonds, etc.) or the programs, activities or services of nonprofit organizations (e.g., UGF, Red Cross blood donations, etc.) and other announcements regarded as serving community interests, excluding time signals, routine weather announcements and promotional announcements.
  - (4) All Others (excluding entertainment and sports) include all other programs which are not intended primarily as entertainment (e.g., music, drama, variety, comedy, quiz, etc.). Do not include play-by-play and pre-or post-game sports related activities and separate programs of sports instructions, news, or information (e.g., fishing opportunities, golfing instructions, etc.).
- D. As explained in Section IV for television applicants, Commercial Matter includes commercial continuity (network and non-network) and commercial announcements (network and non-network) as follows:
- (1) Commercial Continuity is the advertising message of a program sponsor.
  - (2) A Commercial Announcement is any other advertising message for which a charge is made, or other consideration is received.
    - (a) Included are:
      - (i) "bonus spots"
      - (ii) "trade-out spots"
      - (iii) Promotional announcements by a commercial broadcast station for, or on behalf of, another commonly owned or controlled broadcast station serving the same community. (See Report and Order In Docket No. 20588, 59 FCC 2d 594, 41 Fed. Reg. 22055 (1976).)
      - (iv) Promotional announcements of a future program where consideration is received for such an announcement or where such announcement identifies the sponsor of the future program beyond mention of the sponsor's name as an integral part of the title of the program (e.g., where the agreement for the sale of the time provides that the sponsor will receive promotional announcements, or when the promotional announcement contains a statement such as (TOMORROW SEE — (NAME OF PROGRAM) BROUGHT TO YOU BY — (SPONSOR'S NAME)).
    - (b) Other announcements including but not limited to the following are not commercial announcements:
      - (i) Promotional announcements, except as defined above.
      - (ii) Station identification announcements.
      - (iii) Announcements of taped, filmed or recorded material.
      - (iv) Public service announcements.
      - (v) Announcements made pursuant to Section 73.1212(d) of the FCC Rules that materials or services have been furnished as an inducement to broadcast a political program involving the discussion of controversial public issues.
      - (vi) Announcements made pursuant to the local notice requirements of Section 73.3580 ("Local Notice of Filing of Applications") and Section 73.3594 ("Local Notice of Designation for Hearing") of the Rules.

#### SECTION V INSTRUCTIONS

- 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 Section 73.2080 of the Commission's Rules. 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, 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), a program for minority group members need not be filed. In such a case, a statement so indicating must be submitted with this application. 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, but a statement of explanation must be submitted.

- B. Guidelines for developing an Equal Employment Opportunity program are set forth in FCC Form 396-A (Model EEO Program Form).

NOTE: This five-point Model EEO Program is to be utilized only by applicants for new construction permits, assignees and transferees.



## SECTION VI INSTRUCTIONS

Section VI consists of three parts:

- A. Part I is the certification requirements to be completed by the transferor. This part of this application should be personally signed by the transferor, if the transferor is an individual; by one of the partners, if the transferor is a partnership; by an officer, if the transferor is a corporation; by a member who is an officer, if the transferor 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 transferor is an eligible government entity; or by the transferor's attorney in case of the transferor's physical disability or of his/her absence from the United States. The attorney shall, in the event he/she signs for the transferor, separately set forth the reason why the application is not signed by the transferor. 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.
- B. Part II is the certification requirements to be completed by the licensee. This part of this application shall be personally signed by the licensee, if the licensee is an individual; by one of the partners, if the licensee is a partnership; by an officer, if the licensee is a corporation; by a member who is an officer, if the licensee 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 licensee is an eligible government entity; or by the licensee's attorney in case of the licensee's physical disability or of his/her absence from the United States. The attorney shall, in the event he/she signs for the licensee, separately set forth the reason why the application is not signed by the licensee. 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 reasons for believing that such statements are true.
- C. Part III is the certification requirement to be completed by the transferee. This part of this application shall be personally signed by the transferee, if the transferee is an individual; by one of the partners, if the transferee is a partnership; by an officer, if the transferee is a corporation; by a member who is an officer, if the transferee 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 transferee is an eligible government entity; or by the transferee's attorney in case of the transferee's physical disability or of his absence from the United States. The attorney shall, in the event he/she signs for the transferee, separately set forth the reason why the application is not signed by the transferee. 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.

COMMISSION USE ONLY

File No.

United States of America  
Federal Communications Commission  
Washington, D.C. 20554

Approved by OMB  
3060-0032  
Expires 6/30/89

**APPLICATION FOR CONSENT TO TRANSFER OF CONTROL OF CORPORATION HOLDING BROADCAST  
STATION CONSTRUCTION PERMIT OR LICENSE**

(Carefully read instructions before filling out Form — RETURN ONLY FORM TO FCC)

**GENERAL INFORMATION**

**Section I**

**Part I — Transferor**

**1. Name of Transferor**

Street Address

City

State

Zip Code

Telephone No.

(include area code)

**2. Authorization held by corporation whose control is to be transferred**

a. Call Letters

Location

b. Has the station commenced its initial program tests within the past twelve months?

☐ YES ☐ NO

If yes, was the initial construction permit granted after comparative hearing?

☐ YES ☐ NO

If yes, attach as Exhibit No. the showing required by Section 73.3597.

**3. Call letters of any Remote Pickup, STL, SCA, or other stations held by corporation whose control is to be transferred:**

**4. Attach as Exhibit No. a copy of the contract or agreement for transfer of control of the licensee. If there is only an oral agreement, reduce the terms to writing and attach.**

**5. Attach as Exhibit No. a full narrative statement as to the means by which transferor has control over the licensee and the manner by which control over licensee is being transferred.**

**6. Stock holdings of transferor in licensee:**

NAME OF TRANSFEROR	INTEREST HELD		LICENSEE'S TOTAL SHARES OUTSTANDING	
	BEFORE TRANSFER Shares %	AFTER TRANSFER Shares %	BEFORE TRANSFER	AFTER TRANSFER

## Section I (page 2)

## GENERAL INFORMATION

## Part I

7. State in Exhibit No. \_\_\_\_\_ whether the transferor, or any partner, officer, director, members of the transferor's governing board, or any stockholder owning 10% or more of the transferor's stock: (a) have any interest in or connection with an AM, FM or television broadcast station; or an application pending before the FCC; or (b) has had any interest in or connection with any dismissed and/or denied application; or any FCC license which has been revoked.

The Exhibit should include the following information: (i) name of party with such interest; (ii) nature of interest or connection; (iii) call letters or file number of application, or docket number; (iv) location.

8. Since the filing of the transferor's last renewal application for the station affected by this transfer, or other major application, has an adverse finding been made, a consent decree been entered or adverse final action been approved by any court or administrative body with respect to transferor, or any partner, officer, director, member of the transferor's governing board or any stockholder owning 10% or more of transferor's stock, concerning any civil or criminal suit, action or proceeding brought under the provisions of any federal, state, territorial or local law relating to the following: any felony, lotteries; unlawful restraints or monopolies; unlawful combinations; contracts or agreements in restraint of trade; the use of unfair methods of competition; fraud; unfair labor practices; or discrimination?

☐ YES ☐ NO

If Yes, attach as Exhibit No. \_\_\_\_\_ a full description, including identification of the court or administrative body, proceeding by file number, the person and matters involved, and the disposition of litigation.

## Section I (Page 3)

## GENERAL INFORMATION

## Part II

## 1. Name of Licensee

Street Address

City

State

Zip Code

Telephone No.  
(include area code)

2. Is the information shown in licensee's Ownership Reports now on file with the Commission (FCC Form 323 or 323-E) true and correct as of this date?

YES NO

☐ ☐

If the answer is No, attach as Exhibit No. \_\_\_\_\_ an Ownership Report supplying full and up-to-date information.

3. Will the licensee sell any stock or other security not set forth in Section I, Part I herein?

☐ ☐

If, Yes, explain in Exhibit No. \_\_\_\_\_.

4. State in Exhibit No. \_\_\_\_\_ whether the licensee, or any officer, director, member of the licensee's governing board, or any stockholder owning 10% or more of the licensee's stock (other than as set forth in Question 7, Section I, Part I): (a) have any interest in or connection with an AM, FM or television broadcast station; or an application pending before the FCC; or (b) has had any interest in or connection with any dismissed and/or denied application; or any FCC license which has been revoked.

The Exhibit should include the following information: (i) name of party with such interest; (ii) nature of interest or connection, giving dates; (iii) call letters or file number of application, or docket number; (iv) location.

5. Since the filing of the licensee's last renewal application for the station affected by this transfer, or other major application, has an adverse finding been made, a consent decree been entered or adverse final action been approved by any court or administrative body with respect to the licensee, or any officer, director, member of the licensee's governing board, or any stockholder owning 10% or more of the licensee's stock, concerning any civil or criminal suit, action or proceeding brought under the provisions of any federal, state, territorial or local law relating to the following: any felony; lotteries; unlawful restraints or monopolies; unlawful combinations; contracts or agreements in restraints of trade; the use of unfair methods of competition; fraud; unfair labor practices; or discrimination?

☐ ☐

If Yes, attach as Exhibit No. \_\_\_\_\_ a full description, including identification of the court or administrative body, proceeding by the file number, the person and matters involved, and the disposition of litigation.

## Section I (page 4)

## GENERAL INFORMATION

## Part III

## 1. Name of Transferee

Street Address

City

State

Zip Code

Telephone No.  
(include area code)

2. Does the contract submitted in response to Question 4, Part I of Section I embody the full and complete agreement between the parties?

YES

NO

☐☐

If No, explain in Exhibit No. \_\_\_\_\_.

## Section II

## TRANSFeree'S LEGAL QUALIFICATIONS

## 1. Applicant is:

☐ an individual☐ a general partnership☐ a limited partnership☐ a corporation☐ other

2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership or corporation, describe in Exhibit No. \_\_\_\_\_ the nature of the applicant.

## CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS

YES

NO

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?
- (b) Will any funds, credit, etc., for construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

☐☐☐☐

If Yes, provide particulars as Exhibit No. \_\_\_\_\_.



## Section II (page 2)

## TRANSFeree'S LEGAL QUALIFICATIONS

- |   | YES                      | NO                       |
|---|--------------------------|--------------------------|
| 4. (a) Has an adverse finding been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to the following: any felony, antitrust, unfair competition, fraud, unfair labor practices, or discrimination? | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in 4 (a)?  | <input type="checkbox"/> | <input type="checkbox"/> |

If the answer to (a) or (b) above is Yes, attach as Exhibit No. \_\_\_\_\_, a full disclosure concerning the persons and matters involved, identifying the court or administrative body and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and disposition or current status, of the matter. Information called for by this question which is already on file with the Commission need not be refiled provided: (1) the information is now on file in another application or FCC form filed by or on behalf of transferee; (2) the information is identified fully by reference to the file number (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 transferee states, "No change since date of filing."

## Section II (page 3)

## TRANSFeree'S LEGAL QUALIFICATIONS

TABLE I PARTIES TO APPLICATION

5. (a) Complete Table I with respect to the transferee. Additionally, Table I should be completed, where appropriate, for those partners, stockholders, officers and/or directors of the licensee who are not associated with the transferee. (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).

INSTRUCTIONS: If applicant is an individual, fill out column (a) only. If applicant is a partnership, fill out columns (a), (b) and (d), state as to each general or limited partner (including silent partners): (a) name and residence, (b) nature of partnership interest (i.e., general or limited), and (d) percent of ownership interest. If applicant is a corporation or an unincorporated association with 50 or fewer stockholders, stock subscribers, holders of membership certificate or other ownership interest, 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 owner interest 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 owner interest, except that if such entity is a bank, insurance company or investment company (as defined by 15 U.S.C. Section 80a-3) which does not invest for purposes of control, the stock, membership or owner interest need only be reported if 5% or more.

Applicants are reminded that questions 5 through 7 of this Section must be completed as to all "parties to this application" as that term is defined in the instructions to Section II of this form.

Name and Residence (Home) Address(es)	Nature of Partnership Interest or Office Held	Director or Member of Governing Board		% of: Ownership (O) or Partnership (P) or Voting Stock (VS) or Membership (M)
		YES	NO	
(a)	(b)	(c)		(d)

### TRANSFEREE'S LEGAL QUALIFICATIONS

### PARTIES TO APPLICATION

Name and Residence (Home) Address(es)	Nature of Partnership Interest or Office Held	Director or Member of Governing Board		% of: Ownership (O) or Partnership (P) or Voting Stock (VS) or Membership (M)
		YES	NO	
		(c)		
(a)	(b)	(c)		(d)

FCC 315 (Page 7)

## Section II (page 5)

## TRANSFEREE'S LEGAL QUALIFICATIONS

YES NO

5. (b) Does the applicant or any party to this application, own or have any interest in a daily newspaper or cable television system? ☐ ☐

- (c) Does the applicant or any party to this application have an ownership interest in, or is an officer, director or partner of, an investment company, bank, or insurance company which has an interest in a broadcast station, cable system or daily newspaper? ☐ ☐

If the answer to questions 5(b) or (c) is Yes, attach as Exhibit No. \_\_\_\_\_, a full disclosure concerning persons involved, the nature of such interest, the media interest and its location.

## OTHER BROADCAST INTERESTS

6. Does the applicant or any party to this application have any interest in or connection with the following?

- (a) an AM, FM or TV broadcast station? ☐ ☐

- (b) a broadcast application pending before the FCC? ☐ ☐

7. Has the applicant or any party to this application had any interest in or connection with the following:

- (a) an application which has been dismissed with prejudice by the Commission? ☐ ☐

- (b) an application which has been denied by the Commission? ☐ ☐

- (c) a broadcast station, the license which has been revoked? ☐ ☐

- (d) an application in any Commission proceeding which left unresolved character issues against the applicant? ☐ ☐

- (e) If the answer to any of the questions in 6 or 7 is Yes, state in Exhibit No. \_\_\_\_\_, the following information: ☐ ☐

- (i) Name of party having such interest;  
(ii) Nature of interest or connection, giving dates;  
(iii) Call letters of stations or file number of application, or docket number;  
(iv) Location.

8. (a) Are any of the parties to this application related to each other (as husband, wife, father, mother, brother, sister, son or daughter)? ☐ ☐

- (b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of any party to this application have any interest in or connection with any other broadcast station or pending application? ☐ ☐

If the answer to (a) or (b) above is Yes, attach as Exhibit No. \_\_\_\_\_, 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.

## Section II (page 6)

## TRANSFeree'S LEGAL QUALIFICATIONS

## OWNERSHIP AND CONTROL

9. Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?

☐ ☐

If Yes, provide particulars as Exhibit No. \_\_\_\_\_ .

10. Do documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained?

☐ ☐

If No, attach as Exhibit No. \_\_\_\_\_ a full explanation.

## Section III

## TRANSFeree'S FINANCIAL QUALIFICATIONS

1. The applicant certifies that sufficient net liquid assets are on hand or are available from committed sources to consummate the transaction and operate the facilities for three months.
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 the 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 collateral, guarantees, and capital investment; (c) it has determined that all such sources (excluding banks, financial institutions and equipment manufacturers) have sufficient net liquid assets to meet these commitments.

☐ ☐☐ ☐



## SECTION IV

## TRANSFEREE'S PROGRAM SERVICE STATEMENT

## FOR AM AND FM APPLICANTS

1. Attach as Exhibit No. \_\_\_\_\_ a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area.

## FOR TELEVISION APPLICANTS

## 2. Ascertainment of Community Needs.

- A. State in Exhibit No. \_\_\_\_\_ the methods used by the applicant to ascertain the needs and interests of the public served by the station. Such information shall include (1) identification of representative groups, interests and organizations which were consulted and (2) the major communities or areas which applicant principally undertakes to serve.
- B. Describe in Exhibit No. \_\_\_\_\_ the significant needs and interests of the public which the applicant believes its station will serve during the coming license period, including those with respect to national or international matters.
- C. List in Exhibit No. \_\_\_\_\_ typical and illustrative programs or program series (*excluding Entertainment and News*) that applicant plans to broadcast during the coming license period to meet those needs and interests.
3. State the minimum amount of time, between 6:00 a.m. and midnight, the applicant proposes to normally devote each week to the program types listed below (*see definitions in instructions*). Commercial matter, within a program segment, shall be excluded in computing the time devoted to that particular program segment, e.g., a 15-minute news program containing three minutes of commercial matter, shall be computed as a 12-minute news program.

	HOURS	MINUTES	% of TOTAL TIME ON AIR
NEWS	_____	_____	_____
PUBLIC AFFAIRS	_____	_____	_____
ALL OTHER PROGRAMS ( <i>Exclusive of Sports and Entertainment</i> )	_____	_____	_____
TOTAL LOCAL PROGRAMMING	_____	_____	_____

4. State the maximum amount of commercial matter the applicant proposes to allow normally in any 60-minute segments: \_\_\_\_\_
5. State the maximum amount of commercial matter the applicant proposes to allow normally in a 60-minute segment between the hours of 6 p.m. to 11 p.m. (5 p.m. to 10 p.m. Central and Mountain Times): \_\_\_\_\_
- (a) State the number of hourly segments per week this amount is expected to be exceeded, if any: \_\_\_\_\_
6. State in Exhibit No. \_\_\_\_\_, in full detail, the reasons why the applicant would allow the amount of commercial matter stated in Questions 4 and 5 above to be exceeded.

## SECTION V

## TRANSFeree'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

YES NO

1. Does the applicant propose to employ five or more fulltime employees?

☐ ☐

If the answer is Yes, the applicant must include an EEO program called for in the Model EEO Program. (FCC Form 396-A).

**SECTION VI****Part I — TRANSFEROR****TRANSFEROR'S CERTIFICATION**

The **TRANSFEROR** acknowledges that all its statements made in this application and attached exhibits are considered material representations, and that all of its exhibits are a material part hereof and are incorporated herein.

The **TRANSFEROR** represents that this application is not filed by it for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with Section 1.85 of the Commission's Rules, the **TRANSFEROR** has a continuing obligation to advise the Commission, through amendments, of any substantial and significant change in the information furnished.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT**  
U.S. CODE, TITLE 18, Section 1001

I certify that the transferor's 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 Transferor.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**SECTION VI****Part II — Licensee****LICENSEE'S CERTIFICATION**

1. Has or will the licensee comply with the public notice requirement of Section 73.3580 of the Rules?

☐ YES ☐ NO

The LICENSEE 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 LICENSEE acknowledges that all its statements made in this application and attached exhibits are considered material representations, and that all of its exhibits are a material part hereof and are incorporated herein.

The LICENSEE represents that this application is not filed by it for the purpose of impeding, obstructing or delaying determination on any other application with which it may be in conflict.

In accordance with Section 1.65 of the Commission's Rules, the LICENSEE has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.  
U.S. CODE, TITLE 18, SECTION 1001.**

I certify that the licensee's 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 Licensee

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

## SECTION VI

## Part III — Transferee

## TRANSFEEE'S CERTIFICATION

The TRANSFEEE 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 TRANSFEEE acknowledges that all its statements made in this application and attached exhibits are considered material representations, and that all of its exhibits are a material part hereof and are incorporated herein.

The TRANSFEEE represents that this application is not filed by it for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with Section 1.65 of the Commission's Rules, the TRANSFEEE has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.  
U.S. CODE, TITLE 18 Section 1001.

I certify that the transferee's 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 Transferee

\_\_\_\_\_  
Signature

\_\_\_\_\_  
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 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, accountants, 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.

The FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 95-579, December 31, 1974, 5 U.S.C. 552(e)(3), and The Paperwork Reduction Act, P.L. 96-511, December 11, 1980, 44 U.S.C. 3507.

<p style="text-align: center;">Approved by OMB 3060-0009 Expires 4/30/90</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554</p> <p style="text-align: center;"><b>APPLICATION FOR CONSENT TO ASSIGNMENT OF RADIO BROADCAST STATION CONSTRUCTION PERMIT OR LICENSE OR TRANSFER OF CONTROL OF CORPORATION HOLDING RADIO BROADCAST STATION CONSTRUCTION PERMIT OR LICENSE</b></p> <p style="text-align: center;">(Short Form)</p> <p style="text-align: center;"><b>APPLICANT SHOULD NOT USE THIS BOX</b></p> <p style="text-align: center;"><b>GENERAL INSTRUCTIONS</b></p> <p><b>A.</b> This form is to be used when applying for authority for Assignment of a Radio Broadcast Station Construction Permit or License or for Consent to Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License where:</p> <ol style="list-style-type: none"> <li>1. There is an assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests.</li> <li>2. There is an assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests.</li> <li>3. There is an assignment or transfer by which certain stockholders retire, provided that the interest transferred is not a controlling one.</li> <li>4. There is a corporate reorganization which involves no substantial change in the beneficial ownership of the corporation.</li> <li>5. Where there is an assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests.</li> <li>6. There is an assignment of less than a controlling interest in a partnership.</li> <li>7. There is an involuntary transfer to an Executor, Administrator or other court appointed officer caused by death or legal disability. (Note: This form does not cover assignments (or transfers) from the Executor, Administrator or other court appointed officers to the ultimate beneficiary.)</li> </ol> <p><b>B.</b> The Commission reserves the right to require refiling of the application on Forms 314 or 315 if in its judgement this form does not apply to the assignment or transfer when approval is sought.</p> <p><b>C.</b> Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on the back of this sheet. Date each exhibit.</p> <p><b>D.</b> The names of the applicants shall be the exact corporate names, if corporations; if partnerships, the names of all partners and the names under which the partnerships do business; if unincorporated associations, the names of executive officers, their offices, and names of the associations.</p> <p><b>E.</b> Information called for by this application which is already on file with the Commission need not be refilled in this application provided (1) the information is now on file in another or FCC form filed by or on behalf of these applicants; (2) the information is identified fully by reference to the file number (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 applicants state: "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 referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.</p> <p><b>F.</b> 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; or by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall, in the event he 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 knowledge), he shall separately set forth his reasons for believing that such statements are true.</p> <p><b>G. PREPARE AND FILE THREE COPIES OF THIS FORM AND ALL EXHIBITS WITH FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D. C. 20554.</b></p> <p><b>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.</b></p>	<p>File No. _____</p> <p>1. Application for: (Check One)  <input type="checkbox"/> Consent to Assignment      <input type="checkbox"/> Consent to Transfer of</p> <p>2. Name and post office address of assignor (or transferor)          _____          _____          _____</p> <p>3. Send notices and communications to the following-named person at the post office address indicated          _____          _____          _____</p> <p>4. Name and post office address of assignee (or transferee)          _____          _____          _____</p> <p>5. Name and post office address of licensee (or permittee)          _____          _____          _____</p> <p>6. Authorization which is proposed to be assigned or transferred:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Call Letters</td> <td style="width: 50%;">Location</td> </tr> <tr> <td style="height: 40px;"></td> <td></td> </tr> </table> <p>Class of station (AM-FM-TV) _____ File Number _____</p> <p>7. Authorizations of any Remote Pickup, STL, SCA, or other stations held by licensee (or permittee) which are to be assigned or transferred:          Call Letters _____</p> <p>8. State file numbers of any other pending applications which involve the licensee (or permittee)          _____</p> <p>9. Attach as Exhibit No. _____ a full narrative statement of the circumstances leading to the assignment (or transfer) and the reasons therefor. Fill out Item 15 to show the disposition of stock partnership interests both before and after the proposed assignment (or transfer). The name, residence, citizenship and office, if any, of each stockholder (or partner) should also be shown.</p> <p>10. a. If the assignment (or transfer) is voluntary:          (1) Attach as Exhibit No. _____ all contracts, agreements or understandings (the substance of oral agreements should be reduced to writing) by which the stock (or other interest) is transferred.</p> <p style="margin-left: 40px;">b. If the assignment (or transfer) is involuntary:          (1) In the case of bankruptcy, or legal disability of the assignor (or transferor), attach as Exhibit No. _____ certified copy of all court orders pertaining to the assignment (or transfer).          (2) In case of death of the assignor (or transferor), attach as Exhibit No. _____ the Will or Letters Testamentary and all pertinent court orders.</p>	Call Letters	Location		
Call Letters	Location				

11. Attach as Exhibit No. \_\_\_\_\_ a statement showing the consideration or thing of value, if any, which is to be given for the stock or interest being assigned (or transferred). If the consideration is monetary, this statement should indicate exactly to whom it is being paid.
12. Attach as Exhibit No. \_\_\_\_\_ a statement showing other broadcast interests of each new stockholder or partner.
13. Does the assignee (or transferee) propose to continue present program policies and schedules without substantial change? Yes ☐ No ☐
- If the answer is "No", attach as Exhibit No. \_\_\_\_\_ a full statement showing a percentage breakdown in terms of types of programs, a composite week breakdown, a specific statement as to the amount of time to be used for commercial programs and a narrative account of new or proposed program policies.

14. In the following table, in all cases, the interest held before and after transfer must be given in terms of percentages. In the case of corporations, the interest must be stated in terms of shares of stock held as well as the percentage equivalent thereof.

NAME AND RESIDENCE OF STOCKHOLDER, PARTNER, ETC. (CITY AND STATE ONLY)	CITIZENSHIP	INTEREST HELD				TOTAL SHARES OUTSTANDING IF A CORPORATION	
		Before Transfer or Assignment		After Transfer or Assignment		Before Transfer or Assignment	After Transfer or Assignment
		Shares	%	Shares	%		

15. If legal counsel were employed in the preparation or presentation of this application, give name and mailing address  
For assignor (or transferor) \_\_\_\_\_

For assignee (or transferee) \_\_\_\_\_

The applicants waive 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 request consent to assignment of this license or transfer of control over the licensee corporation in accordance with this application. (See Section 304 of the Communications Act of 1934). The applicants represent 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. All the statements made in this application and attached exhibits are considered material representations, and all the exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The applicants, or the undersigned on the applicants' behalf, state that they endeavored to supply full and correct information as to all matters which are relevant to this application and that they have done so as to all matters within their own knowledge.

#### 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 Assignor (or Transferor) \_\_\_\_\_ Name of Assignee (or Transferee) \_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_  
(Signature) (Signature)

Title \_\_\_\_\_ Date \_\_\_\_\_ 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(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, accountants, 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. Your response is required to obtain this authority. Accordingly, every effort should be made to provide all necessary information.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552 a (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

EXHIBIT NO.	QUESTION NO. OF FORM	NAME OF OFFICER OR EMPLOYEE (1) BY WHOM OR (2) UNDER WHOSE DIRECTION EXHIBIT WAS PREPARED (SHOW WHICH)	OFFICIAL TITLE

Approved by OMB  
3060-0010  
Expires 04/30/89

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,  
Assignment of License or  
Construction Permit

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

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 media interests subject to the multiple ownership restrictions of Sections 73.3555 and 76.501 of the Commission's Rules, 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. 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.**

FCC 323-Page 3  
December 1986



<p style="text-align: center;">             Approved by OMB              3060-0084              Expires 4/30/90           </p> <p style="text-align: center;">             UNITED STATES OF AMERICA              FEDERAL COMMUNICATIONS COMMISSION           </p> <p style="text-align: center;"> <b>Ownership Report              For Noncommercial Educational Broadcast              Station</b> </p>	<p style="text-align: center;">FOR COMMISSION USE ONLY</p> <p>File No. _____</p> <p>Name of Applicant _____</p> <p>Telephone No. (Include Area Code) _____</p> <p>1. All of the information furnished is reported as of _____, 19____</p> <p>(date must comply with Section 73.3615(e) when box 1(a) below is checked)</p>				
<p style="text-align: center;">INSTRUCTIONS</p> <p>f. This report is to be filed as follows by noncommercial educational TV, FM, or AM broadcast stations (See Section 73.3615 of the Commission's Rules.)</p> <p>(a) By licensees with the application for renewal of station license. Licensees with current unamended Ownership Reports on file at the Commission may so indicate on their renewal applications and be relieved of the obligation to file a new Ownership Report.</p> <p>(b) By licensees or permittees within 30 Days after the consummation, pursuant to Commission consent, of a transfer of control, or an assignment of license or the grant of an original construction permit.</p> <p>(c) By licensees or permittees within 30 days after changes in the information called for by this form.</p> <p>(d) File one copy with the Federal Communications Commission, Washington, D.C. 20554. If information submitted is equally applicable to each station above listed, one report may be filed for all such stations; otherwise a separate report shall be filed for each station.</p> <p>(e) This form is to be filled out completely when filed pursuant to (a) and (b) above. When filled out pursuant to (c), changes only need be noted.</p> <p>2. Any contract or modification of contract relating to the ownership, control, or management of the licensee or permittee must be filed with the Commission, as required by Section 73.3613 of the Rules. 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.</p> <p>3. This form should be used to report all types of transactions concerning agreements and voting control.</p> <p>4. If the licensee or permittee is directly or indirectly controlled by another entity, a separate Form 323E should be submitted to report changes in the officers and directors of such entity.</p> <p>5. 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 prime responsibility of the licensee or permittee to determine whether a given transaction constitutes a transfer of control or an assignment.</p> <p>6. The official title of the respondent must be an officer of the licensee or permittee corporation or association, or in case of a governmental or public educational agency, a duly authorized administrative representative thereof.</p>	<p>This report is filed pursuant to instruction (Check One)</p> <table style="width: 100%;"> <tr> <td style="width: 50%;">1(a) <input type="checkbox"/> Renewal</td> <td style="width: 50%;">(b) <input type="checkbox"/> Transfer of Control, Assignment of License, or Construction Permit</td> </tr> </table> <p>(c) <input type="checkbox"/> Change of prior report, for the following stations:</p> <p>Call sign _____</p> <p>Type of station _____</p> <p>Location _____</p> <table style="width: 100%;"> <tr> <td style="width: 70%;">City _____</td> <td style="width: 30%;">State _____</td> </tr> </table> <p>2. List all contracts and other instruments set forth in Section 73.3613 of the Commission's Rules and Regulations</p> <p>Description of contract or instrument _____</p> <p>Name of person or organization with whom contract is made _____</p> <p>Date of execution _____</p> <p>Date of expiration _____</p> <p>3. Is the governing board directly or indirectly under the control of another entity? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If "Yes", give name and nature of entity _____</p> <p>4. Show the interests in any other broadcast station of the licensee or permittee, or any of its officers, members of the governing board, and holders of 1% or more ownership interest, if any.</p>	1(a) <input type="checkbox"/> Renewal	(b) <input type="checkbox"/> Transfer of Control, Assignment of License, or Construction Permit	City _____	State _____
1(a) <input type="checkbox"/> Renewal	(b) <input type="checkbox"/> Transfer of Control, Assignment of License, or Construction Permit				
City _____	State _____				

5. Give the following information as to applicant's officers, members of governing board, and holders of 1% or more ownership interest, if any.

NAME AND RESIDENCE	OFFICE HELD	CITIZENSHIP	PRINCIPAL PROFESSION OR OCCUPATION	BY WHOM APPOINTED OR ELECTED

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 or transfer of control (except to report an assignment of license or control made pursuant to prior Commission consent).

### CERTIFICATION

(Date of certification must be within 30 days of date shown in Item 1 when box 1(a) is checked and in no event prior to Item 1 date.)

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 LICENSEE OR PERMITTEE)

By \_\_\_\_\_  
(SIGNATURE)

Title \_\_\_\_\_

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(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, accountants, 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 retain this benefit.

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.

Approved by OMB  
3060-0390  
Expires 9/30/90

## 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

- 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.
- 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:

- For each AM, FM, LPTV, TV and International Broadcast Station, whether commercial or noncommercial; except that a combined report may 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.
- 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

- White, not of Hispanic Origin - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- Black, not of Hispanic Origin - A person having origins in any of the black racial groups of Africa.
- Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race.
- 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.
- 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.

- 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.
- 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, film buyers, rating and research analysts, systems analysts and programmers, financial analysts, state managers, cinema photographers, senior staff assistants, personnel interviewers, and continuity directors.
- 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

FCC 395-B Instructions  
December 1987



- 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, TWX 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.

Federal Communications Commission  
Washington, D.C. 20554**BROADCAST STATION  
ANNUAL EMPLOYMENT REPORT 1988**Approved by CMB  
3060-0330  
Expires 3/30/90

(For FCC Use Only)

Code No.

**SECTION I**

A. Name of Licensee or Permittee	B. Address
----------------------------------	------------

**SECTION II****A. TYPE OF RESPONDENT (check one)****COMMERCIAL BROADCAST STATION****NONCOMMERCIAL BROADCAST STATION**AM ☐ AMTV ☐ TVER ☐ Educational AM or FM RadioFM ☐ FMLP ☐ Low Power TVET ☐ Educational TVAF ☐ Combined AM & FM  
in same areaIN ☐ InternationalHQ ☐ Headquarters (Name and Location) \_\_\_\_\_

ZIP Code \_\_\_\_\_

**B. LIST CALL LETTERS AND LOCATION(S) OF INCLUDED STATIONS**

CALL LETTERS	LOCATION(S)

CALL LETTERS	LOCATION(S)

**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 IMPRISONMENT.****U.S. CODE, TITLE 18, SECTION 1001.**

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		MALE					FEMALE				
JOB CATEGORIES	TOTAL (a-p)	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		MALE					FEMALE				
JOB CATEGORIES	TOTAL (a-p)	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											

## 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.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, PL. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, PL. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Federal Communications Commission  
Washington, D.C. 20554

Approved by OMB  
3060-0113  
Expires 9/30/90

## BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT

(To be filed with broadcast license renewal application)

Call Letters \_\_\_\_\_

(For FCC Use Only)

Code No. \_\_\_\_\_

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.

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.

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.



Federal Communications Commission  
Washington, D.C. 20554Approved by OMB  
3060-0120  
Expires 9/30/90

## BROADCAST EQUAL EMPLOYMENT OPPORTUNITY

## MODEL PROGRAM REPORT

## 1. APPLICANT

Name of Applicant	Address
Telephone Number (include area code)	

2. This form is being submitted in conjunction with:

- ☐ Application for Construction Permit for New Station
 ☐ Application for Assignment of License
- ☐ Application for Transfer of Control
- (a) Call letters (or channel number or frequency) \_\_\_\_\_  
 (b) Community of License (city and state) \_\_\_\_\_  
 (c) Service:
- ☐ AM
 ☐ FM
 ☐ TV
 ☐ Other (Specify) \_\_\_\_\_

## INSTRUCTIONS

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 discrimination in employment and related benefits on the basis of race, color, religion, national origin or sex. See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, an applicant who proposes to employ five or more full-time employees must establish a program designed to assure 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). This is submitted to the Commission as the Model EEO Program. 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. In such cases, a statement so indicating must be set forth in the EEO model program. 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 fewer than five full-time employees, no EEO program for women or minorities need be filed.

Guidelines for a Model EEO Program and a Model EEO Program are attached.

NOTE: Check appropriate box, sign the certification below and return to FCC:

- ☐ Station will employ fewer than 5 full-time employees; therefore no written program is being submitted.
- ☐ Station will employ 5 or more full-time employees. Our Model EEO Program is attached. (You must complete all sections of this form.)

I certify that the statements made herein 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 \_\_\_\_

Signed \_\_\_\_\_

Title \_\_\_\_\_

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.  
U.S. CODE, TITLE 18, SECTION 1001.



## GUIDELINES TO THE MODEL EEO PROGRAM

The model EEO program adopted by the Commission for construction permit applicants, assignees and transferees contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

### I. GENERAL POLICY

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of qualified minorities and women in the relevant available labor force.

### II. RESPONSIBILITY FOR IMPLEMENTATION

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

### III. POLICY DISSEMINATION

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

### IV. RECRUITMENT

The applicant should specify the recruitment sources and other techniques it proposes to use to attract qualified minority and female job applicants. Not all of the categories of recruitment sources need be utilized. The purpose of the listing is to assist the applicant in developing specialized referral sources to establish a pool of qualified minorities and women who can be contacted as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

### V. TRAINING

Training programs are not mandatory. Each applicant is expected to decide, depending upon its own individual situation, whether a training program is feasible and would assist in its effort to increase the available pool of qualified minority and female applicants. Additionally, the applicant may set forth any other assistance it proposes to give to students, schools or colleges which is designed to be of benefit to minorities and women interested in entering the broadcasting field. The beneficiary of such assistance should be listed, as well as the form of assistance, such as contributions to scholarships, participation in work study programs, and the like.

## MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

### I. GENERAL POLICY

It will be our policy to provide 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.

It will also be our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have adopted an Equal Employment Opportunity Program which includes the following elements:

### II. RESPONSIBILITY FOR IMPLEMENTATION

(Name/Title) \_\_\_\_\_ will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be the responsibility of all persons making employment decisions with respect to the recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

### III. POLICY DISSEMINATION

To assure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts will be made:

- ☐ The station's employment application form will contain 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.
- ☐ Appropriate notices will be posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, State or Federal agency if they believe they have been the victims of discrimination.
- ☐ We will seek the cooperation of unions, if represented at the station, to help implement our EEO program and all union contracts will contain a nondiscrimination clause.
- ☐ Other (specify)

#### IV. RECRUITMENT

To ensure nondiscrimination in relation to minorities and women, and to foster their full consideration whenever job vacancies occur, we propose to utilize the following recruitment procedures:

- ☐ We will 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 organizations we intend to contact are:
- ☐ In addition to the organizations noted above, which specialize in minority and women candidates, we will deal only with employment services, including State employment agencies, which refer job candidates without regard to their race, color, religion, national origin or sex. Examples of these employment referral services are:
- ☐ When we recruit prospective employees from educational institutions such recruitment efforts will include area schools and colleges with minority and women enrollments. Educational institutions to be contacted for recruitment purposes are:
- ☐ When we place employment advertisements with media some of such advertisements will be placed in media which have significant circulation or viewership or are of particular interest to minorities and women. Examples of media to be utilized are:
- ☐ We will encourage employees to refer qualified minority and women candidates for existing and future job openings.

## V. TRAINING

- ☐ Station resources and/or needs will be such that we will be unable or do not choose to institute programs for upgrading the skills of employees.
- ☐ We will provide on-the-job training to upgrade the skills of employees.
- ☐ We will provide assistance to students, schools, or colleges in programs designed to enable qualified minorities and women to compete in the broadcast employment market on an equitable basis:

School or Other Beneficiary

Proposed Form of Assistance

---



---



---



---



---



---

- ☐ Other (specify)

**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 application 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 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.

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.

<p style="text-align: center;">United States of America FEDERAL COMMUNICATIONS COMMISSION</p> <p style="text-align: center;">APPLICATION FOR EXTENSION OF CONSTRUCTION PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT</p>	<p style="text-align: center;">FOR COMMISSION USE ONLY</p> <p>FILE NO.</p> <p>1. Legal name of applicant (<i>See instruction C</i>)</p>								
<p style="text-align: center;"><b>INSTRUCTIONS</b></p> <p>A. This form is to be used in all cases when applying for additional time to construct a station or when applying for construction permit to replace expired permit. See the following Parts of the Commission's Rules:</p> <p>BROADCAST - Part 73 COMMON CARRIER - Parts 21, 23 and 25</p> <p>B. Prepare and file original and one copy. File with the Federal Communications Commission, Washington, D.C. 20554 (<i>Sign all copies</i>)</p> <p>C. The name of the applicant must be stated exactly as it appears on the construction permit/expired construction permit.</p> <p>D. This application shall be personally signed by the applicant. If any 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 her/his 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.</p> <p>E. [Broadcast applicants only - Item 6 (c)] Completion of construction includes the time required for testing and filing FCC Form 302 for broadcast station license.</p> <p>F. [Broadcast applicants only - Item 7] Applicants must explain fully, status of construction, reasons for delays in commencement/completion of construction and detailed steps being taken to remedy delays.</p> <p>G. Filing date is determined by date application is received in FCC.</p> <p>H. <b>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.</b></p>	<p>2. Address (<i>Number, street, city, state, ZIP code</i>)</p> <p>Telephone No. (<i>Include Area Code</i>)</p> <p>3. PURPOSE OF APPLICATION: (<i>Check one</i>)</p> <p>a. Additional time to construct radio station <input type="checkbox"/></p> <p>b. Construction permit to replace expired permit <input type="checkbox"/> (<i>Not to be used under Part 21</i>)</p> <p>4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT</p> <table border="1" style="width: 100%;"> <tr> <td>File Number</td> <td>Call Letter</td> </tr> <tr> <td>Frequency</td> <td>Channel No. (<i>Broadcast applicants only</i>)</td> </tr> <tr> <td colspan="2">Station Location</td> </tr> </table> <p>5. Other (<i>Broadcast applicants only</i>) Submit as Exhibit No. ____ a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc.</p> <p>6. EXTENT OF CONSTRUCTION</p> <p>(a) Has equipment been delivered?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>IF NO, answer the following:</p> <p>From whom ordered (<i>If no order has been placed, so indicate</i>)</p> <table border="1" style="width: 100%;"> <tr> <td>Date Ordered</td> <td>Date Delivery Promised</td> </tr> </table> <p>(b) Has installation commenced?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>IF YES, submit as Exhibit ____ a description of the extent of installation and the date installation commenced.</p> <p>(c) Estimated date by which construction can be completed.</p> <p>7. (a) If application is for extension of construction permit, submit as Exhibit ____ reason(s) why construction has not been completed.</p> <p>(b) If application is to replace an expired construction permit, submit as Exhibit ____ 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).</p>	File Number	Call Letter	Frequency	Channel No. ( <i>Broadcast applicants only</i> )	Station Location		Date Ordered	Date Delivery Promised
File Number	Call Letter								
Frequency	Channel No. ( <i>Broadcast applicants only</i> )								
Station Location									
Date Ordered	Date Delivery Promised								

8. Are the representations contained in the application for construction permit still true and correct?

☐ YES ☐ NO

If No, give particulars in Exhibit

THE APPLICANT hereby waives any claim to the use of any particular frequency or of 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 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 \_\_\_\_.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM  
ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S.  
CODE, TITLE 18, SECTION 1001.

\_\_\_\_\_  
(Legal Name of Applicant)

\_\_\_\_\_  
(Signature)

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 principal purpose(s) for which the information will be used is to determine if the benefit requested is consistent with 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, 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.

EXHIBITS furnished as required by this form:

Exhibit No.	Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which).	Official Title



# FEDERAL COMMUNICATIONS COMMISSION



WASHINGTON, D. C. 20554

## CHANGE IN OFFICIAL MAILING ADDRESS FOR BROADCAST STATION

Mail to: Federal Communications Commission  
Broadcast License Division  
Washington, D. C. 20554

1. Licensee Name:

2. Street Address or Post Office Box:

3. City, State, and Zip Code:

4. Call Sign:

Section 1.5 of the Commission Rules requires a permittee/licensee to keep the Commission informed of any change in mailing address in order that the station may be served documents or other official papers without delay.

Only one mailing address can be maintained for each broadcast station.

Due to lack of space the mailing address cannot contain an individual name (unless the licensee is an individual).



## SPONSORSHIP IDENTIFICATION RULE

§73.1212 Sponsorship identification; list retention; related requirements.

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) by whom or on whose behalf such consideration was supplied: Provided, however, That "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by section 507 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcaster matter: Provided, however, That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or

promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified by the licensee under §73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under §73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.



(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions:

(1) Maintain a list showing name, address, and (where available) the telephone number of each advertiser;

(2) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be retained for a period of two years after broadcast.

(h) Any announcement required by section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

Note: The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60-1329; 40 F.C.C. 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when §73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 F.C.C. 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

[40 FR 18400, Apr. 28, 1975, as amended at 46 FR 13907, Feb. 24, 1981; 49 FR 4211, Feb. 3, 1984; 49 FR 33663, Aug. 24, 1984; 50 FR 32417, Aug. 12, 1985]

# **federal register**

**TUESDAY, SEPTEMBER 9, 1975**



---

**PART III:**

## **FEDERAL COMMUNICATIONS COMMISSION**



### **APPLICABILITY OF SPONSORSHIP IDENTIFICATION RULES**

**Revision of May 6, 1963 Public Notice,  
as Modified by April 21, 1975  
Public Notice**

**FEDERAL COMMUNICATIONS  
COMMISSION**  
**SPONSORSHIP IDENTIFICATION RULES**  
**Applicability**

SEPTEMBER 3, 1975.

Revision of May 6, 1963 Public Notice, as modified by April 21, 1975 Public Notice.

With the development of broadcast service along private commercial lines, meaningful government regulation of the various broadcast media has from an early date embraced the principle that listeners are entitled to know by whom they are being persuaded. Thus, as far back as the Radio Act of 1927 and continuing with section 317 of the Communications Act of 1934 there has been an unvarying requirement that all matter broadcast by any station for a valuable consideration is to be announced as paid for or furnished, and by whom.

On September 13, 1960, a bill (S. 1898) was signed into law amending section 317 of the Act to redefine the situations in which broadcast licensees must make sponsorship identification announcements. In addition, the law (Public Law 86-752) added a new section 508 to the Act requiring disclosure by persons other than broadcast licensees who provide or receive valuable consideration for the inclusion of any matter in a program intended for broadcast. The persons to whom section 508 relates had previously not been directly subject to any previous provisions of the Act. Subsection (e) of the revised section 317 directs the Commission to prescribe appropriate rules and regulations to implement the Congressional intent expressed in the new wording of section 317. In adopting this legislation, the Congress also set forth a series of twenty-seven examples to illustrate the intended effect of the proviso clause in amended section 317(a).

In 1963, the Commission revised the sponsorship identification rules for the broadcast services (34 F.C.C. 829) thereby implementing amended section 317. By *Report and Order*, adopted April 17, 1975, in Docket No. 19513, these rules were further amended (and consolidated as new section 73.1212) effective May 30, 1975 (FCC 75-417). When the 1963 rule revision was made, the Commission also adopted a *Public Notice*, entitled "Applicability of Sponsorship Identification Rules," which contained thirty-six illustrative interpretations (40 F.C.C. 141), including the twenty-seven examples set forth by the Congress. These interpretations, except for Interpretation 33, are consistent with the 1975 rule revisions. To reflect the provisions of new section 73.1212, Interpretation 33 was revised by *Public Notice*, dated April 21, 1975 (FCC 75-418). The 1975 *Report and Order* also amended the sponsorship identification rules for origination cablecasting (section 76.221) to conform to the new section 73.1212 for broadcasting. The interpretations of the 1963 *Public Notice* as modified by the 1975 *Public Notice* are applicable to origination cablecasting as well as to the broadcast

services. The present document is a revision of the 1963 *Public Notice*, incorporating both the 1975 rule changes and the revised Interpretation 33.

There follows hereafter section 317 and section 508 of the Act, the Commission's revised rules and the thirty-six illustrative interpretations.

Section 317 reads as follows:

SEC. 317. (a) (1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) In any case where a report has been made to a radio station as required by section 508 of this Act, or circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience or necessity does not require the broadcasting of such announcement.

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

Section 508 reads as follows:

SEC. 508. (a) Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station) or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such pro-

gram or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317 (d), an announcement is not required to be made under section 317.

(e) The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

(f) The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Any person who violates any provision of this section shall for each such violation, be fined not more than \$10,000 or imprisoned not more than one year, or both.

Section 73.1212 of the Commission's rules, applicable in common to the broadcast services, reads as follows:

§ 73.1212 *Sponsorship identification; list retention; related requirements.* (a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce (i) that such matter is sponsored, paid for, or furnished, either in whole or in part, and (ii) by whom or on whose behalf such consideration was supplied: *Provided, however*, That "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(1) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by section 508 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an



appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: *Provided, however,* That in the case of any broadcast of 5 minutes duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified by the licensee under Section 1.526 of this Chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under Section 1.526 of this Chapter. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever

sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions:

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Attach the list to the program log for the day when such broadcast was made; and

(3) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list.

(h) Any announcement required by section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

*NOTE.*—The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60-1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's *Public Notice*, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by *Public Notice*, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.



# PUBLIC NOTICE

A Joint Public  
Notice By The  
Federal Communications  
Commission  
And The Federal  
Election Commission



FCC 78-419  
95369

June 19, 1978 - BC

## SPONSORSHIP IDENTIFICATION AND CANDIDATE AUTHORIZATION NOTICES

1. Through this Joint Public Notice, the Federal Communications Commission and the Federal Election Commission intend to inform broadcast licensees and persons purchasing political broadcast time of ways of complying with both the FCC Rules concerning sponsorship identification and the FEC requirements for candidate authorization notices. 1/ Although the FCC requirements apply specifically to licensees and the FEC Rules apply to Federal candidates, their committees and other persons purchasing political broadcast time, the parties may agree between themselves to use one of the announcements listed in paragraph 4 below in satisfaction of both of these requirements. 2/

2. Under the terms of the Communications Act of 1934, as amended, 3/ and the FCC Rules, 4/ any broadcast time which is paid for or sponsored by a particular person or group must be accompanied

1/ This Notice is intended to supplement FCC Public Notice 76-731 (August 3, 1976) and FEC Notice 1976-55, 41 F.R. 45954, (October 18, 1976).

2/ Section 315 of the Communications Act provides that a licensee shall have no power of censorship over "uses" of a broadcasting station by legally qualified candidates for public office. A "use" is defined as an appearance by a candidate, either orally or visually, during which he or she is identified or identifiable to the listening or viewing audience. In light of this provision, a licensee may not demand that a proposed political broadcast on which a candidate appears comply with the FEC requirements for candidate authorization notices. Of course, if the broadcast does not contain the correct notice of candidate authorization, the candidate or other person submitting the broadcast may be subject to penalties under the Federal Election Campaign Act. An exception is made to the no censorship provision, however, to allow licensees to require that proposed broadcasts comply with FCC Rules, since liability for incorrect sponsorship identification rests with the licensee. 47 U.S.C. §317.

3/ 47 U.S.C. §317.

4/ 47 C.F.R. §73.1212.

by an announcement to that effect. In addition, any political broadcast matter, or any matter which discusses a controversial issue of public importance, which is furnished to a station as an inducement for broadcast, must contain an announcement that it was furnished and by whom. Such announcement must appear or be heard either at the beginning or at the end of the furnished broadcast matter, except that the sponsorship identification must be given at both the beginning and the end of any such broadcast which exceeds five minutes in length.

3. The Federal Election Campaign Act, as amended, 5/ and the FEC Rules 6/ provide that broadcast communications which expressly advocate either the election or defeat of a "clearly identified" candidate 7/ must announce, in a manner which will give actual notice to the listener or viewer, that the broadcast was authorized by a particular candidate or not authorized by any candidate.

4. The following authorization notices and sponsorship identification announcements, in the situations described, comply with both the FCC and FEC regulations:

I. Broadcast communication which is authorized by and financed (or furnished) by the candidate or the candidate's authorized committee:

(1) "Paid for by [Name of candidate or committee]."

or

(2) "Paid for and authorized by [Name of candidate or committee]."

or

(3) "Sponsored by [Name of candidate or committee]."

or

(4) "Furnished by [Name of candidate or committee]."

5/ 2 U.S.C. §441d.

6/ 11 C.F.R. §110.11.

7/ See 2 U.S.C. §431(q) for definition of "clearly identified" candidate.

NOTE: Where a candidate or his committee is paying for or furnishing broadcast matter, authorization by the candidate is assumed and need not be specifically stated.

II. Broadcast communication which is authorized by the candidate or the candidate's authorized committee, but financed (or furnished) by a third party:

(1) "Paid for by [Name of third party] and authorized by [Name of candidate or committee]."

or

(2) "Sponsored by [Name of third party] and authorized by [Name of candidate or committee]."

or (where appropriate)

(3) "Furnished by [Name of third party] and authorized by [Name of candidate or committee]."

III. Broadcast communication which is financed by a third party 8/ and not authorized by any candidate or any candidate's authorized committee:

(1) "Paid for by [Name of sponsor/payor] and not authorized by any candidate."

or

(2) "Sponsored by [Name of sponsor/payor] and not authorized by any candidate."

or (where appropriate)

(3) "Furnished by [Name of person or group furnishing broadcast] and not authorized by any candidate."

8/ If the third party is a political committee, the name of any connected organization must be included in the Notice. See FEC Notice 1976-55, 41 F.R. 45954 (October 18, 1976), Examples 3 and 5.

5. The following additional announcement is required by the FECA 9/ in any of the above situations if the communication (1) is financed by a political committee and (2) solicits political contributions:

"A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C."

6. The notice requirements of the FECA 10/ and the FEC Rules 11/ supersede and preempt any state statute which attempts to impose additional notices on political advertising by Federal candidates or committees. 12/

7. A copy of this Public Notice is being sent to all broadcast licensees of the FCC. For further information interested parties may contact the FCC at (202) 632-7586 or the FEC at (800) 424-9530.

9/ 2 U.S.C. §435; 11 C.F.R. §102.13.

10/ 2 U.S.C. §§435 and 441d.

11/ 11 C.F.R. §§102.13 and 110.11.

12/ 2 U.S.C. §453; 11 C.F.R. §108.7; FEC Advisory Opinion 1978-24.

## **Federal Communications Commission**

# **Mass Media Services Fee Filing Guide**

**for**

- **Commercial Television Stations**
- **Commercial AM/FM Radio  
Stations**
- **FM/TV Translators and LPTV  
Stations**
- **Auxiliary Services**
- **Cable Television Services**
- **Direct Broadcast Satellites**



## **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 purpose 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.

### **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.

## CABLE TELEVISION RELAY SERVICE (CARS)

A cable television relay service (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.

## CABLE 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; impose additional or different requirements; 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 an exemption from the requirements of the cable system rules or seeking the imposition of special requirements beyond those provided for in the rules.

## DIRECT BROADCAST SATELLITES

The Direct Broadcast Satellite (DBS) Service permits signals transmitted or retransmitted by space stations to be directly received by the public.

### **Footnotes:**

1. *A major change in facilities for TV broadcast stations is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Assignments.*
2. *Our rules define minor changes as any change to authorized facilities other than a major change.*
3. *The Commission may designate a TV application for hearing before an administrative law judge if it is unable to make the requisite finding under Section 309(a) of the Communications Act that the public interest, convenience, and necessity would be served by granting the application. The Commission also must designate for hearing if a substantial and material question of fact is presented. Similarly, applications for construction permits for new TV stations, for major or minor changes in authorized facilities or for renewal of licenses may be designated for hearing before an administrative law judge. Fee is due upon submission of a Notice of Appearance.*
4. *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.*

5. A major change for an AM station includes any request for a construction permit for an increase in power (except for Class IV stations on local channels) or any change in frequency, hours of operation, or station location.
6. A major change for FM stations is any change in frequency or community of license that is in accord with a present allotment contained in the Table of Assignments.
7. Minor changes to AM facilities include installation of a transmitter which has not been authorized for use by a licensed broadcast station; any change in the location, height, or directional radiating characteristics of the antenna or antenna system; any decrease in nominal power of an AM station; and moving the main studio of the AM station to a location outside the principal community, or moving the studio from one location outside the principal community to another such location.
8. Minor changes to an FM facility include any application, other than for a new or major change, to modify the facilities of a currently authorized station.
9. 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.
10. This fee is not applicable to any license modification which may be made without prior authorization from the FCC.
11. This fee is in addition to the \$325 for an AM station license.
12. A major change includes any change in frequency (output channel), or authorized principal community or area.
13. Major changes in facilities for TV translator and LPTV stations include changes in frequency (output channels). Often changes will be considered major only if they result in extending the radiation in any direction beyond that which is already authorized. Such changes may include changes in the transmitting antenna systems including the direction of the radiation, directive antenna pattern or transmission line; changes in antenna height; changes in antenna location exceeding 200 meters; and changes in authorized operating power.
14. The fee of \$75 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 transmitters to accommodate a change in the antenna type or transmission line. These changes can be made without prior authorization from the Commission.
15. An additional fee will be required for each station license even though the applicant may wish to assign or transfer multiple licenses on one application.

*16. A major change includes changes in frequency, antenna system, power, and number of mobiles; relocation of station(s); addition of a base station system; and replacement of equipment.*

*17. 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.*

*18. A major change will be considered as any modification involving a significant, additional use of the orbit/spectrum resource.*



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 at Title 47 of the Code of Federal Regulations (CFR) for application and 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 (See Report and Order on the Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, General Docket Number 86-285, FCC 86-562, adopted December 23, 1986. This decision is published in the *FCC Record* or may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037).

**FEDERAL COMMUNICATIONS COMMISSION  
QUICK REFERENCE CHART**

**FILING APPLICATIONS and PAYMENT OF FEES  
for  
MASS MEDIA SERVICES**

**MAIL ALL APPLICATIONS TO: FEDERAL COMMUNICATIONS COMMISSION**  
1919 M Street, NW  
**OR** Washington, DC 20554-1800

**FILE IN PERSON AT: FEDERAL COMMUNICATIONS COMMISSION**  
1919 M Street, NW  
Room L-18  
Washington, DC

**FOR ASSISTANCE, CALL 202/632-FEES**

**NOTE: MAKE ALL CHECKS PAYABLE TO THE FCC. DO NOT SEND CASH.**

**COMMERCIAL TELEVISION STATIONS**

<b>TYPE OF APPLICATION</b>	<b>FORM #</b>	<b>FEE AMOUNT</b>
NEW TV CONSTRUCTION PERMIT	301	\$ 2,250.00/application
MAJOR CHANGE TO AUTHORIZED FACILITY <sup>1</sup>	301	\$ 2,250.00/application
MINOR CHANGES <sup>2</sup>	301	\$ 500.00/application
HEARING <sup>3</sup> (New and major/minor change comparative construction permit hearings; comparative license renewal hearings)	N/A	\$ 6,000.00/application
NEW LICENSE <sup>4</sup>	302	\$ 150.00/request
LICENSE ASSIGNMENT	314 (long-form)	\$ 500.00/station license
	316 (short-form)	\$ 70.00/station license
TRANSFER OF CONTROL	315 (long-form)	\$ 500.00/station license
	316 (short-form)	\$ 70.00/station license
LICENSE RENEWAL	303-S	\$ 30.00/application



## DO NOT SEND CASH

## COMMERCIAL AM/FM RADIO STATIONS

TYPE OF APPLICATION	FORM #	FEE AMOUNT
NEW AND MAJOR CHANGE CONSTRUCTION PERMITS:		
AM STATION <sup>5</sup>	301	\$ 2,000.00/application
FM STATION <sup>6</sup>	301	\$ 1,800.00/application
MINOR CHANGES:		
AM STATION <sup>7</sup>	301	\$ 500.00/application
FM STATION <sup>8</sup>	301	\$ 500.00/application
HEARING (New and major/minor change comparative construction permit hearings; comparative license renewal hearings)	N/A	\$ 6,000.00/application
NEW LICENSE:		
AM STATION <sup>9</sup>	302	\$ 325.00/application
FM STATION <sup>10</sup>	302	\$ 100.00/application
DIRECTIONAL ANTENNA LICENSE <sup>11</sup> (AM ONLY)	302	\$ 375.00/application
LICENSE ASSIGNMENT	314 (long-form)	\$ 500.00/station license
	316 (short-form)	\$ 70.00/station license
TRANSFER OF CONTROL	315 (long-form)	\$ 500.00/station license
	316 (short-form)	\$ 70.00/station license
LICENSE RENEWAL (AM OR FM)	303-S	\$ 30.00/application

## FM/TV TRANSLATORS and LPTV STATIONS

TYPE OF APPLICATION	FORM #	FEE AMOUNT
NEW and MAJOR CHANGE <sup>12, 13</sup> CONSTRUCTION PERMITS	346	\$ 375.00/application
NEW LICENSE <sup>14</sup>	347	\$ 75.00/application
LICENSE ASSIGNMENT <sup>15</sup>	345, 316	\$ 75.00/station license
TRANSFER OF CONTROL <sup>15</sup>	345, 316	\$ 75.00/station license
LICENSE RENEWAL	348	\$ 30.00/application

**AUXILIARY SERVICES**

TYPE OF APPLICATION	FORM #	FEE AMOUNT
MAJOR ACTION <sup>16</sup>	313	\$ 75.00/application
LICENSE RENEWAL <sup>17</sup>	313-R	\$ 30.00/application

**CABLE TELEVISION RELAY SERVICE (CARS)**

TYPE OF APPLICATION	FORM #	FEE AMOUNT
CONSTRUCTION PERMIT	327	\$ 135.00/application
MODIFICATION	327	\$ 135.00/application
LICENSE ASSIGNMENT	327	\$ 135.00/station license
TRANSFER OF CONTROL	327	\$ 135.00/station license
LICENSE RENEWAL	327	\$ 135.00/application
CABLE SPECIAL RELIEF PETITIONS	N/A	\$ 700.00/filing

**DIRECT BROADCAST SATELLITES**

TYPE OF APPLICATION	FORM #	FEE AMOUNT
AUTHORIZATION TO CONSTRUCT or MAJOR CHANGE <sup>18</sup>	N/A	\$ 1,800.00/request
CONSTRUCTION PERMIT and LAUNCH AUTHORITY	N/A	\$17,500.00/request
LICENSE TO OPERATE	N/A	\$ 500.00/request
HEARING (New and major/minor change comparative construction permit hearings; comparative license renewal hearings)	N/A	\$ 6,000.00/application

# INFORMATION BULLETIN



Federal Communications Commission  
Field Operations Bureau

## Broadcast Service Checklist (AM/FM/TV) FCC Rule Part 73

This document has been prepared to assist you in conducting an inspection of your station prior to an official FCC inspection. You may wish to use this checklist at regular intervals to ensure that your equipment is properly maintained.

The items in this document are not inclusive of all FCC broadcast rules. Rather, they reflect the most common areas where problems occur and for which the FCC may impose a fine.

FO Bulletin No. 18  
November 1987

## CONTENTS

PAGE NUMBER

2

## I. INTERFERENCE

- Operation Within Limits
- Remote Control Operations
- Directional Antennas - Maintenance

3

## II. SAFETY

- Antenna Structures and Lighting
- Fencing Requirements
- Emergency Broadcast System Requirements

4

## III. SERVICE QUALITY

- Technical Parameters
- Modulation

4

## IV. ADMINISTRATIVE AND NON-TECHNICAL

- Operator on Duty
- Designation of Chief Operator
- Posting of Licenses
- Public Inspection File
- Station Logs
- Special Technical Records
- Measurement Records
- Station Identification
- Specifications for Indicator Instruments

- 1 -

## I. INTERFERENCE

RULE REFERENCE	SUGGESTED PROCEDURE
<p>[ ] Operation Within Limits</p> <p>Rules: 73.44, 73.62, 73.317, 73.687 73.1545, 73.1560, 73.1570</p>	<p>Develop consistent measurement intervals to maintain operation within authorized limits of your license for:</p> <ul style="list-style-type: none"> <li>-- operating power</li> <li>-- carrier frequency tolerance</li> <li>-- modulation levels</li> <li>-- spurious or harmonic emission</li> <li>-- directional antenna parameters</li> </ul>
<p>[ ] Remote Control, Automatic Transmission System (ATS) Equipment, Extension Metering</p> <p>Rules: 73.57, 73.1410, 73.1500, 73.1550</p>	<p>Provide contingency plan for continuity of operation by direct control if remote or ATS equipment fails. Calibrate indicators and alarms as required to guarantee proper operation and maintenance of technical parameters. Fail-safe capability to turn off the transmitter is essential.</p>
<p>[ ] Directional Antennas - Maintenance</p> <p>Rules: 73.61, 73.62, 73.1745</p>	<p>Perform proper and timely measurements at monitoring point locations specified in license. Change mode of operation as required and review records to verify proper station operation and power levels in appropriate time periods. Keep AM directional antenna parameters within tolerance.</p>



## II. SAFETY

RULE REFERENCE	SUGGESTED PROCEDURE
<p>[ ] Antenna Structures and Lighting</p> <p>Rule: 73.1213</p>	<p>*Develop a verification process for the status of the antenna structure which includes:</p> <ul style="list-style-type: none"> <li>-- daily observation of lights in accordance with station authorization</li> <li>-- direct an immediate notification to FAA of outage or loss of top beacon</li> <li>-- immediate repair of any defective operation/equipment</li> <li>-- periodic review of condition and color of tower paint.</li> </ul>
<p>[ ] Fencing Requirements</p> <p>Rule: 73.49</p>	<p>Prevent access of unauthorized personnel by providing fence and lock for system's antenna area. Check periodically that neither has been tampered with or damaged.</p>
<p>[ ] Emergency Broadcast System Requirements</p> <p>Rules: 73.932, 73.961, 73.1820</p>	<p>Conduct a random test of the EBS system once a week. More often, verify that the EBS monitor receiver and tone generator are operating and set at proper frequencies. Check EBS test entry logs frequently to determine that test has been conducted and received. Familiarize all station personnel with EBS procedures, location of EBS Checklist and Authenticator Word List. Arrange easy accessibility/availability of documents. Ensure that station name is on FCC's mailing list for semi-annual revision of both lists. Be familiar with your State plan.</p>

\*Bulletin FO-13, Radio Tower Painting and Lighting, contains additional information. Contact the FCC office nearest you.

## III. SERVICE QUALITY

RULE REFERENCE	SUGGESTED PROCEDURE
[ ] Technical Parameters	Monitor equipment as often as necessary to keep parameters within limits. Inspect, adjust or repair equipment frequently to alleviate parameters drifting out of tolerance.
Rules: 73.319, 73.322, 73.682	
[ ] Modulation	Check equipment frequently to ensure that modulation limits, including stereo and subsidiary subcarrier levels, are maintained. Adjust or repair equipment as required.
Rule: 73.1570	

## IV. ADMINISTRATIVE AND NON-TECHNICAL

[ ] Licensed Operator on Duty	Verify that adequately trained and licensed operating personnel are on duty during all periods of operation.
Rule: 73.1860	
[ ] Designation of Chief Operator	Ensure that: position of chief operator is a clear-cut designation; documentation is easily accessible; chief operator is well informed on all aspects of technical operation and condition of transmitting system; and that the chief operator keeps management up-to-date with problems detected, status of repairs, adjustments, as well as any unusual operating procedures to be followed.
Rule: 73.1870	
[ ] Posting of Station and Operator Licenses	Post all required licenses in an easily accessible, highly visible location, visible from the principal control point of transmitter. This helps everyone to be familiar with the terms of licensing.
Rule: 73.1230	

## IV. ADMINISTRATIVE AND NON-TECHNICAL - CONCLUDED

RULE REFERENCE	SUGGESTED PROCEDURE
<input type="checkbox"/> Public Inspection File Rules: 73.3526, 73.3527	Maintain a public inspection file that is complete, current, easily accessible and readily available for inspection by the public, at a permissible location.
<input type="checkbox"/> Station Logs Rules: 73.1800, 73.1820	Maintain an accurate, complete and current station log, and ensure that the log is signed.
<input type="checkbox"/> Special Technical Logs Rule: 73.1835	Maintain an accurate, complete and current record of any interference situation, malfunction of equipment or significant system adjustments, and operating parameters as may be directed by the FCC.
<input type="checkbox"/> Measurement Records Rule: 73.1225	Update and make available antenna resistance or common point impedance measurements and any required equipment performance measurements.
<input type="checkbox"/> Station Identification Rule: 73.1201	Identify station in manner prescribed by rules and as stated in license.
<input type="checkbox"/> Specifications for Indicator Instruments Rule: 73.1215	Verify accuracy of instruments and repair, adjust and replace equipment as necessary.

## FCC OFFICE ADDRESSES

ALASKA, Anchorage Office  
Federal Communications Commission  
6721 West Raspberry Road  
Anchorage, Alaska 99502  
Phone: (907) 243-2153

ARIZONA, Douglas Office  
Federal Communications Commission  
P. O. Box 6  
Douglas, Arizona 85608  
Phone: (602) 364-8414

CALIFORNIA, San Diego Office  
Federal Communications Commission  
4542 Ruffner Street  
Room 370  
San Diego, California 92111-2216  
Phone: (619) 293-5478

CALIFORNIA, Livermore Office  
Federal Communications Commission  
P. O. Box 311  
Livermore, California 94550  
Phone: (415) 447-3614

CALIFORNIA, Long Beach Office  
Federal Communications Commission  
3711 Long Beach Blvd.  
Room 501  
Long Beach, California 90807  
Phone: (213) 426-4451

CALIFORNIA, San Francisco Office  
Federal Communications Commission  
424 Customhouse  
555 Battery Street  
San Francisco, California 94111  
Phone: (415) 556-7701

COLORADO, Denver Office  
Federal Communications Commission  
12477 West Cedar Drive  
Denver, Colorado 80228  
Phone: (303) 236-8026

FLORIDA, Vero Beach Office  
Federal Communications Commission  
P. O. Box 1730  
Vero Beach, Florida 32961-1730  
Phone: (305) 778-3755

FLORIDA, Miami Office  
Federal Communications Commission  
Koger Building, Room 203  
8675 NW 53rd Street  
Miami, Florida 33166  
Phone: (305) 536-5542

FLORIDA, Tampa Office  
Federal Communications Commission  
1211 N. Westshore Blvd.  
Room 601  
Tampa, Florida 33607  
Phone: (813) 228-2872

GEORGIA, Atlanta Office  
Federal Communications Commission  
Massell Building, Room 440  
1365 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
Phone: (404) 347-3084

GEORGIA, Powder Springs Office  
Federal Communications Commission  
P. O. Box 85  
Powder Springs, Georgia 30073  
Phone: (404) 943-5420

HAWAII, Honolulu Office  
Federal Communications Commission  
Waipio Access Road  
P. O. Box 1030  
Waipahu, Hawaii 96797  
Phone: (808) 677-3318

ILLINOIS, Chicago Office  
Federal Communications Commission  
Park Ridge Office Center, Rm 306  
1550 Northwest Highway  
Park Ridge, Illinois 60068  
Phone: (312) 353-0195

LOUISIANA, New Orleans Offices  
Federal Communications Commission  
800 West Commerce St., Room 505  
New Orleans, Louisiana 70123  
Phone: (504) 589-2095

MAINE, Belfast Office  
Federal Communications Commission  
P. O. Box 470  
Belfast, Maine 04915  
Phone: (207) 338-4088

MARYLAND, Baltimore Office  
Federal Communications Commission  
1017 Federal Building  
31 Hopkins Plaza  
Baltimore, Maryland 21201  
Phone: (301) 962-2728

MARYLAND, Laurel Office  
Federal Communications Commission  
P. O. Box 250  
Columbia, Maryland 21045  
Phone: (301) 725-3474

MASSACHUSETTS, Boston Office  
Federal Communications Commission  
NPPA Building  
Battery March Park  
Quincy, Massachusetts 02169  
Phone: (617) 770-4023

MICHIGAN, Allegan Office  
Federal Communications Commission  
P. O. Box 89  
Allegan, Michigan 49010  
Phone: (616) 673-2063

MICHIGAN, Detroit Office  
Federal Communications Commission  
24897 Hathaway Street  
Farmington Hills, Michigan 48331-1398  
Phone: (313) 226-6078

MINNESOTA, St. Paul Office  
Federal Communications Commission  
Federal Building, Room 693  
316 North Robert Street  
St. Paul, Minnesota 55101  
Phone: (612) 290-3710

MISSOURI, Kansas City Office  
Federal Communications Commission  
Brywood Office Tower, Room 320  
8800 East 63rd Street  
Kansas City, Missouri 64133  
Phone: (816) 926-5111

NEBRASKA, Grand Island Office  
Federal Communications Commission  
P.O. Box 1588  
Grand Island, Nebraska 68802  
Phone: (308) 382-4296

NEW YORK, Buffalo Office  
Federal Communications Commission  
1307 Federal Building  
111 W. Huron Street  
Buffalo, New York 14202  
Phone: (716) 846-4511

NEW YORK, New York Office  
Federal Communications Commission  
201 Varick Street  
New York, New York 10014  
Phone: (212) 620-3437

OREGON, Portland Office  
Federal Communications Commission  
1782 Federal Office Building  
1220 S. W. 3rd Avenue  
Portland, Oregon 97204  
Phone: (503) 221-4114

PENNSYLVANIA, Philadelphia Office  
Federal Communications Commission  
One Oxford Valley Office Bldg.  
2300 East Lincoln Highway  
Room 404  
Langhorne, Pennsylvania 19047  
Phone: (215) 752-1324

PUERTO RICO, San Juan Office  
Federal Communications Commission  
Federal Building & Courthouse  
Avenida Carlos Chardon, Room 747  
Hato Rey, Puerto Rico 00918-2251  
Phone: (809) 753-4567

TEXAS, Dallas Office  
Federal Communications Commission  
9330 LBJ Expressway, Room 1170  
Dallas, Texas 75243  
Phone: (214) 767-5690

TEXAS, Houston Office  
Federal Communications Commission  
1225 North Loop West, Room 900  
Houston, Texas 77008  
Phone: (713) 229-2748

TEXAS, Kingsville Office  
Federal Communications Commission  
P. O. Box 632  
Kingsville, Texas 78363-0632  
Phone: (512) 592-2531

VIRGINIA, Norfolk Office  
Federal Communications Commission  
1200 Communications Circle  
Virginia Beach, Virginia 23455-3725  
Phone: (804) 441-6472

WASHINGTON, Ferndale Office  
Federal Communications Commission  
P. O. Box 1125  
Ferndale, Washington 98248  
Phone: (206) 354-4892

WASHINGTON, Seattle Office  
Federal Communications Commission  
One Newport, Room 414  
3605 132nd Avenue, S.E.  
Bellevue, Washington 98006  
Phone: (206) 764-3324



UNITED STATES GOVERNMENT

## memorandum

File 1300

DATE: DEC 16 1985

REPLY TO  
ATTN OF: Chief, Mass Media BureauSUBJECT: Statement of Policy for Field Issuance of Monetary Forfeiture and Other  
Actions in the Broadcast Radio Services

TO: Chief, Field Operations Bureau

This Statement of Policy supercedes the Statement dated February 29, 1984.

Pursuant to Section 0.311(d) of the Commission's Rules, 47 CFR 0.311(d), and the terms and provisions of this policy statement, the Mass Media Bureau (MMB) authorizes the Field Operations Bureau (FOB) to field-issue Notices of Apparent Liability (NALs) and Notices of Forfeiture (NOFs); to take action to mitigate or cancel such forfeitures when appropriate; and to take action, when necessary, to refer forfeitures to appropriate U.S. Attorneys for collection litigation. The scope of this authorization is limited to the issuance of monetary forfeiture and other actions described herein for the violation of Commission rules contained in Rule Parts 73 and 74 concerning the technical operation of broadcast and broadcast-related stations, and for the violation of nontechnical Commission rule sections specifically designated in this policy statement or any addendum thereto. Nothing contained in this policy statement precludes MMB from independently issuing forfeitures or other sanction actions regarding matters covered herein. In the event it takes any such actions, notice will be provided to FOB.

FOB will employ a tiered enforcement sanction program for the violation of rules contained in Commission Rule Parts 73 and 74. A "Notice of Radio Station Conditions," FCC Form 790 (no licensee response required), will be issued for (1) technical matters which do not rise to the level of a rule violation, but have a high probability of becoming a violation or causing a problem if left uncorrected, and for (2) technical rule violations that are minor and have little potential for adverse effect upon others or upon signal quality. An "Official Notice of Violation," FCC Form 793 (licensee response required), will be issued for (1) technical rule violations considered more serious than those for which a Form 790 would be issued, but which are not specifically designated in this policy statement and which do not fall into the general categories of Safety, Interference-Harm Actual/Potential or Service Quality violations, and for (2) any specific technical rule violations designated by MMB for issuance of a Form 793 and subsequent forwarding to MMB for review and final disposition. NALs will be issued for the willful or repeated violation of (1) specific technical rules designated in this policy statement; (2) other technical rules more serious than those for which a Form 790 would be issued and which fall into the general categories of Safety, Interference-Harm Actual/Potential, or Service Quality violations; and (3) the specific administrative and nontechnical rule violations set forth in this policy statement.

OPTIONAL FORM NO. 10  
(REV. 1-80)  
GSA FPMR (41 CFR) 101-11.6  
5010-114

★ GPO : 1983 O - 421-526 (9176)



-2-

Except in cases involving mitigating or egregious circumstances, the monetary amounts of forfeiture actions issued pursuant to this policy statement will be the amounts indicated for the specific rule violations reflected in this statement. With regard to technical rule violations warranting NALs because they fall into the categories of violations set forth in this statement, but which are not specifically identified by rule section number in this statement, monetary amounts, except where unusual circumstances exist, will comply with standard amounts established by FOB for those rule violations. Where a monetary forfeiture amount differs from the established amount for that specific violation due to unusual circumstances, the NAL will be particularized to indicate the normal amount for such violation, the mitigating or egregious circumstances involved, and the fact that such particular mitigating or egregious circumstances justify the lower or higher amount. FOB shall have full authority to take mitigation or cancellation action and to seek collection by U.S. Attorneys with regard to fines imposed pursuant to this policy statement or any addendum thereto. General exculpatory statements commonly made by licensees are not adequate grounds for mitigating, cancelling or refraining from issuing an NAL. For example, statements indicating that the violation has been corrected; that it won't be repeated; or that the licensee is not responsible for the violation are not adequate excuses. A field supervisor should not refrain from issuing, or should not mitigate or cancel an NAL merely because the licensee has been cooperative or the field supervisor has a favorable opinion of the licensee. With regard to a licensee's claim of inability to pay a proposed forfeiture amount due to financial reasons, some substantiating proof must be produced by the licensee before the proposed forfeiture amount will be mitigated or cancelled. Licensees of Part 73 and 74 stations, when responding to NALs, will be required to furnish proof that violations due to equipment malfunctions have been corrected or to state, concerning other types of violations, what steps have been taken to prevent recurrence.

Forfeiture actions that are issued pursuant to the terms and provisions of this policy statement shall not exceed \$10,000 in amount. Any violation or combination of violations that justify the issuance of a NAL for an amount exceeding \$10,000 shall be referred to MMB for appropriate handling. Any violation or combination of violations occurring prior to the field-issuance of a NAL that involves conduct sufficiently egregious to raise serious questions concerning the qualifications of a permittee or licensee to become or remain a licensee of the Commission shall be referred to MMB for appropriate handling.

In the event that a request for higher level review by a licensee is received after issuance of a NAL but prior to issuance of a NOF, such request will be forwarded to the Field Supervisor who issued the NAL and appropriately considered and handled by that supervisor in determining whether or not a NOF should be issued. The licensee involved or its representative will be advised that a higher level review may be sought after determination of whether or not a NOF should be issued in the matter. Petitions for reconsideration by higher level staff of actions taken pursuant to delegated authority concerning forfeiture matters covered by this policy statement shall be handled by the Chief, FOB. Applications for review by the Commission of staff actions taken pursuant to delegated authority concerning forfeiture matters covered by this policy statement shall be referred to and handled by MMB.

-3-

FOB will maintain records of the names and call signs of licensees against whom field-issued forfeitures have been imposed, the rule or Act section or sections violated, the date of the NAL, the date the forfeiture is paid or determined to be uncollectable and the date of notification to the Fiscal Accounting Section per FCC Inst. 1157.1A. A quarterly report containing this information will be furnished to MMB. During interim periods between quarterly reports, information concerning the issuance of forfeitures or Forms 793 for specific broadcast licensees will be furnished to MMB by FOB upon request.

This policy statement will be evaluated and reviewed by MMB and FOB periodically and revised as necessary.

1. Safety

- a. All the tower lights are out, FAA not notified within 30 minutes as required. 17.56, 17.48, (73.1213) (\$2,000)
- b. Majority of tower lights out and/or loss of top flashing beacon, FAA not notified within 30 minutes. 17.56, 17.48 (73.1213) (\$1,000)
- c. Tower lights not observed at least once each 24 hours. 17.47, (73.1213) (\$500)
- d. Temporary warning lights not present/operational during construction. 17.45, (73.1213) (\$1,000)
- e. Tower not properly painted, e.g., not the required color bands. 17.50 (73.1213) (The FAA may be requested to evaluate the matter of safe air navigation prior to issuance of the NAL.) (\$750)
- f. High RF voltage at antenna base, hot base at antenna towers not enclosed, damaged fence allowing entry. 73.49 (\$1,000)
- g. High voltage equipment not protected so as to prevent injury to operating personnel, damaged interlock, exposed wiring. 73.49, 73.317(b) (\$750)
- h. Failure to conduct EBS tests. 73.961 (\$300)
- i. EBS monitor receiver and/or tone generator not operational or not installed. 73.932 (\$1,000)

2. Interference-Harm Actual/Potential

- a. Overpower operation, frequency tolerance, excessive modulation resulting in interference, spurious and/or harmonic emission. E.g., 74.636, 74.661, 73.1560, 73.1545, 73.1570, 73.44, 73.317, 73.687 (\$1,000-\$2,000)

-4-

## Examples:

1. Output power grossly exceeding the authorized power. (\$1,000)
2. Where numerous complaints occur or where deliberate or malicious interference occurs or where significant harm is caused. (\$1,500-\$2,000).
- b. Failure to cease operation by remote control when a malfunction occurs in the remote control system. 73.1410 (\$300)
- c. Failure to ensure correct calibration of remote antenna base, common point, and extension meters, e.g., meter readings are grossly out of tolerance from license parameters. 73.57, 73.1550 (\$300)
- d. AM directional antenna systems tolerance, e.g., base and sample currents are grossly out of tolerance from license parameters. 73.62 (\$600-\$1,500)

## Examples:

1. Discrepancy in AM directional parameters (as evidenced by more than 5% deviation of actual base and antenna monitor currents from licensed values) resulting from significant misreading of meters, e.g., wrong scale (\$600). AM directional parameters grossly exceeding licensed values due to improper equipment installation. (\$1,500)
- e. Failure to make field strength measurements quarterly at the monitoring point locations for stations not having an approved sampling system ( Report and Order, Docket No. 85-90, Effective 1-1-86). 73.61 (\$600)
- f. Terms of authorization, e.g., operating non-directional when directional is required, failure to change power at sunset and sunrise, for an extended period of time. 73.1745 (\$1,000)
- g. Station operating under post-sunset authority. Docket No. 82-538
  1. Operating 50% overpower (\$1,000)
  2. Operating one-half hour or longer after the station was required to sign off under the post-sunset authority. (\$1,000)

3. Service Quality

- a. TV pulse and reference levels (\$500)
- b. FM stereo parameters (\$500)
- c. SCA parameters (\$500)
- d. AM audio performance requirements (\$500)
- e. Excessive AM or FM modulation (\$500)

-5-

4. Administrative and Nontechnical


- a. Failure to maintain or have a complete public inspection file. 73.3526 (\$300)
- b. Failure to have a licensed operator on duty. 73.1860 (\$200)
- c. Willfully or repeatedly incorrect log entries, e.g., readings repetitively logged when the meter is defective. 73.1800 (\$1,000)
- d. The Commission has reduced or eliminated the logging requirements detailed in a Report and Order dated August 12, 1983, Docket No. 82-537. However, it has maintained some logging requirements, and forfeitures will be imposed for failure to log the following:
  - 1. Tower lighting operation. 17.49 (73.1213) (\$300)
  - 2. Experimental Broadcast Stations in Part 74. 74.181 (\$300)
  - 3. AM Broadcast Stations operating without Commission approved antenna sampling systems. 73.1820 (\$600)
  - 4. Situations involving interference or deficient technical operation. FCC may require special technical records to be maintained; as necessary, to resolve special problems. 73.1835, 74.19 (\$600)
  - 5. Tests of the Emergency Broadcast System. 73.1820 (\$300)
- e. Repeated failure to reply with assurance of correction/repair for violations listed on Notice of Apparent Liability. Section 308(b) of the Communications Act of 1934, as amended (\$1,000)
- f. Failure to identify the station in the manner and at the times specified. 73.1201 (\$500)
- g. Minor technical, administrative, and operational rules where the forfeiture penalty will result for repeated violation subsequent to initial violation where Form 790 notification occurred.
  - 1. Failure to have available the EBS checklist. 73.908 (\$300)
  - 2. Failure to have available the EBS authenticator word list. 73.910 (\$300)
  - 3. Defective meters, improper scale/range, all powers. 73.1215 (\$300)
  - 4. Failure to have available a copy of the most recent antenna resistance or common point impedance. 73.1225 (\$500)
  - 5. Station and/or operator(s) license(s) not posted. 73.1230 (\$200)

-6-

6. Failure to designate a chief operator (agreement not available or posted with operator license or in station records).  
73.1870 (\$500)

  
James C. McKinney  
Chief, Mass Media Bureau

NOTED:

  
Richard M. Smith  
Chief, Field Operations Bureau

Date: 12-16-85

**FOR PUBLIC INSPECTION FILE: DO NOT FILE WITH THE FCC****CERTIFICATE OF COMPLIANCE  
WITH PRE- AND POST-FILING ANNOUNCEMENTS**

(Licensee Name), licensee of television station (Call Letters) licensed to (City of License), certifies that it has broadcast pre- and post-filing announcements, on the dates and times set forth below, in compliance with 47 C.F.R. Section 73.3580 of the rules of the Federal Communications Commission.

**Pre-Filing Announcements**

The pre-filing announcement set forth below was broadcast on the following dates and times:

	Date	Time		Date	Time
1.	____/____/____	_____	2.	____/____/____	_____
3.	____/____/____	_____	4.	____/____/____	_____

ON (date of last renewal grant) (call letters) WAS GRANTED A LICENSE BY THE FEDERAL COMMUNICATIONS COMMISSION TO SERVE THE PUBLIC INTEREST AS A PUBLIC TRUSTEE UNTIL (expiration date).\*/

OUR LICENSE WILL EXPIRE ON (date). WE MUST FILE AN APPLICATION FOR RENEWAL WITH THE FCC ON OR BEFORE (first day of fourth full calendar month prior to expiration date). WHEN FILED, A COPY OF THIS APPLICATION WILL BE AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST (period of time covered by the application).

INDIVIDUALS WHO WISH TO ADVISE THE FCC OF FACTS RELATING TO OUR RENEWAL APPLICATION AND TO WHETHER THIS STATION HAS OPERATED IN THE PUBLIC INTEREST SHOULD FILE COMMENTS AND PETITIONS WITH THE FCC BY (first day of last full calendar month prior to the month of expiration).

FURTHER INFORMATION CONCERNING THE FCC'S BROADCAST LICENSE RENEWAL PROCESS IS AVAILABLE AT (location of the station's Public Inspection File (street, city)) OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, DC 20554.

---

\*/ NOTE: Stations which have not received a renewal grant since the filing of their previous renewal application should substitute the following paragraph for the first paragraph in the text:

(Station's call letters) IS LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION TO SERVE THE PUBLIC INTEREST AS A PUBLIC TRUSTEE.



### Post-Filing Announcements

The post-filing announcement set forth below was broadcast on the following dates and times:

	Date	Time		Date	Time
1.	____/____/____	_____	2.	____/____/____	_____
3.	____/____/____	_____	4.	____/____/____	_____
5.	____/____/____	_____	6.	____/____/____	_____

ON (date of last renewal grant) (call letters) WAS GRANTED A LICENSE BY THE FEDERAL COMMUNICATIONS COMMISSION TO SERVE THE PUBLIC INTEREST AS A PUBLIC TRUSTEE UNTIL (expiration date).\*/

OUR LICENSE WILL EXPIRE ON (date). WE HAVE FILED AN APPLICATION FOR LICENSE RENEWAL WITH THE FCC.

A COPY OF THIS APPLICATION IS AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST (period of time covered by the application).

INDIVIDUALS WHO WISH TO ADVISE THE FCC OF FACTS RELATING TO OUR RENEWAL APPLICATION AND TO WHETHER THIS STATION HAS OPERATED IN THE PUBLIC INTEREST SHOULD FILE COMMENTS AND PETITIONS WITH THE FCC BY (first day of last full calendar month prior to the month of expiration).

FURTHER INFORMATION CONCERNING THE FCC'S BROADCAST LICENSE RENEWAL PROCESS IS AVAILABLE AT (location of the station's Public Inspection File (street, city)) OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.

This Certificate of Compliance was placed in the station's public inspection file on (date). This Certificate will be kept in the public inspection file for as long as the renewal application, to which it refers, is retained.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

\*/ NOTE: Stations which have not received a renewal grant since the filing of their previous renewal application should substitute the following paragraph for the first paragraph in the text:

(Station's call letters) IS LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION TO SERVE THE PUBLIC INTEREST AS A PUBLIC TRUSTEE.

SAMPLE QUARTERLY ISSUES/PROGRAMS LIST

Issue	Title	Description	Time	Date	Duration
Energy-- cost to consumers	Five-part series following morning and evening newscasts	The series focused on area prices charged for various heating sources as well as heating outlook for the future, how some families cope with energy bills, and energy-saving tips.	7:24 am 6:24 pm	M-F 1/4- 1/8	Four min. per seg- ment
	"Comment" interview program	Discussion of area energy price out- look with electric company executives, head of local fuel oil dealers associ- ation and director of the welfare assistance office.	9:30 am	1/17	One hour
Effect of lowered federal spending on the area	"Comment" interview program	Interview with Sen. Smith, dis- cussing possible cutbacks in local federally funded programs and how local government and the private sector may make up the difference	9:30 am	2/7	One hour
		Interview with State Sen. Jones and Councilwoman Johnson, who dis- cussed effect on state and local government and efforts to maintain level of service without new taxes	9:30 am	3/14	One hour
	Five-part series following morning and evening newscasts	Series examined how area commu- nities are com- peting for public works funding.	7:24 am 6:24 pm	M-F 2/15- 2/19	Four min. per seg- ment

Issue	Title	Description	Time	Date	Duration
Water purity	"Comment" interview program	Discussion with representatives of a local environ- mental group, who enumerated specific problem areas	9:30 am	2/28	One hour
		Discussion with State Board of Health and local conservation officials.	9:30 am	3/7	One hour
	Five-part series following morning and evening newscasts	Examination of area pollution problems, how they are being treated and the effectiveness of the treatment.	7:24 am 6:24 pm	M-F 3/15- 3/19	Four min. per seg- ment

(Remember, although we have listed three issues, you should place in the public file as many issues as your station has given "significant treatment" during the preceding three months.)



NAB Form PB 12 February 1988

# AGREEMENT FORM FOR POLITICAL BROADCASTS

STATION and LOCATION \_\_\_\_\_ 19\_\_\_\_

I, \_\_\_\_\_ (being)  
(on behalf of) \_\_\_\_\_

a legally qualified candidate of the \_\_\_\_\_ political party for the office of \_\_\_\_\_

in the \_\_\_\_\_ election to be held on \_\_\_\_\_, do hereby request station time as follows:

☐ Length of Broadcast ☐ Hour ☐ Days ☐ Times Per Week ☐ Total No. Weeks ☐ Rate

Date of First Broadcast

Date of Last Broadcast

Total Charges: \_\_\_\_\_

The broadcast time will be used by \_\_\_\_\_  
 I represent that the advance payment for the above-described broadcast time has been furnished by \_\_\_\_\_

\_\_\_\_\_ and you are authorized to announce the program as paid for by such person or entity.  
 The entity furnishing the payment, if other than an individual person, is ( ) a corporation; ( ) a committee;  
 ( ) an association; or ( ) other unincorporated group. The names and offices of the chief executive officers  
 of the entity are: \_\_\_\_\_

It is my understanding that: If the time is to be used by the candidate himself or herself within 45 days of a primary or primary runoff election, or within 60 days of a general or special election, the above charges represent the lowest unit charge of the station for the same class and amount of time for the same period; where the use is by a person or entity other than the candidate or is by the candidate but outside the aforementioned 45 or 60 day periods, the above charges do not exceed the charges made for comparable use of such station by other users.

It is agreed that use of the station for the above-stated purposes will be governed by the Communications Act of 1934, as amended, and the FCC's rules and regulations, particularly those provisions reprinted on the back hereof, which I have read and understand. I further agree to indemnify and hold harmless the station for any damages or liability that may ensue from the performance of the above-stated broadcasts. For the above-stated broadcasts I also agree to prepare a script or transcription, which will be delivered to the station at least \_\_\_\_\_ before the time of the scheduled broadcasts. (Note: the two preceding sentences are not applicable if the candidate is personally using the time.)

Date: \_\_\_\_\_  
 \_\_\_\_\_ (Candidate, Supporter or Agent)

Accepted >  
 Rejected

by \_\_\_\_\_ Title \_\_\_\_\_

This application, whether accepted or rejected, will be available for public inspection for a period of two years in accordance with FCC regulations (Sections 73.3526, 73.3527 and 73.1940(d)).

## LAWS AND REGULATIONS GOVERNING POLITICAL BROADCASTS

From the Communications Act of 1934, as amended:

Section 312 (a) The Commission may revoke any station license or construction permit—

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Section 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

- (1) bona fide newscast,
- (2) bona fide news interview,
- (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

- (1) during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and
- (2) at any other time, the charges made for comparable use of such station by other users thereof.

(c) For the purposes of this section:

- (1) The term "broadcasting station" includes a community antenna television system.
- (2) The terms "licensee" and "station licensee" when used with respect to a community antenna television system, mean the operator of such system.

(d) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

*From the Rules of the Commission Governing Radio Broadcast Services. (The foregoing sections of the Communications Act govern any inconsistencies between the following rules and those sections):*

Section 73.1940. Broadcasts by candidates for public office.

(a) Definitions.

- (1) A legally qualified candidate for public office is any person who:
  - (i) has publicly announced his or her intention to run for nomination or office;
  - (ii) is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and,
  - (iii) has met the qualifications set forth in either paragraphs (a)(2), (3), or (4) of this section.
- (2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (a)(1) above, the person:
  - (i) Has qualified for a place on the ballot, or
  - (ii) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those states or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (a)(1) and (2) of this rule: Except, that any such person who has met the requirements set forth in paragraphs (a)(1) and (2) in at least 10 states (or 9 and the District of Columbia) shall be considered a legally qualified candidate for election in all states, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a)(1) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a)(1) of this section,

- (i) He or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that State, territory or the District of Columbia, or
- (ii) He or she has made a substantial showing of bona fide candidacy for such nomination in that State, territory or the District of Columbia; Except, that any such person meeting the requirements set forth in paragraphs (a)(1) and (4) in at least 10 states (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all states, territories and the District of Columbia for purposes of this Act.

(5) The term "substantial showing" of bona fide candidacy as used in paragraphs (a)(2), (3) and (4) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

(b) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed:

- (1) during the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and
- (2) at any other time, the charges made for comparable use of such station by other users thereof. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.

(3) This paragraph shall not apply to any station which is not licensed for commercial operation.

(c) Discrimination between candidates. In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) Records, inspection. Every licensee shall keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. When free time is provided for use by or on behalf of such candidates, a record of the free time provided shall be placed in the political file. All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. See Sections 73.3526 and 73.3527.

(e) Time of request. A request for equal opportunities must be submitted to the licensee within one week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred: *Provided*, however, that where the person was not a candidate at the time of such first prior use, he shall submit his request within one week of the first subsequent use after he has become a legally qualified candidate for the office in question.

(f) Burden of proof. A candidate requesting equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

*Records, Review of by Broadcast Licensees*

409

F.C.C. 71-205

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re  
LICENSEE RESPONSIBILITY TO REVIEW RECORDS }  
BEFORE THEIR BROADCAST

MARCH 5, 1971.

The Commission, by Commissioners Burch (Chairman), Robert E. Lee, Johnson, H. Rex Lee, Wells and Houser, with Commissioner Johnson dissenting and issuing a statement, Commissioners Robert E. Lee, H. Rex Lee and Houser issuing statements, and Commissioner Bartley abstaining from voting, issued the following PUBLIC NOTICE.

LICENSEE RESPONSIBILITY TO REVIEW RECORDS BEFORE THEIR  
BROADCAST

A number of complaints received by the Commission concerning the lyrics of records played on broadcasting stations relate to a subject of current and pressing concern: the use of language tending to promote or glorify the use of illegal drugs as marijuana, LSD, "speed", etc. This Notice points up the licensee's long-established responsibilities in this area.

Whether a particular record depicts the dangers of drug abuse, or, to the contrary, promotes such illegal drug usage is a question for the judgment of the licensee. The thrust of this Notice is simply that the licensee must make that judgment and cannot properly follow a policy of playing such records without someone in a responsible position (i.e., a management level executive at the station) knowing the content of the lyrics. Such a pattern of operation is clearly a violation of the basic principle of the licensee's responsibility for, and duty to exercise adequate control over, the broadcast material presented over his station. It raises serious questions as to whether continued operation of the station is in the public interest, just as in the case of a failure to exercise adequate control over foreign-language programs.<sup>1</sup>

In short, we expect broadcast licensees to ascertain, before broadcast, the words or lyrics of recorded musical or spoken selections played on their stations. Just as in the case of the foreign-language broadcasts, this may also entail reasonable efforts to ascertain the meaning of words or phrases used in the lyrics. While this duty may be delegated by licensees to responsible employees, the licensee remains fully responsible for its fulfillment.

<sup>1</sup> See Public Notice concerning Foreign Language Programs adopted March 22, 1967, FCC 67-368, 9 R.R. 2d 1901.

28 F.C.C. 2d



410      *Federal Communications Commission Reports*

Thus, here as in so many other areas, it is a question of responsible, good faith action by the public trustee to whom the frequency has been licensed. No more, but certainly no less, is called for.

Action by the Commission February 24, 1971. Commissioners Burch (Chairman), Wells and Robert E. Lee with Commissioner Lee issuing a statement, Commissioners H. Rex Lee and Houser concurring and issuing statements, Commissioner Johnson dissenting and issuing a statement, and Commissioner Bartley abstaining from voting.

**FEDERAL TRADE COMMISSION**

Washington, D.C. 20580  
OFFICE OF INFORMATION

NEWS  
RELEASE

For IMMEDIATE Release on Thursday, July 8, 1965.

**FTC ISSUES STATEMENT REGARDING DECEPTIVE  
CLAIMS OF BROADCAST AUDIENCE COVERAGE**

The Federal Trade Commission today issued the following statement regarding deceptive claims of broadcast audience coverage.

Investigations by Congress and by the Commission have disclosed widespread misuse of audience survey results, use of unreliable survey data, and tampering with and distortion of survey results, which has resulted in deception as to the size, composition, and other characteristics of radio and television audiences. These matters are of course important to advertisers in these media.

The Commission believes that, to avoid such deception, television and radio broadcasters, other persons selling advertising or broadcasting time or programs, advertising agencies, and advertisers should, in making claims based on survey results or data, observe the following basic guidelines.

1. A person (or firm) making a claim concerning the size, composition or other important characteristics of a listening or viewing audience is responsible for seeing to it that the claim is truthful and not deceptive. If he bases his claim on the results of an audience survey, he assumes responsibility for interpreting the data accurately. Thus, he should not engage in activities calculated to distort or inflate such data—for example, by conducting a special contest, or otherwise varying his usual programming, or instituting unusual advertising or other promotional efforts, designed to increase audiences only during the survey period. Such variation from normal practices is known as "hyponing."

It is also improper to cite or quote from a survey report or survey data in such a way as to create a misleading impression of the results of the survey, as by unfairly basing audience claims on results achieved only during certain periods of the broadcast day or on a survey of only a segment of the total potential audience.

2. Audience data are based on sample surveys not derived from complete measurements of audiences. As such, they are statistical estimates, and, at best, are of only limited reliability due to errors and distortions inherent in the statistical methods yielding such data. Claims as to audience coverage based on audience surveys should therefore be qualified in recognition of the fact that survey data are inherently imperfect. Any such claim should be accompanied by a disclosure that any figures cited or quoted are estimates only or are based upon estimates, and are not accurate to any precise mathematical degree unless based upon a true probability sample. Audience surveys are not in practice based upon true probability samples.

3. Such claims should not be based on data obtained in a survey that the person (or firm) making the claim knows or has reason to know was not designed, conducted, and analyzed in accordance with accepted statistical principles and procedures, reasonably free from avoidable bias, and based

on a properly selected sample of adequate size. Such claims should not be based on survey reports or data that do not reliably reflect current audience coverage, either because the passage of time has made the data outdated, or because a later survey report encompassing essentially the same area has been published, or because of the entry or departure of a competitor, or for any other reason.

These guidelines are offered to broadcasters and others concerned for consideration in avoiding possible violation of the Federal Trade Commission Act.

EXAMPLES OF PAYOLA

1. An announcer accepts money, food payments on his car, or other benefits in exchange for an understanding that he will play certain records in his programs and this fact is not disclosed prior to the broadcast of such records.
2. An announcer makes a recording for a fee and royalties with the understanding that the record will be played over the station and this fact is not disclosed prior to the broadcast.
3. An announcer participates in outside activities such as dances or other entertainment, either as a financial backer or a paid performer. In order to increase his income from the event or to insure its success so he will be called upon for other performances, he broadcasts promotional announcements for the event without disclosing his involvement to the public.
4. A station licensee's outside activities includes the ownership of a theatre. A record distributor offers the services of a band, for free, in exchange for heavy promotion of the band's appearance. The licensee broadcasts promotional announcements for the event without identifying either the record distributor's participation or the licensee's involvement to the public.
5. As to outside interests, the Commission has stated:  
"Even suggestions to employees by the president of the licensee regarding selection of records published by firms controlled by him may lead to increased play of the record and thus serve the private interest and contravenes the Commission's expressed policies in this area."



SUGGESTED GUIDELINES FOR DEALINGS WITH  
RECORD COMPANIES AND RECORD PROMOTERS

1. When a radio station requests a bulk supply (over 10 copies) of recordings of a given title intended for contests, giveaways or other station promotions, it will provide a management-signed letter acknowledging acceptance and expected use of such bulk supply. This procedure will apply whether recordings are purchased or bartered for commercial time.
2. Review recordings accumulated by a radio station will be controlled by management to prevent resale, and such resale is not authorized. Such accumulated recordings either will be destroyed once retention is no longer desired or will be itemized, receipted, and given to charitable, educational or other institutions with written acknowledgement that the recordings are not to be sold or bartered.
3. The maximum number of copies of free recordings of a given title to be provided for a radio station will be established by the station management and will be limited and intended only for employees involved in music programming.
4. Station management is encouraged to periodically review what has been played, how often and why. Proper criteria for determining record selection should be established, and there should be periodic review to assure staff compliance with the criteria.
5. Radio stations are encouraged to maintain a regular log showing names of all individuals visiting the station or station personnel for music promotion or program purposes; log will show name, company affiliation, company(s) represented and whom contacted.
6. Radio station management shall require an employee to report his management any offer or solicitation of a bribe.





MEMORANDUM TO EMPLOYEES

This Memorandum concerns Sections 317 and 507 of the Communications Act of 1934, as amended. The issuance of this memorandum does not mean that we believe that there have been infractions of the law; we simply wish to remind all personnel of their obligations under the law and under the policies adopted by the Company.

Your obligations under Sections 317 and 507, and our Company's policy, can be stated very simply:

EVERY EMPLOYEE IS PROHIBITED FROM ACCEPTING ANY MONEY, SERVICE OR OTHER VALUABLE CONSIDERATION FROM ANY PERSON OTHER THAN THE COMPANY FOR BROADCASTING ANY MATERIAL OVER THE STATION.

EVERY EMPLOYEE HAVING ANY VOICE IN THE SELECTION OF BROADCAST MATTER IS PROHIBITED FROM (a) ENGAGING IN ANY OUTSIDE BUSINESS OR ECONOMIC ACTIVITY WHICH WOULD CREATE A CONFLICT OF INTEREST IN THE SELECTION OF BROADCAST MATTER; (b) ACCEPTING ANY FAVORS, LOANS, ENTERTAINMENT OR OTHER CONSIDERATION FROM PERSONS SEEKING THE AIRING OF ANY BROADCAST MATTER IN RETURN THEREFOR; AND (c) PROMOTING OVER THE AIR (EXCEPT BY MEANS OF AN APPROPRIATE COMMERCIAL ANNOUNCEMENT) ANY ACTIVITY OR MATTER IN WHICH THE EMPLOYEE HAS A DIRECT OR INDIRECT FINANCIAL INTEREST.

Your attention is also directed to the fact that Section 507 of the Communications Act of 1934, as amended, makes it a criminal offense, subject to a fine of not more than \$10,000 or imprisonment of not more than one year, or both, if any employee fails to disclose to the Company any acceptance or agreement to accept from any person other than the Company, any money, service or other valuable consideration for the broadcast of any material over the station.

Attached to this memorandum is an affidavit which you should execute after reading it and the attached copies of Sections 317 and 507 of the Communications Act of 1934, the FCC's sponsorship identification rule (Section 73.1212) and the 36 interpretations of the applicability of the sponsorship identification rules released by the Commission in May of 1963 and April of 1975.

AFFIDAVIT

I, \_\_\_\_\_ having first been duly sworn, hereby state that I have read and will comply with the provisions of Section 317 and 507 of the Communications Act of 1934, as amended, copies of which are attached hereto. I fully understand that any person who violates Section 507 of the Act is subject to the penalties set forth in Section 507(g), consisting of a fine up to \$10,000 imprisonment up to one year, or both. I also have read and will comply with the provisions of the Commission's Sponsorship Identification Rule (73.1212), a copy of which is attached hereto.

I also have read the attached FCC Public Notice of September 3, 1975 which sets forth the Commission's 36 interpretations of Section 317 and Rule 73.1212.

I also will comply with the policy of the Company to prohibit every employee having any voice in the selection of broadcast matter from (a) engaging in any outside business or economic activity which would create a conflict of interest in the selection of broadcast matter; (b) accepting any favors, loans, entertainment or other consideration from persons seeking the airing of any broadcast matter in return therefor; and (c) promoting over the air (except by means of an appropriate commercial announcement) any activity or matter in which the employee has a direct or indirect financial interest.

---

Affiant

Subscribed and sworn to before  
me this \_\_\_\_ day of \_\_\_\_\_,

My commission expires:

\_\_\_\_\_  
Notary Public

## ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST

SEC. 317. (a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: Provided, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) In any case where a report has been made to a radio station, as required by section 507 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.





## DISCLOSURE OF CERTAIN PAYMENTS

SEC. 507\* [47 U.S.C. § 508] (a) Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d), an announcement is not required to be made under section 317.

(e) The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

(f) The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Any person who violates any provisions of this section shall, for each such violation, be fined not more than \$10,000 or imprisoned not more than one year, or both.\*\*

\*Section 507 was formerly numbered Section 508. It was redesignated as section 507 of Public Law 96-507, 94 Stat. 2747, Dec. 8, 1980. This section was added by Public Law 86-752, 74 Stat. 889, Sept. 13, 1960. See also note 234.

\*\*This section was added by Public Law 86-752, approved September 13, 1960, 74 Stat. 889.

## MEMORANDUM TO STAFF

### Re: Public Inspection File

Section 73.3526 of the FCC's Rules and Regulations provides that each broadcast station shall maintain a public file either at the main studios of the station or at any accessible place in the community in which the station is licensed. Such public file must be made available for inspection at any time during regular business hours.

The Commission has ruled that the public file shall be made available on request to anyone without appointment or without identifying the particular document they wish to inspect. Because the public file contains many documents, it will be permissible to ask the person requesting the file: "Is there any specific part of the file you would like to see?" If the person then identifies a specific part of the file, his or her request should be honored. If the person says "No, I would like to see the public file," he or she must be allowed to review the entire file. The FCC has ruled that it is not necessary for anyone inspecting the file to identify the document they wish to review.

On receipt of any inquiries for the public file, the following procedures should be taken:

1. Have an inspection form (giving the name and address of the person inspecting the public file) filled out.\* (The inspection form also may include a space for "Organization." However, the person filling out the form cannot be *required* to put anything in this space.)
2. Provide a conference room or other area for the inspection (remember, no advance appointment is needed to inspect the public file).
3. Refer any questions concerning the station's policies and practices to the Station Manager.
4. Deliver to the Station Manager a copy of the inspection form.

**REQUEST TO  
EXAMINE LOCAL  
PUBLIC INSPECTION FILE**

Request is hereby made by:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_

PHONE: \_\_\_\_\_

to examine documents which are contained in station \_\_\_\_\_'s  
public inspection file, pursuant to Section 73.3526 of the rules of the Federal  
Communications Commission.

OPTIONAL: If there are specific documents which are desired for inspection,  
please identify them below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_

## REQUEST FOR REPRODUCTION OF PUBLIC FILE MATERIALS

\_\_\_\_\_  
Request Date

Please reproduce the following described materials from your public file:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total No. of Pages \_\_\_\_\_

I hereby agree to pay you at the rate of \_\_\_\_\_ cents per page at the time I place my order for duplication. It is understood that I will be called as soon as the material is ready to be picked up by me.

Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Telephone No. \_\_\_\_\_





## EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

**1 EMPLOYEE INFORMATION AND VERIFICATION:** (To be completed and signed by employee.)

Name: (Print or Type) Last	First	Middle	Birth Name
Address: Street Name and Number	City	State	ZIP Code
Date of Birth (Month/Day/Year)		Social Security Number	

I attest, under penalty of perjury, that I am (check a box):

- ☐ 1. A citizen or national of the United States.
- ☐ 2. An alien lawfully admitted for permanent residence (Alien Number A \_\_\_\_\_).
- ☐ 3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A \_\_\_\_\_ or Admission Number \_\_\_\_\_, expiration of employment authorization, if any \_\_\_\_\_).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature	Date (Month/Day/Year)
-----------	-----------------------

PREPARER/TRANSLATOR CERTIFICATION (To be completed if prepared by person other than the employee). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature	Name (Print or Type)
Address (Street Name and Number)	City State Zip Code

**2 EMPLOYER REVIEW AND VERIFICATION:** (To be completed and signed by employer.)

## Instructions:

Examine one document from List A and check the appropriate box, OR examine one document from List B and one from List C and check the appropriate boxes. Provide the **Document Identification Number** and **Expiration Date** for the document checked.

List A Documents that Establish Identity and Employment Eligibility	List B Documents that Establish Identity	and	List C Documents that Establish Employment Eligibility
<input type="checkbox"/> 1. United States Passport <input type="checkbox"/> 2. Certificate of United States Citizenship <input type="checkbox"/> 3. Certificate of Naturalization <input type="checkbox"/> 4. Unexpired foreign passport with attached Employment Authorization <input type="checkbox"/> 5. Alien Registration Card with photograph <b>Document Identification</b> # _____ <b>Expiration Date (if any)</b> _____	<input type="checkbox"/> 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State) _____ <input type="checkbox"/> 2. U.S. Military Card <input type="checkbox"/> 3. Other (Specify document and issuing authority) _____ <b>Document Identification</b> # _____ <b>Expiration Date (if any)</b> _____	<input type="checkbox"/> 1. Original Social Security Number Card (other than a card stating it is not valid for employment) <input type="checkbox"/> 2. A birth certificate issued by State, county, or municipal authority bearing a seal or other certification <input type="checkbox"/> 3. Unexpired INS Employment Authorization Specify form # _____ <b>Document Identification</b> # _____ <b>Expiration Date (if any)</b> _____	

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and to relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature	Name (Print or Type)	Title
Employer Name	Address	Date

## Employment Eligibility Verification

**NOTICE:** Authority for collecting the information on this form is in Title 8, United States Code, Section 1324A, which requires employers to verify employment eligibility of individuals on a form approved by the Attorney General. This form will be used to verify the individual's eligibility for employment in the United States. Failure to present this form for inspection to officers of the Immigration and Naturalization Service or Department of Labor within the time period specified by regulation, or improper completion or retention of this form, may be a violation of the above law and may result in a civil money penalty.

### Section 1. Instructions to Employee/Preparer for completing this form

#### *Instructions for the employee.*

All employees, upon being hired, must complete Section 1 of this form. Any person hired after November 6, 1986 must complete this form. (For the purpose of completion of this form the term "hired" applies to those employed, recruited or referred for a fee.)

All employees must print or type their complete name, address, date of birth, and Social Security Number. The block which correctly indicates the employee's immigration status must be checked. If the second block is checked, the employee's Alien Registration Number must be provided. If the third block is checked, the employee's Alien Registration Number *or* Admission Number must be provided, as well as the date of expiration of that status, if it expires.

All employees whose present names differ from birth names, because of marriage or other reasons, must print or type their birth names in the appropriate space of Section 1. Also, employees whose names change after employment verification should report these changes to their employer.

All employees must sign and date the form.

#### *Instructions for the preparer of the form, if not the employee.*

If a person assists the employee with completing this form, the preparer must certify the form by signing it and printing or typing his or her complete name and address.

### Section 2. Instructions to Employer for completing this form

(For the purpose of completion of this form, the term "employer" applies to employers and those who recruit or refer for a fee.)

Employers must complete this section by examining evidence of identity and employment eligibility, and:

- checking the appropriate box in List A *or* boxes in both Lists B and C;
- recording the document identification number and expiration date (if any);
- recording the type of form if not specifically identified in the list;
- signing the certification section.

**NOTE: Employers are responsible for reverifying employment eligibility of employees whose employment eligibility documents carry an expiration date.**

Copies of documentation presented by an individual for the purpose of establishing identity and employment eligibility may be copied and retained for the purpose of complying with the requirements of this form and no other purpose. Any copies of documentation made for this purpose should be maintained with this form.

Name changes of employees which occur after preparation of this form should be recorded on the form by lining through the old name, printing the new name and the reason (such as marriage), and dating and initialing the changes. Employers should not attempt to delete or erase the old name in any fashion.

### **RETENTION OF RECORDS.**

The completed form must be retained by the employer for:

- three years after the date of hiring; or
- one year after the date the employment is terminated, whichever is later.

Employers may photocopy or reprint this form as necessary.







## Counsel from the Legal Department

# Keeping Those Big Trucks Rolling

## More Requirements for Heavy Station Vehicles

L-722

### Summary

*In 1986, NAB prepared a Counsel Memo, L-614, outlining driving time limits and daily record requirements for heavy station vehicles. There are other requirements beyond hours and logging which broadcasters may need to follow. This memo discusses these other requirements and those covered in L-614.*

Broadcasters who use trucks or vans for remote broadcasting, satellite news gathering, engineering or other operations requiring the transportation of heavy equipment, should be aware of the Department of Transportation ("DOT") regulations regarding driver qualifications and behavior, driver operating hours, daily records of driver duty status and inspection and maintenance of motor vehicles. The regulations apply to all motor carriers which have a gross weight in excess of 10,000 pounds. Broadcasters would apparently qualify as a "private motor carrier," which is defined at 49 C.F.R. §390.33(b) as a person who "transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee or bailee, when such transportation is...in furtherance of any commercial enterprise." While the federal regulations govern interstate commerce, nearly all the states have adopted them through the Motor Carrier Safety Assistance Program of 1984. Therefore, the regulations are applicable to virtually all

broadcasters.

Although many of these regulations are safety measures originally established with long-distance truckers in mind, Federal Highway Administration ("FHWA") officials say that vehicle operators in broadcasting and other industries are also subject to the regulations. Waivers are generally not granted. In addition, some states have enacted tougher laws than the federal regulations. In those instances, the state law supercedes the federal regulation.

### Drivers

**Qualifications.** The FHWA requires that all drivers of heavy vehicles must be at least 21 years old, be able to read and speak the English language, have a valid motor vehicle operator's license or permit for the class of vehicle to be operated, have successfully completed a road test (see 49 C.F.R. §391.31(c)) and taken a written FHWA rules examination conducted by the employer, and complete an employment application and furnish the required information to the employer. Copies of the written examination may be obtained by writing to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. The written exam need not be given if the driver has a valid certificate of written examination (see 49 C.F.R. §391.35(h)) issued within the past three years. The road test can be omitted if such a test is given as part of the licensing process or if the driver has a valid certificate of road test (see 49

C.F.R. §391.31(f)) issued within the past three years. Nevertheless, a copy of the certificates must be kept in the driver's personnel file, and if you have issued the certificate(s), the original(s) must be kept in the file and a copy given to the driver.

The application must include at least the following information: name and address of the employing motor carrier; applicant's name, address, date of birth and social security number; addresses at which the applicant has resided during the preceding three years; the date on which the application is submitted; the issuing state, number and expiration date of all valid motor vehicle licenses or permits issued to the applicant; the nature and extent of the applicant's experience in the operation of motor vehicles (including types of equipment operated); a list of all motor vehicle accidents in which the applicant has been involved during the preceding three years, specifying the date and nature of the accident and any fatalities or personal injuries caused; a list of all motor vehicle violations (other than parking) of which the applicant was convicted or forfeited bond or collateral during the preceding three years; a statement setting forth the facts and circumstances of any denial, revocation or suspension of any motor vehicle operator's license or permit issued to the applicant, or a statement that no such denial, revocation or suspension has occurred; and a list of the names and addresses of the applicant's previous employers for the preceding three years together with



dates employed and reasons for leaving. In addition, the following certification and signature line must appear at the end of the application and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are complete and true to the best of my knowledge.

(Date) (Applicant's Signature)

Before the application is submitted, the employer shall inform the applicant that the information provided will be used, and the employers listed will be contacted, for the purpose of investigating the applicant's background. The driver must also have a current or valid Medical Examiner's Certificate (see 49 C.F.R. §391.43(e)). To obtain such a certificate, the driver must undergo a physical examination (see 49 C.F.R. §391.43(c)) by a licensed doctor of medicine or osteopathy and be determined to be fit to drive. The Certificate confirms that the driver is mentally and physically sound, has suffered no loss of foot, leg, hand or arm, or has no other impairment which will interfere with safe driving, is able to distinguish colors red, green and yellow, has eyesight of at least 20/40 in each eye, with corrective glasses or contacts if necessary, and has good hearing. If contacts are used, the driver must carry a spare lens or set of lenses. If a hearing aid is used, it must be in operation while driving and the driver must carry a spare power source while driving. Drivers must be examined and certified every two years and reexamined following any physical or mental injury or disease which prevents performance of normal duties. Waivers are granted for some physical impairments; contact your FHWA Regional Office for further details.

When applying for employment, the applicant must furnish the employer with a list of traffic violations (other than parking) within the preceding three years or certify that there were none. The driver must also furnish annually to the employer a list of all violations of motor vehicle traffic laws (other than parking) during the preceding 12 months for which the driver has been convicted or forfeited bond or collateral (see 49 C.F.R.

§391.27(c)). The employer must review the driver's driving record once every 12 months to determine whether minimum requirements for safe driving are met or whether the driver should be disqualified.

Drivers also must be able to determine whether the cargo transported has been properly located, distributed and secured, and must be familiar with proper blocking, bracing and other securing techniques.

**Disqualification.** A person may be disqualified as a driver of a commercial vehicle if the person has been convicted of or has forfeited bond or collateral for a disqualifying offense that takes place while driving a truck or a bus for a motor carrier after December 31, 1970. Disqualifying offenses include: (1) Operating a motor vehicle while under the influence of alcohol, an amphetamine, a narcotic drug, a formulation of an amphetamine or a derivative of a narcotic drug; (2) A crime involving the knowing transportation, knowing possession or unlawful use of amphetamines, a narcotic drug, a formulation of an amphetamine or a derivative of a narcotic drug; (3) Leaving the scene of a fatal or personal injury accident; or (4) A felony involving use of a motor vehicle. A first offender is disqualified from driving for one year. A driver convicted of or forfeiting bond or collateral for another disqualifying offense within the last three years is prohibited from driving for three years.

In addition, a driver may not drive during the period that any license, permit or privilege to operate a motor vehicle has been suspended, revoked, withdrawn or denied by any state. A driver receiving notice of revocation, suspension or withdrawal of license must notify the employer before the end of the next business day.

**Time Limits and Duty Status Records.** As set forth in the DOT regulations, the driving time limitation prohibits the driver of a vehicle subject to the regulations from driving more than ten hours following at least eight consecutive hours off duty. In addition, it prohibits any driving after the vehicle operator has been on duty 15 hours following eight consecutive off-duty hours.

While the regulations will have little effect on drivers who merely transport others to a remote site, and are themselves off-duty while at the site, operators on very long hauls or who must work at their remote destinations should be mindful of the time ceilings.

In addition to adhering to the driving time limitations, every motor carrier subject to these regulations must require the driver to record his or her duty status, in duplicate, for each 24-hour period. The record is required on any day that the driver travels beyond a 100 air-mile radius of the normal work location. If the driver operates entirely within that radius, the driver need keep only a "time card" with sufficient information to indicate that the driver has been operating within that parameter.

The specific requirements regarding the record of duty status, including examples of the type of grid that must be used and a variety of information that must be included on a form attached to the grid, are set forth in the DOT regulations (49 C.F.R. §395.8). In general, the duty status must be recorded as follows:

1. "Off duty" or "OFF";
2. "Sleeper berth" or "SB" (if a sleeper berth is used);
3. "Driving" or "D"; and
4. "On-duty not driving" or "ON."

The record of each change of duty status (e.g., reporting for work, starting to drive, and being released from work) must include the name and state of the city, town or village where the change occurs.

A carrier that is found in violation of the record-keeping requirement may be fined up to \$500 per violation. In addition, the vehicle or the vehicle operator may be placed "out of service" for eight consecutive hours. For each driving time violation, the carrier may be fined up to \$1000. Furthermore, a violation of the driving time limitations sufficiently serious to cause injury or death, or a pattern of violations of either regulation, could subject the carrier to a fine of up to \$10,000.

**Other Obligations.** All drivers must know and obey these rules at all times: (1) All state and local laws must be obeyed unless they conflict with specific FHWA regulations which im-

pose greater obligations or restraint; (2) Never drive while ill or fatigued; (3) Don't drive while in possession or under the influence of any drug (including prescription drugs) which may render you incapable of safely operating a motor vehicle; and (4) Do not drive while in possession of any intoxicating liquor (including beer) or if you have consumed or been under the influence of any intoxicating liquor (including beer) within four hours of going on duty.

All drivers must check the vehicle and its equipment (including emergency equipment) before starting. This includes a check of lights, four-way flashers, tires and rims, engine oil, radiator, steering, gear box, wipers, rear-view mirrors and brakes. Safety equipment should include a fire extinguisher, flares, safety reflectors, tire chains (if applicable), and any other equipment required by state law.

Before driving, the driver must: (1) be satisfied that the motor vehicle is in safe operating condition; (2) review the last vehicle inspection report required to be carried in the power unit; and (3) sign the report, only if defects or deficiencies were noted by the driver who prepared the report, to acknowledge that the driver has reviewed it and that there is a certification that the required repairs have been performed. The signature requirement does not apply to listed defects on a towed unit which is no longer part of the vehicle combination. After being signed, the previous vehicle inspection report must be carried in the cab during the shift and should be provided to any FHWA inspector on request. At the end of the shift the previous inspection report can be removed from the cab. The cab copy of the vehicle inspection report need not be retained for the FHWA 90-day requirement.

Repairs to items that would likely affect safety of operations must be made prior to a driver operating a motor vehicle. If the motor carrier (or his agent) fails to certify that the repairs were made or that no repairs were necessary for a previously identified vehicle defect, the driver is prohibited from operating the motor vehicle.

#### Emergency Rules

In case of an emergency, stop or park the vehicle off the traveled part

of the roadway. If impracticable, leave as much roadway width as possible. Be sure the vehicle is visible both to the front and rear as possible. If stopped on the traveled part or shoulder of the roadway, immediately turn on the four-way flashers and keep them on at least until warning devices have been placed. As soon as possible, but no more than ten minutes, after stopping on the traveled part or shoulder of the roadway, place three pot torches, or three red electric lanterns, or three red emergency reflectors, or three red emergency reflective triangles as follows: one at the traffic side of the stopped vehicle within ten feet of the front or rear of the vehicle; one approximately 100 feet (35 paces) in front and rear of the vehicle in the center of the traffic lane or shoulder occupied by the vehicle. If the vehicle is equipped with pot torches, first place a fusee at the traffic side of the stopped vehicle within ten feet of the front or rear of the vehicle before placing the pot torches.

If lights are not required (e.g., during daylight hours), three red reflective emergency triangles should be placed as outlined above, or use two red flags placed on the traffic side of the stopped vehicle within ten feet of the front and rear of the vehicle.

Warning devices are required in business or residential districts only when lighted lamps are required and when the street lighting is not bright enough to allow the vehicle to be seen from a distance.

If within 500 feet of a curve, hill or other obstruction, place one of the emergency signals in a way to give ample warning between 100 and 500 feet from the vehicle.

If disabled in the roadway of a divided or one-way highway, place: one emergency signal on the traffic side and at least ten feet to the rear of the vehicle; one emergency signal in the center of the lane blocked by the vehicle and approximately 100 feet to the rear of the vehicle; and one emergency signal in the center of the lane blocked by the vehicle and approximately 200 feet to the rear of the vehicle.

Be extremely careful in using flame producing warning signals if there are any leaks of gasoline or other flammable liquids or gases. Never attach a lighted flame producing warning

signal to any part of the vehicle. Make sure four-way flashers are in use while picking up warning devices before moving the vehicle.

#### "Rules of the Road"

Many of the federal "Rules of the Road" have been codified with minor changes by state legislatures. They deal with use of headlamps, proper securing of cargo, safely approaching railroad crossings and drawbridges, use of turn signals and parking brakes, proper fueling procedures, and prohibitions against unauthorized drivers, passengers in the closed body of the vehicle, operation of open flame heaters while the vehicle is in motion, and coasting. These can be easily found in the rules supplied by your state department of motor vehicles.

However, three federal rules deserve special attention. The first prohibits placement of television receivers so that they are visible by the driver while operating the vehicle. The sets, if in the cab, must be behind the driver's seat and at a point where the driver cannot operate the controls without getting out of the seat. Some states have prohibited use of television receivers in truck cabs.

The second requires that seat belts be properly fastened before starting to drive. This means that although your state may not have a seat belt law, persons driving a vehicle over 10,000 pounds must wear a seat belt while the vehicle is in motion.

The third involves the exhaust system. Where an occupant has been affected by carbon monoxide, carbon monoxide has been detected in the vehicle or a condition has been discovered that might result in carbon monoxide danger to the occupants, necessary repairs should be made before anyone is allowed to drive or occupy the vehicle.

#### Accidents

If involved in an accident, the driver should: (1) stop immediately; (2) take all necessary precautions to prevent further accidents at the scene; (3) assist injured persons (do not move them unless necessary to get them out of a place of danger); and (4) give name and address, employer's name and address, and the vehicle's license number to any person demanding this information. The driver should also



show his operator's license if requested. If the vehicle hits an unattended vehicle and the driver is unable to locate the struck vehicle's driver or owner, the driver's and the employer's name and address should be placed securely in a conspicuous place on the other vehicle.

Accidents involving death of a human being, bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene, or total property damage of \$4,400 or more based on actual costs or reliable estimates, must be reported to the FHWA. Fatal accidents must be reported within 24 hours, either in person or by telephone, to the appropriate FHWA Regional Office. This report must include the date and time of the accident, location of the accident, name of the motor carrier involved, number of persons killed, number of persons injured, estimate of total property damage, number and type of vehicles involved, a very brief description of the accident, the name of the person making the report, and a telephone number where the person making the report can be reached.

Within 30 days after a motor carrier learns or should have learned that a reportable accident occurred, the motor carrier must file with the FHWA Regional Office an original and two copies of Form MCS 50-T in the case of a property damage accident or Form MCS 50-B in the case of a personal injury accident. These forms are available for a fee from the Superintendent of Documents, Washington, D.C. 20402. If a person dies as a result of and within 30 days of a reportable accident and the motor carrier has filed the report, the motor carrier must send a written notice to the FHWA Regional Office before the close of the next business day after the carrier learns of the death.

All records and information pertaining to an accident must be made available to FHWA investigators. If the FHWA makes an inquiry in connection with a study of accidents, the motor carrier must respond within 15 days unless otherwise specified and provide a full, true and correct answer to all questions.

#### **Inspection, Maintenance and Repair**

FHWA regulations require that all motor vehicles subject to the owner's

control must be systematically inspected, repaired and maintained. Any motor vehicle discovered to be in an unsafe condition while being operated on the highway may continue in operation only to the nearest place where repairs can be safely effected and only if continued operation is less a public hazard than permitting the vehicle to remain on the highway. Any vehicle which is marked with an FHWA "out of service" sticker cannot be driven until all required repairs are made. The sticker cannot be removed until all required repairs are made. The driver of any motor vehicle receiving a "Driver-Equipment Compliance Check" (Form MCS-63) must deliver it to the vehicle's owner. If the driver will not arrive within 24 hours, the driver must mail the report to the owner.

**Inspection Reports.**<sup>1</sup> At the completion of each day's work, the driver is required to prepare a report in writing identifying the motor vehicle and listing any defect or deficiency discovered which would affect safety of operation of the motor vehicle or result in its mechanical breakdown. The report shall cover at least the following parts and accessories: service brakes including trailer brake connections; parking (hand) brake; steering mechanism; lighting devices and reflectors; tires; horn; windshield wipers; rear vision mirrors; coupling devices; wheels and rims; and emergency equipment.

If no defects are discovered by or reported to the driver, the report(s) shall indicate no defects. In all instances, the driver is required to sign the vehicle inspection report. On two-driver operations, only one driver must sign the report, provided both drivers agree as to the defects or deficiencies. A driver who operates more than one vehicle during a work day must file a report for each vehicle.

A driver dispatched on a trip of more than one day may submit a daily vehicle inspection report for each day to the operator upon the driver's return. This does not relieve the operator of its responsibility to repair any safety related defects identified on any vehicle inspection report. If a driver repairs a motor vehicle enroute, that driver as the operator's agent may certify on the vehicle condition report that the required repair has been made.

#### **Applicable State Laws**

Many states have special laws and regulations which broadcasters should be aware of. Some states prohibit drivers to wear headphones except for communications purposes. Most require splash guards. Some have express laws regarding use of studded snow tires. Check with your state's highway department regarding any state regulations.

#### **For More Information...**

Further details about the DOT regulations may be obtained from the Federal Highway Administration's Bureau of Motor Carrier Safety, 400 7th Street, S.W., Room 3403, Washington, D.C. 20590, telephone (202) 366-1790. You should refer to Title 49 of the Code of Federal Regulations.

Two booklets which may be useful are also available. *Federal Motor Carrier Safety Regulations* contains a comprehensive list of FHWA regulations, including samples of the written examination, road test, medical examination and traffic violation certificates. It can be ordered for \$2.00 per copy from Customer Services, American Trucking Association, 2200 Mill Road, Alexandria, Virginia 22314. The major rules, in digest form, are found in the *Professional Truck Drivers Handbook* which can be purchased for \$3.50 per copy from Wendy Klaich, Private Truck Council of America, 2022 P Street, N.W., Washington, D.C. 20036.

#### **Footnote**

<sup>1</sup>The inspection report requirement does not apply to motor carriers operating only one vehicle.

*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.*

©Copyright 1987. National Association of Broadcasters, Washington, D.C. All rights reserved.

# Copyright Registration Procedures

## COPYRIGHT REGISTRATION

In general, copyright registration is a legal formality placing on public record the basic facts of a particular copyright. Under the 1976 Copyright Act (title 17, United States Code) which became effective January 1, 1978, a work of original authorship is protected by copyright from the time the work is created in fixed form; registration in the Copyright Office is considered "permissive" or "voluntary," not mandatory, and except in two specific situations,\* is not a condition of copyright itself. However, there are certain advantages to registration, including establishing a public record of the copyright claim, securing the right to file an infringement suit, establishing prima facie evidence of the validity of the copyright, and making available a broader range of remedies in infringement suits.

Under the copyright law in effect before 1978, copyright was secured either on the date a work was published with notice of copyright, or on the date of registration if the work was registered in unpublished form. For information about claims and renewals for works copyrighted before 1978, write to:

Information Section, LM-455  
Copyright Office  
Library of Congress  
Washington, D.C. 20559

## REGISTRATION PROCEDURES

To register a claim to copyright in a work, send the following three elements *in the same envelope or package* to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559:

1. **A properly completed application form (use a typewriter or black pen);**
2. **A non-refundable fee of \$10.00 (not cash) for each application;**
3. **A deposit of the work being registered.** The deposit requirements will vary in particular situations. The general requirements are as follows:
  - If the work is unpublished, one complete copy or phonorecord.

\*Works published with notice of copyright prior to January 1, 1978, must be registered and renewed during the first 28-year term of copyright to maintain protection.

Under sections 405 and 406 of the Copyright Act, copyright registration may be required to preserve a copyright that would otherwise be invalidated because of the omission of the copyright notice from the published copies or phonorecords, or omission of the name or date, or an error in the year date.

- If the work was first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.
- If the work was first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.
- If the work was first published outside the United States, one complete copy or phonorecord of the work as first published, regardless of the date of publication.
- If the work is a contribution to a collective work, and published after January 1, 1978, one complete copy or phonorecord of the best edition of the collective work.

## FEES

Do not send cash. A fee sent to the Copyright Office for copyright registration should be in the form of a money order, check, or bank draft payable to the Register of Copyrights; it should be securely attached to the application. **The copyright registration fee is a filing fee and is non-refundable.**

## MAILING INSTRUCTIONS

Remember:

The application, deposit (copies or phonorecords), and fee should be mailed **in the same package** to:

Register of Copyrights  
Copyright Office  
Library of Congress  
Washington, D.C. 20559

## APPLICATION FORMS

Before you submit an application for registration, choose the most appropriate form. There are presently five kinds of application forms available for original registration—

**Form TX:** for published and unpublished non-dramatic literary works (books, pamphlets, computer programs, manuscripts, poems, etc.)

**Form SE:** for serials: works issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be

continued indefinitely (periodicals, newspapers, magazines, newsletters, annuals, journals, etc.)

**Form PA:** for published and unpublished works of the performing arts (musical compositions, dramatic works, pantomimes and choreographic works, motion pictures and other audiovisual works)

**Form VA:** for published and unpublished works of the visual arts (pictorial, graphic, and sculptural works)

**Form SR:** for published and unpublished sound recordings (a sound recording is a work resulting from the fixation of a series of sounds—the author is the performer, or the record producer, or both), but not for sounds accompanying a motion picture or other audiovisual work

In addition, there is an application form, Form RE, for renewals of claims in works copyrighted under the copyright law in existence before 1978; and a form for corrections and amplifications, Form CA.

Form GR/CP, an adjunct application for copyright registration for a group of contributions to periodicals, is the appropriate form to use when you are submitting a basic application on Form TX, Form PA, or Form VA, for a group of works that qualify for a single registration under section 408 (c)(2) of the copyright statute; please write for Form GR/CP.

Most works will fall naturally into one of the five main categories of copyrightable material. If your work contains copyrightable material falling into two or more classes, choose the one class that is most appropriate for the work as a whole. If your work, however, is an audiovisual work consisting of components which could fall into several classes, choose Form PA. If your claim to copyright includes a claim in the sound recording use Form SR.

Use only the officially printed application form; using photocopies or other reproductions of the application form may delay your registration.

### HOW TO ORDER APPLICATION FORMS

Call (202) 287-9100 at any time to order copyright registration application forms, which are supplied free of charge. You may also request Circular R1, "Copyright Basics," and other circulars if you know the circular num-

ber. See Circular R2, "Publications on Copyright," for circular numbers. Or you may request forms and circulars by writing:

Copyright Office  
Publications Section, LM-455  
Library of Congress  
Washington, D.C. 20559

### EFFECTIVE DATE OF REGISTRATION

Please note that a *copyright registration is effective on the date of receipt in the Copyright Office of all the required elements in acceptable form*, regardless of the length of time it takes thereafter to process the application and mail the certificate of registration. The length of time required by the Copyright Office to process an application varies from time to time, depending on the amount of material received and the personnel available to handle it.

If you are filing an application for copyright registration in the Copyright Office, you *will not* receive an acknowledgement that your application has been received (the Office receives more than 500,000 applications annually), but you can expect:

- A letter or telephone call from a copyright examiner if further information is needed; and
- A certificate of registration to indicate the work has been registered, or if the application cannot be accepted, a letter explaining why registration has been refused.

You may not receive either of these until 90 days have passed.

If you want to know when the Copyright Office receives your material, you should send it via registered or certified mail and request a return receipt.

### NOTICE OF COPYRIGHT

The Copyright Act provides that when a work is *published* under the authority of the copyright owner, a notice of copyright must be placed on all publicly distributed copies and on all publicly distributed phonorecords of sound recordings. This notice is required even on works published outside of the United States.

The use of the copyright notice is the responsibility of the copyright owner; the copyright owner need not request advance permission from, or registration with, the Copyright Office before affixing the copyright notice on copies.

### Form of Notice for Visually Perceptible Copies

The notice for visually perceptible copies should contain the following three elements:

- The symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.," and
- The year of first publication of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles; and
- The name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 1982 John Doe

The "C in a circle" notice (or other variation of the notice as described above) is required only on "visually perceptible copies." Certain kinds of works, for example, musical, dramatic, and literary works, may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies," there is no requirement that the phonorecord bear a "C in a circle" notice to protect the underlying musical, dramatic, or literary work that is recorded.

The requirements for the copyright notice for phonorecords containing sound recordings are different; please write for Circular R1, "Copyright Basics," for more information.

The Copyright Office has issued regulations concerning the form and position of the copyright notice in the *Code of Federal Regulations* (37 C.F.R. Part 201); for copies of these regulations, write to the Information Section, LM-401, Copyright Office, Library of Congress, Washington, D.C. 20559, and request Circular R96, Section 201.20.

### MANDATORY DEPOSIT FOR WORKS PUBLISHED IN THE UNITED STATES WITH NOTICE OF COPYRIGHT

Although a copyright registration is not required, the Copyright Act establishes a mandatory deposit requirement for works published with notice of copyright in the United States. In general, the owner of copyright, or the owner of the right of first publication in the work, has a legal obligation to deposit in the Copyright Office, within 3 months of publication in the United States, 2 copies (or in the case of sound recordings, 2 phonorecords) for the use of the Library of Congress. Failure to make the deposit can give rise to fines and other penalties, but does not affect copyright protection.

The Copyright Office has issued regulations exempting certain categories of works from the mandatory deposit requirements, and reducing the obligation for certain other categories. For further information about mandatory deposit, please write to the Copyright Office for Circular R7d.



**Copyright Office • Library of Congress • Washington, D.C. 20559**





# BASIC FACTS ABOUT TRADEMARKS

**A** TRADEMARK may be a word, symbol, design or combination word and design, a slogan or even a distinctive sound which identifies and distinguishes the goods or services of one party from those of another. Used to identify a service, it can be called a service mark. In general, throughout this pamphlet the term trademark will be used to refer to both trademarks and service marks. Normally, a trademark for goods is the word or design that appears on the product or on its packaging, while a service mark is usually the word or design that is used in advertising to identify the owner's services.

A trademark is different from a copyright or a patent. A copyright gives protection for an artistic or literary work and a patent gives protection for an invention.

Unlike a copyright or patent, trademark

rights can last indefinitely if the mark continues to perform a source-indicating function. The term of the Federal trademark registration is 20 years, with 20 year renewal terms. However, between the fifth and sixth year after the date of the registration, the registrant must file an affidavit stating the mark is currently in use in commerce. If no affidavit is filed, the registration will be cancelled.

Trademark rights arise from use of the mark. A Federal registration is not needed for a trademark in order for a trademark to have protection, and a trademark may be used without obtaining a registration. In fact, before a trademark owner may file an application for a Federal registration, the owner must use the mark on goods which are shipped or sold, or on services which are rendered, in commerce which can be controlled by Congress (see page 5).



## BENEFITS OF REGISTRATION

---

**W**HILE Federal registration is not necessary for trademark protection, registration on the Principal Register does provide certain advantages:

- 
- |          |   |
|----------|---|
| <b>1</b> | The right to sue in Federal court for trademark infringement;   |
| <hr/>    |   |
| <b>2</b> | Recovery of profits, damages and costs in a Federal court infringement action and the possibility of treble damages and attorneys' fees;  |
| <hr/>    |   |
| <b>3</b> | Constructive notice of a claim of ownership (which eliminates a good faith defense for a party adopting the trademark subsequent to the registrant's date of registration);   |
| <hr/>    |   |
| <b>4</b> | The right to deposit the registration with Customs in order to stop the importation of goods bearing an infringing mark;  |
| <hr/>    |   |
| <b>5</b> | Prima facie evidence of the validity of the registration, registrant's ownership of the mark and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate; |
| <hr/>    |   |
| <b>6</b> | The possibility of incontestability, in which case the registration constitutes conclusive evidence of the registrant's exclusive right, with certain limited exceptions, to use the registered mark in commerce;                   |
| <hr/>    |   |
| <b>7</b> | Limited grounds for attacking a registration once it is five years old;   |
| <hr/>    |   |
| <b>8</b> | Availability of criminal penalties in an action for counterfeiting a registered trademark;  |
| <hr/>    |   |
| <b>9</b> | A basis for filing trademark applications in foreign countries.   |
- 

## NOTICE

---

**O**NCE a Federal registration is issued, the registrant may give notice of registration by using the ® symbol, or the phrase "Registered in U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off." Although it is not required, prior to registration many trademark owners use a TM or SM (if the mark identifies a service) symbol to indicate a claim of ownership, even if no Federal trademark application is pending.

---

## THE REGISTRATION PROCESS

---

**T**HE Patent and Trademark Office (PTO) is responsible for the Federal registration of trademarks. When an application is filed, it is reviewed to determine if it meets the four requirements for receiving a filing date (see page 4). If not, the entire mailing, including the fee, is returned to the applicant. If the application meets the filing requirements, it is assigned a serial number, and the applicant is sent a filing receipt.

The first part of the registration process is a determination by the Trademark Examining Attorney as to suitability of the mark for registration. An initial determination of registrability, listing any statutory grounds for refusal as well as any procedural informalities in the application, is issued about three months after filing. The applicant must respond to any objections raised within six months, or the application will be considered abandoned. If, after reviewing the applicant's response, the Examining Attorney makes a final refusal of registration, the applicant may appeal to the Trademark Trial and Appeal Board, an administrative tribunal within the PTO.

Once the Examining Attorney approves registration of the mark, whether on a first or subsequent review, it enters the second stage of the registration process. It is published in the Trademark Official Gazette, a weekly publication of the PTO. Any other party then has 30 days to oppose the registration of the mark, or request an extension of time to oppose. An opposition is similar to a proceeding in the Federal district courts, but is held before the Trademark Trial and Appeal Board. If no opposition is filed, a registration is issued 12 weeks from the date the mark was published.

On average, a mark will be registered or the application abandoned within 13 months of the date the application for registration is filed.

---

## STATUTORY GROUNDS FOR REFUSAL

---

**T**HE Examining Attorney will refuse registration if the mark or term applied for:

- |          |   |
|----------|---|
| <b>1</b> | Does not function as a trademark to identify the goods or services as coming from a particular source; for example, the matter applied for is merely ornamentation; |
| <b>2</b> | Is immoral, deceptive or scandalous;  |
| <b>3</b> | May disparage or falsely suggest a connection with persons, institutions, beliefs or national symbols, or bring them into contempt or disrepute;                    |
-

- 
- |       |   |
|-------|---|
| 4     | Consists of or simulates the flag or coat of arms or other insignia of the United States, or a State or municipality, or any foreign nation;  |
| <hr/> |   |
| 5     | Is the name, portrait or signature of a particular living individual, unless he has given written consent; or is the name, signature or portrait of a deceased President of the United States during the life of his widow, unless she has given her consent; |
| <hr/> |   |
| 6     | So resembles a mark already registered in the PTO as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive;  |
| <hr/> |   |
| 7     | Is merely descriptive or deceptively misdescriptive of the goods or services;   |
| <hr/> |   |
| 8     | Is primarily geographically descriptive or deceptively misdescriptive of the goods or services of the applicant;  |
| <hr/> |   |
| 9     | Is primarily merely a surname.  |
- 

A MARK will not be refused registration on the grounds listed in numbers 7, 8 and 9 if the applicant can show that, through use of the mark in commerce, it has become distinctive so that it now identifies to the public the applicant's goods or services. Marks which are refused registration on the grounds listed in numbers 1, 7, 8 and 9 may be registered on the *Supplemental Register*, which contains terms or designs considered capable of distinguishing the party's goods or services, but that do not yet do so. If a mark is registered on the *Supplemental Register*, the registrant may bring suit for trademark infringement in the Federal courts, or may use the registration as a basis for filing in some foreign countries. None of the other benefits of Federal registration listed on page 1 apply. In order to file an application on the *Supplemental Register*, the applicant must have made lawful use of the mark in commerce for one year. (An application may be filed on the *Principal Register* as soon as the mark has been used in commerce.) An applicant may file an application on the *Principal Register* and, if appropriate, amend the application to the *Supplemental Register* for no additional fee.

---

## TRADEMARK SEARCH LIBRARY

---

A RECORD of all active registrations and pending applications is maintained by the PTO to help determine whether a previously registered mark exists which could prevent the registration of an applicant's mark. (See ground for refusal No. 6, above.) The

search library is located near Washington, D.C. at Crystal Plaza 2, 2nd Floor, 2011 Jefferson Davis Highway, Arlington, VA 22022, and is open to the public free of charge Monday through Friday, 8:00 am to 5:30 pm. The PTO cannot advise prospective applicants of the availability of a particular mark prior to the filing of an application. The applicant may hire a private search company or law firm to perform a search if a search is desired before filing an application and the applicant is unable to visit the search library. The PTO cannot recommend any such companies, but the applicant may wish to consult listings for "Trademark Search Services" in the telephone directories or contact local bar associations for a list of attorneys specializing in trademark law.

## HOW TO FILE AN APPLICATION

---

**T**HE owners of the mark may file and prosecute their own application for registration, or be represented by an attorney. The Patent and Trademark Office cannot help select an attorney.

## FILING REQUIREMENTS

---

**A**n application consists of (1) a written application form; (2) a drawing of the mark; (3) five specimens showing actual use of the mark in connection with the goods or services; and (4) the required filing fee. A separate application must be filed for each mark for which registration is requested.

### 1. Written Application Form

---

**T**HE application must be written in English. The enclosed forms may be used for either a trademark or service mark application. Additional forms may be photocopied. The appropriate form for the type of applicant which is applying should be used. Unincorporated associations would generally use the "corporation" form. The following explanation covers each blank, beginning at the top.

**Heading.** Identify (a) the mark (e.g. "ERGO" or "ERGO and design") and (b) the class number(s) of the goods or services for which registration is sought. Classification is part of the PTO's administrative processing. The International Classification of Goods and Services is used (see reverse side of application form). The class may be left blank if the appropriate class number is not known.



**Applicant.** The application must be filed in the name of the owner of the mark. Specify, if an individual, applicant's name and citizenship; if a partnership, the names and citizenship of the general partners and the domicile of the partnership; if a corporation or association, the name under which it is incorporated and the State or foreign nation under the laws of which it is organized. Also indicate the applicant's post office address and, if an individual, place of residence.

**Identification of Goods or Services.** State briefly the specific goods or services for which the mark is used and for which registration is sought.

**Dates of Use.** State the date of first use anywhere of the trademark on the goods or in connection with the services specified.

Applicant must also state its date of first use of the mark on the goods or in connection with the services in commerce which may lawfully be regulated by Congress. The type of commerce must be identified [e.g. "interstate commerce" (shipment of goods from one State to another); or "commerce between the U.S. and (specify foreign country)"]. The date of first use in commerce may be the same as the date of first use of the mark anywhere, but it cannot be earlier.

**Method of Use.** State how the mark is used in connection with the goods or services specified, e.g. labels, packaging, or, for services only, advertising.

**Execution.** The application form must be dated and signed. By signing the form, the applicant is swearing that all the information in the application is believed to be true. If the applicant is an individual, the individual must execute it; if joint applicants, all must execute; if a partnership, one general partner must execute the application; and if a corporation or association, one officer of the organization must execute the application.

## 2. Drawing

---

**T**HE drawing is a representation of the mark as actually used on the goods or services. There are two types: (a) typed drawings and (b) special form drawings. All drawings must be made upon pure white durable nonshiny paper 8½" wide by 11" long. One of the shorter sides of the sheet should be regarded as its top. There must be a margin of at least one inch on the sides and bottom of the paper and at least one inch between the drawing of the mark and the heading.

**Heading.** Across the top of the drawing, beginning one inch from the top edge and not exceeding one quarter of the sheet, list on separate lines applicant's name; post office address; date of first use; date of first use in commerce; and the goods or services recited in the application (or typical items of the goods or services if there are a large number). A typewritten heading is preferred.

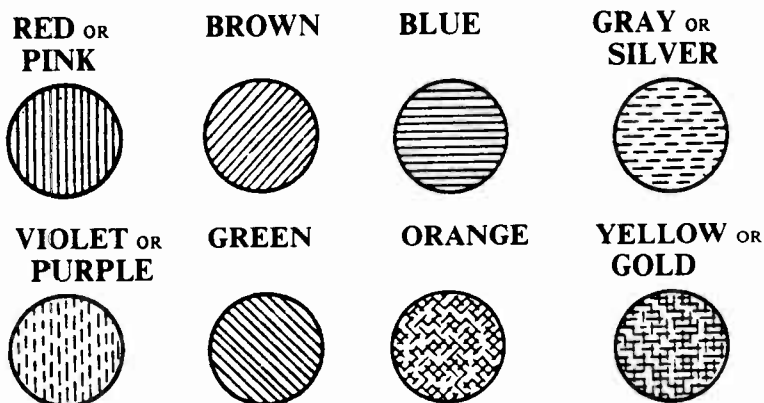
**Typed drawing.** If the mark is only words, or words and numerals, and the applicant does not wish the registration to be issued for a

particular depiction of the words and/or numerals, the mark may be typed in capital letters in the center of the page.

**Special form drawing.** This form must be used if the applicant wishes the registration for the mark to be issued in a particular style, or if the mark contains a design element. The drawing of the mark must be done in black ink, either with an india ink pen or by a process which will give satisfactory reproduction characteristics. Every line and letter, including words, must be black. This applies to all lines, including lines used for shading. Half-tones and gray are not acceptable. All lines must be clean, sharp, and solid, and not be fine or crowded. A photolithographic reproduction, printer's proof or camera ready copy may be used if otherwise suitable. Photographs are not acceptable. Photocopies are acceptable only if they produce an unusually clear and sharp black and white rendering. The use of white pigment to cover lines is not acceptable.

The preferred size of the drawing of the mark is 2½" x 2½", and in no case may it be larger than 4" x 4". If the amount of detail in the mark precludes clear reduction to the required 4" x 4" size, such detail should not be shown in the drawing but should be verbally described in the body of the application.

Where color is a feature of a mark, the color or colors may be designated in the drawing by the linings shown in the following chart:



### 3. Specimens (Examples of Use)

**T**RADEMARKS may be placed on the goods, or their containers, or on displays associated with the goods, or on tags or labels attached to the goods. The applicant must furnish five examples of such use; they may be identical or may be five different types of uses. The five specimens should be actual labels, tags, containers, displays, etc. as long as they are capable of being arranged flat and of a size not larger than 8½" x 13". Three-dimensional or bulky material submitted as examples cannot be accepted. When, due to the mode of applying or affixing the mark to the goods, or to the nature of the mark, specimens as indicated above cannot be furnished,

(Continued on inside back cover)

<b>TRADEMARK APPLICATION, PRINCIPAL REGISTER, WITH DECLARATION (Individual)</b>	MARK (Identify the mark) <hr/> CLASS NO. (if known) <hr/>
<b>TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:</b>	
NAME OF APPLICANT, AND BUSINESS TRADE NAME, IF ANY <hr/>	
BUSINESS ADDRESS <hr/>	
RESIDENCE ADDRESS <hr/>	
CITIZENSHIP OF APPLICANT <hr/>	
<p>The above identified applicant has adopted and is using the trademark shown in the accompanying drawing for the following goods: _____</p> <p>_____ and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.</p> <p>The trademark was first used on the goods on _____ (date) ; was first used on the goods in _____ (type of commerce) commerce on _____ (date) ; and is now in use in such commerce.</p> <p>The mark is used by applying it to _____</p> <p>_____ and five specimens showing the mark as actually used are presented herewith.</p> <p style="text-align: right;">_____ (name of applicant)</p> <p>being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that he/she believes himself/herself to be the owner of the trademark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.</p> <p style="text-align: right;">_____ (signature of applicant)</p> <p style="text-align: right;">_____ (date)</p>	

## International schedule of classes of goods and services

**Goods**

- 1 Chemicals products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or pastes, for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry.
- 2 Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colouring matters, dyestuffs; mordants; natural resins; metals in foil and powder form for painters and decorators.
- 3 Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
- 4 Industrial oils and greases (other than oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights and wicks.
- 5 Pharmaceutical, veterinary, and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth, dental wax, disinfectants; preparations for killing weeds and destroying vermin.
- 6 Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (nonelectric); locksmiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in nonprecious metal not included in other classes; ores.
- 7 Machines and machine tools; motors (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; incubators.
- 8 Hand tools and instruments; cutlery, forks, and spoons; side arms.
- 9 Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counterfreed apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus.
- 10 Surgical, medical, dental, and veterinary instruments and apparatus (including artificial limbs, eyes and teeth).
- 11 Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.
- 12 Vehicles; apparatus for locomotion by land, air or water.
- 13 Firearms; ammunition and projectiles; explosive substances; fireworks.
- 14 Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewelry, precious stones, horological and other chronometric instruments.
- 15 Musical instruments (other than talking machines and wireless apparatus).
- 16 Paper and paper articles, cardboard and cardboard articles; printed matter, newspaper and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and clichés (stereotype).
- 17 Gutta percha, india rubber, balata and substitutes, articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, being for use in manufacture; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (nonmetallic).
- 18 Leather and imitations of leather, and articles made from these materials and not included in other classes; skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
- 19 Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; roadmaking materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.
- 20 Furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, substitutes for all these materials, or of plastics.
- 21 Small domestic utensils and containers (not of precious metals, or coated therewith); combs and sponges; brushes (other than paint brushes); brushmaking materials; instruments and material for cleaning purposes, steel wool; unworked or semi-worked glass (excluding glass used in building); glassware, porcelain and earthenware, not included in other classes.
- 22 Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks; padding and stuffing materials (hair, kapok, feathers, seaweed, etc.); raw fibrous textile materials.
- 23 Yarns, threads.
- 24 Tissues (piece goods); bed and table covers; textile articles not included in other classes.
- 25 Clothing, including boots, shoes and slippers.
- 26 Lace and embroidery, ribands and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.
- 27 Carpets, rugs, mats and matting; linoleums and other materials for covering existing floors; wall hangings (nontextile).
- 28 Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees.
- 29 Meats, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products; edible oils and fats; preserves, pickles.
- 30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar, sauces, spices; ice.
- 31 Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt.
- 32 Beer, ale and porter; mineral and aerated waters and other nonalcoholic drinks; syrups and other preparations for making beverages.
- 33 Wines, spirits and liqueurs.
- 34 Tobacco, raw or manufactured; smokers' articles; matches.

**Services**

- 35 Advertising and business.
- 36 Insurance and financial.
- 37 Construction and repair.
- 38 Communication.
- 39 Transportation and storage.
- 40 Material treatment.
- 41 Education and entertainment.
- 42 Miscellaneous.

<b>TRADEMARK APPLICATION, PRINCIPAL REGISTER, WITH DECLARATION (Partnership)</b>	MARK (Identify the mark) <hr/> CLASS NO. (if known) <hr/>
TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:	
NAME OF PARTNERSHIP <hr/>	
NAMES OF PARTNERS <hr/>	
BUSINESS ADDRESS OF PARTNERSHIP <hr/>	
CITIZENSHIP OF PARTNERS <hr/>	
<p>The above identified applicant has adopted and is using the trademark shown in the accompanying drawing for the following goods: _____</p> <p>_____</p> <p>and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.</p> <p>The trademark was first used on the goods on _____ (date) ; was first used on the goods in _____ (type of commerce) commerce on _____ (date) ; and is now in use in such commerce.</p> <p>The mark is used by applying it to _____</p> <p>_____</p> <p>and five specimens showing the mark as actually used are presented herewith.</p> <p>_____ (name of partner)</p> <p>being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that he/she believes himself/herself to be the owner of the trademark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.</p> <p style="text-align: right;">_____ (signature of applicant)</p> <p style="text-align: right;">_____ (date)</p>	



## International schedule of classes of goods and services

**Goods**

- 1 Chemicals products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or pastes, for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry.
- 2 Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colouring matters, dyestuffs; mordants; natural resins; metals in foil and powder form for painters and decorators.
- 3 Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
- 4 Industrial oils and greases (other than oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights and wicks.
- 5 Pharmaceutical, veterinary, and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth, dental wax, disinfectants; preparations for killing weeds and destroying vermin.
- 6 Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (nonelectric); locksmiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in nonprecious metal not included in other classes; ores.
- 7 Machines and machine tools; motors (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; incubators.
- 8 Hand tools and instruments; cutlery, forks, and spoons; side arms.
- 9 Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counterfeited apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus.
- 10 Surgical, medical, dental, and veterinary instruments and apparatus (including artificial limbs, eyes and teeth).
- 11 Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.
- 12 Vehicles; apparatus for locomotion by land, air or water.
- 13 Firearms; ammunition and projectiles; explosive substances; fireworks.
- 14 Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewelry, precious stones, horological and other chronometric instruments.
- 15 Musical instruments (other than talking machines and wireless apparatus).
- 16 Paper and paper articles, cardboard and cardboard articles; printed matter, newspaper and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and clichés (stereotype).
- 17 Gutta percha, india rubber, balata and substitutes, articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, being for use in manufacture; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (nonmetallic).
- 18 Leather and imitations of leather, and articles made from these materials and not included in other classes; skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
- 19 Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; roadmaking materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.
- 20 Furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, substitutes for all these materials, or of plastics.
- 21 Small domestic utensils and containers (not of precious metals, or coated therewith); combs and sponges; brushes (other than paint brushes); brushmaking materials; instruments and material for cleaning purposes, steel wool; unworked or semi-worked glass (excluding glass used in building); glassware, porcelain and earthenware, not included in other classes.
- 22 Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks; padding and stuffing materials (hair, kapok, feathers, seaweed, etc.); raw fibrous textile materials.
- 23 Yarns, threads.
- 24 Tissues (piece goods); bed and table covers; textile articles not included in other classes.
- 25 Clothing, including boots, shoes and slippers.
- 26 Lace and embroidery, ribands and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.
- 27 Carpets, rugs, mats and matting; linoleums and other materials for covering existing floors; wall hangings (nontextile).
- 28 Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees.
- 29 Meats, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products; edible oils and fats; preserves, pickles.
- 30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar, sauces, spices; ice.
- 31 Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt.
- 32 Beer, ale and porter; mineral and aerated waters and other nonalcoholic drinks; syrups and other preparations for making beverages.
- 33 Wines, spirits and liqueurs.
- 34 Tobacco, raw or manufactured; smokers' articles; matches.

**Services**

- 35 Advertising and business.
- 36 Insurance and financial.
- 37 Construction and repair.
- 38 Communication.
- 39 Transportation and storage.
- 40 Material treatment.
- 41 Education and entertainment.
- 42 Miscellaneous.



<b>TRADEMARK APPLICATION, PRINCIPAL REGISTER, WITH DECLARATION (Corporation)</b>	MARK (identify the mark) <hr/> CLASS NO. (if known) <hr/>
TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:	
NAME OF CORPORATION <hr/>	
STATE OR COUNTRY OF INCORPORATION <hr/>	
BUSINESS ADDRESS OF CORPORATION <hr/>	
<p>The above identified applicant has adopted and is using the trademark shown in the accompanying drawing for the following goods: _____</p> <p>_____</p> <p>and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.</p> <p>The trademark was first used on the goods on _____ (date) ; was first used on the goods in _____ (type of commerce) commerce on _____ (date) ; and is now in use in such commerce.</p> <p>The mark is used by applying it to _____</p> <p>_____</p> <p>and five specimens showing the mark as actually used are presented herewith.</p> <p>_____</p> <p style="text-align: center;">(name of officer of corporation)</p> <p>being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that he/she is</p> <p>_____</p> <p style="text-align: center;">(official title)</p> <p>of applicant corporation and is authorized to execute this instrument on behalf of said corporation; he/she believes said corporation to be the owner of the trademark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.</p> <p style="text-align: right;">_____</p> <p style="text-align: right;">(name of corporation)</p> <p style="text-align: right;">By _____</p> <p style="text-align: right;">(signature of officer of corporation, and official title of officer)</p> <p style="text-align: right;">_____</p> <p style="text-align: right;">(date)</p>	

## International schedule of classes of goods and services

**Goods**

- 1 Chemicals products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or pastes, for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry.
- 2 Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colouring matters, dyestuffs; mordants; natural resins; metals in foil and powder form for painters and decorators.
- 3 Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
- 4 Industrial oils and greases (other than oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights and wicks.
- 5 Pharmaceutical, veterinary, and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth, dental wax, disinfectants; preparations for killing weeds and destroying vermin.
- 6 Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (nonelectric); locksmiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in nonprecious metal not included in other classes; ores.
- 7 Machines and machine tools; motors (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; incubators.
- 8 Hand tools and instruments; cutlery, forks, and spoons; side arms.
- 9 Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counterfreed apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus.
- 10 Surgical, medical, dental, and veterinary instruments and apparatus (including artificial limbs, eyes and teeth).
- 11 Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.
- 12 Vehicles; apparatus for locomotion by land, air or water.
- 13 Firearms; ammunition and projectiles; explosive substances; fireworks.
- 14 Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewelry, precious stones, horological and other chronometric instruments.
- 15 Musical instruments (other than talking machines and wireless apparatus).
- 16 Paper and paper articles, cardboard and cardboard articles; printed matter, newspaper and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and clichés (stereotype).
- 17 Gutta percha, india rubber, balata and substitutes, articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, being for use

in manufacture; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (nonmetallic).

- 18 Leather and imitations of leather, and articles made from these materials and not included in other classes; skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
- 19 Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; roadmaking materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.
- 20 Furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, substitutes for all these materials, or of plastics.
- 21 Small domestic utensils and containers (not of precious metals, or coated therewith); combs and sponges; brushes (other than paint brushes); brushmaking materials; instruments and material for cleaning purposes, steel wool; unworked or semi-worked glass (excluding glass used in building); glassware, porcelain and earthenware, not included in other classes.
- 22 Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks; padding and stuffing materials (hair, kapok, feathers, seaweed, etc.); raw fibrous textile materials.
- 23 Yarns, threads.
- 24 Tissues (piece goods); bed and table covers; textile articles not included in other classes.
- 25 Clothing, including boots, shoes and slippers.
- 26 Lace and embroidery, ribands and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.
- 27 Carpets, rugs, mats and matting; linoleums and other materials for covering existing floors; wall hangings (nontextile).
- 28 Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees.
- 29 Meats, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products; edible oils and fats; preserves, pickles.
- 30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar, sauces, spices; ice.
- 31 Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt.
- 32 Beer, ale and porter; mineral and aerated waters and other nonalcoholic drinks; syrups and other preparations for making beverages.
- 33 Wines, spirits and liqueurs.
- 34 Tobacco, raw or manufactured; smokers' articles; matches.

**Services**

- 35 Advertising and business.
- 36 Insurance and financial.
- 37 Construction and repair.
- 38 Communication.
- 39 Transportation and storage.
- 40 Material treatment.
- 41 Education and entertainment.
- 42 Miscellaneous.

five copies of a photograph or other reproduction, not larger than 8½" x 13" and clearly and legibly showing the mark on the goods, should be furnished.

**Service Marks.** Examples of the mark as used in the sale or advertising of the services (e.g. brochures or advertisements) must be furnished unless it is impossible to do so because of the nature of the mark or the manner in which it is used, in which case some other representation must be submitted. In the case of service marks not used in printed or written form, three audio cassette recordings should be furnished.

## 4. Fees

---

**T**HE fee is \$200 for each class of goods or services for which application is made. (See International Classification of Goods and Services, reverse side of application form.) At least \$200 must be submitted for the application to be given a filing date. All payments should be made in United States specie, treasury notes, national bank notes, post office money orders, or certified checks. Personal or business checks may be submitted, but the Patent and Trademark Office will cancel credit if payment cannot be collected. Money orders and checks should be made payable to the Commissioner of Patents and Trademarks. Money sent by mail to the Patent and Trademark Office will be at the risk of the sender; letters containing money (cash) should be registered. Remittances made from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required.

## BASES FOR RECEIVING A FILING DATE

---

**1**

**Use in Commerce.** A foreign applicant using a mark in commerce which may lawfully be regulated by Congress may apply for registration in the same manner as residents of the United States.

---

**2**

**Foreign Registration.** The application may be based upon a registration which the applicant has previously secured in its country of origin (if the U.S. and this country are parties to the same international trademark agreement or provide reciprocal registration rights). The application must be accompanied by a copy of the foreign registration, certified by the foreign office which issued the registration.

---

**3**

**Foreign Application.** The U.S. application may be based on an application for registration filed in the applicant's country of origin (if the U.S. and this country are parties to the same international trademark agreement or provide reciprocal registration rights) as long as the U.S. application is filed within six months of the foreign filing. This entitles the applicant to a right of priority, giving it an effective filing date in the U.S. that is the same date as the foreign filing. Before the U.S. application will be approved, a certified copy of the foreign registration resulting from the foreign application must be submitted.

**Use-related requirements.** If the applicant relies on a foreign application or registration, and use in commerce is not asserted, the applicant

**U.S. DEPARTMENT OF COMMERCE**

Patent and Trademark Office  
Washington, D.C. 20231

If Undelivered Return in Ten Days

Official Business  
Penalty for Private Use, \$300

POSTAGE AND FEES PAID  
U.S. DEPARTMENT OF COMMERCE  
COM-212



must conform to the same requirements as applicants basing their applications on use in commerce, except that the following need not be submitted:

- a) Specimens;
- b) Date of first use of the mark or date of first use of the mark in commerce;
- c) The manner in which the mark is used on or in connection with the particular goods or services.

## FOREIGN APPLICANTS

**D**OMESTIC REPRESENTATIVE. Applicants not living in the United States must designate by a written document the name and address of some person resident in the United States on whom notices of process in proceedings affecting the mark may be served. This person will also receive all official communications unless the applicant is represented by an attorney in the United States.

## COMMUNICATIONS WITH THE PTO

**T**HE application and all other communications should be addressed to "The Commissioner of Patents and Trademarks, Washington, D.C., 20231." It is preferred that the applicant indicate its telephone number on the application form. Once a serial number is assigned, the applicant should refer to this number in all telephone and written communications.

## ADDITIONAL INFORMATION



The Federal registration of trademarks is governed by the Trademark Act of 1946, 15 U.S.C. Sec. 1051 et seq.; the Rules, 37 C.F.R. Part 2; and the Trademark Manual of Examining Procedure.

**General Trademark or Patent Information:** (703) 557-INFO

**Status Information for Particular Trademark Applications:**  
(703) 557-5249

**General Copyright Information:** (202) 479-0700





## Counsel from the Legal Department



# A Guide to Cable Copyright Payments

L-710

by John I. Stewart, Jr.<sup>1</sup>

### Contents

#### Background ..... 1

#### Guide to Royalty

#### Calculations ..... 2

#### Overview: Calculating the Royalty Cost for Carriage of an Additional Station ..... 3

#### 1. Is it a cable system? ..... 2

#### 2. What are its gross receipts from "secondary transmission service"? ..... 2

#### 3. Is it a "Form 1" system? ..... 2

#### 4. Is it a "Form 2" system? ..... 4

#### 5. Is it a "Form 3" system? ..... 4

#### a. Basic "DSE" royalties ..... 4

#### b. Syndicated exclusivity surcharge ..... 4

#### c. The "3.75" Rate ..... 4

#### 1) Market Quotas ..... 4

#### 2) Non-Commercial Stations and Specialty Stations ..... 5

#### 3) Grandfathered Stations ..... 5

#### 4) Waiver Stations ..... 5

#### 5) UHF Grade B Carriage ..... 5

#### 6) Expanded Temporal Carriage ..... 5

#### 7) "Substitute" Signals ..... 5

#### 8) Local Stations ..... 5

In the changing environment that accompanies the FCC's reconstituted cable must carry rules, broadcasters will be confronted with new questions in negotiating for carriage on cable systems, including questions of whether and how far to give in to cable operators' demands for payment. Under its new rules, the FCC will prohibit cable systems from extracting payments from the *local* stations they are required to carry, except for certain

equipment costs. But if carriage of a station that qualifies for must-carry status under the new rules would require the cable system to pay additional "distant signal" copyright fees, the station would lose its entitlement to mandatory carriage.

In general, cable systems are not required to pay any copyright fees for the carriage of local stations. The federal copyright law requires payments only for distant signals, which it defines as stations that were *not* must carry signals under the FCC's rules that were in effect in 1976. Some stations, however, might be covered by the FCC's new must carry rules even though they would not have been must-carry stations under the old rules. For example, stations located between thirty-five and fifty miles away from a cable system, which do not fit within any of the other must-carry categories under the 1976 rules, might be in this situation. In such cases, which will probably be relatively rare, the station would be a distant signal for copyright royalty purposes and could not demand carriage under the FCC's new rules.

Distant signal stations, of course, will continue to be faced with demands from cable operators to pay for the copyright costs of carrying their signals. Depending on a variety of factors, the annual royalty cost of adding a single new station can range from zero to tens of thousands of dollars. It is important for a station faced with a copyright fee reimbursement request from a cable system operator to have a general understanding of how the cable copyright fee system works. This Guide will provide an outline of the way a cable system's copyright royalty fee obligations are

calculated, and should enable a station to gauge generally whether a cable operator's request is valid.<sup>2</sup>

### Background

Cable systems that use video programs without obtaining a license to do so can be sued by the programs' owners for copyright infringement. For non-broadcast cable programming services, such as HBO or CNN, distributors obtain necessary copyright clearances and negotiate directly with the systems to license the programs' use. The cable operator typically pays a fee, ranging from a few cents to twenty cents per subscriber per month, for the use of non-broadcast services.

For broadcast programming, however, cable systems are not required to negotiate directly with broadcasters or any other owners of the copyrighted programs, because Congress has created the cable "compulsory license." Under this license, cable operators pay royalty fees to the U.S. Copyright Office, and the Copyright Royalty Tribunal distributes the collected funds to the owners of the retransmitted broadcast programs. The rates are not negotiated in the marketplace, but have been set by Congress and the Copyright Royalty Tribunal.

Before 1976, cable transmissions of broadcast stations were not considered to be copyright infringements, since they were determined not to be "public performances" of the programs. The theory was that cable systems, with their mountaintop "headend" antennas, were doing no more than individual viewers do when they put up a rooftop antenna to improve reception at home. But in 1976, the Copyright Act was revised to



make it clear that a cable system could be sued for infringement if it transmitted broadcast station signals without paying copyright royalty fees under the compulsory license.

Although the compulsory license ensured that cable systems no longer get programming from television stations for free, cable systems still pay substantially less than it costs stations to buy or produce the same programming. A 1981 NAB study, for example, found that compulsory license fees being paid by a typical cable system for delivering all of a television station's programming to its subscribers represented as little as 2.5 percent of the costs incurred by the station itself to acquire that programming for delivery to its viewers, when compared on an equal per-household/per-subscriber basis. Royalty rates for distant stations added after 1981, however, may be significantly higher.

#### Guide to Royalty Calculations

Twice a year, every cable system must submit a Statement of Account ("SOA") and its royalty fee check to the U.S. Copyright Office, which is a part of the Library of Congress in Washington. In the SOA, the cable system reports its gross revenues for the preceding six-month reporting period, and calculates its required royalty payment. Each system falls into one of three gross receipts "brackets," which determine which of the SOA forms it will use and the method it must follow to calculate its royalty fee. Copies of a cable system's SOAs can be obtained from the Copyright Office, and the precise amount of its copyright fees can thus be determined directly.

The following chart (page 3) is a basic road map for getting at the question of how much a system's royalty fee should be for a particular additional station, given certain information about the system. It does not provide a precise answer, but serves as an overview and a reference guide for the more detailed explanations in the text that follows.

#### 1. Is it a cable system?

For purposes of the Copyright Act, a "cable system" is any facility that receives any television broadcast station signal and retransmits it by wire or other communications channels "to subscribing members of the public who

pay for such service." The Copyright Office and the courts are currently considering whether a variety of new transmission services, including Multichannel Multipoint Distribution Service (MMDS), Satellite Master Antenna TV (SMATV) systems and Home Satellite Dish programming services fall within this definition and therefore come within the compulsory license royalty scheme.

Some cable operators seek to reduce their total copyright liability by treating a single integrated system as several smaller individual systems. For copyright reporting purposes, however, all commonly-owned units serving contiguous communities are treated as an individual cable system, and all units, whether commonly-owned or not, that operate from a common headend are treated as a single individual system.

#### 2. What are its gross receipts from "secondary transmission service"?

The system's semi-annual gross receipts from subscribers for "secondary transmission service" (i.e., the basic cable service of retransmitting television station signals) determine which SOA form it files. A very rough estimate of a system's gross receipts can be made by multiplying (1) its average number of subscribers by (2) its monthly basic subscriber rate by (3) six months. For reporting purposes, an accrual-basis cable system's revenues are determined by its accruals minus a bad-debt write-off; a cash-basis system's revenues are its actual receipts of subscriber fees for the period. The reporting periods are January through June and July through December.

The Copyright Office initially interpreted gross receipts as including *all* of the subscriber fee revenues for any tier of service offered by the cable system that included at least one broadcast signal. That interpretation was overturned by the U.S. District Court in Washington, in the widely-reported *Cablevision* case. The court held that royalties should be calculated on the basis of only the revenues attributable to the retransmission of local or distant broadcast signals. This means that cable systems are allowed to deduct a portion of subscriber revenues allocable to nonbroadcast services provided within a tier.

For example, if a cable system

offers a ten-channel basic service, consisting of eight local and distant television stations plus Cable News Network and ESPN, for ten dollars per month, it previously reported ten dollars per month per subscriber as its total gross receipts. After the *Cablevision* case, the same system is no longer required to include all ten dollars in its reported gross receipts. Because the court did not specify an allocation method, however, it is now impossible to know exactly how much of its subscriber revenue a particular cable system will report for copyright royalty purposes. It is clear, though, that the reported gross receipts for most systems will be reduced. The *Cablevision* decision has been appealed, but it is being followed while the appeal is pending.

The gross receipts "brackets," as well as the royalty rates themselves, are periodically adjusted to account for inflation and changes in basic subscriber rate structures. The most recent inflation adjustment, effective in January 1985, is reflected in the numbers given below.

#### 3. Is it a "Form 1" system?

If a system's semi-annual gross receipts from basic service are \$75,800 or less, it is a "Form 1" system. (The Copyright Office has now combined its two short-form SOAs, so Form 1 systems file on an "SA1-2" form.) Form 1 systems pay a flat semi-annual fee of \$28, regardless of how many, if any, distant signals they carry.

In 1984, the most recent year for which comprehensive data have been presented to the Copyright Royalty Tribunal, Form 1 systems constituted about 56 percent of the more than 8,000 cable systems paying royalties, but only about two-tenths of one percent of the royalty pool of nearly \$90 million collected during the year. As a rough guide, a cable system charging \$8 per month for basic cable service would pass the \$75,800 mark and become a "Form 2" system at about 1600 subscribers. (After the *Cablevision* case discussed above, of course, such a system could grow substantially beyond 1600 subscribers without becoming a Form 2 system.)

Form 1 systems are not required to specify in their SOAs whether the broadcast signals they carry are distant signals or local signals.

OVERVIEW: CALCULATING THE ROYALTY COST FOR CARRIAGE OF AN ADDITIONAL STATION				
System Type	Classification	Basis for Calculating Royalty Fees Due Semiannually		Royalty Cost to Carry an Additional Station
		Type of Station <sup>2/</sup>		Cost
Semiannual Gross Receipts <sup>1/</sup>				
0-\$75,800	"Form 1"	Flat Fee of \$28		No additional cost <sup>3/</sup>
\$75,801-\$291,999	"Form 2"	0.5 percent of Gross Receipts up to \$146,000, plus 1.0 percent of Gross Receipts over \$146,000		No additional cost <sup>3/</sup>
\$292,000 or more	"Form 3"	Sliding-scale percentages of Gross Receipts for each distant signal carried. <sup>4/</sup> System must pay at least 0.893 percent of Gross Receipts no matter how few distant signals it carries.		No additional cost <sup>3/</sup>
		Local		No additional cost <sup>3/</sup>
		Distant		No additional cost <sup>3/</sup>
		Local		No additional cost <sup>3/</sup>
		Distant		No additional cost <sup>3/</sup>
		Local		No additional cost <sup>3/</sup>
		Distant	"Permitted" <sup>5/</sup>	Additional charge of sliding-scale percentage of Gross Receipts for each "Distant Signal Equivalent" lent. <sup>6/</sup> plus surcharge if system is located in Top 100 television markets. <sup>7/</sup>
		Distant	"Non- Permitted" <sup>5/</sup>	Additional charge of 3.75 percent of Gross Receipts for each "Distant Signal Equivalent" <sup>6/</sup>

1/ For the definition of "Gross Receipts," see §2 in the following text.

2/ "Type of Station" refers here to whether the signal would have been a must-carry station ("local") or not ("distant") under the FCC's old must-carry rules, as in effect in 1976.

3/ Under the Cablevision case, discussed at §2 in the following text, the addition of any signals on a mixed broadcast/non-broadcast tier may increase the system's reportable gross receipts, and may thus increase the system's overall royalty liability, even though no additional charge is made for carriage of the added signal.

4/ Depending on type of distant signal, number of distant signals already carried and location of cable system, the percentage for a single distant

5/ For the definition of "Permitted" and "Non-Permitted" signals, see §5(c) in the following text.

6/ For these purposes, each independent station is counted as one "Distant Signal Equivalent," or "DSE," and each network affiliate or noncommercial station is counted as one-quarter of a "DSE." See the discussion in §5(a) of the following text.

7/ The specific "basic" and "surcharge" percentages are explained in §§5(a) and 5(b) of the following text.

#### 4. Is it a "Form 2" system?

If the system's semi-annual gross receipts are between \$75,800 and \$292,000, it is a "Form 2" system and files a short-form "SA1-2" SOA with the Copyright Office. Form 2 systems' royalty obligations are calculated on the basis of a sliding scale percentage of their gross receipts, regardless of how many, if any, distant signals they carry. The royalty percentage is a maximum of 0.5 percent of their gross receipts up to \$146,000 (through gradually declining exclusions of gross receipts, the effective royalty rate increases from about 0.04 percent to 0.5 percent as the system's receipts approach \$146,000), plus a flat 1.0 percent of their gross receipts in excess of \$146,000.

The average Form 2 cable system in 1984 paid approximately \$600 per semi-annual period. Form 2 systems constituted about 23 percent of the cable systems, but accounted for only 3 percent of the royalty pool, for 1984.

Form 2 systems also are not required to specify whether the signals they carry are distant or local.

#### 5. Is it a "Form 3" system?

If the cable system has semi-annual gross receipts of \$292,000 or more, it must file a "Form 3" SOA with the Copyright Office. Form 3 systems represented only about 21 percent of the cable systems in 1984, but accounted for roughly 97 percent of the royalties. Unlike Form 1 and Form 2 systems, their royalties are calculated on the basis of the number of distant signals they carry.

Form 3 systems pay copyright royalties under three separate rates: the basic "DSE" rates, the syndicated exclusivity surcharge, and the "3.75" rate.

##### a. Basic "DSE" royalties

Form 3 system royalty payments are based upon a sliding scale of percentages of gross receipts, multiplied by the number of "distant signal equivalents" ("DSEs") they carry. A DSE is a numerical value assigned to each distant television station signal retransmitted. A distant independent signal has a value of one DSE, each distant network affiliate or educational station has a value of one-quarter of a DSE, and each Canadian or Mexican station has a value of one DSE. If a

signal is carried during only part of its broadcast schedule, a pro-rated portion of the DSE is counted. Thus, for example, if a system carries three independent distant signals (1 DSE each), a distant network affiliate (0.25 DSE), and a distant PBS station (0.25 DSE), all of them fulltime, its total carriage would represent 3.50 DSEs.

The more DSEs a Form 3 system carries, the higher its total royalty payments. The royalty rates are 0.893 percent of gross receipts for the first DSE, 0.563 percent for each of the second, third, and fourth DSEs, and 0.265 percent for each additional DSE greater than four. If a Form 3 system carries no distant signals, or less than one DSE, it pays a flat 0.893 percent of its gross receipts. For the 3.50-DSE system in the example given above, its basic royalty fees would total 2.3005 percent of its semi-annual gross receipts (i.e., 0.893% plus 2.50 times 0.563%).

If a Form 3 system carries a television signal that is distant in some portions of its service area but local in other portions, it can divide its subscribers up into separate groups along the same lines, treating each group, in effect, as a different system for gross revenue purposes, and with fewer DSEs for the subscriber group for which the signal is local.

##### b. Syndicated exclusivity surcharge

Form 3 systems located in the top 100 television markets must pay an additional "syndicated exclusivity surcharge." If the system is located in one of the top 50 television markets a surcharge equal to about  $\frac{1}{3}$  of the basic charge is added on (0.599 percent for the first DSE, 0.377 percent for each of the second, third and fourth DSEs, and 0.178 percent for each additional DSE greater than four). In the second 50 markets, the surcharge represents an additional payment of approximately  $\frac{1}{3}$  of the basic DSE charge (0.3 percent for the first DSE, 0.189 percent for DSEs two through four, and 0.089 percent for each DSE greater than four.)

The system is permitted, however, to subtract from its DSE total for surcharge purposes any stations that it actually carried prior to March 31, 1972. Another wrinkle is that the list of the top 50 and second 50 markets that is used is the one adopted by the

FCC in Section 76.51 of its Rules, which reflects market sizes as of 1972, and is not updated. Unlike the basic DSE charge, the syndicated exclusivity surcharge, which was adopted to provide compensation for copyright owners after the FCC deleted its syndicated exclusivity "blackout" rules as of 1981, is not adjusted for inflation.

##### c. The "3.75" Rate

Finally, a Form 3 system must pay, instead of the rates described above, 3.75 percent of its gross receipts for each DSE representing carriage of a station that was added as a result of the elimination of the FCC's former distant signal limits. The basic distinction for copyright royalty purposes is between signals that were or would have been permitted to be carried by the cable system by the FCC's rules in effect until June 1981, and those that would not have been permitted to have been carried. The royalty rule is simple: "Permitted" signals are paid for at the rates described above; "non-permitted" signals are paid for at the 3.75 percent rate.

There are a number of complexities, however, that make the question of whether a signal is a permitted or non-permitted one anything but simple. The following outline of the categories of "permitted" signals raises some, but not all, of these complexities:

1) *Market Quotas.* Under the FCC's former rules, cable systems in different sized television markets were permitted to carry different numbers of distant signals. The system's market size is determined by whether it is within the thirty-five mile radius of the reference point of any community to which a commercial television station is licensed or authorized. There are four market sizes. The "top fifty" and "second fifty" markets are listed in the same 1972 FCC list used for applying the syndicated exclusivity surcharge. A "smaller television market" is any community that is not a part of any of the top one hundred markets on the list, and which has a licensed commercial television station or for which a construction permit for a commercial television station has been granted. If the cable system is located more than thirty-five miles from any community of license of a commercial television station, it is considered "outside all TV markets."



The quotas for the different sized markets were as follows: (a) Top Fifty Markets. Cable systems were permitted to carry two distant independent stations, or three distant independent stations if there was no local independent station. They were also permitted to carry any distant network affiliate if there was no local affiliate of the same network. (b) Second Fifty Markets. Cable systems were permitted to import distant signals as necessary to provide a total, including the local stations, of two independent stations and one affiliate of each of the three networks. (c) Smaller Television Markets. Cable systems were permitted to import distant signals as necessary to provide a total, including the local stations, of one independent station and one affiliate of each of the three networks. (d) Outside All Television Markets. Cable systems located outside all television markets were permitted to carry an unlimited number of distant signals.

Thus, if a cable system is located outside all television markets, it is not liable for the 3.75 rate for any distant signals it carries. More and more communities, however, are being assigned their first new television stations. When a construction permit for a commercial television station is granted for a community located less than thirty-five miles from a system that has previously been located outside all television markets, the system may automatically become liable for the 3.75 rate on virtually all of its distant signals.

**2) Non-Commercial Stations and Specialty Stations.** Cable systems in all market sizes were permitted to carry an unlimited number of non-commercial educational stations and "specialty" stations. Non-commercial educational stations, virtually all PBS affiliates, can thus always be carried at the basic DSE rates (and at a value of one quarter of one DSE, rather than a full DSE).

"Specialty" stations are those that broadcast principally foreign language programming, religious programming or "automated" or scrambled programming. While the FCC's rules were still in effect, there were approximately forty such stations. It is important to note that a station that would now qualify for "specialty" station status could be carried at non-3.75 rates even if the same station

was not a specialty station before the FCC's rules were deleted. By contrast, stations that were on the FCC's original specialty station list, which would no longer qualify as specialty stations because of programming changes, are generally treated by the Copyright Office's staff as continuing to have specialty status for 3.75 rate purposes. The issue of whether and how such changes in specialty status should be taken into account is currently the subject of a proceeding before the Copyright Office.

**3) Grandfathered Stations.** The FCC's distant signal limits permitted stations to continue carrying stations they were carrying as of March 31, 1972, pursuant to the pre-1972 rules of the FCC, even if they exceeded relevant market quota limits. Thus, continued carriage of any such "grandfathered" stations does not subject the cable operator to 3.75 liability.

**4) Waiver Stations.** A number of cable systems applied for and received individual waivers of the market quota restrictions to carry specified distant signals, during the time the FCC's rules were still in effect. Continued carriage of any such stations does not subject the cable operator to 3.75 liability. This exception to the applicability of the 3.75 rate does not apply to the relatively large number of stations for which systems had waiver requests pending when the FCC deleted its rules; all such waiver requests were dismissed, and subsequent carriage of any such stations is not "permitted" carriage for 3.75 rate purposes.

**5) UHF Grade B Carriage.** Any cable system was permitted to carry as a distant signal any UHF station whose signal reaching the cable system was at least of "Grade B" strength, even if such carriage exceeded the relevant market quota limits. The carriage by cable systems of any new UHF stations within their Grade B contour is thus not subject to the 3.75 rate.

**6) Expanded Temporal Carriage.** If only a portion of a station's programming was carried on a distant signal basis pursuant to the FCC's former rules, and that station is subsequently carried on a full-time or otherwise expanded-time basis, then the 3.75 rate would apply only to the portion of the station's programming that would not have been permitted to have been carried previously. The SOA

form includes a worksheet for computing the pro rata application of the 3.75 rate.

**7) "Substitute" Signals.** If a cable system changes the distant signals it carries, the 3.75 rate does not apply to the new or substitute signal, so long as such a substitution would have been permitted under the FCC's former rules. For example, if a cable system in a top-50 market imported two distant independent signals in 1979 pursuant to the market quota limits, but replaced those two distant signals with two different independent station signals in 1985, it would not be required to pay 3.75 royalties for the new signals. Where the permissibility of carriage under the FCC's rules depended upon the specific identity of the station, however, substitution of a different station of the same general type (for example, independent for independent) does not preserve the "permitted" status of the original station, and 3.75 liability arises. Thus, the substitution of a non-specialty independent station for a specialty station, or the substitution of a different independent station for an independent station that was grandfathered or carried pursuant to an individual waiver, cannot be accomplished without 3.75 liability. (This principle was recently challenged by a cable system in Federal Court, but the case was dismissed on the ground that the original stations for which the system was trying to substitute different ones had not properly been subject to grandfathered carriage.)

**8) Local Stations.** If a station is not a distant signal at all, of course, its carriage is not subject to royalty payments, 3.75 or otherwise. A station is not a distant signal if it would have been a "must carry" signal under the FCC's rules in effect as of April 1976. Thus, even though the FCC's 1976 must carry rules have been deleted, and no cable system can be required to carry a station that was covered by such rules, if a system begins to carry such a station, it would not be subject to 3.75 liability.

For example, a new independent station that came on the air in 1985 and would otherwise be considered a distant signal might be able to show that it meets the "significantly viewed" standard of the must carry rules by commissioning a viewing survey show-

ing certain threshold levels of viewing in the cable system's community. Even after the deletion of the FCC's original must carry rules, the FCC's staff will, if requested, make determinations that particular stations meet the "significantly viewed" standard of Section 76.54 of its rules. Thus, a cable system may be able to carry some new stations without copyright liability, even though they have never been declared "must carry" signals, and even though they would otherwise be subject to the payment of royalties at the 3.75 percent rate.

Low power television stations were never subject to the FCC's must carry rules, since they did not exist at the time those rules were in effect. After Copyright Office and legislative actions, however, low power television stations are considered "local" for Copyright Act purposes if they are carried within their markets. Thus, carriage of local low power television stations is not subject to 3.75, or any other, copyright liability.

#### Footnotes

<sup>1</sup>John I. Stewart, Jr., is a partner in the Washington, D.C., law firm of Crowell & Moring.

<sup>2</sup>For more information on strategies to attain cable carriage, please refer to the *Counsel Memo* entitled "Cable Carriage for Local Television Stations: Attaining It and Keeping It" by Michael Berg of Miller and Young.

©Copyright 1987, National Association of Broadcasters. All rights reserved.

# TOPICAL INDEX

- Access**
  - during political campaigns ..... 54, 57
  - for advertisers ..... 94
  - prime time access rule ..... 60
- Address**
  - change in mailing ..... 5
  - change in studio ..... 137
- Advertising**
  - (See also Commercial Policies and Practices, Deceptive Advertising Practices, Lotteries, Sales Contracts)
  - agreements affecting rates, antitrust considerations ..... 219
  - Alcoholic Beverages ..... 88
  - appropriation of a person's name or likeness for commercial advertising ..... 83
  - casinos ..... 106
  - children's television advertising ..... 96
  - combination, antitrust considerations ..... 221
  - comparative advertising production, trademark issues ..... 212
  - Consumer credit ..... 89
  - false, misleading or deceptive 85, 92, 97
  - joint sales representation, antitrust considerations ..... 223
  - Lease Agreements ..... 89
  - Lotteries ..... 98
  - Refusing to Sell ..... 94
  - standards, antitrust considerations ..... 222
  - "Subliminal Perception" ..... 87
  - Time Brokerage ..... 95
  - time selling and scheduling policies ..... 94
  - Tobacco Products ..... 88
  - Trade and Barter Arrangements ... 94
- Affirmative Action**
  - (see Equal Employment Opportunity)
- Age Discrimination**
  - (see Equal Employment Opportunity)
- Alcoholic Beverage Advertising** ..... 88
  - deletion of FCC policy ..... 65
- Alien ownership restrictions**
  - renewal application ..... 35
- AM carrier operation** ..... 149
- AM stereo** ..... 150
- AM-FM Program Duplication**
  - deletion of FCC policy ..... 66
- Annual Employment Report**
  - public inspection file, retention in ..... 121
  - renewal application ..... 34, 36
  - renewal of license ..... 12
  - reporting requirements ..... 1
- Antenna Resistance Measurements [AM]** ..... 139
- Antitrust considerations**
  - advertising rates, agreements affecting ..... 219
  - Combination Advertising ..... 221
  - Joint Activity Among Broadcasters ..... 219
  - Joint Advertising and Program Standards ..... 222
  - Joint Collection and Dissemination of Industry Data ..... 223
  - Joint Lobbying Efforts ..... 223
  - Joint Program Purchasing ..... 222
  - Joint Rate Setting ..... 219
  - Joint Sales Representation ..... 223
  - solicitation of particular accounts, agreements regarding ..... 220
- Applications** ..... 6
- Assignment of License or Transfer of Control**
  - amendment ..... 10
  - application for ..... 8
- Astrology Advertising**
  - deletion of FCC policy ..... 66
- Attribution of Ownership Rules**
  - (see Ownership Report)
- Audience Ratings**
  - distortion of, deletion of FCC policy ..... 67
- Audio Attention-Getting Devices**
  - technical requirements ..... 145
- Authority to Construct a New Broadcast Station or to Make Changes**
  - application for ..... 6



- Auxiliary Broadcast Service Station**
  - authorization, modification or renewal . . . . . 11
- Billing**
  - (see Fraudulent Billing)
- BINGO**
  - (see Lotteries)
- Broadcasts During Emergencies** . . . . . 61
  - daytime-only operation, exception . . . . . 61
  - "point-to-point" communications . . . . . 61
- Business organization**
  - business assets, ownership of . . . . . 177
  - business start-up costs, tax treatment of . . . . . 176
- Buy-Sell Agreements** . . . . . 179
- compensation benefits for employees** . . . . . 179
- Corporation** . . . . . 175
  - Estate Freezing of Business Interests . . . . . 178
  - S Corporation . . . . . 175
- Cable carriage of radio signals** . . . . . 161
- Cable television**
  - compulsory copyright license . . . . . 213
- Cable television rules**
  - A/B Switch Requirements . . . . . 157
  - broadcast signal carriage . . . . . 153
  - Consumer Education Requirements . . . . . 158
  - must carry rules . . . . . 153
  - Network Program Non-Duplication Protection . . . . . 159
  - Sports Blackout Rules . . . . . 160
- Call Sign**
  - new or modified, applying for . . . . . 17
  - trademark protection of . . . . . 214
- Call-In Polls** . . . . . 66
  - deletion of FCC policy . . . . . 66
- Casinos, Advertising of** . . . . . 106
- Character qualifications**
  - employee violates FCC regulations . . . . . 38
  - Misconduct by the parent corporation . . . . . 38
  - renewal application . . . . . 35
  - license renewal . . . . . 37
- Children's television advertising** . . . . . 96
  - brand names, excessive promotion of . . . . . 97
  - Commercial Limits . . . . . 96
  - False, Misleading, or Deceptive . . . . . 97
  - Host Selling . . . . . 97
  - Separation of Program and Commercial Matter . . . . . 96
- Children's Television Programming** . . . . . 58
- Combination Advertising**
  - antitrust considerations . . . . . 221
  - deletion of FCC policy . . . . . 66
- Commercial Policies and Practices** . . . . . 85
  - "Subliminal Perception" Advertising [TV] . . . . . 87
  - deceptive advertising practices . . . . . 92
  - False, Misleading, or Deceptive . . . . . 85
  - Program-Length . . . . . 87
  - Time Standards . . . . . 87
- Comparative Renewal Standards** . . . . . 38
- Competing Applications and Comparative Hearings**
  - procedure . . . . . 38
- Complaints, Citations, and Compliance** . . . . . 24
  - required records, checklist . . . . . 24
- Concealed Microphones** . . . . . 74
- Concentration of Control Rules**
  - (see Multiple Ownership)
- Concert Promotion Announcements**
  - deletion of FCC policy . . . . . 67
- Conflict of Interest**
  - deletion of FCC policy . . . . . 67
- Consideration**
  - "consideration received" rule [noncommercial licensees] . . . . . 164
  - for lottery purposes . . . . . 101
  - for sponsorship identification . . . . . 19
- Construction Permit**
  - application for . . . . . 7
  - license to cover . . . . . 7
- Contests and Promotions** . . . . . 107
  - adversely affect public interest, deletion of FCC policy . . . . . 67, 109
  - Contest Files . . . . . 110
  - fishing contests . . . . . 105
  - Licensee Responsibility . . . . . 107
  - Material Terms . . . . . 107
  - Misleading . . . . . 108
  - problem areas . . . . . 108
  - Rigged . . . . . 110
  - Sponsorship Identification . . . . . 111
  - Suggested Safeguards . . . . . 110
  - Tax Consequences . . . . . 111
- Control of station**
  - Substantial Change . . . . . 9
- Controversial Issues of Public Importance**
  - (see Fairness Doctrine)

- Copyright and trademark law**  
 basic description of ..... 201  
 cable compulsory license ..... 213  
 Cable Retransmissions ..... 208  
 Call signs, trademark  
 protection of ..... 214  
 Commercial Production ..... 211  
 Commercial production, music  
 rights ..... 211  
 comparative advertising production,  
 trademark issues ..... 212  
 Copyright Formalities ..... 202  
 copyright protection, obtaining ..... 207  
 copyright protection, scope ..... 208  
 Copyright Registration ..... 203  
 exclusive rights, five basic ..... 202  
 exclusive rights, limitations on ..... 203  
 Fair Use" Doctrine ..... 206, 209  
 Hotel and Apartment House  
 Retransmissions ..... 208  
 Library and Archival Copying ..... 209  
 License Agreements ..... 205  
 Non-Profit Translator or Booster  
 Retransmissions ..... 208  
 Passive Carrier  
 Retransmissions ..... 208  
 Passive Carrier  
 Retransmissions ..... 209  
 Public Domain Works ..... 207  
 Public Reception on a Single  
 Receiver ..... 209  
 radio format, copyright of ..... 213  
 Recordation of Transfers ..... 203  
 School Classroom Uses ..... 209  
 slogans, trademark protection  
 of ..... 214  
 Sports Programs ..... 210  
 Station's Right to Protect Its  
 Own Program ..... 207  
 Station-Produced Programs ..... 204  
 television broadcast day,  
 copyright of ..... 213  
 Trademark/Service mark  
 Principles ..... 204  
 works of others, rights to use ..... 205
- Copyright royalty distribution** ..... 161
- Coverage Maps or Ratings**  
 misuse of, deletion of  
 FCC policy ..... 69
- Cullman Doctrine** ..... 43  
 (see also Fairness Doctrine, Political  
 Broadcast, Zapple Doctrine)
- Deceptive Advertising Practices**  
 Hypoing ..... 92  
 Misleading Sales Promotional  
 Literature ..... 93
- Defamation**  
 (see Libel)
- Directional Antenna Proof-of-  
 Performance [AM]** ..... 140
- Donor Acknowledgements**  
 [noncommercial licensees] ..... 165
- Drug Lyrics** ..... 65
- Emergency broadcast system** ..... 144  
 emergency messages, visual captioning  
 of (TV) ..... 145
- Employee**  
 definition for tax purposes ..... 179
- Employees' compensation benefits**  
 Business Meals ..... 181  
 country club memberships ..... 181  
 Dependent Care Services ..... 183  
 Educational Assistance ..... 182  
 Employer Gym ..... 181  
 Employer-Furnished Transportation  
 Exclusion ..... 182  
 Entertainment ..... 181  
 Group-Term Insurance ..... 181  
 Medical care ..... 181  
 Non-taxable Fringe Benefits ..... 182  
 professional club memberships ..... 181  
 Tax-Qualified Retirement Plans ..... 183  
 Travel expenses ..... 181
- Employment Agreements** ..... 180
- Equal Employment Opportunity**  
 Consequences of Non-  
 Compliance ..... 128  
 Discrimination and How It May Be  
 Proved ..... 123  
 discrimination laws, exceptions  
 to ..... 125  
 employer's liability, scope ..... 124  
 Equal Employment Opportunity  
 Program ..... 122  
 FCC Requirements ..... 126  
 Immigration Reform and Control  
 Act ..... 128  
 Minimum Wage Standards ..... 129  
 minimum wage, employee  
 exemptions ..... 130  
 Overtime Pay Standards ..... 129  
 overtime pay, employee  
 exemptions ..... 130  
 Record Keeping Requirements ..... 132
- Equipment and Program Tests**  
 notification requirements ..... 143
- Equipment Performance**  
 Measurements ..... 139
- Extension of Construction Permit or  
 Replacement of Expired Construction  
 Permit**  
 application for ..... 7
- Fair Labor Standards Act** ..... 129  
 Record Keeping Requirements ..... 132

<b>Fairness Doctrine</b> . . . . .	42	<b>Investigative Reporting</b> . . . . .	75
(see also Cullman Doctrine, Political Broadcast, Zapple Doctrine)		<b>Joint sales agreements</b>	
Personal Attack Rule . . . . .	44	antitrust considerations . . . . .	221
Political Editorializing Rule . . . . .	45	<b>Libel</b>	
<b>False, Misleading and Deceptive</b>		danger areas for broadcasters . . . . .	81
Advertising . . . . .	85, 92, 97	group libel . . . . .	78
deletion of FCC policy . . . . .	68	Handling Complaints . . . . .	79
<b>FCC Complaints and Investigatory</b>		Opinion vs. Fact . . . . .	76
Procedures . . . . .	24	Privileges . . . . .	79
<b>FCC Fee Schedule</b> . . . . .	21	Standard of Care . . . . .	79
Amount of Charges . . . . .	22	<b>License Renewal</b>	
Cover Letters . . . . .	23	abuse of FCC processes . . . . .	38
Exemptions from . . . . .	21	Annual Employment Report . . . . .	34, 36
FCC Forms . . . . .	23	Certification Section . . . . .	36
Inclusion of Payments with		character qualifications . . . . .	35, 37
Applications . . . . .	23	checklist . . . . .	28
Method of Payment . . . . .	23	Competing Applications and	
Payment Locations . . . . .	23	Comparative Hearings . . . . .	38
Penalties for Late or Failed		Completing the Renewal	
Payments . . . . .	23	Application . . . . .	34
Retention and Refund of		Deregulatory Changes . . . . .	28
Charges . . . . .	22	Equal Employment Opportunity	
Waivers and Deferrals . . . . .	23	Program . . . . .	36
<b>Field Strength [AM]</b> . . . . .	141	FCC Forms Which Accompany the	
<b>Financial interest and network</b>		Renewal Application . . . . .	36
syndication rule . . . . .	133	Petitions to Deny . . . . .	37
<b>FM Booster Stations</b> . . . . .	147	Planning Ahead . . . . .	28
<b>FM stereo</b> . . . . .	150	Public Inspection File . . . . .	33
<b>FM subcarrier operation</b> . . . . .	148	Public Notice Announcements . . . . .	29
<b>FM translators</b> . . . . .	147	Radiofrequency Radiation	
<b>Foreign Language Programs</b>		Compliance Certification . . . . .	36
deletion of FCC policy . . . . .	68	Renewal Expectancy . . . . .	39
<b>Fraudulent Billing</b>		Renewal Standards . . . . .	37, 38
deletion of FCC policy . . . . .	68	The Renewal Process . . . . .	36
<b>Frequency Measurements</b> . . . . .	140	<b>Limited Partnership, tax</b>	
<b>Hidden Cameras</b> . . . . .	75	considerations . . . . .	174
<b>Horse Race Advertising and</b>		<b>Lotteries</b> . . . . .	98
Programming,		casino advertising . . . . .	106
deletion of FCC policy . . . . .	69	Chance . . . . .	99
<b>Immigration Reform and Control</b>		chance checklist . . . . .	100
Act . . . . .	128	Consideration . . . . .	101
<b>Independent Political Committees</b> . . . . .	57	consideration checklist . . . . .	103
Access requirements . . . . .	54	consideration, Greater Indianapolis	
<b>Invasion of Privacy</b> . . . . .	81	exception . . . . .	102
Appropriation of a person's name or		Consideration, substantial amount of	
likeness for commercial		time and effort . . . . .	101
advertising . . . . .	83	editorials and news stories . . . . .	105
Defenses . . . . .	83	Elements of . . . . .	99
false light . . . . .	82	eligibility requirements as	
Private premises . . . . .	81	consideration . . . . .	102
Public disclosure of embarrassing		Fishing Contests . . . . .	105
private facts . . . . .	82	General Prohibition . . . . .	98
Public premises . . . . .	81	Horse Racing, Dog Racing, and Jai	
		Alai . . . . .	105
		Licensee Responsibility . . . . .	98
		Prize . . . . .	99
		State-Operated . . . . .	104
		<b>Low power television</b> . . . . .	146

- Mailing Address, Changes in** ..... 5
- Main studio requirements** ..... 136
  - Establishment of ..... 136
  - Relocating ..... 137
- Mechanical Reproduction**
  - Announcements** ..... 18
- Minimum Hours of Operation** ..... 142
- Multiple ownership rules** ..... 134
  - Attribution Rules ..... 134
  - Cross Interest Policy ..... 136
  - Duopoly and One-to-a-Market Rule ..... 135
  - Newspaper/Broadcast Cross-Ownership Rule ..... 136
  - noncommercial educational broadcasters ..... 170
  - One-to-a-Market Rule ..... 135
  - TV/Cable Cross-Ownership Rule ..... 136
  - Twelve-Station Rule ..... 135
- Music licensing** ..... 215
  - radio ..... 216
  - television ..... 216
- Musical Recordings, Repetitious**
  - Broadcast of**
    - deletion of FCC policy ..... 70
- Must carry rules** ..... 153
  - A/B Switch Requirements ..... 157
  - Asserting Carriage Rights ..... 156
  - Commercial Signal Carriage Obligations ..... 155
  - Commercial Television Station Eligibility ..... 154
  - Consumer Education Requirements ..... 158
  - Manner of Carriage ..... 156
  - noncommercial educational TV stations, carriage rights ..... 157
  - Payment for Carriage ..... 156
- NAB Codes**
  - dissolution of ..... 86
- Network affiliation agreements**
  - filing of ..... 132
  - territorial exclusivity ..... 132
- Network Clipping**
  - deletion of FCC policy ..... 69
- Network Program Non-duplication**
  - Protection** ..... 159
    - Cable Systems on Which Stations are Entitled to Protection ..... 159
    - Notification Requirements ..... 160
    - Programs for Which a Station is Entitled to Protection ..... 159
    - Same-Day Non-duplication Protection ..... 160
    - Translators ..... 160
- Network rules** ..... 132
  - Radio ..... 133
  - Television ..... 133
- Network Television Affiliation**
  - Agreements**
    - public file retention ..... 121
    - reporting requirements ..... 5
  - Noncommercial educational broadcasters**
    - Accounting Requirements ..... 169
    - Announcements on Behalf of Other Nonprofit Organizations ..... 165
    - Channel 6 interference ..... 169
    - community advisory boards ..... 170
    - Donor Announcements ..... 165
    - eligibility ..... 164
    - facilities or services, used for revenue generation ..... 167
    - Financial Reports ..... 169
    - fundraising activities ..... 167
    - general guidelines ..... 163
    - Logging Requirements ..... 170
    - lowest unit charge ..... 170
    - minimum operating schedules ..... 170
    - minimum power requirements ..... 170
    - multiple ownership rules ..... 170
    - nonprofit and noncommercial requirement ..... 164
    - open meetings requirement ..... 169
    - political endorsements and editorials ..... 167
    - programming policies ..... 170
    - public inspection file ..... 170
    - Public Telecommunications Facilities Program ..... 171
    - Renewal Applications ..... 170
    - station-related goods and services, promotion of ..... 165
    - Subscription Television Services ..... 168
    - Subsidiary Communications Authorizations (SCA) ..... 168
    - Teletext ..... 168
    - underwriting credits, generic ..... 166
    - underwriting credits, timing ..... 166
    - Vertical Blanking Interval Service ..... 167
  - Obscene, Indecent or Offensive Language**
    - Live Coverage ..... 64
    - Obscenity vs. Indecency ..... 63
    - Political ads ..... 64
    - Practical Advice ..... 65
    - Recorded or Filmed Coverage ..... 64
    - Revised Indecency Standard ..... 63
  - Ownership Interests, use of different classes** ..... 177
  - Ownership Report**
    - attribution standards ..... 3
    - Information Not Required ..... 4
    - Information Required ..... 2
    - public inspection file, retention in ..... 33,120
    - renewal application ..... 34
    - renewal of license ..... 12
    - reporting requirements ..... 2

- Partnership, tax considerations . . . . . 174
- Payola, Plugola and Conflicts
  - of Interest . . . . . 112
  - Promotion of Non-Broadcast Activities . . . . . 69, 115
  - Recognizing Payola . . . . . 113
  - Suggested Preventive Measures . . . . . 113
- Petitions to Deny
  - abuse of FCC processes . . . . . 37
  - Procedure . . . . . 37
- Phone Calls, Harassing or Threatening
  - deletion of FCC policy . . . . . 68
- Point-to-Point Communications
  - prohibitions on . . . . . 72
  - prohibition against, exception for broadcasts during emergencies . . . . . 61
- Political Broadcasts
  - 10-State Rule . . . . . 48
  - Comparable Use . . . . . 53
  - endorsements and editorials, noncommercial educational stations . . . . . 167
  - Equal Opportunities Provision:
    - Section 315 . . . . . 45
  - Legally Qualified Candidate for Public Office . . . . . 47
  - Lowest Unit Charge . . . . . 52
  - obscene . . . . . 64
  - political broadcast file . . . . . 58
  - Political Broadcasting Rates . . . . . 52
  - Pre-Election Checklist . . . . . 58
  - Section 315, No Censorship
    - provision . . . . . 50
  - Sponsorship ID Requirements . . . . . 53
  - Station-Sponsored Debates . . . . . 50
  - Zapple Doctrine . . . . . 51
- Political Candidates
  - Access Requirements . . . . . 54, 57
  - lowest unit charge, inapplicable to noncommercial educational broadcasters . . . . . 170
  - nonfederal candidates, airtime for . . . . . 56
- Pornography
  - (see Obscene, Indecent or Offensive Language)
- Postcard Renewal
  - (see Renewal of License)
- Post-Filing Announcement
  - text . . . . . 32
  - Certificate of Compliance . . . . . 33
  - exceptions and miscellaneous information . . . . . 32
  - procedures . . . . . 31
- Pre-Filing Announcement
  - text . . . . . 30
  - Certificate of Compliance . . . . . 33
- exceptions and miscellaneous information . . . . . 32
- procedures . . . . . 29
- Prime Time Access Rule . . . . . 60
- Program Length Commercials . . . . . 87
- Program Standards
  - antitrust considerations . . . . . 222
- Promoting the Non-Broadcast Business of a Station,
  - deletion of FCC policy . . . . . 69
- Proof-of-Performance
  - directional antenna (AM) . . . . . 140
  - Equipment Performance Measurements . . . . . 139
- Public Inspection File
  - Annual Employment Reports . . . . . 121
  - Citizens Agreements . . . . . 121
  - FCC Procedural Manual . . . . . 121
  - Issues/Programs Lists . . . . . 122
  - Letters from the Public . . . . . 122
  - license renewal . . . . . 33
  - maintaining . . . . . 117
  - Materials Relating to Applications Filed with the FCC . . . . . 119
  - noncommercial educational stations . . . . . 170
  - Ownership Materials . . . . . 120
  - Political and Controversial Programming Information . . . . . 121
  - renewal application questions . . . . . 35
- Public Service Announcements . . . . . 20
- Public Telecommunications Facilities
  - Program . . . . . 171
- Quarterly Issues/Programs List . . . . . 41, 122
- Radio operator requirements
  - Chief Operators . . . . . 138
  - Duty Operators . . . . . 137
- Radiofrequency radiation
  - regulations . . . . . 150
  - ANSI exposure limits, distances to . . . . . 152
  - checking station compliance . . . . . 151
  - license renewal compliance certification . . . . . 36
- Reasonable Access
  - criteria . . . . . 55
  - nonfederal candidates . . . . . 56
- Rebroadcasts
  - Foreign or Non-Broadcast Stations . . . . . 71
  - Telephone Conversations . . . . . 72
  - Transmissions of Other Broadcast Stations . . . . . 71
- Record retention
  - developing a system . . . . . 117



- Regulatory Underbrush** ..... 65
  - Alcoholic Beverage Advertising ..... 65
  - AM-FM Program Duplication ..... 66
  - Astrology Advertising ..... 66
  - Audience ratings distortion ..... 67
  - Call-In Polls ..... 66
  - Combination Advertising Rates and Joint Sales Practices ..... 66
  - Concert Promotion Announcements ..... 67
  - Conflict of Interest ..... 67
  - Contests and Promotions Which Adversely Affect the Public Interest ..... 67
  - Coverage Maps or Ratings, misuse of ..... 69
  - False, Misleading and Deceptive Advertising ..... 68
  - Foreign Language Programs ..... 68
  - Fraudulent Billing ..... 68
  - Horse Race Advertising and Programming ..... 69
  - musical recordings, repetitious broadcast of ..... 70
  - Network Clipping ..... 69
  - phone calls, harassing or threatening ..... 68
  - Promoting the Non-Broadcast Business of a Station ..... 69
  - sales contracts, failure to perform ..... 68
  - Sports announcers, announcements concerning selection of ..... 66
- Remote control and extension metering** ..... 144
- Renewal Considerations** ..... 27
- Renewal of License** ..... 12
  - application for ..... 12
  - FM and TV Translators ..... 13
- Reporting Requirements** ..... 1
- Sales Contracts**
  - failure to perform, deletion of FCC policy ..... 68
- Satellite earth stations**
  - acquiring facilities ..... 194
  - authorized use of ..... 197
  - FCC licensing procedures ..... 196
  - operational responsibilities of earth station licensees ..... 199
  - rules and regulations for ..... 193
- Satellite newsgathering** ..... 199
- Sex Discrimination**
  - (see Equal Employment Opportunity)
- Slogans**
  - Frequency or Channel Identifiers ..... 215
  - trademark protection of ..... 214
- Sole Proprietorship, tax considerations** ..... 174
- Sponsorship Identification**
  - "Teasers" or "Come-On" Spots ..... 20
  - contests and promotions ..... 111
  - political ads ..... 53
  - rule ..... 19
- Sports announcers**
  - FCC policy ..... 66
- Sports Blackout Rules**
  - cable television ..... 160
- Statement of Television Program Service elimination of** ..... 5
- Station identification**
  - announcements ..... 19
- Station Logs and Records** ..... 138
- Station Power** ..... 141
- Station technical specifications**
  - Field Strength [AM] ..... 141
  - Frequency Measurements ..... 140
  - Minimum Hours of Operation ..... 142
  - Modulation ..... 141
  - Tower Lighting and Painting ..... 142
- Stock and Management Consultant Agreements**
  - reporting requirements ..... 5
- Subscription Television Services**
  - noncommercial educational broadcasters ..... 168
- Subsidiary Communications Authorizations (SCA)**
  - noncommercial educational broadcasters ..... 168
- Tax considerations**
  - Accelerated Cost Recovery System
  - Depreciation ..... 184
  - Alternative Minimum Tax ..... 189
  - Business Use of Cars ..... 185
  - capital gains preferential treatment, repeal of ..... 186
  - cash method of accounting, limitations on ..... 188
  - Compensation Arrangements ..... 185
  - Corporate Liquidations ..... 187
  - Expenses for Business and Entertainment ..... 186
  - Investment Tax Credit ..... 186
  - Key Person Insurance ..... 185
  - Loans from Businesses ..... 185
  - Loans to Businesses ..... 185
  - Taxable Years of Partnerships, S Corporations, and Personal Services ..... 188
  - Tax considerations for operating a business ..... 183
- Tax rates**
  - Corporate Rate Structure ..... 184
  - Individual Rate Structure ..... 183



Rate Schedules .....	184
Tax Reform Act of 1986 .....	173
<b>Technical Rules</b>	
FCC citations for violation of .....	27
<b>Telephone Conversations</b>	
"Not-for-Actuality" Recording .....	73
rebroadcasting .....	72
<b>Teletext</b> .....	149
noncommercial educational broadcasters .....	168
<b>Television Multichannel Sound</b> (TV stereo) .....	150
<b>Ten State Rule</b> .....	48
<b>Territorial exclusivity rule</b> .....	132
<b>Time Brokerage</b> .....	95
<b>Tobacco Product Advertising</b> .....	88
<b>Tone Clusters</b>	
technical requirements .....	145
<b>Tower lighting and Painting</b> .....	142
failure, notification requirements .....	143
<b>Trade and Barter Arrangements</b> .....	94
<b>Transfers and Assignments</b>	
applications for .....	8
public notice announcement .....	10
<b>Transmitter meters failure, notification</b> requirements .....	143
<b>Truth in Lending Act</b> .....	89
<b>TV Booster Stations</b> .....	148
<b>Unauthorized Communications and</b> Rebroadcasts .....	70
<b>Vertical Blanking Interval Service</b> noncommercial educational broadcasters .....	167
<b>Zapple Doctrine</b> .....	51
(see also Cullman Doctrine, Political Broadcast, Fairness Doctrine)	