

THE



BROADCASTER'S SURVIVAL GUIDE

**A
Handbook
of FCC Rules
and
Regulations
for
Radio and TV
Stations**

JACK W. WHITLEY AND GREGG P. SKALL

of Baker & Hostetler

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A Handbook of FCC Rules and Regulations
for Radio and TV Stations

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INTRODUCTION

This handbook is intended to expose the reader to the basic legal principles affecting today's broadcasting industry. It is not an exhaustive analysis of broadcast law. In fact, we have made a concerted effort not to cite specific cases or rules. Rather, this handbook will provide a clear and concise explanation of the basic conduct expected of broadcasters by the Federal Communications Commission (FCC or Commission), including both what is prohibited and what is required.

For those who would like a more detailed examination of the regulations, laws, and statutes affecting the industry, we suggest the following two publications: the *National Association of Broadcasters Legal Guide*, written and published by the staff of the National Association of Broadcasters; and the *Public Radio Legal Handbook*, written by Thomas J. Thomas and Theresa R. Clifford, and published by the National Federation of Community Broadcasters, specifically for non-commercial stations. Both organizations are based in Washington, D.C. However, no publication should be considered a substitute for retaining an attorney or engineer who specializes in broadcast regulation. Only such professionals can provide a licensee a full analysis of its specific regulatory problems.

The handbook consists of two sections. The first addresses the licensing process: how licenses are awarded and the procedures by which licensees are regulated. The second section explains the FCC's substantive rules: the standards used to evaluate a licensee's conduct and a station's technical operation, and what a licensee can or can't do. The second section also describes the FCC itself: how it is organized, which subdivisions are of particular importance to broadcasters, and why. Finally, we have included sample forms and checklists which should assist in a station's record keeping.

With this booklet, broadcasters will have the basic information necessary to understand and survive the FCC's regulation of broadcasting.

P A R T

ONE

LICENSING
PROCEDURES

O N E

GENERAL APPLICATION PROCEDURE

Building or Buying Stations

The Communications Act of 1934 requires that a radio or television station be licensed by the FCC before it commences operation. There are two ways to obtain such a license, both of which involve submitting an application to the FCC. The first method is to apply for a construction permit to build a new station. There may be significant competition for the initial grant of such a permit, but once it has been issued and construction properly completed, the issuance of a license is automatic. The second method of obtaining a license is to purchase an existing station and seek authority from the FCC to assume control of the facility. Again, FCC authorization of the ownership change is required, and approval must be obtained before the change is consummated.

The Communications Act requires the FCC to observe certain procedures in these licensing activities¹. First, an application for authorization to build or buy a station must be filed. Then the FCC must issue a public notice announcing the filing. The FCC cannot grant such an application until 30 days have passed from the date this notice is published. The Act also requires that the party filing the application give local notice in

1. The FCC's rules are found in Title 47 of the Code of Federal Regulations and will be referred to hereinafter as 47 C.F.R. (section of FCC Rules).

the community where the station is proposed or, in the case of an existing station, where it is currently operating.

Before an application can be granted, the FCC must find that the grant will serve the public interest, convenience, and necessity. One of the matters it considers is formal petitions to deny or informal objections challenging the grant of the application. These petitions and objections must be filed within the 30-day period following the FCC's public notice of the application's filing. If such petitions or objections are filed, the FCC must determine whether they raise a substantial and material question of fact of whether granting the application would serve the public interest. These questions must be resolved before an application can be granted.

If they cannot be readily resolved, an evidentiary hearing, similar to a trial in a civil suit, is the procedure used to explore and finally resolve such questions. At such a hearing, evidence is collected and the burden is placed on the applicant to prove that the public interest would be served by a grant of its application. If an applicant fails to produce sufficient evidence to meet this burden, its application will be either dismissed or denied.

In contrast, if no petitions or objections are filed and the Commission finds no other problems, an application can be granted as soon as the 30-day period has passed.

Other Applications

Procedures similar to those described above are also used when the FCC is asked to grant various other applications. Since licenses are only granted for a limited period of time—radio for seven years and television for five—a licensee must apply for a renewal of its license. Renewal applications, like initial licensing applications, are subject to public petitions and informal objections, but for a period of several months rather than 30 days.

Another kind of application is one by which the licensee of an existing station seeks a construction permit to make a major change to its station. Among other things, the FCC considers a major change to be a change in a station's community of license or frequency. For AM stations, major changes can also include

increases in power. For non-commercial FM stations, they include significant (over 50 percent) changes to the area covered by the station's signal. Whenever such a change is proposed, the same public notice procedures and 30-day public comment period discussed earlier must be observed.

Some applications are considered minor in nature and are therefore not subject to a 30-day public comment period before they can be granted. These include applications for insignificant modifications to existing facilities, primarily those that do not affect the station's frequency or its community of license. Also included are pro forma ownership changes, such as partnerships becoming corporations, or involuntary transfers of control in bankruptcy or situations involving the appointment of a receiver. Although an FCC public notice of the filing of such applications is still required, and informal objections from the public may still be filed, there is no required waiting period before these applications can be granted.

T W O

SPECIFIC LICENSING PROCEDURES

Although the general licensing process is the same for all applications, there are unique procedures for particular circumstances of which broadcast licensees and applicants should be aware.

Station Construction Permits

Before beginning construction on a new station or on the modification of an existing facility, the FCC must issue a construction permit. The application for a construction permit is FCC Form 301. The permit, once granted, is effective only for a limited period of time: 18 months for radio and 24 months for television. If construction cannot be completed within this time, the permit will automatically expire unless the permittee applies to the FCC for an extension. The FCC has indicated that such extensions will not be granted routinely and only if good cause is shown. An application for an extension of a construction permit (FCC Form 701) should be filed 30 days prior to the permit's expiration.

Upon completion of construction and before a licensee can begin to operate the facilities, the FCC must issue a Program Test Authority, or PTA. In most cases the grant of PTA is automatic upon a notification to the FCC that construction is completed. Occasionally, however, a permittee must submit

further data to the FCC before the authority is granted. Typically, such a filing is required when a directional antenna or some other specialized transmission system is employed.

At approximately the same time that PTA is sought, the permittee must also submit an application for a "license to cover" the new facilities (FCC Form 302). After construction is completed, however, the grant of a license to cover the newly-constructed facilities is usually routine.

Emergency and Temporary Operations

Under some circumstances, the FCC has the power to authorize broadcast operations without going through the full licensing procedures for construction permits. Such an authorization is known as a Special Temporary Authority, or STA, and is issued in two circumstances.

An STA is granted for emergency conditions, such as when an existing station's facilities have been destroyed but the station wishes to resume operations immediately with a technical system other than that for which it is licensed. Under such circumstances, if no harmful interference is caused, the Commission will issue an STA to permit operation.

If a station has an application pending to make a minor change to its facility, the FCC has the authority to issue an STA to permit the station to commence operations with the changes immediately. Generally, the FCC will issue such an STA if there is little question that the pending application will eventually be granted; if there has been some delay in granting the application beyond the application's control, such as unusual internal processing problems at the FCC; and if there are other public interest reasons for commencing operations with the new facilities right away.

An STA is good for only a short period of time, seldom more than three months. The FCC expects that the station will soon have its old facilities rebuilt or, in the case of a pending application, will have been granted authority to operate under normal procedures. Again, the FCC may extend an STA if good cause is shown.

License Renewal

As mentioned above, every license is granted only for a limited term: radio stations for seven years, television stations for five. Before these terms expire, a station must apply to the FCC for a renewal of its license. This process must begin six months prior to the license's expiration date. To initiate the process, the station must begin to broadcast "pre-filing" announcements stating that it is about to file a renewal application. A log of when the announcements are aired must be kept in the station's "public inspection file." (For more on the public inspection file, see pages 32-36). Two months later—four months prior to license expiration—the renewal application must be filed with the FCC and also placed in the station's public inspection file. Then, for an additional three months, the station must continue to broadcast "post-filing" announcements of the application and again keep a log of air times in the public file. Both pre-filing and post-filing announcements are very similar in content and must be broadcast during specific times of the day. Specific requirements are detailed below.

The final event in the renewal process occurs the first business day of the last full calendar month prior to the license's expiration. At that time comments from the public or formal petitions to deny the renewal application are due as well as competing applications (see pages 23-28). All comments, petitions, and competing applications are considered before the FCC will grant a station's renewal application. Even if nothing is filed, it is not unusual for renewal not to be granted until after the old license expires. A station may continue to operate past the expiration of its licenses as long as its renewal application is still pending before the FCC. However, a station must place next to the posted copy of its expired license the FCC's correspondence—usually a post card—acknowledging receipt of the station's renewal application.

★ Pre-Filing Announcements

Six calendar months prior to the expiration of a station's license, the station must begin its pre-filing announcements. These announcements state that the station is seeking the re-

newal of its license and will be filing an application for this purpose with the FCC. These announcements must be broadcast on the 1st and 16th days of each month and must continue until the date an application for license renewal is filed with the FCC. Since a renewal application must be filed four months prior to a license's expiration, this means that pre-filing announcements must be aired for two months on at least four occasions, i.e., on the 1st and 16th days of each of those two months. The text of those announcements are as follows:

On (date on which last license was granted), (station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (license expiration date).

Our license will expire on *(date)*. We must file an application for renewal with the FCC *(date four calendar months prior to the license's 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 *(date first business day of last full calendar month prior to the date of the license's 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.

These announcements must be made within the following time requirements:

Radio stations. At least two of the four required announcements must air between 7 AM and 9 AM and/or 4 PM and 6 PM. If the station does not operate between those hours, the required announcements must be aired during the first two hours of its operation.

Television stations. For stations in the Eastern and Pacific time zones, at least two of the four required announcements must be made between 6 PM and 11 PM. In the Central or

Mountain time zones, they must be made between 5 PM and 10 PM. For television the announcement must be read aurally and simultaneously broadcast visually.

★ Post-Filing Announcements

Post-filing announcements must be broadcast for three months, from the date the license renewal application is filed until the next to last full calendar month prior to the expiration of the station's license. The post-filing announcement must be broadcast on the 1st and 16th days of each these calendar months. This means a minimum of six announcements must be aired. The announcements must consist of the following:

On (date on which last license was granted), (station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (license expiration date).

Our license will expire on *(date)*. We have filed an application for 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 *(date first business day of last full calendar month prior to the month of the license's 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.

The announcements must be made within the following time requirements:

Radio stations

1. At least three announcements between 7 AM and 9 AM and/or 4 PM and 6 PM. If the station does not operate between these hours, at least three announcements must be aired during its first two hours of operation.

2. At least one announcement between 9 AM and noon.
3. At least one announcement between noon and 4 PM.
4. At least one announcement between 7 PM and midnight, if the station operates during these hours.

Television stations

1. In the Eastern and Pacific time zones, at least three announcements between 6 PM and 11 PM; in the Central and Mountain zones, between 5 PM and 10 PM.
2. At least one announcement between 9 AM and 1 PM.
3. At least one announcement between 1 PM and 5 PM.
4. At least one announcement between 5 PM and 7 PM.

Again, television announcements must be given both visually and aurally.

Thirty days prior to expiration, petitions to deny the renewal application are due, as well as competing applications for new facilities. Generally, if no problems exist and no petitions to deny or competing applications are filed, the license can be renewed within a month of expiration.

The FCC sends each station a package of materials to assist it in filing its renewal application, usually 30 to 60 days before the process is to begin. The mailing of these materials serves as a reminder that the renewal procedure will be commencing shortly.

Rules regarding renewal of licenses are found at 47 C.F.R., Section 73.3580. A state-by-state list of when the renewal process begins for local radio and television stations and a sample log for recording pre- and post-filing announcements are included in Appendix A at the end of this handbook.

Mutually Exclusive (MX) Applications

Applications to construct new stations, to make major changes to existing stations, or to renew a license, generally must be held open to competing, mutually exclusive (MX) applications. Under these procedures, members of the public may file an alternative construction permit application for a new station which technically precludes a grant of a previously filed appli-

cation. Such competing applications are considered "mutually exclusive," since one application cannot be granted without denying the other. When presented with such applications, the FCC must hold a special kind of evidentiary hearing, known as a "comparative hearing," in which the FCC must collect evidence and decide which applicant can best serve the public interest.

MX applications are seldom filed in renewal proceedings. Current FCC policies strongly favor the renewal of an existing station's license unless the licensee has been engaged in significant misconduct. Therefore, without proof of such misconduct, MX applications filed against renewal applications have little chance of winning.²

Whether or not a major change can result in a comparative hearing is a matter that varies with the circumstances of each case. Existing licensees who propose major changes to their facilities that do raise the possibility of a hearing may or may not have a significant advantage over an MX applicant, also depending on the circumstances. If an MX application is filed by a party with superior qualifications, an existing licensee could lose its license. For this reason, many licensees hesitate to file applications proposing major changes, unless they can do so in such a manner which will preclude a comparative hearing.

★ New Stations

When applications to construct new stations are filed, comparative hearings are extremely common.

Television, AM or Non-commercial FM Radio. Applicants seeking a construction permit for a new television, AM or non-commercial FM radio station should be aware of two deadlines: the "A" cut-off date, which is the deadline by which all applications must be filed; and the "B" cut-off date, which is the deadline after which an applicant can no longer improve its chances to win in a hearing by amending its application. These dates are

2. There are proposals now pending in Congress to foreclose even the opportunity for comparative applications to be filed against renewal applications unless the FCC finds that an existing licensee is guilty of malfeasance or misfeasance.

set by the FCC after an initial application to build a station is filed. Generally, once the first application is submitted, the FCC will announce its filing and invite the submission of competing applications by a specific date. This date is the "A" cut-off. It is also the date by which petitions to deny the initial application are due. If a competing application is filed, the FCC will then announce the date when amendments to all applications are due. This is the "B" cut-off date. It is also the date when petitions to deny the competing applications must be filed.

New Commercial FM Radio Stations. For new commercial FM station applicants, the FCC uses a procedure known as a "window filing" system. Under this system, parties apply for a commercial FM channel allocation to particular communities within a specific period of time or window.³ If more than one application is filed, a comparative hearing is held. If only one applicant applies, a construction permit is granted without further deliberation. If no applications are filed, the first to apply thereafter is granted a construction permit. After the window filing period closes, a comparative hearing is held only if two applications are filed on the same day for the same allocation.

★ Comparative Hearings

Designation. When more than one grantable application is filed, following all filing deadlines, the FCC will designate competing applications for hearing. In this "hearing designation order," the FCC specifies the issues upon which evidence must be compiled and upon which the decision of which application will be granted will be based. An administrative law judge (ALJ) will then be assigned to hear the matter.

The issues that are designated in hearing orders fall into three

3. Applicants for television or commercial FM stations can only file construction permit applications for specific frequencies "allocated" to particular communities listed in the FCC regulations. Allocations can only be changed by a formal change in the FCC Rules. In contrast, the frequencies and communities of license for new AM or non-commercial FM stations are not determined until an application is actually filed. Applications for such stations can be filed for any frequency and community where they can show a new station is technically possible.

general categories: (1) *technical issues*, relating to the applicant's engineering (coverage, aviation safety, etc.); (2) *character issues*, relating to the trustworthiness and reliability of an application; and (3) *standard comparative issues*, or how one applicant compares to another in how they would serve the public interest.

Most proceedings are decided on standard comparative issues. In the deliberations associated with these issues, credits or demerits are assigned each applicant for the presence or absence of various factors the FCC has found important in awarding broadcast permits. Most of these factors are enumerated in the 1965 Policy Statement on Comparative Broadcasting Hearings of the FCC. They include the following:

1. *Diversification*. The FCC gives preference to applicants who have no other ownership interest in broadcast media. The FCC "attributes" to an applicant any broadcast interests owned by the applicant or, in many circumstances, the applicant's spouse.
2. *Integration*. Preference is also given to applicants proposing owner participation, or "integration," in the station's management. For those applicants proposing a larger percentage of such integration, i.e., full-time rather than part-time integration, comparatively greater credit is awarded.
3. *Minority or female control*. More credit has been given if a controlling portion of ownership belongs to either minorities or women and the ownership is integrated into management. However, the award of such credits is currently the subject of appeal in which the FCC has argued that they are unconstitutional.
4. *Daytime-only AM*. The FCC recently created a preference to licensees of daytime-only AM stations who have owned their stations for at least three years and who seek new FM stations in their communities of license.
5. *Local residence*. Credit is given if the actual or proposed residence of an integrated owner is in the station's service area.
6. *Past broadcast experience*. A slightly enhanced credit is given if an integrated owner has any past experience with a broadcast facility.
7. *Auxiliary power*. Applicants proposing auxiliary power for their facilities are awarded credit.

Hearing. Following a period of information gathering, known as "discovery," the ALJ will schedule a hearing, usually in Washington, D.C., for presentation of written and oral testimony regarding the applicants. Generally, all the management principals of the applicant are required to testify at the hearings.

Initial Decision. Following the hearing, the ALJ will require the applicants to submit proposed findings of fact and conclusions of law. Based upon the applicants' proposals, the ALJ will prepare an initial decision granting a construction permit to one of the applicants.

Appeal. The unsuccessful applicant can appeal the ALJ's initial decision to the FCC's review board, and then to the Commissioners. Appeals may also be taken from the FCC to the United States Court of Appeals for the District of Columbia Circuit.

Obviously, an applicant should try to structure itself to take advantage of the factors upon which the FCC bases its permit award decisions. One potential way to maximize such advantages is to operate the station as a limited partnership or in some other business form that gives the minority or other FCC-preferred principals control over the operation of the station. Such deliberate structuring is consistent with the FCC's policy of encouraging minority and female ownership (although, as noted elsewhere, this policy is currently under appeal), and helps minorities and females improve their position in the broadcast industry. However, such an arrangement is only useful if the other principals are willing to relinquish operating control of the station.

In any event, the participation of minority or female ownership in management, the inclusion of principals whose residence is in the station's area of operation or who have prior broadcast experience, is advantageous no matter what form of ownership is used. It also makes sense that principals planning to participate in management should be accorded a relatively larger share of ownership.

Finally, in order to prepare an application that has the best possible chance of being granted, be sure to consult with counsel prior to filing.

★ Other Procedures

Because comparative hearings are extremely expensive and may not always serve to select the best applicant, the FCC has begun to implement alternative selection procedures. One example is the "window" filing system discussed earlier.

Another procedure, adopted to replace comparative hearings entirely, is the random lottery. Thus far, the random lottery has only been used in granting low-power television applications and non-broadcast service construction permits. In the lottery, applicants with minority ownership are given a greater statistical chance to win. Consequently, both the lottery and comparative hearings provide similar preferences in awarding licenses. Because of its low cost, the FCC may use a lottery more often in the future, particularly for new FM stations.

Ownership Changes

Every change in ownership of a broadcast station must be reported to the FCC. When the change is a complete change in ownership or a change of control, prior consent of the FCC is required by the Communications Act. Such changes can take place in a number of ways, even when there is no change in the particular people who hold an ownership interest. For example, a mere technical change in the entity holding the license of a station (e.g., a partnership becoming a corporation) is considered an ownership change requiring FCC prior consent, even if all underlying ownership interests remain the same. In addition, where a licensee is owned by two partners in equal 50-percent shares, should one of the partners increase his or her percentage above 50 percent (and, consequently, decrease the others to less than 50 percent), prior FCC consent is again required. Should the two partners take in a third, so that one partner has 40 percent, the second partner has 30 percent and the third partner has 30 percent, a change in control has also taken place, because none of the partners would have 50 percent, or "negative control," the amount of ownership necessary to block a majority vote. Similarly, in a corporation with several stockholders

where none have up to 50 percent of the shares, if over half the shares change hands or one of the stockholders acquires a majority of the shares, an application for prior FCC consent is also required.

The procedures for reporting changes vary with the circumstances involved. A complete or substantial change in ownership is subject to the full licensing procedures discussed earlier: filing an application; observing a 30-day waiting period before the application is granted; and permitting petitions to deny the application to be filed by the public. No MX applications can be filed in such situations, however. There are two FCC application forms which are used in such situations. A 314 application is used when a license is to be assigned to a new licensee. A 315 application is used when the licensee remains the same but control of the licensee transfers to a new party.

When a licensee changes its technical form of ownership (e.g., a partnership becomes a corporation), FCC consent is obtained through a "short form" application—officially, the FCC Form 316. In such situations, FCC consent is not subject to any required waiting period for public comment and is usually obtained quickly. Ownership transfers which do not require prior FCC consent—minor changes in ownership where control does not change—merely need to be reported to the FCC within 30 days after their consummation. The FCC now requires licensees to file such reports on an annual basis, even if no changes have occurred in the previous year. The report is due on the anniversary date of the filing of the station's renewal application.⁴

The FCC form used to report these minor ownership changes and for the annual ownership reports is FCC Form 323 for commercial stations and FCC Form 323-E for non-commercial stations.

To be certain of which of the above procedures is required, a qualified communications attorney should be consulted. Caution is advised because FCC ownership rules are complicated and a mistake could result in violating federal law and endangering a station's license.

4. All stations in a particular state file their renewal applications on the same day of each renewal cycle. See the table in Appendix A for these dates.

Application Fees

In 1987, pursuant to an act of Congress, the commission began to require applicants to pay a fee for the processing of their applications. A fee is required with almost all broadcast applications and is due when an application is filed. In fact, the failure to submit the required fee could result in an application's dismissal. Moreover, an applicant is charged an additional fee if its application is designated for an evidentiary hearing. The current fees charged by the Commission are listed in Appendix E. The amounts charged are subject to review every two years, at which time they can be adjusted according to inflation. They can also be adjusted pursuant to the direction of Congress. The FCC has a special telephone number applicants can call to inquire about which fee is applicable to particular applications and what the total amount due will be. That number is (202) 632-3337. Prior to the filing of any application, the applicant should not only be prepared to file a fee, but should check with the FCC on the amount.

T H R E E

LOCAL COMMUNITY INVOLVEMENT

There are several required procedures that are intended to involve the station's local community in the licensing process. These procedures are important because they can affect any application submitted to the FCC.

Studio Location

Until recently, the cornerstone of the Commission's rules on local community involvement was the requirement that each broadcast station locate its main studio within its community of license. This rule has recently been changed for commercial stations, however, since the Commission realized that the location of a station's studios did not assure quality service to the local community. The rules now require that the station's studio be located somewhere within the station's primary service signal contour. This is the 3.16 Mv/m contour for FM radio stations, the 5 Mv/m daytime contour for AM stations, and the city grade contour for television. Stations are required to maintain a toll-free telephone number that members of the public from its community of license can call. All stations must also maintain their public inspection files, discussed below, somewhere in their communities of license.

Non-commercial stations are still required to maintain their studios in their community of license.

Public Inspection File

All radio and telephone stations are required by the FCC to maintain a public inspection file (see 47 C.F.R. Section 73.3526 for commercial stations and Section 73.3527 for non-commercial stations). The file must be kept at some accessible location in the station's community of license, and be made available to all members of the public upon request during normal business hours. The licensee cannot require a person requesting to see the file to explain his or her interest before making it available and must provide an opportunity or facility for copying portions of the file. The licensee, however, can require reimbursement and may ask someone requesting the file to give their name and address.

Recently, the FCC significantly changed and clarified file requirements. Broadcasters can substantially reduce administrative burdens if they are aware of the changes in issues/programs list requirements. Political file requirements, especially during election season, are particularly important. The following is a review and update of file requirements.

★ Political File Requirements

Commercial radio and television station public inspection files must include a complete record of all requests for broadcast time made by or on behalf of candidates for public office (see 47 C.F.R. Section 73.1940(d)). The disposition of each request must be indicated along with charges made, if any, if the request is granted. The file must also include a record of any free time provided to candidates. Broadcasters are not required to keep records of general requests for information on rates and the availability of time. However, all requests for a specific class and length of time must be documented regardless of whether time is actually sold.

Station managers should place this documentation into the political file as soon as possible—at least within 24 hours. Managers should also keep the file current as to the disposition or outcome of requests. Moreover, the record must be complete

and self-explanatory—numerical notations and other data about requests which are not readily understandable by the public are inadequate. The records must be retained for two years.

★ Issues/Programs List

In 1981, the FCC substantially deregulated the commercial radio industry by eliminating non-entertainment programming guidelines, detailed ascertainment requirements, advertising limitation guidelines, and detailed programming log requirements. In place of a programming log, both radio and television station managers must prepare a list every three months of the most significant community issues addressed by the station's programming during the preceding three months. The list must include a brief narrative describing how each issue was treated (e.g., public service announcements or call-in shows), giving a description of the programs including time, date, duration, title, and any other relevant information. See the example included in Appendix B. All broadcasters must place the list in the public inspection file on the tenth day of each calendar quarter (i.e., January 10, April 10, July 10, and October 10). They must also retain the issues/programs lists for the entire license renewal period.

The courts have generally affirmed the FCC's radio deregulation decision, but have twice required the FCC to reconsider the programming log requirement. Nevertheless, the FCC has continued to find the log requirement unnecessary. It did, however, remove a ten-issue cap on the issues/programs list, imposed when the requirement was first adopted. This means licensees may now list as many issues as they believe necessary to adequately reflect their service to the community.

The FCC also ruled that the list must contain the most significant programs the licensee has aired to address the listed issues facing the community. Therefore, if a program is not reported as significant, the licensee will probably not receive credit for it later. Consequently, licensees should compile their issues/programs lists carefully.

The FCC has taken similar steps to deregulate commercial television. It eliminated existing programming and advertising guidelines, ascertainment procedures, and programming log re-

quirements. As a result, the issues/programs list requirements for television and radio are essentially the same.

★ Non-Commercial Exceptions

The rules for non-commercial stations are in the process of being changed to the same as those for their commercial counterparts. At the time of this writing, the requirements are similar but not exactly alike. The non-commercial rules still place a ten-issue cap on the number of issues that must be listed and do not require all "significant" programming to be included. In a rule making which should be completed by the end of the 1987 calendar year, the FCC proposes to make the commercial and non-commercial rules exactly alike. Finally, non-commercial FM Class D stations (basically, 10-watt college stations) and non-commercial stations which only offer instructional programming are exempt from maintaining an issues/programs list under both the new and old rules. Low power television stations are also exempt.

★ Additional Public File Requirements

Applications. The public file, as a practical matter, must contain all applications to the FCC and amendments, correspondence, exhibits, and documents connected with the applications. The file must also contain copies of any initial and final decisions of the FCC regarding the applications and the names and addresses of persons filing petitions to deny.

Applications must be retained for one of the following periods, whichever is longest: (1) seven years from their filing at the Commission; (2) the period required for any FCC proceeding to which they are relevant to be finally resolved; or (3) for the period necessary for the Commission to take final action on the second renewal application of the station filed after the application in question was itself filed. Note that the engineering portion of an application must be retained as long as it reflects the current technical operation of the station. If the station is modified to make the engineering section obsolete, then the old engineering section can be discarded three years after the modifications occur. Also note there are currently pending before the

Commission proposals to shorten the required retention periods.

Ownership Reports. The file must contain a copy of every ownership report or supplemental ownership report filed by the licensee after May 13, 1965, and amendments, exhibits, correspondence, and other documents connected with the reports. A report should be retained for as long as it is the most current complete report on file with the FCC. After it becomes obsolete, such reports should be maintained for the same period required of applications, i.e., whichever is the longest: seven years, or the period required to resolve any proceeding at the FCC to which the report is relevant; or the period it takes for final action on the second renewal application of the station after filing.

Contracts and Agreements. The following types of contracts and agreements must be placed in the file within 30 days of execution: agreements with citizens or groups of citizens affecting the station's operation; stock pledge agreements; articles of incorporation; partnership or association agreements; stock options; trust agreements; voting proxies; mortgage or loan agreements (limiting operation freedom); contracts permitting changes in officers, directors, or stockholders; management consulting agreements; contracts to share station losses or profits. Also, television stations must place in the file affiliation agreements with national networks. The above materials should also be filed with the FCC. They should be retained in the file for the same period required of applications and ownership reports.

The public inspection file need not include contracts with station personnel, attorneys, accountants, consulting engineers, performers, station representatives, and labor unions. However, copies must be kept at the station and made available for inspection by an authorized representative of the FCC upon request.

Equal Employment Opportunity Data. The file must contain the Annual Employment Report (FCC Form 395) and all exhibits, correspondence, and documents connected with the report.

The file must also contain a copy of the station's Equal Employment Opportunity program. The reports, again, must be retained for the same period as applications, ownership reports, and contracts.

FCC Publication. Station managers must place in the file a copy of the FCC pamphlet, *The Public and Broadcasting: Revised Edition—A Procedure Manual*. The pamphlet must remain in the file indefinitely.

Letter from the Public. Letters from the public must be put in the file unless anonymity is requested. The letters must be retained for three years.

Compliance Certification. Each applicant for renewal of license must place in the file a statement certifying compliance with the public notice requirements for license renewal applications. The certification must be placed in the file within seven days of the last day of broadcast of pre-filing or post-filing announcements. Certification should also be provided for public notice of assignment-of-license and transfer-of-control applications and for applications seeking an authorization for a major change to a station's technical facilities. The certifications should be retained as long as the applications they refer to are retained in the file.

List of Donors (Non-Commercial Stations Only). Non-commercial stations must include in their file lists of donors supporting specific programs. The list must be retained for two years.

Since it is used to evaluate the station's performance, the public inspection file should be updated and maintained very carefully. A checklist of the required public inspection file materials and sample file entries are provided in Appendix B.

Local Notice

Another procedure designed to foster local involvement relates to "local notice." The local notice required for renewal applica-

tions was discussed earlier. The Communications Act also requires that an applicant provide local notice immediately after the filing of an application for FCC authority to construct a new station or to make a major change to an existing station, and an application for FCC consent to a change in control of an existing station.⁵

The notice procedures required for these types of applications differ significantly from those for renewal applications. For example, they typically involve both a 30-second announcement over the station as well as a published statement in a local newspaper. One exception to this is for proposed stations, where the notice need only be published in a local newspaper. Another is for an existing station that is the only station licensed to its community. In such cases the announcement need only be broadcast.

Notices typically must indicate what the licensee is proposing in its application and where the public can learn more details about the proposal. If such local notice is omitted, the application is jeopardized.

The licensee must keep a log of when local public notice is given and include this log in its public inspection file. This log essentially certifies that local notice has been completed or is in the process of being completed. Examples of such logs are included in Appendix C.

★ Newspaper Notice

The frequency and amount of newspaper notice varies with the kind of paper available in a station's community of license. There are three possible alternatives, one of which applies to every circumstance and must be strictly followed:

1. When there is a *daily newspaper* of general circulation published in the station's community of license, the notice must appear in that paper at least twice a week for two weeks within a three-week period following filing.

2. If there is *no daily newspaper* but there is a *weekly newspaper*

5. There are also special notice requirements for stations and applications involved in FCC evidentiary hearings. This book does not address such proceedings. Participants in such a hearing should consult a qualified communications attorney for the requirements applicable to such circumstances.

of general circulation published within the community, notice must appear at least once a week for three consecutive weeks in a four-week period following filing.

3. If there is *no newspaper of general circulation* published in the community whatsoever, the notice must appear at least twice a week for two consecutive weeks within a three-week period following filing in the *daily newspaper having the greatest general circulation* within the community.

★ Broadcast Notice

In situations where stations must also broadcast notice over the station, the notice must be broadcast at least once daily for four days during the second week following the filing of the application. The notice must be broadcast within the following time requirements, which are slightly different from those for renewal applications:

Radio Stations. The announcement must be between 7 AM and 9 AM, or 4 PM and 6 PM. If the station does not operate during either of these periods, the announcement must be given during the first two hours of operation.

TV Stations. In the Eastern and Pacific time zones, the announcements must be made between 6 PM and 11 PM. For TV stations within the Central or Mountain time zones, the announcements be made between 5 PM and 10 PM.

★ Content of Notice

Any notice required to be published in the local newspaper or broadcast over the station must contain similar information. Generally, the information includes the following:

Name of Applicant and Principals. The legal name of the applicants. If the applicants are individuals, then their legal names must be included in the notice. If an applicant is a partnership, the partnership's name as well as the names of all the partners must be given. If the applicant is a corporation or an unincorporated association, the entity's name, the names of all officers, di-

rectors, and persons holding 10 percent or more of an ownership or controlling interest in the entity must be contained in the notice.

Nature of Application. The notice must state what the applicants are seeking to do in the application. This may merely involve indicating that there will be a transfer of control of the station or an assignment of its license. For construction permit applications seeking authority to build a new station or modify an existing facility, the description may need to be more detailed. These applications are discussed further below.

Filing Date. The date the application was filed with the FCC.

Station Identification. The call letters of the station, if any, and the frequency and/or channel on which it operates. Obviously, new or proposed stations would not be able to provide call letters in their notice.

Public Inspection File. The notice must indicate that the application is available for public inspection at the location of the station's public inspection file, along with all related materials. For proposed stations, the public inspection file also must be maintained at some publicly accessible location in the community, such as the local library. In either case, the specific address must be given along with the hours the documents are available.

★ Construction Permit Applications

Construction permit applications involve proposals to build new stations or requests for authority to modify existing stations. Existing station modifications only require local notice if they constitute a "major" change under the FCC's rules, such as changes in frequencies or communities of license for commercial FM stations. For AM stations, they can also include increases in power. For non-commercial FM stations, such changes can include significant (50% or more) changes in station coverage. When local notice of such an application is given, a detailed description of the proposal is required and must include the following:

New Stations. If the application to the FCC is for construction of a new station, the notice must contain the following:

1. The type of facilities sought: AM radio, FM radio, or television.
2. The classification of the station, if classes are specified under the FCC's rules.
3. The station's transmitting power.
4. The proposed location of the station's studios, if known.
5. The location of the transmitter site.
6. The height of the antenna.

Existing Stations. If the application to the FCC is for a major modification of a construction permit or license, the notice must contain the exact nature of the modification sought. Typically, these modifications may include a change in frequency, a change in its community of license, or in some cases, changes in power and substantial changes in coverage.

★ Assignment and Transfer of Control Applications

Applications for the assignment of a license or the transfer of control of a license are filed when there are significant ownership changes to a station. An assignment occurs when a station's license is "assigned" to an entirely new licensee, while a transfer of control occurs where the licensee remains the same, but the people or entity controlling it changes. Local notice of such changes are required where there is a substantial change to ownership.

For example, if a partnership becomes a corporation or control of a corporation changes between existing shareholders, notice may be required. In contrast, complete ownership changes always require notice. A communications counsel should be consulted to determine whether local notice is required. A rule of thumb that can be used: If an FCC 314 or 315 application is necessary to report the change, local notice is required. If the change can be reported on the FCC Form 316, "Short Form Application," or a Form 327 or 317-E, "Ownership Report," then no notice is required. See previous section on "Ownership Changes," pages 28-29.

When notice is required for a change of ownership, the information previously specified for all applications generally covers everything that needs to be included. The following information in particular, however, should be carefully presented:

Assignment Applications. Notice of an assignment of license must indicate the name of the current licensee; the nature of the company (proprietorship, partnership, association or corporation); a list of its principals including partners, officers, directors, or anyone else who is either a party to the application (as defined in the instructions to FCC Form 314) or has a 10 percent or greater ownership interest. The same information must then be given about the proposed assignee of the license.

Transfer Applications. Notice of a transfer of control application must indicate a list of the officers, directors and others holding a 10 percent or greater ownership interest in licensee both before and after the transfer. Also listed should be anyone else who would be considered a party to the application (as defined in the instructions to FCC Form 315).

Examples of each of the above local notices are included in Appendix C.

Researching Local Problems and Needs

A licensee is expected to program its station in a way that addresses the problems and needs of both its community of license and the surrounding area to which it provides service. A station is considered to be providing service to an area when that area receives a certain strength of signal from the station, which varies according to the kind of station involved (AM, FM, or TV).

A licensee is therefore expected to ascertain what these problems and needs are and document them in the issues/programs list contained in the station's public inspection file discussed earlier.

Previously, the FCC had rules which specified methods by

which licensees were required to ascertain the problems and needs of the areas served by their stations. These rules were abandoned, however, because such formal ascertainment procedures did not always ensure that community problems were being addressed. The FCC also decided that the local licensee was the best judge of how to determine the community's needs. Nevertheless, it is important to note that licensees are still required to ascertain local needs. The rules have been changed merely to allow the licensee discretion as to how such ascertainment should be conducted.

F O U R

FCC COMPLAINT, ENFORCEMENT, AND RULE MAKING PROCEDURES

The FCC's licensing process, discussed earlier, is often the primary interest of broadcasters. There are additional procedures and rules, however, that do not always affect every licensee or license application but that are of equal importance, due to their potential effect on a station's license.

There are at least five types of such special procedures and rules which require independent discussion. They include procedures for FCC field inspections, for public complaints and objections, for station forfeitures or fines, for rule making, and for ex parte contacts by members of the public with the FCC.

★ Informal Complaints

Anyone may file a complaint with the FCC concerning the operations of a station. If such complaints contain significant allegations, the FCC customarily forwards them to the licensee for comment and explanation. Under this procedure, the licensee is given a specific amount of time to respond. The FCC then evaluates whether any action is necessary and issues a letter informing both the complainant and the licensee of its decision.

★ Formal Complaints

The FCC also considers more formal complaints against a licensee. These complaints often take the form of a legal petition requesting that the FCC take a specific action. Among the most

common of these are petitions to deny an application pending before the FCC. Petitions may also be filed independently of the application process, however. Consequently, a licensee should be wary of such filings at all times.

Petitions often allege that the licensee has violated a federal law or policy and are required to contain specific facts to support their allegations. Once a petition is filed, a licensee has a limited period of time to submit a response or "opposition" to the petition. This is important to remember since, unlike informal complaint procedures, the FCC does not inform a licensee of when its opposition is due. Unless the licensee submits an opposition on its own initiative, it may be completely precluded from responding to the petition at all.

If a licensee submits an opposition to a petition, FCC procedures generally allow the party filing the petition to submit a reply to the opposition. Thereafter, no further pleadings are allowed. The FCC will then make a decision about whether further action is warranted. If it decides no action is necessary, it will either dismiss or deny the petition. If it believes further inquiry is required, it will usually designate the matter for a formal evidentiary hearing or initiate an investigation.

★ Field Inspections

As the result of a complaint, a petition to deny, a licensee's failure to file some required information, or a random decision by FCC staff, a station can receive an unannounced field inspection by the agency. Such investigations or inspections may include anything from a review of the station's public inspection file to an evaluation of the performance of the station's transmitter. In fact, such inspections are frequently held after a station has completed significant new construction, to determine whether it is operating as authorized.

Most inspections are simply a routine investigation by FCC staff to make sure a licensee is operating its station in conformance with FCC rules. Every licensee must eventually endure such an inspection, so they should not be viewed with alarm. Generally, an FCC field inspector has the right to inspect every aspect of a broadcast station's operation and to review all docu-

ments related to the operation. While its rules specify only certain documents that must be made available to a field inspector, the FCC has held that virtually all records must be made available for review if requested.

Remember that while any member of the public has a right to see a station's public inspection file, only an FCC field inspector has a right to see anything more. Consequently, before providing documents or information not contained in the public inspection file, the licensee has a right to see positive identification indicating that the person requesting the information is an FCC official.

★ Forfeiture Proceedings

If as a result of a field inspection or a complaint a violation of FCC rules is found, the licensee involved may be subject to a forfeiture proceeding. A forfeiture is a monetary fine, and a "forfeiture proceeding" determines how serious the violation is and how large a fine, if any, should be imposed. The FCC's forfeiture authority is limited by law to \$10,000 per violation.

In a forfeiture proceeding, an Official Notice of Violation (FCC Form 793) is mailed to the station. This notice indicates the particulars of the violation. The licensee has 10 days from receipt of this notice to respond. Failure to respond may result in the FCC finding that a violation has occurred. After the licensee is given the chance to respond, the FCC considers how serious the violation is or whether one has occurred at all. If it decides further action is warranted, it can issue a Notice of Apparent Liability, which indicates what violations have been found and how much of a forfeiture is due.

In cases involving more serious violations, the FCC may skip the issuance of a Notice of Violation and issue a Notice of Apparent Liability immediately. In fact, in many cases a field inspection will result in the immediate issuance of both kinds of notices, a Notice of Violation for minor infractions and a Notice of Apparent Liability for more serious violations.

In any event, if a Notice of Apparent Liability is issued, a licensee has 30 days to challenge either the amount of the fine or the FCC's findings of a violation. It can also pay the forfeiture,

which ends the proceeding. If the notice is appealed, the FCC then makes a final decision as to whether a forfeiture is necessary and, if so, the amount. The most important point to remember is that FCC inspections or investigations can result in forfeitures for licensees and that care should be taken to respond quickly to any official notice.

★ Rule Making Proceedings

As the name implies, a rule making proceeding is the mechanism by which the FCC adopts its rules and regulations. They can be initiated by the FCC of its own volition or in response to a request by the public. If the FCC decides to begin a proceeding on its own, it will sometimes issue a Notice of Inquiry inviting public comment on a particular problem. Public requests for a rule making proceeding are generally in the form of a Petition for Rule Making. When filed, these petitions are announced in an FCC public notice through which the Commission also solicits public comment.

Following the deadline for public comment on the Notice of Inquiry or the Petition for Rule Making, the FCC decides whether further consideration of the proposed rule is warranted. If so, a Notice of Proposed Rule Making is issued, which usually contains specific proposals for new regulations the FCC should adopt. Public comment is again solicited. Finally, after the Commission is satisfied that it has received sufficient comment, it analyzes all applicable laws and facts and then issues a Report and Order adopting the new rule as proposed or modified. It may also determine that no new rule is warranted.

The rule making process is important because it is the method by which new regulations are adopted and implemented and existing ones are deleted or changed. In effect, they create the environment under which a station will be required to operate. It is an opportunity to have a say in rules that will govern a broadcaster's conduct, or to change rules that already exist. While licensees need not participate in every rule making the FCC initiates, they should be aware of the proceedings that are pending in order to keep up with changes in the industry and to anticipate future regulatory requirements.

★ Ex Parte Rules

Certain proceedings are subject to the FCC's ex parte rules. The term "ex parte" in law is used to refer to the presentation of only one side of a contested matter. The FCC's ex parte rules prohibit those participating in a proceeding from independently contacting or encouraging others (including local senators and congressman) to contact decision-making personnel at the FCC without notice. Generally, the rules only apply to proceedings that involve a valuable right in contest among several parties, such as comparative applications, petitions to deny, informal objections, rule makings, or any evidentiary hearing. The rules are intended to insure that all matters affecting an FCC decision are given a fair opportunity for comment by all sides. Thus, the ex parte rules require that discussions of such matters with agency decision-making personnel be formally entered on the public record with an opportunity for other parties to be present when the discussions occur.

★ Legal Counsel

Although none of the above proceedings requires representation by an attorney, all licensees are entitled to be represented by legal counsel. Any complaint, petition, or forfeiture proceeding can result in a station losing its license, and rule making proceedings can have a dramatic effect on the conditions under which a station must operate. It is therefore recommended that if any of the above-discussed proceedings take place, legal counsel should be consulted immediately.

P A R T

TWO

SUBSTANTIVE
RULES AND FCC
STRUCTURE

F I V E

PROGRAMMING REGULATIONS

The FCC's substantive policy rules fall into three broad groups: programming, commercial practices, and technical standards. Programming regulations address policies affecting the selection of material a station chooses to air, especially controversial issues and political material. They also address the promotion of contests or events in which the station or its employees hold private commercial interests.

Political and Public Affairs Programming

There are two basic groups of rules and policies in the area of political and public affairs programming. The first is the largest and includes the FCC's regulations affecting political campaigns.⁶ These regulations include: political advertising rules; regulations requiring that political candidates receive equal air time; laws mandating reasonable access for federal candidates; and regulations requiring every licensee to maintain a political file. The second group of rules concerns the FCC's Fairness Doctrine, which focuses on public affairs programming ad-

6. The Commission itself publishes a booklet detailing the law of political broadcasting and cablecasting entitled, *A Political Primer, 1984 Edition*. Copies may be obtained from the Fairness/Political Programming Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 1919 M Street, NW, Washington, D.C. 20554, or call (202)632-7586.

dressing controversial issues. All of these rules are summarized briefly below.

★ Campaign Programming

Advertising Rates. The Communications Act imposes two limitations on the rates that may be charged for political advertisements. They are known as the Lowest Unit Charge and the Comparable Use rules. The Lowest Unit Charge rule applies for 45 days preceding primary elections and 60 days preceding a general election. It requires a station to determine the lowest advertising rate it is charging its advertisers, including all potential discounts. This rate then becomes the maximum rate that may be charged to bona fide candidates in an election for the same length spot during the same part of the day, even if they do not otherwise meet the criteria normally required to qualify for a preferred rate.

For example, if 10 dollars is the normal charge for a single 30-second spot during the morning drive time, but the charge drops to 6 dollars if over 100 spots are bought, then 6 dollars is the amount that must be charged to candidates for 30-second drive-time spots during election periods, even if less than 100 spots are purchased. Note, however, that spots qualify for lowest unit rates only for like categories of time, e.g., a midnight to 6 AM rate would not apply to the radio morning drive time or for the 6 PM television news.

The Comparable Use Rule applies at those times that the Lowest Unit Charge rule is inapplicable, i.e., in non-election periods. The rule requires that candidates be charged the same that a station's other advertisers are charged for a comparable use. This means that candidates receive discounts only if they meet the criteria for those discounts. The rule is merely to assure that candidates will not be charged more than other advertisers.

Equal Time. The Communications Act also requires broadcasters to afford opposing candidates an opportunity to equal air time. This arises any time a "legally qualified candidate"⁷

7. 47 C.F.R. Section 73.99(a)(1) defines who is a legally qualified candidate.

uses a station's facilities. If a use occurs, qualified opposing candidates must be offered an equal opportunity to use the station. Certain types of appearances by candidates do not create an equal time obligation; in such cases, the appearance is not deemed a use of the station. A candidate can appear on a bona fide newscast, a news interview, a news documentary, or live coverage of a news event, without generating a use or an equal time requirement. A candidate's appearance on a program other than a newscast, however, such as a talk show or an entertainment program, can obligate a licensee to provide equal time to other candidates. Also, the rule applies to both free appearances and advertising paid for by the candidate. Thus, if a station sells air time to one candidate, it must also be prepared to sell an equal amount of air time to all other qualified opposing candidates. However, if the first candidate paid for the time, a station does not have to provide *free* air time to opposing candidates.

Equal time obligations may also arise when a station airs political advertising from a candidate's supporters. The obligation, however, arises from the FCC's Fairness Doctrine, discussed below. The obligation is part of a corollary rule to the Fairness Doctrine known as the Zapple Doctrine which requires that equal time be provided for the supporters of other candidates. The obligation permits the station to require payment, however, if the original time was paid advertising. This doctrine is in effect only during election periods.

Also be aware that paid advertising on local referendums is similarly subject to an equal time requirement which could require a licensee to provide free air time. See the discussion below of the Fairness Doctrine and another corollary known as the Cullman Doctrine.

Reasonable Access. Broadcasters are also required by the Communications Act to provide "reasonable access" to candidates for federal offices, i.e., president, U.S. senators, and U.S. representatives. This means a licensee must provide candidates a reasonable opportunity to use its station during election periods. Repeated failures to provide such access can result in a license revocation proceeding. Moreover, only those uses of a station which qualify for the Lowest Unit Charge or the equal time requirement, as discussed above, qualify as access air time.

In other words, appearance by federal candidates that fall under the exception to the equal time rules—i.e., news appearances, documentaries, etc.—do not constitute access to the station.

The reasonable access requirement does not apply to candidates for state and local offices. Licensees have the discretion to determine whether access for such candidates is necessary. The FCC has found, however, that licensees do have a public interest obligation to provide some access to state and local candidates. Consequently, a blanket exclusion of air time to such candidates would probably be found improper.

Political File. Political advertising, equal time, and access for federal candidates also entail an additional record-keeping task for a licensee. A station must record all requests for air time that fall into any of the above categories and the station's ultimate disposition of each request. If political advertising is involved, the station must also keep track of the rates charged and the amount of air time purchased. This information must then be assembled into a political file and placed with the station's public inspection file, as discussed earlier.

★ Fairness Doctrine

Until recently, the FCC enforced another programming-related policy known as the Fairness Doctrine, which was not directed toward political programming. In fact, it did not apply to political candidates. Moreover, in August of 1987, the FCC found that the doctrine was unconstitutional in that it violated the First Amendment guarantees of free speech to broadcasters. As a consequence, the FCC suspended the doctrine's enforcement under certain circumstances. It is discussed here, however, because it shares two important characteristics with current political programming policies. First, it addressed controversial material related to community needs and problems which are often also the subject of local political campaigns. Second, and more importantly, the Fairness Doctrine, like the rules affecting political campaigns, forced broadcasters to provide time for discussion of topics not entirely of their own choosing and sometimes without sponsorship. It is also being discussed, however, because, even though found to be unconstitutional, it and

its corollaries are still being enforced under certain circumstances. Furthermore, the FCC's decision is under appeal and the subject of legislation in Congress, either of which could result in the doctrine's full reinstatement.

The Fairness Doctrine imposed a two-part obligation on broadcasters. First, it required them to devote a significant amount of broadcast time to the discussion and coverage of controversial issues of public importance to their communities. Second, in addressing these issues, a broadcaster's coverage could not be grossly one-sided. A reasonable opportunity must be afforded for the presentation of contrasting views. In effect, broadcasters had an affirmative duty to present controversial programming and, in doing so, contrasting viewpoints must be aired, even if people needed to be searched out to present such viewpoints. The doctrine did not require that all possible contrasting viewpoints be aired or that any particular spokesperson be afforded time with or without charge. Such matters were left to the licensee's discretion, so long as the judgment exercised was reasonable.

Cullman Doctrine. While the Fairness Doctrine itself was fairly unambiguous, some of its corollaries had an unforeseen and significant impact. For example, a policy known as the Cullman Doctrine applied to programming on controversial issues which was aired on a paid-for advertising basis. Under the Cullman Doctrine, the FCC held that contrasting views must have been broadcast even if the licensee could find a sponsor. Thus, if advertising was accepted which addressed one side of a controversial issue, contrasting views in the form of ads or other program material must have been aired—if necessary, at the licensee's expense. The policy had a significant impact on a station's ability to accept advertising concerning issues in local referendums. A similar corollary known as the Zapple Doctrine, which is still being enforced and is discussed on page 53, requires that comparable time be provided to the supporters of political candidates during campaign periods.

Personal Attack Rules. The Personal Attack Rule is part of the Fairness Doctrine and is one of the corollaries still being enforced by the FCC. This fact is often overlooked or forgotten.

As a result, there is often a misunderstanding of when the rule is applied. The rule requires that if, and only if, in the context of a program concerning a controversial issue of public importance, an attack occurs on the honesty, character, integrity, or other personal qualities of an identified or easily identifiable person or group, then the station must take the following steps within one week of the attack: (1) notify the person or group attacked of the date and time, and identify the broadcast; (2) send a tape or transcript or, if none are available, as accurate a summary as possible to the attacked party; and (3) offer a reasonable opportunity for response.

Political Editorials. Under another Fairness Doctrine-related policy still being enforced by the Commission, licensees are required to provide notification, a transcript, and an opportunity to reply when the licensee airs an editorial either for or against a legally qualified candidate. If an editorial endorses a candidate, then the notice and the offer of an opportunity to reply must be given to the other legally qualified candidates in the same race. If the editorial opposes a candidate, then that candidate must receive the notice and the reply offer. A station is not obligated to allow the candidate to personally appear in a reply, however, as long as there is an opportunity for someone to air a response.

The Commission also regulates the timing of the notice and reply offer. If the editorial is aired more than 72 hours prior to election day, the notice and offer must be sent out within 24 hours after the editorial. If the editorial is aired within 72 hours of the election, then the transcript and reply offer must go out before the editorial airs so as to allow ample opportunity for the preparation and delivery of a response prior to the election. For the purposes of the Commission's rules in this area, "editorials" are those comments or views represented to be those of the licensee. The above is not applicable to non-commercial stations which are prohibited from airing editorials endorsing political candidates.

Current Status of the Fairness Doctrine. Due to the circumstances under which the Commission found the Fairness Doctrine to be unconstitutional, there are certain situations where licensees must still observe the doctrine's requirements. The

FCC found both the Fairness Doctrine and the Cullman Doctrine unconstitutional in situations involving controversial issues not being considered in an official voting referendum. The Chairman of the Commission has indicated that, as a result, both the Fairness Doctrine and the Cullman Doctrine will be enforced for issues in contest in a referendum, at least until the doctrines' constitutionality is resolved by the courts on appeal.

The Zapple Doctrine, the Personal Attack Rules, and the Political Editorial Rules were not at issue in the decision where the Fairness and Cullman Doctrines were found unconstitutional. For this reason, their enforcement has never been in question. Several parties have requested the Commission to review the constitutionality of these policies as well, but a decision is unlikely until the court appeals on the Fairness and Cullman Doctrines are finally resolved. Note that the political programming policies on advertising rates, equal time, reasonable access, and political files, discussed in the prior section, have not been questioned by the Commission and are in full force and effect.

★ Legal Counsel

The political broadcasting and Fairness Doctrine policies are among the most complicated regulatory schemes applied to the industry, particularly after the FCC's more recent decisions. Their effect on programming is not always predictable, and the violation of any of the policies can result in a station either providing costly free air time or being subject to a fine by the FCC. Moreover, certain questions are not easily resolved. For example, political action committees that independently purchase advertising for individual candidates may or may not fall under the Zapple Doctrine discussed above. Also, such committees may qualify for the Lowest Unit Charge for political ads, depending on the circumstances.

Accordingly, this is an area in which an experienced communications attorney is particularly useful. The attorney may advise of the potential ramifications of airing particular programming, while also suggesting alternative approaches to controversial matters. In addition, the FCC often looks to whether counsel is consulted in determining whether due dili-

gence has been shown by a broadcaster who may have violated a law. For these reasons, such counsel should be consulted when programming questions involving political campaigns or the Fairness Doctrine arise.

Obscene and Indecent Programming

The FCC recently adopted a more restrictive standard of indecency. Previously, the Commission had adopted a broad standard for determining whether broadcast programming was indecent. In an effort to narrow the standard, the FCC has now stated it would apply the following benchmark to determine indecency:

Language or material that depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs.

Station Contests and Promotions

Stations are permitted to organize and to broadcast promotions for contests, but they are not permitted, under federal law, to promote lotteries. A lottery is defined as embodying three elements: prize, chance, and consideration. Only if all three elements exist is a game considered a lottery. If only one or two elements are present, it is a contest and can be promoted.

For example, bingo games are a classic example of a lottery which cannot be promoted. If an entrance fee is charged or bingo game cards sold (consideration), a prize is awarded, and chance is present, then all the elements of a lottery exist and the game falls within the prohibition. Thus, whenever money or another thing of value is awarded (a prize) to members of the public, a licensee conducting or promoting the contest must be on guard to ensure that it is not in fact a lottery.

One key in determining whether a contest is a lottery depends on whether significant consideration is present, i.e., if a

listener must furnish money or another thing of value to enter the contest. This includes requiring the purchase of a specific product or for the participant to devote a substantial amount of time in order to participate. For example, the purchase of a ticket to a sports event has been found to be enough consideration to cause any contest of chance at the event to be classified as a lottery. In some cases, merely requiring attendance at a particular store or sales location has been held to be consideration. Also, for a game to be classified as a lottery, the consideration must come before the chance, i.e., a contestant pays an entrance fee before being allowed to enter the contest.

The ban on the promotion of lotteries does not apply to official state-run lotteries in the licensee's home state. Promotions of a lottery held by a neighboring state are prohibited, unless the station's home state has a lottery of its own.

Finally, a station must fully and accurately disclose the material terms of all contests. Commission sanctions may occur if broadcast information is misleading, if a contest is rigged, or if it somehow harms the public interest.

Disclosures of Commercial Interests

The Communications Act requires that any announcement or promotion aired by a broadcast station for which money or anything else of value is paid to the station must include an announcement that the matter being broadcast is a paid promotion or advertisement. Moreover, an employee of a licensee who accepts something of value for broadcasting any information or announcement must disclose that payment, in advance of the broadcast, to the station's management. Failure to make such disclosures could result in the violation of the FCC's "payola" and "plugola" rules and federal statutes.

Payola is the undisclosed payment of something of value to a station employee for the on-air promotion of goods, services, or events. For example, payment to a station employee for broadcast of a particular record is a classic form of payola. Plugola is the promotion by a station of an item or event in which the licensee or one of its employees has an undisclosed financial

interest. An example of this would be an on-air promotion or discussion of a concert in which a station employee has a commercial interest. Such a promotion is permissible if the management of a station is aware of the interest and when appropriate sponsorship information is announced. If disclosure is not made, federal law is violated, which can lead to the loss of a license. Routine business luncheons paid for by outside promoters do not require disclosure. However, undisclosed trips to other cities, luxury gifts, or other consideration of significance have been found to violate the rule.

S I X

COMMERCIAL PRACTICES

FCC regulations affecting commercial practices address the station's sale of advertising time and its employment practices, and involve ownership restrictions on the number and kinds of communications media a broadcast licensee can hold.

Sales of Advertising and Air Time

The FCC has several rules and policies concerned with a station's sale of advertising and air time. Although recently repealed, their substance may still be enforced in other ways and so remain important. Basically, all these policies are concerned with one thing: prohibiting fraudulent or deceptive conduct on the part of a licensee in making advertising sales.

There are several examples of what has constituted such conduct in the past. One of the most notorious of these is fraudulent or "double" billing. Double billing frequently involves cooperative advertising programs where a third party pays for the advertising of a local merchant. For example, in cases prosecuted by the FCC in the past, a broadcaster provided a local retailer with bills in excess of the amount actually due, with the retailer's knowledge and at its request. These bills were then given to a manufacturer, who had previously agreed to pay for part of the ad campaign. The manufacturer pays for more of the advertising than the percentage it had agreed upon because it receives

an incorrect bill. Another type of fraudulent conduct is known as network "clipping," or the practice of cutting short a network or syndicated program and inserting other material. The station then certifies that the program was run in its entirety in order to obtain full payment from the network.

Other rules involve conflicts of interests in the promotion of non-broadcast businesses or commercial ventures. The FCC has prohibited the use of a station to promote a licensee's non-broadcast interests or to gain a competitive advantage by using the station as a trade weapon. This prohibition has also been applied to the promotion of interests of employees of the station. Violations of this sort usually also involve a payola/plugola disclosure problem, as discussed earlier. Consequently, any type of fraudulent or abusively anti-competitive conduct has in the past resulted in FCC sanctions.

The above conduct had been explicitly prohibited by specific FCC rules; however, most of these regulations have recently been eliminated. This does not mean that the FCC now ignores such conduct. Fraudulent or misleading conduct reflects on a licensee's character, its trustworthiness, and could still be considered by the FCC even though the actions may no longer be explicitly prohibited by a specific rule. In particular, such conduct could bar to the sale of a station or the renewal of its license and, for this reason, should be avoided.

There are other kinds of conduct the FCC has barred in the past for which it is now relying on other government agencies and sources to prevent. One of these activities is ratings distortions. Before, the FCC had prohibited a licensee from filing false information with an audience ratings service or from improperly influencing the results of a rating survey. It had also imposed strict regulation on the airing of false or deceptive advertising. Now, the FCC has decided that such conduct is best regulated either by private entities, such as the rating services, or by other government agencies, such as the Federal Trade Commission, which regulates false or deceptive advertising. Ratings distortions and deceptive advertising may still result in legal problems for a licensee, but not necessarily through the FCC.

There is one final area worth mentioning which was once regulated by the FCC: the combined sale of advertising time by

independently-owned stations in the same market. FCC rules had prohibited combination advertising rates and joint sales practices among such stations. Also prohibited was a single sales representative or agency representing, in combination, separately-owned stations serving the same area. The FCC was concerned with the potential for anti-competitive abuses and the resulting harm to the public that might result through such joint sale arrangements. However, the FCC has recently eliminated these rules on the finding that market forces and the normal operation of antitrust laws could prevent or remedy such abuses much better than FCC regulations.

Ownership Restrictions

As discussed earlier, station ownership is also regulated by the FCC. Every licensee is required to file an ownership report with the FCC annually, detailing its ownership structure and composition. These ownership reports are due on the anniversary of the filing of the station's renewal application and are to be submitted on FCC Form 323 for commercial stations and 323 E for non-commercial stations. The FCC also places restrictions on the ownership interests a single individual or entity can hold. While exceptions are made for limited partners and some non-controlling stock interests, these restrictions apply to any ownership of five percent or more, in both broadcast and non-broadcast media. The rules do not apply to non-commercial stations or low-power television facilities.

The Duopoly Rule prohibits common ownership of two commercial stations in the same service area which have signal contours with substantial overlap. This rule is applied by examining the contours of the stations involved. The rule prohibits common ownership of two commercial FM or AM stations that have an overlap of their 1 Mv/m signal contours, or two commercial television stations which have an overlap of their Grade B signal contours. Thus, it is impossible to acquire two AM stations, two FM stations, or two television stations licensed to the same community. Be aware, however, that there are proposals before the FCC to modify this rule to make it possible to

own radio stations that are closer together. This would be done by using a different set of signal contours that cover a smaller area. The new contours proposed are the .5 Mv/m for AM and the 3.16 Mv/m for FM. A decision on this revision should be issued by the end of 1987.

In addition, a single person or entity cannot acquire both a radio station and a television station that serve the same area. This prohibition is known as the One-to-a-Market Rule. As presently applied, the rule looks to the complete encompassment of a station's community of license by a co-owned commercial radio or television station. For example, a radio station cannot be commonly owned with a television station where the television station's Grade A signal contour completely encompasses the radio station's community of license. Similarly, a television station cannot be commonly owned with a radio station if, in the case of FM, the station's 1 Mv/m signal contour or, in the case of AM, the station's 2 Mv/m contour encompasses the TV station's community of license. Modifications have recently been proposed for the rule that would potentially do away with this One-to-a-Market Rule altogether in smaller markets, or at least permit all UHF-TV/radio or TV/AM radio combinations. Again, a decision on the revision is due in late 1987.

FCC restrictions also address non-broadcast media such as cable television and daily newspapers. A single entity or individual cannot own a daily newspaper and a broadcast station in the same community. This is an encompassment standard similar to the One-to-a-Market Rule. A newspaper cannot be commonly owned with a commercial television station whose Grade A signal contour encompasses the community in which the newspaper is published. The same is true with regard to a newspaper's community of publication and the 1 Mv/m contour of a commercial FM station or the 2 Mv/m coverage of a commercial AM station. Common ownership of a television station with a cable television system within the broadcast station's Grade B contour area is also forbidden.

Finally, the Cross-Ownership Policy applies when the above media ownership restrictions do not apply, due to the nature of the interest held. For example, the Duopoly Rule would not apply to someone whose ownership amounted to a limited partner interest, a non-voting stock interest, or a portion less than five

percent of either of two competing stations. The Cross-Ownership Policy, on the other hand, would be applicable and would bar such ownership if it were found to have a significant effect on market competition. Similarly, the Cross-Ownership Policy would act to bar the same media ownership prohibited by the above rules if the FCC finds a significant effect on competition, even though the nature or size of the interest held would normally not prohibit the ownership combination.

EEO Regulations and Employment Practices

All broadcast stations with five or more full-time employees are required to observe special record-keeping rules in hiring women and minorities. The FCC's Equal Employment Opportunity (EEO) regulations are primarily concerned with compiling and analyzing a licensee's employment record. To accomplish this, two EEO-related documents must be maintained or filed with the FCC. The first is a station's Annual Employment Report (FCC Form 395) which indicates the sex and race of each of the station's employees. This report must be filed annually with the FCC by May 31, and must reflect the sexual and racial composition of a station's staff for a pay period during the first quarter of the year. It is reviewed by the FCC to determine whether the licensee is employing women and minorities at a rate roughly comparable to their presence in the local labor force. Moreover, in analyzing a station's staff, the FCC looks to the percentage of minorities and women on a station's total staff and as well as in the higher-paying jobs identified in "upper-four" job categories on FCC Form 395.

The second EEO-related document that is filed with the FCC is a station's EEO program. The FCC requires stations subject to its EEO rules to maintain an EEO program and to document a station's efforts at hiring minorities and women for the 12 month period prior to filing a license renewal application. This is particularly important when the Annual Employment Report shows that a station employed low numbers of women and minorities. The information from the program can be used to show that such low numbers occurred despite sub-

stantial hiring efforts to attract women and minorities. Without such evidence, a station could be subject to FCC sanctions.

Although the specific format of the program is not addressed by the rules, there is certain data which must be included: the contacts the licensee had with employee recruitment and referral sources in the year prior to seeking renewal; the number of job applicants each such source produced; and the number of people the station hired in the year, including the type of position filled as well as the race and sex of the person hired. The FCC's "Model Ten Point EEO Program" is a suggested program for licensees to follow which includes all the required data as well as additional useful material. But whatever program a licensee uses, it must be completed and submitted with a station's application for renewal of license and be included in the station's public inspection file. For worksheets which will assist in evaluating a station's EEO record and assuring compliance with FCC rules, see Appendix D. These forms, if used, need not be made part of a station's public inspection file. Pursuant to 47 C.F.R. Section 73.3526, only official reports submitted to the FCC and the station's model EEO program must be in the file. Thus, only if these forms are submitted to the FCC or made a formal part of the EEO program do they need to be included.

The FCC imposes sanctions on stations that do not employ a sufficient number of women and minorities. These sanctions range from merely requiring a licensee to revise its EEO program to imposing hiring goals and a timetable during which a station must attempt to increase the number of minority or female employees on its staff. On rare occasions, the FCC will designate an EEO issue for evidentiary hearing or grant a licensee only a short-term renewal. Although this usually occurs only in particularly egregious circumstances, EEO matters nevertheless require special attention.

While the Commission reviews all the data in Annual Employment Reports and EEO programs, three basic statistics have the most impact: the percentage of women and minorities in the local labor force; the percentage of women and minorities on the station's full-time staff (both overall and in upper-four job categories); and the percentage of women and minorities of those employees hired in the year prior to filing the station's renewal application. The closer that the percentage of women and

minorities on the station's staff and of those hired in the year prior to renewal is to their percentages in the local labor force, the less likely the FCC will question the station's employment practices.

Given this scheme of regulation, there are three times in particular that close attention should be given to a station's EEO record. The first is whenever a new employee is hired. Obviously, the best time to affect a station's employment record is when hiring opportunities occur. The second is at the end of the year, possibly December, in anticipation of the following year's Annual Employment Report. By reviewing the station's employment statistics at that time, steps can still be taken to improve the percentage of women and minorities before the Annual Employment Report must be completed. And the third is one year before the station is to file its renewal application. Since the EEO data submitted with the renewal application contain statistics for the previous 12 months, a station's employment practices during this period are especially important.

One final matter related to a licensee's employment practices is the FCC's treatment of individual employment discrimination complaints. The FCC has indicated that such complaints are best left to state or federal agencies such as the Equal Employment Opportunity Commission. However, the Commission has also indicated that, if a licensee is found to have engaged in such discrimination, the station involved might be subject to an FCC sanction. Thus, discrimination suits, even though outside the FCC's jurisdiction, can also create problems for licensees with the FCC.

S E V E N

TECHNICAL MATTERS AND REGULATIONS

Operating Requirements

The fundamental document that determines the technical parameters by which a station must operate is its license. Besides indicating the station's service and class, the license often specifies special technical requirements unique to every facility. The license's importance is reflected by the FCC's rules, which require that it be visibly posted near the principal control point of the station's transmitter. Copies of the license must also be displayed at all other transmitter control, monitoring, or alarm locations. The operating engineer of the station must also post his or her license at the station.

After a station is licensed, the FCC's rules stipulate the various general technical requirements a station must meet in its operation. These requirements exist primarily to ensure that all stations are operating according to national standards to permit their universal reception, and, perhaps most important, to prevent a station from creating interference to any other facility licensed by the FCC or another national authority. The standards specify such matters as frequency bandwidth and power tolerances, modulation limits, minimum operating hours, even the painting and lighting of antenna structures. Some of the most important technical rules are discussed below, but the best mechanism for ensuring compliance with these rules is to contract with a qualified broadcast engineer to maintain the station's transmitting facility.

★ Operating Logs

A licensee is required to maintain records of data reflecting a station's technical operation. These records, also known as the "operating log," must be available to the FCC at its request or upon an inspection of the licensee's facilities. Also, certain stations must file specific data contained in the log with the FCC on a regular basis. Failure to file such data can result in surprise FCC inspections and forfeitures. Below is a general list of the material that must be maintained in the station's operating log. What each station must include in its Operating Log varies from facility to facility; therefore, to determine what is required for a specific station, the station's license should be reviewed and a qualified broadcast engineer should be consulted.

Transmitter Readings. In general, all broadcast stations must record in an operating log at periodic intervals during the day technical readings regarding the station's transmitter. All stations must record operating power at the start and end of every broadcast day as well as at periodic intervals. Other transmitter parameters must also be recorded. The parameters differ for AM, FM, and television transmitters. At the time of purchase or installation of transmission equipment, it is wise to consult the equipment manufacturer concerning the logging requirements of a particular transmitter model.

Antenna Tower Lights. The nature, date, and time of extinguishment or improper functioning of the tower lights must be logged, along with the date, time, and nature of adjustment or repair.

EBS. Each test of the Emergency Broadcast System (EBS) must be logged. Emergency broadcasting operations are discussed further below.

AM Stations. AM broadcast stations, particularly those that operate at night or during critical hours (certain hours before or after sunrise and sunset specified in the station's license) or with pre-sunrise or post-sunset authorizations, have special logging requirements. Such stations should carefully review

their licenses for any such requirements. Licensees of AM stations using directional antennas either on a full-time or part-time basis must also log certain antenna performance data, which may be obtained from automatic antenna monitoring systems or recorded by station personnel. Again, review of the station's authorization and consultation with a qualified engineer will ensure that the appropriate logging requirements are observed.

Equipment Performance Measurements. Licensees operating commercial broadcast stations must conduct "performance measurements" which demonstrate that a station's transmission equipment complies with the various FCC technical rules and regulations applicable to the service in which it is operating. The FCC requires that such performance tests be conducted when:

1. A new or replacement transmitter is installed or a modification is made to an existing transmitter.
2. Stereophonic transmission equipment is installed for the first time.

In addition, all radio stations—both AM and FM—must conduct audio proof of performance measurements at least once every 14 months. Some of the information gained from these tests must be included in any application to the FCC for a new or modified license. License applications no longer require the complete results of proof of performance tests. Test results, however, must be maintained in the station's files and be available to the FCC upon request.

Only FCC-approved, "type accepted" transmission equipment can be used by a facility. Without special approval from the FCC, it is unlawful to use non-type accepted equipment.

AM Directional Antennas. A "proof of performance" for the antennas of directional AM stations, in addition to proofs for other equipment, must periodically confirm that the directional patterns of their signals are operating according to the specifications of their license. This is done by measuring a station's field strength in different directions and distances from the antenna. A "complete proof" requires measurements on at least

20 points along a minimum of eight different radials from the antenna, and it is required of new stations or those that have completed major changes or adjustments to their antenna systems. A “partial proof” needs only 10 measurements on fewer radials and is done to determine if any changes to an existing system have occurred over time. A “skeleton proof” checks only three points on each radial and have been used to verify the validity of the station’s antenna monitoring systems. The important matter to remember about proofs is that they may be required for certain directional AM systems on a regular basis and that they must be retained as part of a station’s operating logs and sometimes filed with the FCC.

AM Antenna Measurements. The performance of any AM antenna may change when there is any modification to the tower structure or any significant change in the vicinity (within two miles) of the station’s antenna site. For example, the antenna’s performance may change with the addition of a small mobile radio antenna to the tower, the construction of a nearby building or tower, or the alteration of the antenna’s ground system. When the resistance changes, so does the antenna’s operating power. If such a change occurs, a licensee must determine the station’s new antenna characteristics and must report the change to the FCC. Even the slightest change to an AM antenna system may require logging and filing with the FCC any measured changes in antenna performance characteristics.

Special Requirements. Specific records may be required by the station’s license or by the local FCC radio district.

★ Special Support Services and Operations

Emergency Broadcasting System (EBS) The Emergency Broadcast System (EBS) was created to provide the president, the federal government, or heads of state and local governments or their representatives with a means of communicating with the general public during an emergency situation. The system uses all types and classes of broadcast stations, and participation in the system by a licensee is voluntary. There are two “EBS Checklists”—one for participating stations, the other for non-

participants—and the applicable checklist must be available to station personnel.

In addition to the checklist, every station should also have the following EBS material:

1. A special FCC instruction card posted at its AP, UPI, or other news service machine.
2. The current EBS Authenticator List issued every six months, on January 1 and July 1.
3. Copies of the state and local EBS plans.
4. FCC EBS rules and regulations.
5. A list of state and local EBS chairpersons.

Special FCC authorization is not needed to participate in a state or local EBS network, but a national authorization must be acquired directly from the FCC. Programming priorities during an emergency are:

1. Presidential message (must be carried “live”).
2. Local programming.
3. State programming.
4. National programming and news.

Finally, attention-getting “tone clusters” may be created and used to alert listeners and viewers to non-EBS important news bulletins, local weather announcements, and other situations that may warrant interruption of regularly scheduled programs. However, they must not cause any confusion with the official EBS alerting system, which also uses tone clusters.

Auxiliary/Subsidiary Services. Several radio service authorizations, known as “auxiliary” services, are available to a broadcast station to support its operations. One such system is used to connect a station’s studio with its transmitter and is known as a “studio-transmitter link,” or STL. Another system, known as “remote pick-up facilities,” can be used to originate programming outside of the studios. Such systems are often used to originate programming from the store of a local advertiser or from a live sporting event. In television, they are more often used to do live news telecasts from the scene of a major story. Finally, there is a system known as an “inter-city relay,” or ICR, which relays material between communities for broadcast.

These auxiliary services are licensed in conjunction with a broadcast station's main license. In some circumstances, no additional authorizations are necessary; usually, however, such facilities must be separately applied for by the licensee.

A broadcast station can also offer additional services to the public on subcarriers to their main signals. These "piggy-backed" transmissions can provide such services as paging, utility meter reading, data distribution, or subscription background music for local merchants. Such subcarriers operate in both radio and television, and have been almost entirely deregulated by the FCC. They can be an added source of revenue for a station.

Translator/Booster Stations. Under certain circumstances, television and FM stations may enhance their coverage by use of additional transmitting facilities known as "booster" and "translator" stations. Booster stations are only used with broadcast FM stations. They retransmit the station's signal on its original frequency within an area it should normally be able to reach with its main transmitter. They are used in unusual circumstances where, for reasons beyond the station's control, its main transmitter signal is providing inadequate coverage. Signal shadowing or multi-path interference are typical reception problems booster stations are intended to correct.

Translator stations, on the other hand, can be used to extend a station's coverage beyond the area it would normally serve. They are used in both television and FM radio. Like booster stations, they can also be used to improve a station's reception in an area it would normally serve when there are problems beyond the station's control. Such interference might be a mountain or other natural obstruction between the location and the station's antenna, which results in a lack of a clear transmission path to a location the station's signal should normally reach. A translator station works by retransmitting or "translating" the station's signal onto a new frequency. A licensee is permitted to operate a translator station only in locations that do not have local stations of their own. If a station already serves the area, then a translator is permitted only under limited circumstances.

There are facilities known as "satellite" stations in broadcast television. These stations are very similar to translator stations in that they take another station's signal and rebroadcast it over

another frequency in an area where the original station is not normally received. The difference between a television translator station and a satellite station is that the satellite station originates some of its own programming and operates at a much higher power. Satellites are typically operated in communities that cannot support their own, full- service television stations.

E I G H T

STRUCTURE AND
ORGANIZATION
OF THE FCC

Overview

The Federal Communications Commission is an independent administrative agency created to regulate private-sector telecommunications and broadcast industries in the United States. It is currently composed of five commissioners and a few thousand staff employees. The staff is organized into subdivisions known as bureaus and offices, which often focus on specific portions of the communications industry. For example, there are the Common Carrier Bureau, which oversees the regulation of the telephone industry; the Private Radio Bureau, which focuses on radio facilities operated by private industry or emergency services such as police and fire departments; and the Mass Media Bureau (MMB) which focuses on the regulation of broadcasting and cable television.

There are also several offices or bureaus which do not specialize in particular industries but assist in the regulation of all matters. The best example of this is the Field Operations Bureau (FOB) which operates the FCC's various field offices. The two bureaus which have the most direct contact with the broadcasting industry are MMB and FOB. Of these two bureaus, MMB is exclusively responsible for all substantive decisions affecting broadcast licensees.

The five FCC commissioners themselves consider and de-

cide only a small portion of the actions affecting broadcasting. The vast majority of decisions are handled on a routine basis by the staff. Only novel or highly controversial matters are acted on by the commissioners themselves, and even in those cases the commissioners generally request a recommended course of action from the MMB. Thus, the MMB is the single most important subdivision within the FCC to broadcasting. An understanding of its organization and structure should therefore be highly beneficial to broadcast licensees.

Mass Media Bureau

★ General Organization

MMB is organized into four divisions: Video Services, Audio Services, Enforcement, and Policy and Rules. Each of these divisions has its own area of expertise and responsibility. Overseeing the operations of these divisions is the Office of Bureau Chief, which is ultimately responsible for all MMB actions. While the bureau chief's office does not directly participate in routine staff actions, it can and does involve itself in any matter pending before the Bureau that is of unique importance or requires special attention.

★ Video Services Division

All applications affecting television facilities are handled by the Video Services Division. This includes applications to build new stations, to modify existing stations, to renew licenses, and to change a station's ownership. Video Services also keeps track of the ownership composition of all broadcast stations, radio and television facilities alike. The division is subdivided into several branches and sections, each with a specialized function, as follows: Television, Low Power Television, Distribution Services, Cable Television, and the Ownership Section.

The Television Branch handles all matters related to full service and satellite television stations (see discussion above on

auxiliary services). The Low Power Television Branch, as its name implies, is primarily concerned with low-power TV operations as well as with regulation of television translator facilities. Distribution Services Branch regulates some of the new technologies that have developed in the television services, such as the new Direct Broadcast Satellite Service. It also supervises the Instructional Television Fixed Service, which is a special class of stations operated exclusively for educational purposes. The Cable Television Branch regulates cable TV and all facilities and services related to cable. Finally, the Ownership Section maintains the FCC ownership records for all broadcast stations, both radio and television. The ownership reports that all licensees are required to file annually are deposited with the Ownership Section.

★ Audio Services Division

This division oversees the regulation of all broadcast radio facilities. As with the Video Services Division, Audio Services is also divided into several branches: the AM Branch, the FM Branch, and the Auxiliary Services Branch. Obviously, the AM and FM Branches focus on the regulation of AM or FM stations, respectively. The Auxiliary Services Branch, on the other hand, not only addresses matters affecting both classes of radio stations, but television stations as well. Auxiliary Services is responsible for overseeing such previously discussed facilities as remote pickup stations, studio transmitter links, and intercity relays. It also regulates and licenses FM translator stations. Auxiliary Services Branch, like the Ownership Section in Video Services Division, addresses matters that cut across basic station classifications.

★ Enforcement Division

Quite simply, Enforcement Division is concerned with the enforcement of the FCC's rules. Its focus is all broadcast stations, both radio and television. It does not, however, become involved with the processing of individual applications, as do the divisions previously discussed. Rather, Enforcement Divi-

sion affirmatively seeks out the violation of FCC rules by conducting investigations or responding to complaints. To accomplish this, the division is subdivided into the following branches: Complaints and Investigations, Equal Employment Opportunity, Fairness/Political Broadcasting, and Hearing.

The Complaints and Investigations Branch has several important functions. The first is to respond to complaints filed by the public about individual stations. It is also the part of the MMB responsible for investigating and deciding matters related to fines or forfeitures. In regard to such matters, the branch works in close conjunction with the staff of the Field Operations Bureau in the various FCC field offices.

The Equal Employment Opportunity Branch addresses the EEO regulations of the FCC. It collects and evaluates the Annual Employment Reports every licensee must complete and file.

The Fairness/Political Broadcasting Branch addresses all Fairness Doctrine complaints and inquiries, as well as any issues that may arise during a political campaign or election concerning the effect of various federal laws and regulations, including equal time and political access requirements.

Finally, the Hearing Branch is the subdivision that represents the MMB in evidentiary hearings. As discussed earlier, such proceedings are held to select from among competing applicants for a permit to construct a new station. They are also held to evaluate significant allegations of wrongdoing by individual licensees. The Hearing Branch prosecutes those allegations of wrongdoing that are supported by substantial factual showing.

★ Policy and Rules Division

In contrast with the Enforcement Division, which is concerned with existing rules, the Policy and Rules Division is concerned with proposing new regulations. Policy and Rules is composed of four branches: Legal, Technical and International, Policy Analysis, and Allocations. The Legal Branch is composed of attorneys who provide legal support to the division. Similarly, the Technical and International Branch houses the division's engineering staff, which provides technical assistance

to the division. The branch also coordinates the FCC's regulation of broadcasting with other countries. For example, the Technical and International Branch must coordinate the operation of Mexico's and Canada's broadcast stations and participates in the International Telecommunications Union (ITU) proceedings. Policy Analysis Branch is responsible for evaluating the FCC's existing rules, for proposing new ones, and for evaluating petitions for rule making filed by the public. Finally, the Allocations Branch allocates broadcast television and FM frequencies to specific communities across the country. It determines where new television and FM radio stations will be located.

Miscellaneous Service

There are various services available to the public from the FCC or outside companies that can be very helpful to parties interested in FCC matters. Below is a list of these services and the office to contact.

Audio tape recordings for the visually impaired of the FCC's Notice of Proposed Rule Making: FCC Consumer Assistance Office, (202) 732-7000.

Copies of press releases, texts, public notices, and FCC decisions from various private distributors: FCC Public Affairs Office, (202) 254-7674.

A recorded listing of FCC daily news releases and texts: (202) 632-0002.

Tape recordings, either audio or video, of FCC meetings: Prism Corporation, (202) 686-8250.

Transcripts of FCC comparative hearings from the FCC's court reporting service: SKS Group, Ltd., (202) 789-0818.

FCC file research or copies of broadcast TV, AM, or FM engineering data bases from companies specializing in such services: Berry Best Services, Ltd., (202) 293-4964; International Transcription Services, Inc., (202) 857-3800.

Copies of the FCC's annual report, the FCC rules and regulations (Title 47 of the Code of Federal Regulations), and the Communications Act of 1934: Government Printing Office, (202) 783-3238.

A multi-volume service containing various legal materials related to the regulation of broadcast stations including federal statutes and regulations, and the decisions of both the FCC and the courts: Pike & Fischer, Inc., (301) 654-6262.

APPENDICES

A P P E N D I X A

MODEL RENEWAL NOTICE LOGS

On the following pages are forms that may be used by your station to document the required renewal announcements. Copies of the actual logs must be placed in the station's public inspection file.

TELEVISION STATIONS

Renewal Notice Log

A. Pre-filing announcements—a total of four announcements must be made.

Time Increment

Date of Announcement

1. 6 PM-11 PM

2. 6 PM-11 PM

3. _____

4. _____

Other non-required announcements.

B. Post-filing announcements—a total of six announcements must be made.

1. 6 PM-11 PM _____

2. 6 PM-11 PM _____

3. 6 PM-11 PM _____

4. 9 AM-1 PM _____

5. 1 PM-5 PM _____

6. 5 PM-7 AM _____

Other non-required announcements.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I, _____, _____,
(name) (title)

hereby certify that Station _____
(call letters and community of license)

broadcast the attached pre-filing and post-filing announcements at the times and dates specified.

(Attach copies of the text of the announcements.)

RADIO STATIONS

Renewal Notice Log

A. Pre-filing announcements—a total of four announcements must be made.

Time Increment	Date of Announcement
1. 7 AM-9 AM or 4 PM-6 PM	_____
2. 7 AM-9 AM or 4 PM-6 PM	_____
3. _____	_____
4. _____	_____

Other non-required announcements.

_____	_____
_____	_____

B. Post-filing announcements—at least six announcements must be made.

1. 7 AM-9 AM or 4 PM-6 PM	_____
2. 7 AM-9 AM or 4 PM-6 PM	_____
3. 7 AM-9 AM or 4 PM-6 PM	_____
4. 9 AM-Noon	_____
5. Noon-4 PM	_____
6. 7 PM-Midnight	_____

TELEVISION RENEWAL DATES

(for subsequent renewal dates, add five years)

State or Territory	Initiate Filing Announcements	Filing Deadline	Expiration Date
Alabama	Oct. 1, 1991	Dec. 1, 1991	Apr. 1, 1991
Alaska	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
Arizona	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988
Arkansas	Dec. 1, 1991	Feb. 1, 1992	June 1, 1992
California	June 1, 1988	Aug. 1, 1988	Dec. 1, 1988
Colorado	Oct. 1, 1992	Dec. 1, 1992	Apr. 1, 1993
Connecticut	Oct. 1, 1988	Dec. 1, 1988	Apr. 1, 1989
Delaware	Feb. 1, 1989	Apr. 1, 1989	Aug. 1, 1989
D.C.	Apr. 1, 1991	June 1, 1991	Oct. 1, 1991
Florida	Aug. 1, 1991	Oct. 1, 1991	Feb. 1, 1992
Georgia	Oct. 1, 1991	Dec. 1, 1991	Apr. 1, 1992
Guam	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
Hawaii	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
Idaho	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988
Illinois	June 1, 1992	Aug. 1, 1992	Dec. 1, 1992
Indiana	Feb. 1, 1992	Apr. 1, 1992	Aug. 1, 1992
Iowa	Aug. 1, 1992	Oct. 1, 1992	Feb. 1, 1992
Kansas	Dec. 1, 1992	Feb. 1, 1993	June 1, 1993
Kentucky	Feb. 1, 1992	Apr. 1, 1992	Aug. 1, 1992
Louisiana	Dec. 1, 1991	Feb. 1, 1992	June 1, 1992
Maine	Oct. 1, 1988	Dec. 1, 1988	Apr. 1, 1991
Maryland	Apr. 1, 1991	June 1, 1991	Oct. 1, 1991
Massachusetts	Oct. 1, 1988	Dec. 1, 1988	Apr. 1, 1989
Michigan	Apr. 1, 1992	June 1, 1992	Oct. 1, 1992
Minnesota	Oct. 1, 1992	Dec. 1, 1992	Apr. 1, 1993
Mississippi	Dec. 1, 1991	Feb. 1, 1992	June 1, 1992
Missouri	Aug. 1, 1992	Oct. 1, 1992	Feb. 1, 1993
Montana	Oct. 1, 1992	Dec. 1, 1992	Apr. 1, 1993
Nebraska	Dec. 1, 1992	Feb. 1, 1993	June 1, 1993
Nevada	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988
New Hampshire	Oct. 1, 1988	Dec. 1, 1988	Apr. 1, 1989
New Jersey	Dec. 1, 1988	Feb. 1, 1989	June 1, 1989
New Mexico	Apr. 1, 1988	June 1, 1988	Oct. 1, 1989

TELEVISION RENEWAL DATES (cont.)

(for subsequent renewal dates, add five years)

State or Territory	Initiate Filing Announcements	Filing Deadline	Expiration Date
New York	Dec. 1, 1988	Feb. 1, 1989	June 1, 1989
North Carolina	June 1, 1991	Aug. 1, 1991	Dec. 1, 1991
North Dakota	Oct. 1, 1992	Dec. 1, 1992	Apr. 1, 1993
Ohio	Apr. 1, 1992	June 1, 1992	Oct. 1, 1992
Oklahoma	Dec. 1, 1992	Feb. 1, 1993	June 1, 1993
Oregon	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
Pennsylvania	Feb. 1, 1989	Apr. 1, 1989	Aug. 1, 1989
Puerto Rico	Aug. 1, 1991	Oct. 1, 1991	Feb. 1, 1992
Rhode Island	Oct. 1, 1988	Dec. 1, 1988	Apr. 1, 1989
Samoa	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
South Carolina	June 1, 1991	Aug. 1, 1991	Dec. 1, 1991
South Dakota	Oct. 1, 1992	Dec. 1, 1992	Apr. 1, 1993
Tennessee	Feb. 1, 1992	Apr. 1, 1992	Aug. 1, 1992
Texas	Feb. 1, 1988	Apr. 1, 1988	Aug. 1, 1988
Utah	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988
Vermont	Oct. 1, 1988	Dec. 1, 1988	Apr. 1, 1989
Virginia	Apr. 1, 1991	June 1, 1991	Oct. 1, 1991
Virgin Islands	Aug. 1, 1991	Oct. 1, 1991	Feb. 1, 1992
Washington	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
West Virginia	Apr. 1, 1991	June 1, 1991	Oct. 1, 1991
Wisconsin	June 1, 1992	Aug. 1, 1992	Dec. 1, 1992
Wyoming	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988

RADIO RENEWAL DATES

(for subsequent renewal dates, add five years)

State or Territory	Initiate Filing Announcements	Filing Deadline	Expiration Date
Alabama	Oct. 1, 1988	Dec. 1, 1988	Apr. 1, 1989
Alaska	Aug. 1, 1990	Oct. 1, 1990	Feb. 1, 1991
Arizona	Apr. 1, 1990	June 1, 1990	Oct. 1, 1990
Arkansas	Dec. 1, 1988	Feb. 1, 1989	June 1, 1989
California	June 1, 1990	Aug. 1, 1990	Dec. 1, 1990
Colorado	Oct. 1, 1989	Dec. 1, 1989	Apr. 1, 1990
Connecticut	Oct. 1, 1990	Dec. 1, 1990	Apr. 1, 1991
Delaware	Feb. 1, 1991	Apr. 1, 1991	Aug. 1, 1991
D.C.	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988
Florida	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
Georgia	Oct. 1, 1988	Dec. 1, 1988	Apr. 1, 1989
Guam	Aug. 1, 1990	Oct. 1, 1990	Feb. 1, 1991
Hawaii	Aug. 1, 1990	Oct. 1, 1990	Feb. 1, 1991
Idaho	Apr. 1, 1990	June 1, 1990	Oct. 1, 1990
Illinois	June 1, 1989	Aug. 1, 1989	Dec. 1, 1989
Indiana	Feb. 1, 1989	Apr. 1, 1989	Aug. 1, 1989
Iowa	Aug. 1, 1989	Oct. 1, 1989	Feb. 1, 1990
Kansas	Dec. 1, 1989	Feb. 1, 1990	June 1, 1990
Kentucky	Feb. 1, 1989	Apr. 1, 1989	Aug. 1, 1989
Louisiana	Dec. 1, 1988	Feb. 1, 1989	June 1, 1989
Maine	Oct. 1, 1990	Dec. 1, 1990	Apr. 1, 1991
Maryland	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988
Massachusetts	Oct. 1, 1990	Dec. 1, 1990	Apr. 1, 1991
Michigan	Apr. 1, 1989	June 1, 1989	Oct. 1, 1989
Minnesota	Oct. 1, 1989	Dec. 1, 1989	Apr. 1, 1990
Mississippi	Dec. 1, 1988	Feb. 1, 1989	June 1, 1989
Missouri	Aug. 1, 1989	Oct. 1, 1989	Feb. 1, 1990
Montana	Oct. 1, 1989	Dec. 1, 1989	Apr. 1, 1990
Nebraska	Dec. 1, 1989	Feb. 1, 1990	June 1, 1990
Nevada	Apr. 1, 1990	June 1, 1990	Oct. 1, 1990
New Hampshire	Oct. 1, 1990	Dec. 1, 1990	Apr. 1, 1991
New Jersey	Dec. 1, 1990	Feb. 1, 1991	June 1, 1991
New Mexico	Apr. 1, 1990	June 1, 1990	Oct. 1, 1990

RADIO RENEWAL DATES (cont.)

State or Territory	Initiate Filing Announcements	Filing Deadline	Expiration Date
New York	Dec. 1, 1990	Feb. 1, 1991	June 1, 1991
North Carolina	June 1, 1988	Aug. 1, 1988	Dec. 1, 1988
North Dakota	Oct. 1, 1989	Dec. 1, 1989	Apr. 1, 1990
Ohio	Apr. 1, 1989	June 1, 1989	Oct. 1, 1989
Oklahoma	Dec. 1, 1989	Feb. 1, 1990	June 1, 1990
Oregon	Aug. 1, 1990	Oct. 1, 1990	Feb. 1, 1991
Pennsylvania	Feb. 1, 1991	Apr. 1, 1991	Aug. 1, 1991
Puerto Rico	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
Rhode Island	Oct. 1, 1990	Dec. 1, 1990	Apr. 1, 1991
Samoa	Aug. 1, 1990	Oct. 1, 1990	Feb. 1, 1991
South Carolina	June 1, 1988	Aug. 1, 1988	Dec. 1, 1988
South Dakota	Oct. 1, 1989	Dec. 1, 1989	Apr. 1, 1990
Tennessee	Feb. 1, 1989	Apr. 1, 1989	Aug. 1, 1989
Texas	Feb. 1, 1990	Apr. 1, 1990	Aug. 1, 1990
Utah	Apr. 1, 1990	June 1, 1990	Oct. 1, 1990
Vermont	Oct. 1, 1990	Dec. 1, 1990	Apr. 1, 1991
Virginia	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988
Virgin Islands	Aug. 1, 1988	Oct. 1, 1988	Feb. 1, 1989
Washington	Aug. 1, 1990	Oct. 1, 1990	Feb. 1, 1991
West Virginia	Apr. 1, 1988	June 1, 1988	Oct. 1, 1988
Wisconsin	June 1, 1989	Aug. 1, 1989	Dec. 1, 1989
Wyoming	Apr. 1, 1990	June 1, 1990	Oct. 1, 1990

A P P E N D I X B

PUBLIC INSPECTION FILE

RADIO AND TELEVISION STATION PUBLIC INSPECTION FILE CHECKLIST

- 1. All applications
 - Name and address of parties filing petitions to deny
- 2. Ownership reports
- 3. Contracts and agreements affecting ownership control, management, or programming
 - national network affiliation contract (television only)
 - agreements with citizens or groups of citizens affecting station's operation
 - stock pledge agreements
 - articles of incorporation
 - partnership or association agreements
 - stock options
 - trust agreements
 - voting proxies
 - mortgage or loan agreements (limiting operational freedom)
 - contracts permitting changes in officers, directors, or stockholders
 - management consulting agreements
 - contracts to share station losses or profits

(Exceptions: contracts with station personnel, attorneys, accountants, consulting engineers, performers, station representatives, and labor unions.)

- 4. Political file
 - list of requests for broadcast time by or for political candidates
 - record of disposition of above request
 - record of all free time provided to political candidates in previous two years
- 5. EEO data
 - Annual Employment Report (FCC Form 395)
 - Equal Employment Opportunity program
 - Official documents and correspondence
- 6. Copy of FCC pamphlet: The Public and Broadcasting; a Revised Edition—A Procedure Manual
- 7. Letters from public unless anonymity requested
- 8. Quarterly issues/programs list (non-commercial Class D FM and stations which air only “instructional” programming exempt)
- 9. Compliance certificates for local notice
- 10. List of donors supporting specific programs (non-commercial stations only)

SAMPLE PROBLEMS AND NEEDS LIST

July 1, 1984

**Quarterly Problems and Needs List
Station WPQR-FM, Smithville, Illinois
Smithville Broadcasting Company**

Smithville Broadcasting Company, licensee of Station WPQR-FM, Smithville, Illinois, has found the following problems and needs to be of particular concern to members of the Smithville community:

1. Need for growth and development of new industry within the community.

2. A need for better educational resources and facilities in the local school system.

3. A need to address unemployment in the local labor force.

4. Problem of local drug abuse by young people in Smithville.

5. Need for improved childcare services for working mothers.

6. Need for improved emergency services such as police and fire protection.

7. A need for greater awareness of the needs of the handicapped.

8. Problem of minority discrimination and unemployment.

9. A need for greater community support of nonprofit and religious organizations addressing the problems of the poor and needy.

10. Greater awareness of the pollution of our natural resources.

11. The problem of the rising crime rate within downtown Smithville.

12. The need to address the problems of senior citizens.

SAMPLE ISSUES/PROGRAMS LIST

WPQR-FM Smithville, Illinois Significant Programming Addressing Community Problems and Needs

1. *Title:* "Smithville Spotlight"

Time/Day: 6:30-7 AM, M-F *Source:* Local

Type: Public Affairs *Frequency:* Daily

Description: A half-hour discussion program which incorporates interviews and live demonstrations.

PROBLEM/NEED 10 (6/2/84) An interview with John Jones of the Smithville Audubon Society about efforts to clean up Lake Smithville for its use as a bird sanctuary.

PROBLEM/NEED 5 (5/24/84) Jane Doe talked about the James County Women's Resource Center which provides day care services for the children of working mothers.

PROBLEM/NEED 9 (4/15/84) Father Patrick Cohen discussed local church organizations providing food and clothing to the poor.

PROBLEM/NEED 1 (4/15/84) A member of the Smithville Chamber of Commerce discussed efforts to attract new business and industry to the area.

PROBLEM/NEED 6 (6/4/84) An interview with a 911 operator discussing the reaction time to a 911 emergency call for help.

PROBLEM/NEED 12 (5/16/84) Director of local nursing home discussed the "Adopt a Grandchild" program which helps both troubled youths and lonely senior citizens.

2. *Title:* "Powerline"

Time/Day: 8:30-9 AM *Source:* Local

Type: Public Affairs *Frequency:* Daily

Description: An interview program which highlights important issues facing the local community in interviews with local government officials, business leaders, and politicians.

PROBLEM/NEED 7 (6/26/84) Governor James Thompson talked about programs to address the needs of handicapped citizens.

PROBLEM/NEED 11 (5/30/84) Senator Charles Percy was interviewed on cuts in the federal budget affecting local law enforcement programs.

PROBLEM/NEED 3 (4/29/84) Mayor John Smith discussed local unemployment programs, including a new effort to retrain unemployed factory workers for new high technology jobs.

PROBLEM/NEED 2 (4/23/84) School Superintendent Richard Smith discussed the need to expand the local adult education program.

PROBLEM/NEED 4 (4/1/84) Police Superintendent James Smith discussed the crackdown on drug sales in the Smithville school system.

PROBLEM/NEED 8 (4/2/84) Joseph Smith, President of the Smithville Chapter of the NAACP, discusses local affirmative action programs.

A P P E N D I X C

LOCAL NOTICE

NOTICE OF CONSTRUCTION PERMIT APPLICATIONS

Text for New Stations

On _____ an application was filed with the Federal
(date filed)
Communications Commission for authority to construct a
new _____ station in
(type of service: AM, FM, or TV, and class)
_____. The application was filed on behalf of
(community of license)
_____,
(name of applicant)
a _____
(type of entity: corporation, partnership, limited partnership, or association)
composed of the following: _____
*(names of shareholders, officers, directors,
partners, or members)*. The proposed station will operate on
_____ with a power of _____
(frequency) *(transmitting power)*
from a transmitting facility at _____
*(location of antenna and transmitter by
street address and by latitude and longitude)*
with an antenna height
of _____. Studios for the station will be located at
(height)
_____.
(give address, if known, otherwise indicate at a location to be determined)
The application is available for public inspection at

_____ during normal business hours.
(address of location where available)

Text for Existing Stations

On _____ an application was filed with the Federal
(date filed)

Communications Commission for authority to _____
(describe change,

i.e., a change to the station's frequency community of licensee or signal coverage, or

_____ of Station _____.
(call letters and current community of license)

The licensee of the station is _____
(name of licensee)

which is a _____ composed of the following:
(corporation, partnership, etc.)

(names of shareholders, officers, directors, partners, or members)

Station _____ currently operates on _____
(call letters) (frequency)

with its studios at _____
(address)

The application is available for public inspection at

_____ during normal business hours.
(address of public inspection file)

NOTICE OF SALE OF BROADCAST STATIONS

Text for Assignment Applications

On _____ an application was filed with the Federal
(date of filing)
 Communications Commission to assign the license of

_____ from _____ to
(call letters of station and community of license) *(assignor-current licensee)*

_____ ,
(assignee-proposed licensee)

_____ ,
(assignor existing licensee)

is a _____ composed of the
(corporation, partnership, or limited partnership)

following: _____ .
(names of 10 percent or greater shareholders, officers, directors,

_____ is a
partners, or members) *(Assignee proposed licensee)*

_____ composed of the
(corporation, partnership, or limited partnership)

following: _____ .
(names of 10 percent or greater shareholders, partners or members)

Station _____ operates on _____ with its
(call letters) *(frequency or channel)*

studios at _____ .
(address)

The application is available for public inspection at

_____ ,
(address of public inspection file)

during normal business hours.

Text for Transfer Applications

On _____ an application was filed with the Federal
(date of filing)

Communications Commission seeking to transfer control of

_____ ,
(name of licensee)

licensee of Station _____.
(call letters, community of license, and state)

The officers, directors and 10 percent or greater shareholders
 of the licensee currently are: _____
(list names of individuals or entities

_____ that hold 10 percent or greater interest in the licensee shares before the transfer of con-

trol and also indicate all officers or directors)

approved, the officers, directors and 10 percent or greater
 shareholders of the licensee will include the following:

(names of individuals or entities that hold 10 percent or

_____ more of company shares after the transfer of control, and all officers or directors

Station _____ operates on _____ with its studio located at
(call letters) (frequency)

(address)

The application is available for public inspection at

(address of public inspection file)

during normal business hours.

in the _____, a daily/weekly publication
(name of newspaper)
of general circulation in _____
(community of license)

on the the following dates:

(signature)

A P P E N D I X D

EEO WORKSHEETS

COMPILATION FORMS

Recruitment and Referral Source Record Sheet. This form is designed to keep track of the recruitment agencies, publications, or other resources your station uses to hire new employees. The FCC requires licensees to establish hiring procedures which utilize such resources outside the station when filling staff vacancies. The FCC encourages regular contact with employment agencies or referral organizations in order to maintain a steady flow of minority and women job applicants. This form is intended to facilitate such contacts.

A separate form should be maintained for every agency, organization, or publication you use when hiring. Space is provided for the source's name, address, and telephone number. Under "Contact Representative," you should list a specific person or persons at the recruitment source with whom you communicate. Space is also provided to log the dates when the source was contacted; the form of the contact (i.e., mail, telephone, or in person); the person at the source with whom contact was made; and the member of your staff who initiated the contact. Space is also provided to record information about the applicants produced by the source, including the names of the applicants, the date they sought employment, and the kind of position in which they were interested.

Station Hiring Log. This form is to provide an ongoing EEO record of station staff. Space is provided to indicate the title of the position filled; whether the position is an FCC defined "upper-four" category job classification (i.e., officials and managers, professionals, technicians, or sales workers); the date the position was filled; whether it was a full or part-time job; and the sex and race of the person hired.

Job Opening Announcement. This is a standardized form to disseminate information regarding available positions at the station. Send the completed form to the station's various employee referral and recruitment sources when openings occur. Also post them within the station and at other locations where prospective employees may see them.

On the form, provide the position's job title and the date it became open. Also describe a contact representative at the station who will receive inquiries from job applicants. The form also requires a job description and a summary of the qualifications prospective job applicants should have. Such qualifications must be reasonably related to the work the employee will be hired to perform. They might include a minimum educational level, prior work experience, or special technical expertise and certification. Since the requirements listed must be used to evaluate the people who apply for the job, the suggested qualifications section should be completed very carefully.

Job Applicant Evaluation Worksheet. The purpose of this form is threefold. First, it provides a standard worksheet for evaluating job applicants. Second, it helps keep track of essential information necessary for a station's EEO records. Third, and most importantly, it provides a standard form for documenting the underlying reasons for a hiring decision.

Under FCC rules, a person becomes a job applicant only after he or she completes an application form. Thus, the worksheet should be completed only after an application form has been filled out. It provides space to indicate the kind of position the applicant is seeking and, if the job is open, the date it became vacant. If the applicant is applying in response to an official vacancy announcement, the information on the Evaluation Worksheet should correspond to that provided on the Job Opening Announcement. The form also provides space to indicate whether full or part-time employment is sought, the applicant's name, whether an interview was conducted, and, if so, the date.

A portion of the form is reserved for an evaluation of the applicant. This evaluation must be based upon the criteria included in the "suggested qualifications" portion of the Job Opening Announcement form discussed earlier. The information contained in this section documents the basis upon which the hir-

Job Opening Announcement

Title: _____

Date Opened: _____

Contact Representative: _____

 Name: _____

 Address: _____

 Phone Number: _____

 Office Hours: _____

Job Description: _____

Suggested Qualifications: _____

Equal Opportunity Employer

Job Applicant Evaluation Worksheet (cont.)

Offer Made: _____ Date: _____

Deposition: _____

FCC EEO REPORTING DATA

Referral or Recruitment Source: _____

Sex: ___ Male ___ Female

Race:

___ American Indian or Alaska Native

___ Asian or Pacific Islander

___ Black, not of Hispanic Origin

___ Hispanic

___ White, not of Hispanic Origin

ing decision was made. If a question is raised about the decision, this section is a primary source for explaining and supporting the action taken. The section should thus be completed carefully.

Just below the space provided for the evaluation, indicate whether an offer was made and, if so, the date. Also, space is provided to indicate the ultimate disposition of the offer. If an offer is turned down by a minority or female job applicant, and if they are willing to indicate why, you can record here the reasons for their decision. These explanations show your good faith attempts at hiring such applicants.

Evaluation Forms

EEO Staff List. This form lists staff employees according to their job classifications, which will facilitate the annual preparation of an FCC Form 395 Employment Report. Also, the form gives an overview of the station's workforce, permitting an easy evaluation of its composition.

Space is provided to indicate the station's call letters, the pay period the staff list represents, and the person who compiled the report. The form is then divided into the six job categories used in FCC Form 395: officials and managers; professionals; technicians; sales workers; office and clerical workers; and all others. Under each classification, space is provided to list every employee's name, sex, race, job title, whether the job involves full or part-time employment, and the employee's salary. This latter information is not required for standard FCC filings; however, on occasion the agency has requested that a station submit a list of employees by job category ranked according to their compensation. Thus, salary information may prove helpful. Finally, space is provided at the bottom of page two, to indicate the total number of full and part-time employees in upper-four job categories. Additional space is also provided at the bottom of page three for the same information on the station's entire staff. This data is helpful in completing the EEO Monitoring Worksheet, discussed below.

EEO Monitoring Worksheet. This form is intended to give you some indication of how your EEO record would appear under the traditional review given to a station's employment record by the FCC's staff. It compiles information and data collected in other forms and places them in a format facilitating analysis and review. At the top of the form, space is provided to indicate the station's call letters, the metropolitan statistical area (MSA) or county in which it is located, the pay period the report represents, and the person who prepared the report.

MSAs are geographical units created by the Census Bureau which represent local regions with common commercial interests. They can encompass more than one county, and they are preferred by the FCC over cities or counties as a reference unit for population statistics. If the area where a station is located is outside an MSA, then county population labor-force statistics are acceptable. Local or state authorities should be consulted to determine if a station is within an MSA. The same authorities, or state or county employment agencies, should also be able to provide the necessary population data. If not, you should contact the EEO Branch of the Mass Media Bureau's Enforcement Division at the FCC. Their telephone number is (202) 632-7069.

Labor-force data, which includes the total number of people available for employment in a region, should be distinguished from either workforce or general population statistics. Workforce statistics include only those people who are actually employed. General population data include the total number of people in the region, regardless of whether they are capable of being employed.

The tables on the first page of the worksheet are designed to assist in applying the FCC's EEO processing criteria to a station's full-time staff. The agency uses the criteria to identify stations that are employing suspect numbers of women and minorities. Table I is intended to reflect the criteria for a station's overall staff. Table II will do the same for station's FCC Form 395 upper-four job classifications, which must be considered separately. The vertical column of headings on the far left of both tables lists each group of employees that are scrutinized in the FCC review—basically, women or minorities. Moreover, space is provided to evaluate both the overall number of minor-

ity employees and those employed in each racial classification (i.e., Blacks, Hispanics, American Indian or Alaskan Natives, and Asian or Pacific Islanders).

EEO Monitoring Worksheet

(For Internal Use Only)

Station: _____

MSA/County: _____

Pay Period: _____

Prepared By: _____

FULL-TIME EMPLOYEES ONLY

Table I
Representation Complete Staff

	Labor Force Percentage	X	50% Parity	X	Total Staff	=	Required Level	Present Level
Women	_____		.50		_____		_____	_____
Total Minority	_____		.50		_____		_____	_____
Black	_____		.50		_____		_____	_____
Hispanic	_____		.50		_____		_____	_____
Am. Ind./ Al. Native	_____		.50		_____		_____	_____
Asian/ Pacific Is.	_____		.50		_____		_____	_____
Problem Category:	_____							

EEO Monitoring Worksheet (cont.)

Table II
Representation Upper-Four Job Categories*

	Labor Force Percentage	X	50% Parity**	X	Total Staff	=	Required Level	Present Level
Women	_____		.50		_____		_____	_____
Total Minority	_____		.50		_____		_____	_____
Black	_____		.50		_____		_____	_____
Hispanic	_____		.50		_____		_____	_____
Am. Ind./ Al. Native	_____		.50		_____		_____	_____
Asian/ Pacific Is.	_____		.50		_____		_____	_____
Problem Category:	_____							

ONE-YEAR HIRING RECORD

Total Full-Time Positions Filled:	_____	Total Upper-Four Positions Filled:	_____
Women:	_____	Women:	_____
Blacks:	_____	Blacks:	_____
Hispanic:	_____	Hispanic:	_____
Am. Ind./Al. Native:	_____	Am. Ind./Al. Native:	_____
Asian/Pacific Is.:	_____	Asian/Pacific Is.:	_____

*Officials and managers; professionals; technicians; and sales workers.

**50 percent if more than ten people are on total full-time staff; 25 percent if ten people or less are on total full-time staff.

EEO Monitoring Worksheet (cont.)

Total Part-Time Positions Filled:	_____	Total Upper-Four Positions Filled:	_____
Women:	_____	Women:	_____
Blacks:	_____	Blacks:	_____
Hispanic:	_____	Hispanic:	_____
Am. Ind./Al. Native:	_____	Am. Ind./Al. Native:	_____
Asian/Pacific Is.:	_____	Asian/Pacific Is.:	_____

Represents 12-month period from pay period _____ to
pay period _____.

ONE-YEAR RECRUITMENT RECORD*

Total Recruitment Source Contacts: _____

Total Applicants from Recruitment Sources: _____

The horizontal headings reflect the information necessary to determine compliance with the FCC's processing criteria. This data will indicate how many people a station should employ in each of the sex and race categories included in the left-hand column. In fact, the horizontal headings reflect the FCC's formula for arriving at its EEO processing criteria. Each group's percentage representation in the local labor force, multiplied by the level of parity expected by the FCC and the number of people on the station's total staff (Table I) or on its total upper-four staff (Table II), equals the required level of such employees necessary to meet the FCC's EEO criteria.

The "Labor Force" heading provides space to indicate the percentage the particular group represents in the labor-force population. Labor-force population data should be available from county or state authorities. This percentage should be expressed as a decimal. For example, 5 percent should be listed as .05, 86 percent as .86.

* Should reflect same one-year period as hiring record unless otherwise noted.

The "Parity" column represents the level at which the FCC expects a station to employ each group, based on the group's representation in the local labor force. For example, under Table I, the FCC expects a licensee's total full-time staff to include women and minorities at 50 percent of parity with each group's level in the local labor force. Thus, if women are 40 percent of the labor force, then at least 20 percent of the station's total full-time staff should be women. Therefore, in Table I of the worksheet, the parity column has a .50 decimal representing 50 percent. In Table II, the parity level is either 25 percent (.25) or 50 percent (.50), depending upon the size of the station's total staff (see below). Thus, if the decimal representing parity is multiplied by the level of women or minorities in the labor force, the result is the percentage of that particular group a station should employ.

The third part of the formula constituting the FCC's processing criteria is different for the two tables. Under Table I, it is the total number of a licensee's full-time employees. In Table II, it is the total number of full-time employees in a licensee's upper-four job categories. This information can be obtained from the EEO Staff List discussed earlier. Both Table I and Table II provide space for this information in their third columns. Once the total staff information has been filled in, the minimum level at which each group must be employed can be derived.

In Table I, the required number of minority or female employees on a station's total staff can be determined by multiplying each group's labor force percentage by the 50 percent (.50) parity level and by the station's total number of full-time employees. The result should be rounded off to the nearest whole number and recorded in the "Required Level" column.

The fifth column, "Present Level," is provided to record the actual number of each group employed. Again, this information is available from the EEO Staff List discussed earlier. Where the number in the required level column is greater than the number in the present level column, the employment for that particular group is below that expected by the FCC. Such groups should be listed in the "Problem Category" space provided at the bottom of each table.

Note the differences and similarities between Table I and

Table II. The "Labor Force Percentage" column will be the same in both tables. The parity column may be different, however, and will vary in Table II, depending upon the size of the station. In Table I, all stations have the 50 percent of parity level applied; in Table II, the parity level is either 50 percent for stations with a total staff exceeding ten people or, for stations with ten employees or less, the parity standard is 25 percent.

(Conveniently, the total number of full-time employees—the statistic that determines which upper-four parity percentage is used—is part of Table I in column three. Thus, if the number in that column is greater than ten, Table II's parity should be 50 percent (.50); if ten or less, it should be 25 percent (.25). Moreover, under FCC rules, no EEO requirements are imposed on stations with less than five full-time employees. Consequently, the 25 percent of parity standard is applied only to stations with five to ten full-time employees.)

The entries under the third column on both tables should also differ. Usually, a station will employ more full-time employees on its total staff than in its upper-four job categories. Consequently, the total number of upper-four employees will be less than those on the entire staff.

On page two of the worksheet is space for data from the Station Hiring Log discussed earlier. Space is provided to discuss how many full-time positions were filled in the previous year and how many positions involved women and members of minority groups. Space is also provided to permit the recording of the same data for upper-four category jobs and for part-time positions. Finally, space to record recruitment and referral source contacts is provided, including how many job applicants the stations received from its sources in a year.

The worksheet will permit a station to conduct its own FCC-like review of its hiring record. First, the completed worksheet will identify EEO groups not employed at levels exceeding the FCC's processing criteria. If such problem groups are found, the worksheet also contains information on the station's hiring record and recruitment efforts which may explain the problem. For example, if groups are employed at low levels, the fact that the station had few hiring opportunities in the previous year indicates the station had no chance to hire persons from the af-

affected groups to improve its EEO profile. Or, if hiring opportunities did exist, perhaps the station's recruitment and referral sources did not produce many female or minority job applicants. From this, problems in a licensee's EEO record can be pinpointed and addressed.

The worksheet can be used even more effectively than just for completing EEO reports required by the FCC. Its best use may be in those pay periods which come sixty to ninety days prior to the periods for which EEO reports are due. Using the worksheet, the licensee will get a preview of what the FCC's staff will see. If problems are identified early, they can be eliminated before the FCC report has to be filed and used to plan future hiring strategies.

A P P E N D I X E

BROADCAST APPLICATION PROCESSING FEES

(All fees due with filing of application.)

Service	New Station or Major Change	Minor Change	License	Long Form	Short Form	Renewal
				(Form 314, 315 or 345) License Assignment or Transfer of Control	(Form 316) License Assignment or Transfer of Control	
AM	\$2000.00	\$500.00	\$325.00	\$500.00	\$70.00	\$30.00
AM Directional Antenna	\$2000.00	\$500.00	\$375.00	\$500.00	\$70.00	\$30.00
FM	\$1800.00	\$500.00	\$100.00	\$500.00	\$70.00	\$30.00
TV	\$2250.00	\$500.00	\$150.00	\$500.00	\$70.00	\$30.00
FM/TV Translators	\$375.00	\$375.00	\$75.00	\$75.00	\$75.00	\$30.00
Lower Power TV Auxiliaries						
STL/RPV/ICR	\$75.00	\$75.00	—	—	—	\$30.00*

Evidentiary Hearing Fee (All Services) \$6000.00. Due after issuance of hearing designation order.

*Due only if renewal application is filed independently of renewal application for main broadcast authorization.

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