PUBLIC RADIO LEGAL HANDBOOK

A guide to FCC rules and regulations

Revised and updated by NFCB Staff (Feb. 2017)
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The Public Radio Legal Handbook is one of a series of information manuals for noncommercial radio stations published by the National Federation of Community Broadcasters (NFCB).

The National Federation of Community Broadcasters advocates for public policy, recognition, and resources on behalf of its membership, and provides services to empower and strengthen community broadcasters with a commitment to localism, diversity, and public service.

A note about references in the Public Radio Legal Handbook: *The FCC's rules are contained in Title 47 of the Code of Federal Regulations. Most of the substantive rules concerning broadcasting are in Part 73. For example, the proper citation to the regulation concerning Public File requirements is: 47 C.F.R. §73.3527. For simplicity's sake, this reference has been shortened to "Section 73.3527." The Communications Act is set forth in Title 47 of the U.S. Code. For example, the citation to the portion of the Communications Act that defines an "advertisement" is 47 U.S.C. §399B. Again, for simplicity's sake, the specific citation is referenced without additional reference to Section 399B of the Communications Act.*

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Chapter 1 is an introduction to the Federal Communications Commission and its structure. It discusses the following topics:

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Organization of the FCC

The FCC is a large, hierarchical organization (www.fcc.gov/about-fcc/organizational-charts-fcc), with a complex structure and more than 1,800 employees. Five Commissioners sit atop the FCC's organizational structure. Each of the Commissioners is appointed by the President of the United States and is confirmed by the Senate for a five-year term. The President designates one of the Commissioners as Chairman. No more than three of the Commissioners may be members of the same political party. Each of the Commissioners has a personal staff that advises them on legal and policy issues.

Just below the Commissioners are the Bureaus. There are now seven Bureaus: Media, Public Safety & Homeland Security, Wireline Competition, Consumer & Governmental Affairs, Enforcement, International, and Wireless Telecommunications. Most of your interaction with the FCC will be with the Media Bureau, which regulates matters involving radio services. The Enforcement Bureau and the Wireless Telecommunications Bureau also affect broadcast stations.

The Media Bureau

The Media Bureau is the part of the FCC primarily responsible for matters involving radio and television broadcast services. The FCC created the Media Bureau on March 25, 2002, by combining the former Mass Media Bureau and the Cable Services Bureau. The Media Bureau is made up of several offices and divisions, including Audio, Video, Policy, and Engineering. The Audio Division handles a wide range of matters related to AM and FM radio. The Audio Division reviews applications for new full-radio stations, translator and booster stations, and Low Power FM stations; initiates rulemaking proceedings that modify, delete, or add rules; and issues Public Notices and rulings related to radio. The Video Division of the Media Bureau carries out similar duties with respect to television, Low Power TV, TV translators, digital TV, Multipoint Distribution Service, and Instructional Television Fixed Service stations.

The Enforcement Bureau

The FCC created the Enforcement Bureau in 1999 by consolidating the enforcement divisions of different bureaus, in the hope that a single Enforcement Bureau could respond more quickly and decisively to any type of violation. The Enforcement Bureau now issues almost all Notices of Apparent Liability and Forfeiture Orders (fines) for violations of the Communications Act of 1934 or the FCC's rules. The FCC's Regional and Field Offices, which handle the investigation of technical violations, are part of the Enforcement Bureau.

The Wireless Telecommunications Bureau

The Wireless Telecommunications Bureau handles FCC domestic wireless telecommunications programs and policies. For broadcast licensees, it is important because it is in charge of both the Universal Licensing System (ULS), and the Antenna Structure Registration (ASR) system. ULS allows electronic filing for certain wireless applications used in broadcasting, such as studio transmitter links (STLs), remote pickup facilities, TIN (Taxpayer Identification Number), and call sign registrations. ASR allows the online registration of antenna structures.

The FCC on the Internet

The Internet has revolutionized the way that business is done at the FCC. The FCC's ever-expanding Internet site (www.fcc.gov) provides valuable sources of information and assistance and permits most FCC applications to be filed online.

The FCC continues to add and update databases that provide information to licensees. A major source of information is the Consolidated Database System (CDBS) (https://licensing.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm), which allows searches of the FCC's databases for information about stations, applications (both granted and pending), EEO filings, and engineering data. Other sources of information are the Media Bureau's homepage (www.fcc.gov/media) and the Audio Division's site (www.fcc.gov/media/radio/audio-division). You can also research call signs and apply online for call signs or call sign changes through the FCC's Call Sign Reservation and Authorization System (CSRS) (www.fcc.gov/media/engineering/call-sign-reservation-and-authorization-system-csrs). The Video Division has useful information available concerning television, Low Power TV, TV translators, digital TV, Multipoint Distribution Service, and Instructional Television Fixed Service stations on its website www.fcc.gov/media/television/video-division.

Finding current copies of FCC forms used to be a major hassle. The development of the Internet makes the latest version of each form available for printing—or download—on the FCC's website (www.fcc.gov/licensing-databases/forms). Forms are available only in Adobe Acrobat format, but the program can be downloaded, free of charge, from the Forms page of the FCC's homepage.

The FCC has been revising all of its forms to make them compatible with online filing. Once a particular form has been available for online filing for six months, the Commission requires online filing of that form. The official name for the online filing program is the Media Bureau (MB) Consolidated Database System Electronic Filing System (CDBS) (https://licensing.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm). The Commission will consider

waiving the requirement of online filing in limited circumstances. Its policy is to require licensees to file online unless Internet access is not readily available in the area of the station.

General Information About Contacting the FCC

The FCC is open from 8:00 a.m. to 5:00 p.m. Eastern (ET) (www.fcc.gov/about/contact). The Commission is closed on all federal holidays. If you have an emergency situation after hours or on the weekend, you can call the 24/7 Operations Center at (202) 418-1122. The FCC's main fax number is (888) 418-0232. The Secretary is the FCC official in charge of receiving documents filed with the Commission, assisting the public's communication with FCC staff, and providing guidance on the Commission's meeting procedures. The Secretary's office is located in the Office of Managing Director, Room TW-A325; the phone number is (202) 418-0300.

Address

The FCC is located at 445 Twelfth Street SW, Washington, DC 20554. If you are in DC and planning a visit to the Commission, take a cab to its building or the Orange/Blue line of the Metro (Washington's subway) to the Smithsonian stop. Parking on the streets is practically impossible, the police are efficient at ticketing, and nearby parking lots are often filled by mid-morning. Cabs are relatively inexpensive from most parts of DC, and mass transportation is easy to use.

Make appointments with FCC staff in advance and come prepared with office numbers and directions. You cannot gain access to the Bureaus without an appointment.

Phone Calls

The FCC allows you to search its phone book online (www.fcc.gov/about/contact). Such searches are restricted to specific FCC employees. For general information about whom to call, contact the FCC's Consumer Hotline at (888) 225-5322. In practice, it is difficult to get information after 4:30 p.m. ET or during the hours from 11:30 a.m. to 1:30 p.m. ET.

Field Location and Facilities

A complete listing of the FCC's Regional and Field Offices is available on the FCC's website (www.fcc.gov/eb-rfo).

Copies of FCC Documents

The FCC releases a Daily Digest of its releases on its website (www.fcc.gov/proceedings-actions/daily-digest). You can also subscribe to the Daily Digest mailing list, which will allow you to receive a list of the daily releases at a designated e-mail address.

Communicating With the FCC

Mail Communications: Filings and Letters

TYPE OF DOCUMENT	ADDRESS
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary (8:00 a.m. to 7:00 p.m.) Also, all other mail, including U.S.P.S Express Mail, Priority Mail, First Class Mail	Office of the Secretary 445 12th St., SW Room TW-A325 Washington, DC 20554
Commercial overnight mail, EXCEPT U.S.P.S.	Office of the Secretary 9300 East Hampton Drive Capitol Heights, MD 20743

More information is available at www.fcc.gov/general/electronic-and-hard-copy-filing-address

For additional information on contacting the Commission, go to www.fcc.gov/about/contact

FCC Registration Numbers

The Internet has both complicated and simplified the filing and recovery of FCC documents. One of the complications involves applicant identification for log-on and security purposes.

Effective December 3, 2001, most FCC applications require that the applicant identify itself by an FCC Registration Number (FRN). The requirement is applicable to all parties that file applications electronically, including applications filed with the Universal Licensing System (ULS) or registrations of antenna towers with Antenna Structure Registration (ASR).

An FRN is obtained through the Commission Registration System (CORES) (https://apps.fcc.gov/coresWeb/publicHome.do). The site uses the registrant's Taxpayer Identification Number (TIN) and a password created by the registrant to generate the FRN. Print out and retain the confirmation page. You will need both the FRN and password to file an application online. If you forget or lose the password, you can get assistance by calling the FRN Help Line, 877-480-3201 (Mon. – Fri. 8am – 6pm ET).

FCC Forms

Most FCC forms include a set of instructions, sometimes as part of the form itself and sometimes as a separate sheet. Make sure you have the instructions; some of the more complicated forms are almost impossible to complete without them.

The number of copies required for each filing is specified in the introduction to the application form (e.g., "Prepare and file three copies of this form . . ."). Instructions typically include applicable requirements for public notice or retention in the station's Local Public Inspection File (the Public File) *[Section 73.3512]*.

A list of the Media Bureau's broadcast forms that MUST be electronically filed via the CDBS (Consolidated Database System) can be found here: https://www.fcc.gov/media/media-bureau-forms-page The list includes links to website (if available) and PDF versions of the forms.

Filings that require the payment of a fee must be accompanied by FCC Form 159 and go to the FCC's office in St. Louis, MO *[Section 0.401(b)]*. (Nonprofit organizations are exempt from most filing fees.) The street address for fees sent by courier is Federal Communications Commission, c/o U.S. Bank, – Government Lockbox # 979089, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101 (Attention: FCC Government Lockbox). The Application Fee Filing Guide for Media Bureau is available online as a PDF. Additional information is available on the FCC's Application Processing Fees homepage (www.fcc.gov/licensing-databases/fees/application-processing-fees).

Make sure that the proper person signs your filings. Ordinarily, the signature of an officer of the organization is required. Check the application to make sure that the date the form is signed postdates all other dates contained in the form. A common error made on applications is a signature date that predates other dated information. This raises a question as to whether the person certifying the accuracy of all information on the form has actually reviewed the materials *[Section 73.3513]*.

For hard-copy filings, only one application, amendment, or related statement needs to have an original signature. Faxed signatures now qualify as original signatures. The form containing the original signature is the "original." All other copies, including any copies placed in the station's Public File, do not require an original signature.

It is important to get a "Stamp & Return" copy of any hard-copy filing. This is a copy of the filing, stamped by the Secretary's office at the time the filing is received. It can be obtained either in person or by requesting that an additional copy of your mailed filing be stamped and returned to you in a self-addressed, postage-paid envelope provided for that purpose. This stamped copy serves as proof of the filing and documents the date on which the filing occurred. If you file an application electronically, print out a copy of the entire application to serve as the proof of filing.

If the authorized officer is absent from the country or physically disabled and cannot sign a document as required by the Commission, an applicant's attorney may sign the document in the officer's place. In this case, however, the attorney is required to explain in writing why the application could not be signed by the applicant and submit the explanation as part of the application. In addition, if the attorney does not have personal knowledge of the facts, the attorney must state the reasons he or she believes statements made in the application are true.

The due date for applications indicates the date by which the Commission must receive the application. Material can be sent by mail, in which case the Commission's mailroom stamps the date received on the application. A postmark does not determine the receipt date for material that is tendered to the Commission.

If there are minor omissions in a filing, the FCC usually will request a supplemental filing with the missing information. Filings considered substantially incomplete are usually returned or dismissed, sometimes with disastrous consequences for the applicant, since a returned or dismissed

application may lose its legal standing, particularly if the application had to be filed by a deadline that has passed.

Letters to the Commission should include a heading or summary at the top of the letter with pertinent file numbers and references to the letter's content—for example, Re: Change of Mailing Address; Re: Request for Clarification of Sponsorship Identification Rules; Re: File No. BPED-1234567; Re: Facility ID No. 12345; and Re: Application for Translator License.

Inspecting Your Station's Files

The FCC's hard-copy files are organized according to activity area. Ownership Reports, for example, are in one file. Complaints are usually kept in the files of the Enforcement Bureau. The original application for a construction permit and subsequent major and minor change applications are in another file.

Most hard-copy files are kept at the FCC for only a limited period of time. They are then retired to the FCC's archives in suburban Washington. It is possible to visit the archives, but it is a full day's undertaking. It can take weeks to get a file shipped from the archives back to the Commission's headquarters.

The FCC will require all broadcast stations to begin uploading new public and political file material to its online file system no later than March 1, 2018 (https://publicfiles.fcc.gov/for-filers/).

What to Ask

The FCC is well prepared to handle some questions, not well equipped to answer other questions, and is prohibited from answering some questions.

Ask Informed Questions

Before communicating with the FCC, collect all pertinent information. If you are inquiring about a station, for example, be able to identify the call letters, facility ID number, licensee name, city of license, and any pertinent file numbers. This information is available from the FCC's website by conducting a search for station information at www.fcc.gov/media/radio/fm-query. Make clear from the start whether your inquiry concerns a noncommercial or commercial station; whether the service is radio or TV, AM or FM; and whether the facility is a full-service broadcast station or a secondary station, such as a translator or booster. Identify yourself and your position. Giving the FCC the right background information is the first step to getting the right answer.

Think carefully about what information you need from the Commission. If you have a number of questions, write the questions down before calling and take notes on answers to each question.

Status Checks

A common inquiry concerns the status of an application being processed by the FCC (yours or someone else's), such as whether it has been accepted for filing, placed on a cut-off list, or granted a construction permit. CDBS (http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm), the FCC's online database, contains information on the status of many types of applications. In addition, the Audio Division of the Media Bureau has a page dedicated to application information

(www.fcc.gov/media/radio/audio-division). For information concerning other FCC online resources, see the section of this chapter titled "The FCC on the Internet."

If you cannot find status information online, the FCC's staff can help you determine the legal status of an application. Generic information can be obtained from the FCC Contact Representative (Commission staff who can tap directly into the FCC's computerized data-base) or the department staff processing the application. The Audio Division's Consumer Hotline is (202) 418-2700.

It is also usually possible to find out how many of the various processing steps have been completed (engineering, legal, financial) and how many are left. Applicants may be able to determine if an application has been found to be defective and whether the defects will delay processing.

Application Requirements

Legal and technical staff can answer many questions about application requirements, such as appropriate forms, necessary exhibits, filing procedures, or required technical showings.

Deadlines and Timetables

It is important to know the dates for required filings, for comments in rulemaking proceedings, or for matters such as a Petition to Deny an application. Some of these dates are announced, some have to be determined from procedural rules.

Interpretation of the Rules

It can be difficult to figure out how to apply an FCC rule to a particular situation. Staff will usually provide guidance in areas such as content-related requirements, including political broadcasting, underwriting, or contest rules.

Do not expect Commission staff to resolve all of your quandaries, however. Many rules, particularly programming rules, require a judgment call for which the station licensee is ultimately responsible. Commission staff usually try to give helpful answers, but different Commission staff may give different answers regarding questions that fall into a gray area. For this reason, informal opinions of individual staff are not legally binding. The risk of making the correct decision remains on the broadcaster.

Bounce your questions off other, experienced broadcasters, particularly if you have received an answer from the Commission that does not seem to make sense. Staff at organizations such as the National Federation of Community Broadcasters, National Public Radio, Public Radio International, and Greater Public have handled dozens of inquiries about various programming, regulatory, and underwriting issues and can offer useful advice or help you obtain the advice you need. If your station has legal counsel, double-check troublesome issues with counsel, especially if you have done the groundwork and can minimize your legal costs.

Ex Parte Rules

FCC staff are prohibited from discussing the merits of contested cases pending before the FCC. Examples include license applications that have had a Petition to Deny filed against them, mutually

exclusive applications, and revocation proceedings. While factual inquiries, such as a status check, are allowed, discussion of the relative strengths and weaknesses of a case are prohibited. This ban includes not only the actual parties involved, but anyone acting on their behalf or at their urging. For example, the *ex parte* rules apply to contacts with the Commission by Congress and congressional staff. Before you ask your Representative or Senator for help, make sure that the matter is not contested. A helpful legislator can actually hurt your case through *ex parte* contacts.

The *ex parte* rules are contained in *Sections 1.1200–1.1216* of the Commission's regulations and should be reviewed carefully by anyone involved in a potentially contested case.

Whether to Write or Call

Status checks, questions about deadlines, and other similar "informational" questions are best handled by an online inquiry or phone call. As a general rule, questions about programming practices are better handled with a call than with a letter. Commission staff are under pressure to handle assigned projects and may not respond promptly to a written request for an interpretation. Written requests also lack the give and take that occurs during a phone call and the chance to pursue points of interest that arise during a conversation.

Stating Questions as Hypothetical Situations

It is not uncommon for management to discuss a questionable programming or technical question with Commission staff. State such questions as hypothetical situations; do not preface your conversation with information about whether your station has or is engaged in such a practice. Stating your question as a hypothetical situation may avoid placing both you and Commission staff in an awkward position.

Violations: When to Notify the FCC

Some technical situations trigger a requirement to notify the Commission within a specified period of time (e.g., operation below authorized power levels for more than 10 days). In the absence of such a notification requirement, however, licensees are not obliged to "confess" regulatory violations to the FCC.

If you discover that a current or past practice is a violation of FCC rules but does not trigger notification requirements, you should (1) correct the problem and (2) document your corrective measures.

Internal documentation of violations can be placed in your personal business files or can take the form of a confidential memo to your Board Chairman, your attorney, or, in the case of university licensees, to the administrator with responsibility for the station. You should not send a copy of this document to the Commission or place such documentation in the station's Public File. It is common, though, for the Commission to investigate a possible violation weeks and even months after the fact. If there is an investigation, an internal memo may serve as evidence that management was in control of the situation and took prompt, appropriate measures. Such efforts may favorably influence the FCC's handling of the situation.

Complaints From the Public

The Commission receives a tremendous volume of mail concerning possible technical and programming violations. That mail is forwarded to the correct FCC division, placed in the station's file, and considered by FCC staff. In many cases, the Commission dismisses the complaint without even informing the station that a complaint has been received.

On occasion, however, the Commission receives a complaint that warrants contact with the station. In most cases, the Commission writes a letter outlining the complaint and requests a response from the licensee within a given period of time.

If you receive notice from the Commission that a complaint has been filed against your station, closely analyze the accusation and investigate the facts. If your station practices have been deficient, decide what steps you will take to avoid such an incident in the future. Write back to the Commission, giving your explanation of the facts. Even if the facts stated in the complaint are true, you may want to argue that they do not constitute a violation of FCC rules or that you have adopted policies to prevent any violation of the rules in the future.

Your response to letters from the FCC should indicate management's control over the station's operations. Do not attempt to excuse a violation by explaining that the station left programming decisions to individual programmers or that you can't afford competent technical support. Harping on the lack of supervision or expertise will not help your case. Make it clear that you have modified station procedures to assure future compliance. If you feel uncertain about the phrasing of your letter, discuss it with a lawyer or the staff at one of your station's membership organizations.

In extreme situations, the Commission sends staff to investigate allegations of programming or technical violations—sometimes without giving a station warning. Needless to say, if FCC staff arrive on your doorstep and advise you that you have the right to remain silent until your lawyer arrives, you are probably in serious trouble. Drop this book and call a communications attorney.

FCC Inspections

The FCC's Field Offices conduct routine, on-site inspections of stations each year. FCC staff arrive without warning and review the station's technical facilities, Public File, Emergency Alert System (EAS) Log, and other required documents. In addition, the FCC may monitor a station's programming or technical operations if it has reason to believe that there are ongoing violations of its rules.

FCC staff usually arrive during regular business hours, despite their right to arrive at any time the station is in operation. Instruct station staff to inform management immediately upon arrival of Commission staff and to answer any questions ("Where is the Public File?," for example) to the best of their knowledge.

Commission staff may ask to take Station Logs or other materials with them. Inspectors have the right to take certain station documents (see Chapter 8), but management should make copies of

any such materials before they are removed from the station and demand a receipt. (Note: The Commission also has the right to ask a station to send certain specified documents, such as logs, to the Commission in Washington or to an Enforcement Bureau Field Office.)

The Commission takes a "no news is good news" approach to inspection: If no violations are found, you may not hear from the FCC. Notification of violations (a "Notice of Apparent Liability"), however, will be communicated along with procedures and time limits to correct the violations. A written response is required—usually within 10 to 30 days. Failure to respond may itself result in a fine. If you believe no violation has occurred, you need to communicate this fact. If you admit the violation, the letter should include an explanation of why the violation occurred and how you have remedied or will remedy the situation.

Although the Commission usually levies fines for infractions of its rules, it is not unusual for the Commission to reduce a fine if the station has taken prompt corrective action and if the station has a record of past compliance with FCC rules. If, after all is said and done, you feel the Commission has levied an unjust fine, communicate this concern to the FCC (make sure to include information about how and when you modified operations to comply with the regulations). Monetary fines are intended to punish violators, so don't expect the Commission to be sympathetic to a defense of economic hardship unless you clearly document your economic position and demonstrate that you are unable to pay the fine.

Standard forfeitures for violation of particular regulations are established in Section 1.80 of the FCC rules—for example, $10,000 for constructing or operating a technical facility without proper authorization; $14,000 for exceeding power limits; $8,000 for failure to install or operate EAS equipment. These standard fines may be increased or decreased, depending on the seriousness of the violation or its isolated or repeated nature.

If a violation is found, correspond directly with the office that issues the violation. In many cases, the notice of violation will come from a Field Office and you can communicate with that office.

FCC inspections are like fires: You will handle the real thing better if you have practice beforehand. For a thorough review of what station operation procedures must be followed, see Chapter 2.

FCC Rules and Regulations

The regulations that govern technical and operational standards for public radio stations are a basic tool of every licensee's trade. You should have a copy or print-out of the portion of Title 47 of the Code of Federal Regulations (CFR) containing Parts 70 through 79. This is also available online (www.fcc.gov/general/rules-regulations-title-47). Part 73 covers broadcast operations—noncommercial and commercial; AM, FM, and TV. Part 74 covers experimental, auxiliary, special broadcast, and other program distribution services, including translators and boosters.

The FCC's procedural rules are covered in Title 47 of the CFR, Volume I, Part 1. Ex parte rules, for example, are covered in this part. The FCC's website (www.fcc.gov) allows you to search its rules according to rule number. The Government Printing Office (GPO) now has the CFR available online

through its website (www.gpo.gov/fdsys/). On this site, the FCC rules are contained in Title 47, Part 73, of the CFR, labeled "Telecommunications." You can also purchase hard copies of all volumes of the CFR from the GPO via its online website or by calling (202) 512-1800 (toll-free 866-512-1800).

FCC Rulemaking Process

The FCC has numerous ways of modifying existing law or creating new rules or policies. One way is through a formal rulemaking process. Here are some of the common procedures used in that process.

Notice of Inquiry (NOI)

An NOI is used to solicit facts and develop ideas on specific issues. The NOI typically identifies critical questions and solicits relevant facts and opinions that will help the FCC answer those questions. The NOI will also inform the public on how to file comments with the FCC, where the public can review the comments filed by others, and how to reply to other comments (reply comments). An NOI is often used to develop the foundation for a Notice of Proposed Rulemaking.

Notice of Proposed Rulemaking (NPRM)

An NPRM proposes changes to the FCC's rules and seeks the comments and reply comments of the public on specific issues or proposals. The proceeding usually results in a Report and Order that makes changes or additions to the rules. Occasionally, before issuing a Report and Order, the FCC issues a Further Notice of Proposed Rulemaking to allow further public comment on issues discussed in the NPRM proceeding.

Report and Order (R&O)

After reviewing the comments filed in an NPRM proceeding, the FCC usually issues an R&O. The R&O will either make changes to the rules or announce a decision to make no changes. The effective date of a rule change is usually based on the date on which the R&O is published in The Federal Register, a daily publication of the GPO.

Petition for Reconsideration

Interested parties are allowed to challenge a decision made in an R&O by filing a Petition for Reconsideration with the FCC within 30 days of the publication of the R&O in The Federal Register.

Memorandum Opinion and Order (MO&O)

The MO&O is the basic means used for announcing general FCC decisions or policy statements. The FCC also issues an MO&O (or an Order on Reconsideration) to respond to a Petition for Reconsideration.

Chapter 2: Station Self-Inspections

Although the FCC's Enforcement Bureau and Field Offices investigate third-party complaints and conduct unannounced station inspections, the FCC depends heavily on voluntary efforts by individual stations to ensure compliance with FCC rules. The purpose of this chapter is to help you conduct a regulatory inspection of your station.

By following the FCC's "Self-Inspection Checklist," you can do essentially what an FCC field officer would do if he showed up at your door. Separate checklists are available for FM and AM stations, as well as Low Power FM stations, at www.fcc.gov/general/broadcast-self-inspection-checklists.

These checklists track administrative requirements, such as the posting of FCC authorizations and the maintenance of a Local Public Inspection File (the Public File), requirements related to antenna structures, Emergency Alert System (EAS) requirements, and other technical requirements. They focus largely on technical and administrative requirements, as opposed to content-related requirements.

It is a good idea to conduct a complete self-inspection at least once a year or, even better, to swap station inspections with another non-commercial station in your area. Many state broadcast associations also offer station inspection programs that use professional engineers to review your compliance with the FCC's technical rules. Any of these voluntary methods of station inspections usually detect potential violations that would have drawn a fine or admonishment from an FCC inspector.

To help you conduct an inspection of your station, the remainder of this chapter provides a brief summary of relevant rules and the rule numbers to use to access the full text of those rules on the FCC's website.

Paperwork

Station Documents and Records

- Station Log and technical records must be available in station files (see "Station Log" section). *[73.1225(c)]*
- Station license and other FCC authorizations (the original or a copy)—such as construction permits, renewal card, auxiliary antenna systems, and special or temporary authorizations—must be posted at the principal control point of the transmitter. *[73.1230(a)]*
- Photocopies of licenses and authorizations must be posted at all other control points. *[73.1230(a)]*
- Designation of Chief Operator must be posted. *[73.1870(a)]*
- If Chief Operator works on contract, the contract must be on file at the station. *[73.1870(b)(3)]*
- Leasing agreements for Subcarrier Communications Authorization (SCA) operations must be in station files. *[73.3613(c)]*

For New Stations and New Facilities

- Equipment test notice must be filed with the FCC. *[73.1610(a)]*
- Advance notice of program testing of new facilities must be filed with the FCC. *[73.1620(a)]*
- License application for non-directional antenna must be filed within 10 days of commencement of program tests. *[73.1620(a)(1)]*
- Holders of non-directional antenna construction permits must obtain Program Test Authorization to operate with 100% power or operate at 50% of authorized power until license application is granted. *[73.1620(a)(2)]*

Station Log

- Logs must be signed by person making entries. *[73.1800(a)]*
- Pages must be numbered and dated, time of entries must be recorded, and time must be indicated as standard or advanced (daylight savings). *[73.1800(b)]*
- Corrections must be made following specified procedures. *[73.1800(c)]*
- Tower light failures must be entered in the Station Log. *[73.1820(a)(1)]*
- Emergency Alert System (EAS) tests and activations must be entered. Records of EAS tests may be kept in a separate EAS Log at a different location, but are still considered part of the Station Log. *[73.1820(a)(1)]*
- Any special technical data required by the FCC must be properly entered. *[73.1835]*
- Logs must be retained for two years. *[73.1840(a)]*
- In addition to other duties, the Chief Operator must review, sign, and date logs on a weekly basis. *[73.1870(c)]*

For AM Directional Antenna Stations Without an Approved Sampling System

- AM directional antenna field strength measurements must be entered in the Station Log pursuant to *Section 73.1820. [73.61(a)]*
- Entries must be made for adjustments to transmitter parameters. *[73.1820(a)]*
  Entries must be made at commencement of each mode and at three-hour intervals that record *[73.1820(a)(2)]*:
    - Antenna or common point current
    - Plate voltage and plate current upon determining power by indirect method
    - Antenna monitor phase or phase deviation
    - Antenna monitor sample current, ratio, or ratio deviation

For Automatic Logging

Automatic logging equipment must meet specifications for accurate calibration and for time, date, and circuit functions. *[73.1820(b)]*

Local Public Inspection File (the Public File)

- The Public File must be maintained at the station's main studio. *[73.3527(b)]*
- The file must be made available during regular business hours. *[73.3527(c)]*
- All of the materials in the file must be made available for photocopying by the public. Stations may charge requesting parties reasonable copying costs. *[73.3527(c)]*

- Stations may maintain all or part of the file in a computer database but must make material in the file available for printing or copying upon requests made in person. *[73.3527(c)]*

Stations that maintain their main studio and Public File outside of their community of license must make copies of Public File documents available by mail upon telephone request.

What Goes in the Public File? (and How Long to Keep It)

- Current FCC authorizations (until superceded). *[73.3527(e)(1)]*
- Pending FCC applications (until grant or denial of the application is final), including *[73.3527(e)(2)]*:
    - Application for construction permit (for new station or modified facilities)
    - License renewal application
    - Transfer or assignment of control application
    - Request for extension of time on construction permit for a new station
    - All amendments, exhibits, changes, initial decisions, final decisions, Petitions to Deny the applications listed above, certifications of public notice for renewal applications
- Current facilities information, including coverage maps (until superceded). *[73.3527(e)(3)]*
- Ownership information, including the most recent Ownership Report, articles of incorporation and bylaws if a corporation, partnership agreement if a partnership, operating agreement if an LLC, and any other documents required to be filed pursuant to *Section 73.3527(e)(4)* (until a new Ownership Report is filed). *[73.3527(e)(4)]*
- Requests for airtime by political candidates, with notation as to the disposition of the requests (two years) *[Section 73.1943]. [73.3527(e)(5)]*
- Annual Employment Reports (until final action on next license renewal application). *[73.3527(e)(6)]*
- *The Public and Broadcasting: A Procedure Manual* (current version). *[73.3527(e)(7)]*
- Quarterly list of issues and programs broadcast in response to them (until final action on next license renewal application). *[73.3527(e)(8)]*
- List of donors supporting specific programming (two years). *[73.3527(e)(9)]*
- Certification of the dates and times at which required license renewal announcements or published public notice were made (for as long as the application to which it refers is pending) *[Section 73.3580]. [73.3527(e)(10)]*
- Items that have a substantial bearing on any claim or complaint against the licensee or that relate to an FCC investigation (until the licensee has been advised by the FCC that the material may be discarded or, if the matter or claim is a private matter, upon the expiration of the statute of limitations or resolution of the complaint). *[73.3527(e)(11)]*

Technical Operations

Radio Operators

- If the Chief Operator is not on duty, the licensee must designate another person as Chief Operator on a temporary basis. *[73.1870(a)]*

- Operator on duty must be properly instructed in operation of station equipment and requirements for maintaining station in compliance with FCC rules and terms of station authorization. *[73.1870(c)]*
- Chief Operator and alternate must be designated in writing. *[73.1870(a)]*
- Agreements with the Chief Operator serving on a contract basis must be in writing, with a copy kept in the station files. *[73.1870(b)(3)]*

Transmitter Operations

- Function of all meters must be labeled. *[73.258(b)]*
- If indicating instruments are defective for more than 60 days, an informal request for additional time must be filed with the FCC's Engineer-in-Charge. *[73.258(c), 73.58(e)]*
- Transmitter and control points must be equipped with accurate meters that meet requirements for scale and range. *[73.1215]*
- Calibration of repaired meters must be certified before meters are returned to service. *[73.1215(f)]*
- Frequency must be maintained within prescribed tolerance: AM–20 Hz, FM–2,000 Hz, Class D FM–3,000 Hz. *[73.1545]*
- Operating power must be maintained at not less than 90% and not more than 105% of authorized power (no minimum for Class D stations). *[73.1560]*
- The FCC must be notified within 10 days if power is below authorized levels. A request for Special Temporary Authorization (STA) must be submitted to the FCC if the power is below authorized level for more than 30 days. *[73.1560(d)]*
- Modulation must be within tolerance (85% to 100%). *[73.1570]*
- Main transmitters must comply with FCC specifications. *[73.1665]*
- Most modifications to the transmission system must be approved in advance by the FCC. *[73.1690(b)]*

Tower and Antenna

- If required, tower must be painted and lighted in accordance with Federal Aviation Administration (FAA) specifications. *[17.21]*
- Each new or altered antenna structure must be registered according to FAA recommendations. *[17.23]*
- The FAA must be notified immediately if top and/or flashing lights do not work. *[17.48]*
- Tower paint must be clean and in good condition. *[17.50]*
- If emergency antenna is used (after damage to regular antenna), an informal request for approval must be filed with the FCC within 24 hours. *[73.1680]*
- Authorization must be obtained for any change in the radiating system. *[73.1690(b)]*

AM Stations Only

- Antenna and transmission line must not be exposed. *[73.49]*
- Base fence must be secure and grounded. *[73.49]*
- Tuning house must be secure. *[73.49]*
- Remote antenna current pickup point must be collocated with, but below, the associated main ammeter. *[73.57(b)]*

- Remote ammeter must be calibrated to base ammeter and be accurate to within 2%. *[73.57(d)]*
- All indicating instruments must conform to technical specifications. *[73.58(a)]*
- Directional antenna system must be functioning within prescribed tolerances. *[73.62]*
- Radials must be protected and in good condition. *[73.189(b)]*
- Station must maintain satisfactory field strength. *[73.189(b)]*

Directional AM Stations Only

- Field strength measurements must be made as often as is necessary to ensure compliance with license. *[73.61(a)]*
- Field strength meter must be available and working. *[73.61(a)]*
- Base currents and antenna monitor currents must agree with license. *[73.62]*
- If applicable, approved sampling system must meet FCC requirements. *[73.68]*
- Antenna monitor must be installed and working. *[73.69]*
- Antenna monitor must be an authorized type. *[73.69]*

Studio and Control Point

- Licensee or permittee must be able to monitor and control Subcarrier Communications Authorizations (SCAs). *[73.127(e), 73.295(e)]*
- Absent a waiver, the main studio must be located in station's community of license, within the principal community contour of any AM, FM, or TV broadcast station or within 25 miles of the center of the station's community of license as defined in *73.208(a)(1)*. *[73.1125]*
- Chief Operator must be designated in accordance with *73.1870. [73.1350]*

If Remote Control Used

- Remote control operation must comply with Emergency Alert System (EAS) rules in Part 11. *[73.1300]*
- Remote control personnel must have the capability to turn the transmitter off within three minutes at all times. *[73.1350(b)]*
- Remote control operation must be discontinued within three hours of any technical malfunction not in compliance with the rules. *[73.1350(d)]*
- Licensee must notify the FCC of the location of the transmission system control point—if it is at a location other than the main studio or transmitter—within three days of first use of that control point unless responsible station personnel can be contacted at the transmitter or studio site during hours of operation. *[73.1350(g)]*

If Automatic Transmission System (ATS) Used

- An ATS must be configured to contact a person designated by the licensee in the event of a technical malfunction. *[73.1400(a)]*

Emergency Alert System (EAS)

- The current EAS Operating Handbook must be displayed. *[11.15]*
- Copies of the EAS Operating Handbook must be present at all control points. *[11.15]*
- EAS encoder timing tones must be 8–25 seconds in length. *[11.32]*

- EAS encoder and decoder must be installed and working (Class D stations exempt). *[11.32, 11.35]*
- EAS encoder must be tuned to correct stations in accordance with local/state EAS plans. *[11.52]*
- Station must immediately broadcast any national level alert that is received. *[11.54]*
- Required Weekly Test (RWT) and Required Monthly Test (RMT) must be performed. *[11.61]*
- RWTs and RMTs must be logged properly in the Station Log. *[11.61]*

Stereo and Subcarriers

For FM Stations

- Stereo pilot must be checked as often as necessary to assure it is in tolerance. *[73.297(b)]*
- Subcarrier baseband must be within limits. *[73.319(c)]*
- Total subcarrier injections (stereo and others) must be within limits. *[73.319(d)]*
- Stereo pilot injection must be within limits of 8% to 10% and frequency must be within 2 Hz of 19 kHz. *[73.322(a)(2)]*
- Stereo subcarrier must be suppressed to less than 1% modulation of main carrier. *[73.322(a)(5)]*

For AM Stations

- Modulation of the stereo signal must comply with bandwidth limitations. *[73.128(b)]*

Remote Pickup Stations

- Unattended operation permitted, but station must be under control of licensee at all times. *[74.18]*
- Station must maintain tower light records as required by Part 17. *[74.30]*
- Power must be within licensed limits. *[74.461]*
- Frequency must be within tolerance. *[74.464]*
- Required station identification must be given. *[74.482]*

When Operated by Remote Control

- Unit must provide adequate monitoring and control functions. *[74.434(a)]*
- Unit must be protected against unauthorized operation. *[74.434(b)]*
- Unit must prevent inadvertent transmitter operation caused by malfunctions in the system. *[74.434(c)]*

Equipment Measurements

- The station's transmission system and all required monitors must be inspected as often as necessary for proper station operation. *[73.1580]*
- FM stations must make equipment performance measurements when a new transmitter is installed, an existing transmitter is modified, an AM or FM stereo is added, or a subcarrier or stereophonic equipment is installed (Class D stations exempt). *[73.1590(a)]*
- AM stations must make equipment performance measurements at least once each calendar year, with no more than 14 months between measurements (Class D stations exempt). *[73.1590(a)]*

- A description of the equipment and methods used for measurements must be signed and dated by the person taking measurements and kept on file for two years. *[73.1590(d)]*

General Operating Requirements

Hours of Operation

- FM stations must meet minimum hours requirement *[73.561]*:
    - At least 36 hours a week, at least five hours a day on at least six days of the week (stations licensed to schools are not required to operate on Saturday or Sunday or during vacation periods)
    - At least 12 hours a day to protect against share-time applications (no exemption for school stations)
- If it is impossible to meet minimum scheduling requirements, the FCC must be notified by the tenth day of operations at less than minimum schedule. If the station does not meet the minimum for more than 30 days, the station must obtain Special Temporary Authorization to operate at a reduced schedule. *[73.561(d)]*

Announcements

- Station identification announcements must be made at the beginning and the end of operation and at least hourly throughout the broadcast day. *[73.1201(a)]*
- Prerecorded material must be identified with an announcement at the beginning of the program if time is of significance or an attempt is made to create the impression that the material is "live." *[73.1208(a)]*
- Sponsorship identification announcements must be made in connection with all programming furnished to the station or for which underwriting or other consideration has been received. *[73.1212(a)]*
- For political broadcast matter or furnished programming on controversial issues of public importance, sponsorship announcements must be made at the beginning and end of all material over five minutes (only once for programming of five minutes or less). *[73.1212(d)]*

Equal Employment Opportunity File

On January 16, 2001, the U.S. Court of Appeals for the District of Columbia Circuit struck down a revised broadcaster Equal Employment Opportunity (EEO) rule adopted by the FCC last year *[MD/DC/DE Broadcasters Association et al. v. FCC 236 F.3d 13 (DC Cir. 2001)]*. The court held that the rule was unconstitutional because it created a race-based classification that was not narrowly tailored to support a compelling governmental interest.

The FCC suspended its enforcement of the broadcast EEO rule on January 31, 2001 *[Suspension of the Broadcast and Cable Equal Employment Opportunity Outreach Program Requirements, Memorandum Opinion & Order, FCC No. 01 34, January 31, 2001]*. As discussed in Chapter 3, however, the FCC has proposed new EEO rules that are designed to remedy the constitutional defects of the old rules.

Chapter 3: Regular Filings and Reports

Getting a broadcast license is the beginning, not the end, of a close relationship with the FCC. The broadcast industry is a regulated industry and a broadcast license involves a continuous stream of forms and reports that must be filed with the FCC and placed in the station's Local Public Inspection File (the Public File). Some of these filings must be made on an annual basis (e.g., the Annual Employment Report), some are more occasional (e.g., license renewal applications once every eight years), and some are required only in special situations (e.g., transfer of control of the licensee, the legal entity to whom the license is issued, when there is a change in the majority of the members of the governing board).

This chapter reviews the following filing requirements:

Ownership Report. This form, documenting who controls the station, is filed in conjunction with license renewal applications, every two years thereafter on the anniversary date of the station's renewal date, and within 30 days of the grant of an initial construction permit *[Section 73.3615]*. Licensees owning more than one station with different anniversary dates must file only one report on the anniversary date of their choice, as long as the reports are not more than two years apart. Ownership Reports must also be filed within 30 days of the consummation of authorized assignments or transfers of licenses and permits. Ownership Reports are filed on Form 323-E.

Assignments of License and Transfers of Control. "Control" of a licensee cannot be transferred without the FCC's approval. Such changes range from routine changes on a station's board to assignment of a license to a completely different party. Applications are filed on Forms 314, 315, or 316, depending on the nature of the change.

Contracts and Key Documents. Certain contracts and agreements must be filed with the Commission or made available to an FCC representative upon request *[Section 73.3613]*.

Change of Official Mailing Address. Licensees must give notice of any change in their official mailing address *[Section 1.5]*.

License Renewal: Broadcast Stations. A radio station must renew its license every eight years by filing an application no later than the first day of the fourth full calendar month prior to expiration of the license. The date for the filing of renewal applications is determined by the state in which the station's community of license is located. Stations licensed to the same state are licensed on the same renewal cycle and must file renewal applications by the same date *[Sections 73.1020 and 73.3539]*. License renewal applications are filed on Form 303-S.

License Renewal: Auxiliary Facilities, FM Booster Stations, and FM Translators. FM booster and FM translator renewals are sought on Form 303-S. Licensees of primary stations, that also hold the license of an FM translator located in the same state as the primary station, can seek renewal of the translator license on the same Form 303-S as the primary license renewal application. If a translator is located in a different state than the primary station, the renewal application for that translator must be separately filed by the date specified for translators in that state *[Section 74.15]*.

Licenses for "auxiliary stations," such as studio transmitter links (STLs), are automatically renewed with the primary station license.

Issues Programs Lists. The FCC requires each station to prepare a quarterly list of programs that respond to issues of importance for the station's community of license, and to place the list in the station's Public File. There is no requirement that the list be filed with the FCC *[Section 73.3526]*. (See Chapter 8 for more details.)

Equal Employment Opportunity. Stations with five or more full-time employees are required to engage in affirmative outreach in recruitment and to document their efforts annually. Affirmative outreach takes two forms: recruitment for each full-time vacancy, and participation in longer-term recruitment initiatives such as job fairs. A report of affirmative outreach activity must be prepared annually and placed in the Public File, and posted on a station's website, if it has one. In addition, the FCC prescribes three equal employment opportunity report forms:

- **EEO Model Program Report (Form 396-A)**, for filing by all applicants for a construction permit for a new station or for FCC consent to license assignment or transfer of control.
- **EEO Program Report (Form 396)**, for filing by all applicants for renewal of license.
- **Broadcast Mid-Term Report (Form 397)**, for filing by non-exempt stations on the fourth anniversary of the filing for license renewal.

Annual Employment Report (Form 395-B). Summary statistics on the station workforce are filed annually.

About Forms and Filings

Before turning to particular forms, here are a few general suggestions that apply to all of the documents reviewed in this chapter.

Read the Instructions. Virtually all FCC forms include a set of instructions, generally included at the beginning of the form or application itself. Review the instructions before filling out an FCC form. Instructions answer many questions and refer you to relevant FCC regulations.

File Online. The Commission now requires that most filings be made over the Internet via the Consolidated Database System (CDBS) Electronic Filing System (https://licensing.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm). Per the FCC's website, "Paper filings of forms will not be accepted unless accompanied by a request for a waiver with ample justification as to why the form cannot be electronically filed." A list of the forms that must be filed electronically is available on the FCC's website (www.fcc.gov/media/media-bureau-forms-page). (See Chapter 1 for further information concerning electronic filing.)

Sign the Form. Most forms must be signed by specifically designated individuals, generally one of the officers of the licensee. A common error in routine FCC filings is to forget to have the form signed and dated by the appropriate station official, or to send the FCC unsigned documents while the signed original sits in a file at the station. The FCC will now accept faxed signatures as original

signatures on paper filings. When filing forms electronically, you must provide the name and title of the individual signing the form. Before filing the form, therefore, be certain that the signer has reviewed the contents of the form and has approved the use of his/her signature.

Be Candid. Every submission to the Commission must accurately report the relevant facts. Any misrepresentation of a material fact or an attempt to mislead the Commission by a "lack of candor" can have devastating effects. On the other hand, unnecessary detail can confuse the staff, slow down the application process, or raise new legal issues. The rule of thumb is to keep your answers clear and to the point.

Over the past two decades, the FCC has embraced a policy of reducing the frequency of filings and the quantity of information that must be filed. This "deregulatory" trend should not make stations lackadaisical about fulfilling FCC rules. One of the consequences of the reduced filing requirements has been stricter enforcement of those that remain—including steep fines for failure to file required reports and applications.

Public File Requirements. A copy of most of the documents reviewed in this chapter must be kept in the station's Public File (https://publicfiles.fcc.gov/about-station-profiles/), and be made available during normal business hours. All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file.

By March 1, 2018, all stations will be required to come into compliance with the FCC's online public file requirements (https://publicfiles.fcc.gov/for-filers/). This excludes the top 50 market stations, which were required to begin uploading new public and political files to the FCC's online public file system by June 24, 2016.

If your station is still keeping a paper-based public inspection file, when preparing the filings for the FCC, be sure to make a printed copy and place it in the Public File immediately after filing. (See the "Local Public Inspection File" section in Chapter 8 for details on which materials must be made available for public inspection and the period of retention for the respective documents.)

For more information about correspondence, filings, and telephone contacts with the FCC, refer to Chapter 1.

Ownership

Licensees must periodically file detailed information concerning station ownership and control. This requirement arises from provisions of the Communications Act that place limits on the ownership of licenses for broadcast facilities, including the control that can be exercised by foreign governments and non-U.S. citizens. Commercial broadcast stations have long been subject to rules related to multiple ownership of mass media and concentration of media control. These rules look beyond the ownership interests held by the licensee to the interests in the licensee held by other legal entities or by individuals.

The sometimes complex rules that determine when an interest is significant enough to be counted (in legalese, when an interest is "cognizable") and to whom a cognizable interest should be attributed were once irrelevant to noncommercial stations because multiple ownership limits did not apply to noncommercial stations [Section 73.2080(i)(3)]. For the most part, the Commission was concerned only in determining who "owned" the licensee entity, and in determining that the organization meet basic eligibility requirements, such as having a bona fide educational purpose. Because most nonprofit organizations are non-stock entities, the "owners" were deemed to be the directors or trustees of the licensee.

The concept of ownership became more complex when the Commission began to use attribution principles to determine what applicants were eligible to apply for a Low Power FM station and to determine if an applicant was entitled to a diversity credit under the point system used to evaluate mutually exclusive applicants. Those principles are discussed in Chapters 11 and 7.

This chapter covers four types of ownership filings:

1. Ownership Reports, which notify the FCC of minor changes in station control
2. Applications for the assignment of a station license or construction permit, where the license or permit passes from one entity to another; or applications for a Transfer of Control of the licensee, where there is a change in the effective control of the station
3. Station contracts, related to ownership or control, that must be filed with the FCC
4. Requirements concerning certain contracts that, although not filed with the FCC, must be kept on file at the station

Ownership Report

Public radio stations must file an Ownership Report on four different occasions:

1. Within 30 days after the grant of an initial construction permit
2. Within 30 days of effecting or "consummating" an assignment or Transfer of Control of licenses and permits
3. At the time of filing the station's renewal application
4. Every two years thereafter, on the anniversary of the date on which the renewal application must be filed

If the Ownership Report on file with the Commission is current, the licensee may certify that the Ownership Report on file is accurate rather than file a new Ownership Report *[Section 73.3615]*.

The Ownership Report, Form 323-E, solicits the following information:

- The name, residence, citizenship, office held (if any), amount of any ownership interest in the licensee (if greater than 1%), principal profession or occupation, by whom appointed or elected, and identification of attributable interests in any other broadcast station (all solicited information applies to all officers, members of the governing board, and holders of a 1% or more ownership interest in the licensee)
- Ownership information regarding any other entity that has direct or indirect control over the licensee or permittee (e.g., an entity that has the power to appoint one or more of the directors of the licensee entity)

- A list of all contracts that may affect ownership or control of the station (see the "Contracts and Key Documents" section below), along with the date of execution and expiration of each contract

Licensees with more than one noncommercial, educational FM, AM, or TV broadcast station may file a consolidated Ownership Report for all stations at two-year intervals, regardless of the renewal schedules of the individual stations.

Assignments and Transfers

The FCC rules contemplate two different types of situations in which the control of a broadcast facility passes from one group to another:

1. **Assignment of License (or Permit).** Often referred to as a "sale" of a station, an assignment takes place when a license or permit passes from one organization to another. For example, if a school board gives or sells its station to an independent, community-based organization, the exchange would be considered an assignment of the license.
2. **Transfer of Control.** When the organization holding a license or permit remains the same, but the effective control of that organization changes (e.g., through a change in a majority of the Board of Directors), a Transfer of Control occurs.

The Commission must give prior consent to all assignments and transfers of control. It therefore requires that an application for such changes be submitted at least 45 days prior to the contemplated change *[Section 73.3540].*

Assignment of License. When a license is assigned from one group or corporation (the "assignor") to another (the "assignee"), the application must be filed on Form 314, "Assignment of License."

In some circumstances in which the assignor and assignee are related, the assignment is considered a "paper" (or pro forma) transaction, with no real change in the effective ownership of the licensee. Form 316, the "short form," is used in these situations. Form 316 can be used for (1) an assignment from a corporation to a wholly owned subsidiary or vice versa or (2) an assignment from one corporation to another corporation in which both corporations have the same directors.

Transfer of Control. A Transfer of Control occurs when there is a change in the "control" over the entity that holds the station license. A Transfer of Control may occur through regular turnover in directors or through changes in the structure of the organization—for example, by a change in the way in which directors are elected.

As with the assignment applications discussed above, the Commission recognizes two types of Transfers of Control: (1) those in which there is a substantial change in effective control of the licensee and (2) those that are the result of routine changes that have no substantial effect on the nature of the licensee or its purposes.

Transfers of Control occur for a variety of reasons. Often, the transfer occurs through a normal course of events for a nonprofit organization. For example, control of a licensee's Board of Directors may change through regular or special elections, resignations, new appointments, turnover in positions that entitle a person to an ex officio director's seat, or the death of one or

more directors. By contrast, some transfers occur because of a specific policy decision to increase or decrease the number of directors to include or exclude specific constituencies, or to assimilate other organizations into the licensee's governance. A licensee may decide, for example, to give another organization control of certain seats on the Board of Directors, sometimes a majority of the total. In such a case, the name of the licensee would remain the same, but control of the station could shift to another organization.

Which Form to Use for Transfers of Control. The question of whether to apply for a Transfer of Control on Form 315 or Form 316 is more than a matter of how much paperwork is involved. Use of Form 315 suggests that a significant change is involved, prompts a closer scrutiny by Commission staff, requires that the licensee give formal public notice of the filing of the application, and provides an opportunity for interested persons to file Petitions to Deny. Because Form 316 generally concerns a pro forma transfer, it receives more routine treatment at the Commission, does not require public notice, and may be granted at any time after filing.

The Issue of Timing in Transfers of Control. The FCC rules require that any Transfer of Control (long or short form) be filed 45 days prior to the contemplated date of transfer. The Commission must grant the proposed Transfer of Control before the actual transfer occurs.

When Does a Station File for a Transfer of Control on Form 315 (Long Form)? The following are some examples of situations that require the use of a long-form Transfer of Control application:

- A university station is operated by a separate University Broadcasting Corporation, the directors of which are selected by the university's Board of Trustees. The bylaws of the licensee corporation are changed to provide that a third of the directors will be selected by the university trustees, a third by contributors to the station, and a third by major social service and arts organizations in the community. Control of the licensee has passed from the university to three separate groups.
- A community station in deep financial trouble approaches a fiscally healthy arts group for a bailout. The arts group conditions its support on getting the right to name a majority of the Board of Directors for the station. Control of the licensee passes to the arts group.
- The bailout in the above example succeeds and, after a few years, the arts group agrees to reduce the board seats under its control to a third of the board. Control of the licensee would change again.

When Does a Station File for a Transfer of Control on Form 316 (Short Form)? In 1989, the FCC initiated an inquiry into the question of when transfers of control of non-stock licensees occurred *[Transfers of Control of Certain Licensed Non-Stock Entities, 4 FCC Rcd 3403 (1989)].* Because the inquiry did not result in specific changes in FCC rules, there is still some uncertainty about the issue when a Transfer of Control occurs.

To manage this uncertainty, FCC staff have informally adopted principles articulated in the inquiry as guidelines for processing Transfer of Control applications. That inquiry analogized the directors of self-perpetuating boards to the stockholders of a for-profit corporation and distinguished between "substantial" and "insubstantial" changes in board membership, and between changes that occurred "abruptly" and those that occurred "gradually." A "substantial" change is a change in the majority of the board. An "abrupt" change is one that occurs in less than one year. The inquiry

reasoned that substantial changes that occurred abruptly were more likely to signal a change in the purposes of the organization and should be examined more closely by requiring that the change be explained more fully on a long form (FCC Form 315). By contrast, substantial changes that occurred gradually were more likely to be "evolutionary" in nature. For such changes, a short form is sufficient.

All licensees of noncommercial stations are required to keep the Commission informed of changes in the ownership of the station by filing Ownership Reports every two years. In addition, organizations governed by self-perpetuating boards[*] are expected to seek FCC approval when there is a cumulative change in the majority of the board members. When a substantial change occurs in less than a one-year period, the licensee should seek FCC approval on a long-form application. The long form not only requires the applicant to provide a more detailed explanation of the Transfer of Control period, but subjects the application to greater regulatory and public scrutiny. The long-form applicant must broadcast announcements concerning the filing of the application. The Commission issues a Public Notice of the acceptance of the application and will entertain Petitions to Deny the application for a 30-day period following the issuance of the Public Notice (see *Section 73.3580*—application filing announcements—and *Section 73.3584*—filing petitions to deny Transfer of Control applications).

The Commission may scrutinize any Transfer of Control to determine whether it gives control to a new control group or is merely a routine transfer that arises through changes on a board. The Commission reserves the right to require that Transfer of Control applications filed on Form 316 be filed on the longer Form 315.

[*] The Notice of Inquiry proposed treating changes in self-perpetuating boards differently than changes in the boards of membership organizations or governmental entities. Gradual changes in the governing boards of membership organizations and governmental entities were not regarded as Transfers of Control, even when the changes resulted in the replacement of a majority of the board members. Abrupt changes in a majority of the governing board of a membership organization or governmental entity was regarded as an "insubstantial" Transfer of Control, which required only a short-form application *[see Transfer of Control of Certain Licensed Non-Stock Entities, 4 FCC Rcd 3403, 3404–3405 (1989)]*.

Public Notice Requirements. If an application for assignment of a license is filed on Form 314 or Transfer of Control is filed on Form 315, licensees are required to give public notice through broadcast announcements *[Section 73.3580(d)(3)]*. The filing of 316 does not trigger public notice requirements.

The broadcast announcements are to be made during the second week following the filing of the application with the Commission. The announcements should be made at least once a day for four days. While there is no prescribed schedule for public radio stations, the FCC requires commercial radio stations to make these announcements between the hours of 7:00 a.m. and 9:00 a.m. or between 4:00 p.m. and 6:00 p.m. Stations that do not broadcast during those hours must make the announcements during the first two hours of the broadcast day.

If a station does not broadcast during the portion of the year in which the above broadcast announcements are required, the public notice must be published in a newspaper *[Section 73.3580(e)]*. The notice should be published in a daily newspaper of general circulation in the station's service area at least twice a week for two consecutive weeks within 30 days of the time the application is filed with the FCC. If no daily newspaper is published in the community of license, the notice can be published in a weekly newspaper for three weeks within four weeks of the filing date. If no daily or weekly newspaper is published in the community of license, the daily newspaper with the largest local circulation should be used to publish the notice at least twice a week for two consecutive weeks within 30 days of the filing date *[Section 73.3580(c)]*.

A Certificate of Compliance, which certifies that the required notices have been given at specified dates and times, must be associated with a copy of the filed application in the station's Public File. The Certificate of Compliance does not have to be filed with the FCC. If a station is unable to broadcast the announcements during the periods specified by the Commission, it must attach an explanation to the Certificate of Compliance *[Section 73.3580(h)]*.

Contracts and Key Documents

Stations must file with the FCC copies of certain documents that may affect control of the station. Such documents, including any amendments, supplements, cancellations, and written summaries of oral contracts, must be filed with the Commission within 30 days of their execution. The required materials *[Section 73.3613]* are:

Contracts Relating to Ownership or Control

These include articles of incorporation or amendments to the articles of incorporation, bylaws, or changes in the bylaws, any agreement concerning Transfer of Control of the license, and any mortgage or loan agreement that restricts freedom of operation (limitations on equipment purchases, requirements for maintenance of current assets, etc.).

Contracts Relating to Personnel

These include management consultant agreements with independent contractors; contracts for management services from persons other than an officer, director, or regular employee; contracts that sign over a percentage of the station's income to persons other than the licensee; and any similar agreements.

A list of the current versions of any of the documents listed above (but not the documents themselves) must be submitted as part of any Ownership Report (Form 323-E), including the Ownership Report filed at the time of license renewal.

Other Contracts and Agreements

The following contracts must be kept at the station and made available upon request for inspection by FCC representatives (they do not, however, have to be filed with the Commission):

- SCA lease agreements
- Contracts with Chief Operators working with the station on a contract basis (as opposed to being full-time employees) *[Section 73.1870(b)(3)]*

Contracts that are not filed with the Commission and that do not have to be made available for inspection include:

- Contracts with radio networks
- Contracts that grant the right to broadcast music, such as ASCAP, BMI, or SESAC agreements
- Agreements with regular station employees
- Contracts with attorneys, accountants, or consulting engineers
- Contracts with performers
- Contracts with station representatives
- Contracts with labor unions

Change in Official Mailing Address

Section 1.5 of the FCC rules requires licensees, permittees, and applicants to inform the Commission immediately of any change in mailing address for the licensee or its representative. Only one mailing address can be maintained for each broadcast station. A notification of change of address should include the name of the licensee, street address or post office box, city, state, and zip code, and call sign (if already assigned). Per the FCC's website, "corrections of mailing addresses may be made as a CDBS (Consolidated DataBase System) informal filing." Information on how to do so may be found here: http://licensing.fcc.gov/prod/cdbs/forms/prod/faq_informal.htm#21
If the change in address corresponds with a change in the station's studios, the station must also certify that the license will continue to comply with the rules concerning the location of its main studios *[Section 73.1125].*

Renewal

The license term for public radio stations is eight years, unless otherwise specified by the FCC *[Section 73.1020]*. The license term for secondary facilities, such as translators and boosters, is also eight years *[Section 74.15]*. All radio broadcast station licenses are scheduled to expire between

2019 and 2022. This section reviews the various requirements associated with renewal of the primary station license and other associated facilities.

Renewal for Broadcast Stations

Stations file for license renewal on Form 303-S. Applications for Renewal of Broadcast Station License must be filed electronically via the CDBS Electronic Filing System no later than the first day of the fourth full calendar month prior to the expiration date of the license. If the deadline falls on a Saturday, Sunday, or a national holiday, the due date is the first full business day thereafter. The FCC's website provides Broadcast Radio License Renewals by Date here: www.fcc.gov/media/radio/broadcast-radio-license-renewal-dates-by-date
Broadcast Radio License Renewals by State are available here: https://www.fcc.gov/media/radio/broadcast-radio-license-renewal-dates-by-state#block-menu-block-4

Additional details, as covered in this section, on the FCC's requirements for filing license renewal applications can be found here: www.fcc.gov/media/radio/broadcast-radio-license-renewal

Applications for renewal filed after the due date will not be denied solely because they are late, but may not be granted until after the expiration date for the license. If a renewal application is filed late, the FCC will accept Petitions to Deny up to 90 days after the FCC gives Public Notice that it has accepted the late-filed application for filing *[Section 73.3516(e)(1)]*. The Commission will allow the station to operate until the renewal application is granted, but the lack of a license in the interim will make everyone nervous. License renewal dates for radio and television stations are available in *Section 73.1020* of the FCC rules.

Associated Materials. A license renewal application will not be granted unless several other documents also have been filed *[Section 73.3539(b)]*. These materials include:

- The Broadcast Equal Employment Opportunity Program Report (Form 396), which must be filed prior to the license renewal application Form 303-S, as Form 303-S requires the application file number of the Form 396 application. Per the FCC's website, "without this number, the CDBS Electronic Filing System will not accept a Form 303-S Application for Renewal of Broadcast Station License.
- A current Ownership Report (Form 323-E)
- Contracts relating to control required to be filed with the FCC

The requirements for all of the above are discussed in earlier sections of this chapter.

Public Notice Requirements: Broadcast Station License Renewal

Licensees must broadcast a Public Notice concerning the filing of a license renewal application for a broadcast station, both before and after the application is filed. No newspaper publication notice is required for noncommercial licensees. If a licensee subsequently amends the renewal application, the Public Notice requirements must be repeated.

Broadcast notice requirements *[Section 73.3580(d)(4)]* are as follows:

Pre-Filing Announcements. Four announcements must be broadcast during the two months prior to the date the renewal application is filed (beginning six months prior to the date a station's license expires). The licensee must make at least one announcement on the first and sixteenth day of each month.

At least two of these four announcements should be broadcast between 7:00 a.m. and 9:00 a.m. or between 4:00 a.m. and 6:00 p.m. If a station does not broadcast during these hours, at least two of the announcements should be made during the first two hours of the station's normal broadcast day. A public radio station does not need to make these announcements during any month in which the station does not normally operate.

The wording of the announcement, which should be broadcast in the primary language used by the station in its broadcast service, is as follows:

> "On (date of last renewal grant) (station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (expiration date).
>
> "Our license will expire on (date). We must file an application for renewal with the FCC (date four calendar months prior to the 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, e.g. 8 years).
>
> "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 day of last full calendar month prior to the month of expiration).
>
> "Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station's Local Public Inspection File) or may be obtained from the FCC, Washington, DC 20554, www.fcc.gov."

Post-Filing Announcements. Six announcements must be broadcast in the three months following the filing of the renewal application *[Section 73.3580(d)(4)(ii)]*. During the month stations file their renewal and for the following two months, licensees must broadcast announcements on both the first and sixteenth day of each month.

At least three of these announcements must be broadcast between 7:00 a.m. and 9:00 a.m. or between 4:00 p.m. and 6:00 p.m. If a station does not operate during these hours, at least three announcements must be made during the first two hours of the station's broadcast day.

The station must broadcast at least one announcement between noon and 4:00 p.m. and at least one between 7:00 p.m. and midnight. The scheduling of the remaining announcement is left to the licensee's discretion.

A public radio station is not required to broadcast post-filing announcements during any month in which the station does not normally operate. If the station does not broadcast all of the announcements because it is off the air during the filing period, it must nonetheless comply with the FCC rules to the extent possible. For example, if the station can broadcast only three post-filing announcements, all three should be between the hours of 7:00 a.m. and 9:00 a.m. or between 4:00 p.m. and 6:00 p.m. If a fourth announcement is broadcast, it should air between noon and 4:00 p.m.

The wording of the post-filing announcement is as follows:

> "On (date of last renewal grant) (station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (expiration date).
>
> "Our license will expire on (date). We have filed an application for renewal with the FCC.
>
> "A copy of this application is available for public inspection during our regular business hours. It contains information concerning this station's performance during the last (period of time covered by the application).
>
> "Individuals who wish to advise the FCC of facts relating to our renewal application, and to whether this station has operated in the public interest, should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).
>
> "Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station's Local Public Inspection File) or may be obtained from the FCC, Washington, DC 20554, www.fcc.gov."

If a station does not broadcast primarily in English, the station should broadcast the announcements in the primary language it uses.

Public Stations That Do Not Broadcast at All. Public stations that do not broadcast at all during the pre-filing or post-filing announcement periods are required to publish the required notice in a daily newspaper of general circulation published in the station's service area. This notice should be published twice a week for two consecutive weeks within a three-week period. If no daily newspaper is published in the community of license, the notice can be published in a weekly newspaper once a week for three consecutive weeks. In the absence of a daily or weekly newspaper, the licensee can publish a Public Notice in the daily newspaper that has the largest general circulation in the community of license. The notice should be published twice a week for two consecutive weeks within a three-week period *[Section 73.3580(e)]*.

If emergency operation interrupts the pre-filing or post-filing announcement schedule, the station should shift the announcement to the next regular broadcast day or make the announcement during one of the other time periods specified above.

Certificate of Compliance. A Certificate of Compliance that contains the times, dates, and text of all pre-filing and post-filing announcements must be associated with the renewal application in the

station's Local Public Inspection File. The Certificate of Compliance should not be filed with the FCC. If a station is unable to broadcast the announcements during the time periods specified by the Commission, it should attach an explanation to the Certificate of Compliance. Stations are expected to broadcast (or publish) the total number of required announcements, even if they cannot do so at the correct times *[Section 73.3580(h)]*.

Granting License Renewal. License renewal will be granted if (1) no Petition to Deny the application is filed; (2) the application for license renewal demonstrates that the applicant is legally, technically, financially, and otherwise qualified to hold a license; (3) the applicant is not in violation of the FCC rules or policies; and (4) the Commission finds that a grant of the application will serve the public interest, convenience, and necessity.

Petitions to Deny. Any party may submit a Petition to Deny an application for license renewal. Such petitions may be filed up to the first day of the last full calendar month prior to the expiration of the license. The applicant for license renewal may file an opposition to the Petition to Deny up to 30 days from the date the petition was filed. Failure to respond to the petition is not construed as an admission of facts alleged by the petitioner, but it is rarely advisable to ignore a Petition to Deny.

Unless an extension of time is granted, Petitions to Deny that are not filed in a timely manner may be dismissed without consideration. The Commission may grant a license renewal even when an untimely Petition to Deny is pending *[Section 73.3584]*.

The FCC may also consider *informal objections* to a station's renewal application. Informal objections do not need to meet the formal requirements of a Petition to Deny, but are not accorded the same procedural guarantees. For example, the licensee may never be notified of the filing of an informal objection and may never have an opportunity to respond. Although the Commission is not obliged to consider an information objection, it may do so. If a station's renewal application is not granted by the expiration date of the old license, it is wise to find out the reason. If the reason is a pending informal objection, the station should obtain a copy of the objection and decide whether the allegations warrant a response.

Renewal of Other Facilities

Auxiliary Facilities. Licenses for auxiliary facilities (e.g., remote pickup units, studio transmitter links) are renewed automatically with the filing of the primary station's license renewal. There are no separate Public Notice requirements for license renewal of auxiliary facilities.

Booster Stations and FM Translators. Renewal applications for booster stations are due on the same date and use the same Form 303-S application as the broadcast station's license renewal. When an FM translator is located in the same state as the primary station, the licensee can seek renewal of the translator license on the same Form 303-S as the primary license renewal application. If a translator is located in a different state than the primary station, its renewal application should be filed on the date specified for translators located in that state *[Section 74.15]*. Public notice requirements for translator and booster station license renewals differ from those for the primary broadcast station. For boosters and translators, follow the requirements outlined below *[Section 74.15]*.

Public Notice Requirements: Translator and Booster Station License Renewal. Applicants for renewal of an FM translator or FM booster station must publish at least one notice concerning the renewal application in a daily, weekly, or biweekly newspaper of general circulation in the area of service. If no such newspaper serves the community, the licensee must determine an appropriate alternative, such as posting notice at the local post office. This Public Notice is also required in the event a licensee submits a major amendment to the renewal application *[Section 73.3580(g)(1)]*.

The Public Notice should be published immediately following filing of the renewal application with the Commission (within one or two weeks) and must contain the following information:

- Name of the applicant, the community or area served, and the transmitter site
- Purpose for which the application was filed (i.e., Renewal of License)
- Date the application was filed with the FCC
- Output channel or channels on which the station is operating and the operating power
- In the case of an application for changes in facilities, the nature of the proposed change
- In the case of a major amendment to an application, the nature of the amendment
- A statement that the station engages in rebroadcasting, along with the call letters, location, and channel of the primary station
- A statement that invites comment from individuals who wish to advise the FCC of facts relating to the renewal application and whether the station has operated in the public interest

Equal Employment Opportunity (EEO) Requirements

The FCC's commitment to nondiscrimination in the broadcast industry dates to 1969. The evolution of the law in the succeeding 30 years, however, led the Commission to retool its EEO regulations from a results-oriented, job-hires evaluation to an efforts-based examination of recruitment activity. The FCC's new recruitment outreach requirements grew out of a series of challenges to the previous EEO plans. As a result of these challenges, the new rule focuses on general outreach efforts, rather than on the recruitment of minorities and women. The new rule became effective March 10, 2003.

The FCC's EEO rule contains four components: a nondiscrimination provision, general program requirements, specific recruitment obligations, and record-keeping requirements *[Section 73.2080]*.

The first component applies to every broadcaster: no station may discriminate in employment on the basis of race, color, religion, national origin, or sex.

The general program, recruitment, and record-keeping components apply fully to stations or employment units that employ five or more persons full time. (The FCC defines "employment unit" as a station or group of commonly owned stations in the same market that share at least one employee. An employee working 30 or more hours per week is considered to be full time.) General program, recruitment, and record-keeping requirements are relaxed for stations or employment units with ten or fewer full-time employees, and further relaxed for those with five or fewer full-time employees. (See the Exemption Table at the end of this chapter for details.) As adopted, the

requirements apply to vacancies for full-time positions only. The FCC continued a study of whether and to what extent part-time positions should be included in the rule.

Voting Interest Exemption. Owners holding a 20 percent or greater voting interest in a licensee will not be regarded as station "employees" for EEO purposes (unless a single owner has more than 50 percent voting control, in which case he or she will be the only one not regarded as an "employee"). This exemption has greater impact on commercial broadcasters and does not apply to the usual, organizational form of noncommercial licensee.

General EEO Program Requirements

Non-exempt broadcast stations must establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. These general program requirements obligate non-exempt stations to:

1. Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

2. Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

3. Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

4. Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based on race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

5. Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

Radio and television stations and employment units with fewer than five full-time employees are exempt from these general EEO program requirements.

Specific Recruitment and Record-Keeping Requirements

The recruitment requirements of the EEO rule consist of three prongs. The FCC has granted exemptions of varying degrees from certain of the requirements.

Non-exempt employment units have a basic outreach obligation to widely disseminate information concerning each full-time job vacancy (Prong 1). They must provide notice of openings to qualifying organizations that request such notice (Prong 2). They must regularly engage in longer-term recruitment initiatives (Prong 3). The Commission provides a menu of 16 choices from which to select such initiatives.

Non-exempt employment units must annually document their recruitment efforts, place them in the Public File, and post them on their websites. Details about when the EEO report must be placed in the Public File and what information it must contain are discussed below. These forms are available on the FCC's website here: www.fcc.gov/licensing-databases/forms

With an application for renewal of license, every station—exempt or not—must file a **Broadcast Equal Employment Opportunity Program Report** (Form 396). The Report of non-exempt employment units must be accompanied by the two most recent EEO Public File reports.

A **Broadcast Equal Employment Opportunity Model Program Report** (Form 396-A) must be filed with every application for a construction permit to build a new station or for an assignment of license or Transfer of Control, regardless of whether an applicant is exempt.

Midway through the license term, television station employment units with five or more full-time employees, and radio station employment units with more than ten employees, must file the two most recent EEO Public File reports with the Commission, using the **Broadcast Mid-Term Report** (Form 397). Others are exempt.

The Annual Employment Report is not part of a station's EEO program, and is not to be placed in the Public File or to be made publicly available. It is filed with the FCC only for industry monitoring purposes. (Note: The Commission suspended the filing of the **Annual Employment Report** Form 395-B pending revisions to the form.)

The specific EEO recruitment requirements for non-exempt broadcast station employment units, incorporating the three prongs referred to previously are grouped in the following elements, which require a non-exempt employment unit to:

1. **Recruit for every job vacancy in the operation (Prong 1).**

   A station employment unit must use recruitment sources for each vacancy which is sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy. Sources that specifically target minorities or women may be used, but are not required to be used.

   A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary.

   An employment unit must provide notification of each vacancy to any organization, on request, that distributes information about employment opportunities to job seekers or refers job seekers to employers (Prong 2). An organization may request notice of all vacancies. The FCC emphasizes the importance of honoring a "requesting" organization's desire to receive notice of vacancies. Records should therefore clearly identify "requesting" organizations so they can be notified.

2. **Engage in at least four of the FCC's prescribed initiatives in a two-year period coinciding with the license renewal filing date (Prong 3), regardless of whether any vacancies occur.**

If the employment unit has five to ten full-time employees or is located in a "smaller market," it is required to engage in only two initiatives. A "smaller market" includes metropolitan areas as defined by the Office of Management and Budget (OMB) with a population of fewer than 250,000 persons, and areas outside of all metropolitan areas as defined by OMB. (See the attachment to OMB Bulletin No. 99-04 for a list of metropolitan areas as of June 30, 1999, at www.whitehouse.gov/omb/bulletins/b99-04.html.)

The Commission prescribes the following Prong 3 initiatives from which to choose:

(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions (Note: counts as one initiative);

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (not primarily directed to providing notification of specific job vacancies);

(vii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher-level positions;

(ix) Establishment of a mentoring program for station personnel;

(x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of websites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;

(xvi) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

3. Analyze the recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

4. **Periodically analyze measures taken to:**
   (i) Disseminate the station's equal employment opportunity program to job applicants and employees;
   (ii) Review seniority practices to ensure that such practices are nondiscriminatory;
   (iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based on race, national origin, color, religion, or sex discrimination;
   (iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, or sex over another;
   (v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;
   (vi) Where union agreements exist, cooperate with the union or unions in the development of programs to assure all persons equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and
   (vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

5. **Retain records to document that the employment unit has satisfied the requirements of paragraphs (1) and (2) above.**

   The records may be maintained in electronic format. They must be retained until after grant of the renewal application for the term during which the vacancy was filled or the recruitment initiative occurred. The following records must be maintained:
   (i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;
   (ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to Item (1), which should be separately identified), identified by name, address, contact person and telephone number;
   (iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;
   (iv) Documentation necessary to demonstrate performance of the initiatives required by Item (2), if applicable, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;
   (v) The total number of interviewees for each vacancy and the referral source for each interviewee; and,
   (vi) The date each vacancy was filled and the recruitment source that referred the hiree.

6. **Place in a station's Public File (and on its website, if it has one) annually, on the anniversary of the date for filing the station's license renewal application, an EEO Public File report containing the following information:**
   (i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to Item (1), which should be separately identified), identified by name, address, contact person and telephone number;
(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year; or, in the case of an internal promotion, a notation that the vacancy was filled by internal promotion;
(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and
(v) A list and brief description of initiatives undertaken pursuant to Item (2) during the preceding year.

Religious Broadcasters

Religious broadcasters that elect to apply a religious qualification to all employees are not required to comply with the recruitment requirements of Prongs 1 and 2, or the recruitment initiatives of Prong 3. They must, however, make reasonable, good faith efforts to recruit applicants, without regard to race, color, national origin or gender, among those who are qualified based on their religious belief or affiliation. Documentation as to the full-time vacancies filled, the recruitment sources used, the date each vacancy was filled, and the recruitment sources of such hires must be placed annually in the station's Public File. The FCC defines a "religious broadcaster" as "a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity."

A religious broadcaster that elects to establish a religious qualification for some-but not all-job positions must comply with Prongs 1 and 2 with respect to positions not subject to a religious qualification. A religious broadcaster that treats five or more of its full-time positions as non-religious must additionally engage in the recruitment initiatives of Prong 3 because, the FCC says, the station is in a comparable position to stations that have five or more full-time employees, none of which is subject to a religious qualification. Similarly, a religious broadcaster electing to treat none of its positions as subject to a religious qualification would be required to comply with all three prongs of the rule.

The religious broadcaster exemption does not relieve a religious broadcaster from the provisions of the EEO rule on nondiscrimination, general program requirements, and record-keeping.

Brokering Situations

If a station is subject to a time brokerage agreement, the licensee must file Forms 396 and 397 and EEO Public File reports concerning only its own recruitment activity.

If a licensee is a broker of another station or stations, the licensee-broker must include its recruitment activity for the brokered station(s) in determining the bases of the Forms 396 and 397 and EEO Public File reports for its own station.

If a licensee-broker owns more than one station, it must include its recruitment activity for the brokered station in Forms 396 and 397 and in the EEO Public File reports for its own station that is most closely affiliated with, and in the same market as, the brokered station.

If a licensee-broker does not own a station in the same market as the brokered station, then it must include its recruitment activity for the brokered station in Forms 396 and 397 and in the EEO Public File reports for its own station that is geographically closest to the brokered station.

Enforcement

Although the Commission acknowledges that the question whether broad outreach is achieved in any case is a subjective one, enforcement activity, including substantial fines, is likely to focus on compliance with the detailed record-keeping requirements of the rule. The probability that record-keeping violations will occur is heightened by the record retention requirements. Stations are obligated to retain records for the entire eight-year term of a license, during which time station personnel could change substantially and repeatedly.

Record-keeping also includes an additional element not covered by the rule, but required to be confronted at license renewal time. The EEO Program Report (Form 396) that every station must file with its license renewal application asks for a description of any pending or resolved complaints filed during the preceding license term alleging unlawful discrimination in employment. Due to the likelihood of personnel changeover from one eight-year license term to the next, it is important to institutionalize the maintenance of complete records of any such activity.

Q&A

Q1: I'm new to this area of regulation. Where do I start?

A: The first step is to determine how the EEO rule applies to you. All stations must comply with the basic requirement not to discriminate against any person in employment because of race, color, religion, national origin, or sex. If you employ fewer than five persons full-time, you are exempt from the general program requirements and the parts of the rule on recruitment and record-keeping (but you must still file FCC Form 396 or 396-A with license renewal, or if applying for a new station or acquiring an existing station). If you employ between five and ten persons full-time, you must complete only two, instead of four, recruitment initiatives in a two-year period. Radio stations employing fewer than ten persons full-time are excused from filing the mid-term EEO report (Form 397) with the FCC.

Q2: My station is licensed to a school system with dozens of employees, but only two full-time employees are associated with the station. What requirements apply?

A: The station is exempt from the general program, recruitment, and record-keeping requirements of the rule, but it must comply with the nondiscrimination provision.

Q3: My station employs six persons, but three of them work only 20 hours a week. Am I exempt?

A: Yes. Employees that work fewer than 30 hours a week are not considered to be full time, and the EEO rule presently applies only to full-time employees.

Q4: If I hire a volunteer as a full-time employee, is that an internal promotion?

A: Probably not. Although the FCC does not address the issue of volunteer staffs, what it said about part-time employees provides a rough analogy. Converting a part-time employee to full-time status in the same or similar position is an internal promotion only if he or she was initially hired pursuant to the recruitment requirements of the EEO rule. So, if the volunteer position was not filled after full recruitment, or the hire is for a different position, then the recruitment requirements would likely apply. There may be exigent circumstances, however, to excuse you from the recruitment process. See Q&A 9 below.

Q5: My radio station employs 10 persons full time but it is not located in an OMB-defined metropolitan area. How does that affect my EEO obligations?

A: You are subject to all requirements of the EEO rule, except that (1) you need to complete only two Prong 3 recruitment initiatives in a two-year period, and (2) you do not have to file a mid-term EEO report (Form 397).

Q6: All air personnel on my station are required to be members of the church that the station is licensed to. We employ ten persons full time, six of them on-air. What requirements apply?

A: Vacancies in on-air positions are subject to the requirement to make reasonable, good faith efforts to recruit applicants without regard to race, color, national origin or gender, among those who are qualified based on their religious belief or affiliation. Vacancies in other positions are subject to the Prong 1 and Prong 2 recruitment requirements because the station employs more than five persons full-time. However, because only four positions are covered by those recruitment requirements, you are exempt from engaging in Prong 3 recruitment initiatives.

Q7: Where do I start with the various record-keeping requirements of the rule?

A: First, identify and compile a permanent record of sources of recruitment and referrals. As a whole, the sources should be sufficient to ensure wide dissemination of information about a full-time job opening. The list may include sources specifically targeted to minorities or women, but the FCC does not require such sources to be included. Then, keep track of all vacancies, all recruitment sources you notify for each vacancy, all interviewees and the recruitment source for each one, the recruitment source that referred each hiree, and the total number of referrals from each recruitment source. You'll need this information to prepare the annual EEO Public File report.

Q8: Does "wide dissemination" mean that if I'm looking for a station engineer, I have to advertise in the want ads of my daily newspaper?

A: Not necessarily. The Commission recognizes that different positions may require different qualifications, and that in a given case, different recruitment sources may be appropriate to

reach persons likely to possess the requisite qualifications for the job. The Commission requires only that you use whatever recruitment sources can reasonably be expected to widely disseminate notice of the vacancy to qualified applicants. There is one exception to the rule: in every case, you must provide notification of full-time job vacancies to any organization involved in assisting job seekers that requests such notification.

Q9: My development director quit suddenly due to a family crisis, and I need to fill the position immediately. Do I have to go through the recruitment process, or can I offer the job to someone I know is immediately available?

A: The FCC acknowledges that in occasional exigent circumstances, recruitment may not be feasible, and that hires may be made outside the recruitment process. The Commission said in some instances, the unique nature of a particular position and the need to proceed promptly to fill it may qualify as an exigent circumstance that would warrant a decision not to recruit. The FCC cautioned, however, that it expects non-recruited vacancies to be rare relative to the number of vacancies for which recruitment is conducted because the EEO rule generally requires recruitment for every vacancy.

Q10: I just want to know what, when, and where to file!

A: Filing requirements for the Public File and for the FCC are keyed to the filing date for a station's license renewal application. That filing date is four months prior to expiration of the station's license. For example, licenses that expire October 1st have a June 1st filing date (see the table following this Q&A for license expiration dates, by state).

Every year on that date a non-exempt station must compile and place its annual EEO report in the Public File, and post it on the station's website if it has one.

With the station's license renewal application, a non-exempt station's two most recent annual EEO Public File reports must be filed with the FCC (using Form 396).

At the mid-term anniversary, four years into the license term, television station employment units with five or more full-time employees, and radio station employment units with more than ten employees, must file the two most recent annual EEO reports with the FCC (using Form 397).

Q11: Are these the only reminders I need to put on my calendar?

A: No. In every two-year period, calculated from station's license renewal filing date, if you are a non-exempt station or employment unit, you must complete four of the sixteen recruitment initiatives contained in the EEO rule. Only two initiatives must be completed if the radio or television employment unit has five to ten full-time employees or is located in a smaller market.

Q12: We have a very diverse staff. Because of this, will the FCC expect us to maintain our current level of diversity when we recruit?

A: The FCC does not examine station employment profiles. It no longer focuses on employees. It looks only to recruitment efforts and how widely an employer disseminates information about job openings. More than this, the EEO rule does not require stations to keep or to report statistics on the gender and race of applicants or candidates. Although the Annual Employment Report (Form 395-B), solicits gender and race information about employees, it is compiled only for industry-wide monitoring purposes. It is not publicly-available information and it is no longer a part of the FCC's EEO program.

Exemption Table

The following table summarizes the elements of the recruitment, record-keeping, and FCC filing requirements of the EEO rule from which broadcast stations or employment units may be exempt. No station is exempt from the nondiscrimination provision of the rule.

EEO Rule Compliance Requirement	Number of Full-Time Employees			
	Fewer Than 5	5 to 10 (Radio)	5 to 10 (Television)	More Than 10
General EEO Program	No	Yes	Yes	Yes
Recruitment for All Vacancies (Prong 1)	No	Yes	Yes	Yes
Notification to Requesting Groups (Prong 2)	No	Yes	Yes	Yes
Recruitment Initiatives (Prong 3)	No	Yes (two in two years)	Yes (two in two years)	Yes (four in two years, but two in two years in small markets)
Broadcast EEO Program Report Form 396 (license renewal)	Yes	Yes	Yes	Yes
Broadcast EEO Model Program Report Form 396-A (new or acquire)	Yes	Yes	Yes	Yes
Broadcast Mid-Term Report Form 397	No	No	Yes	Yes

License Expiration Dates

The FCC sets license terms on a state-by-state basis, separately for radio and for television. The expiration and renewal cycle courses generally from Washington, DC, south and westward, then through New England, the Northeast, and the Mid-Atlantic states. The filing date for renewal is four months prior to the expiration date. The FCC's website has tables that show Broadcast Radio License Renewal Dates by State here: www.fcc.gov/media/radio/broadcast-radio-license-renewal-dates-by-state - block-menu-block-4 and by Date here: www.fcc.gov/media/radio/broadcast-radio-license-renewal-dates-by-date - block-menu-block-4

Chapter 4: Sponsorship Identification

This chapter covers the Sponsorship Identification (ID) Rules. These rules are not only the basis for the FCC's regulation of "payola" and "plugola," discussed in this chapter, but also for the underwriting rules discussed in Chapter 5. Topics discussed in this chapter include:

- "Payola" and "Plugola"
- Content of Sponsorship ID Announcements
- Sponsorship and Donations
- Sponsorship Payments to Employees
- Station Liability for Sponsorship ID Rules Violations
- "Plugola"
- Sponsorship ID of Political and Controversial Programming
- Scheduling of Sponsorship ID Announcements
- The "Garage Sale" Exception
- Example of Station Policy on Sponsorship ID
- Scenarios Illustrating the Sponsorship ID Rules
- Appendix: Station/Employee Sponsorship Identification Declaration

The rules related to "sponsored" program material are premised on the public's right to know by whom it is being persuaded *[Broadcast Announcement of Financial Interests of Broadcast Stations and Networks and Their Principals and Employees in Services and Commodities Receiving Broadcast Promotions ("Plugola Practices"), 46 RR 2d 1421 (1980)]*. The public is generally entitled to assume that programming is unsponsored, and that the licensee has decided what to broadcast based solely on its view of the interests and needs of the community it serves. In situations in which this assumption is incorrect, the station must inform the public that material is "sponsored, paid for, or furnished by" a third party *[Section 73.1212(a)]*.

This simple principle isn't always easy to apply. Programming decisions are often affected by many factors other than the broadcaster's understanding of community issues. Economic factors, such as the cost to acquire or produce different types of programming, changes in a licensee's governing board, the availability of programs from other programming sources, the receipt of grants or donations to produce a program or program series, the discovery of a talented volunteer with a wonderful music collection—all of these, and many other factors, can "influence" programming decisions. Distinguishing between a "sponsored" program and one that does not require any special notice to the public is not always a simple task. That distinction is made even more complicated by the fact that a broadcaster's duty to disclose sponsored programs extends to programs produced by volunteers or employees. Has an announcer's selection of music been affected by CDs he has been given by a particular label? Is a volunteer using her program to promote her own concerts or plug her website? Has the receipt of travel benefits or free tickets influenced the decisions of a Program Director? These are some of the questions addressed in this chapter.

“Payola” and “Plugola”

The Sponsorship Identification (ID) Rules *[Section 73.1212]* grew out of the “payola” practices of the 1960s, when congressional investigations revealed that radio station personnel were accepting under-the-table payments from record companies in exchange for playing certain songs. “Payola” has come to mean the broadcast of material for which a station or its employees, producers, or program suppliers have received or are promised consideration, without disclosing that the consideration was paid or promised.

The Communications Act and FCC regulations *[Sections 317 and 507; Section 73.1212]* also prohibit a related practice known as “plugola.” “Plugola” refers to the on-air promotion of goods or services in which a person with programming responsibility has a financial interest. The standard situation is one in which a programmer promotes a club, music store, or concert in which he has an undisclosed personal interest.

In most situations, the antidote to both payola and plugola violations is an announcement that clearly discloses the sponsor of the material. At the end of this chapter, you will find a section entitled “Scenarios Illustrating the Sponsorship ID Rules.” It shows how the Sponsorship ID Rules are applied to specific factual situations.

The key portion of the Sponsorship ID Rules *[Section 73.1212(a)(1)-(2)]* is as follows:

> “[W]hen a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, at the time of the broadcast, [the station] shall announce:
>
> > “(1) that such matter is sponsored, paid for, or furnished, either in whole or in part, and
> >
> > “(2) by whom or on whose behalf such consideration was supplied”

The rules require the identification of those who pay or promise anything of value in exchange for the broadcast of any “matter.” The rules do not require broadcasters to identify those who make general donations to the station or those who provide the station with goods or services at no cost or at a nominal cost unless these goods or services are provided in exchange for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property for the broadcast *[Section 73.1212(a)(2)]*. A station, thus, has to distinguish a pure gift from “consideration” offered in exchange for a product mention. For example, if a local coffee shop provides a radio station with free coffee for early morning broadcasts, a sponsorship identification announcement is not required unless the coffee is provided in exchange for an identification of the coffee shop.

As this example illustrates, underwriting rules grow out of, and are closely linked to, sponsorship identification requirements. One simple distinction between sponsorship identification requirements and underwriting rules should be noted here. The Sponsorship ID Rules are triggered by broadcasting matter for which consideration has been received. Thus, even non-promotional material, such as simply playing a song in exchange for consideration, may violate the Sponsorship

ID Rules, even though no violation of underwriting rules would arise because the song was not "promoted."

Content of Sponsorship ID Announcements

Sponsorship announcements must include:

- The fact that program material was sponsored, furnished, or funded by a grant
- The identity of the person, organization, or other entity that provided the program or made or promised payment
- The identity of the person, organization, or other entity that furnished material for a program involving political matter or discussion of controversial issues of public importance

The standard sponsorship identification announcement is: "This program was sponsored (or 'furnished' or 'paid for') by X." Because, as noted above, noncommercial stations may not accept consideration for broadcasting programs, other formulations for indicating sponsored programming have become customary. These include: "This program made possible by a grant from X," or "Support for this program provided by X."

Stations must exercise "reasonable diligence" in determining the true sponsor of programming *[Section 73.1212(e)]*. When a licensee knows that an agent is acting on behalf of another entity, the announcement must include the name of the sponsor rather than that of the agent *[Section 73.1212(a)(2)]*. For example, the FCC found that several radio stations in Oregon failed to identify the true sponsor of a political advertisement that was paid for by a citizens' group funded almost exclusively by the tobacco industry. The tobacco industry, and not the citizens' group identified, was the sponsor of the programming *[Trumper Communications of Portland, Ltd. 5 CR 256 (Mass Media Bureau 1996)*].

Sponsorship and Donations

Sponsorship identification is not required for simple donations, whether cash or in-kind. The obligation to air a sponsorship ID arises only if there is an exchange of something of value for the broadcast of some matter *[Section 73.1212]*.

Note, however, that the sponsorship ID requirements apply to nonprofits as well as for-profits. Noncommercial stations may carry such programs subject to the following limitation [*Section 73.503(c)]:*

> [Noncommercial educational broadcast stations] . . . "may broadcast programs produced by, or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee. The payment of line charges by another station, network, or someone other than the licensee of a noncommercial educational FM broadcast station, or general contributions to the operating costs of a station, shall not be considered as being prohibited by this paragraph."

As indicated by the rule just cited, certain types of payments are excluded from the definition of "consideration." Third parties, such as venues for remote broadcasts, may pick up the cost of telephone line charges without triggering the sponsorship identification requirements. This principle is strictly applied, however. Payments of anything beyond "incidental" production costs will be viewed as consideration for mentioning the venue.

While noncommercial stations may accept programming from outside entities, they must identify the source of such programming to the public. A broadcast program provided to a station by a third party, even at no cost to the station, is subject to the Sponsorship Identification Rules on the theory that the program itself is the "consideration" for broadcasting it *[Section 73.1212].*

Sponsorship Payments to Employees

Sponsorship not only includes payments to the station, but payments to station personnel and other persons directly involved in programming. Station employees or volunteers who pay, accept, or agree to accept consideration to broadcast a program or part of a program must notify the station of this agreement before the program airs. When a licensee is made aware that consideration has been received in exchange for broadcast material, the licensee must make an appropriate announcement in connection with the programming at the time of broadcast *[Section 507]*. If, during or after a program airs, the licensee becomes aware of the fact that the program was sponsored, the licensee must broadcast a sponsorship identification announcement that identifies the sponsor as soon as possible *[Section 73.1212(c)].*

Station Liability for Sponsorship ID Rules Violations

Licensees must use "reasonable diligence" to obtain the information necessary to fulfill sponsorship identification announcement requirements. As a practical matter, this means that the licensee must inform employees and volunteers of the Commission's sponsorship ID requirements, and make sure that all persons with influence over the programming content understand and comply with the rules.

The FCC takes sponsorship ID requirements seriously. A station's failure to comply with the FCC's Sponsorship Identification Rules can result in fines or criminal charges against the station and employees *[Payola and Undisclosed Promotion, 4 FCC Rcd 7708]*. The Commission has authority to fine stations up to $10,000 per violation and can commence license revocation proceedings against a licensee for violating the Sponsorship Identification Rules. In addition, the Department of Justice has jurisdiction over these rule violations, and violators may be subject to criminal penalties and jail time. In at least one case, the FCC rejected a station's claim that it made a good faith effort to comply with the rule by referring to a sponsor as the "host" of the program *[Southern California Broadcasting Co., 69 RR 2d 953 (1991)]*.

"Plugola"

The on-air promotion of goods or services for which the station or anyone with programming responsibility has an undisclosed financial interest is considered "plugola." If any volunteer or employee promotes goods or services on-air for which the employee receives a financial benefit, an appropriate sponsorship identification is required *[Broadcast Announcement of Financial Interests of Broadcast Stations Networks and Their Principals and Employees in Services and Commodities Receiving Broadcast Promotions, 76 FCC 2d 221 (1980)]*. The legal principle involved is that

broadcast stations are licensed to serve the public interest, not the private interests of their personnel *[Gross Telecasting, Inc., 14 FCC 2d 239]*.

Sponsorship ID of Political and Controversial Programming

Stations that air programs on controversial issues are required to air sponsorship identification if the program material is furnished by an outside entity [Section 399B]. In addition, stations must keep a list of the names of corporate officers or directors of the entity sponsoring political or controversial programming. This list must be kept in the station's Public File for a period of two years *[Section 73.1212(e)]*. (For a more in-depth analysis of political broadcasting, see Chapter 7.)

Scheduling of Sponsorship ID Announcements

Stations must make at least one sponsorship identification announcement for any sponsored program material. If the sponsored program is political or controversial and is five minutes or less, the station may make only one sponsorship announcement at the beginning or end of the program. If the program is more than five minutes, the station must air an announcement at the beginning and end of the program *[Section 73.1212(d)]*. These announcements may be brief, but must meet all of the content requirements discussed above.

The "Garage Sale" Exception

Stations are not required to air sponsorship identification announcements when broadcasting unpaid "classified ads" on behalf of individuals. This waiver of the Sponsorship Identification Rules does not extend to "want ads" by businesses, corporate or otherwise. If a station broadcasts an on-air garage sale as a public service, the station must maintain a list of the individuals who offer items for sale. The list should contain the person's name, telephone number, and address. Stations must retain this list for two years after the broadcast. The list need not be kept in the station's Public File, but must be made available to members of the public who have a legitimate interest in obtaining information on the list *[Section 317; Section 73.1212(g)]*.

Example of Station Policy on Sponsorship ID

All stations should have a policy regarding sponsorship identification requirements and should take steps to ensure that staff understand and comply with the policy. Here is one version of such a policy:

No employee or volunteer at [station name], who has any role in the production or selection of broadcast matter, may:

1. Accept money, services, goods, or other valuable consideration from individuals, organizations, associations, or other entities to broadcast a program or program material, or

2. Promote any activity or matter in which he or she has a direct or indirect financial interest, or

3. Broadcast any material that to his or her knowledge requires sponsorship identification as outlined in the FCC's regulations and that does not include the required sponsorship identification.

Stations should ask employees who are in any way connected with station programming to sign a "payola/plugola" declaration periodically. The declaration both familiarizes employees with the rules and evidences the fact that the licensee has taken steps to comply with the FCC's regulations. A sample declaration is contained in the Appendix to this chapter.

Scenarios Illustrating the Sponsorship ID Rules

The FCC has provided considerable guidance about the kinds of consideration and remuneration that require on-air acknowledgment and about the kinds of exchanges that constitute a sponsorship relationship. The Commission is aware that stations typically receive records, books, tickets, premises for remotes, and programs. Such goods or services do not automatically trigger the FCC's requirement for a sponsorship announcement, even though they may influence a station's programming.

The following hypothetical situations are taken from past and recent Commission notices, rulings, and publications interpreting the Sponsorship Identification Rules *[Applicability of Sponsorship Identification Rules, May 6, 1963, Public Notice, 40 FCC 141; as modified by Public Notice April 21, 1975, 52 FCC 2d 701]*. Situations requiring a sponsorship identification are identified in caps as "REQUIRED," and situations that do not require a sponsorship identification are identified in caps as "NOT REQUIRED."

Situation A record distributor furnishes copies of records to a broadcast station or a disc jockey for broadcast. No announcement is required unless the supplier furnishes more copies of a particular recording than are needed for broadcast purposes. If a record supplier furnishes 50 or 100 copies of the same release, for example, with the agreement by the station, express or implied, that the record will be used on a broadcast, an announcement would be REQUIRED because consideration beyond the matter used on the broadcast was received.

Situation Several record distributors supply a new station, or a station that has changed its format, with a substantial number of different releases. A sponsorship identification is NOT REQUIRED if the records are furnished for broadcast purposes only and if the station would have received the same material had it previously been on the air or followed its current program format.

Situation Records are furnished to a station or disc jockey in consideration for plugging the record supplier or artist beyond an identification reasonably related to the use of the record on the program. If the disc jockey says, "This is my favorite new record and sure to become a hit. It is available on the Sony label at XYZ stores," a sponsorship announcement would be REQUIRED, because it is understood that this statement is made in return for the record and that this type of statement would not have been made absent such an understanding and the supplying of the record free of charge.

On the other hand, if a disc jockey, in playing a record, says, “Listen to this latest release of performer X, a new singing sensation,” and such matter would be included whether or not the particular record had been purchased by the station or furnished to it free of charge, the identification by the disc jockey is reasonably related to the use of the record on that particular program and an announcement is NOT REQUIRED.

The practice of permitting record labels to send promotional CDs directly to program producers is a dangerous one, since it is not subject to station supervision and may affect programming decisions. It also prevents the CDs from becoming part of the station’s music library. The safer course is to have all CDs and other promotional materials, such as tickets, back-stage passes, or travel benefits donated to the station so that station management can decide on the propriety of the donation and determine whether sponsorship identification is required.

The following scenarios illustrate situations where a broadcaster is given a service or property free of charge for use in connection with a program.

Situation A record company buys underwriting in support of a station concert and offers to have one of its recording artists appear at the concert, but pressures the station to play the artist’s new song despite the fact that the song does not fit the radio station’s regular format. The station agrees to add the new song to its playlist and gives it significant airplay. Although it is not directly being paid to play the song, a sponsorship identification announcement is REQUIRED each time the song is played because the station is playing the song in exchange for “consideration”—the underwriting and the concert appearance *[AMFM Texas Licenses Limited Partnership, DA 00-2315 EB, (October 12, 2000)]*.

The same result would apply if, given the same facts, the record company threatened to cancel the concert appearance based on lack of airplay and the radio station gave the song increased airplay for several weeks in order to prevent cancellation of the concert. Because the radio station is receiving indirect consideration for broadcasting the song, a sponsorship announcement is REQUIRED when it airs the song *[AMFM Radio Licenses, L.L.C., DA-2314 (EB, October 12, 2000)]*.

Situation Free books or theater tickets are furnished to a book or drama critic of a station. The books or plays are reviewed on the air. A sponsorship announcement is NOT REQUIRED.

Situation On the other hand, if 40 theater tickets are given to the station with the understanding, express or implied, that the play would be reviewed on the air, a sponsorship announcement would be REQUIRED.

Situation News releases are furnished to a station by government, businesses, and labor and civic organizations. The station draws on these materials for news reporting and editorial comment. A sponsorship announcement is NOT REQUIRED.

Situation A government department furnishes air transportation to radio newscasters so they can accompany a foreign dignitary on his travels throughout the country. A sponsorship announcement is NOT REQUIRED.

Situation A university makes one of its professors available to give lectures in an educational program series. A sponsorship announcement is NOT REQUIRED *[Section 73.503(c)]*.

Situation A well-known performer appears as a guest on a program at union scale because the performer likes the show, although the performer normally commands a much higher fee. A sponsorship announcement is NOT REQUIRED.

The following scenarios illustrate situations in which a station receives goods or services free of charge for use in, or in connection with, programming. If there is an agreement, either expressed or implied, that the station will make an identification of the goods or services beyond the use for which they are reasonably related to the program, a sponsorship identification is REQUIRED.

Situation X furnishes a refrigerator to a radio station for use as a prize with the understanding that a brand identification will be made at the time of the give-away. In the presentation, the announcer mentions the brand name of the refrigerator, its cubic content, and such other features that describe the prize. A sponsorship announcement is NOT REQUIRED because such identification is reasonably related to the use of the refrigerator on the show.

Situation A hotel permits a program to originate from its premises. A sponsorship announcement is NOT REQUIRED.

Situation Same scenario, but the hotel also furnishes electricity, cable connections, and rooms for the production crew free of charge. A sponsorship announcement is NOT REQUIRED so long as there is no identification of the hotel during the program beyond that reasonably related to the use made of the hotel on the program.

Situation A hotel furnishes free, or at a nominal charge, any services or items that are not for use on or in connection with a program that originates from its premises (e.g., furnishing free room and board for the producer for a period of time not related to the production of the program at the hotel site). A sponsorship announcement would be REQUIRED if there is an agreement that the services and goods are furnished in exchange for an announcement identifying the hotel.

Situation The host of a gardening show is employed by a wholesaler of fertilizers, pesticides, and other garden products that the host often recommends on the show. A sponsorship announcement is REQUIRED because the station should disclose the host's employment since it constitutes a potential conflict of interest *[Taft Broadcasting, 39 FCC 2d 1070 (1973)]*.

The following examples represent situations in which public stations that broadcast public service announcements (PSAs) on behalf of nonprofit or governmental entities are REQUIRED to make sponsorship identification announcements.

Situation The United States Surgeon General's new anti-smoking campaign includes several paid PSAs on local radio stations. A sponsorship announcement is REQUIRED because

broadcasters must identify clearly that the Surgeon General's Office paid for or sponsored the PSAs.

Situation A local radio station broadcasts a PSA furnished by a local nonprofit group on the benefits of recycling. A sponsorship announcement is REQUIRED because the station must announce the name of the nonprofit entity on whose behalf the PSA is aired.

Situation A national nonprofit domestic violence group pays for several PSAs about its toll-free spousal abuse hotlines. A sponsorship announcement is REQUIRED because stations are required to identify the name of the group paying for the PSAs.

Station/Employee Sponsorship Identification Declaration

I have read Sections 317 and 508 of the Communications Act and Section 73.1212 of the Commission's rules, which are attached hereto. I understand the penalties outlined in Section 508, which include a fine of up to $10,000 and imprisonment of up to one year for each offense.

I will comply with the policy that any person at this station who has any role in the selection of broadcast matter will not a) accept money, services, goods, or other valuable consideration from individuals, organizations, associations or other entities to broadcast a program or program material, b) promote any activity or matter in which he or she has a direct or indirect financial interest, or c) air any material which to his or her knowledge requires sponsorship identification as outlined in Commission Rule 73.1212 and which does not include a proper sponsorship identification announcement.

_____ _____

(date) (name)

_____

(witness)

Chapter 5: Underwriting, Fundraising, and Promotion

This chapter considers the regulation of underwriting and on-air fundraising and promotion. Some of the topics covered include:

- Origin of the Underwriting Rules
- Current Rules and Regulations
  - The Definition of an Advertisement
  - Mandatory Identification of Sponsorship
- Underwriting Announcements
  - Permissible Underwriting Announcements
  - What Is Underwriting?
  - Content of Underwriting Credit Announcements
  - Logos
  - Impermissible Underwriting Announcements
  - Scheduling of Underwriting Announcements
  - Duration of Underwriting Announcements
  - Underwriting Announcements for Nonprofits
- On-Air Fundraising and Auctions
  - Station Fundraising
  - Fundraising for Other Nonprofits
  - Auctions
  - Waivers
- Promotional Programming
  - Promotions for Which No Consideration Is Received
  - Host Selling
  - Program-Related Materials
- Issue Ads and Political Ads
- Illustrations of the Underwriting Rules
  - Impermissible Announcements
  - Permissible Underwriting Announcements and Practices
- Example of Nonprofit Promotional Announcements
- Questions and Answers

The FCC underwriting rules represent the efforts of Congress and the Commission to strike a balance between preserving a noncommercial broadcast service and giving noncommercial stations the ability to attract contributions from commercial sponsors. The tension is between mission and money.

This chapter focuses on the regulatory constraints imposed by the Commission and does not explore many other factors that may affect fundraising efforts—from the station's image in its community to the practical issues of how to staff and compensate a development department. The first section of the chapter reviews the pertinent rules. The second section contains examples of permissible and impermissible announcements and a Q&A on underwriting.

Origin of the Underwriting Rules

The early vision of noncommercial broadcasting called for a service totally divorced from commercial enterprise. The rules banned both a station's own entrepreneurial efforts and the unpaid promotion of other nonprofits.

As the fiscal requirements for high-quality public broadcasting grew but outstripped public and federal support, the government became more willing to encourage efforts by public broadcasting to attract contributions through underwriting, creative fundraising, and joint ventures with for-profit or other nonprofit entities.

For many years, the FCC rules provided that "no announcements promoting the sale of product or service shall be broadcast in connection with any program" on a public station. These rules prohibited any announcements promoting the products or services of either a for-profit or nonprofit entity, and any announcement promoting the licensee's own activities where the sale of goods and services was involved. In addition, while the FCC required stations to acknowledge commercial entities and others that had contributed to the costs of a specific program, these announcements were restricted in timing and frequency and were limited to no more than the name of the underwriter.

The movement toward current policy began in June 1981. In an era of deregulation for broadcasting and of major cutbacks in federal support for public broadcasting, the Commission amended its rules to allow public broadcasters greater flexibility in programming and fundraising practices *[Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, Second Report and Order, 86 FCC 2d 141 (1981)]*. In adopting the new rules, the Commission stressed that the changes would allow public broadcasting to grow in the manner envisioned by Congress, while maintaining noncommercial programming standards consistent with a public service programming mission. The Commission also emphasized its intent, consistent with the First Amendment, to impose the minimum regulatory framework needed to accomplish these objectives.

The language of the 1981 *Second Report* reflected a fundamental change in the Commission's approach to the fundraising practices of noncommercial broadcasters. The ban on all promotional programming was replaced with a "consideration received" rule, designed to protect public broadcasting's programming from influence by the commercial marketplace while expanding the public service options, programming choices, and First Amendment rights of public stations.

The *Second Report* concluded that if the existing restrictions on underwriting announcements were loosened, more entities would be willing to contribute. The "name only" restriction was lifted and stations were allowed to include "a corporate logo and other non-promotional information about the donor, including location and identification of product lines." The Commission gave public stations complete discretion as to the timing and frequency of underwriting announcements.

Shortly after the Commission's *Second Report*, Congress passed the Public Broadcasting Amendments Act of 1981. This legislation was consistent with the FCC's new rules in most respects, with three notable differences. First, the Commission's 1981 rules prohibited the broadcast of any

promotional material for which the station had received consideration. The legislative language applied that prohibition only to goods and services offered by for-profit entities. Second, the Commission's rules removed all time and frequency restrictions on the airing of donor announcements. Congress expressed concern that such freedom might "clutter" programming schedules. Finally, the House report that provided background to the legislation expressed concern that the FCC rules would permit language of a promotional nature to be contained in donor acknowledgments.

The Commission reviewed the new legislation and public comments concerning its implementation and, in 1982, adopted several modifications of its 1981 decision *[Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Memorandum Opinion and Order, 90 FCC 2d 895 (1985)]*. Key provisions of this 1982 order included the following:

- Public stations were allowed to air promotional announcements for the goods and services of nonprofit entities, including the station licensee itself, even if consideration was received.
- The 1982 order prohibited donor announcements from interrupting regularly scheduled programming.
- Stations were allowed to air aural and visual logograms, including slogans, provided that such logos and slogans (1) only provided value-neutral description of the donor's general product line or services, (2) did not include a specific listing of products or services, and (3) did not promote a product or service or use qualitative language.

The restriction on the identification of products and services limited announcements to a "generic identification." For example, "General Motors, maker of automobiles and automobile accessories" would be permissible; "General Motors, maker of Oldsmobile Cutlass, Pontiac Firebird, Buick Century, and Cadillac Eldorado" would not.

Following these modifications, the Commission continued to receive comments seeking clarification or amendment of these rules. In addition, Congress established a Temporary Commission on Alternative Financing for Public Telecommunications (TCAF), which published a report on funding sources that would augment the federal investment in public broadcasting. One of TCAF's recommendations encouraged Congress to allow public broadcasters to identify supporters by using brand names, trade names, slogans, brief institutional-type messages, and public service announcements.

In 1984, the Commission released an order further modifying its rules to allow the inclusion of brand names, logos, location, and other value-neutral descriptive material as part of donor announcements *[Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Memorandum Opinion and Order, 97 FCC 2d 255 (1984)]*. The FCC noted that the statutory language itself did not prohibit such "enhanced underwriting announcements" and that the Commission's earlier retrenchment had been prompted by legislative report language that questioned the timing of the FCC's initial relaxation of underwriting rules, not the substance.

Based on the TCAF recommendations and its own review, the Commission concluded that there was clear evidence that enhanced underwriting offers "significant potential benefits to public broadcasters in terms of improving the financial self-sufficiency of the service, yet, properly limited, does not threaten its underlying noncommercial nature."

In 1986, the Commission further clarified its views with more specific policies concerning promotional programming, donor announcements, program-related materials in general programming and in children's programming, and fundraising practices in foreign language programming, all of which are addressed in the first parts of this chapter *[Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, 7 FCC Rec 3 (1986)]*.

Throughout the evolution of these rules, the Commission encouraged stations to rely on their own "good faith" judgment with regard to many of the details. At the same time, the FCC left no doubt that the broadcast of flagrantly commercial messages for for-profit entities will not be tolerated:

> "The Commission will continue to rely on the good faith determinations of public broadcasters in interpreting our non-commercialization guidelines. We emphasize, however, that we will review complaints and, in the event of clear abuses of discretion, will implement appropriate sanctions, including monetary forfeitures" *[Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Public Notice, 7 FCC Rec. 3 (1986)]*.

Day-to-day applications of the Commission's underwriting rules force stations to balance their noncommercial mission with the need to generate revenue. That policy decision underlies many of the difficult judgments about whether particular words or phrases "promote" rather than "identify," and whether, even if legally permissible, the announcement sounds too "commercial." There is no simple resolution to these issues. Like many programming rules, *Section 73.503* provides general guidance rather than a precise formula for determining what may be broadcast. Legitimate differences in approaches result in an ongoing discussion about underwriting standards.

Current Rules and Regulations

The FCC's underwriting policies are derived from the Communications Act of 1934, 47 U.S.C. *Section 399* (amended as "the Act"), FCC regulations that implement the Act, 47 CFR *Sections 73.503(d) (radio)* and *73.62(e) (television)*, and various interpretive Public Notices and rulings.

The Definition of an Advertisement

The Act prohibits stations from broadcasting advertisements. An advertisement is defined as *[Section 399B(a)(1)–(3)]:*

"(a) Any message or programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended:
- "(1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;
- "(2) to express the views of any person with respect to any matter of public importance or interest; or
- "(3) to support or oppose any candidate for political office."

It is useful to break down this definition into a ban on three different types of ads: commercial ads, issue ads, and political ads. The ban on the first of these three types of ads, the promotion of for-profit entities in exchange for remuneration, has received the lion's share of attention from the FCC and public broadcasters.

The Act authorizes the broadcast of certain types of information concerning a commercial entity *[Section 399A]:*

> "Each public television station and each public radio station shall be authorized to broadcast announcements which include the use of any business or institutional logogram and which include a reference to the location of the corporation, company, or other organization involved, except that such announcements may not interrupt regular programming."

Permissible "business or institutional logograms" that may be included in announcements are *[Section 399A]:*

> "Any aural or visual letters or words, or any symbol or sign, which is used for the exclusive purpose of identifying any corporation, company, or other organization, and which is not used for the purpose of promoting the products, services, or facilities of such corporation, company or other organization."

Mandatory Identification of Sponsorship

As discussed in the preceding chapter, public broadcasters must identify entities from which they receive consideration in exchange for broadcasting any matter. The Sponsorship Identification Rules *[Section 73.1212(a)(1)-(2)]* require that:

> "When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, at the time of the broadcast it shall announce:
>
> "(1) that such matter is sponsored, paid for, or furnished, either in whole or in part, and
>
> "(2) by whom or on whose behalf such consideration was supplied."

FCC regulations do *not* require broadcasters to provide a sponsorship announcement for general monetary contributions to the station, nor for goods or services contributed at no cost or at a nominal cost, *unless* the sponsoring entity provides the goods or services in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property for the broadcast *[Section 1212(a)(2)].* (See Chapter 4 for a more in-depth analysis of the Sponsorship Identification Rules.)

Underwriting Announcements

Permissible Underwriting Announcements

The Sponsorship Identification Rules define what broadcasters must announce when they receive direct or indirect remuneration in exchange for broadcasting any matter. Underwriting rules are generally concerned with what broadcasters may announce in recognizing a contribution to the station.

What Is Underwriting?

Underwriting is the contribution of some form of consideration in exchange for recognition in an on-air announcement.

Content of Underwriting Credit Announcements

Underwriting credit announcements may "identify" the underwriter and its facilities, services, or products. "Identification" has been interpreted *[Public Notice FCC 86-161, 36590 (April, 11, 1986)]* to include the following:

- The name of the person or entity
- Location information
- Telephone numbers
- Audio logograms or slogans that identify but do not promote
- Value-neutral descriptions of a product line or service
- Brand and trade names and product or service listings that do not include qualitative or comparative language

Logos

The FCC permits the use of logos and aural slogans if these are not promotional in nature. For example, the slogan "XYZ Oil Corporation of New York, refiners of petroleum products" is permissible; the slogan "XYZ Corporation of New York, refiners of the cheapest petroleum products around" is not permissible.

Logos have acquired a special and, sometimes confusing, life of their own in underwriting law. Because logos are usually designed to promote a company, it seems paradoxical to ask if a logo is promotional. This paradox has been compounded by a conundrum. FCC staff rulings have found that logos, even those containing comparative or qualitative language, may become so "established" that they become part of the underwriter's "identity." For example, FCC staff in 1989 rendered an informal opinion that the DuPont logo, "Makers of Better Things for Better Living" was not promotional, despite the fact that the term "better" was used twice in the logo. The staff found that use of the logo was "long-standing" and that the logo did not describe a particular product or service, or compare DuPont's products or services with those of its competitors *[Letter to Jim Metzner, Mass Media Bureau].*

The confusion deepened when the FCC fined station WTTW-TV for airing promotional announcements that included the logo "Sun America, because it's not just your retirement, it's your future," but then rescinded the fine after finding that the station could reasonably have concluded that the logo was not promotional *[Letter to Chicago Educational Television Association, DA 95-2216 (Mass Media Bureau, October 31, 1995)].* The Commission has, however, subsequently admonished a station for airing announcements that included the logo "We're Lumber One, we're number one" *[Letter to Station KOUZ(FM), Enforcement Bureau (July 12, 2000)].*

In short, the law of logos is embarrassingly illogical. Logos are permitted under the Communications Act if they do not contain comparative or qualitative language, or if they do contain comparative or qualitative language ("better things for better living") that conveys a

corporate philosophy or image but does not promote specific products or services. Established logos are less likely to be deemed promotional than new logos, but the FCC has given no guidance for determining when a logo is "established." Is the test based on usage of the logo for some period of time (e.g., more than a year)? Usage in media other than underwriting announcements (e.g., on letterhead or business cards)? Recognition of the logo by the public? Protection of the logo as a trademark?

Because there are no definite answers to these questions, broadcasters are thrown back on their "good faith" judgment. That gives stations interpretive leeway, but often puts stations in an awkward position when they are asked to explain why a logo—to which the underwriter may be passionately loyal—cannot be aired. Under this standard, the best suffer the most.

Impermissible Underwriting Announcements

The FCC has identified several specific types of impermissible promotional announcements, including those containing:

Price Information

Information regarding product or service price, including interest rate information or other indications of savings or value associated with the product, is prohibited. Examples include:

- "7.7% interest rate available now."
- "Tickets are $2.50 and $1.50 for students."

Calls to Action

Messages presented in exchange for remuneration cannot include a call to take a specific action. Examples include:

- "Stop by our showroom to see a model."
- "Try product X next time you buy oil."

Inducements to Buy, Sell, Rent, or Lease

Inducements to buy, sell, rent, or lease a product or utilize a service violate the rules. Examples include *[Public Notice FCC 86-161, 7 FCC Rec. 827, (1986)]:*

- "Six months of free service."
- "A bonus available this week."
- "Special gift for the first 50 visitors."

A fourth type of promotional announcement—one containing comparative or qualitative language—is discussed in more detail below.

Scheduling of Underwriting Announcements

Underwriting announcements may not interrupt regularly scheduled programming. During periods in which station fundraising activities are being conducted and regularly scheduled programming is

suspended, stations may make underwriting or donor announcements "as often and for as long as they choose," so long as those announcements are in compliance with the content regulations outlined above.

Duration of Underwriting Announcements

The FCC does not impose specific time limits on underwriting announcements, although it has warned that the longer the announcement the more likely it is to be considered promotional *[WNYE-TV, 7 FCC Rcd 6864, Mass Media Bureau (1992)]*. More pointedly, it has noted that announcements more than 30 seconds long appear "excessive" *[Tri-State Inspirational Broadcasting Corporation, DA 01-2178, Enforcement Bureau, September 18, 2001].*

Underwriting Announcements for Nonprofits

In acknowledging consideration from nonprofit entities, stations may promote a nonprofit's products, services, and activities, but may not alter substantially or suspend regular programming *[Public Notice FCC 86 161, 7 FCC Rec. 827 (1986)].* This rule permits a station to run short plugs for other nonprofits, but prevents a station from conducting an on-air fundraising event for another nonprofit without obtaining a waiver of the FCC rules.

On-Air Fundraising and Auctions

Station Fundraising

A noncommercial station may engage in unlimited on-air fundraising for itself. A station's ability to conduct on-air fundraisers does not extend to other nonprofits or to a licensee's other interests. For example, a university radio station cannot suspend programming to raise funds for a new gymnasium.

Fundraising for Other Nonprofits

Stations may not substantially alter or suspend regular programming in order to raise funds for other nonprofits. For example, the FCC found that this rule was violated by a special Christmas program in which the station and various other nonprofits offered to sell goods or services to the public *[Sponsorship Identification Chapter 4; WTTW, Windows To The World Communications, Inc., forfeiture letter, (December 3, 1997)].* The violation arose not from promoting the other nonprofits or giving price information about their offerings, but from suspending regularly scheduled programming to conduct a fundraiser that was not solely for the benefit of the station.

Stations are permitted, at their discretion, to broadcast brief announcements that directly or indirectly raise funds for other organizations, if fundraising announcements occur at the beginning or end of a program, during an "intermission," or at natural breaks in the program.

Auctions

There is no limit to the amount of broadcast time that may be used for auctions on behalf of the station itself. Licensees may not conduct auctions for other entities without obtaining a waiver of the underwriting rules.

Waivers

The Commission will consider requests for a waiver of the underwriting rules so that a station can conduct on-air fundraising for another nonprofit. Waivers for fundraisers to benefit victims of the September 11, 2001 terrorist attacks were liberally granted, but the FCC is not generally inclined to grant fundraising waivers.

Promotional Programming

Promotions for Which No Consideration Is Received

The FCC does not restrict programming that promotes the products, facilities, or services of any for-profit or nonprofit entity, as long as:

- No consideration has been received by the licensee in exchange for such promotion, and
- The licensee deems it in the public interest to broadcast the promotional message.

Stations traditionally understood that they had virtually unrestricted freedom to promote local events so long as the station did not receive any consideration in exchange for the promotion. Music program announcers often talk freely about "transitory events," such as artists who are performing in local clubs or groups that give local concerts.

One FCC decision indicates that, in some circumstances, a station's ability to promote "transitory events" is more limited than previously assumed. The decision concerns a concert put on by a for-profit promoter but "sponsored" by the station. The station lent its name to the "WNCW Mountain Oasis Music Festival," received tickets to the concert, which it gave away to listeners and donors, and aired announcements that promoted the concert. The FCC ruled that the station had violated the underwriting rules by promoting a for-profit event in exchange for consideration. It also found that the promotions could not be excused as the promotion of a "transitory event" because the announcements were motivated by the station's self-interest, rather than the public interest *[Isothermal Community College, DA 01 283, Enforcement Bureau (December 6, 2001)].*

Host Selling

As discussed above, stations are permitted to broadcast promotional announcements offering the goods or services of a nonprofit entity from which the station has received consideration, provided these announcements do not interrupt regularly scheduled programs. One exception to this general rule relates to children's programming. "Host selling" of program-related materials during children's programming is presumed to take unfair advantage of children and is considered to be contrary to a station's responsibility to operate in the public interest. The rule encompasses selling by program talent as well as fictional characters that appear in children's programs.

Program-Related Materials

Public broadcasters may promote the goods and services of a nonprofit entity so long as they deem the sale of the materials to be in the public interest. The sale of program-related materials must be at a "nominal price." Audiotapes of a featured program, or the printed play on which a radio drama was based, are examples of acceptable "program-related" material. Program material announcements must clearly indicate the identity of the sponsoring entity *[Second Report]*.

Issue Ads and Political Ads

While most stations have guidelines related to promotion of commercial ads—i.e., announcements that promote the products, services, or facilities of a for-profit entity—there is less awareness of similar bans on issue and political ads. The FCC itself has relegated discussions of these restrictions to footnotes in its underwriting rulings and left broadcasters with scant guidance.

Issues programs can involve subtle issues as to whether "consideration" is received. The furnishing of a program is generally deemed to be "consideration" for broadcasting that program. In order to allow stations to broadcast free programs, however, FCC rules permit stations to receive programs and production costs from third parties if no additional consideration is received *[Section 73.503(C)]*. Thus, if a station is supplied with a series of commentaries addressing public issues, and no other consideration is involved, the station may broadcast such programming, provided it airs a sponsorship announcement disclosing that the material was furnished *[Section 73.503(C)].*

Similarly, if in the course of meeting its obligations to provide "equal opportunities" to a political candidate, a station receives material produced by the candidate's campaign organization, it may broadcast such material, along with an appropriate sponsorship identification.

A station may not, however, broadcast any matter that expresses a view on a public issue or supports or opposes a political candidate if it receives consideration beyond the program or the costs incurred in producing it. There is no nonprofit exception to this rule.

The restrictions on issue and political ads are designed to provide "insulation of program control and content from the influence of special interests—be they commercial, political, or religious." As long as the station (1) determines which views are heard by applying a public interest rather than a partisan standard and (2) does not receive donations or underwriting contingent upon the exclusive presentation of a particular view, support for issue-oriented and political programming is acceptable.

One approach used to generate underwriting for issue-oriented programming is a "public affairs fund." In this model, donors contribute to a general fund that is used to pay the costs of various public affairs programs. By breaking the direct link between the consideration and the presentation of a specific view, the requirements of the law can be satisfied.

Illustrations of the Underwriting Rules

Impermissible Announcements

This section provides examples of underwriting announcements that violate one or more of the FCC rules and policies reviewed in this chapter. The first set of examples shows what cannot be included in announcements made about for-profit entities that furnish some form of consideration in exchange for the broadcast of an acknowledgment.

Examples of Price Information

"7.7% interest rate available now."

"Tickets are $2.50 and $1.50 for students."

"A discount of 15% off the normal price is available."

"Mention our call letters and receive a special discount."

Examples of Calls to Action

"Stop by our showroom to see a model."

"Try product X next time you buy oil."

"Let us show you how accommodating . . ."

"Spoil yourself or a client . . ."

"Call the retail loan rate line at . . ."

"Consult with a DeCarless professional and rent trucks, trailers, and vans . . ."

"It pays to do business where business is being done."

"Your child's vision may be the most important tool he or she takes to school, so be sure that your children's vision needs are met. Have the whole family's eyes checked today by the vision care professionals at Eye Care."

Examples of Inducements to Buy

"Six months of free service."

"A bonus available this week."

"A special gift for the first 50 visitors."

"Does your current health insurance really cover you for all hospital expenses for major surgery, illness, and accidents? Preferred Care members are covered for unlimited days and unlimited dollars for hospitalization."

"Even you can buy at wholesale price."

Examples of Qualitative or Comparative Language

"A relaxing and comfortable evening in one of A&J's luxurious limousines . . ."

"For the perfect way to enjoy a perfect and safe evening . . ."

"Light Beer from Miller. Tastes great and it's less filling."

"Anheuser Busch . . . the finest in the world for more than 100 years. Somebody still cares about quality."

"No one tells a story just the way we do . . . Kodak and youuuuuu." (Jingle)

"JB would like to remind you that a lawnmower merely cuts your grass, but at JB Sales, Service, and Rental Center there is a Snapper Hi Vac. This 121-inch, self-propelled mower has the power-vacuum system and attachments to keep your lawn beautiful the year-round."

"Insurers of many of the contractors, manufacturers, and retailers in the Northern Monmouth County area, Bitner and Carton's insurance costs are usually lower than most competitors. But Bitner and Carton's pleasant, personal service sets them apart from everyone else."

"This note from The Art of Framing, the largest area frame center on the Jersey Shore."

"For a small intimate dining experience, it's Jerry's Fishery. Their oysters are moister, their trout packs a clout, their King Crab is fit for a king."

"The new Via Madrid Restaurant specializes in the most delicious Spanish dishes that will please the entire family. The service at the Via Madrid Restaurant is also top-notch because the customer always comes first."

"What's the difference between a fine fur and an exquisite fur? You can always find the difference at Knowel's Fur Shop. So, for that fur that stands above the rest, it's Knowel's Fur Shop."

"Exxon, producer of fine petroleum products."

Permissible Underwriting Announcements and Practices

Below are examples of acceptable announcements made about for-profit entities.

"This program made possible by a grant from . . ."

"XYZ Department Store, featuring men's clothing by Haggar and Levi's, women's fashions by Anne Klein and others, and appliances including General Electric and Westinghouse."

"XYZ Restaurant, which serves steaks, seafood, and homemade breads and soups. XYZ is located at A and B streets in downtown Orlando."

"First International Bank, providing banking services that include checking and savings accounts, stock, bonds, mutual funds, and insurance, as well as advisory services and consulting. First International Bank at (800) 888-8989 or www.FIB.com."

"Computer Technologies, provider of integrated hardware, software, and Internet solutions

in classrooms and homes. Computer Technologies can be reached at (800) 333-3434 or at www.corporatetech.com."

"The Spirit Shop, providing domestic and imported wines and beers and monthly educational tasting events featuring individual wineries."

"Iowa State Bank and Trust Company, Iowa City and Coralville; providing support for public radio, and assistance for personal and commercial financial needs."

"Woock's Handcraft Music, Elk Run Heights, Waterloo; providing sales, service, repair, and rental of woodwind, brass, and stringed instruments."

"Amelia Earhart Deli, East Washington, Iowa City; offering homemade breads and soups, deli lunches and dinners, plus continental cuisine every evening."

"Honeywell, who believes that together we can find the answers."

"Hewlett-Packard, worldwide manufacturer of computers and instrumentation for industry and science."

"The Chubb Group of Insurance Companies, business and personal insurance underwriters worldwide."

Example of Nonprofit Promotional Announcements

The following is an example of an announcement that could be made on behalf of a nonprofit entity that has paid the station for the message:

> "For an exhilarating evening of hilarious entertainment and fun, come to the Folger Theatre's production of *The Taming of the Shrew*. And while you're there, be sure to check out our discount rate for season tickets. Mention this station's call letters and you'll get 10% off your tickets for the night. The Folger—for the best in theater."

The fact that such announcements are permissible does not mean that a station should air them. Listeners may not always understand that an entity is a nonprofit, and it may be hard to explain to a for-profit underwriter why a station permits other underwriters to use the very promotional language it has told the for-profit it may not use. Consequently, many stations apply the same underwriting criteria to for-profits and nonprofits alike.

Questions and Answers

The following questions highlight typical station concerns with underwriting, fundraising, and promotion issues.

Q: A local auto parts store is underwriting our station. The storeowner wants to read his own underwriting credit. Is this allowed? Can the store back up the announcement with a song called "Crazy 'Bout an Automobile?"

A: The FCC rules do not restrict who can read an announcement; that decision is left to the

discretion of the licensee. There is also no prohibition of background music, so long as that music and its lyrics do not promote the underwriter's goods or services. The FCC does not prohibit humor on public radio (although sometimes you wouldn't know it). This is not to say that jingles or underwriter-voiced announcements may not increase the likelihood of getting a complaint or a fine. Since such techniques are not used to "identify" the underwriter, they may affect the FCC's judgment that an announcement is "promotional."

Q: Can we say "Underwritten by your Cablevision Company, with 24 channels of basic service for $11.00, plus Home Box Office, the Disney Channel, and the Music Video Channel?"

A: No. Use of the qualifier "your" is generally considered promotional in nature. Price information is prohibited.

Q: During our last marathon, a pizza parlor delivered free pizzas to our station. Everybody was so excited about the gesture that we talked at length about the pizza and how good it was. Did we break the underwriting rule?

A: This scenario raises several issues. The FCC prohibits donor announcements that interrupt "regular programming." During fundraising periods, the FCC leaves the issues of timing and frequency of acknowledgments to the discretion of the licensee, however. So, the length of the discussion is probably not an issue in these circumstances.

Does pizza constitute "consideration?" Yes. In-kind contributions qualify. The tougher issue is whether the pizza was given "in exchange for" mention.

In a case similar to this example, the Commission found that the connection between the remuneration and the announcement could be inferred because the pizza store was a regular underwriter on the station.

Q: One of our favorite local musicians has cancer. Our station wants to put on a benefit concert to raise money for her medical bills. Is it OK to give that concert a big push on the air?

A: Probably, if the announcements are limited to short plugs. One issue is whether this is a station event or a fundraiser for a third party. If all proceeds go to the musician, the station should not air the concert without getting an FCC waiver. The FCC might well deny the waiver request since the musician is a private individual, not a nonprofit.

Q: Our station is running a paid "promotional announcement" for a nonprofit group. Do we have to state the name of the group and say that the ad was paid for by that group?

A: Yes. The Commission's Sponsorship Identification Rules require that listeners be informed when a station airs programming in exchange for consideration. The name of the nonprofit organization must be stated at the time of broadcast. It is an optional but common practice to tag such messages with language along the lines of "This message is furnished by XYZ, a nonprofit organization."

Q: Is it OK to include operating hours as part of a credit?

A: Yes. The FCC rules do not specifically allow hours of operation as part of the "identification" of an underwriter, but unless this information is presented in a promotional fashion (e.g., "Open Sunday for your convenience"), a station could make a good faith judgment that such information is "value-neutral."

Q: A local food co-op wants our station to announce its hours, membership fee, and discount rates compared with regular food store prices. Can we air such programming?

A: The answer depends on the for-profit or nonprofit status of the food co-op and on whether the proposed announcements are to be made in connection with some consideration from the co-op, or simply as a service to listeners. If the co-op is a nonprofit entity, as most are, the matter is left to the discretion of the licensee. If the co-op is a for-profit entity, the price-related promotion could be broadcast only if (1) no consideration was received from the co-op, and (2) the station deemed it to be in the public interest to provide such information.

Q: Can we run an underwriter announcement that states "Underwritten by Curly's Record Shop, which carries current popular records, including Whitney Houston"? Can we play a cut from the latest Whitney Houston album behind the announcement?

A: Assuming Curly's is a for-profit entity, the message is probably permissible as stated. The word "popular" is ambiguous, however. Does it mean "best-selling" or does it merely describe a type of music? A judgment call is required.

The rules allow for product listings, which could include the name of an artist such as Whitney Houston.

Most public radio stations do not use background music because it makes the announcement sound "commercial," even if the announcement complies with FCC requirements. The FCC has never ruled that background music is inherently promotional.

Q: A local concert promoter has offered our station a large block of tickets for an upcoming concert. Our station may keep the proceeds from the sale of the tickets. Can we promote the concert?

Second scenario: We are putting on a concert at a local club. Our station is booking and paying the group, and we get the cover charge at the door. The club gets the take from the bar. Can our station promote this activity on the air?

A: The question of "co-sponsorship" is complicated and the Commission has never fully articulated the criteria to be used. There is no simple formula for determining when an event is a "station" event.

In the first scenario, the station receives a block of tickets and any proceeds from those tickets. The logical inference is that the station is given the tickets ("consideration") in exchange for announcements about the concert. If those announcements are promotional, the station would violate the underwriting rules.

The second scenario is a closer case. The station actively participates in setting up the concert and has clearly invested time and money in the event. On the other hand, if the bar stands to make a profit on the event, the FCC would probably find promotional announcements to violate its underwriting rules, since a for-profit entity has provided consideration (the revenue) in exchange for the promotion of an event from which it may derive a profit.

Q: We ordinarily announce the local appearances of musicians in connection with the airplay of their records. Given this situation, can we announce the concert of this musician? Can we give records away over the air and plug the concert in connection with the giveaway?

A: An announcement of an upcoming club date is clearly within the FCC rules if the announcements do not promote the event, or if the station receives no consideration. An announcement of the concert date in connection with giving away records (as premiums, a contest, or whatever) is okay so long as there is no explicit or implicit understanding that such announcements would be made. The fact that the station regularly announces upcoming concerts is additional support for the fact that this particular mention is not given "in exchange for" remuneration. A larger number of free records would support a theory that the "gift" is really an inducement to air an announcement.

Q: A volunteer involved in producing a concert wants to have our station run underwriting announcements in connection with the upcoming performance. Can we air an announcement that states "Underwritten by Rocking Chair Production, presenting Fred Frith and Skeleton Crew at Mickey's on September 6?" Can the underwriting announcement be run in connection with the volunteer's music show?

A: Running underwriting announcements for a volunteer's concert in the volunteer's music show is a dangerous practice. Nothing in the FCC rules prohibits such a practice, as long as station management controls the underwriting announcements and assures that they do not contain promotional language. The practice may create serious problems, however. Other volunteers may want to use their programs to promote projects in which they are involved. Potential "payola" and "plugola" issues abound.

Q: A volunteer involved in a local band has been promoting that band's performances during his late night air-shift. Is this permissible?

A: No. If the band is a for-profit entity, such promotional announcements violate the Commission's "plugola" policies discussed in Chapter 4. It is good station policy to require all staff who have control over the selection of broadcast material to sign a statement that they will not promote any activity or matter in which they have a direct or indirect financial interest without explicit permission from the station's management.

Q: A candidate for City Council wants to underwrite on our station. Is this allowed? Can our station run an underwriting announcement that reads "Underwritten by Shirley Johnson, the Working Woman, a candidate for the City Council"?

A: Underwriting by political candidates is a potentially complicated area because such

underwriting triggers the political broadcast rules as well as the underwriting rules. There are also a variety of situations in which candidate underwriting, while technically legal, may create the appearance of inappropriate partisanship or conflict of interest.

The FCC's underwriting rules give station licensees discretion to decide whom they will accept underwriting from and what rates will be charged. The fact that a person is a candidate for public office would not automatically disqualify him or her from underwriting a program. The underwriting rules do prohibit the broadcast, in exchange for remuneration, of material that supports or opposes a candidate for public office, or that expresses a "view" on a topic of public interest. Underwriting by a political candidate must not advance that person's candidacy, oppose his or her opponent, or express a "view."

In the above example, identifying the underwriter as "a candidate for the City Council" would be permissible. Similarly, an incumbent might be identified by his or her title. Anything else should be viewed with suspicion. For example, the slogan "the Working Woman," especially if it is the candidate's campaign slogan or theme, crosses the line into prohibited areas. The "logo" exception applies only to commercial underwriters, not political underwriters.

Q: A station in a small city is presenting a debate between candidates for local office. One of the participating candidates has offered to underwrite the debate. Is this allowed?

A: A program involving candidates for political office may or may not be considered programming that supports or opposes a particular candidate, depending on how the program is structured. The FCC's political rules define certain debates—those arranged by "neutral" parties, including stations that meet specific standards regarding balance—as bona fide news events which are exempt from the strict "equal opportunities" provisions that apply to "uses" of a station by candidates.

If a debate meets the standards for a news event (see Chapter 7 for more details), it would be permissible for such a debate to be underwritten. For the sake of appearance, however, the station would be ill-advised to air such underwriting from only one of the participating candidates.

Q: A candidate wants to voice his own underwriting announcement. Permissible?

A: Very dangerous. Under the FCC's political broadcast rules, any "use" of a station by a legally qualified candidate, other than in the course of specifically exempted news, documentary, and interview programs, gives legally qualified candidates for the same office "equal opportunities" to use the station. A candidate's participation in an underwriting announcement—even one that does not support his candidacy or express a view—could be considered a "use." Because stations cannot censor what candidates say in exercising their "equal opportunities" rights, the situation could get out of hand if opposing candidates fully exercise these rights.

Q: The nonprofit Nuclear Free Task Force wants to buy time for a message that highlights the dangers of nuclear power and that encourages people to support an anti-nuclear referendum item. Is this permissible?

A: No. The proposed announcement would express a view with respect to a matter of public interest. It is irrelevant that the underwriter is a nonprofit.

Chapter 6: Programming Regulations

Although the First Amendment assures a great deal of freedom in programming decisions, broadcasters are subject to FCC regulations that are not imposed on print media. These regulations have been based on a number of rationales, including the scarcity of broadcast frequencies; the ubiquitous and intrusive nature of the broadcast signal; the broadcaster's duty to serve the "public interest;" and, in the case of public stations, the duty to preserve a noncommercial service.

This chapter reviews FCC rules that mandate or prohibit the broadcast of certain types of program material, including:

- Station Editorials and Political Editorials
- Obscenity, Indecency, and Profanity
- Personal Attack Doctrine Repealed
- Broadcast of Telephone Conversations
- Rebroadcasts
- Emergency Alert System (EAS)
- Other Programming Concerns
  - Use of Recorded Material
  - Interception of Wire or Radio Transmissions
  - Drug-Related Song Lyrics

Other program-related topics are discussed in other chapters. For example, the regulations that cover broadcasts by and on behalf of political candidates are discussed in Chapter 7. Underwriting announcements are discussed in detail in Chapter 5.

Station Editorials and Political Editorials

In 1984, the Supreme Court overturned the long-standing prohibition of editorials by noncommercial stations *[FCC v. League of Women Voters of California, 468 US 364, (1984)].* Prior to the Supreme Court's decision, stations were free to carry programs that presented the opinions of individuals or organizations, but could not themselves take editorial stands. The Supreme Court found the editorial ban to be a content-based restriction that violated the First Amendment.

The fact that FCC rules do not prohibit station editorials does not, of course, mean editorials present no legal problems. Editorializing may implicate other laws such as state defamation law or IRS regulations related to grassroots lobbying.

Although there are no special requirements with regard to identifying station editorials, it is a general journalistic and broadcast practice to state when an opinion has been presented on behalf of the licensee. There are no special logging or Public File requirements for station editorials.

The freedom to editorialize does not extend to political editorials, i.e., editorials that endorse or oppose a political candidate. In October 2000, the FCC repealed the political editorial rule *[Section 73.1930]* after the Court of Appeals for the District of Columbia found that the FCC had done nothing to justify the rule's existence *[In the Matter of Repeal or Modification of the Personal Attack and Political Editorial Rules 2000, FCC LEXIS 5725 (2000)].* Even with the repeal of this rule, however, noncommercial stations are prohibited from airing political editorials. *Section 399* of the Communications Act states that "No noncommercial educational broadcasting station may support or oppose any candidate for political office" *[Section 399].*

The FCC ban on political editorials applies only to *licensee* endorsement of or opposition to particular candidates for public office. It does not exclude the expression of political views by candidates or other parties over a public station. In fact, the FCC's political broadcasting rules *encourage* the even-handed discussion of political issues. (For a detailed discussion of the political broadcasting rules, see Chapter 7.)

Obscenity, Indecency, and Profanity

This section discusses the legal definitions of obscenity, indecency, and profanity, and the issues to be considered in crafting and administering a station policy in this area.

The Commission does not monitor broadcasts for content. Its enforcement actions are based on complaints of indecent or obscene broadcasting received from the public.

Stations must be prepared to defend everything they broadcast. While the Commission treads carefully in the area of program content, it is strict with regard to licensee control. The Commission will have little sympathy for a licensee that defends a questionable broadcast by stating, "We had no idea anybody was going to play records like that." Such a statement is tantamount to admitting that the licensee is not in control of the airwaves entrusted to it.

Clear station policies and prompt, consistent enforcement of those policies are essential to demonstrate that a licensee exercises control over its programs. Station policies regarding the broadcast of sensitive material should clearly state who has ultimate authority over programming decisions (generally, the Program Director or Station Manager), and should outline punishment for infractions.

Legal Definitions

Two statutory provisions are relevant to the broadcast of obscene, indecent, or profane language:

> "Whoever utters any obscene, indecent, or profane language by means of radio communications shall be fined not more than $10,000, or imprisoned not more than two years, or both." *[18 U.S.C. §1464]*
>
> "Nothing in this [Communications] Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the

> Commission which shall interfere with the right of free speech by means of radio communication." *[Section 326]*

As these provisions indicate, the Commission must walk a fine line between its obligation to penalize licensees that break the law and its inability to interfere with the licensee's rights of free speech. The tension between these competing duties is addressed in a number of judicial and administrative decisions, as are the distinctions between obscene and indecent material.

Obscenity

FCC rules prohibit broadcasters from transmitting obscene material at any time *[Section 73.3999(a)]*. The Supreme Court has determined that three elements must be present for material to be considered obscene *[Miller v. California, 413 US 15, (1973)]:*

- An average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest
- The material depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable law
- The material, taken as a whole, lacks serious literary, artistic, political, or scientific value

What does this mean in practical terms? In one case, Morality in Media of Massachusetts, Inc., filed a petition to deny the license renewal of WGBH-TV of Boston, MA *[WGBH Educational Foundation, 69 FCC 2d 1250, (1978)]*. Morality in Media contended that the station had repeatedly broadcast offensive, vulgar, and other material harmful to children without adequate supervision or parental warnings. Among the programs cited were *Monty Python's Flying Circus* and *Masterpiece Theatre.* Morality in Media claimed the programs were obscene.

The FCC denied this petition. It pointed out that the FCC was prohibited by the First Amendment and by *Section 326* of the Communications Act from censoring broadcast matter and held that Morality in Media had failed to show that the programs cited met the legal definition of obscenity. For example, Morality in Media did not indicate which programs appealed predominantly to the prurient interest of minors, nor did Morality in Media show that the programs lacked serious literary, artistic, political, or scientific value for minors.

While the above discussion illustrates the Commission's cautious approach in the area of obscene programming, there have been several instances in which the FCC has taken action against broadcasters for obscene programming. Probably the best-known case concerning a noncommercial station involved WXPN-FM, a Philadelphia station licensed to the University of Pennsylvania. In December 1975, WXPN-FM was fined $2,000 for the broadcast of obscene material in connection with a live, weekly call-in program, *The Vegetable Report [Notice to Trustees of the University of Pennsylvania of Apparent Liability for Forfeiture, 57 FCC 2d 782 (1975)]*. During the shows in question, callers carried on sexually explicit conversations with the disc jockeys that included the words "fuck," "piss," and "titties" and discussed "beating off" and "blow jobs." During one call, a three-year-old boy was asked if he could say "fuck" and the mother of the boy was told that she should let her son "screw" her so he wouldn't turn out to be a rapist.

The Commission's harshest action against WXPN was not based on the obscenity, but on the lack of control by the University licensee. When the station's license came up for renewal, the Commission denied the renewal. The University had to reapply for its frequency and face the risk of competition from other parties *[Application of the Trustees of the University of Pennsylvania Radio Station WXPN(FM), Philadelphia, Pennsylvania for Renewal of License, 69 FCC 2d 1394 (1978)].* Miraculously, the University's construction permit application was approved and the University got the station back.

Indecency

Unlike obscene material, indecent material is protected speech under the Constitution. It is channeled to certain hours, not banned altogether. The FCC rules limit the time period in which indecent material may be broadcast to the hours between 10:00 p.m. and 6:00 a.m. *[Section 73.3999(b)].* The broadcast of any indecent programming outside this safe harbor period is prohibited.

The FCC defines indecency as language that:

> ". . . describes, in context, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs." *[Infinity Broadcasting Corporation of Pennsylvania, 2 FCC Rcd 2705 (1987) (subsequent history omitted), citing Pacifica Foundation, 56 FCC 2d 94, 98 (1975), aff'd sub nom. FCC v. Pacifica Foundation, 438 US 726 (1978)]*

While this definition is similar to that for obscenity, there are three important differences. First, obscenity requires that the language in question appeal to the prurient interest; indecent language need not. Indecent speech need refer only to sexual or excretory activities or organs in a "patently offensive" way. Second, material is obscene only if it lacks any literary, artistic, political, or scientific value. A great literary work is never obscene, but may be indecent. Merit is relevant to the issue of whether material is indecent, but is not a complete defense. Third, obscenity is defined by reference to local community standards; indecency, by a single national standard "for the broadcast medium." Local community values are irrelevant to the issue of whether a work is indecent.

The "Seven Dirty Words"

The standard initially used by the FCC in enforcing the indecency standard was determined by, and for many years narrowly limited to, the language in a satiric George Carlin routine. This case was considered by the United States Supreme Court in 1978 *[FCC v. Pacifica Foundation, 56 FCC 2d 94 (1975), aff'd 438 US 726 (1978)].* The Supreme Court upheld an FCC ruling that comedian George Carlin's 12-minute monologue, "Filthy Words," broadcast at 2:00 p.m. when children were likely to be in the audience, was indecent. Carlin's monologue repeatedly used what became known as the "seven dirty words": fuck, shit, piss, motherfucker, cocksucker, cunt, and tit. The *Pacifica* decision affirmed the Commission's constitutional authority to regulate indecent speech and "channel" the "repetitive, deliberate use" of words that referred to excretory or sexual activities or organs in an offensive fashion. For almost a decade after *Pacifica*, the Commission limited its enforcement of *Section 1464* to those broadcasts which repeatedly used the "seven dirty words" before 10:00 p.m.

In April 1987, the Commission issued a Public Notice that expanded the definition of indecency and the FCC's enforcement policy *[Indecency Enforcement Standards, 2 FCC Rcd 2726 (1987)].* The Public Notice summarized three concurrently released decisions that found several broadcasts, which would not have been found indecent under the prior FCC standard, would violate the new standard. Two of the broadcasts had aired after 10:00 p.m. (Ironically, one of the broadcasts, which involved dramatic readings from a play describing gay sex, was aired by a station licensed to the Pacifica Foundation.) The Public Notice announced that the definition of indecency would no longer be limited to Carlin's "seven dirty words," but would thereafter extend to any material found indecent under a broad, "generic" definition of indecency. This expanded definition not only included graphic descriptions, but innuendo and indirect allusions. The new definition would be enforced whenever there was a reasonable risk that children would be in the audience.

On reconsideration, the FCC defined a safe harbor period and clarified other aspects of its new policy. Broadcasters were not given leeway to make reasonable, good faith judgments as to what was indecent. Instead, broadcasters would be strictly liable for weighing a "host of variables" that made up the "context" of the material. Variables which the broadcaster had to weigh included the "vulgar" or "shocking" nature of the language or imagery at issue, the "manner" of presentation, consideration of whether the material in question was isolated or fleeting, and the merit of a work. The Commission hastened to add that merit was simply one of many variables, and that it was entitled to no greater weight or respect than any other variable *[2 FCC Rcd 2726 (1987)].*

The Action for Children's Television ("Act") Cases

Act I. The Commission's indecency standard was reviewed and invalidated in part by the Circuit Court of Appeals for the District of Columbia in *Action for Children's Television v. FCC ("Act I"), 852 F.2d 1332 (DC Cir. 1998)*. The court found itself "impelled" to affirm the "less than precise" definition of indecency, because that definition was derived from the Supreme Court's Pacifica decision. A determination that the standard was unconstitutionally vague would have to be left to "higher authority." Merit, the court found, although properly a factor considered by the FCC in its analysis, did not automatically "immunize" indecent material from FCC channeling authority. The court did, however, strike down the "safe harbor" period that had been prescribed (midnight to 6:00 a.m.) as arbitrary and capricious. The court found that the Commission not only failed to explain how the proposed safe harbor would achieve the government's interest of helping parents supervise their children's listening, but failed to explain what constituted a "risk" to children.

The court remanded the case to the FCC for a "full and fair hearing" to determine an appropriate safe harbor period. The court instructed the FCC to keep in mind that indecent material is protected by the First Amendment and that "the FCC may regulate such material only with a due respect for the high value our Constitution places on freedom and choice in what people say and hear" *[Act I at 1334].*

In the wake of the Act I decision, Congress stepped in and directed the FCC to promulgate regulations imposing a 24-hour ban on broadcast indecency.

Six months later, the Supreme Court decided *Sable Communications of Cal., Inc. v. FCC, 492 US 115 (1989)*, which struck down a 24-hour ban on indecent telephone services. In Sable, the Court reaffirmed that "sexual expression which is indecent but not obscene" deserves full First

Amendment protection and can only be proscribed if government chooses the least restrictive means to further a compelling governmental interest. The means chosen must be carefully tailored to achieve those ends without unnecessarily interfering with First Amendment freedoms.

In spite of the Sable decision, the Commission followed the congressional directive and imposed a 24-hour ban on indecent broadcasts. The Commission declined to consider "individual station data" on grounds that "such data are unnecessary to determine children's listening and viewing habits" *[Notice of Inquiry, 4 FCC Rcd 8358 at 8361, 8366 n. 30 (1989)].* The Commission instead relied on composite national listening and viewing data to support its conclusion that there was a reasonable risk that significant numbers of children (ages 17 and under) listen to radio and view television at all times without "active" parental supervision *[Report and Order, 5 FCC Rcd 5297 at 5306 (1990)].*

Act II. The Commission's generic definition of indecency and the 24-hour ban were again challenged in the Circuit Court of Appeals for the District of Columbia in *Action for Children's Television v. FCC ("Act II"), 932 F.2d 1504 (DC Cir. 1991).* Although the court again rejected the challengers' argument that the definition of indecency was unconstitutionally vague, it struck down the 24-hour ban. The court stressed that the Supreme Court's decision in *Sable* affirmed the protected status of indecent speech and the strict constitutional standard that government regulations of such speech must satisfy. The court again ordered the Commission to conduct a "full and fair hearing" to determine the times indecent speech could be broadcast. As part of this inquiry, the court instructed the Commission to consider the appropriate definition of children and what constituted a "reasonable risk" of exposing children to indecent material, program-specific audience data broken down by age group, and the scope of the government's interest in regulating indecent broadcasts.

Before the FCC could implement the court's mandate, Congress again intervened by enacting the Public Telecommunications Act of 1992. *Section 16(a)* of the Act directed the FCC to promulgate a rule banning indecent broadcasts from 6:00 a.m. to midnight. The FCC, accordingly, again solicited public comment and issued a rule implementing the congressional mandate.

Act III. In *Action for Children's Television v. FCC ("Act III"), 11 F.3d 170 (DC Cir. 1993),* a panel of the Circuit Court of Appeals for the District of Columbia unanimously struck down *Section 16(a)* on the grounds that it was not "narrowly . . . tailored" to avoid "unnecessary abridgment of First Amendment rights." The court found that the 6:00 a.m. to midnight ban was not the least restrictive means to advance the Commission's asserted interest of protecting children since it did not provide adults with a reasonable period during which they could "exercise a meaningful choice to view the material while still awake" *[Act III at 182]*. Nor had the Commission demonstrated that the government's interest in protecting children outweighs the First Amendment rights of adults and older minors in receiving such protected material.

The court again remanded the case to the FCC to conduct a "full and fair hearing" to determine an appropriate safe harbor and to review and address concerns the court had raised in Act I and Act II.

Act IV. Before the Commission acted on the Act III mandate, all of the judges on the court of appeals re-heard the case and, in a 7-to-4 opinion, reversed the prior decision of the three-judge panel *[Action for Children's Television v. FCC ("Act IV"), 58 F.3d 654 (DC Cir. 1994)]*. The 6:00 a.m. to midnight ban on indecent broadcasts was upheld as constitutional. Because there was a reasonable

risk that children would be in the audience during the restricted hours and because, the court held, the safe harbor period would provide an opportunity for "adult" programming, the proposed rule would effectuate the goal of protecting children from indecent broadcasts without unduly restricting the First Amendment rights of adults. The court concluded that "although the restrictions burden the rights of many adults, it seems entirely appropriate that the marginal inconvenience of some adults be made to yield to the imperative needs of the young" *[Act IV at 667].*

The court also addressed an exception in the regulations which allowed public radio and television stations that went off the air at or before midnight to broadcast indecent programming beginning at 10:00 p.m. The court found this distinction to be unjustified. The less restrictive approach was to enforce a 6:00 a.m. to 10:00 p.m. ban for all stations.

The Supreme Court chose not to hear an appeal of the Act IV *decision [Action for Children's Television v. FCC, 58 F.3d 654, DC Cir. 1995), cert. denied, 516 US 1043, 1996)],* and thus indirectly upheld the FCC's enforcement of its generic definition of indecency and the 6:00 a.m. to 10:00 p.m. safe harbor period.

Policy Statement

In March 2001, the FCC released a Policy Statement to illustrate its interpretation of the indecency standard *[In the Matter of Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency, 2001 FCC LEXIS 1889 the "Policy Statement"].* The Policy Statement reviewed FCC indecency rulings and identified three basic principles underlying its decisions. These are:

- Whether the description or depiction of sexual or excretory activities is explicit or graphic
- Whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities
- Whether the material panders or titillates, or is presented for its shock value

The particular weight given each of these, and other factors, depends on the overall "context" of the broadcast *[Policy Statement, paragraph 5].*

Explicit/Graphic Description Versus Indirectness/Implication. The first issue the FCC considers is whether the material "depicts or describes" sexual or excretory activities or organs. The more explicit or graphic the description or depiction, the greater the likelihood that the material will be considered patently offensive and, thus, indecent *[Policy Statement, paragraph 12].* The FCC issued either a warning or a Notice of Apparent Liability after finding that the language in question was immediately understandable as sexual in nature *[Policy Statement, paragraph 13].*

Even in cases involving innuendo or double entendre rather than explicit references to sex or excretion, the FCC has found language to be indecent where the context of the language made the sexual or excretory import "unmistakable*" [Policy Statement, paragraph 14 (e.g., "Candy Wrapper," a song which uses the names of different kinds of candy to suggest sexual organs and activities)].*

In some cases, the FCC did not find material to be indecent, despite sexual innuendo, because the context of the broadcast did not have "inescapable sexual import" *[Policy Statement, paragraph 15 (e.g., a suggestive description of a Peterbuilt truck as "Big Peter")].*

Otherwise indecent material may not be actionably indecent if such material is edited or "bleeped out." The editing must be effective, however. If portions of the indecent material are understandable, the FCC may still find the material indecent *[Policy Statement, paragraph 16 (e.g., "What's up fu(bleep)ckhead")].*

Dwelling/Repetition Versus Fleeting Reference. The more repetitive the references to sexual or excretory material are, the more likely the FCC is to find the material indecent *[Policy Statement, paragraph 17].* In a few cases, the FCC has found that fleeting or isolated references to sex or excretion are not indecent. These cases grant the broadcaster some latitude for spontaneous remarks made during live broadcasts *[Policy Statement, paragraph 18 (e.g., a single usage of the word "motherfucker")].*

All factors are not created equal. For example, offensive references to sexual activities with children or extremely graphic sexual material have been found indecent even when the references are fleeting *[Policy Statement, paragraph 19 (e.g., a joke about "screwing an eight-year-old")].*

Presented in a Pandering or Titillating Manner or for Shock Value. An analysis of "context" includes more than a verbal analysis of the language used. The FCC considers the "purpose" for which the material is presented. A sexual act graphically described on a radio program for the purpose of titillating, sexually arousing, or amusing listeners is more likely to be found indecent than similar language used in a bona fide news program or medical program, even if explicit language is used. Context is the most important factor in determining "purpose" *[Policy Statement, paragraphs 20 and 21 (e.g., a sex education program for teens was not considered indecent because the material was presented in a clinical or instructional manner)].*

One inaccurate conclusion to draw is that a "news" context is an absolute defense to an indecency complaint. The newsworthiness of a particular topic does not immunize the programs from an indecency ruling if the topic is presented in a pandering or titillating manner *[Policy Statement, paragraph 22 (e.g., banter about the alleged rape of Jessica Hahn by the Rev. Jim Bakker)].*

Similarly, the absence of a lascivious purpose is not an absolute defense. References to sexual activities or organs may be patently offensive even if those references are not pandering or titillating *[Policy Statement, paragraph 23 (e.g., "Penis Envy," a satiric song about what a woman would do if she had a penis)].*

Although broadcasters are required to apply these less-than-precise indecency standards with unerring accuracy, the FCC gets to make mistakes. The Commissioners may reconsider and reverse a staff ruling, or Enforcement Bureau staff may reverse an earlier decision. For example, after fining a commercial station $7,000 for airing an edited version of the Eminem song, "The Real Slim Shady," outside of the safe harbor period, the Enforcement Bureau rescinded the fine and concluded that the sexual references (e.g., "My bum on your lips") contained only "oblique" sexual references that were not "patently offensive" after all *[Citadel Broadcasting Company, DA 02-23 (Enforcement Bureau, January 8, 2002)].*

The FCC's Enforcement Process

The FCC does not monitor broadcasts for indecent material, but relies on complaints from the public. Complaints will be considered by FCC staff if they include (1) a full or partial tape or transcript of the offending program, (2) the date and time of the broadcast, and (3) the call sign of the station that aired the program. If FCC staff conclude that they do not have enough information to determine whether a program is indecent, or if the allegedly indecent material was aired during the safe harbor period, the complaint will be dismissed with a letter from the staff to the complainant. If the staff conclude that the material meets the definition of indecency and it was broadcast outside the safe harbor period, they will analyze the material for patent offensiveness.

If FCC staff determine that the material was not indecent, the complaint will be denied. The staff may issue a Notice of Inquiry (NOI) if they need more information about the circumstances surrounding the broadcast in question. The staff may also issue a Notice of Apparent Liability (NAL), to which the licensee can respond, or refer the case to the full Commission in cases that may raise new policy issues.

Profanity

Although the Communications Act prohibits the broadcast of "profane" as well as "obscene" and "indecent" language, the FCC has not treated profanity as a separate category of speech. Complaints concerning profanity have been analyzed under the indecency standard *[LBJS Broadcasting Company, L.P., 13 FCC Rcd 20956 (Mass Media Bureau 1998)].*

Personal Attack Doctrine Repealed

The "personal attack" rule provided that if an attack was made on a person's integrity during the presentation of views on a controversial issue of public importance, the station had to inform that person or group attacked and provide a reasonable opportunity to respond *[Section 73.1920].* The rule was under scrutiny for more than 10 years because of First Amendment concerns that it chilled free speech. In 1999, the Circuit Court of Appeals for the District of Columbia ordered the Commission to explain its rationale for the rule *[Radio-Television News Directors Association v. FCC, 184 F.3d 872 (DC Cir. 1999)].* In October 2000, the same court ordered the FCC to repeal the personal attack rule after the FCC took no action to justify the rule's continued existence *[Radio-Television News Directors Association v. FCC, 229 F.3d 269 (DC Cir. 2000)].*

On October 26, 2000, the FCC repealed the personal attack rule, but noted that it could, consistent with the District of Columbia court's order, institute a rulemaking proceeding to reinstitute the rule if, in the future, it found that the rule was in the public interest *[In the Matter of Repeal or Modification of the Personal Attack and Political Editorial Rules, 15 FCC Rcd 20697 (2000)].*

Broadcast of Telephone Conversations

The FCC's "telephone conversation rule" protects the privacy of telephone conversations by requiring licensees to notify any and all parties to a phone call of the station's intention to

broadcast or record the conversation. This notice must be given before the station broadcasts or records any portion of the conversation *[Section 73.1206].*

A telephone conversation begins the moment a party answers the phone. Therefore, a party's "hello" on the air or on tape before the required notification is given violates the rule. The rule requires a station to "inform" members of the public that the call is "being broadcast live" or "being recorded for broadcast" prior to the broadcast.

Express notification is not necessary when it is obvious from the circumstances that the conversation is likely to be broadcast. For instance, the rule presumes a person's awareness that a conversation will be aired if that person originates the call to a call-in show or if the person is associated with the station (such as an employee or part-time reporter).

Violations may occur when callers are given misleading information. For example, nationally syndicated shock jocks Don Geronimo and Mike O'Meara pushed the telephone conversation rule's limits too far by informing a caller she was being placed on hold, while they continued to broadcast her private (and quite personal) conversation with her sister *[Infinity Broadcasting Corp. of Washington, DC, Licensee Radio Station WJFK-FM, Manassas, VA, 14 FCC Rcd 5539 (1999)].*

Although the caller was informed at the outset that her conversation was being broadcast live, the FCC found that she reasonably believed her "on-hold" conversation was private. Even after the embarrassed caller settled a civil suit against two stations that aired the program and withdrew her FCC complaints regarding the matter, the FCC issued a $4,000 fine to the stations. The fact that the stations were broadcasting a syndicated program rather than originating the program was also found to be irrelevant—the licensee was held responsible for the content of any material broadcast on its station, regardless of the source.

Broadcasters have periodically sought to have the telephone rule changed in order to allow stations to record or broadcast conversations that are spontaneous and unguarded. The Commission has always rejected elimination of the rule on grounds that it protects the private citizen's right to privacy *[Broadcast of Telephone Conversations, 3 FCC Rcd 5461 (1988)].*

How Stations Handle the Prior Notification Rule

The prior notification requirements outlaw "ambush interviews," in which a reporter gets on the air, telephones a party, and simply broadcasts that conversation live without telling the other party what is happening. The rule also prohibits live outgoing calls to unsuspecting members of the public. An announcement that "This is Susan Smith of station WXYZ and you're being broadcast live" does not satisfy the prior notification requirement if the party called is already on the air. Stations may, however, call a party and immediately advise the party that the call will be broadcast, and then put the call on the air.

Licensee Control During Live Telephone Broadcasts

A licensee is generally responsible for any and all material it broadcasts. Statements by members of the public during the course of a live telephone call-in program are no exception. Programs devoted to controversial issues require a high alert. Content issues are more likely to arise during a discussion of AIDS than during a discussion of cooking techniques.

Some stations use a tape delay for live programming, regardless of the nature of the program. The technique involves recording a program, program host, guests, and callers, but delaying actual broadcast by several seconds. If an inappropriate statement (such as indecent language) is made, the material can be bleeped over or cut out, and the show can still be billed as live.

Some stations use other techniques. For example, call-in programs can be handled by two or more staff. One person takes the calls and talks with the callers before connecting them to the person on the air. The on-air host typically makes a statement along the lines of, “Hi, you’re on the air.” The first staff member can thus screen the calls, give the required notice, and avoid putting a party on the air who is calling the station on other business.

Scheduling is another factor. Call-in programming that might elicit highly charged reactions from the audience should be scheduled during the indecency safe harbor hours between 10:00 p.m. and 6:00 a.m. A skilled on-air host who projects a sense of authoritative control can also discourage indecency and encourage informed and rational dialogue.

Regardless of how calls are handled, on-air staff should be prepared to make quick judgment calls regarding what should and should not be edited. This requires an understanding of FCC rules regarding indecency, obscenity, and libel, and station policies concerning sensitive program content.

Rebroadcasts

Radio signals from other media sources can be a good source of program material, especially for news and public affairs programming. The FCC rules on the rebroadcast of such material vary depending on the signal source *[Section 73.1207, 47 USC §325]*. The rules discussed below relate to the rebroadcast of certain transmissions. These rules apply without regard to whether the rebroadcast in question violates copyright interests in program content.

Definition of Rebroadcast

A “rebroadcast” is a reception by radio of the transmissions of a radio station and the simultaneous or subsequent retransmission by a broadcast station. Programs transmitted from their point of origin by common carrier facilities (wire or radio) and the broadcast of programs relayed by a remote pickup broadcast station are not considered rebroadcasts. The rebroadcast rules apply to complete programs or any parts thereof.

Rebroadcast of Other Broadcast Stations

Stations may not rebroadcast another broadcast station’s programming without express written authority from the originating station. Permission from the FCC is not required, but the licensee of the retransmitting station must keep a copy of the written consent and make it available to the FCC upon request.

Note, however, the following special situations:

Emergency Alert System (EAS). Stations can rebroadcast the emergency communications of an originating station (operating under a state area EAS plan) without written authority.

Subcarrier Signals. Subcarrier Communications Authorization (SCA) programming can only be rebroadcast with written permission of the originating station.

U.S. Government Stations. Voice of America (VOA) and Armed Forces Radio and Television Service (AFRTS) programming can be rebroadcast only pursuant to a program-specific written contract.

Foreign Broadcast Stations. Unless precluded by international agreement, stations can rebroadcast the programming of a foreign broadcast station and do not need to obtain the consent of the originating station. Consent generally needs to be obtained to rebroadcast programs from stations in Canada, Mexico, and Latin America.

Rebroadcast of Non-Broadcast Transmissions

Some non-broadcast material can be picked up over the airwaves, but is not originally transmitted to the general public—Citizens Band (CB) radio transmissions, for example. The following rules apply to non-broadcast transmissions:

Amateur Radio and CB Messages. Messages originated by stations in the Amateur and CB radio services can be rebroadcast without consent of the originating party.

Other Privately Owned Non-Broadcast Stations. Messages originated by privately owned non-broadcast stations that are not part of the Amateur and CB radio services may be broadcast only with prior permission from the non-broadcast licensee. Messages transmitted by common carrier stations may be rebroadcast only with prior permission from both the station licensee and the originator of the message. (See the section in this chapter on “Interception of Wire or Radio Transmissions” for additional information on use of non-broadcast station transmissions.)

Federal Government Non-Broadcast Stations. In general, stations must obtain written permission from the appropriate government agency before broadcasting material that originates from a non-broadcast station licensed to the federal government.

Special Non-Broadcast Rules

Stations may rebroadcast time signals of the U.S. Naval Observatory and the National Institute of Standards and Technology and weather information of the National Weather Service without prior permission, under the following conditions:

Naval Observatory Time Signals. (1) The programming must be obtained by direct radio reception or land-line circuits of a Naval radio station. (2) An announcement must be made without reference to any commercial activity. (3) The Naval Observatory must be identified as the source of the programming—substantially as follows, “With the signal the time will be . . . courtesy of the U.S. Naval Observatory.” (4) Schedules of time signal broadcasts are available from the Superintendent, U.S. Naval Observatory, Washington, DC 20390.

National Institute of Standards and Technology (NIST) Time Signals. (1) The programming must be obtained by direct radio reception from an NIST station. (2) Rebroadcast equipment must not delay rebroadcast of time messages by more than 0.05 seconds. (3) Time messages must be rebroadcast live and cannot be rebroadcast from tape or other recording. (4) NIST call sign information (voice or code) may not be rebroadcast. (5) The rebroadcast must be made in association with an announcement that states substantially as follows, "At the tone, 11 hours 25 minutes Coordinated Universal Time. This is a rebroadcast of a continuous service furnished by the National Institute of Standards and Technology (NIST), Fort Collins, Colorado (or appropriate city and state)." No commercial sponsorship of this announcement is permitted and none may be implied. (6) Stations using NIST time signal messages must forward notice of this use, on a semiannual basis, to the National Institute of Standards and Technology, Radio Stations WWV/WWVB, 5701 N. Highway 1, Fort Collins, CO 80524 *[Section 73.1207].* (7) Stations cannot produce programming that imitates NIST time messages and present that programming as NIST time signals, even if the station calibrates its clocks to the NIST time in the process of producing such a message. (8) Details on automatic or manual switching techniques for rebroadcast of NIST time signals are contained in the FCC rules *[Section 73.1207(d)(2)(vii)]* and can be obtained from NIST at the above address.

National Weather Service Messages. Messages of the National Weather Service (NWS) must be rebroadcast within one hour of the original broadcast. If advertisements are given in connection with weather rebroadcast, these advertisements must not directly or indirectly convey an endorsement by the U.S. government of the products or services advertised. Stations must include announcements that credit the National Weather Service as the programming source in association with use of NWS weather information.

Emergency Alert System (EAS)

In 1994, the FCC established the Emergency Alert System to replace the Emergency Broadcast System (EBS), and created a new set of EAS regulations found in *Part 11* of the FCC rules. The EAS allows the President and other government officials to communicate with the public in the event of a national, state, or local emergency. The EAS works through coordination of broadcast networks, individual broadcast stations, cable networks, program suppliers, and other electronic media which use a common EAS protocol. The FCC's webpage on the EAS may be found here: www.fcc.gov/general/emergency-alert-system-eas

All broadcasters (with the exception of Class D noncommercial educational FM stations, which do not need to install EAS encoders) are required to install EAS equipment. EAS is a digital system that allows broadcasters and other participating media to send and receive emergency information quickly, even if those facilities are unattended. The new system is automated and can be programmed to operate without the need for human intervention.

Each state has an EAS plan that contains procedures which must be followed by emergency officials and broadcast stations in that state in order to activate the EAS. Local area plans contain procedures for local officials to transmit emergency information to the public during a local emergency. Sometimes, local plans are part of state plans. The FCC has compiled a "mapbook" that lists locations of stations and cable systems in a state, organized by their EAS local area and any special designations needed to identify their role in the system. The mapbooks are distributed to all broadcast stations that participate in the EAS. Stations should consult the FCC mapbook to

determine which state and/or local area plans they must follow. Links to some state and local area plans can be found at www.fcc.gov/public-safety-and-homeland-security/policy-and-licensing-division/alerting/general/state-eas-plans

Stations must ensure that all EAS operators understand and comply with the EAS rules. In 1999, the FCC began inspecting stations for EAS violations and has issued steep fines for noncompliance. For example, the FCC's Enforcement Bureau imposed a forfeiture of $8,000 on a radio licensee for failure to ensure that its EAS equipment was installed and functioning. The licensee had not noted the equipment failure in the Station Log *[In the Matter of AM Broadcast Station KTNC and C.R. Communications, Inc., 2000 FCC LEXIS 5294 (2000)].*

EAS Activation

The ***EAS Operating Handbook*** *[Section 11.15*]. The *EAS Operating Handbook* summarizes the actions to be taken by station personnel upon the receipt of Emergency Action Notification (EAN) and Emergency Action Termination (EAT), tests, or state and local area alerts. Stations must display the current handbook (a new version was released in 2016), which can be obtained directly from the FCC website (https://transition.fcc.gov/pshs/eas/ETRS/EASOperatingHandbook2016.pdf) or NFCB's Solution Center. The handbook must also be displayed at all other control points—e.g., a second studio or a remote control location such as a telephone answering service.

Emergency Broadcasts: Emergency Action Notification (EAN) and Emergency Action Termination (EAT) *[Sections 11.13 and 11.54].* In the event of a national emergency, each station will receive an EAN on its EAS decoder display. Stations used to be required to verify EAN messages with a secret "authenticator list" distributed by the FCC. That list is no longer required. The FCC now asks that EAS equipment be set to run in an automatic mode, which requires neither human intervention nor authentication.

State and Local Emergency *[Section 11.55].* Stations have the discretion to interrupt regular programming for day-to-day emergency situations "posing a threat to life and property." Such natural emergencies include tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc. Other man-made emergencies, such as toxic gas leaks or liquid spills, widespread power failures, industrial explosions, or civil disorders may also justify EAS activation. EAS operations must follow the relevant state and local area EAS plans.

EAS Equipment Requirements

EAS Protocol. The EAS uses a four-part message for emergency activation of the EAS: Preamble and EAS Header Codes, audio Attention Signal, message, and Preamble and End of Message (EOM) codes. Details can be found in *Section 11.31* of the FCC rules.

EAS Encoder and Decoder. EAS encoders generate the EAS codes and the Attention Signal. The specifications for EAS encoders can be found in *Section 11.32* of the FCC rules. Generally, Class D noncommercial educational FM stations (those operating with no more than 10 watts transmitter power output) are not required to have encoders.

EAS decoders detect the EAS codes and the Attention Signal. *Section 11.33* of the FCC rules explains the requirements for EAS decoders.

EAS Monitoring Requirements

EAS Code and Attention Signal Monitoring Requirements *[Section 11.52]*. All broadcast stations must be capable of receiving the Attention Signal required by *Section 11.33(a)(9)* and emergency messages of other broadcast stations during their hours of operation. In addition, all stations must install and operate, during their hours of operation, equipment capable of receiving and decoding, either automatically or manually, the EAS Header Codes, emergency messages and End of Message (EOM) codes. All broadcast stations are required to interrupt normal programming, either automatically or manually, when they receive an EAS message in which the header contains an Emergency Action Notification, Emergency Action Termination, or Required Monthly Test for their state or county location. Automatic interruption of programming is required when facilities are unattended. If manual interruption is used, messages must be retransmitted within 15 minutes of the receipt of an EAN, EAT, or RMT.

EAS Recording Requirements

EAS operators must log the transmission and receipt of EAS messages in the Station Log, or a special EAS log *[Section 73.1820(a)(iii)].* Automatic transmissions of EAS messages must include a permanent record that contains the following information: originator, event, location, and valid time period of the message. EAN messages must be transmitted immediately and monthly EAS test messages must be transmitted within 15 minutes of receipt.

Manual interruptions must also be logged. EAS logs must be maintained for two years and reviewed weekly by the person designated as the station's Chief Operator.

Participation in EAS

Participating Stations Versus Non-Participating Stations *[Section 11.41].* All stations are considered Participating National (PN) stations unless they submit a written request to the FCC to become a non-participating station and receive a Non-Participating National (NN) authorization letter. Regardless of their participating or non-participating status, all stations must install and maintain EAS equipment and participate in the weekly and monthly tests of the system. In addition, all stations must monitor for state and local EAS activations. Once a state or local level activation has been received, the station management can then decide whether or not to participate further at that level.

During national level Emergency Activation Notification alerts, a PN station will stay on the air to provide necessary information while an NN station takes its carrier off the air.

Monthly and Weekly Tests

Required Monthly Test (RMT) and Required Weekly Test (RWT) *[Section 11.61].* Each month, Local or State Primary EAS sources will transmit test messages of the EAS digital Header Codes (three long EAS data bursts), the two-tone 8-second Attention Signal, a Test Script (audio message), and EOM codes. Stations must retransmit monthly tests within 15 minutes of receipt. In odd months, the tests must be conducted between 8:30 a.m. and local sunset. In even months, tests must be conducted between local sunset and 8:30 a.m. Class D noncommercial educational FM stations are required to transmit only the Test Script.

All stations must conduct tests of the EAS Header and EOM codes at least once a week on random days and times between 8:30 a.m. and local sunset. Class D noncommercial educational FM stations do not need to transmit the Attention Signal. A weekly test is not required the week that a monthly test is conducted.

EAS Checklist

The following checklist is not a substitute for a thorough knowledge of the EAS rules and the EAS Operating Handbook, but should help you determine whether you are in compliance with the EAS rules.

- ☐ **Current (Aug. 2016) *EAS Operating Handbook* Displayed?** Stations must display the current handbook, which can be obtained directly from the FCC website (https://transition.fcc.gov/pshs/eas/ETRS/EASOperatingHandbook2016.pdf) *[Section 11.15].*

- ☐ **Copies at All Control Points?** Copies of the EAS handbook must be present at all other control points (e.g., a second studio or a remote control location such as a telephone answering service) *[Section 11.15].*

- ☐ **EAS Encoder/Decoder Installed and Operational?** Stations are responsible for ensuring that EAS encoders, EAS decoders, and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the station is in operation (Class D noncommercial educational FM stations are required to have only EAS decoders *[Section 11.32]*). Stations do not need special FCC permission to operate if the encoder or decoder becomes defective as long as the equipment is repaired within 60 days. If repair or replacement is not possible within 60 days, stations must submit an informal request for additional time to the District Director of the FCC Field Office serving the station's broadcast area. Despite faulty equipment, monthly test scripts must still be transmitted *[Sections 11.32 and 11.35].*

- ☐ **EAS Encoder Tuned to Correct Stations in Accordance With Local/State EAS Plans?** Stations must comply with any EAS plan imposed by the state in which the station is located *[Section 11.52].*

- ☐ **Encoder Timing Tones 8 to 25 Seconds in Length?** The encoder must have timing circuitry that automatically generates the two tones simultaneously for a time period of not less than 8 nor longer than 25 seconds *[Section 11.32].*

- ☐ **Tests of EAS Procedures: Required Weekly Test (RWT) and Required Monthly Test (RMT)** *[Section 11.61].*
  - ☐ Transmit Test—Is the RWT conducted weekly? Send test messages once every week on random days and times. During the week of the monthly test, no weekly test is required.
  - ☐ Transmit Test—Is the RMT conducted within 15 minutes of reception?

Retransmit the monthly test message between 8:30 a.m. and sunset in odd-numbered months, and between sunset and 8:30 a.m. in even-numbered months.

☐ **Are RMTs and RWTs Logged Properly on Station Log?** An EAS log form recommended by the FCC's Compliance and Information Bureau *[Section 11.61]* can be found at the end of this chapter. Does your Station Log reflect the:

- ☐ RWT Transmit Test?
- ☐ RWT Receive Test?
- ☐ RMT Transmit Test?
- ☐ RMT Receive Test?

☐ **Immediately Broadcast Any National-Level Alert That Is Received.** The *EAS Operating Handbook* summarizes the procedures to be followed during a national-level emergency *[Section 11.54].*

☐ **The FCC Has Discontinued Use of EAS Authenticator Lists**. As of September 1998, the FCC discontinued its distribution of the Emergency Alert System authenticator lists *[Public Notice, Commission to Discontinue Distribution of EAS Authenticator Lists (September 3, 1999)].* The FCC now asks that EAS equipment be set to run in an automatic mode.

Other Programming Concerns

The final section of the chapter discusses programming concerns still regulated by the FCC, and other concerns that have been regulated by the Commission in the past but are now under the jurisdiction of state or federal courts.

Use of Recorded Material

Increasingly sophisticated recording and sound delivery technology has enabled broadcasters to bring music and cultural events from every corner of the world into the living room or car of the listener. With these increased capabilities come new opportunities for abuse. A reporter may press for an interview at an embarrassing moment or record comments without the person realizing that the interview is meant for broadcast. Broadcast of conversations obtained through a telephone wiretap or through a surreptitious recording of a private conversation may violate laws that protect privacy interests.

While the FCC has rules designed to prevent such abuse, stations are also governed by federal, state, and local laws and regulations that protect private citizens from injurious invasions of privacy. Station policies on broadcast and non-broadcast use of recorded material should reflect both the Commission's regulations and a range of other legal concerns.

This section discusses rules that apply to:

- Broadcasts of recorded material that create the impression of a live broadcast
- Telephone conversations recorded for broadcast and non-broadcast use
- Recording with "hidden microphones"

Recorded Material That Sounds Live. Whenever a broadcaster tries to create the impression that recorded material is actually occurring live at the time of broadcast, or presents recorded material in which time is of special significance, that programming must be preceded by an announcement that the material is recorded *[Section 73.1208].* Such an announcement prevents listeners from being misled. Programming of a public service nature need not be identified as recorded.

Recording of Telephone Conversations. Although the Commission does not regulate recordings of telephone conversations for non-broadcast purposes, federal law requires that at least one party give prior consent to such a recording *[18 U.S.C. §2511].* That party can be the licensee or the station personnel actually making such a recording. A number of states have enacted more stringent requirements that may require all-party consent and prior consent before any use is made of such a recording.

As broadcasters devise station policies regarding recorded conversations, state and federal statutes regulating recordings of both wire and oral communications must also be taken into consideration. While these laws are generally concerned with the use of recorded conversations in a manner that would be injurious to the individual involved, they implicate the broader issue of an individual's right to privacy. Almost all jurisdictions have some laws restricting "invasion of privacy."

Recording Conversations. FCC rules require all-party consent for recordings made with a wireless microphone. A key exception is made, however, for the recording of private conversations that are not, in effect, "private" (i.e., conversations that occur in a semi-public or public place and in a manner that others would be likely or able to overhear). Restaurants, parks, and streets are all examples of such places. An office, hotel room, and other such locations fall into a gray area. Check with a lawyer for advice on how to proceed in these circumstances *[Section 15.9].*

In situations in which a parabolic or shotgun microphone, or other device not apparent to those being recorded, is used to record conversations, state laws may again impose more stringent requirements than are contained in federal law. In some states, for example, the interception itself may have been carried out in a legal manner, but use of the material for either non-broadcast or broadcast purposes would require all-party consent.

Use of a recording of a private conversation without permission may subject a station to a suit for violation of the right of publicity. The right of publicity (sometimes confusingly called a right of privacy) is the right of every person to control the commercial use of his or her voice, image, or name. Most of the cases relate to celebrities, such as Bette Midler, who sued to stop an imitator on a TV commercial from imitating a personal, but commercially viable, attribute—her voice.

Surreptitious or undercover news-gathering techniques may implicate any number of non-FCC legal issues. For example, in Greensboro, NC, in 1992, an ABC television series, *PrimeTime Live*, sent undercover producers to get jobs with the grocery store, Food Lion, so that they could secretly record unsanitary meat-handling practices with hidden video cameras and microphones. After some of the footage was used in a broadcast of *PrimeTime Live*, Food Lion sued ABC and the *PrimeTime Live* producers and reporters for millions in damages, claiming fraud, breach of duty of loyalty, trespass, and unfair trade practices *[Food Lion, Inc. v. Capital Cities/ABC, Inc., 194 F.3d 505 (4th Cir. NC 1999)].* The court held that ABC had illegally trespassed because the journalists had

used misrepresentation to gain access to parts of the store that were off-limits to regular customers. Had the filming taken place in an area open to the public, such action would not have constituted a trespass.

Editing Recorded Material for Broadcast Use. Editing inevitably affects the nuances of recorded material and may radically transform the substance. Many people are shocked to hear only a snippet of an interview in which they expounded at length on some topic. A simple release form that clearly gives a station permission to record, edit, and broadcast a taped interview will establish a station's right to use the recorded material. (A sample release form can be found at the end of this chapter.) Permission to use recorded material for broadcast does not, of course, obligate the broadcaster to use that material—unless such a restriction was explicitly agreed to by both parties.

While the Commission and the courts recognize the problems associated with editing material, broadcasters have generally been afforded great discretion. A quote from Chief Justice Burger sums up this widely-held sentiment: "For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors—newspapers or broadcast—can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values" *[Columbia Broadcasting System v. Democratic National Comm., 412 US 94, 124-25 (1973)].*

Prerecorded Telemarketing Messages. The Telephone Consumer Protection Act of 1991 (TCPA) restricts the use of certain telemarketing messages. The TCPA is a consumer protection statute enacted to protect the privacy rights of residential telephone subscribers.

The FCC rules implementing the TCPA *[Sections 64.1200 and 68.318]* place numerous restrictions on the use of an artificial or prerecorded voice to deliver a message over the telephone. Such calls must not be made to emergency lines, guest or patient rooms of hospitals, or to telephone numbers assigned to paging services, cell phone services, or similar services for which the called party is charged for the call. These restrictions also apply to autodialing systems, regardless of whether a recorded message is used. If an artificial or prerecorded telephone message is delivered by an autodialing system, the message must identify the entity on whose behalf the call is made at the beginning of the message and state the telephone number or address of such entity during or after the message. Other restrictions further limit autodialing.

The TCPA and the related FCC rules should be consulted before executing any telemarketing plan, particularly one that includes an automatic telephone dialing system or an artificial or prerecorded voice.

Interception of Wire or Radio Transmissions

Broadcasters should obtain written permission to make use of any material transmitted over police, fire, FAA, and similar frequencies used in the preparation or airing of broadcast programming. The transmission need not be used as over-the-air programming in order to violate the Communications Act. Simple interception of the message requires permission.

Written authorization should be obtained from the licensee of the frequency and kept in the station's records. Stations regularly reach agreements that authorize monitoring of either specific frequencies or all frequencies used in the licensee's community. Federal law treats unauthorized

use or interception of these transmissions in the same manner as wiretapping and electronic eavesdropping. Sanctions include prison and fines *[47 U.S.C. §705].*

Drug-Related Song Lyrics

The broadcast of lyrics that glorify or promote the use of drugs is subject to the same standards applied by the Commission to other broadcasts: licensees are expected to exercise responsible discretion. There is no outright ban on the broadcast of drug lyrics, but a broadcaster could jeopardize the station's license by failing to exercise reasonable judgment in this area.

The Commission has said that ". . . selection of records is a matter for the licensee's judgment. Licensees could reasonably and understandably reach differing judgments as to whether a particular record promotes drug usage. Such an evaluation process is one solely for the licensee. The Commission cannot properly make or review such individual licensee judgments. At renewal time, the Commission's function is solely limited to a review of whether a licensee's programming efforts, on an overall basis, have been in the public interest" *[Licensee Responsibility to Review Records Before Their Broadcast, Memorandum Opinion and Order, 31 FCC 2d 377 (April 16, 1971)].*

The FCC's policy on drug lyrics is a sleeper. Although drug lyrics were a hot topic in the 1960s and 1970s, the issue does not regularly receive much FCC attention. It is important for broadcasters to remember that the FCC's policy is still on the books and that it can be reactivated in times of intense public concern regarding record lyrics.

Sample EAS Log

From: http://emergencyalertsystem.org/images/logblank.pdf

Emergency Alert System Log

Station: _____

Month/Year: _____

Required Monthly Test (RMT) Received

Received From	Date	Time	Signature or Notes
Explanation for RMT not received:			

Required Monthly Test (RMT) Transmitted

Date	Time Sent	Sent Within 1 Hour	Signature or Notes
Explanation for RMT not Transmitted:			

Required Weekly Test (RWT) Received

LP or NWR	WEEK OF	WEEK OF	WEEK OF	WEEK OF	WEEK OF
	Date:	Date:	Date:	Date:	Date:
	Time:	Time:	Time:	Time:	Time:
	Initial:	Initial:	Initial:	Initial:	Initial:
	Date:	Date:	Date:	Date:	Date:
	Time:	Time:	Time:	Time:	Time:
	Initial:	Initial:	Initial:	Initial:	Initial:

Required Weekly Test (RWT) Transmitted

WEEK OF	DATE	TIME	SIGNATURE or NOTES
Explanation of RWT Failures:			

Weekly Log Review by Chief Operator or Designee

WEEK OF	SIGNATURE

ABBREVIATIONS

LP - Local Primary

NWR - National Weather Radio

RMT - Required Monthly Test

RWT - Required Weekly Test

Authorization and Release

Date: _____

_____ is a not-for-profit organization that operates a
Station Name
noncommercial radio station in _____
City of License

By signing this Authorization and Release, I give _____
Station Name
permission to record and to broadcast my voice and likeness, in analog or digital format; preserve the work in any medium; edit, reproduce, archive, webcast, and promote the work and create derivative works or compilations; distribute the work to other noncommercial radio broadcast stations or noncommercial radio networks; utilize the work for promotional and public relations purposes; and incorporate the work or any portion in one or more compact discs for premium and promotional use.

_____ shall own all rights, title, interest, and copyright to the
Station Name
work.

_____ _____
Signature *Printed Name*

_____
Address

Chapter 7: Political Broadcasting and Candidate Rules

Programs involving political candidates are subject to special rules that reflect a legislative awareness of the tremendous impact the electronic media have on the political process. These rules curtail a broadcaster's customary ability to control programs when the programs are of a political nature.

This chapter canvasses the rules affecting political broadcasting and includes discussion of the following topics:

- Basic Principles: Equal Opportunities, Non-Censorship, Reasonable Access
- Who Is a Candidate
- What Is a "Use"
- Exempt Programs
- Equal Opportunities
- Requests for Equal Opportunities
- Censorship of Candidates
- Reasonable Access
- The Zapple Doctrine
- Special Rules for Public Stations
- Sponsorship Identification
- Public File Requirements

A few hours spent studying the rules and explanatory material will make one somewhat knowledgeable in the area of political broadcasting, but stations should not expect all programmers to be on top of the political broadcast rules. There are simply too many complexities and nuances. Someone associated with the station (the station's lawyer, Program Director, or News Director, for example) should act as a resource person for the staff as a whole. This person should be familiar with state and local laws regarding political campaigns as well as with FCC requirements. The Commission's Political Programming Group can be reached at (202) 418-1440 to answer written and oral questions. FCC policy is to work with stations and candidates to resolve problems as they arise. The FCC's webpage on Political Programming can be found here: www.fcc.gov/media/policy/political-programming

Basic Principles: Equal Opportunities, Non-Censorship, Reasonable Access

The federal statutes on political broadcasting and the FCC regulations that implement those statutes are designed to address several basic concepts:

- Broadcasters will give all candidates "equal opportunities" to use broadcast stations *[Section 315(a)].*
- Candidates can speak without fear of censorship by broadcast stations *[Section 315(a)].*

- All qualified candidates for federal elective office will have reasonable access to airtime on broadcast stations *[Section 312(a)(7)].*
- The rates commercial stations charge for candidates' use of airtime will be at least as low as the rates given to the station's most favored advertisers. As discussed later in this chapter, noncommercial stations are prohibited from airing political ads, but may broadcast material for which they charge nothing *[Section 315(b)].*

FCC rules focus on the consequences that arise when a candidate appears on, or "uses," a broadcast station. The FCC rules do not address many other concerns that arise in the course of an election, such as coverage of public issues, balance between political parties, and internal party politics. This distinction is especially important in understanding the different requirements that apply to such situations as candidate appearances on newscasts, documentaries about a political campaign, and statements by candidate support groups.

In 1984, the FCC issued the *Political Primer*, a readable guide to the intricacies of the political broadcast rules, which remains a helpful, if dated, guide. In 1991 and 1992, the FCC systematically reviewed and revised its political broadcast rules *[In the Matter of Codification of the Commission's Political Programming Policies, Report and Order, 7 FCC Rcd 678 (1992); In the Matter of Codification of the Commission's Political Programming Policies, Memorandum Opinion and Order, 7 FCC Rcd 1616 (1992); In the Matter of Codification of the Commission's Political Programming Policies, Memorandum Opinion and Order, 7 FCC Rcd 4611 (1992)].*

One change in the political broadcasting rules occurred immediately after the November 2000 elections. Congress amended the Communications Act to relieve noncommercial stations of their duty to provide "reasonable access" to federal candidates. This amendment grew out of well-publicized demands that noncommercial stations air, for free, the same paid political spots that congressional and presidential candidates were running on commercial stations.

Who Is a Candidate?

The Commission uses three criteria to define a legally qualified candidate. First, the person must publicly announce that he or she is a candidate. Second, the person must meet the qualifications for office prescribed by applicable federal, state, or local law. Third, the person must either qualify for a place on the ballot or seek election by write-in ballot and make a substantial showing that he or she is a bona fide candidate. The following examples illustrate these principles.

The candidate must meet the legally prescribed qualifications for office.

Example Station WXYZ has had the Republican and Democratic candidates for governor on the air. A candidate from the "Hip-Hop Party" calls up and demands airtime. She is 19 years of age. Is station WXYZ obligated to give airtime?

If the Hip-Hop Party candidate met all the qualifications of law, the station would certainly be obligated to consider her request for airtime. If state law requires a person to be at least 21 years of age to hold the office of governor, however, the Hip-Hop party

candidate is not a legally qualified candidate and, thus, is not entitled to equal opportunities.

Example The Hip-Hop Party has registered a 22-year-old with the state as a candidate for governor. She meets all of the legal qualifications, but it's clear she'll be lucky to get a smattering of votes. In the station management's view, this person is not a serious candidate. Is the station obligated to afford her equal opportunities for airtime?

If a candidate is legally qualified, the political broadcast rules apply—even if it appears the candidate has no chance to win.

The political rules apply only to primaries and elections.

Example The issue of whether to recall a county commissioner has been placed on a ballot. The county commissioner appeared on station WXYZ. A councilman who is interested in holding that public office has demanded equal time. Must the station provide the councilman an equal opportunity for airtime?

No. The vote is on the issue of recall. Since there are no legally qualified candidates running for a public office, the political broadcast rules do not apply. If the recall ballot had been an election, the candidate rules would have applied.

The political rules apply only to elections to a public office.

Example Station WXYZ recently aired a commentary by a woman who is seeking the "County Democratic Committee Chair." A man claiming to be her opponent calls the station and demands time to respond.

The political rules apply only in situations in which a legally qualified candidate seeks public office. A party office may involve election by some members of the public, but a vote by members of the public does not necessarily make the office a "public office." For clarification about whether an election is an election for public office, contact the secretary of state, state attorney general, or state election bureau.

The political rules apply only to election by the public.

Example The city council will vote to fill the unexpired term of a council member who resigned. Two people are seeking the post. The race is controversial. Do the political broadcast rules apply?

No. The political rules apply only in situations involving election by the general public.

The political rules apply only within a station's community of service.

Example Station WXYZ serves towns A, B, and C. The station recently aired the views of a man who is running for the office of mayor in town D, located outside the station's service area. The opposing candidate for mayor calls station WXYZ and demands equal time. She says that station WXYZ's program will affect town D's election process even if the signal does not reach that area. Do the political rules apply?

No. If the station's broadcast signal does not reach at least one county in the district in which the candidate is running for office, the political rules do not apply. The reach of a station's signal is determined by the station's primary signal contour (0.5 mV/m for AM stations, 1 mV/m for FM stations).

Example What if, in the above example, WXYZ was carried on town D's cable system?

Same answer. Candidates in communities where WXYZ is retransmitted by cable, the Internet, translators, or boosters would not be eligible for equal opportunities in the above example. The political rules apply only to a station's broadcast coverage area. Cable systems are directly subject to political rules only when the cable system originates the political material.

The political rules distinguish between primaries and general elections.

The distinction affects the determination of when candidates are "opposing candidates." Prior to the completion of primary elections, including any "run-offs," candidates who seek the nomination of the same party for the same office are opposing candidates in a primary. Candidates seeking the nomination of different parties are not opposing candidates in the primary. After the primary, those competing for the same office are opposing candidates.

Example In the District of Columbia, Democrats outnumber Republicans by a huge ratio. The battle over the Democratic nomination for mayor is considered the "real race." A station has devoted virtually all of its primary campaign coverage to the Democrats, and Republican candidates complain that their exclusion during the primary period hurts their visibility and thus their chances in the general election. Must the station provide more balanced treatment?

No. The political rules allow a licensee to decide what amount of time to allocate to different races. The Democratic and Republican primaries are considered to be separate races. There is no requirement to balance the time devoted to the two races.

What Is a "Use?"

Many of the FCC's requirements are triggered by the "use" of a broadcast station by a political candidate. A "use" is defined as the broadcast of a candidate's voice (or, in television, by the candidate's picture or image). In general, a "use" by one candidate requires the broadcast station to provide to opposing candidates equal opportunities to use the station, if a timely demand is made.

Any programming that portrays the candidate in a positive light is considered a "use," unless it falls into one of the categories of exempt programming discussed below. This definition can result in some surprising "uses." For example, when old Ronald Reagan movies, such as the chimpanzee comedy, *Bedtime for Bonzo*, were aired during one of Reagan's political campaigns, other candidates were entitled to equal opportunities.

Similarly, appearances by a celebrity candidate that are unrelated to an election campaign, such as a public service spot promoting the United Way, would be considered a "use."

Even if a public service announcement voiced by an incumbent official does not help the public understand the candidate's political platform, such programming may promote a favorable image of the candidate and, thus, constitute a "use."

In order to constitute a "use," the candidate's voice or image must appear in an identifiable and positive manner. In other words, Candidate X's negative use of Candidate Y's voice or image does not create equal opportunities for Candidate X or other candidates opposing Y.

Example Richard Smith, Randy Stenner, and Robert Schneider are candidates for U.S. Congress. Schneider is the incumbent. Smith runs a spot on which Schneider says "I will not raise taxes," followed by an announcer listing three tax increases for which Schneider voted. The spot ends with the announcer saying, "He did it before and he'll do it again. Vote Smith." Stenner demands equal opportunities based on Schneider's appearance in the spot. Should his request be granted?

No. Smith's spot does not cast Schneider in a positive manner and therefore does not give rise to equal opportunities.

Example Jim Thorn and Rita Daye are candidates for mayor. The Jim Thorn for Mayor Committee is given airtime. What are Rita Daye's rights to airtime?

If the broadcast includes the voice of Jim Thorn (live or prerecorded), Rita Daye is entitled to equal opportunities. If the broadcast does not contain the voice of Thorn, however, the answer is more complicated. The candidate rules are primarily designed to afford equal opportunities to individual candidates, not to committees or other members of the public. Political programming in which candidates themselves do not appear may nonetheless result in obligations for "quasi-equal opportunities" under what is known as the Zapple Doctrine. See the end of this chapter for a discussion of the Zapple Doctrine.

Example Jim Thorn and Rita Daye are candidates for mayor. A campaign by the All Bark No Bite Committee portrays Thorn as a sleeping dog, with Thorn's head superimposed on a hound's body. Daye demands equal opportunities. Is Thorn's appearance a "use" by Thorn?

No. Thorn's appearance in the spot is not positive and is, thus, not a "use." In addition, coverage of the All Bark No Bite campaign presumably occurs in a newscast, an exempt program, as discussed in the next section.

Requirements related to a candidate "use" apply only when a person actually becomes, or is designated as, a legally qualified candidate.

Example Jim Thorn, incumbent Democratic mayor, has a regular monthly 10-minute "constituent report" on station WXYZ. Rita Daye has been nominated as the Republican candidate for mayor. Jim Thorn has not formally announced his intentions, but it is generally assumed that he will seek another term on the Democratic ticket. Rita Daye requests equal opportunities from station WXYZ. Is she entitled to the time?

No. Until Jim Thorn becomes a legally qualified candidate for the office of mayor, Rita Daye is not entitled to equal opportunities afforded an opposing candidate. After Jim Thorn announces his candidacy for office, or is nominated for office, Rita Daye will be entitled to equal opportunities.

Exempt Programs

Bona fide newscasts, news interviews, news documentaries, and on-the-spot coverage of news events are exempt from equal opportunities requirements. A candidate's appearance in these programs is not a "use."

The Commission takes a number of factors into account in determining whether programs are exempt. Such factors include:

- Whether the program in question is regularly scheduled
- How long and how often the program has been on the station's schedule
- Whether station staff produce or control program content (in whole or part), as opposed to programming produced by an outside source
- Whether the program is intended to advance the candidacy of a particular person
- Whether the candidate or topic is newsworthy

The Commission has held that the bona fide news coverage exemption extends to debates arranged and controlled by stations themselves *[Petitions of Henry Geller, 95 FCC 2d 1236 (1983), aff'd sub nom., League of Women Voters v. FCC, 731 F.2d 995 (DC Cir. 1984)].* In order to be exempt, however, the debate must meet the following criteria:

- A decision to broadcast the debate must be a bona fide journalistic decision by the station and the format of the presentation must ultimately be determined by the station or by an independent third party
- There must be "structural safeguards" to ensure that no candidate will be favored or disfavored in the broadcast

- All station decisions, including the exclusion of certain candidates, must be based on viewpoint-neutral, bona fide news judgments

Consider the following news programs the Commission has ruled *exempt* from equal opportunities provisions:

- *Today, Good Morning America, Access Hollywood, Inside Edition, 60 Minutes, Meet the Press, Face the Nation,* and (believe it or not) *Entertainment Tonight.*
- A regularly scheduled program in which the governor gives unrehearsed and unedited answers to questions from a group of area journalists—the program was produced by the station and had been on the air for two years.
- An *A&E Biography* series on current presidential candidates—this illustrates how a program that does not qualify for one exemption may qualify for another. In order for a documentary to be exempt, for example, the candidate's appearance must be "incidental" to the program. The *A&E Biography* series did not qualify as a documentary because the candidate's appearance was not incidental to the program, but the program was found to be exempt as a bona fide news interview program.
- A 30-minute news interview program run on a regular basis but lengthened to one hour for six weeks prior to the election—the Commission ruled that the length did not significantly alter the content of this regularly scheduled program.
- *Phone Forum*, a regularly scheduled program with a two-year run—guests were selected by the station's news department and the same staff controlled selection of the phone callers to assure balance in the questions.
- A news interview program aired on station KABC, which was regularly rebroadcast several weeks later by station WXYZ.
- A documentary in which a candidate appeared for less than two minutes, and the appearance was incidental to the program.
- Coverage of political conventions.
- A broadcaster-sponsored debate covered live and in its entirety and broadcast on the basis of its newsworthy content. Delayed broadcast would also be exempt.

By contrast, the Commission has ruled the following programs were not exempt from equal opportunities provisions:

- A series of three news interview programs aired on station KABC from which station WXYZ sought to rebroadcast one program—selection of the one program altered the initial balance of a three-program series.
- *Governor's Forum*, a regularly scheduled program in which the incumbent governor selected letters he had received, and sent an edited, prerecorded program to the broadcaster.
- A special interview scheduled with an incumbent—despite complete editorial control by news staff and newsworthy content, the program did not meet the test for interview programs because it was not regularly scheduled.
- A program entitled *Know Your Congressman*, scheduled to begin 11 weeks prior to the election.

Equal Opportunities

Whenever a legally qualified candidate makes "use" of a broadcast station in a non-exempt program, that station must afford all opposing candidates equal opportunities to air programming that reaches comparable audience size. The obligation is to provide "equal opportunities," not equal time. For example, if one candidate has been given five minutes during peak audience, morning drive time, while an opposing candidate is given five minutes at 1:00 a.m., the two candidates would have been given equal time but not equal opportunities to communicate with the public.

A station is not obligated to contact candidates to offer "equal opportunities" after a competing candidate has appeared on the station. The station's obligation is simply to place a record of "use" in its Public File (see Chapter 8) as soon after the appearance as possible. Legally qualified opponents must assert their right to equal opportunities within seven days of the appearance by the first candidate (see discussion of the "seven-day rule" in the section "Requests for Equal Opportunities" later in this chapter), so prompt placement of a record of the appearance in the Public File is critical.

The right of equal opportunities may be exercised by candidates for any state, local, or federal primary or election.

Example An announcer conducts a 30-minute interview program after he becomes a candidate for U.S. Congress. His opponent requests equal opportunities in the form of a series of 60-second announcements that total 30 minutes. Must the station comply with the opponent's request?

No. The opponent is entitled to the same block of time as given the first candidate, in a comparable time period, but is not entitled to reconfigure the time into a series of 60-second spots. Generally, the opponent will only be entitled to equal opportunities for the amount of time the announcer/candidate is actually on the air, not the entire length of the program on which he or she appears.

Example Suppose a DJ becomes a legally qualified candidate for public office. Can the DJ continue to work at the station?

Yes, but each broadcast of the DJ/candidate's voice will be a "use," even if the DJ does not talk about his candidacy or discuss political issues. The opponents of the candidate would be entitled to demand equal opportunities based on the amount of time the DJ is on the air. There have been instances where opposing candidates have waived their rights to equal opportunities based on a DJ/candidate's "use," but opposing candidates are under no obligation to sign such waivers.

Example Slick and Shiny Car Wash is a frequent underwriter on a station. Sammy Slick, the owner

of the car wash, recently became his party's nominee for U.S. Senate. If the station continues to air Slick and Shiny Car Wash underwriting announcements, will it owe Sammy's opponent equal opportunities?

It depends on whether the candidate's voice is heard in the announcement. If Sammy's voice is heard in the Slick and Shiny Car Wash announcements, then the underwriting announcements will constitute a "use" that will trigger the station's equal opportunities obligations. If Sammy's voice is not heard in the announcement, no "use" will occur.

The following are further illustrations of how the equal opportunities principle is applied:

- When time is made available at different periods of the broadcast day, but with approximately equal audience potential during each, the equal opportunities requirement is met.
- Two opposing candidates are offered equal amounts of time in the same time slot, but one candidate uses more time than another. The second candidate has the right to request additional time, but must make the request within seven days of the opposing candidate's appearance.
- A station invites only two of five competing candidates to participate in a station-sponsored debate. If conducted in compliance with FCC guidelines, debates are exempt programs. The exclusion of some candidates from the debate is appropriate as long as the decision is based on "reasonable, viewpoint-neutral exercise of journalistic discretion" *[Arkansas Educational Television Commission v. Forbes, 523 US 666, 118 S. Ct. 1633, 140 L. Ed. 2d 875 (1998)].*
- A station offers three candidates for state office the opportunity to appear on an interview program. Two candidates accept, but one candidate declines and the station withdraws its offer of time based on its conclusion that the programs will be of interest to the public only if all candidates appear. As long as no actual "use" has occurred, no equal opportunities rights arise.
- A station offers four candidates the opportunity to appear on a program. Three candidates accept and the program airs. If the program qualifies for one of the exemptions, the fourth candidate is not entitled to equal opportunities. If the program is not an exempt program, the fourth candidate is entitled to equal opportunities even though he or she was unable or did not choose to participate in the program offered by the station.
- A station offers all candidates for an office an opportunity to appear on a program. The moderator of the program agrees on a format that should result in roughly equal amounts of time for each candidate, but fails to enforce the procedure. One candidate receives approximately 75% of the airtime. The other candidate is entitled to additional time on the station.

Requests for Equal Opportunities

A station's responsibility to provide equal opportunities extends for a seven-day period following the "use" of the station by a legally qualified opposing candidate. This "seven-day rule" *[Section 73.1941(c)]* reads as follows:

> "A request for equal opportunities must be submitted to the licensee within one week of the day on which the first prior 'use,' giving rise to the right of equal opportunities, occurred . . ."

A person requesting equal opportunities must have been a legally qualified candidate for the office in question at the time of such first prior "use."

Example Mary LaForge has been making a weekly five-minute broadcast on behalf of her candidacy for Congress. After the fourth such broadcast, her opponent makes a request for 20 minutes of time.

LaForge's opponent is entitled only to the amount of time used in the previous seven days, i.e., five minutes.

There are several key points to remember with regard to the timing of a request for equal opportunities. For example, only a "use" by a legally qualified candidate triggers the responsibility to provide equal opportunities, and only a legally qualified candidate can assert a claim for equal opportunities.

Example Paul Anderson has been nominated as the Democratic candidate for governor. Alice Pibble, the current lieutenant governor, is running unopposed for the Republican gubernatorial nomination but has not yet been officially nominated. Pibble appears on a candidate forum and denounces Anderson as a "prisoner of special interests." Anderson claims a right to equal opportunities to respond.

Since Pibble is not yet a legally qualified candidate for governor, lacking only her party's nomination, her appearance on the candidate forum does not create an equal opportunities obligation with respect to candidates for governor. Anderson's claim is, thus, invalid.

Example In the above example, could the station comply with Anderson's request?

Yes, but if Anderson's response is a "use," it would trigger equal opportunities rights for any other person who is a legally qualified candidate in the Democratic primary.

Example Same situation as above: Paul Anderson has the Democratic nomination for governor and Alice Pibble is unopposed in seeking the Republican nomination. Immediately after his nomination, Anderson, in a non-exempt program, directly attacks Pibble as incompetent. Pibble demands an equal opportunity to respond.

Since Pibble is not yet a candidate for governor, she is not an opponent of Anderson and cannot assert an equal opportunities claim.

Example Pibble is nominated by the Republicans three weeks after Anderson's campaign began. Anderson continues his attacks on Pibble in a non-exempt program the morning after her nomination. Pibble again makes an equal opportunities claim.

Pibble's claim is now valid, provided she makes the claim within seven days of Anderson's "morning-after" message. She cannot claim equal opportunities for the broadcasts prior to her nomination.

When there are multiple opposing candidates, the initial broadcast date triggers the seven-day request period.

Example Candidate 1 appears in a non-exempt program on station WXYZ. Candidate 2 requests equal opportunities within seven days of that broadcast. Candidate 2 appears on station WXYZ. Candidate 3 requests equal opportunities based on candidate 2's airtime, but candidate 3's request for airtime is made more than seven days after the appearance of candidate 1. The station is not obligated to afford equal opportunities to candidate 3 because the request for airtime was not made in a timely fashion.

If a station announces a scheduled appearance by a candidate, that candidate's opposition can request equal opportunities prior to the actual "use." However, the obligation to provide the equal opportunities does not arise until the scheduled appearance has taken place.

Example A station decides to broadcast a special series of four weekly interviews with the Democratic and Republican nominees for U.S. representative. Within seven days of the first interviews, the candidate of the Reform Party makes an equal opportunities claim. That claim may be asserted not only with respect to the first interviews, but also with respect to the three interviews scheduled to take place subsequently.

If a licensee mistakenly denies equal opportunities due a candidate, the Commission expects that the first step in remedying the situation will be an attempt by the licensee and candidate to work out a mutually acceptable solution. If the licensee and candidate are unable to reach an agreement, FCC staff will usually try to resolve the issues informally. If the candidate remains dissatisfied, he or she can file a formal complaint with the FCC.

The Commission has noted that even if timely requests for equal opportunities are made under the "seven-day rule, a "licensee may be called upon to exercise reasonable judgment in affording 'equal opportunities,' particularly where there has been an accumulation of time" *[Complaint of Emerson Stone, Jr., 40 FCC 385 (1964)].* This flexibility should only be used if last-minute requests for equal opportunities would deluge the air with candidate statements or preclude a fair chance for messages by all opposing candidates.

Non-Censorship of Candidates

Section 315 of the Communications Act prohibits broadcasters from censoring a candidate's statements—even candidate statements that are libelous, indecent, or likely to incite racial hatred or violence.

Stations cannot force candidates to sign an indemnity agreement. The Supreme Court has ruled that licensees are immune from suits for libelous statements made by candidates and that to require a formal indemnification agreement would have a chilling effect on a candidate's proclivity to use a station *[Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 US 525, 535 (1959)].*

Broadcasters *cannot* require that a candidate appear live or that a program be prerecorded, review the candidate's programming material in order to make changes in the content, insist that a candidate discuss certain issues or refrain from discussing certain issues, or require the candidate to include or exclude the other individuals in the broadcast.

A station is entitled to take a few measures to assure compliance with the political rules. To ascertain the equal opportunities obligations that may be incurred by a candidate's "use" of the station, as well as to ensure compliance with other FCC requirements, broadcasters may request an advance script or tape to check such matters as length of the broadcast, proper sponsorship identification announcements, or actual appearance of the candidate *[Primer on Political Broadcasting and Cablecasting, 100 FCC 2d 1476, 1512 (1984)].*

The anti-censorship restrictions apply only to programming that would constitute a "use" *[see WMUR-TV, Inc., 11 FCC Rcd 2728 (1996)].* Other politically oriented programming is subject only to the usual content-related considerations. Such programming includes statements by a candidate's supporters in which the candidate does not participate, and news and information programming that is specifically exempt from the candidate rules as discussed above. In these cases, a station is free to control program content, specify program format, and apply normal editing procedures.

Broadcasters may be liable for defamatory programming that is not a "use." It would be entirely proper for a station to refuse to broadcast a program by a campaign committee or a political action committee (PAC) if the station concludes that the content is potentially libelous *[Felix v. Westinghouse Radio Stations, 186 F.2d, (3d Cir. 1950), cert. denied, 314 US 909 (1950)].*

Reasonable Access

While a wide range of programming may serve the public interest, Congress historically elevated access to airtime by candidates for federal office to a unique status. Until recently, all broadcast stations were required to provide *reasonable access* to any candidate for *federal* elective office who requests such time.

In December 2000, an eleventh-hour addition to an Omnibus Budget Bill exempted noncommercial stations from the federal access provision of the Communications Act and forbade the FCC from taking action against any noncommercial educational station that declined to carry a political advertisement.

The amended *Section 312* of the Communications Act now reads:

> "(a) The [Federal Communications] Commission may revoke any station license or construction permit—
>
> "(7) . . . for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a noncommercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy."

The full impact of the amended language may not be known until the Commission is faced with specific cases. Until then, noncommercial educational stations should assume that the only purpose of the statutory language is to relieve them of the duty to grant demands for reasonable access. Public stations are presumably not relieved of duties to comply with equal opportunities, sponsorship identification, and Public File requirements.

Before Congress exempted noncommercial educational stations from granting access to federal candidates, a station had to make its "reasonableness" determination on a case-by-case basis. In deciding whether a request for time is reasonable, a station could consider such practical factors as the number of candidates in a race and the amount of time requested *[Carter/Mondale Presidential Committee, Inc., 453 US 367, 387 (1981)].*

The Zapple Doctrine

The Zapple Doctrine is a cousin of the Fairness Doctrine, which is triggered when supporters of candidate A advocate A's election or oppose the election of candidate B, A's opponent. The doctrine has limited applicability for noncommercial radio because of the bans on political ads and political editorials. The demise of the Fairness Doctrine in 1987 has also created doubts as to the constitutionality of the Zapple Doctrine. The Zapple Doctrine is still enforced by the FCC, however.

The Zapple Doctrine requires that, in particular situations, broadcasters afford "quasi-equal opportunities" *[Letter to Nicholas Zapple, 23 FCC 2d 707; First Report, 36 FCC 2d 40 (1972)].* The Zapple Doctrine applies to broadcasts by supporters of legally qualified candidates in which no candidate actually appears.

Even though such broadcasts do not constitute a "use," the Commission recognizes the broadcasts are "in the political arena" and has required that when such broadcasts are made, the licensee must, if requested, provide comparable amounts of time, under comparable circumstances, to an opposing candidate or to an opposing candidate's supporters for a similar message. (Note the programming flexibility that is left to the broadcaster.) The Commission has emphasized that obligations outlined under the Zapple Doctrine are limited to formal campaign periods, apply only to major political parties, and do not apply to programming exempt from equal opportunities (bona fide news, etc.) *[In the Matter of the Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, First Report, 36 FCC 2d 40 (1972)].*

Special Rules for Public Stations

Most of the political broadcast rules apply to commercial and noncommercial broadcasters alike; some special restrictions and exemptions apply only to public stations. The Communications Act contains four provisions that ban certain types of programming on noncommercial stations: (1) political editorials, (2) political ads, (3) issue ads, and (4) ads on behalf of for-profit entities.

The rule with respect to political editorials is simple: "No noncommercial educational broadcasting station may support or oppose any candidate for political office" *[Section 399*]. This ban applies only to licensee endorsement of, or opposition to, particular candidates. It does not exclude the expression of political views by candidates or other parties over a public station. In fact, the candidate rules *encourage* the discussion of political issues. On-air personnel should, however, be carefully instructed to refrain from making statements that suggest the station supports or opposes any candidate.

The Communications Act bars public broadcasting stations from presenting political "advertisements." A political advertisement is defined as "any message or other programming material broadcast or otherwise transmitted in exchange for any remuneration and which is intended . . . to support or oppose any candidate for political office" *[Section 399B].*

Section 399B of the Communications Act also bans "issue ads." This ban includes programming broadcast in exchange for remuneration that expresses "the views of any person with respect to any matter of public importance or interest." The ban on issue ads thus includes, but is broader than, ads which advocate a position on a political topic. The ban applies to programming which expresses a view "with respect to any matter of public importance or interest" and is not limited to political candidates or political campaign groups. It applies to "any person"—even other nonprofit organizations—offering to remunerate a station for expressing a "view." Issue ads are discussed at greater length in Chapter 5 in the "Underwriting Announcements" section.

Historically, the ban on political editorials, political ads, and issue ads did not relieve the station of its duty to grant candidates for federal office "reasonable access." In fact, *Section 312(a)(7)* of the Communications Act provided that the Commission could revoke any station license or construction permit for failure to allow reasonable access to a broadcasting station by a legally qualified candidate for federal elective office on behalf of his candidacy. The FCC reconciled these conflicting directives by requiring public stations to grant federal candidates "reasonable access,"

but at *no charge*. Public stations were entitled to charge only for expenses incurred in producing a political spot for a candidate. As discussed above, noncommercial stations have not been exempted from the "reasonable access" requirements.

Sponsorship Identification

The Sponsorship Identification Rules *[Section 73.1212]* require that when a station transmits any matter in exchange for the payment or promise of any consideration— including programming furnished by the sponsor—the station must air a complete sponsorship identification. (See Chapter 4 for a more comprehensive discussion of sponsorship identification requirements.) Stations may insert the sponsorship ID into any programming that fails to include it even if the insertion causes the spot to be modified. If time prohibits adding the ID, the licensee may air the spot without the proper identification, as long as the ID is added before the next airing. The identification must appear at the beginning and end of any program longer than five minutes.

A sponsorship identification must state that the political announcement is "sponsored by" or "furnished by" the specific entity on behalf of whom such announcement is made. While there is no absolute formula for the length or format of a sponsorship ID announcement, the audience must be accurately informed as to who sponsored the spot *[Design Media, Inc., 5 FCC Rcd 5584 (1990)]*. For example, "Friends of Al Konyers" may be too general unless it is the official name of the entity *[Letter to KOOL Radio-Television, Inc., 26 FCC 2d 42 (1970)].* Stations need not be private investigators, but they must use "reasonable diligence" to confirm that the sponsor identified is truly the entity behind the spot.

Public File Requirements

A station must keep a "Political File" as a part of its Public File (see Chapter 8). The Political File rule *[Section 73.1943]* requires that, for a period of two years, stations keep the following records in this Political File:

- A record of all requests for broadcast time made by or on behalf of candidates
- A record of the station's response—positive or negative—to any request for time by or on behalf of a candidate, and the charge made
- A record of any "use"

Chapter 8: Records, Logs, the Public File

This chapter covers FCC record-keeping requirements. Topics discussed include:

- Station Log
- Program Record-Keeping
- Designing the Right System
- Local Public Inspection File
  - Access to the Public File
  - Availability
  - Guidelines for Inspection of the Public File
  - Making Copies
  - Contents of the Public File
  - Document Retention Periods
  - Obligation When a License Is Transferred
  - General Notes on the Public File
- Other Files and Records
- Designation of Chief Operator
- FM Subchannel (SCA) Leases
- Technical Measurements
- Rebroadcast Agreements

The FCC once required stations to keep detailed, daily records concerning programming and technical operations. Many of those requirements, including those related to program logs, operating logs, maintenance logs, and formal ascertainment of community issues have been eliminated or relaxed.

Despite the reduction in record-keeping requirements, FCC rules still require that stations keep a great deal of information on file. One of the emerging issues is the extent to which stations will have to begin posting documents on their websites. As discussed in Chapter 1, more and more applications filed with the FCC are filed electronically and are available on the FCC's website. The FCC now encourages broadcast stations to post Local Public Inspection File documents on their websites, but does not yet require such posting.

The availability of electronic information makes stations more readily subject to scrutiny than ever before. Stations remain accountable for maintaining compliance with a broad range of programming and technical requirements, and must carefully design and organize operational data.

Station Log

Each licensee must keep a Station Log in which it enters technical items required by the FCC. Stations may, at their discretion, keep additional information in the Station Log.

Required Entries

Stations must make the following entries in the official Station Log *[Section 73.1820]:*

- Information about any malfunctions of a tower's lighting system: A description of the problem with the date and time the problem was detected and the date, time, and nature of the adjustment or repairs made to solve the problem. The FAA must be notified immediately if required antenna lighting is not working, and a note should be made in the log of the date and time of such notification *[Sections 17.48 and 17.49].*
- An entry for each test and activation of the Emergency Alert System (EAS). Stations are allowed to keep their EAS information in a separate EAS Log, maintained at the same location, which will be considered part of the Station Log.
- Results of required field strength measurements for AM stations with directional antenna systems *[Section 73.61].*
- Regular entries of operating parameters of directional AM systems that do not have an FCC-approved antenna sampling system *[Sections 73.1820(a)(2) and 73.68].*
- Any entries required by the FCC, on a case-by-case basis, due to reported interference problems, rule violations, or deficient operations.
- Any other entries that may be required by the station authorization.

Optional Information

Stations may keep other information in the Station Log, subject to the requirement that data in the log must accurately reflect station operations *[Section 73.1800(a)].* FCC rules require stations to keep the results of various equipment measurements "on file" (see the "Other Files and Records" section at the end of this chapter for a discussion of these requirements). The results of these tests and measurements are not required to be kept in the Station Log, although many stations find it convenient to design a log in which they maintain all of their technical records.

Who May Keep the Log?

Entries in the Station Log may be made by any station employee who is competent to make the entries and has actual knowledge of the facts required. The person who makes an entry in the log is required to sign (and should also date) the log as a certification to the accuracy of the information *[Section 73.1800(a)].*

What Is a "Log?"

It is important to keep the definition of a log in mind when designing the Station Log or the log for EAS tests and activations. An envelope stuffed with printouts from EAS tests is not a "log."

Section 73.1800 sets out the general requirements for a log. Logs must be kept in an orderly and legible manner, and in suitable form. Each sheet of the log must be numbered and dated. Any abbreviations or symbols used should be accompanied, within the log, by an explanation of their meaning. All time entries should be in local time, with an indication as to whether the time is standard or daylight savings time *[Section 73.1800(b)].*

Taking Measurements

Data may first be recorded in rough form and later entered into the log or corrected, but the actual time of observation must be recorded with each entry and not the time or the date when the material is entered in the log. The log entry must be made by the person who observed and recorded the information *[Section 73.1800(c)].*

All required technical and operating measurements must be recorded before any adjustment of the equipment. When adjustments are made to restore operating levels to their proper values, a new measurement must be taken after the adjustment and the results must be entered into the log. If operating parameters were outside legal limits, make a note in the log regarding the corrective action that was taken. Measurement of any operating parameter that is affected by modulation of the carrier must be read without modulation *[Section 73.1800(a)].*

Automatic Logging

Automatic log-keeping equipment is allowed by the FCC and is becoming increasingly commonplace. The FCC requires that automatic logging equipment *[Section 73.1820(b)]* must:

- Have the appropriate time, date, and circuit functions
- Not affect the operation of the circuits or the accuracy of the indicating instruments of the equipment being monitored
- Have a recording accuracy equivalent to the accuracy of the indicating instruments
- Be calibrated against the original indicators as often as necessary to ensure accuracy
- Have indicating instruments that conform to the requirements in *Section 73.121*5 for such instruments

Automatic logging equipment must be checked periodically to ensure that data is being properly recorded. If the equipment fails for any reason, required entries in the Station Log must be made manually.

Weekly Review

The station's Chief Operator is responsible for seeing that the Station Log is reviewed at least once each week to ensure that entries are made correctly and that the station is operating in compliance with the FCC rules and the station's authorization *[Section 73.1870(c)(3)].*

This weekly review must be conducted by the Chief Operator or a person designated by the station as the Acting Chief Operator. Upon completion of the review, the Chief Operator must:

- Sign and date the log
- Initiate any corrective actions that are needed
- Advise the licensee of any technical problems that are occurring on a repetitive basis

This weekly review and the required follow-up constitute one of the principal responsibilities of the Chief Operator. Individuals have been fined by the FCC for failing to ensure that these duties are carried out.

Corrections to the Log

Once a log entry is signed, corrections should be made only by striking out the erroneous portion and making a corrective notation in the log or in an attachment to the log *[Sections 73.1800(c) and (d)].* Corrections should be made only by the person who made the original entry, the station's Chief Operator, the Station Manager, or an officer of the licensee. Any correction to the Station Log must be signed and dated *[Section 73.1800(c)].*

Retention

Ordinarily, Station Logs must be kept for two years. In special cases, such as when logs relate to a disaster or a matter under FCC investigation about which the licensee has been notified, they must be kept until the FCC authorizes the station in writing to destroy them.

Similarly, any logs relating to a situation in which there is a claim or complaint (such as a civil action), of which the licensee has been notified, must be retained until the matter is resolved or the statute of limitations expires *[Section 73.1840(a)].*

Program Record-Keeping

At one time, the FCC required stations to keep a detailed Program Log, an hour-by-hour record of all programming, entries for various required announcements, a listing of program titles, and notes about the source and type of each program. The requirements discussed below are the only remaining vestige of these elaborate logging requirements. Stations now have the latitude to keep information concerning programming in any form that meets their needs.

Required Records

When the FCC eliminated the Program Log requirement, it did not eliminate all requirements related to programming. The following record-keeping requirements are still in force with respect to specific types of programs.

Political Broadcasts. Stations must keep a record of how they handle all requests for airtime by and on behalf of candidates for public office *[Section 73.1943].* The term "legally qualified candidates" is defined in *Section 73.1940(d).* Information that must be recorded includes the time requested and when spots actually aired. The station must also keep a record of any free airtime that is provided for use by or on behalf of a candidate. This information must be kept in the Political File for two years. As discussed in Chapter 7, Congress has eliminated the requirement that noncommercial stations give "reasonable access" to all candidates for federal office.

Issues Programs Lists. Each station (other than a Class D or instructional station) is required to place in its Public File a quarterly list of several community issues addressed by the station's programming during the previous three months. The list must be placed in the file within 10 days of the end of the preceding quarter. The FCC requires that the list include the time, date, duration, and title of programming in which the issues were covered *[Section 73.3527(a)(8)].* These lists must be maintained in the Public File until final action is taken on the station's next renewal application. (See the "Local Public Inspection File" section later in this chapter.)

Public Notice of Applications. When an operating broadcast station files an application for Renewal of License or an amendment to an application for Renewal of License, it must broadcast specified announcements informing the public that the application has been filed with the FCC *[Section 73.3580(d)].* The station must certify its compliance with these requirements in a statement placed in its Public File. The certification should document the date, time, and text of the required announcements.

Personal Attacks. In October 2000, a federal court of appeals ordered the FCC to vacate its rule regarding personal attacks. Stations are no longer required to provide notices of "personal attacks" or to offer opportunities to respond.

Emergency Information. During special emergency situations, a station may, at the request of responsible public officials, broadcast point-to-point messages for the purpose of requesting or dispatching aid, assisting in rescue operations, and the like. At the conclusion of the emergency, the station must file a report with the FCC outlining the nature of the emergency, the hours during which emergency information was broadcast, and a description of the material broadcast *[Section 73.1250].* (See the "Emergency Alert System" section in Chapter 6 for more information.)

Other Needs for Program Records

Stations may have uses for accurate programming records, even if those records are not required by the FCC.

Program Underwriting. Many donor and underwriter contributions require an announcement regarding the contribution or a report to the donor or contributor that can be used for tax purposes. In addition, underwriters often want assurance that they have received appropriate on-air credit. Many stations have contracts with underwriters and donors that set out specific commitments regarding the number, timing, and content of such on-air announcements.

Detailed programming records can provide documentation that underwriting announcements were made at the specified times, with the specified frequency, for a specified duration, and in conjunction with the appropriate programming.

On-Air Fundraising Drives. Contributions by individuals are generally the largest source of private support for noncommercial stations. These funds are usually raised through on-air fundraising drives. Most station managers and development directors want to control the amount of time dedicated to fundraising activities so that they can evaluate the amount of money raised in relation to the time spent raising it. Accurate records of on-air fundraising provide the necessary information.

The Corporation for Public Broadcasting. Stations that receive grants from the Corporation for Public Broadcasting (CPB) are frequently asked to supply information about various aspects of their programming, such as:

- Service to minority audiences
- Use of work from independent producers
- Division of airtime between local and non-local programming

- Percentage of airtime devoted to several categories of program types, such as music, public affairs, instruction, and drama

Without accurate program records, such information can only be estimated.

Other Responsibilities

Most public radio stations are accountable for their programming to a variety of groups including administrators and board members of the educational institutions that may hold the station license, community advisory boards, major funders, and the general public.

Program records are a key element in documenting the service a station provides to its community, its attention to specific needs and constituencies, its fulfillment of grant requirements, and its overall performance in meeting its mission and goals.

Designing the Right System

Because public radio stations have a host of non-regulatory reasons for keeping regular program records, most stations continue to keep some form of a program log, even though not required by the FCC.

License renewal announcements (see Chapter 3 for more information) are a case in point. Since stations renew their licenses only once every eight years, it is not really necessary to the design of the log to record the broadcast of these announcements. A more appropriate way to handle this record-keeping requirement would be to prepare a “checklist” of the scheduled dates and times for such announcements, perhaps in the same document as the text of the announcement itself. Leave a place for the on-air operator to note the actual date and time for each announcement, a place for a signature or initials for each announcement, and you have a ready-made certification form that can be inserted directly into the Public File when the announcements are completed. By contrast, a more comprehensive system is needed to collect the information for the quarterly Issues Programs List and the Political File.

Program logs should record information needed for the station’s own purposes. The station may want to record information, such as underwriting announcements or public affairs programming, on a continuous basis. In other areas, periodic sampling may do the job. For example, detailed records of all programming for one month each quarter may be sufficient to analyze the balance of airtime among different sources and types of programming. Similarly, a station may want to keep more precise program entries during special fundraising periods than would otherwise be the case.

Program record-keeping can serve as an effective management tool. One way to remind on-air personnel to make required station identification announcements or PSAs is to require that they be logged. Such record-keeping also makes it easier to enforce station programming policies. Give careful thought to the design of the form or forms on which information is to be kept. A well-designed form makes accurate information easier to record and retrieve. At most public stations, successful program record-keeping is a team effort. Simple forms and good training produce the best results.

Local Public Inspection File

The Local Public Inspection File (the Public File) is a collection of documents that must promptly be made available to anyone who asks to see it. The rationale is that the public should have access to sufficient information to hold each station accountable, determine whether the representations that the station has made to the FCC are accurate, and identify those who control and operate the station. Most of the rules regarding Public Files for public stations are found in *Section 73.3527.*

Access to the Public File

The station's Public File must be available to any representative of the FCC and to any person who asks to see it during normal business hours. The FCC has set out very specific procedures regarding the inspection of the Public File. These procedures ensure that members of the public have ready access to certain documents, free of harassment by station officials, and that stations are protected from undue time and expense in fulfilling their obligations for public access.

Availability

The Public File must be kept at the station's main studio or, in the case of an applicant for a new station or a change in the community of license, at the proposed main studio or some other accessible place in the proposed community of license. The main studio is the station's principal business office and/or studio where full-time managerial and full-time staff personnel are present on a regular basis during normal business hours. For more information about main studio requirements, including the location of the main studio, see Chapter 9.

Many noncommercial stations operate "satellite" stations and obtain a waiver of the "main studio" rules *[Section 73.1125].* If the main studio and Public File are maintained outside of the community of license *[Section 73.3527(c)(2)]*, the licensee must:

- Upon telephone request, make available by mail to people within the station's geographic service area (the 1 mV/m contour for FM stations) photocopies of documents in the Public File (with the exception of the Political File). The station must pay any necessary postage.
- Mail the most recent copy of *The Public and Broadcasting* to any member of the public who requests a copy.
- Assist members of the public in identifying the documents that they would like to have sent.

The FCC requires that the Public File be available for inspection "at any time during regular business hours." This refers to the hours during which the station's business office is normally open—not the full broadcast day (or night). An informal ruling by the Enforcement Bureau allows noncommercial stations flexibility in establishing "reasonable" business hours, so long as the public is notified of the station's business hours.

Guidelines for Inspection of the Public File

A station may require personal identification before providing access to its Public File. Such identification is limited to name and address. Stations may not require the disclosure of any organizational affiliation, the purpose of the inspection, or the specific documents to be inspected.

Requests to inspect the Public File are rare. At most stations, years go by between requests. In part because such requests are so rare, station personnel tend to get flustered when a request is actually made. The following suggestions can help station staff avoid some of the confusion:

- Managers should periodically remind staff and volunteers about the requirements for access to the Public File, and make sure that anyone serving as receptionist understands Public File procedures.
- All requests for inspection of the Public File should generally be referred to the senior staff person on duty at the station, but any employee or volunteer who handles the reception desk during regular business hours should know how to handle such requests. The absence of management staff is not a reason to deny access to the Public File during normal business hours.
- Be courteous to people who want to look at the Public File. The way you handle such requests can be as important as what is in the files themselves.
- Don't be foolish. Don't leave a person alone in your file room just because that is where the Public File materials happen to be, or give them access to the Station Log or other documents which should be made available only to FCC officials.
- If something is missing from the Public File, don't try to bluster your way through the situation. Apologize for the inconvenience and make arrangements to supply the material as soon as possible.
- Never let your Public File or program logs leave the station except under the care of station staff. You may never see them again.
- FCC officials are entitled to remove required station records and logs or to have the station mail them. If the FCC is concerned enough about something to want your records, you should make a copy of the records before letting them go. If an FCC representative is actually present to take possession of the records or logs, he or she is required to furnish the station with a receipt. This provision applies only to records required by FCC rules *[Section 73.1226(a)].*

Making Copies

If a member of the public wishes to have copies of Public File materials, the station must fulfill the request within seven days. The station can make copies itself or have the copies made by a commercial copying firm. In either case, stations can ask the person making the request to reimburse the station for the "reasonable costs" of copying or require guarantee of payment in advance (e.g., by requiring a deposit or obtaining credit card information). The station may also make the requested Public File materials available at a location where the person can make his or her own copies. A station is not required to honor requests for copies of Public File materials that are made by mail, unless the main studio for the station is outside its community of license. In these circumstances, as discussed above, the station must provide photocopies of Public File documents (except the Political File) to persons within the station's geographic service area and pay the cost of postage. The station may still charge for the reasonable cost of copying the material *[Section 73.3527].*

All or parts of the Public File may be kept in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public. Simply posting the contents of

the Public File on the station's website does not satisfy a station's duty to give public "access" to those documents.

Contents of the Public File

Each of the following items must be in the Public File:

Authorizations. A copy of the current FCC authorization to construct or operate the station, and any modifications or conditions thereto, must be placed in the Public File.

Applications. A copy of all pending applications filed with the FCC, including all related materials (i.e., exhibits, correspondence with the FCC), must be kept in the Public File. Applications must remain in the Public File until "final action" has been taken—that is, until any Petitions to Deny or other objection has been resolved and the time for filing any further appeals or requests for review or stay has expired. Applications for a new construction permit or for assignment or transfer of license must, however, be kept in the file for as long as the waiver is in effect. If any Petitions to Deny are filed against an application, a statement that the petition has been filed, along with the name and address of the party filing the petition, must be placed in the Public File. Examples of applications that must be placed in the Public File include the following:

- Construction permit for a new station
- Renewal of License
- Major change in station facilities
- Assignment or Transfer of Control of license

In addition, any document or other material referred to in any of the required applications must also be available in the Public File. (Material that has previously been filed with the FCC can be "incorporated by reference" in later filings by noting the appropriate file number of the earlier document, provided there has been no change in the original information since the time of filing.) If material incorporated by reference is already in the Public File, it need not be duplicated, provided the reference clearly identifies the document so that it may be readily located.

Stations are not required to keep the engineering sections of their applications (and material related to those sections) in their Public File. The only engineering material required is a map showing the station's service contour and the location of its studio and transmitter.

Ownership Information. The Public File must contain a copy of the most recent, complete Ownership Report (FCC Form 323-E) as well as all contracts listed in the Ownership Report. Exhibits, letters, amendments, and other materials related to these contracts and documents must also be included (see *Section 73.3615(d)* of the FCC rules for information about Ownership Reports and *Section 73.3613* for details on required contracts).

The FCC requires that the following contracts and documents be placed in the Public File:

- Articles of incorporation (with any amendments).
- Bylaws (with amendments).

- Any agreement or document providing for the assignment of a license or permit directly or indirectly affecting the ownership or voting rights of the licensee or permittee; transfer of stock; issuance of new stock; or pledges, options to purchase stock, or other agreements that relate to rights to acquire the licensee's stock in the future. Upon request by the FCC, licensees and permittees must also place certain information about trust agreements in the Public File.
- Management consultant agreements with a person other than an officer, director, or employee of the station, such as an independent contractor, and other contracts that provide for profit-sharing or loss.

Most stations have numerous contracts and agreements that do not need to be kept in the Public File. Examples of documents that should not be disclosed to the public include:

- Contracts with regular employees and union contracts
- Contracts and agreements with consulting engineers, attorneys, accountants, performers, or station representatives
- Contracts and agreements with networks
- Lease agreements for SCA operations
- Music licensing agreements with organizations such as ASCAP, BMI, and SESAC

Note that while SCA leases and contracts with Chief Operators do not need to be in the Public File, they must be made available to the FCC upon request. Multiple station licensees should keep copies of the above contracts and documents in the Public File of each station.

Contour Maps. A copy of any service contour maps, when submitted with an application to the FCC—along with any information in the application regarding the service contours and/or main studio location—must be maintained for as long as they reflect accurate, current information about the station.

Political File. Information concerning requests for, and uses of, airtime by qualified political candidates must be kept in the Public File *[Section 73.1940(d)].* These records, which should be placed in the file as soon as possible, include:

- A record of all requests for airtime made by, or on behalf of, candidates for public office (whether or not the request was granted)
- Notes showing the disposition of each such request, including the charges made, if any
- Notes regarding any free use of airtime by, or on behalf of, a candidate for public office

The Public and Broadcasting. A copy of the FCC's manual, *The Public and Broadcasting* (Revised Edition, July 2008), which can be obtained through the FCC's website (www.fcc.gov/media/radio/public-and-broadcasting), must be kept in each station's Public File.

Issues Programs Lists. Each station (other than Class D stations and those with wholly instructional programming) must place in the Public File, every three months, a list of several community issues addressed by the station's programming.

These lists are to be placed in the Public File no later than the tenth day of each calendar quarter (i.e., January 10, April 10, July 10, and October 10) and should cover programming for the preceding three months. For example, the list placed in the file by January 10, would cover programming for the preceding October through December.

The list should include a brief narrative of how each issue was treated. The program descriptions should include the date, time, and duration of each broadcast, together with the title and the type of programming (e.g., call-in show, public service announcement, documentary).

Donor List. Stations must keep a list of donors supporting specific programs broadcast on the station. Donors making a general contribution to the station are not required to be identified *[Section 73.3527(e)(9)].* Informally, FCC staff advise that donor lists be kept for locally produced, as well as nationally syndicated and network, programs.

Sponsors of Controversial Programming. When a group sponsors or furnishes programming of a political nature or programming regarding a controversial issue of public importance, the station must keep a list of the chief executive officers or members of the executive committee or the board of directors of such group. When such a program is originated by a network, the required list may, instead, be kept at the network headquarters *[Section 73.1212(e)].*

Renewal Announcement Certification. The Public File must include certification that the required public notice of renewal filing was made, including the dates and times of the pre-filing and post-filing announcements and the text of the announcements. This certification must be placed in the file after completion of the last broadcast announcement *[Section 73.3580(d)].* (See the "Renewal" section of Chapter 3 for details.) Note that major amendments to renewal applications also require public notice and certification of such notice to be placed in the Public File.

Material Concerning an FCC Investigation or Complaint. Any material that has a substantial bearing on a matter that is subject to FCC investigation, or a complaint to the FCC of which the applicant, licensee, or permittee has been advised, must be placed in the Public File. An example would be materials concerning a conflict arising from a political broadcast *[Section 73.3527(e)(11)].*

Document Retention Periods

Stations must maintain their Public File (and provide for public inspection of the Public File) for as long as they hold a station authorization—even if the station is not on the air. Applicants for construction permits for new stations must maintain their Public File for as long as the application is pending before the FCC or while any proceeding involving the application is pending. Once the application is granted, all of the requirements for authorized stations apply.

The FCC has established varying periods of retention for the different types of documents that must be placed in the Public File. Once the required retention period has passed, materials should be removed from the Public File. Stations may wish to retain such materials in their business files.

The retention periods are defined in the following table:

Document	How Long to Keep It
The Public and Broadcasting	Indefinitely
Applications	Until final FCC action is taken
Ownership information	Most recent *Ownership Report* and copies of all related contracts
Contour maps	As long as they are current and accurate
Political broadcasting files	Two years
Issues programs lists	For the license term
Donor list	Two years from the date of broadcast of the program sponsored by the donor
Sponsors of controversial programs	Two years from the date of broadcast
Certification of renewal announcements	Until final FCC action on the renewal application
FCC investigation and complaint materials	Until notified in writing that the material may be discarded

Obligation When a License Is Transferred

While an application to assign a license is pending before the FCC, the licensee (the "assignor") has the responsibility for maintaining the Public File until the assignment is approved by the Commission. As soon as the assignment of the license is completed, the new licensee (the "assignee") assumes responsibility for the Public File. This responsibility includes maintaining in the Public File all necessary documents from before the assignment as well as those that must be placed in the Public File after the assignment of the license.

General Notes on the Public File

Because the Public File does not play an active role in the day-to-day operations of the station, it can easily become disorganized. When the Public File is disorganized, it is hard to know whether required documents are present or missing, and harder still for citizens or FCC inspectors to find the documents they are seeking. One convenient way to keep the station Public File in order is to create a Table of Contents to be kept with the file. The Table of Contents can be updated as new material is added and old material is removed.

It is not a good idea to keep originals of key documents in the Public File; it is too easy for them to disappear or to become mangled with use. If you find that something that should be in the Public

File is missing, remember that many of the required documents will be on file at the FCC and can be obtained through the FCC's copy service or via the FCC's website (see Chapter 1 for more information).

All multi-page documents should be bound together. Otherwise, they will soon be separated and mixed in with other materials. Consider a metal fastener or clamp. This makes it easier to copy specific pages—and more difficult for the first and last pages to get torn off.

Also, consider using a distinctive cover page for each Public File document. In large letters, the cover should indicate "PUBLIC FILE COPY: DO NOT REMOVE." The cover should also have a place for a brief description and date of the document. Use of the cover page will help you keep out documents that don't belong in the Public File.

The FCC is not the only agency that requires certain documents be made available for public inspection. It is crucial, however, to separate required FCC documents from other materials. Keeping the FCC materials separate will make it much easier for the station and the FCC to determine whether all FCC Public File requirements are being met.

Lastly, keep all station staff and volunteers informed of the Public File's existence. Anyone who answers the phone or opens the door to visitors should be aware that the Public File is available, upon request, for inspection. If the Public File is only available during certain hours, staff should be able to supply that information.

Other Files and Records

In addition to the Station Log and the Public File, the FCC requires each station to maintain a wide range of other documents, records, and files. This section outlines these miscellaneous requirements.

Licenses

Station License. In addition to the copies of authorizations kept in the Public File, stations must post, in a conspicuous place at the principal control point of the station's transmitter, both the broadcast license and any other station authorization instruments [Section 73.1230]. This posting may be accomplished either by mounting the licenses on the wall at the required location or by keeping them in a folder or binder at the required location. A photocopy of the license and other authorizations must be posted at any other control points or automatic transmission system (ATS) monitoring and control points.

- Examples of required licenses and authorizations include:
- Station license, including any postcard notices of the grant of a license renewal
- Un-built construction permits, both for new stations under construction and for existing stations making changes
- Auxiliary broadcast licenses, such as studio transmitter links (STLs) and remote pickup units (RPUs)

- Temporary operating authorizations for special tests or operations outside the normal terms of the station license (often in the form of telegrams from the FCC granting Special Temporary Authorization)
- Emergency Alert System (EAS) authorization
- Pre-sunrise or post-sunset authorizations for AM stations

If the station's principal control point is a semi-public place (such as the main control room/studio), keep the actual license elsewhere for safekeeping (such as locked up with the transmitter itself) and substitute a photocopy in the more accessible location.

Designation of Chief Operator

Each station must designate one person to serve as the station's Chief Operator *[Section 73.1870].* If that person is unavailable or unable to act (e.g., because of a vacation or illness), the station must designate an Acting Chief Operator. The designation of the Chief Operator must be in writing, and a copy of the designation must be posted with the station license. Agreements with Chief Operators working on a contract basis must be in writing and kept in the station files.

The Chief Operator for FM stations may be a volunteer. The Chief Operator for nondirectional AM stations, with no more than 10 kW operating power, may be either an employee of the station or a person working on a contract basis, and must be on duty for the number of hours necessary, per week, to keep the station's technical operations in compliance with FCC rules and the terms of the station authorization. At AM stations with directional antenna systems or an operating power in excess of 10 kW, the Chief Operator must be an employee of the station.

FM Subchannel (SCA) Leases

Any agreements for use of an FM station's subchannel(s) for subsidiary communications services must be in writing, kept in the station's records, and made available for inspection upon request by the FCC *[Section 73.3613(e)].*

The FCC does not specify the period for which these agreements must be maintained, but it is reasonable to assume that the agreements must at least be kept on hand during the time they are in effect. It is probably wise to retain copies of SCA leases at the station until final FCC action on the next renewal application that follows the expiration of the agreement.

Technical Measurements

AM and FM stations are required to make periodic tests and measurements of their equipment, and the records of these tests and measurements must be kept in the station's records. Included are:

AM and FM Equipment Performance Measurements. All AM and FM stations (except Class D stations authorized at output power of 10 watts or less) must make periodic proof-of-performance measurements of each main transmitter. For AM stations, the inspection must occur annually, with no more than 14 months between inspections. For FM stations (other than Class D stations), inspections must occur periodically, generally when significant changes are made in transmission equipment *[Section 73.1590].*

FM Stations: Subchannel Tests. FM stations are required to make certain tests after installing multiplex subcarrier transmitting equipment *[Section 73.322(f)].*

In addition, AM stations with directional antenna systems must conduct regular field strength measurements *[Section 73.61]* and directional antenna proofs-of-performance *[Section 73.154].* The results of these measurements should be entered in the Station Log.

FCC requirements for these various measurements are discussed in more detail in Chapter 10.

Rebroadcast Agreements

Before a station can rebroadcast another station's signal, it must obtain the written consent of the licensee that originated the program *[Section 73.1207]*. (See the "Rebroadcasts" section of Chapter 6.) This requirement does not apply to messages originating in the Amateur and Citizens Band services.

A copy of the written consent must be retained in the station's files. While the FCC does not specify a retention period, at a minimum such consent must be retained for as long as the station is engaged in the rebroadcast activity and probably should be kept until final FCC action on the renewal application following the last rebroadcast covered by the agreement.

Chapter 9: Operating Requirements

This chapter reviews a variety of operating requirements, including:

- Station Identification Announcements
- Hours of Operation
- Required Operating Schedule
- Share-Time Agreements
- Local Service
  - Main Studio Location
- Lotteries
- Contests
- Multiplex Transmissions
- Call Signs
- Special Temporary Authorizations (STAs) and Waivers

Station Identification Announcements

All broadcast stations are required to make periodic station identification announcements. While stations may identify themselves informally (e.g., "You're in tune with FM 90") at any time, stations must also make announcements that meet prescribed requirements concerning timing and content.

Station identification announcements must be made:

- At the beginning and end of day if the station does not broadcast 24 hours per day *[Section 73.1201(a)(1)]*
- Hourly, as close to the "top of the hour" as feasible, at a natural break in program offerings *[Section 73.1201(a)(2)]*
- Each required station identification announcement must include the station's assigned call letters immediately followed by the community or communities specified in the station's license *[Section 73.1201(b)].* When airing a required station ID, the station has the option of inserting the name of the licensee or its frequency, or both, between the call letters and the community of license. No other sequence is permissible.

Acceptable IDs:
"KAAA, Anytown"
"KAAA, 88.1 FM, Anytown"
"KAAA, University of Anytown, Anytown"
"KAAA, Anytown, your public radio station

Unacceptable IDs:
"In Anytown, this is KAAA"
"FM 88, Anytown"
"KAAA, the listener-supported broadcast service of the University of Anytown"
"KAAA, public radio for Anytown

The unacceptable IDs are unacceptable only for the required top-of-the hour or sign-on/sign-off ID. They would be fine for other announcements.

The optional identification of a station's frequency may be made in any number of ways, such as "FM 90.1," "90.1 Megahertz," "90.1 on your FM dial," or "Channel 211."

Identification of Other Communities. A station may include, in its official station identification, the names of any additional community or communities it serves, so long as the community to which it is licensed is named first. For example, a station licensed to Anytown could identify itself as "KAAA, Anytown, Neartown, and Fartown."

Simultaneous Announcements. If the same licensee operates AM broadcast stations in the 535–1605 kHz band and in the 1605–1705 kHz band, and both stations are licensed to the same community and simultaneously broadcast the same programs, station IDs may be made jointly for both stations *[Section 73.1201(c)(2)].*

Satellite Operation. When the programming of a station is rebroadcast simultaneously over the facilities of a terrestrial satellite (or "repeater") station, the originating station may make station identification announcements for the satellite station *[Section 73.1201(c)(3)].*

Hours of Operation

All noncommercial FM stations are licensed for unlimited hours of operation *[Section 73.1705(a)].* Even if the station's license application proposed only a limited schedule, hours may be expanded with no further permission from the FCC.

AM stations in the 535–1705 kHz band are licensed for unlimited hours of operation *[Section 73.1705(c)].* AM stations currently licensed only for "daytime" operation or other limited-time operation may continue to broadcast on a limited schedule, but no new AM stations will be granted such part-time operation. The Commission will, however, allow full-time stations to reduce operating hours to daytime-only in order to resolve interference.

Noncommercial AM stations in the 535–1605 kHz band and all noncommercial FM stations may apply for share-time agreements or other specified hours of operation *[Section 73.1715].*

Required Operating Schedule

Noncommercial AM stations are not required to operate on a regular schedule and have no minimum operating schedule. The FCC does note, however, that it may take the actual hours of operation into account during license renewal *[Section 73.1740(b)].* Thus, a highly irregular or limited schedule could be taken into consideration in determining whether to renew a station's license.

Noncommercial FM stations are subject to a two-tiered minimum schedule requirement: One set of requirements sets the standards stations must meet to maintain their license; a more stringent set

of requirements sets the standards that stations must meet in order not to have to share the use of their frequency.

Minimum Hours of Operation *[Section 73.561(a)].* The minimum operating schedule for noncommercial FM stations is 36 hours per week, consisting of at least five hours of operation on at least six days of the week. In order to accommodate the needs of educational institutions, the Commission has made two important exceptions. Stations licensed to educational institutions are not required to operate on Saturday or Sunday (and may thus meet the 36-hour obligation on five rather than six days), nor are these stations required to adhere to the minimum operating schedule during those days designated on the official school calendar as vacation or recess periods.

Protection Against Share-Time Applications *[Section 73.561(b)].* Stations that wish to protect their frequencies against applications to share use of their frequency must operate at least 12 hours per day each day of the year. The FCC has made no exceptions to this provision with regard to educational institutions, although it has been reluctant to force educational institutions to share a frequency in circumstances where the institution has only temporarily dipped below minimum operating requirements *[In re Application of Seattle Public Schools; for Renewal of License for Station KNHC(FM), Seattle, Washington, 4 FCC Rcd 625 (1989)].*

A station that does not meet the 12-hour-per-day schedule may be required to share its frequency upon FCC approval of an application by another party proposing a share-time arrangement.

Operating on a Reduced Schedule *[Section 73.561(d)].* When circumstances beyond the control of the licensee make it impossible to operate on a minimum schedule, the station may reduce its hours of operations or discontinue normal operations for up to 30 days without further authorization from the FCC. In such cases, however, the licensee must notify the FCC no later than the tenth day of reduced or discontinued operation. If the station's normal operating schedule is resumed within the 30-day period, the licensee must immediately notify the Commission of the date on which regular operations were restored.

If causes beyond the licensee's control make it impossible to resume a minimum schedule within the 30-day period, the station should ask the FCC for Special Temporary Authorization (STA) to remain dark or to operate with a reduced schedule for a period greater than 30 days.

Even if a station has notified the FCC of a reduced operating schedule or obtained an STA to be off the air, a station's license will expire as a matter of law if the station fails to transmit broadcast signals for any consecutive 12-month period *[Section 73.561(d)].*

Share-Time Agreements

A share-time agreement is a means by which two separate entities share a single broadcast frequency. A share-time agreement may be entered into voluntarily or imposed by the FCC. Under a share-time agreement, each party holds its own license from the FCC. Each enjoys all of the rights and each must meet all of the obligations of a licensee, with the exception that the license for each licensee specifies operations only during certain hours. In some share-time situations, the two licensed parties share station facilities, or some part of the facilities, such as the transmitter and

antenna. In other situations, the two parties operate with separate studios, at different power levels, and from different transmitter locations.

A licensee may propose a voluntary share-time arrangement for its frequency at any time. The FCC uses involuntary time-sharing to resolve proceedings between mutually exclusive applicants, each of whom seeks a permit to construct a new station. (For a discussion of the use of time-sharing to resolve proceedings involving mutually exclusive applications, see Chapter 11.) The FCC may also require a licensee to share its channel if the licensee does not meet minimum operating requirements

Voluntary Agreements *[Sections 73.1715(a) and 73.561(b)(1)].* A party proposing shared use of a frequency applies to the FCC under the same procedures that would be used in filing an application for a new station. If the licensee whose frequency will be shared agrees to the proposed sharing, the share-time application will be processed immediately. If the two parties cannot agree on a share-time arrangement, the application proposing time-sharing will be considered only in connection with the license renewal application of the incumbent licensee. In such contested situations, the new application must be filed no later than the deadline for filing petitions to deny the renewal application of the incumbent.

Voluntary time-sharing agreements must be in writing, must set forth the proposed hours of operation for each station throughout the year, and must be submitted to the Commission as part of an application or a settlement agreement. If the agreement is acceptable to the FCC, it will then become a part of each station's license.

FCC-Imposed Agreements *[Sections 73.1715(b) and 73.561(b)(2)]*. If the parties are unable to agree upon a division of time, the Commission must be so informed in the application proposing the time-sharing. The two applications will then be designated for a hearing. The hearing may include any qualification issues relevant to either applicant (e.g., legal or financial qualifications, character issues). If there are no such issues, the FCC will schedule a hearing on the single issue of time-sharing. At the conclusion of the hearing, the FCC will either conclude that time-sharing is not required or impose a time-sharing agreement on the parties if they cannot arrive at an agreement among themselves.

Changes to Share-Time Agreement *[Sections 73.1715(c) and 73.561(c)].* Once a share-time schedule is approved by the FCC, it remains in effect for the duration of the license term. Changes are allowable, however, if an agreement for change is reduced to writing, signed by the licensees, and filed in triplicate with the FCC prior to the time of the proposed change. When time is especially important (e.g., the parties agree for one station to broadcast outside its normal hours to cover a special event), the Commission will permit the licensees to make changes prior to filing the agreement, provided appropriate notice is sent to the FCC.

Consideration of share-time applications proposing time-sharing is an exception to the general rule that the FCC no longer permits the filing of a competing application for the renewal of a broadcast license *[Section 309(K)(4)].*

Local Service

To ensure that each station operates from and provides a local service to the community to which it is licensed, the FCC invokes a number of requirements under its "main studio" rules.

Main Studio Location

In 1998, the FCC amended the main studio rule to give broadcasters more flexibility in locating their main studios. The relaxed rule combines a signal contour and a mileage standard. Except for those stations described later in this section, and those for which the

FCC has granted a main studio waiver, each station must maintain a main studio at one of the following locations *[Section 73.1125]:*

- Within the station's community of license,
- Within the station's principal community contour (5 mV/m for AM radio, 3.14 mV/m for FM radio), or
- Within 25 miles from the reference coordinates of the station's community of license

AM stations licensed as synchronous amplifier transmitters ("AM boosters") are not required to maintain their main studios at the locations described above.

Waiver of the Main Studio Rule. The Commission allows noncommercial stations to locate their main studios at locations other than those specified above if a station can show that it would be in the public interest.

Waiver requests must be evaluated on a case-by-case basis, but each waiver request should contain a commitment to (1) maintain a telephone number which permits those within the service area to contact the main studio toll-free, (2) determine the programming needs of the community of license, (3) meet those needs through programs carried on the station, (4) include residents of the community of license on the governing board or on an advisory board that regularly advises the licensee on programming needs, and (5) accommodate listeners who wish to examine the contents of the station's Public File.

Studio Relocation. A station may move its studios to a new location without prior permission from the FCC so long as the new location meets the requirements for a main studio location. A station may also move its studio without prior FCC approval in the following situations:

- An AM station may move its main studio to its transmitter site at any time.
- When an AM/FM combination is licensed to the same community of service and the AM transmitter is located outside the principal community of service, the FM station can move its main studio to the AM transmitter site at any time in order to collocate with the AM main studio.

Prompt notification of the FCC is required in all of the above situations.

Staffing Requirement. A main studio is more than equipment capable of originating programming. It must be a "meaningful presence" in the area served *[Jones Eastern of the Outer Banks, Inc. 6 FCC Rcd 3615 (1991), clarified 7 FCC Rcd (1992), aff'd 10 FCC Rcd 3759 (1995)].* FCC rulings have defined this presence in staffing terms and have held that a main studio must maintain at least one managerial and one full-time staff person. Management personnel need not be chained to their desks, but must use the studio as "home base." Staff members may take on other responsibilities of another business while attending to their duties at the station *[Liability of W-AIR, Inc., DA 96-1310 (Mass Media Bureau 1996)].* In a March 16, 2000, *Letter to NFCB, EB-00-IH-0088*, the Enforcement Bureau indicated that it would allow noncommercial stations latitude in establishing "regular business hours" so long as the main studio was "reasonably accessible" to the public. The same letter also made clear that the staffing requirement of the main studio rule could be satisfied by unpaid as well as paid staff and that, while staff could be "shared" with another business, it did not permit a station to delegate main studio duties to "next-door neighbors." The essence of the staffing requirement was that "a member of the station's staff, paid or unpaid, must be present at the studio at all times during regular business hours."

Lotteries

Section 1304 of the U.S. Criminal Code prohibits the broadcast of any "advertisement of any lottery or any information concerning a lottery" *[18 U.S.C. §1304].* Although the "anti-lottery statute" and the implementing FCC regulation *[Section 73.1211]* are still "on the books," their enforcement has been greatly limited by numerous exemptions and by judicial decisions. For the most part, state law has replaced federal law with respect to the broadcast of lotteries and stations should be familiar with relevant state law. Many states permit nonprofit organizations to conduct lotteries, subject to certain conditions, or the grant of a lottery permit.

Definition of a Lottery *[Section 73.1211(b)].* A lottery has three basic elements: prize, chance, and consideration *[Federal Communications Comm'n v. American Broadcasting Co., 347 US 284 (1954)].* All three elements must be present to constitute a lottery. If any one element is missing, no lottery occurs. The definition of these elements varies from state to state, but follows a common pattern.

- *Prize:* The prize is money or anything of value, awarded to a winner.
- *Chance:* The element of chance is present if the person (or persons) who receives the prize, or the amount of the prize, is determined by chance, rather than the skill of the contestant.
- *Consideration:* Participants are required to pay money or contribute something of value, possibly including the expenditure of substantial time or energy, in order to participate. Consideration usually includes the requirement to pay for products made, sold, or distributed by the contest sponsor. A drawing limited to station contributors could inadvertently constitute a "lottery" if there are no provisions by which those who do not give the station money can enter.

Contests

The FCC's contest rule *[Section 73.1216*] requires three things. First, a station must fully and accurately disclose the material terms of a contest it conducts. Second, the station must conduct

the contest substantially as announced or advertised. Third, the material terms must not be false, misleading, or deceptive.

A "contest" is defined as "a scheme in which a prize is offered or awarded, based on chance, diligence, knowledge, or skill to members of the public." While this definition is similar to that for lotteries, there are two important differences. First, if consideration is present, the contest may be a lottery. Second, the contest rule applies only to contests conducted by the station. The lottery rule applies to lotteries conducted by third parties as well as by the station.

Material Contest Terms. "Material terms" are "those factors which define the operation of the contest and which affect participation therein." The material terms of a contest include the following:

- Details of how contestants enter and/or participate in the contest
- Restrictions on eligibility
- Deadline dates for entry or participation (i.e., dates the contest or promotion begins and, more important, ends)
- Whether prizes can be won
- When prizes can be won
- The extent, nature, and value of prizes
- Terms and conditions of how winners can select prizes
- Procedures for breaking ties

When Material Contest Terms Should Be Disclosed. The obligation to disclose material terms arises at the time the audience is first told how to enter or participate in the contest and continues thereafter. Material terms need not be disclosed each time the contest is announced, but should be disclosed periodically throughout the duration of the contest. The FCC has ruled that airing contest rules only in overnight time periods is not reasonable and has fined stations for failure to make adequate disclosure of contest rules *[CBS, Inc., 9 FCC Rcd 705 (1994)].*

Potentially Misleading or Deceptive Terms. The following are some of the practices the FCC has found to be deceptive or improper:

- Failing to give a full and accurate description of the terms of the contest
- Changing the rules or material terms of the contest or promotion without prompt, repeated notice to the public
- Applying arbitrary or inconsistent standards for judging winners
- Providing aid or assistance to some contestants, but not all
- Failing to supervise the conduct of the contest adequately
- Failing to assure each contestant a fair and equal opportunity to win the prizes announced
- Predetermining or prearranging winners in games of chance
- Failing to award prizes as announced or within a reasonable time after completion of the contest or promotion
- Failing to provide procedures for breaking ties between winners
- Creating the appearance that contestants won prizes of equal value, when only one contestant actually won the grand prize

- Creating the appearance that prizes can be won at times that they cannot be
- Giving the false impression that non-cash winners were cash winners
- Disseminating false clues
- Distortion in other programming, such as news, to promote a contest

Practical Suggestions. The rules in every contest or promotion should provide (1) a time period in which the prizes must be claimed or used (e.g., the time period within which a trip must be taken), (2) a warning that no substitutions for prizes or travel arrangements will be permitted, and (3) a statement that the station is not liable for the failure of any third-party provider of the prize (e.g., a travel agent) to satisfy its obligation to furnish the prize. If the prize involves travel or other potential risks, it is wise to have the prizewinner release the station from liability for any injury he or she may suffer by accepting the prize.

Do not exaggerate the nature of the prizes or chances of winning. Hyperbole can cause trouble. For example, if a "travel" prize includes only hotel accommodations but not transportation, terms such as "vacation" or "trip" should be avoided, since they suggest that transportation is included *[Randy Jay Broadcasting Co., 64 FCC 2d 1121 (1977)]*. A station's promotion of its "$100,000 People's Choice Contest," which appeared to indicate that $100,000 worth of cars would be given away as prizes, was declared misleading when, in fact, the prize was one car worth substantially less than that amount *[Stoner Broadcasting System, Inc., 7 FCC Rcd 3574 (1992)].*

Documentation. Documentation regarding the contest is a station's best defense against complaints. Make up a separate file for each contest. This file should not be included in the Public File. The following materials, however, should be regularly preserved in the contest file:

- Rules and eligibility requirements for the contest
- Verification as to when the rules for the contest were broadcast or otherwise disseminated
- Promotional materials relating to the contest or promotion, such as broadcast copy, recordings or air-checks of the copy as it was broadcast, print advertisements, billboard and poster layouts, direct-mail pieces, bumper stickers, and promotional merchandise
- A list of prizes awarded and the names, addresses (and in the case of prizes with a value of more than $599, Social Security numbers) of the winners
- Prize receipts signed by winners
- Personal releases allowing the station to use the name, voice, and/or image of contest winners for promotional purposes
- Any written complaints or internal memoranda concerning complaints about the contest
- Recordings of any on-air telephone calls that were an element of the contest

The standard fine for violation of the FCC's contest rule is $4,000.

Non-FCC Liability. A station's most significant exposure may not be FCC sanctions, but lawsuits from disgruntled contestants. Such liability can drastically be reduced by taking a number of precautions.

- Impose realistic and legitimate eligibility restrictions on every contest or promotion. The first restriction should be that no station employee, and no family member of station employees, should be eligible to be a contestant.
- If age is a material term (such as in a car give-away), be sure to include age restrictions among the eligibility qualifications.
- In any contest involving physical participation by contestants, obtain a full liability release from all contestants before they are permitted to participate.

Those participating in a contest should be advised that they do so at their own risk. Often, particularly at station-sponsored dances or other events involving large gatherings of people, it is difficult to have every participant sign a release. In such cases, station management should consider the use of admission tickets or vouchers that contain disclaimers and notices of risk assumption for the ticket bearers.

A broadcaster could also be liable for a defect in a product that is awarded as a prize (e.g., a champagne bottle that explodes). In order to limit this liability, have each prizewinner sign a form that releases the station from liability.

Historically, contests that resulted in personal and property damage involved such common themes as:

- Treasure or scavenger hunts on public or private property
- Events which attract large crowds and divert local authorities and police from other duties
- Competitions requiring contestants to travel specified distances in short periods of time, or that disrupt traffic flow or encourage traffic violations
- Discharging objects from the back of moving vehicles or from aircraft, particularly during a large assemblage of people (e.g., dropping a football or money over a stadium during a football game)
- Nuisance calls by the contestants calling randomly selected numbers in search of a specific slogan or response from the answering party
- Competitions requiring the accumulation and deposit of materials or items (e.g., scrap metal) in such a way as to obstruct access to commercial establishments or public offices

Criminal Liability. *Section 508* of the Communications Act prohibits the broadcast of contest information where the outcome has been predetermined. A station that gives a contestant secret assistance in a contest of purported intellectual skill may be subject to criminal sanctions *[Section 508].*

Tax Aspects of Contests and Promotions. Prizes and awards may be taxable income under the Federal Internal Revenue Code. Here are the general tax considerations of contests and promotions.

- With few exceptions, amounts received as prizes from contests must be included in the winner's gross income. If a prize is not money, but goods or services, the fair market value of the goods or services is the amount to be included in gross income.

- The broadcast licensee must report to the IRS the identity of contest winners and the amounts awarded to them on MISC Form 1096. The report must include (1) the name and address of the prize recipient and (2) the *aggregate* amount of payments to that recipient. This reporting requirement is triggered whenever the aggregate amount given to a recipient in one year is $600 or more. In addition, a copy of IRS Form 1099 MISC must be provided to prize recipients by January 31 of the year following the calendar year in which a prize is awarded.
- The obligation to report income occurs when the amount or prize is credited or set aside for the recipient. Therefore, regardless of when the recipient claims the prize, the obligation to report the income arises when the broadcast station makes the prize available.

Multiplex Transmissions

An AM or FM channel accommodates "side channels" as well as the main channel which carries the station's programs. The side channels can be used by one or more "subcarriers" without disruption of the main channel service. Making multiple use of the broadcast channel is called "multiplexing."

FM Subsidiary Communications Services and AM Subcarrier Services. Broadcast stations may transmit FM or AM subcarriers not audible on ordinary consumer receivers to provide a Subsidiary Communications Authorization. Radio reading services, foreign language programs, utility load management, market and financial data and news, paging services, point-to-multipoint messages, and traffic control signal switching are some of the SCA services possible. Stations are at liberty to provide SCA services for both broadcast and non-broadcast purposes, with the following caveats *[Sections 73.593, 73.295 (FM), and Section 73.127 (AM)]:*

- If the SCA service is offered on a common carrier basis, the licensee must apply to the FCC's Common Carrier Bureau for authorization for that service and comply with all relevant regulations. For example, a paging service available to any member of the public who subscribes would be a common carrier service. It is the responsibility of a licensee to determine when a service is common carrier in nature.
- While stations are free to provide or not provide such services or to lease this capacity to another party, stations cannot "sell" or transfer this authorization separate from the broadcast license itself.
- Requirements for station identification, delayed recording, and sponsorship identification announcements are not applicable to SCA services.
- Licensees are responsible for all material transmitted in a broadcast mode and should reject the broadcast of any material deemed inappropriate.
- Remunerative use of a public station's FM subcarrier capacity cannot preclude or be detrimental to a radio reading service. Thus, a station that leases an SCA channel at cost to a reading service could not replace the reading service with a more profitable tenant if the reading service was left without SCA service.
- An AM station is prohibited from using its carrier in such a way as to degrade its own programs or the programs of another broadcast station.

FM and AM Multiplex Transmissions. The technical standards for FM multiplex subcarriers, except those used for stereophonic sound broadcasts, are found in *Section 73.319* of the FCC rules. The technical standards for AM multiplex subcarriers, except those used for stereophonic broadcasting, are found in *Section 73.127.*

FM Stereophonic Sound Broadcasting. Noncommercial FM stations do not need authority from the FCC to transmit in stereo, but must install proper equipment pursuant to *Sections 73.322* and *73.1590* of the FCC rules. Specifications governing FM stereophonic sound transmission standards are found in *Sections 73.322* and *73.597.*

AM stations may transmit stereophonic programs only upon installation of type-accepted transmitting equipment and required measuring equipment to ensure that such transmissions conform to the required modulation characteristics. While the FCC does not specify composition of the transmitted stereophonic signal, the signal must comply with occupied bandwidth limitations, must be compatible with AM receivers using envelope detectors, and must comply with pertinent international agreements *[Section 73.128].*

Call Signs

Four-letter call signs beginning with the letter K are assigned to stations located west of the Mississippi River; call signs beginning with the letter W are assigned to stations located east of the Mississippi River *[Section 73.3550(e)].* Stations operating in different broadcast services and under common control (e.g., commonly named AM and FM, FM and TV stations) can ask to use the same call sign. Low Power FM stations are assigned four-letter call signs in the same manner as described above, followed by the suffix "-LP" *[Section 73.3550(f)].*

The call sign of an FM broadcast translator station consists of the initial letter K or W, followed by the channel number assigned to the translator and two letters *[Section 74.1283(a)].* FM booster stations use the call sign of the primary station, followed by the letters "FM" and the number of the booster station being authorized, e.g., WFCCFM-1 *[Section 74.1283.(b)].*

Requests for new or modified call signs must be made via the FCC's Broadcast Call Sign Reservation and Authorization System (CSRS) found on the FCC's website (www.fcc.gov/media/engineering/call-sign-reservation-and-authorization-system-csrs) *[Section 73.3550].* Paper requests for new call signs or call sign changes are no longer accepted. Licensees and permittees may use this online system to:

- Determine the availability of any call sign
- Select an initial call sign for a new station
- Change a station's call sign
- Modify an existing call sign to add or delete an "-FM" or "-TV" suffix
- Exchange call signs with another licensee or permittee in the same service
- Reserve a different call sign for a station being transferred or assigned

Applicants may request a call sign of their choice as long as the call sign requested is not assigned to another entity. The Commission will grant a request for a call sign assigned to a station in another service (e.g., a TV or AM station) if the FM applicant certifies that the other station has consented to the use of its call sign. If an applicant wishes to use a call sign assigned to the Coast Guard, it must make a request to the Coast Guard to release the call sign to the FCC. After it is released, the broadcaster may apply for the call sign. No application fee is charged for call sign requests for noncommercial stations.

Organizations granted a construction permit should apply for call letters as expeditiously as possible following authorization *[Section 73.3555(b)].* If the permittee does not request a call sign, the FCC will randomly assign one.

Stations that choose to modify their call letters can request an "effective date" for the change as long as that date falls within 45 days of the Commission's receipt of the request for change *[Section 73.3550(j)].*

If a station license or permit is being transferred or assigned, the proposed transferee or assignee may request a new call sign for the station or construction permit. Such a change will not be effective until the relevant application is granted and the FCC receives notification of consummation of the transaction *[Section 73.3555(c)].*

Special Temporary Authorizations (STAs) and Waivers

Although FCC regulations are rigorously enforced, the Commission recognizes that equipment breakdowns occur, unique technical situations may demand an exemption from normal requirements, and special situations may warrant operation outside of the rules. Generally, any noncompliance with FCC technical rules requires notification to the Commission, particularly in situations that involve extended periods of time.

When a station needs authorization to operate temporarily outside of the terms of the station authorization, and no specific procedure for such operation is specified, it is usually possible to apply for a Special Temporary Authorization *[Section 73.1635].*

Requests for an STA must be filed with the FCC at least 10 days prior to the date of the proposed operation *[Section 73.1635(a)(1)].* The STA may be in letter form and should fully describe the proposed operation and why such operation is necessary. The STA must be signed by the licensee or the licensee's representative *[Section 73.1635(a)(2)].* In an emergency, licensees can apply to the Commission via telephone or telegram, followed by a written confirmation request within 24 hours *[Section 73.1635(a)(3)].*

STAs are usually granted for a limited period of time, up to 180 days, and may be extended as the situation demands *[Section 73.1635(a)(4)].*

Many FCC rules, particularly those that regulate equipment-related functions, describe the procedure to be followed in the event a licensee cannot comply with FCC requirements. The

following sections of the FCC rules specify procedures for obtaining an STA, or permit temporary operations at variance with technical requirements, without prior authorization from the FCC:

73.62	Directional antenna system tolerances
73.157	Antenna testing during daytime
73.158	Directional antenna monitoring points
73.691	Visual modulation monitoring
73.1250	Broadcasting emergency information
73.1350	Transmission system operation
73.1560	Operating power and mode tolerances
73.1570	Modulation levels
73.1615	Operation during modification of facilities
73.1680	Emergency antennas
73.1740	Minimum operating schedule

When protracted, rather than temporary, relief from an FCC requirement is needed, a waiver of an FCC rule may be possible. Waivers can be granted for a specific one-time situation or may grant a licensee the equivalent of a permanent exemption. The Commission has granted waivers of interference standards, main studio location requirements, EAS equipment requirements, requirements for monitoring transmitter operations, and the prohibition on point-to-point messages outside emergency situations.

A request for a waiver may be made by letter, by telephone, or in person with Commission staff. A waiver does not take effect until FCC notification that the waiver is granted, although such notice can be retroactive in effect. The Commission can modify or revoke a waiver without prior notice.

In many cases, FCC staff have informal guidelines about the extent to which they will bend the rules, such as the maximum amount of interference that will be tolerated even when all parties agree or the maximum amount of time a station will be given to rectify a troublesome situation. Since these guidelines are unpublished, one learns of them only through studying previous cases and learning about specific situations.

Before applying for an STA or a waiver, discuss the problem with an engineer, attorney, the manager of another station in a similar situation, or other appropriate parties and find out what showing in support of the waiver or STA request the FCC will expect.

Chapter 10: Technical Regulations

This chapter covers the following topics related to technical regulations that affect full-service public stations, translators, and boosters. The technical regulations that affect LPFM stations are discussed in Chapter 12. This chapter discusses the following topics:

- Spectrum Allocation
- Technical Specifications for Broadcast Stations
- Transmitter Control
- Operational Requirements
- Required Technical Measurements
- Meters and Indicating Instruments
- Painting and Lighting Requirements
- Authorized Power
- TV Channel 6 Protection
- Translators and Boosters
- Class D Stations

The FCC regulates almost every technical aspect of broadcasting, beginning with the allocation of the electromagnetic spectrum. Pursuant to requirements of the Communications Act and agreements between the United States and other countries, the FCC allocates portions of the spectrum to services such as AM and FM radio, VHF and UHF television, common carrier services, satellite channels, land mobile service, and many others. Part of the FCC's spectrum management function is the reservation of particular channels for noncommercial use *[Section 73.501].*

The FCC has reserved 20 of the 100 FM channels exclusively for noncommercial educational FM broadcasting (i.e., Channels 200–220 (87.9–91.9 MHz). In addition, other FM channels may be reserved for noncommercial use based on a showing that (1) the remaining reserved channels cannot be used because they would cause prohibited interference to TV Channel 6 or foreign broadcast stations; or (2) the applicant is prohibited from using the reserved band by existing stations or previously filed applications and the proposed station would provide a first or second noncommercial radio service to 2,000 or more people, who constitute at least 10% of the population within the station's service area. The request to reserve a non-reserved frequency must be submitted to the FCC as a petition for rulemaking to modify the FM Table of Allotments *[Section 73.202(b)(11)].*

In addition to allocating spectrum, the FCC establishes technical standards for particular communications services. To ensure adequate quality of the broadcast service, promote certain signal characteristics, and protect each station's service area from interference, the FCC establishes numerous operating parameters for broadcast stations, including power, frequency deviation, and modulation. Every station is responsible for ensuring that operations remain within prescribed limits.

The right to construct a broadcast station on a particular frequency is granted through an application process. In the past, the FCC accepted applications for new noncommercial stations at any time. In April 2000, the FCC revised its rules to specify a "window" filing period [see *Section 73.3573 and Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 15 FCC Rcd 7386 (2000)].* Applications for new noncommercial stations are now accepted only during the limited period of time when a "filing window" is open. Filing windows are announced in Public Notices which the FCC releases and posts on its website. The application process is described in greater detail in Chapter 11.

While the technical aspects of broadcasting remain heavily regulated, the FCC has "streamlined" some requirements by eliminating detailed procedures for achieving technical compliance and giving broadcasters flexibility in achieving the end result. For example, the FCC once prescribed a host of technical readings and log entries that had to be taken every day. Licensees are now given discretion to create their own system of ensuring that stations operate according to licensed values. In the past, anyone who operated a station was required to have an operator's license, and various kinds of equipment testing and repair could be done only by individuals with "advanced" licenses. Now, no operator licenses are required to operate a station, stations may operate for periods of time on an unattended basis, and the qualifications of the person who serves as Chief Operator are left largely to the station.

Spectrum Allocation

Spectrum policies affect the frequencies reserved for noncommercial use, the values which determine the coverage of the station, and the bandwidth associated with the frequency that is licensed.

Different principles are used to assign reserved and non-reserved frequencies. Frequencies in the non-reserved, or "commercial," portion of the FM band are "allotted" to specific communities through a rulemaking process. This process also authorizes use of the frequency by a particular class of station. There are now seven classes of FM stations: A, B1, B, C3, C2, C1, and C0. Each class is defined in terms of levels of ERP and HAAT. For example, a Class A station is one that may operate with a minimum effective radiated power (ERP) of 100 watts, a maximum ERP of 6,000 watts, and a minimum height above average terrain (HAAT) of 100 meters (328 feet). A maximum Class A station has a predicted coverage contour of 28 kilometers (approximately 16.8 miles). The highest-class FM station, a Class C station, operates with 100,000 watts at 600 meters (1,968 feet) HAAT, and has a predicted contour of 92 kilometers (approximately 55 miles). The allotments of non-reserved channels, including the class of the station allowed, are set forth in the FM Table of Allotments *[Section 73.202].*

No one can apply to operate on a non-reserved FM frequency until that frequency has been allotted through a rulemaking process that amends the Table of Allotments. The station proposed must be designed so as to cover substantially the entire community of license with a city grade signal (for FM stations, a 70 dBu signal). Non-reserved frequencies are protected from interference by a "mileage separation" methodology. The FCC rules specify minimum distances between allotments on the same channel; first-, second-, and third-adjacent channels; and allotments

located 53 and 54 channels above and below the allotment. The separations required vary with the class of the frequency and the relationship to other allotments *[Section 73.207].*

By contrast, in the portion of the FM band reserved for noncommercial use, licenses are granted on a "demand" basis. Frequencies and classes of stations are not allotted in advance. Applicants are allowed to choose a frequency and tailor its use to their needs, as long as they avoid interference to other stations. There are no "city grade" coverage requirements. Noncommercial applicants are required to cover only 50% of their designated community of license, or 50% of its population, with the service area (60 dBu) contour *[Section 73.515].* Noncommercial stations are assigned a class, based on their ERP and HAAT, but the classification is descriptive, not prescriptive. That is, the classification is based on the facilities actually proposed in a construction permit application, not on the nature of the frequency allotment *[Section 73.506].*

Interference between non-reserved channels is determined by a "contour" method rather than a mileage separation method. The FCC rules prevent "overlap" of certain signal strength contours. These contours vary with the proximity of the relevant frequencies. For example, the interfering (40 dBu) contour of a proposed station may not "cause" prohibited overlap with the protected (60 dBu) contour of another co-channel station, nor may the proposed station's protected contour "receive" prohibited overlap to its protected contour from the co-channel station's interfering contour *[Section 73.509].*

The reservation of spectrum has generally worked to public radio's advantage. By setting aside a block of frequencies as the exclusive domain of noncommercial radio, the Commission has protected these frequencies from commercial development and, long after the commercial radio bands were saturated, afforded public broadcasters a chance to develop new stations. The demand system also gave stations flexibility in the design of facilities.

At the same time, like unplanned cities, the demand system has not always resulted in the most efficient use of space. In many communities, there is limited public radio service but no room for the development of new stations. In other locations, the configuration of stations has left substantial "holes" in the spectrum, but none suitable for a significant power increase by an existing facility.

A related problem arises from the Commission's frequency allocation policies for television. The frequencies allocated for Channel 6 television are immediately adjacent to the reserved noncommercial FM band. Because of the limited selectivity of many television receivers, public radio stations may cause interference to the reception of TV 6. In response, the FCC imposed severe power restrictions on public radio stations located near Channel 6 television stations. The protection of Channel 6 television stations precludes the use of many FM frequencies reserved for noncommercial use.

In addition, treaties with other countries have an effect on the spectrum available for noncommercial use. For example, it is often difficult to use many reserved channels along the Canadian and Mexican borders because of international agreements that require U.S. stations to protect existing Canadian and Mexican stations, as well as unused frequencies allotted for future use.

The FCC's spectrum management policies affect the technical design of new facilities and modification of existing facilities. Because these technical restrictions vary from case to case and have become increasingly complicated as the FM band has become more congested, an application for a construction permit to modify an existing station or to build a new station usually requires help from a consulting engineer. This chapter is limited to a general overview of the spectrum management regulations most likely to be encountered by public stations: authorized power levels, rules for translators and booster stations, policies concerning protection of Channel 6 television, and regulation of Class D stations.

Technical Specifications for Broadcast Stations

Station Power

The power at which a noncommercial FM station is allowed to operate is initially determined through an application process. After studying the FM frequencies available, an applicant must file an application which demonstrates that the frequency will not cause prohibited overlap with other authorized FM stations, Channel 6 TV stations, or

Canadian or Mexican allotments. The application must also propose a specific ERP and HAAT with which the station will operate from a particular transmission site. If the FCC is satisfied that all technical criteria are met—and if no mutually exclusive applications or Petitions to Deny are filed—the FCC will issue a permit that authorizes the construction of a station. After the station is built, the permittee files a license application and is issued a license that specifies the technical values at which it must operate. The specified power levels at which the station is licensed must then be maintained within the following limits *[Section 73.1560]:*

FM (over 10 watts)	90% to 105% authorized level
FM (10 watts or less)	0% to 105% authorized level
AM	90% to 105% authorized level

If it becomes technically impossible to operate within the prescribed limits of authorized power, a station may operate at reduced power for up to 30 days without specific authorization from the FCC. If reduced power operations will extend beyond 10 consecutive days, the station must notify the FCC by the tenth day *[Section 73.1560(d)].*

If normal operations are restored after the 10-day notice has been given, but within the 30-day period, the station must notify the FCC in writing of the date on which the station returned to authorized power levels. If it is impossible to return to authorized levels within the 30-day period, the station must seek Special Temporary Authorization to continue operating at variance with its construction permit or license. This written request must be submitted by the thirtieth day of reduced power operation. (See *Section 73.1635* and Chapter 9 for details concerning requests for Special Temporary Authorization.)

Modulation

Modulation should be maintained at as high a level as is consistent with good engineering practice (i.e., without distortion) but at no more than the maximum limits outlined below. The FCC suggests

that modulation generally should not be less than 85% on peaks of frequent recurrence, but notes that lower levels may be necessary to avoid objectionable loudness or to maintain the dynamic range of the material being broadcast. The maximum limits *[Section 73.1570]* are as follows:

FM 100% on peaks of frequent recurrence: Stations that broadcast in stereo and also use their subcarriers for subsidiary services may increase their peak modulation up to 110% (0.5% for each 1.0% subcarrier injection modulation)

AM 100% on negative peaks of frequent recurrence and 125% on positive peaks at any time

Frequency

Each broadcast station is authorized to operate on a specific frequency and may not deviate from that frequency by more than the following limits *[Section 73.1545]:*

FM Plus or minus 2,000 Hz: Stations operating at 10 watts or less are allowed a deviation of plus or minus 3,000 Hz

AM Plus or minus 20 Hz

Stations may measure their frequency as often as, and by whatever method, they choose, as long as the method has sufficient precision to determine that the station is operating within the prescribed limits. The most common approaches are by using a frequency monitor (which all stations were required to have at one time), using a frequency counter, or retaining a professional electronic measuring service. The standard reference source for frequencies is a National Institute of Standards and Technology signal which is transmitted over stations WWV, WWVB, and WWVH (www.nist.gov/pml/time-and-frequency-division/radio-stations) Measuring instruments can be calibrated against one of these stations.

Transmitter Control

The heart of station operations is control of the transmitter. At one time, FCC regulations distinguished among four distinct methods of controlling the transmitter:

- Control at the transmitter itself
- Control at the transmitter with extension metering
- Control through a remote control system
- Control with an automatic transmission system (ATS)

Current Requirements

Current FCC rules establish general guidelines and let the licensee decide on specific implementation. Regardless of the control system used, each station must meet certain requirements regarding its transmitter control point or points (more than one authorized control point is possible) *[Section 73.1350(g)].*

For example, any control point for the station must provide for compliance with Emergency Alert System (EAS) requirements. At any control point, a station must have the capacity to receive and to transmit the EAS Attention Signal and to monitor EAS messages immediately. A copy of the EAS Operating Handbook must be immediately available at any and all station control points *[Section 11.15 (LPFM and Class D stations are exempt from the EAS transmission requirement), Section 11.11(b)]*.

If the station operates SCA services, the station must be able to monitor and control such services from its control point, even if those services are supplied from other sources or locations *[Section 73.295(e) for FM and Section 73.127(e) for AM].*

Control at the Transmitter

At some stations, the transmitter is located at the same site as the studio. Other stations retain a transmitter operator at a remote transmitter site, often where such a person can attend the transmitters of several stations at once. In either case, the Chief Operator must devise a system of monitoring the station's operating parameters as often as necessary to ensure maintenance of required levels and to make necessary adjustments.

Extension Meters

Extension meters permit one to monitor and operate the transmitter from a remote location. At some stations, the transmitter is in the same building as the main studio and control point, but on a different floor or in a different room. Extension meters in the control room are "hard-wired" to the transmitter itself.

The FCC no longer sets forth detailed requirements for the use of extension meters. Instead, the FCC gives broadcast stations latitude to equip themselves with indicating instruments for determining power and for proper adjustment, operation, and maintenance of the transmitting system *[Section 73.258].* The indicating instruments must meet certain technical requirements and specifications *[Section 73.1215].*

Stations have up to 60 days to repair or replace indicating instruments that malfunction. If repairs or replacement cannot be made within that time, the station must notify the FCC and request additional time to complete repairs of defective equipment. The notice should be sent to the FCC's Audio Division and should describe the steps taken to repair or replace defective equipment and the procedures being used while the equipment is out of service *[Section 73.3549].*

Operational Requirements

At one time, the FCC required that a licensed "duty operator" be in charge of the transmitter whenever a station was on the air. Those requirements were eliminated as of December 2, 1995. Broadcast stations may now be operated on an unattended basis without prior FCC approval *[Section 73.1300].*

It is important to note that permitting stations to operate on an unattended basis does not mean that the FCC has eliminated the human factor altogether. A human presence is still required during

normal business hours as part of the FCC's main studio rules (see Chapter 9). Unattended operation does not excuse a station from complying with EAS requirements, designating a Chief Operator, or assuring that the station satisfies all technical specifications.

Chief Operators

Technical operations at each station must be supervised by a Chief Operator. The Chief Operator is responsible for carrying out, or delegating and supervising, the completion of the following duties *[Section 73.1870]:*

- Periodic inspection and calibration of the transmission system, required monitors, metering and control systems, and any necessary repairs or adjustments.
- Periodic AM field monitoring point measurements, equipment performance measurements, or other tests as specified in the rules or terms of the station license.
- Review of the station records at least once each week to determine if required entries are being made correctly and to verify that the station has been operating within the rules and the terms of the station license. After completing this weekly review, the Chief Operator (or the person to whom this task has been delegated) must sign and date the log, make any necessary corrections, and advise the licensee of any recurring problems.

The Chief Operator for FM stations (and for AM stations with less than 10 kW operating power) may be either an employee or a person working on a contract basis. The Chief Operator for AM stations with directional antenna systems or operating power of more than 10 kW must be a full- or part-time employee, on duty for whatever number of hours the licensee believes is necessary to keep the station in compliance with FCC's technical rules.

The designation of the Chief Operator must be in writing. A copy of the designation must be posted with the station's license at the control point for the station. At times when the Chief Operator is unavailable (e.g., illness or vacation leave), an alternate must be designated. Agreements with Chief Operators working on a contract basis must be in writing and kept on hand (but not in the Public File), where they can be made available to an FCC inspector.

Required Technical Measurements

AM and FM stations are required to make periodic tests and measurements of equipment. The records of these tests and measurements must be made available to the FCC on its request, but are not required to be placed in the station's Public File.

AM and FM Equipment Performance Measurements

All AM and FM stations (except Class D stations authorized at output power of 10 watts or less) must make proof-of-performance measurements of each main transmitter as follows:

- Upon installation of a new or replacement main transmitter
- Upon modification of an existing transmitter *[Section 73.1690]*
- Upon installation of AM stereo *[Section 73.128]*
- Upon installation of FM subcarrier or stereo *[Sections 73.295, 73.297, 73.593, and 73.597]*

- Annually, for AM stations, with not more than 14 months between measurements
- When required by the station license or other provisions of the FCC rules *[Section 73.1590]*

The FCC rules do not specify a period of retention for the results of these required measurements. The safest rule is to retain the measurements until they are replaced by a new set of measurements.

FM Stations: Subchannel Tests

FM stations are required to make certain tests upon installation of multiplex subcarrier (SCA) generators. These tests should show compliance with crosstalk and bandwidth limitations. Records of these tests must be kept on file at the station *[Sections 73.297 and 73.319].*

AM Stations: Antenna System Measurements

Because AM stations use their antenna structure to transmit the broadcast signal, changes in the structure can change the pattern of the AM signal. After modifying an AM structure (for example, mounting an additional antenna, such as a land mobile or RPU antenna on the tower structure), the licensee must recalculate the antenna resistance and report the results to the FCC. A copy of the most recent antenna resistance measurement filed with the FCC must be kept on hand.

AM stations with directional antenna systems must conduct field strength measurements as often as necessary to ensure that the station is operating within the values specified in its license *[Section 73.61].* If an AM station using a directional antenna has any reason to believe that the radiated field may exceed authorized limits, it must conduct a partial proof-of-performance following the provisions of *Section 73.154*. The results of these measurements should be entered in the Station Log.

Meters and Indicating Instruments

All broadcast stations are required to have such metering and indicating instruments as are necessary for the proper adjustment, operation, and maintenance of the transmitting system. The FCC specifically requires the following:

For FM Stations Licensed at More Than 10 Watts *[Sections 73.258 and 73.558]:*

- Instruments to determine power by the indirect method
- Instruments to indicate the relative amplitude of the transmission line, radio frequency current, voltage, or power
- Any other instruments needed for the proper adjustment, operation, and maintenance of the transmission system

For AM Stations *[Section 73.58]:*

- Instruments for determining power by the direct and indirect methods
- A thermocouple-type ammeter or other device capable of providing an indication of radio frequency current at the base of each antenna element (current measured at the input of the excitation circuit feed line is acceptable as the antenna current)

The function of each meter must be clearly and permanently indicated on the meter itself or on the adjacent panel.

The "direct" method of determining the operating power of an FM station is by reading a transmission line meter responsive to relative voltage, current, or power and located at the Radio Frequency (RF) output terminals of the transmitter. The "indirect" method of determining operating power is by means of a formula that multiplies DC input power by the efficiency factor of the transmitter. It is wise to have the Chief Engineer post this formula at the control point of the station so that operating power can be calculated by the indirect method if meters are defective or in need of recalibration *[Section 73.267].*

Specifications for Indicating Instruments

Linear scale instruments having square-law scales, instruments with logarithmic scales, and instruments with expanded scales must meet the following specifications *[Section 73.1215]:*

- The scale cannot be less than 2.3 inches (5.8 cm) in length.
- Accuracy shall be at least 2% of the full scale reading.
- The maximum rating of a meter shall be such that it does not read off-scale during modulation or normal operation.

Instruments with different scales must meet the following specific standards:

Linear Scale Instruments

- The scale must have at least 40 divisions.
- The full scale reading cannot be greater than five times the minimum normal indication.

Instruments Having Square-Law Scales

- The full scale reading may not be greater than three times the minimum normal indication.
- No scale division above one-third full scale reading (in watts) may be greater than one-thirtieth of the full scale reading.

Instruments Having Logarithmic Scales

- The full scale reading cannot be greater than five times the minimum normal indication.
- No scale division above one-fifth full scale reading (in watts) can be greater than one-thirtieth of the full scale reading.

Instruments Having Expanded Scales

- The full scale reading cannot be greater than five times the minimum normal indication.
- No scale division above one-fifth full scale reading (in watts) shall be greater than one-fiftieth of the full scale reading.
- Stations can use digital meters, printers, or other numerical readout devices in place of, or in addition to, a station's indicating instruments. The readout of these devices must include at least three digits and must indicate the value of the parameter being read to an accuracy of 2%. If a multiplier is applied to the reading of any parameter, it must be indicated at the operating position.

Defective Meters

A meter that appears to be defective, damaged, or of questionable accuracy cannot be used until it has been checked and, if necessary, repaired and recalibrated by either the manufacturer or a qualified repair service. Stations cannot put repaired meters back in use without a certificate of calibration indicating the instrument conforms to the manufacturer's specifications for accuracy *[Section 73.1215].*

If a meter is not functioning properly and no ready substitute meets FCC standards, a station can operate without that equipment for 60 days—subject to the provisions outlined below. Licensees are not expected to notify the FCC during this 60-day period *[Sections 73.558 and 73.58(e)].*

For FM Stations

- If the transmission line meter gives out, stations are expected to determine operating power by the indirect method during the period that the meter is not available *[Sections 73.258 and 73.267(c)].*

For AM Stations

- If a station with a directional antenna system loses its antenna base current ammeter, measurements may be taken from the antenna monitor.
- If the defective instrument is the antenna current meter of a non-directional station or the common point meter of a directional station, indications may be obtained from the antenna monitor, and measurements may be taken with a remote meter. If the station does not employ a remote meter, operating power must be determined by an alternative direct method *[Section 73.58]* or by the indirect method *[Section 73.51(d)].*
-

If the licensee is unable to repair a meter within 60 days, the licensee should informally request additional time to complete repairs to the equipment *[Sections 73.558].*

Painting and Lighting Requirements

The construction permit and license for a station may contain conditions for painting and lighting the radio tower. These conditions are designed to satisfy Federal Aviation Administration requirements that promote air safety *[Section 17.21 through 17.58 and 73.1213].* Details of FAA requirements are provided in FAA Advisory circulars titled "Obstruction Marking and Lighting" *(AC 70/7460-1L)* and "Specification for Obstruction Lighting Equipment" *(AC 150/5345-43G).* Both are available on the FAA website (www.faa.gov/airports/resources/advisory_circulars/).

Applicability of Painting and Lighting Requirements

Antenna structures must be painted and lighted when they exceed 200 feet (60.96 meters) in height above ground or when they are close enough to an airport or heliport to present an aeronautical danger. Applicants may seek to have painting and lighting conditions modified by explaining why the painting and lighting conditions are not needed to ensure air safety *[Section 17.21].*

Painting and Lighting Requirements

Painting and lighting requirements vary, depending on the tower's height; its proximity to other structures, airports, and population centers; and other factors.

In general, towers that are required to be painted must have an alternating pattern of white and aviation-orange color bands equal to approximately one-seventh the height of the tower. The band may not be more than 100 feet or less than 1.5 feet wide. Orange bands are required at both the top and the bottom of the tower.

Lighting specifications vary with the height of the tower and may require fixed or flashing red beacons or high-intensity strobe lights.

Authorized Power

The FCC has established minimum and maximum power limits for "full-service" broadcast stations. (The power limits for "secondary" stations, such as Class D stations, translators, and boosters, are discussed later in this chapter.)

Minimum Power Requirements

The FCC will not license a new full-service noncommercial FM radio station with an effective radiated power of less than 100 watts, the minimum power for Class A service *[Sections 73.506(a)(3), 73.511(a), and 73.211].*

Noncommercial FM stations operating with a maximum power output of 10 watts and an effective radiated power of less than 100 watts are designated as Class D stations. These stations were originally licensed prior to 1978. The Commission will not accept new applications for this service *[Section 73.512].* Class D stations operate on a secondary basis: They are not protected from interference by full-service commercial stations.

In September 2000, the FCC created the Low Power FM (LPFM) service and authorized two classes of LPFM stations. LP100 stations must operate with minimum facilities of 50 watts ERP at 30 meters HAAT and maximum facilities of 100 watts ERP at 30 meters HAAT.

The second class of LPFM station, LP10 station, must operate with at least 1 watt ERP (no minimum HAAT) and with maximum facilities of 10 watts ERP at 30 meters HAAT.

FM Maximum Power Limitation

In the past, the FCC rules imposed no maximum power limit on noncommercial FM radio stations. Since January 1, 1985, however, the FCC has applied the commercial limits to noncommercial facilities *[Section 73.511(b)].* As a result, no station will be authorized with facilities in excess of the following limits:

- In Zones I and IA (the northeastern United States, Puerto Rico, the Virgin Islands, and Southern California), the equivalent of 50 kW (17.0 dBk) at an antenna height of 150 meters (492 feet) above average terrain (HAAT)

- In Zone II (the rest of the United States), the equivalent of 100 kW (20.0 dBk) at an antenna height of 600 meters (1,968 feet) above average terrain (HAAT)
- Stations may operate with antenna height above average terrain in excess of the above limits if they decrease their power accordingly

"Grandfathered" stations, authorized at higher power prior to December 31, 1984, may continue to operate as authorized.

AM Power Requirements and Limitations

The limited number of noncommercial AM stations are subject to a complex set of rules regarding minimum and maximum power limitations. Applicants for new or modified non-commercial AM stations should consult *Sections 73.21–73.37.*

TV Channel 6 Protection

Channel 6 television and the noncommercial FM band are immediately adjacent to one another. Because of the limited selectivity of television receivers, sets tuned to Channel 6 (82–88 MHz) may also receive interference from noncommercial FM stations (88–92 MHz).

This problem has existed since the FCC established the noncommercial FM band. In the early days of broadcasting, the limited number of Channel 6 TV stations, the limited number of noncommercial stations, and the flexibility in channel selection afforded by the relatively undeveloped noncommercial band all served to minimize the problem. With the passage of time, however, Channel 6 TV stations became increasingly worried about interference caused by the growing number of public radio stations.

The current rules governing protection of Channel 6 were adopted in 1985 at the conclusion of a decade-long rulemaking proceeding. They represent a compromise negotiated by the National Federation of Community Broadcasters, National Public Radio, the Corporation for Public Broadcasting, and parties representing Channel 6 interests.

The Technical Framework

The compromise is complex *[Sections 73.525].* Areas of interference are predicted by using relevant field strengths of the Channel 6 television station and the noncommercial FM station. The basic criterion is that noncommercial FM stations will not be allowed to cause interference to the reception of Channel 6 for more than 3,000 people. That's the simple part. The complications arise from provisions designed to secure the maximum coverage for public radio while providing maximum protection to Channel 6. These rules treat existing stations and new stations differently, but give both the means of adjusting several technical factors to reduce interference.

Adjustments

The FCC rules identify several ways of reducing the number of people affected by interference to Channel 6 and, thus, increasing the allowable power for the noncommercial FM station. Allowances are made for filters on TV sets (installed at the radio station's expense), receiver antenna directivity, and vertical polarization of the radio station's signal. The rules also encourage collocation of Channel 6 and noncommercial FM transmitter sites, since this decreases the interference between the two signals.

Further adjustments can be made if portions of the predicted Channel 6 interference area are served by TV translators, satellite stations, and other TV stations carrying the same network. Considerations for existing interference from co-channel and adjacent channel television stations can be taken into account, as can the impact of terrain shielding.

For each of the remedies and adjustments, the rules provide a specific formula to determine the predicted reduction in interference area or the number of people that can be subtracted from the affected population.

Existing Stations

Existing stations were not required to modify their facilities to comply with the Channel 6 protection rules as long as they continued to operate with those facilities. Specifically, the rules did not apply to any facilities authorized prior to December 31, 1984 (including those authorized by that date but not yet on the air). If any station (or holder of a construction permit) seeks to change its facilities, however, it must either comply with the provisions outlined above for new stations (i.e., keep the adjusted, predicted interference to fewer than 3,000 people) or demonstrate that for each new person predicted to receive interference from the proposed facility, existing interference will be eliminated for two people. Situations involving an involuntary change in facilities, as with the loss of a transmitter site, are evaluated on a case-by-case basis.

In planning a new station or modifying an existing station, the first step is to determine whether any Channel 6 TV station is near enough to be considered an "affected" station. If the Channel 6 station qualifies as an affected station, the public radio entity will probably need a consulting engineer to help determine whether its proposal is feasible or can be made feasible by taking advantage of one or more of the adjustment factors set forth in the FCC rules.

Translators and Boosters

FM translators are used to retransmit the signal of full-service stations (the "primary" station) to areas in which reception of the primary station is "unsatisfactory due to distance or intervening terrain" *[Section 74.1231(a)].* Translators use a frequency other than that used by the primary station, i.e., they "translate" the primary station to a different frequency. Commercial FM translators may use translators only for "fill-in" service; that is, the translator may rebroadcast the signal of the primary station only within the primary station's protected service area *[Sections 74.1201 and 74.1232].* Noncommercial translator stations are not limited to a fill-in service; they may be operated outside of the primary station's service area.

Translator stations are distinguishable from booster stations, which operate on the same frequency as the primary station and may only be used for a fill-in service by either a commercial or noncommercial station. The power of a booster station may not exceed 20% of the maximum allowable power for the primary station's class of station *[Sections 74.1201(f) and 74.1231(h)].*

Both translators and boosters are restricted to rebroadcasting the signal of the primary station, although translators are allowed to originate emergency warnings of imminent danger and to make limited requests for financial support *[Section 74.1231(g)].*

The interference standards for FM translators reflect their "secondary," or bottom-of-the-heap, status with respect to all other authorized stations. A new FM translator cannot cause interference to the direct reception of other stations or television translators, including Class D noncommercial stations or existing translator or booster stations *[Section 74.1203].* Translators must protect the maximum facility authorized by a construction permit for an LP100 station (a 100-watt Low Power FM station), but are not required to protect LP10 stations *[Section 74.1204(a)(4)].*

The FM translator licensee is responsible for resolving interference problems, although if the party receiving interference refuses to allow the translator licensee to implement techniques that would resolve the interference problem, the translator licensee is absolved of further responsibility. A translator that is shut down because it causes interference cannot resume operations (except for brief transmissions to test remedial measures) until the translator demonstrates that the interference has been eliminated, the interference problem is not being caused by the translator, or the party receiving interference will not allow the translator to resolve the problem *[Section 74.1203].*

Eligibility and Licensing Requirements

A translator may be licensed to the same entity that operates the primary station or to a completely separate entity. A translator station may be issued to any qualified individual, broadcast station licensee, or local governmental body. There are no limitations on the number of translators that can be licensed to a single organization. Only one input and one output channel will be authorized for each translator. Each translator is licensed separately and must be applied for on a separate application *[Section 74.1232].*

Transmitter Operation

Most translators and boosters are operated unattended (i.e., without an operator on duty at the translator or booster site). Permission for unattended operation must be specifically requested, however, in either the original application or a subsequent application for modification of facilities. To secure FCC authority for unattended operation, the station must meet several requirements *[Section 74.1234]:*

- It must be possible to turn the transmitting apparatus on and off promptly (at all hours, in all seasons), either at the transmitter site or at a remote control point.
- The transmitter must be equipped to switch to a non-radiating condition whenever it is not receiving a signal on the input channel.
- The transmitter equipment and the on-and-off control switch must be adequately protected from tampering.
- The licensee must keep the Commission informed of personnel who can shut down translator operations in the event the FCC decides operation of the translator must cease.
- For translators that require a painted and lighted antenna and supporting structure, licensees must make arrangements for a daily inspection of the lighting equipment and for logging the results of such inspections.

Power, Emissions, Transmission Equipment, and Related Rules

The power of translators is limited to a maximum of 250 watts, but may be much less, depending on the location of the station and the elevation of its transmitter site. Translator stations east of the Mississippi and in Southern California, Puerto Rico, and the Virgin Islands—Zone IA, as defined by *Section 73.205(b)*—are subject to the following power limitations: Composite antennas and antenna arrays may be used if the total ERP does not exceed the maximum allowable ERP *[Section 74.1235].*

Radial HAAT (meters)	Maximum ERP (millions of watts)
Less than or equal to 32	250
33 to 39	170
40 to 47	120
48 to 57	80
58 to 68	55
59 to 82	38
83 to 96	27
97 to 115	19
116 to 140	13
Greater than or equal to 141	10

Translator stations west of the Mississippi (other than in Southern California) are subject to the following limitations:

Radial HAAT (meters)	Maximum ERP (millions of watts)
Greater than or equal to 107	250
108 to 118	205
119 to 130	170
131 to 144	140
145 to 157	115
158 to 173	92
174 to 192	75
193 to 212	62
213 to 235	50
236 to 260	41
261 to 285	34
286 to 310	28
311 to 345	23
346 to 380	19
381 to 425	15.5
426 to 480	13

Except for transmitting antennas, antennas used to receive signals for rebroadcast, and transmission lines, all equipment used for translators and boosters must be type-accepted. Wiring, shielding, and construction must be consistent with "good engineering practices." (See *Sections 74.1235–74.1262* for rules regarding power, emission standards, equipment requirements, modification of transmission systems, and other transmission information.)

Other Operating Rules

Translator stations have no minimum operating schedule, but are expected to provide a dependable service to their community. Translator stations must notify the FCC of their intent to discontinue operations for more than 30 days. The failure of a translator station to operate for 30 days or more without providing such an explanation may result in the cancellation of the license. Regardless of the reasons for discontinued operation, a license will expire if the station is off the air for any consecutive 12-month period *[Section 74.1263].*

Translators may only rebroadcast the signal of a single primary station and are not allowed to "radiate" for extended periods outside the primary station's broadcast schedule, absent a waiver (discussed below). Requests for financial support for the translator may not exceed 30 seconds per hour. Requests for financial support can include acknowledgment of support (including donors' names and the nature of the contributions) and underwriting messages.

Licensees are required to display the licensee's name, address, and telephone number— including the name, address, and telephone number of a local contact—in a prominent location at the transmitter site. Such information must be posted in a legible form that can weather the elements *[Section 74.1265].*

Licensees of a translator or booster must have a current copy of relevant Commission regulations *[Section 74.1269].*

Translator stations are not required to maintain a Public File, but are required to maintain certain records and make them available to authorized FCC representatives. Required station records include a copy of the license, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other pertinent documents. Licensees can keep translator station records at the same location as the records of the primary station. Station Logs and technical records must be maintained for a two-year period *[Section 74.1281].*

Station ID

The Commission assigns all translators a call sign beginning with the letter K or W followed by the translator's channel number and two letters (licensees have no discretion over a translator's call sign). Translator stations must make an ID announcement three times a day: (1) once between 7:00 a.m. and 9:00 a.m., (2) once between 12:55 p.m. and 1:05 p.m., and (3) once between 4:00 p.m. and 6:00 p.m. The identifications, which may be announced by the primary station, must state the translator call sign and location. Alternatively, the translator may identify its call sign in Morse Code at least once every hour of its operating schedule. Other methods of identification may be proposed *[Section 74.1283].*

Booster stations need not be separately identified. Their station ID requirement is satisfied by the primary station's ID.

Delivery Methods, Waivers

Initially, all translators could only rebroadcast a signal received over the air. While this restriction hampered commercial broadcasters seeking to use translators to invade other radio markets, it also limited the use of translators to serve isolated pockets of population in rural areas. As a compromise, the FCC prohibited commercial stations from owning or supporting translator stations outside the station's service area, but did not impose similar restrictions on noncommercial stations.

The FCC also permitted booster and translator stations to use "alternative signal delivery means" that operate on a reserved channel (88.1 MHz to 91.9 MHz) to noncommercial translators. These special dispensations permit noncommercial stations to use translators to feed translators located on reserved frequencies by phone lines, microwave, satellite facilities, or other "alternatives" to over-the-air signal delivery.

With few exceptions, the FCC has limited translators to the function of rebroadcasting a primary station. The exceptions permit certain Alaskan translator stations that serve remote communities to receive signals from distant primary stations and to originate some local programming. The advent of LPFM, and the liberalization of the rules concerning alternative signal delivery methods for translators operating on reserved frequencies, may make such waivers difficult to obtain in the future.

Class D Stations

In the mid-1970s, the FCC conducted an extensive study of spectrum used in the noncommercial FM band and found that the use of noncommercial FM frequencies by hundreds of 10-watt, Class D stations did not constitute an efficient use of spectrum. The Commission concluded that such stations were generally too limited in power to offer an effective public service and that the growing number of such stations blocked the establishment of full-service stations in a number of communities.

In 1978, the FCC placed a freeze on licensing new Class D stations anywhere outside Alaska. Existing stations were given several options *[Section 73.512]:*

- Increase power to minimum Class A standards (100 watts)
- Relocate to a frequency on the commercial FM band where no interference would be caused to existing stations
- Relocate to a noncommercial frequency where the station would have the "least preclusive" effect on future station assignments
- Submit an engineering exhibit demonstrating that commercial band frequencies were unavailable and that the 10-watt station was already operating on the "least preclusive" noncommercial channel

Stations located in Alaska and along the Mexican and Canadian borders were exempt from these requirements and allowed to relocate on an optional basis.
All non-exempt Class D stations were required to comply with one of these options by the time of their first license renewal after the rules were adopted. Once a station complied with any of the options other than increasing power to 100 watts, it was re-licensed on a secondary basis. This secondary status meant that the station lost its protection from interference by full-service commercial stations. As of November 2000, there were still some 135 licensed Class D stations.

For the most part, Class D stations are subject to the same rules and regulations as other noncommercial FM stations. The secondary status of Class D stations, however, has led to a relaxation of some technical and operational standards, as outlined below.

Interference to Commercial Stations

A Class D station may not cause interference, but may receive interference from commercial stations. Such interference could occur if the Class D station were located in the commercial band or if the station were on one of the three noncommercial channels adjacent to the commercial band. In addition, a change of the commercial FM Table of Allotments or an increase in power by a commercial station could result in new interference to the Class D station. Class D stations are not protected from such interference, but may elect to receive it.

If a Class D station will cause interference to a commercial station because of the commercial station's power increase or a change in the FM Table of Allotments, the Class D station must cease operations when program tests for the commercial station commence. The FCC may grant temporary authorization to a Class D station to operate on a new channel if the station would otherwise be forced to cease operations before a construction permit for that new channel could be processed *[Section 73.512(d)].* Procedures for obtaining temporary authorization are outlined in Chapter 9.

Interference to TV Channel 6 and Television Translators

A Class D station may not cause objectionable interference to a television or television translator station. Interference is predicted to occur wherever the 15 dBu contour of the Class D station (based on the F 50(10) curves) overlaps the 40 dBu contour (based on the F 50(50) curves) of the TV or TV translator station. A TV or TV translator station can propose a new service that would bump an existing Class D station, and the Class D station must cease operations when program testing begins.

Interference to Noncommercial Stations

Class D stations may not cause interference to full-service noncommercial FM stations. Class D stations that operate in the reserve band are afforded interference protection from other secondary stations (i.e., translators or other Class D stations).

In contrast to the rules concerning commercial FM stations, however, the Commission will not approve a new noncommercial station or power increase that would force a Class D station to move or leave the air. If a Class D station has moved to the "least preclusive" channel, as required in *Section 73.512,* that Class D station may block other assignments if it would cause interference to

the new assignment. The Commission will not accept a noncommercial application that would receive interference from a Class D station.

Interference to FM Translators

A Class D station may cause interference to an FM translator. An FM translator, however, may not cause interference to a Class D station and is required to move or cease operations if it causes such interference. Interference occurs when a "regularly used . . . signal by listeners is impaired by the signals radiated by the translator, regardless of the quality of such reception, the strength of the signals so used, or the channel on which the protected signal is transmitted" *[Section 74.1203].*

Technical Operations

Because of a Class D station's limited power, which decreases the chance that it will cause interference to other stations, the FCC has substantially relaxed many requirements concerning technical operations.

Transmitters

While higher-powered transmitters (and some items of studio gear) are covered by fairly exacting specifications, 10-watt transmitters are required only to conform with the transmitter equipment safety features outlined in the National Electrical Code, as approved by the American Standards Association. Ten-watt transmitters should be operated, tuned, and adjusted so that no emissions are radiated outside the authorized band. Audio distortion, audio frequency range, carrier hum, and noise level should be monitored to ensure satisfactory service over the station.

Monitors and Meters

The monitoring requirements for 10-watt stations require only an indicator of whether the transmitter is on or off, an indicator of program modulation, and an Emergency Alert System decoder (receiver). Class D stations do not need meters that indicate various transmitter functions such as plate voltage and current, are allowed to check modulation by using either a percentage modulation indicator or a calibrated program level meter, and do not need an EAS encoder.

Power and Frequency

Class D stations may operate below their assigned power and do not need to notify the FCC when doing so. Stations may not, however, exceed 105% of their authorized power level. Class D stations also have greater latitude with regard to staying on frequency. Operations must be within 3,000 Hz of the assigned center frequency, as opposed to the 2,000 Hz limitation applied to other stations.

Inspections, Logs, and Licensed Operators

Class D stations are subject to the same standards as all other noncommercial FM stations to ensure that their transmitter is functioning properly and that necessary records are being kept (see Chapter 8 for details).

Operational and Content Requirements

Class D stations must comply with most non-technical rules that apply to full-service noncommercial stations. Class D stations are not exempt, for example, from minimum hours of operation, political broadcasting rules, or Sponsorship Identification Rules.

Proposed Changes

The FCC has proposed revising its Class D rules to simplify licensing and application processing. The proposal would permit Class D stations that change channels to use non-reserved channels, and classify such applications as applications for a “minor” change; it would eliminate the 10-watt transmitter output limitation and define Class D stations as stations whose 60 dBu contours do not exceed 5 kilometers [see *Notice of Proposed Rule Making, 13 FCC Rcd 14849, 14876–14880 (1998)].*

Chapter 11: Applications for New Stations

This chapter discusses the procedures by which the FCC processes and grants applications for new full-service and translator stations. It covers the following specific topics:

- Past Application Procedures
- New Window Filing System
- Evaluation Process: The Point System
- Fair Distribution
- The Point System
  - Established Local Applicants
  - Technical Superiority
- Tie-Breakers
- Settlements
- Petitions to Deny
- Holding Period

Past Application Procedures

Traditionally, applications for noncommercial stations were filed and processed on a "demand" basis. Applicants were free to submit (or "tender") an application for a new full-service or translator station at any time. After a preliminary review of the application to determine that it was substantially complete, the FCC would formally "accept" the application for filing and place the application on an "A" cut-off Public Notice. This Public Notice established a date by which Petitions to Deny or "mutually exclusive" applications had to be filed. Two applications are mutually exclusive (MXd) if both could not be granted.

In the simplest case, two applications were MXd if both proposed to use the same frequency from the same site. In more complicated cases, applications were MXd if the applicants proposed to use frequencies within three channels of each other and from different transmitter locations but relevant interfering and protected signal strength contours of the proposed stations overlapped [Section 73.509]. For example, Applicant A, which proposed to use Channel 210 (89.9 MHz) to serve an urban area, may have been MXd with Applicants B and C, which proposed to use Channels 208 (89.5 MHz) and 212 (90.5 MHz), respectively, to serve suburbs across town from each other. All three applications would have been MXd if B and C each overlapped Applicant A, even though there was no prohibited overlap between Applicants B and C.

If one or more MXd applications were filed by the "A" cut-off deadline, the FCC would issue a "B" cut-off list, which identified those applications which were MXd with the A application and would establish a date by which Petitions to Deny the B application were due. No applications MXd with either the A or B applications were accepted after the A cut-off date, however.

If no MXd applications or Petitions to Deny were filed during the "A" cut-off period, the A application would be reviewed again by FCC staff and routinely granted if the application complied with all legal and technical criteria. If MXd applications were filed, the FCC would designate all applications for a comparative hearing. The hearing was a formal, trial-like proceeding in which the MXd applications were "prosecuted" before an Administrative Law Judge to determine which of the applications would best serve the public interest.

Over time, this system of processing and evaluating broadcast applications proved to be nasty, brutish, and inconclusive. The criteria used to compare applicants were so vague that judges had difficulty in reaching clear, well-reasoned decisions *[Real Life Educational Foundation of Baton Rouge, Inc., 6 FCC Rcd 2577 (Rev. Bd. 1991)].* Instead, judges tended to resolve comparative hearings by splitting the broadcast baby and ordering the parties to share the use of a frequency. The FCC ultimately became so disenchanted with the comparative hearing process, that it froze all ongoing comparative cases and initiated a proceeding to establish better ways of distinguishing between MXd applicants *[Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995)].*

As the FCC pondered this issue over the next five years, reserved frequencies became scarcer, the number of MXd applications increased, and the application backlog continued to grow. By April 21, 2000, when the FCC froze the filing of all applications for new FM stations on reserved frequencies, more than 1,400 MXd applications were pending *[Reexamination of Comparative Standards for Noncommercial Educational Applicants, 15 FCC Rcd 7386 (2000), Note 41].* The backlog consisted of 1,356 MXd applications for new full-service FM stations and 97 MXd applications for new FM translators.

New Window Filing System

In order to simplify the application process, the Commission replaced its old "A/B" cut-off system with "filing windows." Under the filing-window system, the Commission periodically issues a Public Notice announcing a period of time during which it will accept applications for new full-service FM or translator stations operating on reserved frequencies *[Section 73.3573(e)].* Applications filed prior to the window opening date or after the window closing date are dismissed.

Although filing windows simplify the application process and reduce the risk that MXd applications will be filed for speculative or obstructive purposes, filing windows drastically restrict the freedom to file applications. Under the filing-window system, applications can be filed only when the FCC opens a window and only for the period during which the window is open. The filing-window system thus brings with it new elements of uncertainty and time pressure. Entities interested in building new broadcast stations must be ready to file those applications on short notice from the FCC.

Evaluation Process: The Point System

In revamping its application processing system, the FCC also revamped the criteria for evaluating MXd applications. After considering alternatives, such as modified versions of the comparative hearing process, a lottery, and simply granting the applicant that was the "first to file," the

Commission decided on a "point system" as a method that would efficiently select the "best" applicant—that is, the applicant that would best advance certain public interest factors such as localism, diversity, and technically superior service.

There are three tiers to the evaluation process: (1) a basic or "threshold" tier that determines which, if any, application will best achieve the goal of a "fair distribution" of reserved spectrum; (2) a point system that evaluates each application based on certain comparative criteria; and (3) tie-breakers that may resolve proceedings in which no applicant prevails on fair distribution or comparative criteria.

Fair Distribution

The fair distribution issue is based on *Section 307(b)* of the Communications Act, which requires the FCC to "provide a fair, efficient, and equitable distribution of broadcast service among the states and communities" *[Section 307(b)].* The fair distribution or *"307(b)"* issue arises only when MXd applicants propose to serve different communities of license. In these circumstances, the Commission seeks to determine whether a particular applicant will best advance a spectrum allocation goal of a fair distribution of non-reserved spectrum. The comparison is not between competing applicants, but between uses of the spectrum to serve different communities of license.

There are two steps to the *307(b)* analysis: (1) determining if any applicant is eligible for any *307(b)* credit and (2) determining whether a *307(b)* credit entitles one or more applicants to a preference over the other MXd applicants. An applicant is eligible for fair distribution, or 307(b), credit *[Section 73.7002],* if:

- The applicant and other MXd applicants propose to serve different communities
- The applicant will provide a first or second noncommercial educational (NCE) radio signal to at least 10% of the population within the 1 mV/m contour the applicant proposes
- At least 2,000 people within the proposed 1mV/m contour will receive first or second NCE service

If only one applicant receives *307(b)* credit by providing a significant first or first and second NCE service, that applicant prevails. If two or more applicants are equivalent with respect to first service, the Commission compares their aggregated levels of first and second NCE service. The applicant providing the most people with the highest level of service will receive a *307(b)* preference if it provides such service to at least 5,000 or more people than the next best applicant. If no applicant is entitled to a *307(b)* preference, the point system is used to compare all applicants.

This *307(b)* issue is "basic" rather than "comparative" in nature in that if an application is preferred to other applications on *307(b)* grounds, the Commission will grant that application, without regard to the comparative merits of the applicant, as determined by the point system.

To illustrate these principles, the FCC issued a Public Notice, DA 01-1245 (May 24, 2001), that applies the *307(b)* credit to several specific circumstances. Here are six examples that show how the *307(b)* credit is applied and how complicated the process can become. In each example, assume that applicants propose to serve different communities, that all mutually exclusive

applicants are identified, and that each applicant's 60 dBu contour encompasses 40,000 people, so that a 10% threshold for each applicant is 4,000 people (which exceeds the 2,000 minimum).

Example 1

Principle Illustrated. This example illustrates the standard analysis, including aggregation of first and second service when first service alone is not decisive.

	Community 1	Community 2
	Applicant A	**Applicant B**
First Service	4,000	7,000
Second Service	5,000	7,500

Analysis. Applicant B is selected pursuant to *307(b).* A and B are both eligible for consideration under *307(b)* because each provides a new first or second service to 10% of the population within its respective service areas. Both applicants are entitled to a first-service preference. However, B does not provide a new first service to at least 5,000 more persons than A and, thus, is not entitled to a decisive *307(b)* preference on the basis of first NCE service. Next, the FCC considers whether A or B would provide total first and second NCE service to 5,000 more people than the other applicant. Applicant A provides a first and second service to 9,000 people (4,000 plus 5,000). B provides a first and second service to 14,500 people (7,000 plus 7,500). B is superior to A because B provides first and second service to at least 5,000 more people than A (14,500 – 9,000 = 5,500).

Example 2

Principle Illustrated. An applicant meeting the 10% threshold for new service prevails over an applicant that does not. In such circumstances, the prevailing applicant need not satisfy the 5,000-person differential threshold. A credit for first service will prevail over credit for a second service of any magnitude.

	Community 1	Community 2
	Applicant A	**Applicant B**
First Service	4,750	3,000
Second Service	5,000	15,000

Analysis. Applicant A receives a *307(b)* preference. Applicant A is the only applicant to meet the minimum new first-service threshold. B does not qualify for first-service credit because B does not propose to provide a first service to at least 4,000 people (i.e., 10% of the people within its 60 dBu contour). Because B does not qualify for a first-service credit, A's first service need not exceed B's first service by 5,000. Because Applicant A prevails under the first-service criterion, no second-service analysis is undertaken.

Example 3

Principle Illustrated. The point system applies to applicants that are preferable to other applicants but equivalent to each other under *307(b)* analysis. Assume five applicants, A through E, each serving a different community.

	Applicants				
	A	**B**	**C**	**D**	**E**
First Service	100	6,000	20,000	20,250	21,000
Second Service	20,000	15,000	0	5,000	4,000

Analysis. Applicants D and E will be considered under the point system. All applicants are eligible for consideration under *307(b)* since all provide first or second service to 10% of the people within their respective 60 dBu contours. When first service is compared, however, Applicant A is eliminated because A does not meet the minimum first-service threshold (10%/2,000 people). B is eliminated because B's first service is inferior by at least 5,000 people to the next best applicant, C (20,000 – 6,000 = 14,000). C, D, and E proceed to aggregate first- and second-service consideration. C is eliminated because it provides total first or second service that is inferior by at least 5,000 people to the first or second service provided by the next best applicant, E (25,000 – 20,000 = 5,000). D and E will be considered under the point system because they provide materially equivalent first and second service.

Example 4

Principle Illustrated. For purposes of comparing a group of three or more applicants, equivalency is determined by comparing each applicant to the applicant proposing the next best service, not by comparing each applicant to the top applicant.

	Community 1	Community 2	
	Applicant A	**Applicant B**	**Applicant C**
Second Service	5,000	7,500	11,000

Analysis. All applicants are eligible for *307(b)* consideration, but no *307(b)* preference will be awarded because no applicant exceeds the next-best applicant by at least 5,000 people. Applicant A is not eliminated even though it proposes to serve more than 5,000 fewer people than C (11,000 – 5,000 = 6,000) because it is not clear who will represent Community 2, B or C. If B were to prevail, B would not be materially superior to A with respect to *307(b).*

Example 5

Principle Illustrated. First and second service totals are aggregated for the purpose of establishing eligibility for the *307(b)* preference.

	Community 1	Community 2	
	Applicant A	**Applicant B**	**Applicant C**
First Service	3,000	0	100
Second Service	2,500	5,000	500

Analysis. Applicants A and B are eligible for *307(b)* consideration, but C is not because C's combined first- and second-service level (600) is below the 10%/2,000-person minimum. Applicant A can rely on its combined new first and second service to meet the 10% threshold (see FCC Form 340 Supplement, Worksheet #6, Lines 5 and 6). Applicant A would report this eligibility by answering "yes" to Question III(2) on the Form 340 Point Supplement (concerning second local service) and by providing an exhibit showing that A is relying on its first and second service combined to establish its *307(b)* eligibility. Neither A nor B meets the minimum first-service threshold, thus no preference is awarded based on first service. Applicant A provides first or second service to 5,500 people (3,000 plus 2,500). Applicant B provides first or second service to 5,000 people. Thus, A and B are materially equivalent based on aggregate first and second service. Had the group consisted only of A and C, however, A would have received a decisive *307(b)* preference because A would have been the only applicant to provide first and second service to a significant population.

Example 6

Principle Illustrated. If applicants specify the same community, the point system is used to determine the comparatively superior proposal, even if one of the applicants provides first or second service to a larger population.

	Community 1	Community 2	
	Applicant A	**Applicant B**	**Applicant C**
First Service	1,000	8,000	7,000
Second Service	5,000	0	6,000

Analysis. All applicants are eligible for *307(b)* consideration by virtue of providing a first or second service to 10% of their populations. Applicant A is eliminated, however, because A provides first service to less than 10% of its population. B and C provide an equivalent level of first service to 10% of their populations. The elimination of Applicant A eliminates Community 1 from consideration. The remaining applicants, B and C, both propose the same community. Thus, the *307(b)* analysis is not applied. Applicants B and C proceed to comparative consideration under the point system.

The Point System

The point system is used to evaluate the merits of applicants in proceedings where no applicant receives a decisive *307(b)* preference. Points are awarded to applicants that advance the goals of localism, diversity of ownership, expansion of a statewide network, and technical superiority.

Established Local Applicants

The Commission considers "localism" the single most important criterion in its point system and awards three points to an applicant that qualifies as an "established local applicant."

An applicant is "local" if it (1) is physically headquartered, or (2) has a campus within 25 miles of the reference coordinates for the designated community of license, or (3) if 75% of board members reside within 25 miles of the reference coordinates of the community of license. Governmental applicants are considered to be "local" throughout their areas of jurisdiction (e.g., the school board would be local within the district over which it has jurisdiction) *[Section 73.7000].*

A local applicant is "established" if it has been local for at least the 24 months immediately preceding the filing of its application. (For MXd applicants on file when the point system was first announced, the relevant two-year period was measured backward from June 4, 2001.)

Diversity of Ownership. The point system awards two points to applicants that advance local diversity of ownership. In this context, local ownership means an ownership interest in any other broadcast station or authorized construction permit whose "city grade" contour overlaps the city grade contour of the proposed station. For FM stations, the city grade contour is the area within which the station delivers a signal strength of 70 dBu *[Section 73.313(c)].*

Only ownership of stations in the same service is relevant to diversity. For example, an FM applicant's ownership interest in a local television station would not disqualify the applicant from receiving diversity points.

The definition of "ownership" is potentially complicated since it involves not only the interests held directly by the applicant, but the interests that are "attributable" to it. Although the intricacies of the attribution rule may not significantly affect the points received by independent nonprofit corporations that typically apply for community stations, they will affect the points received by large organizations that file for reserved frequencies across the country.

The point system incorporates attribution principles that are familiar to commercial broadcasters but that have not previously been applied to noncommercial stations. These principles, set forth in *Section 73.3555* (the "Multiple Ownership Rules"), vary with the legal form of the applicant. For example, there are different rules for general partnerships, limited partnerships, corporations, and limited liability companies. The attribution rules seek to break through these legal formalities and ferret out interests that are capable of exercising influence and control over a broadcast station. For purposes of analysis, several different types of "attributable" interests can be identified.

Direct Ownership. The applicant's ownership of interests in other stations is "attributable" to it. If, for example, an FM applicant is the licensee of an existing FM station or the holder of a construction permit for another FM station, its interests in the existing station or permit are "attributable." If the attributable interests are in a station that is "local" (i.e., one whose city grade contour overlaps that of the proposed station), the applicant will not receive local diversity points. Attributable interests in non-local stations are disregarded in the diversity analysis.

Indirect Ownership. Attribution principles not only consider interests owned directly by an entity, but interests that are owned by a subsidiary or affiliated entity. For example, if Company A owns 20% of Company X, which owns 50% of a licensee, A holds a 10% interest (20% x 50%) in the licensee. Since ownership interests greater than 5% are counted (or are considered "cognizable"), A's interest in the licensee is relevant to a determination of A's diversity points. As a general rule, only active ownership interests are cognizable. For example, a limited or "silent" partner that owns a 20% equity interest in a limited partnership, but is prohibited from having any involvement in media-related activities of the limited partnership, does not have a cognizable interest in a broadcast station licensed to the limited partnership.

Officers and Ownership Interests Attributed to Officers and Directors. Officers and directors of a broadcast licensee have a cognizable attributable interest in that entity. If, for example, a director of an applicant is a director of the licensee of an existing broadcast station, his "positional" interest in the licensee is attributable to the applicant. Though an officer or director may not actually "own" stock or any equity interest in a licensee, an ownership interest is "attributed" because the officer or director is in a position to influence the licensee's activities.

Debt. Similarly, although loans are not generally considered ownership interests, the FCC recognizes that a large creditor may be able to influence its debtor and therefore considers debt to be an attributable interest when the amount of the debt exceeds 33% of the entity's total asset value and the creditor either supplies more than 15% of the debtor's weekly programming or has an attributable interest in other media in the same market *[Sections 73.7000 and 73.3555].*

To complicate matters even further, the FCC will attribute interests that arise through a combination of "debt plus equity." Thus, passive equity interests that would not ordinarily be attributable may become attributable when those interests, combined with debt interests, exceed 33% of the total asset value of the applicant or licensee. For example, a stockholder who holds a 25% equity interest in a licensee corporation may not own an attributable interest if the 25% interest takes the form of non-voting stock. But the same stock interest could become attributable if it is combined with a loan equal to more than 8% of the corporation's total asset value.

The attribution rules were developed to prevent the ownership of commercial broadcast stations from becoming unduly concentrated. Ironically, as attribution principles have become more sophisticated, the Commission has tended to "deregulate" ownership limits by relaxing or eliminating ownership restrictions. Ownership restrictions not dictated by principles of antitrust law have also increasingly come under attack as an unconstitutional restriction on free speech. Given these competing forces, the FCC's multiple ownership rules are likely to remain a subject of controversy, particularly because the application of these rules to noncommercial broadcasting is new. The rules will evolve as they are applied and tested in a variety of factual circumstances.

Statewide Network. The FCC has historically encouraged the development of statewide networks of noncommercial stations. Recognizing that such networks may not qualify for diversity points because they already own one or more existing stations, the FCC devised a special two-point credit for networks. As indicated below, however, the criteria for qualifying as a statewide network are so difficult to satisfy, that points will only rarely be awarded on this basis.

An applicant that does not qualify for local diversity points may nonetheless qualify as a statewide network if it meets one of the following three sets of criteria *[Section 73.7003]:*

(1) (a) The applicant is a public or private entity with authority over a minimum of 50 accredited full-time elementary and/or secondary schools within a single state, (b) the schools are encompassed by the combined primary service contours of the proposed station and the applicant's existing station(s), (c) the existing station(s) regularly provide(s) programming to the schools in furtherance of the school curriculum, and (d) the proposed station will increase the number of schools the applicant will regularly serve.

(2) (a) The applicant is an accredited public or private institution of higher learning with a minimum of five full-time campuses within a single state, (b) the campuses are encompassed by the combined primary service contours of the proposed station and existing station(s), (c) the existing station(s) regularly provide(s) programming to campuses in furtherance of their curriculum, and (d) the proposed station will increase the number of campuses served.

(3) (a) The applicant is a public or private organization, with or without direct authority over schools that will (i) regularly provide programming for, and in coordination with, elementary and/or secondary schools and (ii) meet the criteria described in paragraph one, or (b) an institution of higher learning that meets the criteria described in paragraph two.

Technical Superiority

One point is awarded to the applicant that provides coverage to both a 10% greater area and a 10% greater population than the applicant with the next best coverage. The technically superior applicant will receive two points, rather than one point, if its technical proposal covers a 25% greater area and 25% greater population than the applicant with the next best coverage.

The "technical superiority" credit is distinguishable from the *307(b)* credit in several respects. First, the technical superiority credits may be awarded even if the MXd applicants specify the same community of license; the *307(b)* credit is available only when applicants propose to serve different communities of license. Second, the *307(b)* preference is awarded to the applicant that best advances the Commission's spectrum allocation principles by providing a first or second noncommercial radio service to a significant population. The technical superiority points are awarded to the applicant that provides the best coverage to an area and population, regardless of whether that area and population already receive other noncommercial radio signals. Third, the *307(b)* preference is a potentially decisive, threshold preference. The applicant that qualifies for a *307(b)* preference is awarded the construction permit if MXd applicants are not entitled to an equivalent preference. By contrast, technical superiority points are simply added to other points to which the applicant is entitled. The "technically superior" applicant may still lose to an applicant that has a higher point tally based on location and diversity credits.

Tie-Breakers

The third tier of the selection process comes into play only if no applicant receives a decisive *307(b)* preference and if two or more applicants receive the same number of points. In these circumstances, two tie-breaking tests are applied, in sequence *[Section 73.7003(c)].*

Under the first tie-breaker, the applicants are compared based on the number of attributable authorizations each holds in the same service for which they are applying. For example, radio applicants count only radio authorizations. Only permits and licenses (for commercial and noncommercial stations) issued as of the date of the filing of the application are counted as authorizations. (For applicants considered in the first closed groups of MXd applications, the relevant date was June 4, 2001, rather than the date the application was filed.) The construction permit is awarded to the applicant with the fewest authorizations.

If a tie remains after applying the first tie-breaker, the applicants are compared based on the number of pending applications for new stations or for major changes in existing stations in the same service area as the MXd application. (Pending applications for "minor" changes in existing authorizations are not counted.) The permit is awarded to the applicant with the fewest pending applications.

If a tie remains after applying the second tie-breaker, the tied applicants will be awarded the permit on a shared basis. The Commission will divide time for use of the frequency equally among the tied applicants if the applicants are unable to agree on a time-sharing arrangement.

Settlements

Settlements among MXd applicants are encouraged, and the Commission will suspend processing of MXd applications if it is advised that the parties are negotiating or have reached a settlement *[Section 73.7003(d)].* After July 19, 2001, no MXd applicant may be paid more than its reasonable and prudent expenses for dismissing or amending an application in order to resolve an MX situation.

Settlement agreements must be submitted to the Commission with a joint request for Commission approval. The joint request must be accompanied by an affidavit from each party that sets forth *[Section 73.3525]:*

- The reasons why the agreement is in the public interest
- A statement that the application was not filed for the purpose of reaching the settlement, rather than obtaining a grant of its application
- A certification that neither the applicant nor its principals has received any consideration in excess of the applicant's expenses
- The exact amount of the consideration
- An accounting of the expenses for which it seeks reimbursement
- The terms of an oral agreement concerning the dismissal or withdrawal of the application

Petitions to Deny

After evaluating MXd applicants, the FCC issues a Public Notice designating the party that prevails (the "tentative selectee") *[Section 73.7004].* Challenges to the tentative selectee in the form of a Petition to Deny may be filed for a period of 30 days from the issuance of the Public Notice. Petitions may be filed by other MXd applicants or by "any party in interest" (e.g., a station that can show it will receive prohibited interference from the station proposed by the tentative selectee) *[Section 73.3584].* The Petition to Deny must be supported by an affidavit of a person or persons with personal knowledge of the facts relevant to the petition. The tentative selectee has 10 days to file an opposition to the Petition to Deny, and the petitioner has five days to file a reply.

If the Petition to Deny is denied, the Commission will grant the tentative selectee's application. If the Petition to Deny is granted, the outcome may be more complicated, depending on the nature of the issues raised. The Petition to Deny may simply challenge some of the points claimed by the tentative selectee. If such a petition is granted, the Commission will reduce the points awarded and compare the revised point tally with the point tally of the other MXd applicants. If the tentative selectee remains the highest scorer, its application will be granted. If the tentative selectee is leapfrogged by another applicant that now has a higher point tally, the FCC will announce a new tentative selectee that, in its turn, will be subject to Petitions to Deny. If the Petition to Deny proves that the tentative selectee is unqualified, for example because it has misrepresented material facts in order to obtain the construction permit, then the tentative selectee's application will be denied without regard to its points and the applicant (or applicants) with the next highest point tally will be named the new tentative selectee.

Holding Period

Construction permits for all full-service FM stations are valid for a period of three years *[Section 73.3589],* but construction permits awarded by the point system may be subject to special "holding periods" that continue after the station has been constructed *[Section 73.7005(a)].*

The first holding period, applicable to all grants made through the point system, begins with the award of the construction permit and continues for four years from the date the station goes on the air. During the holding period, the permit or license can be transferred or assigned to another party only if (1) the other party would qualify for the same, or greater, number of points and (2) any consideration paid or promised does not exceed the permittee's legitimate and prudent expenses. Allowable expenses may include the costs of preparing the application (e.g., legal and engineering expenses) and of buying and installing broadcast equipment. Costs incurred in operating the station prior to transfer or assignment are not recoverable.

The second holding period applies only to applicants that receive a decisive *307(b)* preference *[Section 73.7005(b)].* These applicants must construct and operate the facilities proposed and, for a four-year period, cannot downgrade service to the areas on which the preference was based, beginning with the date the station goes on the air.

The purpose of both holding periods is to preserve the integrity of the evaluation process by preventing applicants from assigning authorizations to less qualified parties or from abandoning underserved areas which they had promised to serve.

Chapter 12: Low Power FM Service

In January 2000, the FCC created a new radio service called Low Power FM, or LPFM. The service was conceived as a noncommercial service that would give schools, churches, civic groups, and other nonprofit organizations a means of providing a new locally based radio service that would, in part, offset the consolidation of ownership of commercial radio.

- This chapter discusses the rules concerning LPFM and surveys the following topics:
- Noncommercial Nature of LPFM Service
- Classes of LPFM Stations
- Ownership and Eligibility Restrictions
  - Restrictions on Assignments and Cross-Ownership
- Technical Rules
- Application Process
- Selection Process
- Tie-Breakers
- Construction Period and License Terms
- Operating Rules
  - Restrictions on Transfers of Control

Because LPFM was designed to operate on frequencies throughout both the reserved and non-reserved portions of the FM band, the most controversial issue in creating the LPFM service was whether LPFM would adequately protect existing FM stations. In order to make LPFM stations available, the FCC originally permitted slight amounts of potential interference to stations operating on third-adjacent channels (i.e., on channels such as 88.1 MHz and 88.7 MHz, which are separated from each other by three 200 kHz channels). After adoption of such a standard, but before the grant of any LPFM construction permits, Congress stepped in and ordered the FCC to restore third-adjacent channel protections *[Pub. L. No. 106-553, 114 Stat. 2762 (2000)].* The technical rules summarized in this chapter reflect the current, congressionally mandated interference protection rules. These rules are based on the distance between transmitter sites needed to prevent an LPFM station from causing theoretical interference to another authorized station.

It is possible that the rules will be relaxed in the future. In July 2003, Mitre Corporation issued a report commissioned by the FCC, in which Mitre recommended that the existing third-adjacent minimum distance separation requirements between LPFM stations and other FM stations be eliminated. On February 19, 2004, the FCC delivered a report to Congress which summarized Mitre's technical findings and endorsed Mitre's recommendation. Senators John McCain and Patrick Leahy introduced a bill to repeal the third-adjacent channel restrictions previously imposed *(S. 2505),* but Congress has not yet passed this legislation. If Congress agrees to eliminate the third-adjacent channel restrictions, additional LPFM stations could become possible, even in some of the larger radio markets where LPFM stations are now impossible.

Rules and regulations for LPFM stations can be found on the FCC website (www.fcc.gov/media/radio/lpfm).

Noncommercial Nature of LPFM Service

The FCC concluded that LPFM would best respond to local community needs if the service was not "subject to commercial imperatives to maximize audience size" *[Report and Order, FCC 00-19, paragraph 17 (January 27, 2000)].* LPFM applicants must therefore certify that they are (1) a nonprofit educational institution, (2) a nonprofit educational organization, or (3) a noncommercial public safety radio service [Section 73.853]. An applicant qualifying as an educational institution or organization must submit an exhibit describing its educational program and explaining how the station will be used to advance that program. "Educational" has been broadly defined to include cultural programs, children's programs, and Bible study, among other activities *[Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 13 FCC Rcd 21167, 21169 (1998)]).*

Classes of LPFM Stations

The FCC authorized two classes of LPFM service: (1) an LPFM 100 class and (2) an LPFM 10 class.

LP100 stations are designed to provide service to an area approximately 5.6 kilometers (3.5 miles) from the transmitter. They must operate with a minimum effective radiated power (ERP) of 1 watt, and may not exceed a maximum ERP of 100 watts at 30 meters antenna height above average terrain (HAAT). LP100 applicants that propose a HAAT greater than 30 meters must reduce ERP so as not to exceed the maximum coverage contour.

LP10 stations are designed to achieve a coverage area of 1.6 to 3.2 kilometers (1 to 2 miles). They may operate with an ERP from 1 to 10 watts at 30 meters HAAT. The FCC will accept applications for LP10 stations only after it has processed the initial round of applications for LP100 stations.

Ownership and Eligibility Restrictions

In order to assure that LPFM stations are diversified, the FCC imposed several limits on the ownership of LPFM stations. Broadcast "cross-ownership" is prohibited. That is, no license for an LPFM station will be granted if the applicant holds any "attributable" interest in any broadcast station. These ownership restrictions not only prevent existing noncommercial stations from acquiring an LPFM license, but may disqualify an LPFM applicant whose directors are the officers, directors, or shareholders of an entity that holds the license for a commercial or noncommercial broadcast station. For a more detailed discussion of "attribution" principles, see Chapter 11.

National and local ownership limits were also placed on the number of LPFM stations that could be held. For a period of two years from the opening of the first LPFM filing window, no one may hold an attributable interest in more than one LPFM station. That limit will be increased to five LPFM stations two to three years after the first filing window, and to 10 LPFM stations after three years

[Section 73.855]. Even under these relaxed "national" ownership rules, common ownership of local LPFM stations will still be prohibited unless the LPFM stations are separated by more than 12 kilometers (7 miles) *[Section 73.855].*

The FCC sought to prevent speculation in LPFM licenses by prohibiting the transfer or assignment of LPFM licenses, except in circumstances involving (1) less than a substantial change in ownership or control (e.g., a routine turnover in directors) or (2) an involuntary assignment of license or Transfer of Control (e.g., if a licensee declares bankruptcy, the license may "involuntarily" be transferred to a trustee appointed by the bankruptcy court). A gradual change in a majority of the board members does not, in itself, constitute a prohibited Transfer of Control.

To assure that LPFM stations remain independent, the FCC prohibits LPFM licensees from entering into certain programming agreements with other stations. LPFM stations may not retransmit, terrestrially or via satellite, the signal of a full-power radio broadcast station *[Section 73.879].* In addition, an LPFM station may not enter into "an operating agreement of any type, including a time brokerage or management agreement, with either a full power broadcast station or another LPFM station" *[Section 73.860(c)].* To assure that the LPFM service will be a community-based service, the FCC permitted only "local" applicants to submit applications for the first two years in which LP100 and LP10 applications are accepted for filing *[Section 73.853(b)].* An applicant is considered local only if it certifies that (1) it or its local chapter or branch is physically headquartered or has a campus within 16.1 kilometers (10 miles) of the proposed transmitter site for the station, (2) 75% of its board members reside within 16.1 kilometers of the proposed transmitter site, or (3) it is a public safety entity with jurisdiction in the area *[Section 73.853].*

The Commission created limited exceptions to its ownership rules for public safety organizations and for universities. Government public safety and transportation organizations may apply for multiple LPFM stations, but must designate one application as the "priority" application. The applications not designated as "priority" will be dismissed if mutually exclusive (MXd) applications are filed. Universities that already own a full-service station can apply for an LPFM license, provided that the station, although licensed to the university, will be managed and operated by students of the university. If a mutually exclusive application is filed, the university's application will be dismissed *[Memorandum Opinion and Order on Reconsideration, MM Docket No. 99-25, FCC 00-3-349 (September 28, 2000)].*

Early versions of the eligibility requirements granted amnesty for certain repentant "pirates." In restoring third-adjacent channel protection, Congress prohibited the FCC from granting an LPFM license to any applicant not certifying that, "Neither the applicant, nor any party to the application, has engaged in any manner . . . in the unlicensed operation of any station" *[Section 73.854*]. A federal court of appeals found the automatic and permanent disqualification of all pirates to be constitutional because it is "reasonably tailored to the government's substantial interest in protecting the broadcast spectrum" *[Ruggiero v. FCC, 318 F.3d 239 (DC Cir. 2003) (en banc), cert. denied, 124 S. Ct. 62 (2003)].*

Technical Rules

To protect existing stations and to simplify the LPFM application process, the FCC devised an interference system based on mileage separation requirements. An LPFM station will not be authorized unless the proposed LPFM transmitter site is separated by specified minimum distances from the transmitter sites of existing full-service and FM translator stations operating on co-channel or first-, second-, and third-adjacent channel frequencies, as well as from the transmitter site of TV Channel 6 stations. The mileage separation requirements include a 20-kilometer "buffer" zone for co-channel and first- adjacent channel full-service stations. Charts detailing the minimum distance separations are set forth in *Section 73.807* and are built into the electronic LPFM Channel Finder the FCC has developed to help LPFM applicants determine what channels will meet FCC interference criteria (www.fcc.gov/media/radio/lpfm-channel-finder). To simplify application processing, the FCC requires LPFM applicants (other than public safety and transportation entities) to use non-directional antennas.

Technically, LPFM is placed on a footing similar to that of FM translator stations. Both are "secondary" services that must protect existing FM authorizations, but are not protected from interference they may receive from "primary," full-service stations. LPFM applications must protect authorized FM translators, based on mileage separations. These separations are measured in terms of the distance between the transmitter sites of the LPFM and the translator station. FM translators must protect the predicted service area of an LP100 station. The interfering contour of the translator may not overlap the 60 dBu contour of the LP100 station. Translators are not required to protect LP10 stations *[Section 74.1204(a)(4)].*

One important difference between the interference standards applied to LPFM stations and FM translators is that full-service stations are always entitled to protection from interference from translators, but are entitled to protection from LPFM stations only up to the date of the Public Notice of the relevant LPFM filing window. After that date, an application to modify a full-service station is not protected from an authorized LPFM station unless the LPFM station causes interference within the full-service station's "city grade" (70 dBu) contour *[Section 73.209].* For example, a full-service station that modifies its license by changing transmitter sites can cause interference to an existing LPFM station, but will be subject to interference received from an LPFM station unless the interference from the LPFM station overlaps the core, "city grade," contour of the full-service station.

LPFM stations are generally subject to the same technical and content-related regulations as full-service stations. A complete list of regulations applicable to LPFM is set forth in *Section 73.801.*

Application Process

To accommodate the large number of LPFM applications it anticipated, the FCC adopted a window filing procedure and created a system for filing applications electronically *[Section 73.870].* Detailed instructions on how to prepare and file an LPFM application (FCC Form 318) are available on the FCC's website (https://transition.fcc.gov/Forms/Form318/318.pdf). Applications for new LPFM

stations and for major changes in authorized stations may be filed only during the filing windows specified in Public Notices issued by the FCC.

To license LPFM 100 stations, the FCC randomly divided the 50 states into five groups and opened a series of windows to accept applications for stations in each state. Groups 4 and 5 were subsequently combined into a single window.

Because Congress imposed third-adjacent channel protection requirements after the first three LP100 windows were opened, 653 applications that would have been technically acceptable became technically defective. Rather than simply dismiss these applications, the Commission permitted the applicants to file minor amendments to correct defects and opened an additional filing window in which the 653 applicants could file a "major" amendment to specify a new channel, if one was available *[Second Report and Order, MM Docket 99-25, FCC 01-100 (April 2, 2001)].*

Unless special filing windows are opened, only "minor" changes may be proposed. For LP100 stations, a minor change is defined as a relocation of the proposed transmitter site by fewer than 2 kilometers; for LP10 stations, a minor change is a site relocation of less than 1 kilometer *[Section 73.871].* Other technical changes, including changes in channel, are considered major changes.

The LPFM processing rules are similar to those used for other applications for broadcast facilities (see Chapters 1 and 3). The FCC will issue a Public Notice of the filing of the application, assign a file number to the application, and issue subsequent Public Notices of agency action on the application. Actions on an LPFM application can be tracked through an FCC search function called LPFM Reports (www.fcc.gov/media/radio/lpfm).

Selection Process

The FCC adopted a point system to resolve situations in which two or more mutually exclusive (MXd) LPFM applications are filed in a given window *[Section 73.872].*
Three selection criteria are applied:

- Established local presence (1 point)
- Proposed operating hours (1 point)
- Local program origination (1 point)

Applicants that demonstrate that they had an "established" community presence of at least two years prior to the filing of the LPFM application are awarded one point. An applicant is "local" if it is physically headquartered, has a campus, or has 75% of its board members residing within 10 miles of the reference coordinates of the proposed transmitter site. Applicants claiming the "established local presence" credit must document the basis of the claim in their application.

Applicants that pledge to operate at least 12 hours per day are awarded one point. Although the minimum operating schedule for LPFM stations is only five hours *[Section 73.561],* the FCC

encourages applicants to operate more than the minimum schedule by awarding a point to applicants that pledge to operate more than the minimum schedule.

Applicants that pledge to originate programming locally at least eight hours a day are awarded one point. “Locally originated” programming is programming produced within 10 miles of the reference coordinates of the transmitter site.

The pledges made in order to obtain the 12-hour-per-day operating credit and the local program origination credit will be enforced by random FCC audits, as well as by third-party complaints. Sanctions for failure to fulfill a pledge may include monetary fines and/or license revocation.

Tie-Breakers

If two or more MXd applicants receive the same number of points, the FCC will issue a Public Notice that announces the tie and that gives the MXd applicants 30 days to enter into a voluntary time-sharing agreement [Section 73.872(c)]. Such agreements must be in writing and must allow each time-share proponent at least 10 hours a week of operating time. The FCC encourages settlements by allowing applicants who enter into a time-sharing agreement to aggregate the points to which they are individually entitled.

If the MXd applicants are not able to reach a voluntary time-sharing agreement, the FCC will review the applications of the tied applicants to determine that their applications are grantable, and award the eligible applicants successive, non-renewable licenses. The normal eight-year license term is divided into license terms of no less than one year per licensee. The sequence of license terms is based on the time in which the applicants complete construction of their facilities and file a license application. For example, the first applicant to file would be assigned the first license period. Applicants proposing same-site facilities are required to submit a written statement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and grant the remaining eligible applications.

If there are more than eight tied, grantable applications, the FCC will dismiss all but the eight or more with the longest-established community presence. If more than eight tied applicants still remain, the FCC will dismiss the entire group, unless the applicants are able to reach an agreement limiting the group to eight.

Construction Period and License Terms

The construction permit issued to a successful LPFM applicant is valid for 18 months (not 36 months as for full-service and translator station permits) *[Section 73.3598(a)].* In extraordinary circumstances, where natural disasters or administrative or judicial appeals prevent the LPFM permittee from constructing, the running of the construction period may be suspended or “tolled,” but the failure to raise sufficient funding or obtain necessary zoning clearances are not grounds for tolling the expiration of a permit. Lately, the Media Bureau staff has been more flexible when it comes to extensions, but successful applicants that want additional time to construct should be

prepared to show the FCC that they have been diligent in implementing the construction process (e.g., that equipment orders have been placed).

LPFM licenses are issued for renewable eight-year terms, on the same schedule as licenses for full-service stations in the same state *[Section 73.873].* The principal exceptions to this rule are short-term licenses issued to tied applicants and initial licenses issued for less than eight years to synchronize an LPFM license with other broadcast licenses for the same state.

Operating Rules

The FCC's LPFM rules are contained in Part 73, Subpart G, of the Code of Federal Regulations. Subpart G cross-references a number of technical and legal provisions related to full-power stations, and makes them applicable to LPFM stations. Several cross-referenced rules are derived from federal statutes relating to matters such as obscenity and indecency, non-citizen ownership of radio stations, underwriting announcements, and political broadcasting. Like their full-power counterparts, LPFM stations can be fined or admonished if they violate FCC rules or policies, or the Communications Act. Extreme cases of wrongdoing can jeopardize their licenses.

LPFM stations are excused from several requirements imposed on full-service stations, including the requirement that the station maintain a main studio *[Section 73.1125(a)]* and file periodic Ownership Reports with the FCC *[Section 73.3615].* LPFM stations are also excused from maintaining a Public Inspection File *[Sections 73.3526 and 73.3527].* These exemptions will undoubtedly cause some confusion. For example, although LPFM stations are subject to the requirement that they maintain a Political File *[Section 73.1943],* it is not clear where that file should be kept, since LPFM stations are not required to keep a Public File.

The discussion below highlights legal requirements that LPFM stations are likely to encounter in their daily operations.

Equipment Tests and Program Tests. Before an LPFM station officially goes on the air with regular programming, and provided notice has been given to the FCC, its transmitting and other authorized equipment may be tested *[Section 73.1610].* Once the station's license application has been filed with the FCC, the station may begin its regular broadcast schedule, known as "program tests." Program tests convert to licensed operations when the FCC formally approves the station's license application. The approval process can take several months or more, depending on the FCC's workload.

Continuing Compliance With Technical Parameters. Like full-power stations, an LPFM station must operate within tolerances prescribed in the FCC's technical rules and specified on its construction permit or license. If an LPFM station is operated in an unattended mode (i.e., without a station employee present), it must install highly stable equipment or automated monitoring devices *[Section 73.1300].* In general, transmission systems must be monitored either by personnel or through automation. Where a station is completely automated, it must have equipment capable of taking the station off the air within three hours of any technical malfunction which is capable of causing interference *[Section 73.1400].* Stations may be tested during their authorized hours of operation to assure that they are operating within FCC-assigned parameters *[Section 73.1520].* The

technical rules carried over to LPFM stations also set down procedures for frequency carrier measurements *[Section 73.1540];* for permissible departures from carrier frequencies *[Section 73.1545];* and for maximum modulation levels for AM, FM, and TV stations *[Section 73.1570].* Finally, all LPFM licensees or holders of LPFM construction permits must conduct periodic inspections of their stations' transmitting systems and required monitors in order to ensure the stations are operating properly *[Section 73.1580].*

Emergency Alert System (EAS). LPFM stations are subject to the same EAS requirements as Class D stations *[Sections 73.11.11, 11.51, 11.53 and 11.61].* That is, they are required to install the decoder equipment necessary to receive EAS tests, but not the encoder equipment required to generate the EAS codes and EAS Attention Signal. LPFM stations must log receipt of EAS tests, and broadcast the text of any national emergency message. See Chapter 6 for a detailed discussion of EAS requirements.

Broadcasting Emergency Information. In emergency situations not involving activation of the Emergency Alert System, LPFM stations may transmit emergency point-to-point messages requesting or dispatching aid and assisting in rescue operations. The rule governing these procedures requires stations to file post-operation reports with the FCC *[Section 73.1250].*

Station Log. Although LPFM stations are excused from maintaining Public Inspection Files and filing Ownership Reports, they must maintain a Station Log. The Station Log must contain a record of four categories of technical information: (1) any outages, malfunctions, adjustments, repairs, or replacements of the lighting system, if the antenna tower is required to be lit; (2) a brief explanation of station outages due to equipment malfunction, servicing, or replacement; (3) operations not in accordance with the station license; and (4) an EAS log *[Sections 73.11.61 and 73.877].* The logging rule also obligates stations to comply with the weekly EAS log requirements, discussed in Chapter 6. If an LPFM station is inspected, it is highly likely that the FCC inspector will want to examine the Station Logs. Although the FCC retention period rule applicable to full-power stations was not carried over to LPFMs, it is recommended that logs be retained for no fewer than two years.

The Chief Operator Requirement. Full-power broadcast stations must designate a person to serve as Chief Operator *[Section 73.1870].* Although the chief operator need not be physically present at the station on a daily basis (and may, in fact, perform duties for several local broadcasters) he or she is responsible for maintaining the technical integrity of station equipment and for reviewing and editing Station Logs. The Chief Operator rule was not included among the broadcast station rules applicable to LPFM stations. This omission, however, does not relieve LPFM licensees from their continuing obligation to assure that they are operating in compliance with the terms of their license and with the FCC's regulations, policies, and orders.

Posting of Station License. The station's license and any other authorizations issued by the FCC must be posted in a "conspicuous place" at the transmitter's principal control point or maintained in a binder or folder and available for inspection by FCC personnel *[Section 73.1230].*

Station Identification and Call Sign Changes. Like full-power broadcast stations, LPFM stations must identify themselves hourly, as close to the hour as feasible, and at the beginning and end of each time of operation *[Section 73.1201].* Stations that program in a language other than English

may identify themselves in that language *[Section 73.1201].* In all official identifications, the station's four-letter call sign must include the "LP" suffix, followed by its community of license. Call sign changes must be approved by the Commission *[Section 73.3550].*

Minimum Operating Schedule ("36/5/6 Rule"). LPFM stations are subject to the minimum operating requirements that apply to full-power noncommercial educational stations. They must be on the air at least 36 hours per week, at least 5 hours per day, and for at least 6 days per week. Stations licensed to educational institutions do not have to broadcast on weekends or during vacation or recess periods. If an LPFM station fails to adhere to a minimum operating schedule, the FCC may cancel its license or impose a channel-sharing arrangement *[Sections 73.850 and 73.561].*

Discontinuance of Operation. LPFM stations are subject to the FCC's "anti-warehousing" rules. Those rules provide that if a broadcast station fails to transmit for any 12 consecutive months, its license expires automatically. Operations after the one-year silent period are illegal *[Section 73.873(c)].*

Foreign Ownership Restrictions. LPFM license holders must be domestic nonprofit entities such as a corporation, limited liability company, partnership, or association. Non-citizens and foreign business entities may hold limited direct interests in these entities (up to 20%), and indirect interests of up to 25% in a holding company that owns the entity licensed to operate the LPFM station. A party must seek special permission to maintain indirect ownership above the 25% cap. LPFM licensees may have non-citizen officers and directors, but individuals, regardless of citizenship, and foreign governments or their representatives, may not hold an LPFM station license *[Communications Act, Section 310(a) and (b); Section 73.865].*

Phone Conversations. LPFM stations are subject to regulations concerning the broadcast of telephone conversations. If an LPFM station broadcasts a telephone conversation, it must first place any party to the call on notice that the call is being, or is likely to be, broadcast. Notice is unnecessary if the party is aware, or may be presumed to be aware from the circumstances of the conversation, that the call may be broadcast. Stations failing to provide proper notification may be fined or admonished by the FCC, which can treat each instance of non-compliance as a separate violation, thereby subjecting the station to multiple monetary forfeitures *[Section 73.1206].*

Lotteries. The FCC's lottery rule and the federal anti-lottery statute apply to LPFM stations. That statute prohibits a station from broadcasting advertisements of, or information concerning, a lottery or similar scheme. In addition, as noncommercial stations, LPFM stations may not broadcast "advertisements" on behalf of a for-profit entity. The question of whether a station may air a lottery announcement on behalf of a nonprofit organization depends on whether the lottery is legal under state and local law. Thus, announcements concerning lotteries or state-sanctioned lotteries conducted by non-profits or governmental entities, or by a commercial organization where the lottery is ancillary to the primary business of that organization, may be lawful under applicable state law *[18 U.S.C. §1307(a); Section 73.1211].*

Prohibitions of Certain Assignments and Transfers of Control. All radio station licenses are issued to parties whose qualifications have been evaluated by the FCC under its public interest standard. With the exception of LPFM authorizations, those licenses and construction permits may be assigned or transferred to similarly qualified parties. An LPFM license or construction permit may

not, however, be voluntarily assigned or transferred. Only involuntary (e.g., upon death or bankruptcy) assignments or transfers are allowed, and assignments and transfers of control that are "minor," not "substantial." In general, an "insubstantial" change is one that occurs gradually, over the course of more than a 12-month period, and does not result in a change in the objectives of the organization. An LPFM may change its name by providing written notification of the change to the Commission *[Communications Act, Section 310(d); Section 73.865].*

Political Broadcasting. When it enacted the LPFM rules in 2000, the FCC applied the same political programming rules to LPFM stations that apply to full-power noncommercial stations. Less than a year later, Congress amended the Communications Act to exempt all noncommercial educational broadcasters, including LPFM stations, from the statutory requirement that they afford legally qualified candidates for federal office "reasonable access" to their facilities. Moreover, since LPFM stations and other noncommercial educational stations are not permitted to sell political ads, they cannot be required to provide airtime to any political candidate unless the station has provided time to the candidate's opponent in the primary or race. If, however, a station receives a request for political time, it must comply with the Political File rule by making a written record of the request and the station's disposition of that request. The record should be maintained in a Political File located at the station's studio site and retained for two years.

LPFM stations should be alert to the fact that they may inadvertently trigger the FCC's political broadcast rules by allowing a candidate to "use" the station, even in a non-political context. If the candidate's voice is recognizable, the candidate's appearance on the air permits opposing candidates to demand "equal opportunities." If, for example, an LPFM station announcer runs for political office, the station must assess whether it should place that individual on leave until the election is over, or risk having to honor opposing candidates' demands for equal opportunities generated by the employee's "uses." See Chapter 7 for a detailed discussion of the rules related to political broadcasting *[Communications Act, Sections 315 and 317(a)(7)].*

Taped and Recorded Material; Misleading Material. LPFM stations that rely on taped or recorded program material must avoid creating the impression that a particular program, such as a sporting event or interview, is occurring simultaneously with the broadcast. To avoid misleading the public, the station must disclose at the beginning of the program that it has been pre-recorded *[Section 73.1208].* In the same vein, broadcasts of "hoaxes"— knowingly false information relating to a "crime" or a "catastrophe"—violate FCC rules if the information causes substantial public harm and is unaccompanied by disclaimers *[Section 73.1217].*

Underwriting Rules. All noncommercial educational stations must comply with the underwriting rules. This fact was brought home in August 2004, when the FCC's Enforcement Bureau admonished an LPFM licensee in Enid, Oklahoma, for running announcements promoting local businesses that had donated funds to the station. Although the FCC declined to fine the licensee, it warned it that future violations could be punished. See Chapter 5 for a detailed discussion of underwriting rules.

Restrictions on the Transmission of Obscene, Indecent, and Profane Materials. LPFM stations are subject to restrictions on the transmission of obscene, indecent, and profane material. The FCC is responsible for enforcing the federal laws prohibiting obscene speech and the statute and federal court decisions defining indecent language or material. The courts have not yet tested the FCC's

newly asserted authority to regulate profanity. Indecent and profane material may be broadcast, but only during "safe harbor" hours of 10:00 p.m. to 6:00 a.m. when children (those under the age of 17) are less likely to be in the listening audience. Defining obscene, indecent, and profane broadcasts is a complex and inexact exercise, but LPFM stations must familiarize themselves with basic concepts and keep up with changes in the law. In particular, LPFM stations that carry non-English language programming must recognize that they are not insulated against FCC-imposed monetary forfeitures or other sanctions if those broadcasts contain obscene, indecent, or profane material. See Chapter 6 for a detailed discussion of obscene, indecent and profane material *[18 U.S.C. §1464; Section 73.3999].*

Drug Lyrics. There is no outright ban on broadcasts of lyrics that glorify or promote the use of drugs, and no FCC rules relating to this subject. Public indignation over drug lyrics has waned over the years, and no broadcast licenses have been lost for violations of the "unwritten rule" against drug lyrics. Nevertheless, LPFM licensees should be aware of an FCC policy concerning drug lyrics *[Section 73.4095],* and apply their own rule of reason in this area, particularly if this issue regains national attention.

Translators. LPFM stations are intended to promote localism within relatively small geographic coverage areas. Consequently, the FCC prohibited LPFMs from owning FM translators, and using them to extend or enhance their stations' coverage. That prohibition is inapplicable to FM translators owned by independent parties. Those translators may rebroadcast the signals of any LPFM station, but must first obtain the station's "rebroadcast consent" *[Communications Act, Section 325(a); Section 74.1284].* LPFM stations may not rebroadcast the signal of a full-power radio broadcast station *[Section 73.879].*

Equal Employment Opportunities. LPFM stations staffed by fewer than five full-time employees (those employed for 30 hours or more per week) are exempt from the FCC's rules concerning EEO outreach, recruitment, and record-keeping. All LPFM stations must, however, comply with the FCC's prohibition against employment discrimination, and with the Commission's annual reporting requirement. LPFM stations that employ more than five full-time employees must meet additional EEO program requirements and reporting obligations discussed in Chapter 7 *[Section 73.881 and Section 73.2080(a)].*

Facilities Changes. LPFM facilities changes are classified as major and minor. Applications to make major changes, such as the construction of a new tower more than 2 km from an authorized site, cannot be submitted until a filing window opens. LPFM stations may make certain minor modifications to their technical facilities without having to await the opening of a filing window. Applications for these minor modifications include site moves and, in specialized cases, frequency changes. LPFM licensees may make certain specified changes in their stations' transmission systems without seeking prior approval, but must file an application with the FCC after they begin operating with modified facilities *[Section 73.8785].*

Chapter 13: Other Legal Concerns

Public radio stations must worry about a host of legal concerns beside those governed by the FCC. The Internal Revenue Service regulates the activities of nonprofit organizations that seek federal tax-exempt status. U.S. Postal Service regulations apply to nonprofit groups that take advantage of subsidized postal rates. State and local governments regulate everything from fund solicitations to the number of fire exits in buildings. As discussed in Chapter 14, federal copyright law affects different aspects of the Internet.

Although the *Public Radio Legal Handbook* focuses primarily on FCC legal requirements, two other unrelated bodies of law affect so many stations—and are so unlikely to be addressed in general reference materials for nonprofit groups—that they are discussed briefly here.

This chapter includes an introduction to defamation law and a summary of requirements applicable to stations that receive funds from the Corporation for Public Broadcasting (CPB). Topics covered include:

- Defamation
  - Private Versus Public Figures
  - Prerecorded Programs
  - Liability for Talk Shows and Live Interviews
  - Some Preventive Measures

- CPB Requirements
  - Open Meetings
    - What Constitutes a Meeting
    - Public Notice
    - Who May Attend
    - Deliberations Related to Public Broadcasting
    - Exceptions to Open Meeting Requirements
    - Notice Requirement for Closed Meetings
    - Documentation of Meetings
    - Consequences of Noncompliance
  - Open Financial Records
    - Exceptions
    - Compliance
    - Documentation
  - Community Advisory Boards
    - Role of the Community Advisory Board
    - Membership on Community Advisory Boards
    - Limitations on Community Advisory Boards
    - Documentation
  - CPB Equal Employment Opportunity Requirement

- Compliance
- Documentation

- Donor Privacy
  - Documentation

- Certification

Defamation

Defamation is a term that includes the related terms “libel” and “slander.” Historically, those terms distinguished between written and spoken forms of defamation. Defamatory broadcast programs are considered to be more similar to speech than to print and, thus, to be a species of slander. Modern law has largely eliminated the old common law distinction between libel and slander.

Although defamation is not regulated by the FCC, defamation law is pervaded by constitutional concerns because a limitation on speech implicates First Amendment considerations. As a result, it is useful to think of defamation law as an ongoing, judicially moderated dialogue between state and federal law. New court decisions constantly refine the legal tests that determine when defamation has occurred and what damages are available to an injured party.

In simplest terms, defamation is the publication of a false factual statement that injures someone’s reputation. Corporations are considered “organizational persons” and, as with individuals, can bring a defamation claim, although some important differences between individuals and business entities apply *[Global Telemedia Int’l., Inc. v. Does, 29 Media C. Rep 1385 (C.D.Ca 2001)].*

Private Versus Public Figures

Defamation law is a branch of the law of negligence, and one of the central questions of defamation law is what level of responsibility, or “duty of care,” a publisher owes to those about whom it publishes statements. Because defamation relates to false statements of fact, broadcasters that report or comment on the news face the highest level of potential liability. News stations are especially well-advised to carry insurance that covers “errors and omissions” in program content.

Defamation law distinguishes between “private figures” and “public figures.” If the subject of a news report is a private figure, the liability threshold is low and the risk of liability is high. Liability for statements about a matter of public concern will arise if the publisher of the statement either knew, or *should* have known, that the statement was false and injurious. Before publishing statements of fact, publishers are expected to exercise reasonable care in determining whether those facts are true and are likely to injure another’s reputation.

Factual statements about private figures should be corroborated by multiple, independent sources before such statements are aired. The language of the news report and commentary must be chosen carefully. If a person has been charged with a crime, that fact should be carefully reported.

There is a world of difference between reporting that "X murdered Y" and reporting that "X has been charged with the murder of Y by local police."

The United States Supreme Court has raised the threshold of liability for defamation liability if the subject is a public figure. The courts have identified several different types of public figures, including (1) a public official (i.e., one who has, or appears to the public to have, responsibility for or control of the conduct of government affairs); (2) a public figure by virtue of his or her position or degree of overall fame; or (3) a "limited-purpose" public figure, one who becomes a public figure by having been injected into a public controversy to which the statement pertains. A publisher is not free to say whatever it wishes about public figures, but is liable only for false statements published with "actual malice."

Actual malice, in this context, does not mean spite, hatred, intention to harm, or ill-will but, rather, that the statement was published with actual knowledge of its falsity or with "reckless disregard" for the truth. The Supreme Court has held that a defendant publishes with reckless disregard if it "in fact entertained serious doubts about the truth of the publication," or published the statement "with a high degree of awareness of its probable falsity." While the standard of fault is not clear-cut, more than simple negligence is required to show actual malice. In practice, the line between reasonable care and reckless disregard can be hazy, particularly when editorial judgments must be made about the veracity of news sources *[New York Times v. Sullivan, 376 US 254 (1964); Gertz v. Robert Welch, Inc., 418 US 324 (1974); Time Inc. v. Firestone, 424 US 448 (1976)].*

The distinction between "fact" and "opinion" can also be difficult to define with precision. The distinction goes beyond syntax. A damaging statement of fact ("X is a crook") does not escape scrutiny simply by being rhetorically re-cast as an opinion ("In my judgment, X is a crook"), an "editorial comment" ("Many believe that X is a crook"), or a question ("Is X a crook?"). In 1990, the Supreme Court held that even an opinion might be defamatory if it contains a provably false factual connotation. Thus, a plaintiff can recover damages for a statement that can be reasonably interpreted as a fact, provided the plaintiff proves that the factual connotation is false and injurious *[Milkovich v. Loraine Journal Co., 497 US 1 (1990)].*

Liability for Prerecorded Programs

Broadcasters may be liable for "publishing" defamatory statements of others. For example, if a station broadcasts a program that defames a person, the station may be liable, even if it had nothing to do with the production of the program. Traditionally, a "conduit" was held responsible for further circulating (or "republishing") a defamatory statement only if the conduit had reason to know of the defamatory character of the statement. The rationale for this rule is that conduits, such as libraries or bookstores, are passive distributors and exercise no editorial control over the content of the material.

The application of this rule to broadcasting has proven cumbersome, and the results in the courts have been inconsistent. In a 1992 libel suit against CBS and three local affiliates arising from a *60 Minutes* report about the insecticide Alar, a federal court in the State of Washington refused to impose liability on the three affiliates. Applying the traditional conduit rule, the court held that the affiliates were aware of the general subject matter of the report, but had no inkling of defamatory content. The affiliates' contractual right to pre-screen and reject "unsuitable" network

programming did not impose a duty to censor, according to the court *[see Grady Auvil, et al. v. CBS "60 Minutes," et al., 800 F. Supp. 928 (1992); 800 F. Supp. 941 (1992)].*

This ruling does not mean that a broadcaster can immunize itself from liability by adopting a "see no evil, hear no evil" attitude toward prerecorded programs. The rule from the *60 Minutes* case is not a universally accepted legal principle, although it is fair to say that the more active the broadcaster's role in selecting and editing the content of prerecorded programming, and the broader its rights to exercise such control, the more likely it is that a duty to review and reject defamatory content will be imputed to the broadcaster. Stations that air network programs, or other programs produced outside of the station, should ask the distributor or producer to "stand behind" the program and agree to "indemnify" or defend the broadcaster if a defamation action is brought.

Liability for Talk Shows and Live Interviews

Live call-in talk and interview programs are particularly problematic because they do not give the broadcaster a chance to verify or edit content. Most courts confronted with cases involving a broadcaster's failure to censor defamatory remarks by a caller on a talk show, even where a delay system gave it the technical capacity to do so, have refused to hold the broadcaster strictly liable. Courts have been especially reluctant to find broadcaster liability in "public figure" cases subject to "reckless disregard" for the truth standard. When a broadcaster has only seven seconds to decide whether or not a statement should be cut, it is difficult for a plaintiff to establish that the broadcaster had the requisite state of mind needed to prove reckless disregard for the truth *[see Lorentz v. Westinghouse Electric Corp., 472 F. Supp. 946 (W.D. Pa 1979); Adams v. Frontier Broadcasting Co., 555 P. 2d 556 (Wyo. 1976); Pacella v. Milford Radio Corp., 18 Mass. App. Ct. 6 (1984), aff'd 394 Mass. 1051 (1985)].*

Broadcasters should, however, be aware that at least one court has held that a broadcaster's failure to use its delay system rendered it liable for the remarks of an anonymous caller about a public figure. The court found that failure to use the delay system met the "actual malice" standard, because it amounted to an open invitation for callers to use a broadcast station to defame others *[see Snowden v. Pearl River Broadcasting Corp., 251 So. 2d 405 (La. App. 1971)].*

States differ widely on the question of whether defamatory statements can be "taken back." Although the majority of states have "retraction statutes" that permit a publisher to correct an erroneous statement of fact, there is a considerable variation among these statutes. Some apply specifically to broadcast media; some do not. Some distinguish between different types of media (e.g., newspapers and magazines). Some completely exonerate the publisher that retracts a defamatory statement made in good faith; some treat a retraction merely as a factor that mitigates damages.

Inartful retractions can boomerang. A retraction that is not made in a timely fashion, or that does not comply with other requirements of the relevant retraction statute, may not only fail to protect a station, but may compound a station's difficulties by becoming evidence of fault in a defamation trial. A bungled attempt to take back a false statement can be worse than silence.

The conventional wisdom that “truth is an absolute defense” to an allegation of defamation contains a subtle, but important, inaccuracy. While only a false statement of fact can be libelous, it does not follow that truth is only a defense or that the protection afforded by “truth” is absolute.

If truth were available only as a defense, there would be many more defamation trials. The more accurate formulation of the principle involved is that the injured party has the burden of proving that the statements involved were false. Because “truth” and “falsity” are not simple concepts, evidentiary considerations are crucial.

The belief that truth is a complete defense may also give false comfort to a reporter who imagines that his view of the truth is the last word on the subject. It is not. If a defamation case is tried, the trier of fact, usually a jury, determines whether the statements in issue are true or false. Truth is, therefore, something to be proved by the preponderance of evidence, not something to be presumed. A reporter’s soaring faith in his reportorial skills can look reckless to a jury that sees the facts differently.

Some Preventive Measures

Many defamation cases arise as the result of carelessness. The following are some precautions that can reduce potential liability:

- Identify high-risk programs and screen them carefully.
- Educate your news and public affairs programmers on principles of defamation law.
- Check names and addresses for accuracy. Liability for defamation can arise over mistaken identification.
- Think carefully about the words being used: “he said” and “he admitted” imply different things, as do “statement” and “confession.”
- An indictment is a charge, not a finding of guilt.
- Be wary of anonymous sources.
- Be careful with “teasers,” “promos,” and “headline stories.” A fair and accurate job of reporting can easily be undone when it is squeezed into a few lines of hype.
- Exercise care in covering stories in which reputations are most on the line: stories of crime, sex, violence, and official misconduct. Use similar care when emotions, including those of one’s sources and reporters, may run high. Such stories involve disasters, riots, hate crimes, and situations involving personal pain or loss.
- Retain documentation of controversial facts. The broadcast of unsupported allegations of fact is inherently risky, if not “reckless.”
- Avoid name-calling and personal attacks. A developer who proposes a controversial housing project is not necessarily a “criminal” or “slumlord.”
- Refer all defamation complaints to the General Manager. Complaints should not be handled by the reporter or programmer who is the subject of the complaint.
- Consult with an attorney before responding to a defamation complaint or issuing a retraction.

CPB Requirements

Although CPB is not a federal regulatory agency, its grants impose a number of legal obligations on the recipients. Stations that receive Community Service Grants or other forms of support must comply with requirements concerning open meetings, open financial records, community advisory boards, Equal Employment Opportunity, and donor privacy. CPB's current Communications Act Compliance requirements may be found here: *[Communications Act and Certification Requirements for CPB Station Grant Recipients; www.cpb.org/stations/certification (CPB guidelines)],* and are discussed in further detail, below.

Open Meetings

The Communications Act requires stations that receive CPB funds to hold open meetings of their governing body (including committees) and advisory groups *[Section 396(k)(4)].* All such open meetings must be preceded by "reasonable notice" to the public. The station may not require a person to give his or her name or any other information as a condition of attendance.

What Constitutes a Meeting. Not all sessions of a governing board or committee fall under this requirement. A "meeting" is defined as an event at which *[Section 397(5)]:*

- A quorum is present
- Deliberations occur that "determine or result in" some action or disposition of some matter before the board, board committee, or advisory body
- The deliberations relate to public broadcasting

Types of gatherings that are not considered meetings include, but are not limited to, background or status briefings, sessions to stuff envelopes or complete menial tasks, events that are purely social in nature, or assemblies to assign responsibilities for particular projects to individual board members.

Public Notice. The open meeting provisions require that meetings be preceded by "reasonable notice to the public." The Communications Act does not specifically define reasonable notice, but CPB guidelines state that "reasonable notice" is a form of notice reasonably expected to inform, and appropriate to the purpose of the notice. A board can exercise reasonable judgment in deciding who is likely to have an interest in attending the meeting and can use a form of notice that will be particularly effective in reaching that group.

CPB recommends that broadcasters:

- Provide reasonable notice to the public of the fact, time, and place of an open meeting at least one week in advance of the scheduled date of an open meeting
- Provide notice by letter, e-mail, fax, phone, or in person to any individuals who have specifically asked to be notified
- Provide notice through a recorded announcement that is accessible on the grant recipient's phone system
- Provide notice through an announcement on the grant recipient's web page

Who May Attend. Although the Communications Act specifies that "all persons" must be allowed to attend any open meeting, the language has not been read literally. CPB guidelines recognize that practical considerations, such as limitations of physical meeting space, may make it impossible for "all persons" to attend a given meeting. CPB has therefore applied a "rule of reasonableness" and interpreted the requirement as one of making reasonable efforts to accommodate the public.

Deliberations Related to Public Broadcasting. The open meeting requirements apply only to deliberations that relate to public broadcasting. This distinction may not be especially important for community licensees, whose sole activity is public broadcasting, but institutional licensees, such as school boards and universities, may engage in many activities and devote only a portion of their meetings to public broadcasting issues. CPB's open meeting requirement applies only to the broadcast-related portion of the meeting. Even when CPB open meeting requirements do not apply, institutional licensees may, however, be subject to state or local laws which require open meetings.

Exceptions to Open Meeting Requirement. The Communications Act recognizes that not all business before governing boards, committees, and advisory boards should be conducted in a public forum *[Section 396(k)(4)].* Exceptions to the open meeting requirements permit a board, its committees, or its advisory body to hold closed meetings to consider matters relating to (1) individual employees; (2) proprietary information; (3) litigation; (4) other matters requiring the confidential advice of counsel, commercial, or financial information obtained from a person on a privileged or confidential basis; and (5) the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of the recipient *[Section 396(k)(4)].*

Notice Requirement for Closed Meetings. When a board invokes one of the exceptions and holds a closed meeting, it must provide reasonable notice of the closed meeting to the public. This notice may consist of a written explanation of the reasons for the closing of the meeting and may be done within a reasonable period of time after the meeting is held *[Section 396(k)(4)].* The explanation should reference the closed meeting exceptions contained in the statute.

Documentation of Meetings. As part of its Certification of Eligibility, each CPB grant recipient must certify its continued compliance with the open meeting requirements. Accordingly, CPB recommends that each grant recipient maintain documentation of compliance that can be made available to CPB upon request.

Consequences for Noncompliance. The Communications Act provides that CPB may not distribute funds to a licensee or permittee of any public broadcast station that does not hold open meetings in compliance with the meetings requirements provision *[Section 396(k)(4)].* Licensees that fail to comply with the meetings requirements risk loss of all CPB funding.

Open Financial Records

The Communications Act requires that CPB grant recipients adhere to certain financial record-keeping requirements. Stations receiving CPB funding must *[Section 396 (l)(3)(B)]:*

- Keep financial records in accordance with CPB policy
- Maintain annual financial or audit reports filed with CPB for public inspection

- Undergo an independent audit every two years or, if CPB determines that an audit is too costly in light of the station's financial condition, prepare an appropriate financial statement
- Submit a bi-annual audit report or financial statement to CPB

The types of financial documents that stations must make available for public inspection include:

- Annual financial reports filed with CPB (including the CPB Annual Survey)
- Annual audited financial reports or statements filed with CPB
- Other financial information submitted to CPB, such as financial information accompanying agreements for production assistance, training grants and contracts, research or consultant grants and contracts, EEO statistical reports, and any funding agreement with CPB that requires a financial report

The Communications Act does not say how long CPB grant recipients must retain these documents; however, CPB must maintain financial records received from stations for public inspection and copying at its offices for at least three years after the "Spending Period" *[Section 396(l)(4)(A)].* In addition, as of FY 2015, CPB requires that:

CSG records must be retained for no less than 10 years, after commencement of any of the events below:

1. when litigation or an audit begins before the expiration of the three-year period;
2. when real property or equipment are acquired with federal funds;
3. when CSG funded activities involve program income transactions;
4. when indirect cost proposals and cost allocation plans are involved; and
5. when the federal awarding agency requests otherwise in writing.

Additional information regarding record retention for CPB grant recipients may be found here: www.cpb.org/sites/default/files/stations/radio/generalprovisions/FY-2017-Radio-General-Provisions2.pdf

Exceptions. Financial information submitted to CPB as part of a funding proposal is confidential until the proposal is actually funded. Once a proposal is funded, the financial information must be made available for public inspection, but the station may redact proprietary information. A station does not need to make financial information related to the proposal available if CPB rejects the proposal.

Financial records dealing with personnel matters, such as salary information, do not need to be made available for public inspection. In general, the records may be kept confidential if they meet the criteria of the Privacy Act of 1997, 5 U.S.C. §552a. In addition, financial documents, notes, and working papers associated with a CPB or Government Accounting Office audit that the station retains do not need to be made available to the public [CPB guidelines].

Compliance. The Communications Act does not say exactly how stations must comply with CPB's public access requirements. One acceptable approach is to maintain CPB documents in the Local Public Inspection File and follow the same procedures for public access as the FCC specifies for such records. Alternatively, stations may keep required financial records in a separate place and develop guidelines for public inspection, provided that requests for access are not unreasonably denied. Advance appointments may be required if the process is not burdensome to the public.

Documentation. Each station must document the manner in which it complies with open financial records requirements and provide CPB with this documentation upon request. The documentation should indicate the type of records made available for public inspection, the location of the documents, the way in which the records are made available to the public, the procedure for public photocopying, and any restrictions or limitations the station places on public access to the file.

Community Advisory Boards

The Communications Act requires CPB-funded stations not owned and operated by a state, political or special-purpose subdivision of a state, or public agency to establish a Community Advisory Board *[Section 396(k)(8)].* The advisory board must be distinct from the station's governing body.

Role of the Community Advisory Board. The role of the Community Advisory Board "shall be solely advisory in nature, except to the extent other responsibilities are delegated to the board by the governing body of the station" *[Section 396(k)(8)(C)].* In no circumstances may the advisory board be delegated "any authority to exercise control over the daily management of the station" *[Section 396(k)(8)(C)].*

In setting up its advisory board, a station must make a good faith effort to ensure that *[Section 396(k)(8)(A)]:*

- The advisory board meets at regular intervals
- The members of the advisory board regularly attend its meetings
- The composition of the advisory board is "reasonably representative" of the diverse interests and needs of the communities which the station serves

The Communications Act also provides that the advisory board shall have the authority to *[Section 396(k)(8)(B)]:*

- Establish and follow its own agenda and schedule
- Review the station's programming goals
- Review the program service provided by the station
- Review the station's significant policy decisions
- Advise the station's governing body with respect to whether the programming and other policies are meeting the specialized educational and cultural needs of the communities served by the station

Membership on Community Advisory Boards. A station may exercise reasonable discretion in selecting its advisory board members. No individual member of the public and no representative of any particular organization or group has a legal right to membership on an advisory board. Stations must make a good faith effort to ensure that the advisory board is "reasonably representative of the diverse needs and interests" of the communities being served.

Limitations on Community Advisory Boards. No person is entitled to seek a court order or agency ruling (such as from the FCC) that would require a station to take or refrain from taking any action with respect to programming or any other area of station operations as a result of an advisory

board recommendation or decision. In no case may the advisory board be delegated authority to exercise control over the daily management or operation of the station *[Section 396(k)(8)(C)].*

Documentation. CPB advises stations to maintain documentation sufficient to demonstrate compliance with the advisory board requirements. Such documentation should be sufficient to show:

- The existence of a Community Advisory Board and a list of its current members
- The mechanism used to determine the advisory board's composition
- The schedule of the advisory board's meetings and attendance records
- The role of the advisory board with respect to advising the station

CPB Equal Employment Opportunity Requirement

The Communications Act requires CPB-funded stations to certify that they are in compliance with the FCC's regulations regarding Equal Employment Opportunity (EEO) and to file annual EEO reports with CPB *[Section 396(k)(11), Section 73.2080].* CPB may not distribute funds to any station with five or more employees that does not file an annual statistical report with CPB identifying *[Section 396(k)(11)(B)–(C)]:*

- The number of full-time and part-time employees, by race and sex, who are officials and managers, professionals, technicians, semiskilled operatives, skilled craft persons, clerical and office personnel, unskilled operatives, and service workers
- The number of job openings that occur throughout the year, which jobs were or were not filed in accordance with the FCC's EEO regulations, and, if they were not, the reasons why

Stations must make their CPB report available for public inspection at the station's central office and must certify to CPB that the station complies with the FCC's EEO regulations.

Compliance. CPB continues to require its grantees to file EEO reports with CPB, even though the FCC has suspended enforcement of EEO reporting requirements pending completion of a rulemaking to adopt new EEO rules. CPB does not impose fines or sanctions, but can withhold funding from stations that do not comply with the EEO regulations.

Documentation. CPB requires that stations maintain documentation of compliance in a manner similar to that required for open financial records.

Donor Privacy

In November 1999, Congress amended the Communications Act to give a new right of privacy to those who contribute to entities that receive federal funding through CPB. The Communications Act was amended to include the following provisions *[Section 396(k)(12)]:*

"(12) Funds may not be distributed under this subsection to any public broadcasting entity that directly or indirectly:

> "(A) Rents contributor or donor names (or other personally identifiable information) to or from, or exchanges such names or information with, any federal, state or local candidate, political party, or political committee

"(B) Discloses contributor or donor names, or other personally identifiable information, to any nonaffiliated third party unless:

"(i) Such entity clearly and conspicuously discloses to the contributor or donor that such information may be disclosed to such third party

"(ii) The contributor or donor is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party

"(iii) The contributor or donor is given an explanation of how the contributor or donor may exercise that nondisclosure option."

Although point A applies only to political candidates, parties, or committees, point B applies to any "nonaffiliated third party." The requirement thus ensures donors that "personally identifiable information" will not be disclosed to anyone not affiliated with the station, unless the donor is given a chance to object to such disclosure. The station must give donors the right to exercise this right before disclosing donor information to nonaffiliated third parties, explain how donors can exercise their right to object, and periodically remind donors of their right.

A political candidate is defined as an individual who seeks election or nomination for election to federal, state, or local office. A political party is defined as an association, committee, or organization which nominates a candidate to any federal, state, or local office whose name appears on an election ballot as the candidate of such association, committee, or organization. A political committee is defined as a committee authorized by a candidate, or whose primary purpose is the election of such candidate, to federal, state, or local office. These definitions limit the scope of these terms to those directly involved in the election process, and do not include pure "advocacy" groups that merely take positions on political issues.

CPB guidelines consider a third-party person, company, partnership or other entity to be a "nonaffiliated" third party when the third party is acting on behalf of, and at the request of, the public broadcasting entity for purposes of the public broadcasting entity's fundraising development. This definition permits a station to disclose donor information to those helping the station with fundraising activities, but not to individuals or companies that do not act "on behalf of" and at the "request of" the station, or that are not involved in station fundraising.

Neither the Communications Act nor CPB guidelines defines "personally identifiable information." The term can reasonably be understood to include information such as a donor's name, street address, business address, e-mail address, social security number, and credit card number, but may be interpreted to include additional information that may identify the donor.

There are several practical implications to the donor privacy requirements. First, stations must actively maintain control over their donor lists. They cannot turn their donor list over to a list broker with no other instructions than to maximize its value.

Donors must not only be advised of the station's policy concerning donor lists, but must be given a right to "opt out" of having their names included on a list shared with any nonaffiliated party. The requirements are ongoing in nature. They cannot be satisfied by one simple notice to donors.

Because the requirements do not distinguish between commercial and noncommercial entities, they may have a direct impact on fundraising projects with other nonprofits. Unless a donor has been given an opportunity to object to the disclosure of information, the station will be unable to swap lists with another unaffiliated nonprofit, such as a library, museum, or school.

Documentation. CPB grantees are required to maintain complete and accurate records that demonstrate compliance with the donor privacy requirements. The retention period is a minimum of three years. An "affiliated party" may maintain these records for the grantee, but the grantee bears the responsibility for record-keeping defects

Certification

CPB is required to withhold funds from any station that does not comply with the open meeting, open financial records, EEO, donor privacy, or Community Advisory Board requirements. As part of CPB's Certification of Eligibility, each grant recipient must certify annually that it complies with these requirements.

Stations receive Certification of Eligibility forms annually. These forms must be completed and returned to CPB as evidence of compliance. These forms must be signed by two individuals: (1) an official of the licensee who is authorized to sign grants or contracts on the licensee's behalf (such as a Board of Directors member or school board president) and (2) the station's chief executive officer (such as the station's General Manager, President, or Station Manager). CPB reserves the right to request specific documentation of compliance with the individual provisions from each station.

Chapter 14: A Guide to Copyright Law for Noncommercial Radio Stations

NOTE: This Guide was commissioned by the National Federation of Community Broadcasters (NFCB) and Native Public Media (NPM), who have approved of its publication by Garvey Schubert Barer. The Guide contains information of a general nature that should not be regarded as legal advice on particular situations. The authors of the guide are John Crigler and Melodie Virtue, partners in the law firm, Garvey Schubert Barer. This guide is also available as a stand-alone document from NFCB at nfcb.org

What is copyright?

The answer used to be much simpler. Before the advent of digital technologies with their capability of making near-perfect copies, before streaming and podcasting, before YouTube, Spotify, Vimeo, Pandora, Twitter and iTunes, before SoundExchange … well, you get the idea. Now, the starting point for understanding current copyright law is to realize that it encompasses a multitude of different rights, in different kinds of creative works, in different forms of media.

Because these rights are largely created by federal statute, they change, sometimes radically, over time. One of the complexities of copyright law is deciding which Copyright Act applies. Is it the Copyright Act of 1909, which still applies to many historic works, the Copyright Act of 1976, or the 1998 Digital Millennium Copyright Act ("DMCA")? Unless otherwise indicated, statutory references in this Guide are to the Copyright Act of 1976, 17 U.S.C. § 101, et seq.

Copyrights created by statute revolve around definitions. To understand basic principles of copyright law, you need to understand the definition of terms such as "work," "derivative work," "sound recording," "perform," "reproduce," "display" and "fair use." These and other terms are explained in the discussion that follows. Most of these definitions are also featured in the questions around which this guide is organized.

Just as there are multiple copyrights in multiple kinds of works, there are multiple organizations that police those rights and collect royalties on behalf of the rights owners. ASCAP, BMI, SESAC and now Global Music Rights (GMR) (known collectively as the performance rights organizations or PROs) represent the owners of musical works. SoundExchange collects royalties for streaming copyrighted music and distributes the royalties to owners of sound recordings (usually the record labels) and featured artists.

Different kinds of copyright are subject to different licensing schemes. Some licenses are created by the Copyright Act itself. These are called "statutory" or "compulsory" licenses because they are granted to anyone who complies with certain conditions and pays the relevant royalty fee. Another kind of license is a "direct" license. This kind of license is negotiated directly with the copyright owner.
The legal sources of copyright law are Article 1 of the Constitution, various copyright statutes, regulations established by the Copyright Office of the Library of Congress, judicial decisions and decisions of the Copyright Royalty Board ("CRB"), which establishes royalty rates for streaming copyrighted music. The glory and bane of copyright law, however, is that it has not been

prescribed by law so much as driven by reality. Copyright law may hold the leash, but the law has been unpredictably jerked and dragged by a large, rambunctious young dog named Digital.

Before the explosion of digital technologies, copyright law was an arcane field that could safely be left to experts. New media have exploded traditional concepts and littered the law with questions relevant to anyone involved in those media. Who is the "author" of a video created by a host of collaborators? Is a database laboriously compiled by a brilliant computer geek an "original" work or a collection of factoids not worthy of being called "creative"? Is a rap song that samples a few bars of a traditional R & B tune a new work or an unauthorized "derivative work"? Where is the line between a private and a public "performance," a Spotify song downloaded to party in your living room and the same song broadcast at 4:00 a.m. when even fewer people may be listening? What's the difference between a podcast and a broadcast of the same work? This Guide will help you answer these questions.

This Guide is not a treatise on copyright law. It will introduce you only to portions of copyright law that are relevant to broadcasting and streaming music to U.S. listeners. It barely touches on copyright protection for photographs, art work, literature, architecture, software and dance, or of the relationship between U.S. copyright law and the laws of other countries. Let's start with some basic concepts and definitions.

What is a Work?

Copyright law protects original works of authorship fixed in a tangible medium of expression. Protection arises automatically from the moment of fixation. No registration or other filing is required. Protected types of works include the following:

1. literary works;
2. musical works, including any accompanying words;
3. dramatic works, including any accompanying music;
4. pantomimes and choreographic works;
5. pictorial, graphic, and sculptural works;
6. motion pictures and other audiovisual works;
7. sound recordings; and
8. architectural works.

[Section 102 of the Copyright Act]

What rights does copyright law confer?

The owner of a copyright has the exclusive right to do and to authorize any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Note that some copyrights adhere to all works and some only to particular kinds of works. Also, note that not all rights have the same effective date. For example, as discussed later, under federal law the right to perform sound recordings applies only to sound recordings created on or after February 15, 1972.

Anyone who violates any of these exclusive rights is an "infringer of copyright," but an oddity of the Copyright Act is that it does not define an "infringement." That definition has largely been left to the courts.

[Section 106 of the Copyright Act]

What's the difference between a musical work and a sound recording?

Music consists of at least two separate copyrighted works. One is the musical composition, known as the musical work. The copyright in the musical work, consisting of the lyrics and the arrangement of musical notes, is usually owned by the composer or songwriter. The copyrights can be shared by the lyricist and band members who arranged the music, but typically those rights are assigned to music publishers. The second type of work is a sound recording, a particular recording of musical work. The copyright in the sound recording is usually held by a record company.

Copyrights in the musical work confer the right to reproduce, distribute, and publicly perform the work. Copyrights in the sound recordings confer the right to reproduce and distribute the work, but the right to publicly perform the work is limited to digital transmissions. Thus, for now, a license fee is required to stream a sound recording, but not to broadcast it. Unless rights are covered by a statutory license, they must be "cleared" – i.e., licenses or permissions to use the music must be obtained – before music can be used on the Internet. As discussed later, podcasts require specific licenses for reproduction and distribution rights.

What's a "work made for hire"?

A work made for hire is a work:

1. prepared by an employee within the scope of his or her employment; or

2. specifically ordered or commissioned, which the parties agree, in writing, is a work made for hire.

Stations that wish to commission and own copyrighted musical works, such as original compositions or theme music, may do so with those who are not employees, but a written agreement should clearly indicate that the resulting work will be a work for hire.

What is a public performance?

To perform or display a work "publically" means –

1. to perform or display it at a place open to the public or at a place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
2. to transmit or otherwise communicate a performance or display of the work … to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

[Section 101 of the Copyright Act]

Regardless of the number of actual listeners, a broadcast or digital stream will be deemed to be a "public" performance because it is inherently "capable" of being received by members of the public.

What is a "public performance" of a digital sound recording?

Copyright Office regulations define a public performance of a sound recording as "each instance in which any portion of a sound recording is publicly performed to a Listener" but excludes:

1. a sound recording that is not copyrighted (e.g., because of its age, it is in the public domain);
2. a sound recording for which the licensee has a direct license from the copyright owner; and
3. an incidental performance that both:
   (a) makes no more than incidental use of the music (e.g., "brief musical transitions in or out of commercials or program segments, brief performances during news, talk or sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events"), and
   (b) "other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds" (e.g., theme song).

What is the duration of copyright?

The duration of a copyright depends on when the work was created, under which copyright act, and (sometimes) on when or whether it was published. For a work created on or after January 1,

1978, copyright in the work exists from its creation for the life of the author plus 70 years after the author's death. When the work is "a work for hire," the copyright exists for a term of 95 years from its publication or 120 years from its creation, whichever occurs first. Under federal copyright law, any work created prior to 1923 is in the public domain, but state laws may protect the work for longer if federal copyright law does not apply.

A useful chart for determining when federal copyright expires can be found at: http://copyright.cornell.edu/resources/publicdomain.cfm

Determining which works are in the public domain can be a complex task, particularly for works created before 1978. For example, one state court held that although pre-1972 sound recordings were not protected by federal law, they were protected in perpetuity under state law.

Works may be donated to the public domain before the expiration of the copyright or may be licensed under private licensing schemes. For instance, some works are licensed under Creative Commons licenses, in which authors select the terms of how their works may be used, such as for noncommercial use only. See https://creativecommons.org/. Other similar sources for music can be found at freemusicarchive.org, ccmixter.org, and jamendo.com.

What is fair use?

Fair use is a defense to a claim of copyright infringement. It permits reproduction of portions of copyrighted work, *without* the copyright owner's consent, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. Four statutory factors guide courts' application of the doctrine. Specifically, courts look to:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

Because fair use is an "equitable rule of reason," courts have discretion to honor a fair use defense based on the facts of a particular case.

[Section 107 of the Copyright Act]

The Copyright Office has developed a fair use index of cases that is searchable by court and category of use at www.copyright.gov/fair-use/index.html. The cases show how courts apply the four fair-use criteria to particular facts.

Licensing Musical Works and Sound Recordings

What licenses does a station need to broadcast musical works and sound recordings?

Public performance licensing of musical works in the U.S. historically has been handled by three major performing rights organizations (PROs) - ASCAP (American Society of Composers, Authors and Publishers), BMI (Broadcast Music Incorporated), and SESAC (Society of European Stage Authors and Composers). As of January 2017, however, a new PRO launched – GMR (Global Music Rights) – which is trying to extract higher royalties for high profile artists such as Adele, the Beatles, the Eagles, Pharrell Williams, Katy Perry, Usher and other popular artists. The PROs collect royalties from radio stations, restaurants, concert venues, and others that publicly perform music and distribute the royalties to the owners of the musical work, typically the songwriters/composers and the music publishers who manage rights on their behalf. A broadcast station must buy licenses from these PROs. A license allows the station to broadcast music within that organization's repertoire. Go to the specific PRO's website or contact the PRO to obtain a list of compositions in its repertoire.

Although commercial stations often negotiate royalty rates directly with the PROs, the rates for NCE stations are usually set by the Copyright Royalty Board in a ratemaking proceeding every five years. The rates are then published in the Code of Federal Regulations, *37 C.F.R. Section 381 et seq.*

CAUTION: Some artists have not signed with or have withdrawn from one of the PROs. Other organizations are trying to compete with the major PROs by developing their own repertoire. So, be sure that any music your station airs is licensed by the appropriate PRO.

What licenses does a station need to stream musical works and sound recordings?

To stream music, a station or pure play webcaster needs public performance licenses from ASCAP, BMI, and SESAC *and* must be covered by a royalty agreement with SoundExchange or must pay SoundExchange royalty rates set by the CRB. Royalties for streaming rights to perform sound recordings are in addition to the royalties owed to perform musical works over the air.

Radio stations have historically been exempt from license fees for broadcasting sound recordings, on the theory that if radio did not play the songs, no one would buy the records. This exemption does not apply to digital transmissions, i.e. music streamed on the Internet.

Based on the fact that digital technology allows flawless copying, sound recording copyright owners secured the right to "perform" sound recording by digital audio transmissions in the Digital Performance Right in Sound Recordings Act of 1995. The exemption for over-the-air performance of sound recordings was preserved, but was not extended to the simultaneous transmission of sound recordings via the Internet.

The 1995 Act created new rights for sound recordings, but not a mechanism for collection of royalties. It was left to the Digital Millennium Copyright Act of 1998 (the "DMCA") to create a statutory license for performances of sound recordings over the Internet. Eligibility for the statutory license requires adherence to a number of programming and technical restrictions, compliance with recordkeeping and reporting requirements and payment of royalties, all of which are discussed below.

If a station is not eligible for the statutory license, or if it wants to provide an interactive digital music service, it must obtain direct licenses from copyright owners of the sound recording. Identifying individual copyright owners can be difficult. Multiple band members may hold interests in a particular song; some owners may have assigned their rights to third parties; some may have died; and some may simply be impossible to locate. Regardless of these difficulties, all rights must be cleared to be sure the use is non-infringing.

An entity called SoundExchange is charged with collecting sound recording royalties and distributing them to copyright owners and artists. Now an independent organization, SoundExchange was initially a creation of the Recording Industry Association of America ("RIAA"), which represents record companies. SoundExchange handles only royalties for streaming. It does not administer royalties for broadcasting, podcasting, RSS feeds, or interactive streaming.

What is the sound recording performance complement?

The statutory license for sound recordings comes with certain restrictions. One restriction is the "sound recording performance complement" on each channel streamed. What is that? During a three-hour period one may:

- Play no more than three songs from a particular album;
- Play no more than two songs consecutively from a particular album;
- Play no more than four songs by a particular artist;
- Play no more than four songs from a boxed set; and
- Play no more than three songs consecutively from a boxed set.

If, in addition to streaming the over-the-air broadcast programs, the station wants to stream "side" channels, those additional channels must also comply with the sound recording performance complement. The sound recording performance complement also applies to archived and looped programs, discussed below.

What other restrictions apply to the statutory license for sound recordings?

The statutory license for sound recordings contains limitations on advance notice. Advance program scheduling or prior announcement of song titles may not be transmitted by text, video or audio, although it is permissible to announce the name of a song immediately before it is performed or to announce that a particular artist will be featured at an unspecified future time. One or two artists, or a particular genre of music, may be identified to illustrate the type of music on a particular channel, but a prior announcement that a sound recording will be played at a particular time is prohibited because such an announcement facilitates copying of that recording. The song, artist and album must be identified. During the performance of a sound recording, one must identify, in textual data, the sound recording, the album and the featured artist, if receivers are capable of displaying the information.

Transmission of copyright management information is required. If technically feasible, digital transmissions must be accompanied by information encoded in the sound recording that identifies the title of the song, the featured artist and any other related information.

A sound recording may not be performed in a way that falsely suggests a connection between the copyright owner or recording artist and a particular product or service.

One must disable copying by a transmission recipient if the technology used can be disabled, and may not induce or encourage copying by transmission recipients.

One must accommodate technical protection measures widely-used by sound recording copyright owners to identify or protect copyrighted works if those measures do not impose substantial burdens on the transmitting entity.

The transmitting entity must cooperate with copyright owners to prevent recipients from automatically scanning transmissions in order to select particular recordings, if such cooperation will not entail substantial costs or burdens.

The statutory license is limited to transmissions of lawful sound recordings. Transmissions of bootlegs or unauthorized, pre-released recordings are not covered by the statutory license.

The transmitting entity cannot allow automatic switching of channels. Digital transmissions may not automatically and intentionally cause a device receiving the transmission to switch from one program channel to another.

The statutory license does not cover interactive services which allow the consumer to select the songs.

Are waivers of the DMCA restrictions possible?

Yes. It is possible to obtain a waiver of the conditions to the statutory license, such as the sound recording performance complement. Some stations have been successful in getting record companies to waive some of the DMCA programming restrictions.

The National Association of Broadcasters (NAB) negotiated partial waivers from Sony Music Entertainment ("Sony") and Warner Music, Inc. ("Warner"). The Sony waiver, which expires December 31, 2020, requires that broadcasters opt-in to the agreement. It applies to both commercial and non- commercial broadcasters. Stations wishing to opt-in to the Sony waiver can do so at: www.nab.org/sites/sonywaiver/

The Warner agreement, which expires September 30, 2019, does not require that a broadcaster opt-in, but applies only to commercial stations.
Each Waiver is slightly different, but, here are key provisions:

- Despite the restrictions in the "sound recording performance complement," the Waiver Agreements allow broadcasters to transmit consecutively up to one-half of an entire album of sound recordings and permit the transmission of certain classical musical works in their entirety, regardless of duration.

- The Waivers allow prior aural announcements, but not prior publication of a written or visual advance program schedule that identifies the particular artists or sound recordings

that will be featured at specified future times. Classical music broadcasters, however, can publish a schedule of classical music programming in accordance with their standards and practices as of September 30, 1998.

- The Sony waiver allows broadcasters to announce in written or visual form, that a program featuring a particular artist or artists will be aired at a specified future time if (a) the station airs a recurring program that features the music of that artist(s) and the program was on the air as of August 1, 2016, or (b) the station airs a tribute or documentary for special occasions, such as the death of an artist or to honor a commemorative milestone in music history or career of an artist.

- To the extent that music-intensive stations use third-party programming over which the broadcaster does not have the right or ability to control music selection, or programming not performed using a digital music file system, the Waivers waive the requirement that textual data must identify the artist, song title, and album while the song is streamed.

  - Sony requires that stations which opt-in to its Waiver Agreement and that have more than 80,000 music ATH per month provide a "buy now" link to purchase a download of a sound recording through a Sony-authorized store, such as iTunes or Amazon.

- The Waivers lift the 6-month limitation on retaining ephemeral copies of recordings (such as songs from a CD copied onto a station's hard drive music system).

Although the Waivers do not apply to all webcasters or to all the major labels, some webcasters have obtained waivers directly from labels. Contact the labels directly to ask for those waivers in writing.

What are archived and looped programs?

An archived program is one posted on a website for listeners to hear repeatedly, on demand, in the same order. It may not be less than five hours in duration. Such archived programs may reside on the website for no more than a total of two weeks and must otherwise meet the terms of the statutory license described above. Merely changing one or two songs does not make the program a different program, nor can programs be taken off for a short period of time and then made available again.
The limitations on archived programs do not apply to recorded events or broadcast transmissions that make no more than an incidental use of sound recordings, so long as the transmissions do not contain an entire sound recording or feature performances of a particular sound recording.

Looped or continuous programs are those that are performed continuously so that the program automatically starts over when it is finished. They may not be less than three hours in duration. Again, merely changing one or two songs does not create a new program.
The ability to repeat other programs is also limited. Programs that are retransmitted at publicly-announced times in advance can be repeated only if:

- The repeats of a program are limited to three times in a two-week period for programs under one hour in duration.
- The repeats are limited to four times in a two-week period for programs over one hour.

What are the royalty rates for streaming?

CRB Rates. Under rates adopted by the Copyright Royalty Board ("CRB") for 2015-2020, music streamers ("Statutory Licensees") must pay a minimum annual fee of $500 per channel. The CRB statutory license rates effective through 2020 are:

- $0.0017 per performance for nonsubscription services
- $0.0022 per performance for subscription services

Royalty rates are recouped from that minimum annual fee for commercial webcasters. Noncommercial webcasters' payment of a minimum annual fee of $500 per channel, however, covers up to 159,140 Aggregate Tuning Hours ("ATH") (defined below) per channel, per month. That averages out to 218 online listeners per hour each month. Performances over that ATH threshold must be paid at the commercial "per performance" rates listed above.

The rates are adjusted each year based on changes in the cost of living determined by the Consumer Price Index.

Noncommercial Educational Stations Covered by CPB Agreement. CPB and SoundExchange reached an agreement whereby CPB pays a lump sum to cover specified noncommercial stations and other non- profit entities ("Covered Entities") that distribute noncommercial programs. The current agreement covers the period 2016-2020. To be covered, a non-profit entity must be a noncommercial terrestrial radio station that receives funding from the CPB; an affiliate of NPR, American Public Media, Public Radio International or Public Radio Exchange; or a member of the National Federation of Community Broadcasters.

Eligible public stations must elect to participate by registering through CPB's website at www.cpb.org/musicrights. Registered stations do not have to pay a minimum annual fee to SoundExchange, but do need to provide data regarding performances of music (i.e., song title, featured artist, album title, marketing label, play frequency, and start time and duration for transmitted sound recordings) so that CPB can provide system-wide reports of use to SoundExchange. If a station is not a Covered Entity, it must abide by the CRB rates and terms applicable to noncommercial webcasters or elect an alternative deal for which it is eligible.
Accredited Educational Institutions. Noncommercial radio stations that are not CPB-funded but that are operated by accredited educational institutions and staffed by enrolled students may elect to participate in the College Broadcasters deal. A $500 minimum annual fee covers 159,140 ATH per month and is paid to SoundExchange directly. If that monthly ATH is exceeded in a given month, the additional performances are paid on a per performance basis at the commercial webcaster rates listed above. If the educational institution is unable to calculate actual total performances however, it can calculate royalties using ATH figures and assume that 12 songs per hours are played if it is not subject to full census reporting described in the Recordkeeping Section below.

PRO Streaming Fees. In addition to paying royalties to stream sound recordings, webcasters must obtain non-interactive Internet licenses from ASCAP (www.ascap.com/weblicense - minimum annual fee was $288), BMI (www.bmi.com/licensing/webcaster - minimum annual fee in 2015 was

$351), and SESAC (www.sesac.com/Licensing/internet.aspx- minimum fee is $301 per six months per web page in 2016). These fees cover the on-line performance of musical works in the PRO repertories. Information about licensing from GMR is available at globalmusicrights.com.

What is an "Aggregate Tuning Hour"?

"Aggregate Tuning Hours" ("ATH") are the total hours of programming the Statutory Licensee transmits to all "Listeners." A "Listener" is defined as a player, receiving device or other point capable of receiving the digital sound recording. A Listener is thus a device, not a person. For example, if the station streamed for one hour to 10 simultaneous Listeners, the ATH would be 10. A Statutory Licensee may deduct from the ATH the time during which it transmitted a song for which it obtains a direct license from the copyright owner.

What information must a station report?

Under the CRB rules, for each sound recording streamed, the following records must be kept and sent periodically to SoundExchange:

1. Name of Service (e.g., XYZ Broadcasting, Inc.).
2. Transmission Category (e.g., "Eligible nonsubscription transmission of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming" defined in the rule as category code "B").
3. Featured Artist (the full name of the individual or band).
4. Sound Recording Title (the song title).
5. Sound Recording Identification – either:
   (a) Album Title and Marketing Label (if a particular sound recording has been released for promotional purposes before the album title is available, the information must be kept only if it is available before or at the time of the performance, but must be supplied if it is available for subsequent performances), or
   (b) International Standard Recording Code (ISRC) (imbedded in promotional and commercially released sound recordings which can be read by software).
6. Actual Total Performances (the number of times a sound recording is "performed" – i.e., each time a sound recording is accessed by a computing device represents a separate performance of the sound recording).

If a webcaster qualifies as a minimum fee webcaster (defined below), instead of reporting based on actual total performances, it may, instead, report Aggregate Tuning Hours, Channel (for broadcasters, call sign or FCC facility ID number) or Program Name, and Play Frequency (the total times a sound recording is "played" during the reporting period – i.e., offered or transmitted by the service, regardless of the number of listeners).

A "minimum fee webcaster" is a webcaster that does not owe streaming royalties in excess of the minimum annual fee for the statutory license and that is (1) owned and operated by an AM or FM station licensed by the FCC or (2) operated by an educational institution primarily staffed by students. For noncommercial webcasters, the $500 minimum annual fee covers 159,140 ATH (approximately 218 listeners per hour).

Stations covered by the CPB royalty agreement must supply the data listed below to NPR Digital Services, which submits aggregated music usage information to SoundExchange on behalf of all Covered Entities:

For each song played on each stream, stations covered by the CPB license provide the following data:

1. Song title.
2. Featured artist/group/orchestra.
3. Album title.
4. Marketing label.
5. Start date and time of song play.
6. End date and time of play or duration of song.

What is a track?

SoundExchange considers each track, on a CD for instance, to be one song. For example, each track or movement on a classical album must be reported separately.

Who is a featured artist?

The featured artist is the performing artist, such as the band, an individual, or orchestra, as distinguished from the songwriter or composer. For example, it would not be appropriate to identify Mozart, the composer, as the featured artist.

How often do webcasters need to submit Reports of Use to SoundExchange?

Webcasters must submit to SoundExchange Reports of Use that identify the featured artist, the song title, album title, marketing label, and number of performances (i.e., number of listeners per song, for minimum fee webcasters the ATH, or for Covered Entities under the CPB deal the start and end times and server logs). Reports of Use must be submitted to SoundExchange each month within 45 days after the end of the reporting month. Webcasters must file monthly Reports of Use on a full "census" basis – i.e., every song streamed. Minimum fee webcasters, however, and Covered Entities under the CPB Agreement, can file quarterly based on a two-week survey per quarter. The two weeks can be consecutive or two separate 7-day periods within the quarter. The 7-day consecutive period may start on any day of the week.

The precise file format for most reports other than for Covered Entities under the CPB deal is set forth in *Copyright Rule 370.4* found at www.loc.gov/crb/laws/title37. SoundExchange also posts an Excel spreadsheet, at www.soundexchange.com/service-provider/reporting-requirements/, that statutory licensees can complete and convert to a properly formatted file.

Under the College Broadcasters Agreement, a noncommercial educational webcaster that did not exceed 159,140 ATH per channel for more than a month in the prior year must prepare Reports of Use that cover two 7-day periods per quarter, filed annually by January 31 each year. If the noncommercial educational webcaster is unable to calculate actual total performances or ATH, it may report channel and play frequency. If it exceeded 159,140 ATH for more than a month in the prior year, the noncommercial educational webcaster must file full census Reports of Use each quarter. During the first, year the channel reports on a full census basis, it will have a 1 year grace period to include ATH or total performances in its Report of Use.

The College Broadcasters deal provides an exemption from preparing Reports of Use if the webcaster qualifies for the exemption and pays an additional $100 annual fee (called a "Proxy Fee"). Remember that this deal applies only to an educational institution that operates a streaming service staffed primarily by students. Under this deal, a noncommercial educational webcaster can pay the $100 Proxy Fee and avoid filing Reports of Use if it has no more than 80,000 ATH per channel per month. The ATH limit represents an average of 109 listeners per hour.

The election to be exempt from reporting must be made each year by January 31. With the election, a small noncommercial educational webcaster must provide SoundExchange with ATH numbers, music genre, and other information SoundExchange needs for creating a proxy for distributing royalties.

If an exempt webcaster unexpectedly exceeds the ATH limit in a year, it may still qualify if it takes steps reasonably calculated to ensure that it will not exceed the applicable ATH limit during the following year.

Are sound recordings created prior to February 1972 covered by the streaming license administered by SoundExchange?

No. The public performance right in digital sound recordings and the related statutory license are based on federal copyright law, which does not cover sound recordings made prior to February 15, 1972. Court decisions have split on the issue of whether such sound recordings are protected under state common law. A recent decision by a federal appellate court illustrates how tricky copyright distinctions can be. The appellate court reversed a lower court which had protected pre-1972 analog recordings under New York State law. The higher court concluded that digital remastering of old analog recordings created after the 1976 Copyright Act went into effect created new "derivative" works that were subject to the federal Copyright Act that preempted state law. The owners of the pre-1972 copyrights lost the infringement claim they initially won. Others have been more successful. A class action suit brought against Sirius XM by The Turtles and other artists resulted in a settlement agreement that could pay the claimants up to $100 million, depending on the outcome of other lawsuits brought under state law.

Recording Live Music

The Copyright Act requires that performers consent to the recording of their live performances and to the distribution or transmission of that recording. Stations that record live in-studio performance must get consents or releases from all performers involved in the performance.

[Section 1101 of the Copyright Act]

What does a station need to do to stream sound recordings?

In addition to complying with the restrictions built into the statutory license and paying royalties, a webcaster must file a Notice of Use with the Copyright Office in Washington, DC. The form is available at www.copyright.gov/forms/form112-114nou.pdf . The filing fee is $40 at the time of this writing. For current fee schedule, go to www.copyright.gov/licensing/fees.html .

Alternatively, if a station is eligible, it must register with CPB so that it can be included in the list of Covered Entities CPB provides to SoundExchange.

Stations that qualify under the deal negotiated by College Broadcasters, Inc., must be noncommercial educational webcasters ("NEW") owned by educational institutions and run by students. Such webcasters must elect the NEW license by January 31st each calendar year.

Does the statutory music license cover operas and musicals?

No. The statutory license covers only non-dramatic musical works. It does not cover public performances of dramatico-musical works, such as an opera or musical. These performance rights are sometimes referred to as "grand rights." Musical works written to tell a story fall into this category. Licenses with the PROs and statutory license with SoundExchange cover a single song from an opera or musical, but not the performance of the entire opera or musical.

To perform an entire opera or musical, either over-the-air or on the Internet, a station must obtain a direct license for the "dramatic" performance rights. Although an opera as a musical work may be in the public domain, the sound recording of the work may not be. A station must obtain a direct license to use sound recordings of the work if the sound recording is played in sequence in its entirety.

What licenses does a station need to use music in a podcast?

There are no blanket or statutory licenses for use of music in a podcast. As a result, each copyright in each piece of music must be directly licensed from the owner of the copyright or licensed indirectly through an agreement with organizations such as Creative Commons. The download of a podcast does not require a public performance right, but does require a mechanical license to reproduce and distribute the musical work and a master use license to reproduce and distribute the sound recording.

Podcasts may contain audio, video, images, text, PDF, or other types of files. Although there is much debate about podcast copyright issues, one should assume that a podcast is a reproduction and distribution of a copyrighted work. Before posting a broadcast program for podcast, have permission to use all copyrighted materials included in the program. A podcast program that uses copyrighted material such as songs and video will need one or more licenses in order to reproduce and distribute the work. Program hosts and celebrity guests may also have "publicity" rights (discussed below) that need to be secured.

What's the difference between a reproduction right and performance right?

When a song is included in a podcast, that song is "reproduced" when the podcast is made available for download. Reproduction rights in the musical work and the sound recording must be individually secured for the podcast.

For the right to reproduce a musical work, a podcaster must secure a mechanical license. The mechanical license is compulsory. That is, the copyright owner must grant the license based upon rates set by the Copyright Royalty Board. As prescribed by regulation (37 C.F.R. § 385.3), the maximum statutory rate for a mechanical license is 9.1 cents per musical work or 1.75 cents per

minute of playing time or fraction thereof, whichever is greater, although it may be possible to negotiate a lower rate directly from the copyright owner. The podcaster can obtain a mechanical license through the Harry Fox Agency (HFA). See www.harryfox.com/

Public broadcasting entities can reproduce and distribute musical works at the rates published in *37 C.F.R. Section 381.7*, although licenses at lower rates can be separately negotiated. The information required to be included in cue sheets which must be filed with the Copyright Royalty Board are set forth specifically in that rule. For the rule and rates, go to: http://www.ecfr.gov/cgi-bin/text-idx?SID=3a295e157091e5a2a3397e936e16b888&mc=true&node=pt37.1.381&rgn=div5

For the right to reproduce the sound recording, a podcaster must secure a master use license directly from the record company. The liner notes for commercially-released CDs usually list the name of the relevant record company. The record label can charge what it wants and is not required to grant a license.

How are video rights different from audio rights?

To reproduce an audiovisual work, a podcaster must obtain a digital transmission license. To perform an audiovisual work, a podcaster must obtain an exhibition license. Typically, the owner of the motion picture copyright can license both rights together. The owner of the copyright in the audiovisual work can charge what it wants and is not required to grant a license.

The right to reproduce a musical work contained in a motion picture requires a synchronization license. A podcaster will need to determine whether the synchronization right obtained by the producer of the video authorizes the digital transmission of the work. If not, the podcaster must also obtain a videogram reproduction license directly from the music publisher or its licensed agent, such as the Harry Fox Agency. This license is not compulsory but is based on voluntary negotiations between the parties.

Because the integration of sound and image make movies and other audiovisual works unified works, the producer of a video must obtain a master use license from the record company to reproduce the sound recording as part of the video. A podcaster must determine if the master use agreement the video producer obtained covers the digital transmission of the recording. Otherwise, the podcaster will need a separate license from the sound recording copyright owner.

What's a display right?

Any podcast containing artwork, film, a slide, a TV image, a still picture or photograph will need an electronic print reproduction license. If a website contains a "thumbnail" photograph of a record album cover, artwork, a movie poster, or a print from an audiovisual work, display rights need to be cleared.

What's a right of publicity?

Rights of publicity are not federal copyright interests, although they are often closely entwined with those interests. Most states grant individuals (and sometimes their estates) the right to control the commercial use of their name, image, likeness, or some other identifying aspect of identity, generally known as the right of publicity or personality. The scope and duration of the rights vary considerably from state to state. As a result, a program host or other talent, whose voice or likeness are on the podcast, may have the right to license his or her voice or image on a podcast.

The best course of action for the broadcast station is to have a written agreement which specifies that an on-air program is a "work made for hire." The contract can provide the station the right to use the program in perpetuity in all media. Without a written contract, it may be difficult to clear materials that include the voice or likeness of former employees. In the case of archived materials, the station may need to obtain the permission of the former program host before including the material in a podcast.

Note, too, that additional fees may need to be paid to members of trade unions, such as SAG-AFTRA (www.sagaftra.org/), for use of on-air materials that are re-purposed for on-line transmissions such as podcasts.

Station Use of Recorded and Other Digital Material

Is a station allowed to make copies of its CDs or vinyl albums to put on its hard drive so DJs can program the station from a computer?

Converting a music library from CDs or vinyl to a computer music vault involves reproduction of both the sound recording and the music composition. There are no rulings on the question whether such an unlicensed reproduction violates copyright law.

The Copyright Act allows noncommercial broadcasters to make copies of musical compositions and sound recordings in limited situations. *Section 114(a)* of the Copyright Act provides an exemption for a sound recording included in educational radio programs distributed by NCE stations. This exemption gives public broadcasters the right to make copies of programs that incorporate sound recordings, provided that copies of the programs are not commercially distributed to the public. Note, however, that this right applies to programs, not individual works or sound recordings.

Other exceptions for reproduction of a musical work are narrower in scope. If the public performance of a musical work is licensed pursuant to the statutory license or a direct license, *Section 118(c)(2)* of the Copyright Act allows public broadcasting entities to reproduce and distribute programs containing licensed works solely for the purpose of allowing other NCE broadcast stations to broadcast the programs. Copies of those programs must then be destroyed within 7 days. This provision also applies to the copying and distribution of programs. Thus, it does not explicitly cover copying individual works on vinyl or CDs to a musical vault.

Section 112(a)(1) of the Copyright Act allows a broadcaster that has a license to perform copyrighted musical works to make one copy of programs that include a copyrighted work, provided that the copy is used only for the broadcaster's own purposes within its service area and that it is destroyed within 6 months of the date of first transmission unless it is preserved solely for archival purposes. Other elements to consider:

- To be licensed to publicly perform means the station has its ASCAP, BMI and SESAC licenses in place for the musical works.
- A "transmission program" is "a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit." Thus, the copying needs to be in the context of a program, not a copy of an individual album or CD.
- The limit is one copy of the transmission program, which must be destroyed after 6 months. Although no time limit applies if the program is kept for archival purposes, that program could not be transmitted again after the 6 months expired. The 6 months runs from the date of first transmission of the program.
- The copy made pursuant to this section could not be used by affiliates. The exemption applies only to the original transmitting organization.
- The Sony and Warner waivers lift the 6-month limit on the use of a server copy during the term that the Waiver Agreements are in effect.

Conversion of a music library to a music vault for convenience of programming a radio station is not one of the fair use purposes cited in *Section 107* of the Copyright Act (listed above), although an argument can be made that such conversion would be a fair use if it were undertaken to preserve deteriorating recordings that would be accessed for future research or comment. The non-profit nature of a noncommercial station does not necessarily make all copying noncommercial. Copying in order to avoid buying commercially available digital substitutes may directly affect the commercial market for the work.

Can DJs use music from YouTube, Pandora, Spotify or other digital services?

Using YouTube content is no different from copying anything else from the web. The station's ASCAP/BMI/SESAC licenses and the statutory license cover over-the-air performance of musical works, but do not cover reproduction of those works or the creation of bootleg or derivative works. A copy of a sound recording played on someone's YouTube video is a derivative work, and unless whoever uploaded the YouTube video first obtained a synchronization license to use the music with the video, the derivative work is unauthorized.

A different question arises when the content is a live performance of an artist at a musical venue. In this situation, a station is performing a recording of a live performance, possibly transmitted on someone's iPhone. The person shooting the video may own the copyright to the sound recording, but that person probably did not obtain a mechanical license from the owner of the musical work or receive permission from all the performers to record the live performance in the first place.

Playing a digital download would be covered by ASCAP/BMI/SESAC if the work was included in their repertories, but what if a DJ plugs his iPad to the board and broadcasts directly from his online music services, such as Pandora? Again, ASCAP/BMI/SESAC and statutory licenses cover broadcast and streaming of non-dramatic musical works and sound recordings, but the situation is murkier

when one reviews the Terms of Service for Pandora, or other online music services. Those terms of service limit usage to personal non-broadcast use. Thus, a DJ using his Pandora subscription to broadcast his "channel" is probably violating Pandora's terms of service. In fact, Spotify and Pandora cannot authorize broadcast use because these services do not have authority to license other businesses to perform works "publicly."

Another possible risk of liability is third party interference with contract (i.e., the Terms of Service for music channels). A station could become liable if it induced a breach of the terms of service for Pandora or Rdio or whatever the music service happens to be. Copyright owners are third party beneficiaries of those contracts. Bottom line: don't actively solicit volunteers or employees to plug in their music service channels or enable that activity unless they have consent from the service or the terms of service for those music services permit broadcast use.

Should the station allow a program host to post the show on his or her own website?

No. The station's licenses from the PROs and the statutory license administered by SoundExchange do not cover the performance of the program by anyone other than the licensee of the station. Hosts need to obtain their own licenses to transmit any copyrighted content on any server other than the station's. They are not covered by the station's licenses.

Can a station post any photograph it pulls from the Internet?

No. Anyone posting photographs or re-tweeting them must have a license from the photographer and possibly a publicity rights consent from the person photographed. Some professional photographers have made a cottage industry out of detecting unlicensed copies and suing, or threatening to sue, those displaying their work. The first step is usually a "cease and desist" letter in which an attorney for the copyright owner asserts the owner's rights and demands compensation for infringement. Consult with an attorney before responding to a photographer's "cease and desist" letter.

If a photograph is obtained from a Creative Commons site, be sure to follow the terms on which that photograph was posted. For instance, if attribution is required, do not strip the photographer's name. Licenses for stock photos can be obtained from sources such Getty Images or Agence-France Press.

Can a station read a literary work, such as a children's book, on the air?

There is a no compulsory license for literary works. A direct license from the owner of the copyright is required. Quotations or short excerpts from literary works are generally permissible under the fair use doctrine, but an unlicensed recitation of whole works, even if they are short, runs the risk of infringement. Unfortunately, there is no clearing house for performance of literary works, as there is for musical works, so stations must clear rights directly with the copyright owner.

What are the penalties for infringement?

Because clearing the rights from various copyrights owners is time-consuming and not always successful, it is tempting to use copyrighted material without first securing the necessary permissions. In weighing the risks of doing so, consider the potential costs of copyright

infringement. The copyright owner may enjoin the use of such materials and, in effect, shut down the use. In addition, it may recover actual damages, profits made by the infringer, or statutory damages, plus attorney fees and costs. For willful infringement, statutory damages can run as high as $150,000 per infringement. Where the infringer proves it had no reason to believe its acts infringed on copyrights, the court has the discretion to reduce damages to $200 per infringement. For a public broadcasting entity, the court can also reduce damages if the court finds that the public broadcasting entity had no reason to believe that its acts constituted a violation. For example, with podcasting, each time a podcast is downloaded may infringe multiple copyrights – the reproduction rights held by the sound recording and the musical work copyright owners, respectively, the audiovisual rights held by the motion picture copyright owner and the owner of the display rights. Likewise, operating without the necessary PRO license could add $200 for each song from its repertoire times every listener. Even minimal statutory damages of $200 can quickly mount up.

About the Authors of Chapter 14:

A Guide to Copyright Law for Noncommercial Radio Stations

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John Crigler represents clients in all aspects of public broadcasting. His clients include public radio and TV stations, program producers, nonprofit internet distribution platforms, webcasters, satcasters, community groups, tribal Nations and trade associations. John provides representation before the Federal Communications Commission, the Copyright Office and Copyright Royalty Board, the Corporation for Public Broadcasting, the National Telecommunications and Information Administration and state and federal courts. He writes and speaks widely on public broadcasting topics and is a frequent panelist at conferences on noncommercial broadcasting and the internet. In addition to co-authoring Chapter 14, A Guide to Copyright Law for Noncommercial Radio Stations, John also revised a previous version of the *Public Radio Legal Handbook.*

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Melodie Virtue represents broadcast and online commercial and noncommercial educational radio and television companies before the Federal Communications Commission in Washington, D.C., as well as other federal agencies. Her experience includes proceedings before the FCC dealing with licensing, spectrum auctions, program content, forfeitures, and administrative hearings as well as drafting comments on proposed rules that impact her clients' businesses.

In addition to serving their regulatory compliance needs, she negotiates and drafts contracts on behalf of electronic media clients on various facets of their business, such as asset sales and stock transfer agreements, tower leases, local marketing agreements, programming agreements, and employment agreements. She also advises clients regarding copyright, music licensing, service marks, online digital streaming and podcasting, terms of use, privacy policies, and web site legalities.

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List of Acronyms Index

AFRTS	Armed Forces Radio and Television Service
ASCAP	American Society of Composers, Authors, and Publishers
ASR	Antenna Structure Registration
ATS	automatic transmission system
BMI	Broadcast Music Incorporated
CAB	Community Advisory Board
CARP	Copyright Arbitration Royalty Panel
CB	Citizens Band
CDBS	Consolidated Database System
CFR	Code of Federal Regulations
CORES	Commission Registration System
CPB	Corporation for Public Broadcasting
CSRS	Call Sign Reservation and Authorization System
DMCA	Digital Millenium Copyright Act of 1998
DPRA	Digital Performance Right in Sound Recordings Act of 1995
EAN	Emergency Action Notification
EAS	Emergency Alert System (replaced EBS, Emergency Broadcast System)
EAT	Emergency Action Termination
EEO	Equal Employment Opportunity
EOM	End of Message
ERP	effective radiated power
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
FRN	FCC Registration Number
GPO	Government Printing Office
HAAT	height above average terrain
ITS	International Transcription Service
LPFM	Low Power FM
MO&O	Memorandum Opinion and Order
MXd	mutually exclusive
NAL	Notice of Apparent Liability
NCE	noncommercial educational
NFCB	National Federation of Community Broadcasters
NIST	National Institute of Standards and Technology
NN	Non-Participating National station
NOI	Notice of Inquiry
NPR	National Public Radio
NPRM	Notice of Proposed Rulemaking
NWS	National Weather Service
PAC	political action committee
PN	Participating National station
PSA	public service announcement
R&O	Report and Order
RF	Radio Frequency

RIAA	Recording Industry Association of America
RMT	Required Monthly Test
RPU	remote pickup unit
RWT	Required Weekly Test
SCA	Subcarrier Communications Authorization
SESAC	Society of European Stage Authors and Composers
STA	Special Temporary Authorization
STL	studio transmitter link
TCAF	Temporary Commission on Alternative Financing for Public Telecommunications
TCPA	Telephone Consumer Protection Act of 1991
TIN	Taxpayer Identification Number
ULS	Universal Licensing System
USPS	United States Postal Service
VOA	Voice of America