National Association of Broadcasters

LEGAL GUIDE

To FCC Broadcast Regulations

SECOND EDITION

FOREWORD

It is difficult to believe that seven years have passed since the first edition of the *NAB Legal Guide* appeared in May 1977. Its revision – the *NAB Legal Guide to FCC Broadcast Regulations* – was a significant undertaking. For this effort, NAB thanks especially **Rose H. Perez**, Esq., 1983-84 Legal Fellow, NAB Legal Department, and **Erwin G. Krasnow**, Esq., Partner, Verner, Liipfert, Bernhard & McPherson, who conceived and supervised the original *Legal Guide*. Both spent the better part of a year revising and editing the *Legal Guide*'s Second Edition. It is largely due to their dedication, professionalism and long hours of hard work that the 1984 *Legal Guide* has finally become a reality.

Since the publication of the first *Legal Guide*, monumental changes have taken place in the FCC's regulation of the broadcast industry. Many FCC regulations have been eliminated, modified or streamlined. I have often felt, however, that deregulation is in the eyes of the beholder. Whether it is termed reregulation, as by the Wiley Commission, deregulation, as under the Ferris Commission, or unregulation by the Fowler Commission, a cursory review of the *Legal Guide* indicates that much is left to be done before we, as an industry, have achieved true deregulation. Until Chairman Fowler's pledge to review each and every broadcast regulation becomes a reality and all unnecessary rules are eliminated, the *Legal Guide* will continue to be an essential tool for all broadcast licensees.

Judging by the *Legal Guide*'s sheer volume, it is apparent that broadcasters still must comply with a significant number of rules and regulations. The *Legal Guide* is designed to serve as a valuable resource for each and every broadcaster to use in understanding the vast maze of federal regulation. By using the *Legal Guide*'s various elements, the task of complying with FCC regulations and achieving a renewal of license should be much easier.

Special thanks also are due to many members of the Federal Communications Commisson's staff and NAB staff for their patience in reviewing the materials that make up the *Legal Guide*. In addition, for their substantial contributions to the *Legal Guide*'s Second Edition, NAB thanks: Raul Rodriguez, Barbara Dent, Irv Gastfreund, Baryn Futa, Peter Tannenwald, John Logan, Molly Pauker, Dom Monahan, Bill Perry, Jonathan Blake, Paul Berman, Greg Schmidt, John Scott, Carl Ramey, Herb Terry and Michael Botein.

Henry L. Baumann
Senior Vice President & General Counsel

PREFACE

A GUIDE TO USING THE GUIDE

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

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

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

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

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

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

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

Applications. Chapter I, Section B describes the most frequently used application forms filed by broadcasters with the Commission (some of the forms are reprinted in the Appendices) and provides guidance on filling out these forms. The FCC policies and procedures on establishing or relocating a main studio are explained in Chapter V, Section G.

Compliance Checklist. You should conduct a periodic in-house inspection to make sure that your station's technical plant and operating procedures are in order. Appendix I-D contains an updated version of the FCC's Field Operations Bureau checklist of Commission regulations that govern AM and FM stations. Chapter V describes the FCC's radio operator rules, required engineering records, station technical specifications, FCC notification requirements, Emergency Broadcast System procedures and other technical requirements – your engineer might review this material prior to conducting an in-house inspection of the station's technical plant.

Every station should establish a diagnostic and preventive audit process to assure compliance with all FCC rules and policies – a section-by-section review of the *Legal Guide* will be of significant assistance to you in devising an audit process for your station. For example, we recommend that television stations prepare periodic reports comparing the station's programming performance with the promises made in the last renewal application – Appendix II-G contains a suggested Promise vs. Performance Report.

Programming Requirements. Chapter II (Programming Policies and Practices) and Chapter III (Announcements) should be reviewed by the station's Program Director. With respect to political broadcasting requirements, we recommend that you and your Program Director use the pre-election checklist set forth in Chapter II, Section B-4. The tenth (and most recent) edition of the NAB *Political Broadcast Catechism* is contained in Appendix II-E – the *Catechism*'s Table of Contents and the Topical Index will help you in finding answers to questions that might arise. Your Program Director also should review Chapter II, Section A (Program Logs) and Chapter V, Section B (Ascertainment of Community Needs and Problems).

News Requirements. Your News Director should review the sections on (a) Investigative Reporting (Chapter II, Section C) – Appendix II-F contains a suggested policy statement on this subject; (b) Unauthorized Communications and Rebroadcasts – Appendix II-I lists state statutes governing telephone recording, wireless microphones and eavesdropping; and (c) Lotteries as Editorial and News Topics (Chapter IV, Section E).

Advertising Requirements. Employees involved with sales should review Chapter II, Section B (Fairness Doctrine, Political Broadcasts and Related Topics) and Chapter IV (Commercial Policies and Practices). You should review your traffic and accounting procedures to prevent fraudulent billing – Chapter IV, Section B-1 (Fraudulent Billing) contains an eight question checklist on this topic. Chapter IV, Section E (Contests, Promotions, Lotteries and Gambling-Related Sports) contains suggested safeguards concerning the content of broadcast copy dealing with contests and maintenance of contest files, as well as checklists on the elements of a lottery pertaining to the elements of "chance" and "consideration." The appendices to Section F (Payola and Conflicts of Interest) are designed to aid you in identifying potential problems in the area of payola and plugola – they list common practices that fall under the scope of payola prohibitions and suggest guidelines for use in your dealings with record companies and record promoters. These appendices also contain a suggested memorandum that may be circulated to secure information from pertinent employees concerning their outside business interests and activities, and a sample affidavit that might be executed by such station employees.

Record Retention Requirements. You should periodically review your station's public inspection file to ensure that all of the documents listed in FCC Rule 73.3526 are included. Appendix V-A sets forth the records that you must make available to the public and the period of time such records must be retained. You should also provide instructions to all staff members who maintain the file – Appendix V-B contains a suggested memorandum for distribution to your staff concerning the local public inspection file; Appendix V-C is a suggested form that you might ask persons desiring to inspect the file to fill out; and Appendix V-D is a suggested form that you might ask parties to complete if they desire reproduction of materials in the local public file. Also, Chapter V, Section J contains a list of technical records that you are required by the FCC to maintain.

Cable Television Rules. Licensees of television stations should understand the impact on their operations of the FCC's cable television rules governing broadcast signal carriage, nonduplication and carriage of sports events. Chapter VI is designed to simplify the maze of cable television rules. Each television licensee should adopt a monitoring program designed to assure that cable systems are providing the signal carriage, nonduplication protection and program exclusivity required pursuant to the FCC's cable television rules.

Noncommercial Educational Stations. While noncommercial educational (or public) broadcasters are generally subject to the same regulatory and statutory requirements as their commercial counterparts, the FCC imposes unique requirements on noncommercial educational broadcasters. Chapter VII (Regulation of Noncommercial Educational Broadcasters) outlines and discusses the differences between the regulatory treatment of public and commercial broadcasters. Also, Chapter IV, Section C-7 discusses fund-raising rules for noncommercial broadcasters.

FCC Assistance. Chapter VIII (Obtaining Advice and Information from the FCC) provides a functional telephone listing of FCC personnel to enable you to call the right person on the Commission's staff at the right number on the first try. Since checking with your local field office may save you a long-distance call, we have listed in Chapter VIII, Section D the telephone numbers as well as the mailing addresses of the FCC's field offices.

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Before using the *Legal Guide*, you should bear in mind several cautions. First, the *Legal Guide* cannot be considered in any way an official publication whose contents have been approved by the FCC. It represents the views and interpretations of the NAB Legal Department on major FCC rules and regulations applicable to broadcast stations as of the date of publication (May 1984). Second, since the Commission's policies and rulings are constantly being revised, you should check to see whether the law may have been changed.

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

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CHAPTER I:

REPORTING REQUIREMENTS, APPLICATIONS AND COMPLIANCE PROCEDURES

A. REPORTING REQUIREMENTS

Each licensee should develop a system that will serve as a reminder of the following FCC reporting requirements.

1. ANNUAL EMPLOYMENT REPORT

All broadcast licensees must file an Annual Employment Report (FCC Form 395) with the FCC on or before May 31 of each year. FCC Rule 73.3612. Stations with fewer than five full-time employees should check box 1C of the form and complete the required sections listed there. Stations with five or more full-time employees during the selected payroll period should check box 1D and complete all pertinent sections of the form. The employment data filed on the form must reflect the employment figures from any one payroll period in January, February or March. The same payroll period must be used each year.

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

2. OWNERSHIP REPORT

The Commission recently revised its rule concerning commercial broadcast licensee ownership reporting and disclosure requirements. *See Report and Order* in Docket No. 20521 (FCC 84-115) 49 Fed. Reg. 19482 (May 8, 1984). Effective June 6, 1984, amended Rule 73.3615 requires each commercial broadcast licensee to file an Ownership Report (FCC Form 323) once a year, on the anniversary of the date that its renewal application is required to be filed. The Ownership Report must be based on information as of a date not more than 30 days prior to its filing.

Exempt from the annual filing requirement are sole proprietorships and 50/50 partnerships, which must file ownership information in connection with their initial applications for license. A licensee that owns multiple stations with different anniversary dates need file only one Report per year on the anniversary date of its choice. The revised rule additionally allows a licensee with a current and unamended Report on file at the Commission simply to certify in a letter to the Commission that it has reviewed its current Report and that the Report is accurate, rather than having to file a new Report.

3. SPORTS AND NETWORK AFFILIATION AGREEMENTS

All network affiliation agreements must be reduced to writing, and single copies of all local, regional and national network agreements, including any amendments, supplements and terminations, must be filed with the FCC within 30 days of execution. Rule 73.3613. The term "network" includes essentially all program sources (including satellites) that feed program material to stations entirely or chiefly by interconnection, so that it is capable of simultaneous broadcast presentation. This definition includes Associated Press Radio and United Press International Audio services. It also includes sports affiliation agreements. However, agreements involving interconnection which cover only one or two individual programs or episodes need not be filed with the FCC. The filing requirement also applies to radio network contracts where the network normally furnishes programming to affiliated stations at least five days each week during eight months or more of the year. Rule 73.3613(a)(2).

4. STOCK AND MANAGEMENT CONSULTANT AGREEMENTS

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

5. CHANGE IN OFFICIAL MAILING ADDRESS

A licensee is required to keep the FCC informed of any change in its mailing address, so that the station may be sent documents or other papers without delay. A copy of a form that may be used for this purpose appears in

Appendix I-A. For information regarding a change in studio location, *see* Chapter V, page V-20.

6. SUBSTANTIAL CHANGES IN TELEVISION PROGRAMMING AND COMMERCIAL PROPOSALS

All licensees are bound to promises made in their latest applications or renewal audit forms, unless the Commission is notified of a change in the original proposal. Whenever any "substantial" change occurs in the accuracy of representations concerning television programming or commercial proposals (for example, the amount of News, Public Affairs and "All Other" programming), the FCC must be notified of the pertinent details within 30 days of the change. Substantial changes must be compiled on a Statement of TV Program Service (*see* below). Rule 73.3526(a)(8). This reporting requirement applies only to television stations, because the FCC, in its "radio deregulation" proceeding, decided to relax its requirements regarding the programming and commercial practices of commercial radio stations.

7. STATEMENT OF TV PROGRAM SERVICE

TV licensees must remember that the Commission requires television licensees to comply with their Statement of TV Program Service. The Statement of TV Program Service is Section III, Question 9 of the Television Audit Form (Form 303-C), and appears in Appendix I-B. It is the statement of the amount of nonentertainment programming that the licensee expects to air during a typical week of programming.

The Statement of TV Program Service must be kept in the public inspection file. A new statement need not be placed in the public file at every renewal if the statement on file remains current. However, licensees must notify the Commission of any "substantial changes" in their programming promises. This is done by submitting a revised Statement of TV Program Service to the FCC within 30 days of the change and also placing a copy in the public file. A "substantial change" in this context is defined as a decrease of 15 percent in any of the three nonentertainment program categories (news, public affairs or all other) or a 20 percent decrease overall in the categories found on the Statement of TV Program Service. This refers to decreases between the composite week performance and the amount promised in the last renewal application, unless otherwise amended during the license term with appropriate notification to the Commission. Licensees periodically should compare (at least on a semi-annual basis) their programming with the Statement of TV Program Service to make sure that the Statement of TV Program Service on file at the FCC is accurate.

8. DISCONTINUED REPORTING REQUIREMENTS

a. Annual Programming Report [Commercial TV]

Prior to 1981, the Commission required that all licensees of commercial television stations file an Annual Programming Report (Form 303-A). The Report provided the Commission with data on nonentertainment and local programming for a composite week drawn over a year. Form 303-A has been eliminated. The Commission merged Form 303-A into the television renewal audit form (Form 303-C). The audit form will be sent to 5 percent of commercial television renewal applicants. The other 95 percent of television applicants will receive the postcard form, which contains no composite week questions. *See* page I-13 of this chapter for 1984 composite week dates.

b. Annual Financial Report

Effective March 11, 1982, the FCC eliminated the requirement that commercial broadcasters file an Annual Financial Report (Form 324), which elicited detailed information about broadcasters' assets, expenses and revenues.

B. APPLICATIONS

The first step in filling out an application is to determine whether you are using the correct FCC form and, if so, whether it is the most up-to-date version. Appendix I-C contains a list of broadcast applications and reports that identifies, as of July 29, 1983, the latest edition of each form. Keep in mind that the use of obsolete forms can result in unnecessary delays in processing applications, requests for more information by the Commission, and the preparation and submission of data no longer required. The most common mistakes made by applicants involve signatures, dates and the number of copies of the form which need to be filed. To determine the number of copies necessary for filing with the Commission, check the instructions that appear on that form. Where dates are required on applications or exhibits, use the same date as, or a date prior to, the date you provide in the certification portion of the application. Only the original application or amendment must be signed. *See* Rule 73.3513.

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

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

FCC Form 301 is to be used by applicants proposing either to construct a new station or to make major changes in an existing AM, FM or TV facility. Rule 73.3533. (Use Form 346 for FM and TV translators, and Form 349-P for FM booster stations.) Form 301 requires information about the applicant's citizenship and character, as well as its financial, technical and other qualifications, plus details about the transmitting apparatus to be used, antenna system, studio location, proposed programming relating to issues of local public concern and equal employment policies. Applicants for new stations also are required to certify that they are financially able to construct the facilities and operate the station for three months without reliance on advertising revenues. In addition, Form 301 should be used by applicants seeking to modify an AM, FM or TV license in the following respects:

- change in station location involving no change in transmitter location;
- change in main studio location of a television station to a location outside the principal community;
- change in main studio location of an AM station to a location outside the principal community (other than to the authorized transmitter site);
- change in main studio location of an FM station to a location outside the principal community (other than to the main studio location of a commonly-owned AM station licensed to the same community);

- change in hours of operation of a standard broadcast station; or
- the installation of a transmitter which has not been type approved by the FCC for use by broadcast stations.

See Rule 73.3538.

Form 301 also should be used if a major change is sought in a station's power, transmitter site, theoretical patterns or such technical characteristics as augmentation of standard pattern, antenna height, and transmission line. Note that on January 5, 1984, the Commission initiated a proceeding proposing to define any changes in power, antenna location and/or height above average terrain as a minor change, while changes in frequency and station location would continue to be classified as major changes. *See Notice of Proposed Rule Making* in MM Docket No. 83-1377, FCC 83-608, 49 Fed. Reg. 1252 (Jan. 10, 1984).

2. EXTENSION OF CONSTRUCTION PERMIT OR REPLACEMENT OF EXPIRED CONSTRUCTION PERMIT

FCC Form 701 ("Application for Additional Time to Construct Broadcast Station") should be used to request an extension of a construction permit or, if the permit has expired, to request that it be replaced by a new permit. The application must contain a specific and detailed showing that failure to complete construction was due to causes beyond the control of the applicant. Rule 73.3534.

Form 701 should be filed at least 30 days prior to the expiration date of the construction permit, unless the applicant makes a satisfactory showing to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date. *See* Rule 73.3534(a). If the FCC grants the application, extensions of time will be limited to periods of not more than six months.

If a construction permit expires, applications for a construction permit to replace the expired permit (Form 701) must be filed within 30 days of the expiration date. If approved, the authorization will specify a period of not more than six months within which construction must be completed and an application for license filed. Rule 73.3534(b).

3. LICENSE TO COVER CONSTRUCTION PERMIT

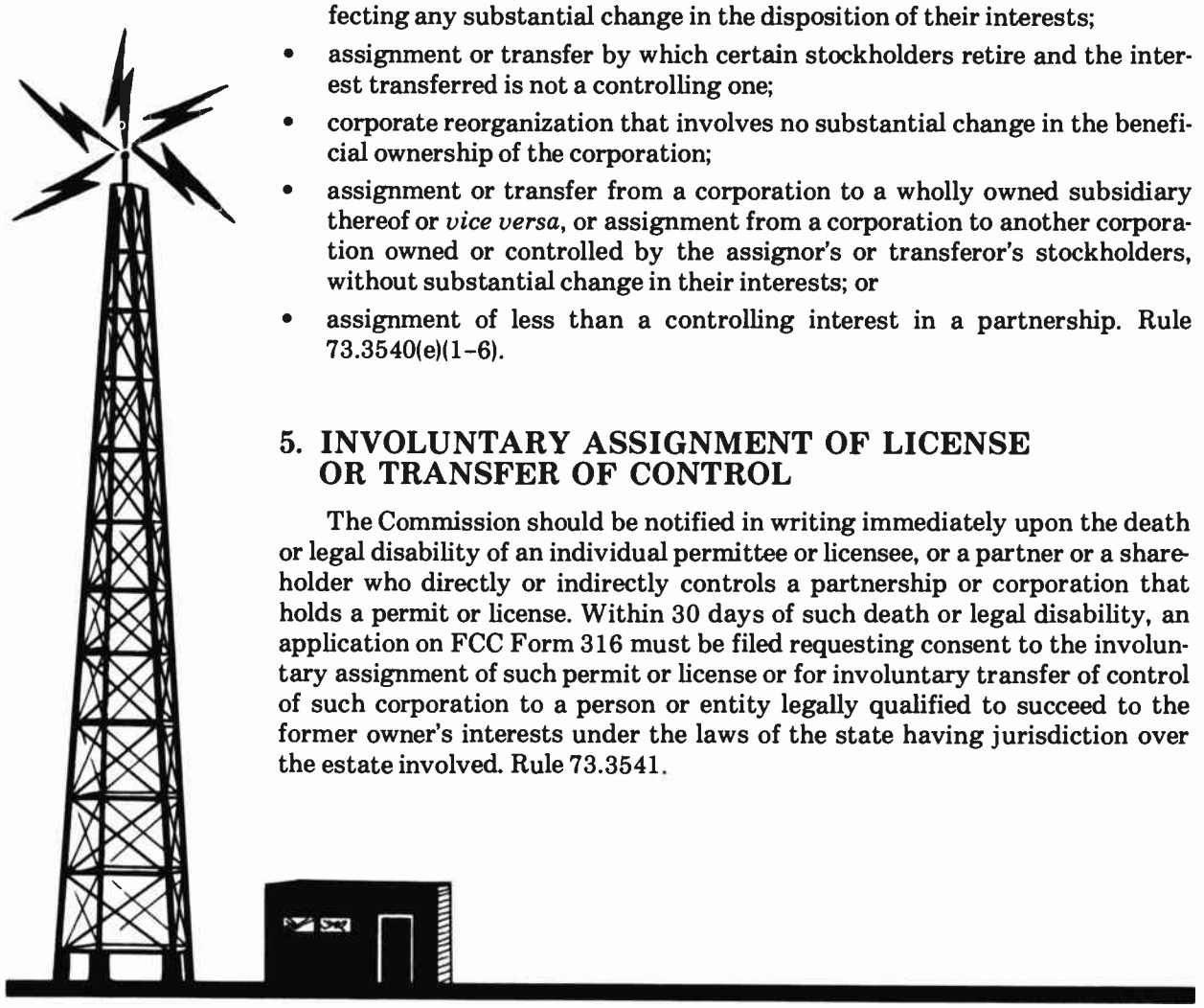
Once construction is completed, it is necessary to apply for a license on FCC Form 302 ("Application for New Commercial Broadcast Station License"), Form 347 (for TV and FM translators), or Form 349-L (for FM boosters). Rule 73.3536. Applicants must show compliance with all terms, conditions and obligations set forth in the original application and construction permit. Upon completing construction, the permittee of a directional or nondirectional TV station, or a nondirectional AM or FM station, may begin program tests upon sending a notice to the Commission in Washington, D.C., provided that within ten days thereafter the permittee files Form 302. Permittees of AM or FM directional stations must file a request for program test authority with their applications for license, and must await grant of such authority before beginning program tests. Program test authority should be issued within ten days. Also, an antenna proof-of-performance must be filed with any request by an AM station with a directional antenna. Rule 73.1620.

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

4. VOLUNTARY ASSIGNMENT OF LICENSE OR TRANSFER OF CONTROL

FCC Form 314 must be used to request the Commission's consent to assign the assets associated with a construction permit or broadcast license. Form 315 is used to request Commission approval to transfer control of a corporation holding a construction permit or broadcast license. Rule 73.3540. Form 316, usually called the "short form," should be filed under the following circumstances:

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



5. INVOLUNTARY ASSIGNMENT OF LICENSE OR TRANSFER OF CONTROL

The Commission should be notified in writing immediately upon the death or legal disability of an individual permittee or licensee, or a partner or a shareholder who directly or indirectly controls a partnership or corporation that holds a permit or license. Within 30 days of such death or legal disability, an application on FCC Form 316 must be filed requesting consent to the involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the former owner's interests under the laws of the state having jurisdiction over the estate involved. Rule 73.3541.

6. AUTHORIZATION, MODIFICATION AND RENEWAL OF AN AUXILIARY BROADCAST SERVICE STATION

FCC Form 313 should be filed by applicants seeking authorization to operate an auxiliary station or to make changes to an authorized auxiliary station. Since June 1, 1982, license renewals of auxiliary stations are automatically granted with the license renewals of the associated stations unless specifically indicated on FCC Forms 303-C, 303-N and 303-S. This automatic renewal process, however, does not include auxiliary stations licensed to international broadcast stations, network or educational entities, motion picture and television program producers and cable television system operators who are not also licensees of AM, FM, TV or LPTV stations. Non-broadcast licensees should use FCC Form 313-R for renewal of their auxiliary stations.

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

- **Question 8B.** When applying for base/mobile remote pickup stations, specify the highest power of *all* of the units to be covered by the application.
- **Questions 9A and 12C.** When side-mounting antennas for auxiliary stations on the towers of existing broadcast stations, verify coordinates and heights of these towers with the current licenses for the broadcast stations.
- **Questions 12C, D, E and F.** A sketch of the transmitting antenna support structure must accompany the application. The heights shown on the sketch should correspond to the answers to Questions 12C (overall height above ground level), 12D (elevation of ground above mean sea level at antenna site) and 12E (elevation above ground of antenna center of radiation).
- **Question 12C.** Include any top-mounted antennas in computing the overall height of the antenna supporting structure above ground. This answer should specify the height to the very top of the structure.
- **Question 12F.** The sketch of the antenna supporting structure should include the height above ground of the building roof, when the antenna is constructed on the roof of a building. This is in addition to supplying the overall height above ground level and the elevation of the antenna center of radiation.
- **Question 14.** When TV auxiliary transmitting equipment is proposed (*e.g.*, STL, relay and TV pickups) and also is type accepted, you may respond with "type-accepted equipment." It is not necessary to provide the manufacturer, type acceptance number and rated power as requested. Aural STL equipment is currently not subject to type acceptance.
- **Question 15.** When a new antenna supporting structure does not require FAA notification due to shielding exemption (*e.g.*, existing structures, natural terrain or topographic features of equal or greater height), a statement explaining in detail the basis for this exemption should be included with the Form 313.

Furthermore, licensees of TV pickup stations should be aware that the Commission amended the TV auxiliary rules (Part 74, Subpart F), effective January 10, 1983 (BC Docket 81-793). Included in these rule changes is the re-

quirement that TV pickup transmitters be licensed as a group or system, rather than individually as they are now authorized.

TV pickup systems for any number of mobile transmitters will be licensed to operate in a specific area using frequencies within a specific band designated in Rule 74.602(a).

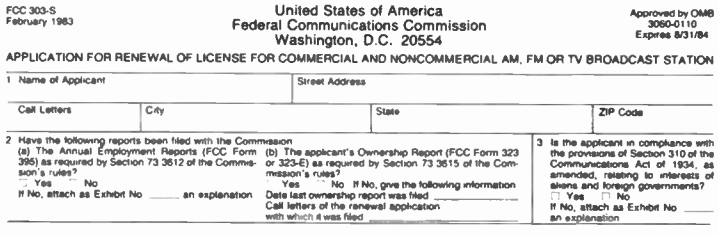
Applications for consolidation of individual TV pickup mobile stations into licensed systems will be accepted only at the time that the associated (Part 73) station files its license renewal application. FCC Form 313 should be used when applying for consolidation. A listing of the individually licensed transmitters, including their call signs, to be consolidated in a single system should be attached to the Form 313.

If you have questions concerning FCC Form 313, contact the Auxiliary Services Branch of the FCC at (202) 634-6307 between 8:00 a.m. and 5:00 p.m., Eastern Time.

7. APPLICATION FOR RENEWAL OF LICENSE

a. Filing Deadlines

All licensees (except those television and noncommercial stations selected to complete the long form audit) must file FCC Form 303-S, the simplified renewal application (SRA).* Form 303-S requires broadcasters to list the licensee's name and location, to certify whether the Annual Employment Reports (FCC Form 395) and Ownership Report (Form 323 or 323-E) have been filed as required, and to certify that the licensee has complied with foreign control and ownership restrictions. The form also inquires as to the applicant's involvement in specific legal actions and whether the required documents have been placed in the public inspection file. Finally, a statement is provided in which the applicant waives any claim to the use of any radio frequency "as against the regulatory power of the United States."



FCC 303-S
February 1983

United States of America
Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-0110
Expires 8/31/84

APPLICATION FOR RENEWAL OF LICENSE FOR COMMERCIAL AND NONCOMMERCIAL AM, FM OR TV BROADCAST STATION

1 Name of Applicant	Street Address		
Call Letters	City	State	ZIP Code

2 Have the following reports been filed with the Commission
(a) The Annual Employment Reports (FCC Form 395) as required by Section 73.3612 of the Commission's rules?
☐ Yes ☐ No
If No, attach as Exhibit No ____ an explanation

(b) The applicant's Ownership Report (FCC Form 323 or 323-E) as required by Section 73.3615 of the Commission's rules?
☐ Yes ☐ No If No, give the following information
Date last ownership report was filed ____
Call letters of the renewal application with which it was filed ____

3 Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments?
☐ Yes ☐ No
If No, attach as Exhibit No ____ an explanation

Television and Radio Broadcast Stations

Renewal applications 303-S, 313-R (auxiliary facility) and 349-R (FM Booster) must be filed every five years for television stations or every seven years for radio stations on or before the first business day of the fourth month prior to the expiration of the station's license. Rule 73.1020. The next license expiration periods and the deadlines for filing, as of April 30, 1984, are as follows:

*As of the *Legal Guide's* publication date, the Commission's postcard (SRA) renewal decision (*Report and Order* in Docket 80-253, FCC 81-146, 49 Rad. Reg. [P&F] 740 [1981]; *Memorandum Report and Order* in BC Docket 80-253, 87 F.C.C.2d 1127 [1981]) was still on appeal to the federal courts. Black Citizens for a Fair Media and Henry Geller *et al.* filed on March 10, 1984 a petition for certiorari to the U.S. Supreme Court. The U.S. Court of Appeals for the D.C. Circuit had denied the parties' petition for rehearing in December, 1983.

TELEVISION BROADCAST STATION LICENSE EXPIRATION PERIODS

Expiration Date	OCT. 1, 1986	DEC. 1, 1986	FEB. 1, 1987	APR. 1, 1987
Filing Deadline	JUN. 1, 1986	AUG. 1, 1986	OCT. 1, 1986	DEC. 1, 1986
	D.C. MD. VA. W. VA.	N.C. S.C.	FLA. P.R. V.I.	ALA. GA.

Expiration Date	JUN. 1, 1987	AUG. 1, 1987	OCT. 1, 1987	DEC. 1, 1987
Filing Deadline	FEB. 1, 1987	APR. 1, 1987	JUN. 1, 1987	AUG. 1, 1987
	ARK. LA. MISS.	IND. KY. TENN.	MICH. OHIO	ILL. WISC.

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

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

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

RADIO BROADCAST STATION LICENSE EXPIRATION PERIODS

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

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

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

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

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

FM and TV Translators

Renewal applications (FCC Form 348) for FM Translators must be filed every seven years, and renewal applications (FCC Form 348) for TV Translators must be filed every five years, on or before the first business day of the fourth month prior to the expiration of the station's license. The next license expiration periods, as of April 30, 1984, are as follows:

FM BROADCAST STATION TRANSLATOR EXPIRATION PERIODS

ALABAMA	AL	8-1-90	MONTANA	MT	8-1-84
ALASKA	AK	4-1-89	NEBRASKA	NE	12-1-90
ARIZONA	AZ	12-1-89	NEVADA	NV	2-1-90
ARKANSAS	AR	8-1-90	NEW HAMPSHIRE	NH	6-1-90
CALIFORNIA	CA	4-1-90	NEW JERSEY	NJ	6-1-90
COLORADO	CO	6-1-89	NEW MEXICO	NM	8-1-89
CONNECTICUT	CT	6-1-90	NEW YORK	NY	6-1-90
DELAWARE	DE	6-1-90	NORTH CAROLINA	NC	8-1-90
DC	DC	6-1-90	NORTH DAKOTA	ND	4-1-91
FLORIDA	FL	8-1-90	OHIO	OH	6-1-90
GEORGIA	GA	8-1-90	OKLAHOMA	OK	10-1-90
GUAM	GU	4-1-89	OREGON	OR	2-1-89
HAWAII	HI	4-1-89	PENNSYLVANIA	PA	6-1-90
IDAHO	ID	10-1-88	PUERTO RICO	PR	8-1-90
ILLINOIS	IL	8-1-90	RHODE ISLAND	RI	6-1-90
INDIANA	IN	8-1-90	SOUTH CAROLINA	SC	8-1-90
IOWA	IA	2-1-86	SOUTH DAKOTA	SD	2-1-91
KANSAS	KS	12-1-90	TENNESSEE	TN	8-1-90
KENTUCKY	KY	8-1-90	TEXAS	TX	10-1-90
LOUISIANA	LA	8-1-90	UTAH	UT	10-1-89
MAINE	ME	6-1-90	VERMONT	VT	6-1-90
MARYLAND	MD	6-1-90	VIRGINIA	VA	8-1-90
MASSACHUSETTS	MA	6-1-90	VIRGIN ISLANDS	VI	8-1-90
MICHIGAN	MI	8-1-90	WASHINGTON	WA	12-1-88
MINNESOTA	MN	4-1-89	WEST VIRGINIA	WV	6-1-90
MISSISSIPPI	MS	8-1-90	WISCONSIN	WI	8-1-90
MISSOURI	MO	8-1-90	WYOMING	WY	6-1-84

TV BROADCAST STATION
TRANSLATOR EXPIRATION PERIODS

ALABAMA	AL	8-1-88	MONTANA	MT	8-1-84
ALASKA	AK	4-1-87	NEBRASKA	NE	12-1-88
ARIZONA	AZ	12-1-87	NEVADA	NV	2-1-88
ARKANSAS	AR	8-1-88	NEW HAMPSHIRE	NH	6-1-88
CALIFORNIA	CA	4-1-88	NEW JERSEY	NJ	6-1-88
COLORADO	CO	6-1-87	NEW MEXICO	NM	8-1-87
CONNECTICUT	CT	6-1-88	NEW YORK	NY	6-1-88
DELAWARE	DE	6-1-88	NORTH CAROLINA	NC	8-1-88
DC	DC	6-1-88	NORTH DAKOTA	ND	4-1-89
FLORIDA	FL	8-1-88	OHIO	OH	6-1-88
GEORGIA	GA	8-1-88	OKLAHOMA	OK	10-1-88
GUAM	GU	4-1-87	OREGON	OR	2-1-87
HAWAII	HI	4-1-87	PENNSYLVANIA	PA	6-1-88
IDAHO	ID	10-1-86	PUERTO RICO	PR	8-1-88
ILLINOIS	IL	8-1-88	RHODE ISLAND	RI	6-1-88
INDIANA	IN	8-1-88	SOUTH CAROLINA	SC	8-1-88
IOWA	IA	2-1-89	SOUTH DAKOTA	SD	2-1-89
KANSAS	KS	12-1-88	TENNESSEE	TN	8-1-88
KENTUCKY	KY	8-1-88	TEXAS	TX	10-1-88
LOUISIANA	LA	8-1-88	UTAH	UT	10-1-87
MAINE	ME	6-1-88	VERMONT	VT	6-1-88
MARYLAND	MD	6-1-88	VIRGINIA	VA	8-1-88
MASSACHUSETTS	MA	6-1-88	VIRGIN ISLANDS	VI	8-1-88
MICHIGAN	MI	8-1-88	WASHINGTON	WA	12-1-86
MINNESOTA	MN	4-1-87	WEST VIRGINIA	WV	6-1-88
MISSISSIPPI	MS	8-1-88	WISCONSIN	WI	8-1-88
MISSOURI	MO	8-1-88	WYOMING	WY	6-1-84

b. "Audit Form" and Composite Week Dates

At least five percent of television and noncommercial radio renewal applicants will be randomly selected to complete an "audit form" (Form 303-C for Commercial Television, and Form 303-N for Noncommercial Licensees), which is similar in length to the past television renewal application. No commercial radio licensee will be selected to submit an "audit form." Problems arising from either the simplified renewal form or the "audit form" may be resolved through Commission telephone inquiry or correspondence.

This procedure rarely requires TV applicants to file both a short and long audit form. The FCC sends only selected TV applicants the audit form for filling out. However, if the FCC determines that more information is needed from a TV licensee who has filed *only* the simplified renewal application, the licensee may be required to file an "audit form" in addition.

Each year the Commission will release composite week dates to be used by *all* television licensees filing for renewal that year. Applicants filing the postcard form must take program logs for the dates of the composite week, make copies of those logs and place the copies in the public inspection file on the date that the renewal application is due to be filed at the FCC. This is all these applicants are required to do with regard to the composite week.

On the other hand, licensees selected to complete the extensive renewal audit form (Form 303-C) must use the composite week dates as the basis for compiling programming data required on the audit form *in addition to* placing the logs in the public file. These applicants also are required to file with the FCC a copy of the program logs covering the composite week as an exhibit to the audit renewal form.

The FCC announces the composite week dates for commercial television stations each year, usually in June. For example, the 1984 composite week dates are as follows:

Sunday ..... April 17, 1983
Monday ..... October 25, 1982
Tuesday ..... March 15, 1983
Wednesday ..... July 7, 1982
Thursday ..... September 23, 1982
Friday ..... August 20, 1982
Saturday ..... December 18, 1982

Licensees of commercial television stations with *license expiration dates of February 1 and thereafter* in calendar year 1984 and which are *randomly selected to file the renewal audit form (FCC Form 303-C)* will use the above dates for answering questions 4, 8, 11 and 12 of Section III of the Form 303-C.

These dates also will constitute the composite week for use by commercial television applicants preparing applications for assignment of license (FCC Form 314) and transfer of control (FCC Form 315) that are filed in calendar year 1984.

If automatic program logging devices are used by the station, transfer the required information from the recording, tape or other logging means employed for the days in question and submit that information in written log form. Attach to the written log a certificate from a responsible person on the station's staff to the effect that the data on the written logs accurately reflect what was actually broadcast. All licensees then must place these written logs (along with their certifications) in the public file on the date their renewal applications are due for filing. Licensees selected to submit the audit form also

must mail the written logs as an exhibit to the renewal application. The underlying recording, tape or other logging device should *not* be filed with the Commission.

8. NEW OR MODIFIED CALL SIGN

The procedures for applying for a new call sign or changing an existing call sign are set forth in Rule 73.3550 (as amended).* Applicants for new stations may not request a new call sign assignment until a construction permit has been granted. Applicants for transfer or assignment of an outstanding construction permit or a license may request a new call sign when the application for transfer or assignment is filed or any time thereafter. However, if an effective date is desired before the application is granted by the Commission and the transfer is consummated, the request must be accompanied by written consent from the transferor or assignor. Otherwise, the call sign assignment will be made effective after notification to the Commission of the consummation of the transfer. Should the call sign of a station whose construction permit or license has been transferred conform to that of a commonly-owned station not part of the transaction, the transferee or assignee must request a different call sign within 30 days. Failure to do so will result in the Commission's selecting an appropriate call sign.

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

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

As many as five call signs, listed in descending order of preference, may be included in a single request. Objections to a requested call sign will no longer be entertained at the FCC. A party wishing to object to a certain call sign will have to assert its rights under state or federal law in a local forum. Should it be determined by a local forum that a station should not use a certain call sign, the initial Commission action assigning a call sign will not preclude a different assignment.

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

*In December 1983, the Commission eliminated that portion of its rules that mandated FCC resolution of call sign disputes, and liberalized other then-existing call sign rules, including the requirement that call signs be "in good taste." As of April 1984, this matter was under reconsideration at the Commission.

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

C. COMPLAINTS, CITATIONS AND COMPLIANCE

1. FCC COMPLAINTS AND INVESTIGATORY PROCEDURES

Tens of thousands of letters of complaints are received by the FCC each month. The Commission disposes of most by letter to the complainant without contacting the broadcast station in question. For those complaints involving political broadcasts or fairness doctrine questions, the Commission encourages prior good faith negotiations between licensees and persons seeking broadcast time or having related questions. In the past, such negotiations often have led to a disposition of the request or questions in a manner that is agreeable to all parties.

In general, the Commission limits its interpretative rulings or advisory opinions to cases in which the specific facts in controversy are before it for decision. For those relatively few complaints that are not disposed of by Commission letters, FCC personnel may appear at the broadcast station to investigate the complaint, although this activity has been reduced dramatically under the Commission's deregulatory philosophy. The investigation visit should not be confused with a routine engineering inspection that is discussed in the next subsection. Only cases that raise substantial questions of fact affecting a licensee's qualifications to remain a broadcast licensee (for example, fraudulent billing, employment discrimination, misrepresentation, as well as other questions concerning character qualifications) may bring investigators to a station's door.

Advance notice of an investigation rarely is given, because the Commission normally acts on the premise that notice might compromise the effectiveness of the investigation. This lack of notice can create difficult problems for licensee management. You should understand at the outset that Commission investigators are entitled to inspect some station materials without providing any justification or doing anything other than identifying themselves and making the request. These materials include, of course, the contents of the station's public file. They also include any and all program (for TV stations), operating and maintenance logs (within the period that these are required to be retained) and annual equipment performance measurements.

Beyond inspecting these materials, Commission investigators are entitled to interview station personnel (management or employees) and to inspect or copy documents. If the questions they wish to pose or the documents they wish to obtain are pertinent to a lawful Commission inquiry and compliance within the time and at the place they request is not unreasonably burdensome or oppressive, then the licensee has no legal privilege (for example, self-incrimination, lawyer-client communications, etc.) to refuse disclosure. Deciding whether a particular request is proper, one with which you should cooperate or one you are entitled to resist, can be quite difficult. For assistance, *see* FCC Rules 73.1225 and 73.1226 which define FCC inspection rights and identify which documents must be made available.

Commission investigators are instructed to seek out the highest management authority at the station upon their arrival, to present their identification and to state the subject matter of their investigation. Although they are not specifically instructed further, investigators also should be willing to explain the relevance of any particular question addressed to management personnel or of a request for a document pertinent to the subject matter of the investigation. Presumably, investigators also should be willing to discuss the scope of their requests for documents or demands for lengthy interviews with station management, if these appear to be unreasonable.

Investigators categorically deny that they ever enter stations on "fishing expeditions." However, during the investigation of a particular matter, an investigator may stumble upon evidence of station misconduct in another field. The investigator is instructed, in that event, to seek the guidance of superior authority at the Commission as to whether this matter should be added to the investigation.

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

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

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

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

After an interview, a statement is prepared summarizing the investigator's interview. The investigator will ask the interviewer to read the statement, make corrections if necessary, and sign the document. You have a right

to refuse to sign the document if you disagree with its contents. The investigator also will sign and date the document. This eliminates any possibility of confusion at a later date as to what occurred during the meeting.

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

The Commission monitors station compliance with technical operation and public inspection file requirements. The Field Operations Bureau annually conducts on-site inspections of ten percent of all broadcast licensees (including commercial radio broadcasters) chosen at random (drawn from a sample other than the one used to determine the five percent of television and noncommercial radio station licensees chosen to fill out the renewal "audit form"). Such inspections include review of technical operations and facilities to ascertain their maintenance at the level required by the Commission's rules and the licensee's authorizations. The inspections also include review of the licensee's authorizations and the public inspection files. On-site inspections may occur at any time, while "audit forms" are associated only with the renewal process. *See* Chapter V, page V-5 for the Field Operations Bureau Checklist for Maintaining Public Inspection Files.

In addition, the Commission's Complaints and Investigations Branch also may conduct on-site inspections of an unspecified number of randomly selected stations, depending on budgetary constraints. If they are conducted, random inspections by the Complaints and Investigations Branch will exclude commercial radio licensees. The inspections will not be investigative fishing expeditions, and station staff members will not be interviewed. Rather, Complaints and Investigations Branch personnel only will review such materials as those contained in the local public file—in other words, kinds of data routinely reviewed by the FCC. Investigations of such matters as unauthorized transfers of control or misrepresentation also will be handled by the Commission's Complaints and Investigations Branch staff.

2. FCC CITATIONS FOR VIOLATION OF TECHNICAL RULES

On inspection, members of the Field Operations Bureau (FOB), located at FCC field offices, examine stations for violations of the Commission's engineering standards and other rules. Ordinarily an FOB inspection is technical and extends to a broad range of matters (*e.g.*, monitor readings, condition of equipment, safety, remote control, EBS, modulation, directional antenna performance, local public file and similar documents).

After an investigation occurs, the licensee will receive either (1) no notice at all, if the investigator determines no violation exists; (2) a written letter alerting the station that a problem area exists that could, if continued, result in a violation or prevent a station from performing effectively; or (3) an Official Notice of Violation (FCC Form 793-A).

An Official Notice of Violation indicates that a station has violated a specific rule and lists the rule section or the provision of the Communications Act violated and sets forth the particulars of the violation. A written response is required, within *ten days* of receipt. Failure to do so will result in a Notice of Violation. In replying, the licensee may either deny that any violation has

taken place and explain the reasons for the denial, or choose to admit the violation. If the licensee admits the violation, it must (1) explain the cause and what the licensee has done to correct it, and (2) explain what steps the licensee has taken to ensure it will not reoccur. If the licensee, for any reason, wishes additional time to reply or to complete necessary corrections, it still is obligated to acknowledge the Notice of Violation, and to state when the reply will be forthcoming.

In responding to an Official Notice of Violation, the licensee should reply directly to the Field Office issuing the Notice, rather than to the Commission in Washington, D.C. It is important that the reply be signed by the licensee, or an authorized representative. It also is important that the reply be strictly limited to the Notice of Violation. Extraneous matters such as a request for renewal of a license should not be included.

Once the Field Office receives the reply, it will review the correspondence and forward it to Field Operations Bureau headquarters in Washington. The FOB headquarters will determine whether referral to the Mass Media Bureau is appropriate. If it feels that more information is needed, it will send to the licensee Form 789, which requests additional or clarifying information. (This might happen, for example, when the licensee says it must order a part and will receive the part in four weeks. Form 789 will request that the Field Office be notified when the part is received.)

3. COMPLIANCE: CHECKLIST OF REQUIRED RECORDS

Licensees can avoid the trauma of an FCC inspection by performing a periodic in-house inspection. This in-house inspection ensures that the station's technical plant and operating procedures are in accordance with FCC Rules *before* the inspector arrives. In July 1982, the FCC's Field Operations Bureau prepared a checklist for AM and FM broadcast stations of regulations that govern these stations (Appendix I-D). A similar checklist for television stations will be released in 1984. Rule 73.1225 requires the following records be made available to FCC representatives:

TECHNICAL

COMMERCIAL AND NONCOMMERCIAL AM STATIONS

- ☐ Equipment performance measurements required by Rule 73.1590.
- ☐ Copy of the most recent antenna resistance or common point impedance measurements submitted to the FCC.
- ☐ Copy of the most recent field strength measurements made to establish performance of directional antennas required by Rule 73.151.
- ☐ Copy of the partial and skeleton directional antenna proofs of performance as required by Rule 73.154 and made pursuant to the following requirements:
  (a) Rule 73.67, Remote control operation;
  (b) Rule 73.68, Sampling systems for antenna monitors;
  (c) Rule 73.69, Antenna monitors;
  (d) Rule 73.61, AM directional antenna field strength and proof-of-performance measurements.
- ☐ Written designations for chief operators and, when applicable, the contracts for chief operators engaged on a contract basis.

COMMERCIAL AND NONCOMMERCIAL FM STATIONS

- ☐ Equipment performance measurements required by Rule 73.1590.
- ☐ The written designation for chief operator.

CHAPTER II:

PROGRAMMING POLICIES AND PRACTICES

A. PROGRAM LOGS

1. COMMERCIAL RADIO

The FCC's radio deregulation proceeding eliminated all program logging requirements for commercial radio stations. However, despite the absence of FCC rules, these stations still may want to keep a program log in order to ensure a smooth on-air operation and/or maintain "proof-of-performance" evidence that spots contracted for actually ran. Although commercial radio broadcasters may establish any program logging system they choose, basic recordkeeping concerning the airing of commercials still is essential to the maintenance of good relationships with advertisers and agencies.

Note that in response to a court remand asking the Commission to reconsider and explain in greater detail its elimination of the program logging requirements applicable to commercial AM and FM stations, the FCC adopted a *Second Report and Order* on March 1, 1984. The Commission found that the logging requirement is not justified at this time, and it modified its issues/programs filing requirement to allay the court's concerns. *See* Chapter V, page V-6. (FCC program logging rules still apply to all television stations and to noncommercial radio stations.)

Immediately following the FCC's announcement of its radio deregulation decision, NAB and the Radio Advertising Bureau (RAB) met with representatives of the American Association of Advertising Agencies (AAAA) and the Association of National Advertisers (ANA) to devise a voluntary system of commercial recordkeeping. All parties agreed that orderly records of the date, time, duration and advertiser name(s) of each commercial broadcast are the minimum necessary for a station's internal purposes and for successful and efficient dealings with purchasers of advertising time. Advertiser and agency representatives who met with NAB and RAB were satisfied that this information would substitute adequately for the information formerly required by FCC rules.

Radio operators may establish their own logging and proof-of-performance systems. NAB and RAB, however, strongly recommend that radio broadcasters keep the records described above. Radio broadcasters also should indicate, on station invoices, that the information maintained is accurate and available for inspection by advertisers and agencies. The following invoice language is suggested:

> Station (your call letters) warrants that the information shown on this invoice, concerning the dates, times, durations and sponsors of commercial announcements broadcast, is true and correct and was taken from the Commercial Record produced and maintained at the Station. Commercial Record proof-of-performance information for particular commercial announcements will be made available, on request, for inspection by the relevant Advertiser or Agency for a minimum of 12 months from the month of broadcast.

Commercial radio stations adopting the NAB/RAB commercial recordkeeping recommendation may use a recordkeeping format modeled after the one in Appendix II-A. This form includes entries for the date, time, duration and sponsor(s) of a station's commercial spots.

Again, radio licensees may adopt any recordkeeping course that will serve their internal and business purposes. However, the minimal recordkeeping developed by NAB and RAB allows these licensees to benefit from the paperwork reductions of radio deregulation, yet does not jeopardize their relationships with advertisers and agencies.

2. TELEVISION PROGRAM LOGGING INSTRUCTIONS

Personnel responsible for maintaining program logs must be familiar with the FCC's logging rules. *See* Rules 73.1800 and 73.1810. (The FCC's logging rules appear in Appendix II-B.) This section discusses FCC rules on television program logging and contains instructions and additional explanation. A sample log form (filled in with sample entries) appears on page II-11. Referring to the log while reading this section will aid you in understanding the Commission's logging requirements. The 40 line numbers on the left margin of the log are not required; they are used here as references to specific illustrations of the logging requirements.

The sample log format is designed to include the information actually required by FCC logging rules and, if properly kept, will provide the programming information that must be supplied to the FCC in the event of a renewal audit. It is recognized, however, that many stations desire more detailed information in their logs than the minimum prescribed by the FCC. Any innovation that will make a licensee's logs more useful in carrying out its responsibilities,

and yet maintain the minimum of information required by the FCC, is encouraged. Note that the sample form allows for additional columns, if needed. Also, stations may delete information not required to be logged before making a television log available for public inspection or prior to fulfilling composite week requirements.

While some stations already may have adopted the sample log suggested here, others no doubt have different logging formats adequate for their purposes. The important fact is that the log – whatever form it takes – is designed to include all required information. Therefore, even if a station chooses not to follow our sample format, it should check the following instructions closely to assure that it complies with the Commission's logging requirements.

The FCC program logging rules require a complete chronological record, in hourly segments, of virtually all material broadcast. Logs must be kept in an orderly and legible manner. Handwritten entries are permissible as long as they can be read clearly. Key letters or abbreviations may be used if the full meaning or explanation appears at some point on the day's log. Also, each sheet must be numbered and dated, and the log must show the local time in effect (*e.g.*, EST, EDT, CST, CDT, etc.). The log must be signed by the log keeper when going both on and off duty. (The above information is on our sample log form, but most of it could just as well be displayed on a cover sheet numbered page 1 of the log. *See* page II-10 of this section.)

The sample program log columns are numbered from one (1) to seven (7). Instructions for the use of each column follow:

Column 1. Enter the time each *required station identification* is made. Express the time in hours and minutes; for example, 8:00 a.m. Indicating seconds is not required for any of the time entries in column 1, although stations using computerized or automatic logging devices may wish to include such information. *See* sample log, column 1. The hourly station identification entry will serve to divide the log into hourly segments, as the rules require. *See* Rule 73.1810, and sample log, lines 5 and 34.

In column 1, also enter the beginning time of each program. (Stations keeping handwritten logs may find it easier to record this information in a separate column and use an adjacent column to indicate the ending time of each program.) If desired, these times may be entered only once for an entire program, even though separate programs may be scheduled within the time. (Not shown in the sample log.) For instance, if news or sports segments are broadcast within a single program, they may be entered below the longer program, with their beginning and ending times indented or otherwise distinguished to indicate that they were broadcast within the longer program. *See* Rule 73.1810(b)(1)(ii).

Column 2. At the minimum, enter the *duration* of each commercial message or spot or the total duration of all *commercial matter* (CM) in each hourly time segment. A station need not show the "on" times of commercials. Moreover, it need not distinguish between commercial continuity (CC) and commercial announcements (CA) for logging purposes. Such programming need only be entered as commercial matter (CM). The total duration of all commercial matter in each hourly time segment (be-

the hour) may be shown in one entry, rather than by individual time entries for each commercial message. *See* Rule 73.1810(d)(3). However, FCC rules permit licensees to log the duration of each separate commercial message, if they desire.

The duration of CM should be as close an approximation to the time consumed as possible. It is not necessary, for example, to correct an entry of a one-minute commercial to show the actual reading speed of the announcer, even though the reading time might be a few seconds more or less than the scheduled time. *See* Rule 73.1810(d)(3)(iii). The duration of announcements other than CM, *e.g.*, PSAs, need not be logged, although stations may find it desirable to do so for their own recordkeeping purposes. *See* Rule 73.1810(b)(2)(ii), and sample log, column 2 which illustrates the entry of the duration of each program, including commercial items, but the method used is optional.

With certain sponsored *programs* it is difficult to measure the exact length of what would be considered commercial matter. For example, some *sponsored* political and religious programs may be logged merely as "sponsored." No breakdown of commercial matter is required. Naturally, this exception does not apply to any program advertising commercial products or services; nor is it applicable to any actual commercial announcements. *See* Rule 73.1810(d)(3)(iii).

The FCC no longer requires a check mark showing that a sponsorship identification announcement has been given over the air. The log entry identifying the sponsor of the commercial matter will suffice to show that a sponsor ID was broadcast. *See* sample log, lines 9, 18, 21, 25, 26, 33, 36, 37 and 39.

Column 3. Enter the *title* of the program and, if sponsored, the name of the *sponsor*. *See* sample log, line 24.

Stations broadcasting national *network programs* are not required to make a log entry of the name of the sponsor of such network programs. Only the beginning and ending times and program titles of network programs need be logged. The network supplies all other required information for the composite week. The composite week information furnished to the station by the network must accompany the copy of the composite week logs submitted with the license audit renewal application. Licensees, otherwise, are not required to associate with the logs the information that is furnished almost daily by the network.

Non-network matter appearing in or adjacent to a network program must be logged. *See* Rule 73.1810(c), and sample log, lines 35, 38 and 40.

We suggest that program titles be typed in capital letters, but the method used is optional. If the title includes the sponsor's name, *e.g.*, XYZ NEWS, a separate entry is not required.

Where more than one advertiser participates in the cost of the program, each advertiser must be entered as a sponsor. *See* Rule 73.1810(a)(2).

If a program continues onto the next log page, the title does not have to be repeated.

For a *program* presenting a *political* candidate, enter the candidate's name and his or her political affiliation. If sponsored, include the name of the person or organization paying for the program. *See* sample log, line 32.

Column 4. Indicate the *source* of each program as follows:

"L"-Local programs are any programs originated or produced by the station and that also employ live talent over 50% of the time. Such programs may be taped or recorded for later broadcast and are still classified as local. Local programs fed to a network also may be classified as local. *See* Rule 73.1810(d)(i), and sample log, lines 20, 24, 27, 30 and 32.

"NET"-Use the specific initials of the network concerned to indicate network source, *e.g.*, ABC, CBS, CNN, NBC. This requirement applies to regional and special networks, as well as national networks. *See* Rules 73.1810(b)(1)(iv) and 73.1810(d)(2)(ii), and sample log, lines 35, 38 and 40.

"REC"-A recorded program is any program not defined above. This includes syndicated programs, taped or transcribed programs and feature films. *See* Rule 73.1810(d)(2)(iii), and sample log, lines 1, 4, 6, 8, 12, 16 and 17.

Column 5. Designate each *program* according to its predominant *type* of content. Where appropriate, however, programs may be divided into segments, with each segment designated as a different type on the log. For example, a 30-minute talk show may be divided into two 15-minute segments, with one segment devoted to a discussion of local issues with the mayor and logged as Public Affairs (PA) and the other devoted to a discussion of religion with the local bishop and logged as religion (R). Pay close attention to the definitions of program types in Rule 73.1810(d).

Each program or program segment must be classified as one (and only one) of the following *basic types*:

Agricultural	(A)
Entertainment	(E)
News	(N)
Public Affairs	(PA)
Religious	(R)
Instructional	(I)
Sports Programs	(S)
Other	(O)

The following *sub-categories* may be used along with any one of the above basic types to describe a program more accurately:

Editorials	(EDIT)
Political	(POL)
Educational	(ED)

Note: While sub-categories may be used along with any of the eight basic types, no two basic types may be combined. For example, a program may be classified as both Public Affairs (PA), a basic type, and Editorial (EDIT), a sub-category. It may not be classified as both Public Affairs (PA) and Agricultural (A), or Public Affairs (PA) and Religious (R), because these are all basic categories. *See* sample log, line 32.

Programs such as "community bulletin boards," swap shops, auctions and "lost and found" should not be logged as Public Affairs (PA). While such programs may provide a public service, they do not deal with issues or problems. Therefore, they should be logged as "Other (O)." *See* sample log, line 17. Similarly, military recruiting programs should not be logged as PA simply because they are furnished by the military. They should be logged according to content. For example, a recruiting program might be logged as "Public Service Announcement (PSA)". *See, e.g.*, sample log, lines 14 and 29.

Although the type of commercial or noncommercial matter may be entered in a separate, adjacent column, stations might choose instead to enter this information in this column also. Designate both commercial announcements and commercial continuity as "CM" and public service announcements as "PSA".

Column 6. Stations may wish to include a separate column for the log keeper's comments and/or remarks concerning the broadcast of each program. *See* sample log, line 27. Comments also may be indicated elsewhere on the log, *e.g.*, at the bottom of the log sheet or underneath the relevant program title.

Column 7. Each person keeping the program log (the log keeper) must sign that portion of the log corresponding to the time he or she is on duty. The log keeper should enter the sign-on time and sign the page where his or her tour of duty begins. Each succeeding page may be initialed in the space designated "operator," until sign-off, when the log must be signed again and the time the log keeper goes off duty entered. If the station uses a cover sheet such as that mentioned earlier and shown on page II-10, that sheet could contain spaces for the log keeper to sign on and off. Then, the log keeper merely could initial each page of the log covered during the tour of duty.

Signatures on the log certify that all entries, changes or corrections accurately represent what actually was broadcast. *See* sample log, line 27. No separate certification statement is required. Falsification of logs under this procedure is a ground for license revocation. For corrections or additions made after the log keeper signs off, the FCC requires that an explanation be made on the log or in an attachment to the log, dated and signed by the log keeper, the station program director or manager, or an officer of the licensee. *See* sample log, lines 21 and 22 and COMMENTS portion.

3. GENERAL NOTES ON LOGGING

a. Promotional Announcements

A program promotional announcement that is paid for is commercial matter and must be logged as such. A promotional announcement of a future program in which the sponsor's name is part of the program title is not commercial matter and need not be logged, unless an agreement for the sale of the program provides for such promotional announcements (*see* below).

Examples:

1. "Watch the Afternoon Show at three o'clock Monday through Friday." NOT COMMERCIAL.
2. "Tune in at six-thirty for the Acme Sports Windup." NOT COMMERCIAL.

If, however, the announcement identifies the sponsor beyond use of its name as part of the title, it is commercial matter and must be logged as such.

Example:

"Listen to the Sports Windup at six-thirty, brought to you by Tenney Shoes." MUST BE LOGGED AS COMMERCIAL. *See* sample log, line 37.

If the agreement for the sale of the program provides that a certain number of promotional announcements be broadcast, then each of those announcements must be logged as commercial, even though they otherwise conform to examples 1 and 2 above. *See* Rule 73.1810(d)(3)(ii).

Finally, promotional announcements broadcast by one station for or on behalf of other commonly owned or controlled broadcast stations serving the same community must be logged as commercial matter.

b. Public Service Announcements

PSA

A public service announcement (PSA) is one for which no charge is made and one that promotes programs, activities or services of federal, state or local governments or the programs, activities or services of nonprofit organizations, or any other announcements regarded as serving community interests. *See* Rule 73.1810(d)(4).

A log entry must be made for each PSA. It must show the name of the organization or interest on whose behalf the announcement was made. A mere indication that a PSA on a certain subject was aired, *e.g.*, "Health PSA," will not satisfy this requirement. *See* Rule 73.1810(b)(3), and sample log, lines 11, 13, 14, 15, 28, 29 and 31.

c. Other Announcements

Each announcement made pursuant to the local notice requirements of Rules 73.3580 (renewal pre-filing and post-filing), 73.3580(d)(3) (assignment of license or transfer of control) and 73.3594 (designation for hearing) must be entered on the log. The time of broadcast must be entered for each of these announcements. *See* sample log, line 34. Also, an entry must be made for each announcement of the broadcast of taped, filmed or recorded material pursuant to Rule 73.1208.

An entry must be made for each announcement presenting a political candidate. It must include the candidate's name and political affiliation. Of course, the sponsor, if any, also must be named. *See* sample log, line 32.

d. The Log Keeper

The program log may be kept by any station employee who has actual knowledge of the facts required and who is competent to perform the task. The log keeper need not hold a radio operator's license. If a station uses an automatic logging machine, the log keeper must check the automatic equipment periodically throughout his or her tour of duty to make sure that it is functioning properly. Any failure or malfunction of the equipment must be noted on the log or an attachment. Additionally, and importantly, the log keeper or employee on duty must make the required entries in the log manually, should the automatic logging equipment fail or malfunction in any way.

When going on and off duty, the log keeper or employee on duty must sign the log or an attachment to the log. No formal certification regarding corrections or proper operation of automatic logging equipment is required. The signature of the person on duty upon signing off is sufficient. Therefore, a licensee should be certain that the log keeper is aware of the significance of his or her signature and actually has performed the duties it signifies.

e. Logging Corrections

When the person keeping the log signs the log upon going off duty, the signature will constitute a certification that any changes or corrections made before signing off accurately represents what actually was broadcast. *See* sample log, line 27. The Commission has stated that it would consider any falsification under this procedure to be a ground for revocation of license. *Corrections*, as well as additions, made *after* the log keeper signs off duty are governed by different requirements. An explanation of the reason for the change must be made on the log or on an attachment to it. The explanation must be dated and signed by either the person who kept that portion of the log, the station program director or manager, or an officer of the licensee. The space marked "COMMENTS" at the bottom of the sample log could be used for this purpose. *See* sample log, lines 21 and 22 and COMMENTS portion.

Use of liquid paper correcting fluid or similar means of obliteration to make corrections or deletions in logs after the log keeper signs off duty is prohibited. *See* Rule 73.1800. Corrections or deletions must be made in a manner that will permit an understanding of the change, *e.g.*, by inserting the corrections above the entry to be corrected, but by not eradicating the originial entry. *See* sample log, lines 21, 22 and 27. Billing, cueing and other information not required to be logged may be changed at any time, because the logging rules do not apply to such information. *See* Rule 73.1800(f).

f. Automatic Logging

The Commission permits automatic logging and does not evaluate specific features of various automated systems or pass on their usefulness. Licensees employing automatic logging must nevertheless meet the following requirements:

- They must be able to furnish the Commission accurately with all information required to be logged.
- An employee on duty must be designated responsible for the automatic logging process and the keeping of the written log. This duty includes checking the automatic equipment periodically for malfunction or failure. Each licensee may determine the frequency of such checks. If automatic logging processes fail or malfunction, all required entries must be made

manually on the written log until proper automatic operation resumes. *See* Rule 73.1810(d).

- The employee responsible must sign the automatic log or a page attached to either the log or logging data when starting and finishing duty, and enter the time of each. The off-duty signature certifies periodic inspections of the automatic logging equipment throughout the tour of duty and that, to the best of the employee's knowledge and belief, at no time did it fail or malfunction, unless otherwise noted above the signature. The signature also certifies that any part of the log kept manually is an accurate representation of what actually was broadcast.
- Broadcasters in Puerto Rico are permitted to use automatic logging with sequential Spanish language print-outs. However, any log submitted to the Commission or its representatives must be translated into English.
- The licensee must extract any required information sought by the Commission or its representatives from stored recordings or tapes for the days specified. This information must be submitted in written form together with the certified tapes or recordings from which it was extracted. Normally, a station employing automatic logging would have to submit a written log only for the composite week. However, remember that if the station were subject to a Commission investigation, it could be asked to submit written logs for a much longer period. *See* Rule 73.1800.

g. Tradeouts

FCC rules provide that tradeout spots are commercial announcements. Thus, they must be logged and computed as commercial matter. *See* Rule 73.1810(d)(3)(ii).

4. SAMPLE LOG
Cover Sheet (Optional)

STATION WXXX-TV -- LITTLETOWN, PLAINSTATE

OFFICIAL BROADCAST LOG

DATE: _____

I. STATION OPERATOR DUTY PERIODS

Operator	Time On	Time Off

II. LOG CERTIFICATION

I hereby certify that the attached program log accurately reflects what was actually broadcast.

NAME _____ TITLE _____

Sample Log

Page 1
Day Friday
Date 04/20/84
Time EDT

STATION WXXX-TV FCC PROGRAM LOG

	AIR TIME 1	DURATION 2	PROGRAM TITLE AND SPONSOR 3	SOURCE 4	PROGRAM TYPE 5	REMARKS/ OPERATOR 6
1-	05:14:47	3807	Test Tone	REC	O	
2-	05:52:54	0109	National Anthem			
3-	05:54:03	0037	Sign On			
4-	05:54:40	0500	TODAY IN THE WORLD	REC		
5-	05:59:40	0020	PRO/ID 20/20 Mag		PR	
6-	06:00:00	0025	SPECTACULAR FEATURE	REC	PA	
7-	06:00:25	0010	Spectacular Super Slide			
8-	06:00:35	0529	SPECTACULAR FEATURE	REC	PA	
9-	06:06:04	0031	Allen's Furniture		CM	
10-	06:06:35	0101	Promo 9:00 Movie		PR	
11-	06:07:36	0101	WAC Volunteers		PSA	
12-	06:08:37	1113	SPECTACULAR FEATURE	REC	PA	
13-	06:19:50	0101	Education-N Kids School		PSA	
14-	06:20:51	0032	Marine Corp.		PSA	
15-	06:21:23	0100	Special Olympics		PSA	
16-	06:22:23	0606	SPECTACULAR FEATURE	REC	PA	
17-	06:28:29	0100	COMMUNITY BULLETIN BD.	REC	O	
18-	06:29:29	0031	Winstone Cleaners		CM	
19-	06:30:00	0007	Open News Headnotes			
20-	06:30:07	0500	NEWS HEADNOTES	L	N	
21-	06:35:07	~~0030~~ 0060	LEHI Beverage Co.		CM	
22-	~~06:35:37~~	~~0030~~	~~ABC Ice Cream~~		~~CM~~	
23-	06:36:07	0020	Stand By Slide News Promo Kids 7-9 AM Wknds		PA	
24-	06:36:27	0403	HEAVENLY MOMENTS - Coun. of Churches	L	R	
25-	06:40:30	0030	Wright Insurance		CM	
26-	06:41:00	0030	Gen. Mills Corn Flakes		CM	
27-	06:41:30	0739	HEAVENLY MOMENTS	L	R	+Black aired apx. 10 secs.
28-	06:49:09	0031	Red Cross		PSA	
29-	06:49:40	0020	Air Force Recruiting		PSA	
30-	06:50:00	0400	HEAVENLY MOMENTS	L	R	
31-	06:54:00	0030	Diabetes		PSA	
32-	06:54:30	0500	JOE SMITH - DEM. County Dem. Comm.	L	PA-POL	
33-	06:59:30	0030	Stop-Start Driver Training School		CM	
34-	07:00:00	0030	Announcement per Sec. 73.3580/ID			
35-	07:00:30	0732	THE MORNING SHOW	MBS		
36-	07:08:02	0060	GK Cars & Tires		CM	
37-	07:09:02	0030	Promo Sports Windup (Tenney Shoes)		CM	
38-	07:09:32	0528	THE MORNING SHOW	MBS		
39-	07:15:00	0060	Frank's Carpets		CM	
40-	07:16:00	0612	THE MORNING SHOW	MBS		

On	7. Operator or Announcer	Off	On	7. Operator or Announcer	Off
	[signature]	9:00	7:00	[signature]	
On	7. Operator or Announcer	Off	On	7. Operator or Announcer	Off
	[signature]				

COMMENTS: ABC Ice Cream spot did not run after LEHI Beverage Co. spot, and log keeper forgot to delete entry. LEHI Beverage spot ran for 60 seconds, rather than 30 seconds. [signature], Program Manager WXXX-TV 4/21/84

B. FAIRNESS DOCTRINE, POLITICAL BROADCASTS AND RELATED TOPICS

1. THE FAIRNESS DOCTRINE

a. In General

The fairness doctrine requires broadcasters to devote a significant amount of time to coverage of "controversial issues of public importance," and to make sure that this coverage is not grossly out of balance – that a "reasonable opportunity" is afforded for presentation of contrasting views.

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

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

To determine whether an issue is also "controversial," you might inquire whether substantial elements of your community are engaged in vigorous debate over the issue. Sometimes there are important issues not subject to debate. Here again, you may look to the news media, governmental bodies and community groups to determine whether strong disagreement on the matter exists.

In deciding which issues deserve coverage under the fairness doctrine, ask yourself this question: Is the issue one that almost everybody in the community cares about and wants to know about, and is it controversial? To some extent, your answer will depend upon your familiarity with your community. If you conducted an ascertainment study, this could guide you. You also can and should check other sources as well. These include local newspapers, other broadcasters, public officials and community leaders.

If you discover vigorous debate among substantial elements of your community about a matter of paramount importance to your community, you should cover it. However, you are not obliged to cover every controversial issue of public importance within your community. As long as you select a few of the most important issues to cover, and as long as you cover different viewpoints on these issues, you should have no problems with the Commission regarding fairness doctrine compliance.

You should give reasonable comparable exposure to significant contrasting viewpoints on a "controversial issue of public importance" covered. Indicia of comparable coverage are the total amount of time presented to each side, frequency of presentation of viewpoints, and audience potential (*i.e.*, scheduling of broadcasts presenting each side of the issue).

The fairness doctrine is not like the "equal opportunities doctrine" that applies to political candidates; *i.e.*, you do not have to give equal opportunities for coverage of all viewpoints on a controversial issue, nor do you have to give access to particular representatives on particular issues. For example, you may address issues yourself in station-presented editorials. However, you

must ensure that the audience that hears one side of a controversial issue of public importance also will have a fair opportunity to hear the other side. As in all other matters involving the fairness doctrine, the Commission typically defers to the broadcaster's reasonable and good faith judgment. The Commission gives the licensee discretion even if another result also would be reasonable. Generally, the Commission does not involve itself in fairness doctrine questions on its own initiative, but only when an aggrieved party files a complaint.

As noted above, you should assess the comparability of exposure given to opposing sides of an issue in terms of total amount of time, frequency of presentation and scheduling.

The total amount of time allotted to one side should not be disproportionately greater than the total amount of time devoted to another side. In one case, the FCC found a 5-1 ratio appropriate; in another case, a 3-1 ratio was acceptable. What is reasonable depends on the facts of a particular case.

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

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

b. The *Cullman* Doctrine

A station broadcasting a sponsored spot or program on one side of a controversial issue of public importance thereafter may not refuse to present the opposing viewpoint merely because the station could not obtain paid sponsorship for the opposing presentation. This corollary to the fairness doctrine is known as the "*Cullman*" doctrine, named after the case in which the Commission first articulated this principle. However, a broadcaster may attempt to obtain paid sponsorship for time used to respond to a controversial issue. The station is not precluded from obtaining payment for such broadcasts if it is able to do so.

c. The Personal Attack Rule

The personal attack rule serves to effectuate important aspects of the fairness doctrine, without altering or adding to the substance of the doctrine. Under the personal attack rule, if a station broadcasts an attack on the honesty, character, integrity or similar personal qualities of an identified person or group during the presentation of views on a controversial issue of public importance, it must take the following actions within one week of the attack:

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

As noted above, the Commission's personal attack rule defines a personal attack as an attack upon the honesty, character, integrity or similar personal qualities of an identified person or group. Mere mention of a person or group,

or even certain types of unfavorable references, do not necessarily constitute personal attacks. Within the meaning of the rule, a personal attack is essentially an accusation of moral turpitude.

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

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

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

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

- a personal attack on foreign groups or foreign public figures;
- personal attacks occuring during "uses" of broadcast stations by legally qualified candidates for public office (*see* page II-15 for definition of "use");
- personal attacks made during broadcasts that are not "uses," but that are made by legally qualified candidates, their authorized representatives or those associated with them in the campaign, on other such candidates, their authorized representatives or persons associated with the candidates in the campaign; and
- *bona fide* newscasts, *bona fide* news interviews and on-the-spot coverage of *bona fide* news events, including commentary or analysis contained in any such programs. (Note, however, that the notification and offer of response provisions *do* apply to editorials of the licensee.)

d. The Political Editorializing Rule

The political editorializing rule in many respects parallels the personal attack rule and is also closely related to the fairness doctrine. It requires a broadcaster to provide notification, a transcript and an offer of reply time where a broadcaster editorializes either for or against a legally qualified candidate for public office.

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

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

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

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

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

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

2. POLITICAL BROADCASTS

a. The Equal Opportunities Provision: Section 315

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

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

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

- *bona fide* newscasts;
- *bona fide* news interviews;
- *bona fide* news documentaries (if the appearance of the candidate is incidental to the presentation of the subject covered by the news documentary); or
- on-the-spot coverage of *bona fide* news events.

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

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

The United States Court of Appeals for the District of Columbia Circuit upheld the Commission's November 1983 declaratory ruling to exempt from the equal opportunities requirements debates arranged and sponsored by broadcasters.

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

- what the format, nature and content of the program are;
- whether the format, nature and content of the program have changed since its inception and, if so, in what respects;
- who initiates the program;
- who produces and controls the program;
- when the program was initiated;
- whether the program is regularly scheduled; and,
- if the program is regularly scheduled, the time and the day of the week when it is broadcast.

Examples of exempt programs

- **Regularly scheduled news shows such as:**
  - NBC Today Show
  - CBS 60 Minutes
  - ABC Good Morning America
  - NET Journal
- ***Bona fide* news interview shows such as:**
  - Meet the Press
  - Face The Nation
  - Issues and Answers
  - Youth Wants To Know
  - "Donahue"*

*On May 23, 1984, the Commission issued a declaratory ruling that regularly scheduled "bona fide news interview" segments of the "Donahue" program are exempt from the equal opportunities provision of Section 315.

Legally Qualified Candidate for Public Office

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

Preliminary questions applicable to all candidates:

Has the person publicly announced his or her intention to run for nomination or for public office (either by a formal declaration of candidacy or by engaging to a substantial degree in activities commonly associated with political campaigning)?

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

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

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

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

Questions applicable to candidates for President or Vice President of the United States:

If seeking *nomination* for the office . . .

Has the person, or proposed delegates, qualified for the primary or Presidential ballot?

OR

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

Yes—stop. Is "legally qualified."

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

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*SUBSTANTIAL SHOWING

The term "substantial showing" of *bona fide* candidacy means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed which would contribute to such a showing. *See* Rule 73.1940(a)(5).

If seeking *election* to the office . . .

Has the person qualified for a place on the ballot?

OR

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

Yes–stop. Is "legally qualified."

No–but go on to the "10-State Rule" below.

10-State Rule

Your answers above indicate that the person claiming to be a Presidential or Vice Presidential candidate has not met the FCC's standards for candidacy *in your state.* However, the Commission considers a candidate a "national candidate"–meaning that all broadcasters must treat that person as a "legally qualified candidate"–once such a candidate has qualified under FCC rules in 10 states (or nine states, plus the District of Columbia).

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

Yes–stop. Is "legally qualified."

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

Questions applicable to candidates for all public offices other than President and Vice President of the United States:

If seeking *nomination* for the office . . .

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

OR

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

Yes–stop. Is "legally qualified."

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

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

Is the person making a substantial showing of being a *bona fide* candidate for such a nomination?

AND

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

Yes–stop. Is "legally qualified."

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

If seeking *election* to the office . . .

Has the person qualified for a place on the ballot?

OR

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

Yes – stop. Is "legally qualified."

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

Opposing Candidates

For purposes of the equal opportunities provision, *prior to a primary election*, only the candidates for a particular party's nomination are considered to be opposing candidates. *After the primary*, the nominees of the respective parties seeking the same office in the general election are considered to be opposing candidates.

Note that if a station sells time to a candidate *during a campaign period* (*i.e.*, once there is a legally qualified candidate), it need not give free time to opposing candidates who request it. The law requires "equal opportunities" for candidates – not "equal time." This means that the other candidates must be allowed to *purchase* comparable time at an equal rate. (However, *outside campaign periods*, the *Cullman* doctrine may apply requiring a station to provide free time for political spots. *See* page II-13.)

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

Employee Candidates

When a station announcer whose voice or image is readily identifiable is also a legally qualified candidate for public office, the announcer's legally qualified opponent is entitled to the same amount of time in comparable time periods as those used by the announcer-candidate. Also, unless the announcer-candidate paid the station for his or her appearances, opposing candidates would be entitled to free time under the "equal opportunities" doctrine. In light of the obvious problems that are created by staff announcers or other on-air talent becoming legally qualified candidates for public office, the station facing such a situation has the following options:

- Remove the employee from the air for the duration of his or her candidacy.
- Leave the employee on the air and be fully prepared to afford equal opportunities to any opposing candidate for all appearances of the employee-candidate during the seven days prior to the opponent's request. There is no obligation on the part of the station to inform opposing candidates of their rights to equal opportunities arising from the employee-candidate's on-air duties. Of course, as noted above, equal opportunities if requested under these circumstances would require that free time be offered to opposing candidates.
- Seek a waiver from the employee-candidate's opponent(s) to the effect that the opponent(s) waives any equal opportunity rights he or she may acquire as a result of appearances by the employee-candidate during the normal course of his or her station duties, with the understanding that the

employee-candidate will make no reference, directly or indirectly, to his or her candidacy during such appearances. The FCC has approved such equal opportunities waivers. It must be understood, however, that opposing candidates are under no obligation whatsoever to agree to such waivers.

A station need not advise a candidate that time has been sold or given to his or her opponent. It is the candidate's obligation to obtain this information from the station's political file. A station is required to keep a public record of all requests for time by or on behalf of political candidates, as well as time given free to candidates, together with a record of the disposition and the charges made, if any, for each broadcast.

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

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

Equal Opportunities Checklist

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

- Requesting candidate is a legally qualified candidate for public office.
- Candidates are opposing candidates.
- Request is made in response to a "use."
- The "use" did not occur in one of the four news-type programs that are exempt from the "equal opportunities" rule (*see* page II-15).
- The request was made within 7 days of the first prior use by an opposing candidate since the requesting candidate became a legally qualified candidate.
- The request is for a "use" by the requesting candidate.

b. Station-Sponsored Debates

In response to petitions from the NAB and others, the Commission, in a November 1983 declaratory ruling, authorized broadcasters to sponsor political debates. Even if all competing candidates do not appear on the debate, the broadcast of a debate will be exempt from the equal opportunities requirements, provided the debate has genuine news value and is not used to advance the candidacy of any particular individual (*see* page II-16). Also, taped debates need not be aired within 24 hours of their occurrence to qualify for the exception, as long as they are broadcast currently enough so that they are still *bona fide* news.

Specifically, licensees now may air in-studio debates featuring only the most significant candidates. Minor candidates will not be entitled to request other air time even if they are not invited to appear on the station-sponsored debate. (The Commission did not, as also requested, supplement its interpretation of the rules governing appearances by candidates on documentaries dur-

ing election periods.) In March, 1984, the United States Court of Appeals for the District of Columbia Circuit upheld the Commission's decision to exempt from the equal opportunities requirements debates arranged and produced by broadcasters.

c. The "No Censorship" Provision of Section 315

If a broadcast consitutes a "use" of a station by a legally qualified candidate for public office, Section 315 of the Communications Act prohibits a station from censoring the broadcast, either directly or indirectly.

This "no censorship" provision of the Act prohibits a station from refusing to broadcast a "use" by a candidate for any reason connected with the content or format of the broadcast. Thus, even if the proposed broadcast contains libelous statements, the station is prohibited from rejecting the broadcast for such reason. For this reason, the United States Supreme Court has exempted broadcasters from liability under state libel and slander laws for any defamatory material contained in such a broadcast "use."

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

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

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

Similarly, the Commission has indicated that a broadcaster may be violating the "no censorship" rule if the broadcaster advises the candidate that a particular candidate "use" might subject the candidate to a lawsuit for defamation by the station licensee.

Although the foregoing suggests that the Commission takes a rather strict approach toward enforcement of the "no censorship" provision of Section 315, an FCC staff memorandum submitted by Chairman Fowler to Congressman Luken on January 19, 1984, indicates the view of the staff that the "no censorship" provision of Section 315 does not require a broadcaster to carry candidate "uses" if they contain obscene or "indecent" material. Hence, the FCC staff memorandum suggests that a broadcaster who airs a candidate "use" containing obscene or indecent material would not be immune from criminal or other sanctions as a result of such carriage. As of the date this publication went to press, the full Commission had not had occasion to formally endorse the staff position in a ruling.

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

"Quasi-equal opportunities," also referred to as the political party corollary to the fairness doctrine, or the "*Zapple* doctrine," was established by the Com-

mission in 1970. In contrast to Section 315's equal opportunities provision that applies to the candidates themselves, the *Zapple* doctrine applies to the supporters of political candidates. It requires a station selling time to supporters or representatives of a candidate during a campaign period, who wish to discuss the campaign issues or criticize an opponent, to afford comparable time to the supporters or representatives of an opponent.

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

- does not apply outside campaign periods where there exist no legally qualified candidates for public office (note, however, that the *Cullman* doctrine may apply, which may require broadcasters to provide free time in response to political spots sponsored by a candidate's supporters – *see* page II-13);
- does not apply to appearances by candidates' supporters on programs exempt from Section 315 equal opportunities requirements;
- does not require stations to provide free time to the opposing side when the first side paid for its time; and
- does not apply to all candidates or require provision of time to minor or fringe candidates (*i.e.*, it applies to all *major party* candidates only).

e. Political Broadcasting Rates

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

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

The "Lowest Unit Charge" Rule

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

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

During these pre-election periods, a broadcaster may charge legally qualified candidates who seek to broadcast "uses" no more than it would charge its "most favored commercial advertisers" for comparable time, including all discounts, frequency and otherwise (whether on or off the rate card), but without regard to frequency of use by the candidate. Specifically during the applicable 45- and 60-day periods, a legally qualified candidate seeking to "use" a station's

facilities may be charged no more than the "lowest unit charge of the station for the same class and amount of time for the same period."

- "Class" of time refers to the rate categories that most stations have, such as rates for fixed-position spots, preemptible spots, run-of-schedule spots and special discount packages.
- "Amount of time" refers to the length of the period purchased, *e.g.*, 30 seconds, 60 seconds, 5 minutes, 1 hour, etc.
- The "same period" refers to the time of the broadcast day, such as prime time for TV, "drive time" for radio, Class A, Class B and other classifications of time which a station may establish.

> **Example:** If a station sells one fixed-position, one-minute spot in drive time to its most favored commercial advertisers for $15, but offers such advertisers a frequency discount so that 500 such spots cost $5,000, *i.e.*, $10 per spot, then the station is prohibited from charging a candidate entitled to "lowest unit charge" any more than $10 for one fixed-position, one-minute spot in drive time, even where the candidate only wishes to purchase one such spot.

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

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

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

The "Comparable Use" Rule

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

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

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

f. Sponsorship ID Requirements

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

- the fact that the matter broadcast was sponsored, and
- the true identity of the person or entity on whose behalf payment was made or promised for the broadcast.

A station is not required to broadcast a "disclaimer" stating that "the preceding was a paid political announcement." Rather, the station must:

- announce that the broadcast was sponsored (by use of the phrase "sponsored by" or the phrase "paid for"), and
- identify the sponsor in such a way as to reveal to the public the true sponsor's identity.

Note that under Rule 73.1212(d), if a film, tape, record or other material is furnished for political or controversial issue broadcasts as an inducement to the station to air the material, a sponsorship identification announcement, as set forth above, would be required even though no monetary "payment" was made (*e.g.*, "The preceding announcement was furnished for broadcast by _____").

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

In addition to these FCC regulations, various state and local rules govern political advertising. For instance, FCC rules do not require that a political broadcast identify the chairman, treasurer or other officers of a candidate's campaign committee, but state laws do. To comply fully with the law, broadcasters should become familiar with the unique regulations that may apply in their own localities.

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

3. ACCESS REQUIREMENTS FOR CANDIDATES AND INDEPENDENT POLITICAL COMMITTEES

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

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

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

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

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

such candidates to purchase reasonable amounts of time for "uses." A station is not required to do both, although it may do so if it wishes.

a. Criteria of "Reasonable Access"

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

- An across-the-board station policy limiting the period of time during which airtime will be sold to legally qualified federal candidates is not permitted.
- The prospective purchaser must be a legally qualified candidate for federal elective office or intend to become one by the first air date of his or her "uses."

Airtime must be sold or made available to legally qualified federal candidates only after the campaign has begun. The starting date of a particular campaign is a question of fact to be determined in the first instance by the broadcaster. If a complaint were filed by a candidate asserting a denial of "reasonable access," the FCC then would review the reasonableness of the broadcaster's determination as to whether the campaign period has begun.

The obligation to provide "reasonable access" to federal candidates asking to purchase time is not limited to the time periods during which the "lowest unit charge" rule applies.

Each request for time under "reasonable access" must be examined on its own merits.

- A broadcaster cannot rely on merely generalized assertions about the number of potential multiple requests for time, but must attempt to appraise the actual likelihood of such multiple requests at each stage of the campaign.
- In evaluating individual candidate requests, a broadcaster may consider such factors as the number and length of individual uses, total amount of time, and scheduling of access opportunities (*e.g.*, "uses" by a particular candidate). Thus, if a candidate has had numerous recent access opportunities on a particular station, the station may be less accommodating in offering time than it might be in the case of a candidate who previously has not purchased time. Conversely, at the beginning of a campaign, when a candidate has not previously made any requests for time, no such "weighing" of an individual candidate's other access opportunities can be undertaken. Rather, the FCC has indicated that a broadcaster rejecting a federal candidate's initial access request will be called upon to demonstrate compelling reasons for such rejection.
- In evaluating the reasonableness of a particular "reasonable access" request, a broadcaster should not "second guess" the "political" wisdom or relative audience-attracting effectiveness of longer versus shorter formats. Such judgments, according to the FCC, should be left to the discretion of the candidate and his or her media advisors.
- Nevertheless, the candidate's request does not dictate how much time, if any, must be afforded. The broadcaster may consider, in balancing the equities involved, other public interest factors, such as the disruption or displacement of regular programming (particularly as this may be increased by a reasonable probability of requests for equal opportunities to airtime by other candidates).

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

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

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

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

Commercial stations must make prime time spot announcements available to federal candidates. However, even though a *noncommercial educational station* normally may broadcast spot promotional or public service announcements, it generally need not make spot times available to political candidates. If a commercial station chooses to donate, rather than sell time to candidates, it must afford federal candidates free spot time of the same various lengths, classes and periods as are available to commercial advertisers.

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

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

b. Airtime for Non-Federal Candidates

The "reasonable access" provision of Section 312(a)(7) of the Communications Act applies only to candidates for *federal* elective office. However, in 1971, the FCC ruled that each broadcaster has a public interest obligation to make the facilities of its station "effectively available" to all candidates for public office. This policy applies to all legally qualified candidates, both federal and non-federal.

Under this policy, candidates in state and local elections have no initial right of access to broadcast stations. Individual stations have the responsibility and the discretion to determine which state and local election races are of

sufficient interest and importance to warrant coverage. The FCC recently implied that it would not approve a blanket refusal to sell time to non-federal candidates.

In fulfilling this obligation, the station may provide free spot or program time, sell spot or program time, or make some combination of free and paid time available to all candidates in a particular race.

c. Independent Political Committees

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

- Broadcast stations are not obligated to sell time to independent political committees. The FCC has ruled that the "reasonable access" requirement of Section 312(a)(7) of the Communications Act provides a *personal* right of access to federal candidates that does not apply to any other individuals or groups.
- Independent political committees may, under certain circumstances, have a *contingent* right of access. That is, where candidate A appears in a broadcast "use" sponsored by an independent committee, which "use" would entitle his legally qualified opponent, candidate B, to equal opportunities, and candidate B does not make a timely request for equal opportunities within seven days of A's prior "use," but an independent political committee does make such a request within seven days of A's "use," a station must provide equal opportunities to that independent group.
- Stations need not provide independent political committees with information about past or present programming or advertising broadcast on behalf of other groups or individuals. However, in the case of information which must be retained in the local public inspection file, such as political broadcast records, any member of the public has the right to view the file at the station during the station's normal business hours.
- Independent political committees are not entitled to the "lowest unit charge" for political advertising which they may purchase, since the FCC has ruled that the entitlement to "lowest unit charge" is a right which is personal to the candidate.
- The FCC has determined that, during *campaign* periods (*i.e.*, during periods where there exist legally-qualified candidates), the Commission's "Zapple" doctrine (*see* page II-21) applies. Thus, no free time may be demanded by any individual or entity to respond to paid spots appearing during a campaign period purchased by an independent political committee supporting or opposing the candidacy of any candidate. However, the FCC has determined that during *non-campaign* periods the "Cullman" doctrine (*see* page II-13) applies. Thus, free response time may be demanded under the fairness doctrine to respond to paid spot announcements appearing during a non-campaign period purchased by an independent political committee that address a controversial issue of public importance.

4. A PRE-ELECTION CHECKLIST

Broadcasters should do a series of things prior to each primary, general or special election. Here are some reminders of the major problem areas in political broadcasting:

- Make sure station personnel understand the rules on political broadcasting; have copies of documents required for purchases of time (*e.g.*, the NAB Political Agreement Form, Appendix II-D).
- Establish a political broadcast file, as part of the public inspection file, and instruct station personnel to permit public access to it on request. This file should include a complete record of all requests for access by or on behalf of candidates, with a notation showing how each request was handled (including charges).
- Determine the lowest unit charges and review rate cards for any inconsistent rates – all candidates in a given campaign must be treated alike.
- Adopt, for in-house use by station staff, a station policy on access for candidates and their supporters and for ballot issues. Review the rules on mandatory access for federal candidates (*see* page II-24). For non-federal elections, formulate a policy designed to make your station facilities "effectively available" to all candidates, based on the importance of the office, public interest in the campaign, the number of candidates and the amount of time likely to be requested. Remember to treat primary, general and special elections as separate events.
- Obtain an up-to-date copy of your state's laws governing candidate eligibility and the campaign itself.
- Be sure to comply with state as well as federal sponsorship identification requirements.

5. *POLITICAL BROADCAST CATECHISM*

Appendix II-E contains the tenth edition of the NAB *Political Broadcast Catechism* (March 1984). The *Catechism*'s Table of Contents and the Topical Index will help you in finding answers to questions that might arise.

C. INVESTIGATIVE REPORTING

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

Stations engaging in investigative reporting (*i.e.*, the journalistic investigation of matters that may involve a violation of law and the reporting to the public of the results of such investigations) have a responsibility not to violate the law on deliberately "staged" news events. For this reason, the Commission recommends that stations that engage in investigative reporting have written policies on the subject. *See Inquiry Into WBBM-TV's Broadcast on a Marijuana Party, (WBBM-TV)*, 18 F.C.C.2d 124 (1969). These written policies should make clear the general guidelines to be followed by all personnel involved in news and documentary programs and should set forth procedures for implementation. The policies should be distributed to all news employees and

other employees likely to be involved. Appendix II-F contains a suggested policy statement on this subject. It must be emphasized that this statement is only a suggestion. Each station's policy should be tailored to its individual circumstances.

Also, a station is not required to notify law enforcement officials when it or its personnel become aware that a crime is about to be committed, *except* that the FCC suggests law enforcement officers should be called when the crime involves "mugging, robbery, or other violent situations where a participant's life or safety or someone else's significant property interest is at stake." (*See WBBM-TV.*)

D. CHILDREN'S TELEVISION PROGRAMMING

The FCC began its study of children's television programming in the early 1970's. In 1974 the FCC issued its *Children's Television Report and Policy Statement* (50 F.C.C.2d 1). This 1974 *Policy Statement* provided guidelines to be followed by commercial television broadcasters in providing children's programming, and outlined policy changes regarding television advertising aimed at children.

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

On December 22, 1983, the FCC adopted a *Report and Order* terminating its 13-year inquiry into children's television programming. The Commission, while reaffirming the obligations of all commercial broadcast television stations to serve the special needs of children, rejected the option of mandatory programming requirements for children's television by a 3-1 vote. The *Report and Order* stated that the Commission will place "continued stress on the general licensee obligations emphasized in the 1974 *Children's Television Policy Statement*"* and reaffirmed the Commission's belief "that the broadcasters' public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience."** The *Report and Order*, however, specifically interpreted the *Policy Statement* as *not* imposing specific program or scheduling requirements (*e.g.*, educational, age-specific or day or day-part-specific). The Commission thus

*_Report and Order_ in Docket No. 19142 (FCC 83-609), 49 Fed. Reg. 07104 (Jan. 13, 1984) at ¶ 43.

**1974 *Policy Statement.*

will rely on the 1974 *Policy Statement* as a statement of general rather than specific licensee obligations.

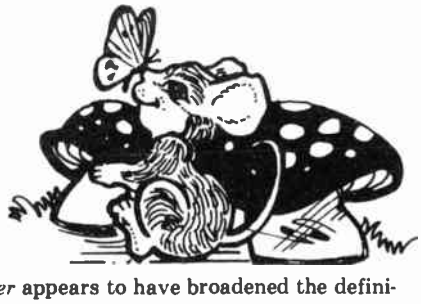
The *Report and Order* emphasized that the child audience warrants "special programming attention from licensees," but that broadcasters retain broad discretion in determining what programming they present, what the needs of the child audience in their markets are and how they will serve those needs.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

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

Commissioner Henry Rivera filed a stinging dissent to the Commission's action, calling it unreasonable and an abrogation of the FCC's responsibility. On February 14, 1984, Action for Children's Television filed an appeal of the FCC's decision with the United States Court of Appeals for the District of Columbia Circuit.

While the current postcard renewal applications no longer request information concerning children's programming and commercial practices, if a licensee is randomly selected by the FCC for an audit, these questions must be answered. Section III of Renewal Application Audit Form 303-C requires television stations to submit an exhibit which provides "a brief description of programs, program segments or program series broadcast during the license period that were designed for children twelve years old and under" and indicates "the source, time and day of broadcast, frequency of broadcast, and program type."

"Programs designed for children" include programs originally produced and broadcast primarily for an audience of children twelve years and under. The Commission has stated that they do not include programs originally produced and broadcast for a general or adult audience which may subsequently be broadcast during hours when children constitute a sizeable portion of the audience.* Since the question elicits information on programming during the entire license term, many licensees assign one person at the station the task of preparing such a list on a periodic basis (*e.g.*, once a month). (*See* Appendix II-G. *See also* Chapter IV, page IV-22 for a discussion of restrictions on children's commercials.)



*However, the Commission's 1983 *Report and Order* appears to have broadened the definition of children's programming to include programming of interest to general or family audiences in addition to age-specific programming.

E. PRIME TIME ACCESS RULE [TV]

The following is a summary of the Prime Time Access Rule (PTAR) (Section 73.658(k)) adopted by the Commission in its *Third Report and Order in Docket 19622*, 53 F.C.C.2d 542 (1975):

1. Network-owned or affiliated stations in the 50 largest markets (in terms of prime time audience for all stations in the market*) may present no more than three hours of network or off-network programs other than feature films, or, on Saturdays, feature films during the hours of prime time (7 p.m. to 11 p.m. E.T. and P.T.; 6 p.m. to 10 p.m. C.T. and M.T.).
2. Certain categories of network and "off-network" programming are not to be counted toward the three-hour limitation; these are generally:
   a. On nights other than Saturday, network or off-network programs designed for children, public affairs programs or documentary programs.**
   b. Special news programs dealing with fast-breaking news events, on-the-spot coverage of news events or other material related to this coverage, and political broadcasts by or on behalf of legally qualified candidates for public office.
   c. Regular half-hour network news programs when immediately adjacent to a full hour of locally produced news or public affairs programming.
   d. Runovers of live network coverage of sports events, where the event has been reasonably scheduled to conclude before prime time.
   e. For stations in the Mountain and Pacific time zones, when network prime time programming consists of a sports or other live program broadcast simultaneously throughout the United States, these stations may schedule programming as though the live network broadcast occupies no more of their prime time than that of stations in the other time zones.

*The top 50 markets to which this paragraph applies are the 50 largest markets in terms of average prime time audience for all stations in the market. For broadcast years before fall 1980, the 50 markets are the largest 50 as listed in the Arbitron publication "Television Markets and Ranking Guide," generally published in November, which will apply for the broadcast years starting the following fall. For broadcast years starting in the fall of 1980 and thereafter, the 50 largest markets will be determined at 3-year intervals, on the basis of the average of two Arbitron February-March audience surveys occurring roughly 2½ years and roughly 3½ years before the start of the 3-year period. (For further details, *see* Rule 73.658(k), note 1.)

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

f. Network broadcasts of an international sports event (such as the Olympic Games), New Year's Day college football games, or any other network programming of a special nature other than motion pictures or other sports events, when the network devotes all of its time on the same evening to the same programming, except brief incidental fill material.

The FCC has received requests to eliminate the Prime Time Access Rule. On October 28, 1982, the FCC indicated that it planned no proceeding with respect to the access rule in the near future. At the time of publication, no proceedings were being considered by the FCC to review the access rule.

F. OBSCENE, INDECENT OR SUGGESTIVE MATERIAL

1. OBSCENITY, INDECENCY OR PROFANITY

a. Federal Law

The U.S. Criminal Code (18 U.S.C. §1464) forbids the utterance of "any obscene, indecent or profane language by means of radio communication." Whether the law applies only to the spoken word is questionable. In *Allen B. DuMont Laboratories v. Carroll*, 184 F.2d 153 (3d Cir. 1950), *cert. denied*, 340 U.S. 929 (1951), the court applied Section 1464 to both television and radio program content. Also, the FCC has asked Congress to forbid obscene and indecent visual depictions both over the air and on cable television, but no action has yet been taken. Criminal prosecution is within the sole power of the U.S. Justice Department, but the FCC can revoke a license or impose a fine for violation of the statute whether or not the Justice Department acts.

b. Obscenity vs. Indecency

Conviction under the obscenity provisions of the statute tends to be much more difficult to obtain than a finding that the words involved are indecent. The prevailing standard for obscenity was adopted by the United States Supreme Court in its 1973 resolution of *Miller v. California*, 413 U.S. 15 (1973). The Court's three-part test is: (a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious artistic, political and scientific value.

"Indecency" is distinct from "obscenity." "Indecent" programming need not appeal to the prurient interest. In its original "Seven Dirty Words" decision, *Pacifica Foundation*, 56 F.C.C.2d 94 (1975), the FCC defined "indecent language" as "language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, *at times of day when there is a reasonable risk that children may be in the audience*" (emphasis added). When the Supreme Court reaffirmed the Commission's decision three years later it added that "an occasional expletive . . . would (not necessarily) justify any sanction . . . (or) criminal prosecution." *FCC v. Pacifica Foundation*, 438 U.S. 726, 750 (1978). The Supreme Court also stated that "the prohibition against cen-

sorship unequivocally denies the Commission any power to edit proposed broadcasts in advance and to excise material considered inappropriate for the airwaves." 438 U.S. at 735. The following subsections should guide licensees in applying these standards to their decisions involving coverage of events where obscene or indecent words may be or have already been uttered.

c. Live Coverage

The FCC has announced that it will not hold a licensee responsible for the broadcast of words depicting sexual or excretory functions during live coverage of public events because no opportunity for editing exists. *See Pacifica Foundation*, 59 F.C.C.2d 92 (1976).

d. Section 315's "No-Censorship" Provision

The FCC's staff recently concluded that broadcasters may refuse to run obscene political ads, in large part because obscenity is not protected speech under the First Amendment. The staff's view, indicated in a memorandum submitted by Chairman Fowler to Congressman Luken on January 19, 1984, is that Section 315 "was not intended to override the statutory prohibition against the broadcast of obscene or indecent materials" contained in Section 1464 of the U.S. Criminal Code. Hence, the memorandum suggests that a broadcaster who airs a candidate "use" containing obscene or indecent material would not be immune from criminal or other sanctions as a result of such carriage. As of the date of publication, the full Commission had not had the occasion to formally endorse the staff position in a ruling.

e. Recorded or Filmed Coverage

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

f. Practical Advice

When in doubt a station may want to consider covering questionable words with a "bleep" (1,000 cycle) tone. This technique will convey to the audience that questionable language was used without exposing the station to potential criminal liability for having broadcast the words. Licensees are advised to consult private counsel if questions arise regarding obscene or indecent material.

2. DRUG LYRICS

While the broadcast of songs containing "drug lyrics" is a matter of licensee discretion, the Commission has established procedures by which licensees must exercise responsibility and judgment in the screening of songs that may promote drug usage. Some songs contain references to drugs which are simply incidental or which, in substance, warn against the use or abuse of drugs. Such songs would not normally be of concern to the Commission.

Appendix II-H is a *Memorandum Opinion and Order*, released April 16, 1971, that sets forth the FCC policy on this subject.

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

G. UNAUTHORIZED COMMUNICATIONS AND REBROADCASTS

1. UNAUTHORIZED USE OF COMMUNICATIONS

Section 605 of the Communications Act of 1934, as amended, prohibits anyone from divulging or making public any radio, television or wire communication (other than a radio broadcast transmitted for reception by the general public), unless authorization is granted by the sender. Similarly, the 1968 Omnibus Crime Control Act, 18 U.S.C.A. §2510 *et seq.*, prohibits the willful interception, or attempted interception, of any wire or oral communication. Section 2511 details this prohibition and its criminal penalties, which can include a $10,000 fine and five years' imprisonment.

Section 605 does not apply to amateur radio communications. However, FCC Rule 73.1207(c) strictly forbids the rebroadcast of amateur transmissions without the amateur's consent and prior FCC authorization. FCC authorization may be requested informally by telephone. Within one week after the broadcast of the amateur transmission, a written confirmation accompanied by the written consent of the amateur must follow. FCC Rules 97.113 and 97.114(c) further limit the broadcast of certain amateur transmissions. These sections prevent amateur stations from engaging in any form of radio broadcasting, and from facilitating the regular business or commercial affairs of any party.

The Commission has held that unauthorized use of public safety messages sent by the police, fire department or Federal Aviation Administration is a violation of Section 605 of the Communications Act. Licensees monitoring police, fire and FAA radio transmissions and using the contents of these messages in news and other programs are in violation of the Act unless permission has first been granted by officials of the public safety agencies being monitored.

2. REBROADCASTING OTHER BROADCAST STATIONS

Rebroadcasting the program of another broadcast station requires the written consent of the originating station. However, it is not necessary to obtain Commission authority to rebroadcast the programs of other broadcast stations. Copies of the written consent are to be kept at the rebroadcasting station and made available to the Commission upon request. They need not be kept in the station's public inspection file. *See* Rule 73.1207.

3. REBROADCASTING FOREIGN OR NON-BROADCAST STATIONS

Generally, the non-delayed rebroadcast of time signals originated by the Naval Observatory and the National Bureau of Standards and the rebroadcast

of National Weather Service transmissions is permitted without specific Commission authorization. Programs originated by foreign broadcasting stations such as BBC and Radio Moscow may be rebroadcast without the consent of the Commission or the orginating station, except where covered by prior international agreement. (For example, the consent of originating stations should be obtained for the rebroadcast of Canadian and most Latin American programs, and such stations should be identified, as to location and call letters, during the course of the rebroadcast). Programs originated by the Voice of America and the Armed Forces Radio and Television Service may be rebroadcast only by special arrangement among the parties concerned. Permission to retransmit any FM station (SCA) subcarrier background music or other multiplex subscription program service first must be obtained from the originating station.

Retransmission of messages originated by privately owned *non-broadcast* stations must be authorized by the Commission prior to retransmission. Rule 73.1207(c)(1) provides that such authority may be requested informally by telephone, and within one week after such retransmission a written confirmation accompanied by the written consent of the originating station must follow. Permission to retransmit government operated and owned non-broadcast stations first must be obtained from the government agency originating the message. Written notification must be sent to the FCC within one week after such retransmission confirming that prior authorization for the transmissions had been obtained. Rule 73.1207(c)(2).

4. REBROADCASTING TELEPHONE CONVERSATIONS

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

The Commission has ruled that a "conversation" begins whenever a party answers the telephone. Therefore, the prior notification requirement is violated when the party called answers the phone by saying "Hello" even though the announcer may intend to immediately inform the party called of his or her identity and the fact that they are being broadcast live or being recorded for later broadcast. The Commission has stated that the live use of a telephone conversation prior to receiving permission, albeit with the intent of receiving the party's permission during the broadcast, is not acceptable. Furthermore, the FCC has held that the recording of a telephone conversation for possible broadcast with the intention of informing the other party of such, either during the conversation or after, but prior to its broadcast, also violates the rule.

Additionally, the prior notification requirement applies to "cash calls" or similar contests, in which a contestant called must answer with a specific phrase or a station's call letters. "Hi, I'm Jack Smith of WXXX and you're on the air" is insufficient notification, because the party called would have al-

ready initiated the converstion by saying "Hello." Here, use of a beep tone would not be sufficient. While beep tone usage is sufficient as an automatic audible warning to a party that a call is being recorded, it does not inform the party that a station intends to broadcast that recorded conversation.

On October 12, 1983, NAB filed a petition for rule making asking the Commission to amend Rule 73.1206. The Commission placed the petition on public notice on December 15, 1983. Action in this proceeding is expected in 1984.

5. NOT FOR "ACTUALITY" RECORDING

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

Recording such conversations may or may not be legal in your state. To learn if it is requires a very careful reading of federal* and state law.** Such recording should not be undertaken without first consulting with your local attorney. The following paragraph contains some factors your lawyer will want to consider.

The federal Criminal Code is less stringent than FCC regulations if the conversation will not be broadcast. Instead of the FCC's all-party consent rule, the federal law requires that only one party to the conversation give prior consent to recording. You or your employee recording the conversation can be that person. However, the federal law contains an exception that ought to put you on your guard. The federal law does not apply if your state has enacted a more restrictive rule or when the recording has been made for what the federal statute describes as "criminal," "tortious" or "injurious" purposes. A number of states have enacted tougher laws that forbid any covert recording without the consent of all parties. Others provide for only one-party consent, but penalize using or divulging the information without obtaining the consent of all parties. An examination of the statutes alone by your attorney will not be enough. That review also should include the current position of your state courts about invasions of privacy and the possibility of a suit against you.

6. CONCEALED MICROPHONES

a. Wireless Microphones

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

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

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*18 U.S.C. §§ 2510, 2511.

**See Appendix II-I for references to state laws.

Streets, parks, public buildings, restaurants, sports arenas and theaters are examples of public and semi-public places. Remember that if an employee of your station is not a party to the conversation, he or she should make sure that the conversation is being picked up where another would be likely to overhear it, *i.e.*, within earshot, and in a public or semi-public place.

If the site appears to be private but is not the private home, office or hotel room of any of the participants in the conversation – check with your supervisor or station attorney before proceeding.

Even when the FCC's exception for public or semi-public conversations does apply, state law still might forbid the pickup of dialogue with a wireless microphone or the use of such dialogue. Maryland, Illinois, New York and California specifically require the consent of all in a conversation before it may be covertly intercepted.

b. Wired Microphones

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

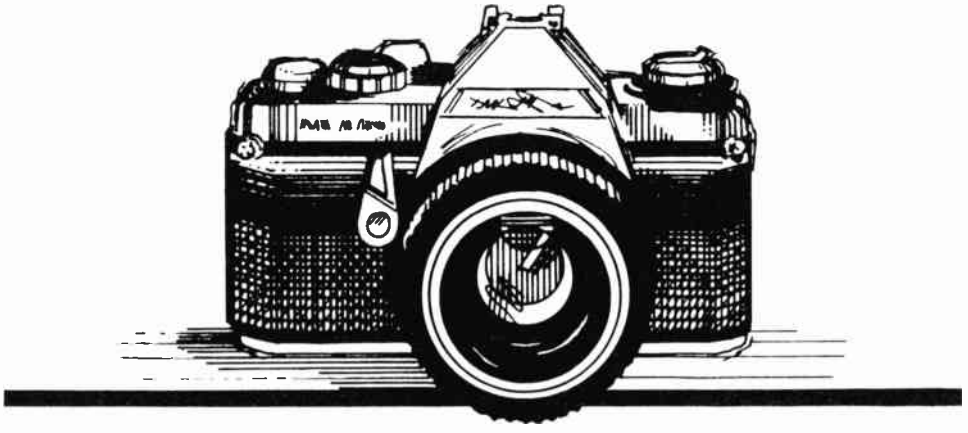
Federal law (47 U.S.C. §605) permits surreptitious interception of a conversation in a public or private place if one party to the conversation has consented. But when concealed microphones are used, some states supersede the federal rule and require the consent of all parties. In other states, use or disclosure after recording also requires consent of all parties, even though the interception itself was legal. The advice and guidance of your local attorney should be sought.

7. HIDDEN CAMERAS

a. In Public and Semi-Public Places

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

Covert photography generally may be employed to obtain pictures of what takes place in public and semi-public places for news and public affairs purposes. However, such techniques used for entertainment programs or commercials may expose you to suit for some form of invasion of privacy. With this



caveat in mind, you may surreptitiously photograph events that take place in, for example, public streets, parks and buildings, restaurants, sports arenas and theaters. The reasoning behind these general rules is that in some places and situations people should reasonably expect that they will be seen. This also leads to some limitations.

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

b. In Private Places

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

In Maryland, a claim was filed by an insurance salesman whose pitch to a Congressional investigator posing as a would-be customer was filmed and audio-taped in a private home. At issue was the salesman's assertion that he expected privacy in the home of a stranger. The case is still making its way through the courts.

8. POINT-TO-POINT COMMUNICATIONS

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

H. EMERGENCY BROADCASTS

Radio and television stations are licensed only for broadcasting to the general public. Personal messages, sometimes referred to as "point-to-point" communications, are permitted only during emergencies. For an expanded discussion of the Emergency Broadcast System, *see* Chapter V, page V-28.

The Commission acknowledges that situations involving "tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules as a result of any of these conditions" may justify an exception to the policy against point-to-point messages. Rule 73.1250(a). Additionally, at the request

of responsible public officials, stations may air messages to request or dispatch aid or assistance in rescue operations without FCC authorization.

If the station is licensed for daytime AM operation only, it may operate during non-daytime hours to broadcast emergency information "only if regular, unlimited-time service, is nonexistent, inadequate from the standpoint of coverage, or not serving the public need." Rule 73.1250(f). In addition, this rule permits AM stations that normally reduce power or alter their antenna pattern at night to operate using their daytime facilities. Commercials may not be aired during times when this rule is invoked.

Television stations are required to transmit emergency information visually at a minimum, although aural and visual transmission is preferred. *See* Rule 73.1250(h).

Finally, any station broadcasting emergency information is required to file an immediate report in letter form to the FCC. *See* Rule 1250(e) for details.

I. PROGRAM DUPLICATION [AM-FM]

Rule 73.242 provides that licensees of FM stations may duplicate the programming of an AM station owned by the same licensee in the same local area to the extent that:

> if either the AM or the FM station is licensed to a community of over 25,000 population, the FM station [does] not operate so as to devote more than 25% of the average program week to duplicated programming.

For purposes of this section, program duplication means simultaneous broadcast of a particular program over both the AM and FM stations or the broadcast of a particular program by one station within 24 hours before or after the identical program is broadcast over the other station. Rule 73.242(b). Additionally, the population figures are to be taken from the regular U.S. Census data.

Prior to adoption of the new "short form" renewal application, the renewal applicant was required to make a showing, on former radio renewal Form 303-R, to verify compliance with the rule. This verification is not required by the new renewal Form 303-S.

J. TEN DISCONTINUED PROGRAM CONTENT POLICIES

On August 4, 1983 the Commission deleted from its rules references to ten policies that raised First Amendment concerns because they established rigid guidelines for or cautioned against broadcast of certain categories of programming. Many of the policies deleted were cross-referenced to old Commission cases or letters, rather than formal statements of Commission policy.

The Commission's role in the areas covered by the former sections of the rules will be one of oversight. Therefore, stations should continue to be mindful of their public interest obligations in these areas. For example, while the Commission's rules no longer specifically mention astrology, licensees still must review astrology-related material to be sure it does not constitute false

or deceptive advertising. (*See* Chapter IV for a detailed discussion of the FCC's advertising policies.) The following subsections summarize the deleted policies.

1. FOREIGN LANGUAGE PROGRAMS (Former Section 73.4105)

In 1973 the FCC issued an order with specific guidelines concerning licensee responsibility for monitoring foreign language programs. Under this policy, the FCC required licensees to maintain adequate controls over foreign language programming to ensure compliance with all Commission rules and policies.

After finding that the overall thrust and ultimate effect of this policy appeared to intrude unnecessarily upon the licensee's judgment in the selection and content of programming in instances where it broadcasts foreign language programming, the Commission decided to delete the 1973 policy statement. Instead, it will rely on its basic policy:

> Broadcasting licensees must assume responsibility for all material which is broadcast through their facilities. This includes all programs and advertising material which they present to the public . . . . This duty is personal to the licensee and may not be delegated. [The licensee] is obligated to bring [its] positive responsibility affirmatively to bear upon all who have a hand in providing broadcast matter for transmission through [its] facilities so as to assure the discharge of [its] duty to provide acceptable program schedule consonant with operating in the public interest in [its] community. *Report and Statement of Policy re: Commission en banc Programming Inquiry*, 44 F.C.C. 2303, 2313-14 (1960).

2. AGREEMENTS WITH MUSICAL FORMAT SERVICE COMPANIES [AM-FM] (Former Section 73.4145)

This policy stressed the licensee's non-delegable duty to retain discretion over programming and identified specific contract terms in music service agreements that could result in abdication of that duty.

In 1975, the FCC warned that any agreement entered into by the licensee of a radio station and a musical format service company* that unduly restricted the free exercise of independent judgment in programming would be

*Musical format service companies contract with radio stations to supply taped musical programs over a period of time on a subscription basis. Usually, the station plays the tapes over the air as received and then returns them to the supplier. The programs contain breaks for commercials, news and other announcements. Some programs are musical only; others include an announcer between musical selections. Some companies also provide consulting services to supply stations with programming or format ideas.

considered an abdication of that responsibility by the licensee and contrary to the public interest. In this area, a station licensee had an affirmative obligation to ensure that any agreement with a program service was in accord with the Commission's policies.

The Commission's current view is that it is better to rely upon the licensee's basic obligation not to abdicate control of station operations, rather than to impose strict, detailed policies on broadcasters.

3. ALCOHOLIC BEVERAGE ADVERTISING (Former Section 73.4015)

This policy referenced a 1949 letter. There, the Commission noted that spot advertisements for alcoholic beverages could raise fairness doctrine issues. Recent decisions have made the policy obsolete by holding that ordinary product ads will not trigger fairness doctrine obligations. Although some state laws still prohibit or restrict the advertising of alcoholic beverages, there is no federal law prohibiting this type of advertising. Station licensees should familiarize themselves with their local and state laws on this subject. The FCC will continue to concern itself with broadcast advertisements of alcoholic beverages only in circumstances where a licensee has been convicted of a violation of a law prohibiting or limiting such advertisements. (For further discussion on advertising alcoholic beverages *see* Chapter IV, page IV-6.)

4. ASTROLOGY MATERIAL (Former Section 73.4030)

In its published response to a letter from an astrologer who complained of censorship and a denial of air time, the Commission cautioned licensees against presenting the services of fortune-tellers, astrologers or persons offering similar services that might be considered to guarantee monetary, health or other benefits.

5. REPETITIOUS BROADCASTS OF MUSICAL RECORDINGS (Former Section 73.4150)

Here, by publishing its letter to a station that had promoted a new format by broadcasting a single record as its entire entertainment programming for several days, the Commission warned that promotions involving repetitions of a single recording over a long period might subordinate the licensee's public trustee responsibility to its private interests.

6. OFF-NETWORK PROGRAMS AND FEATURE FILMS (Former Section 73.4175)

This 1972 Public Notice interpreted a section of the Commission's Prime Time Access Rule as prohibiting during the access hour the use of off-network or feature films that had been broadcast by a station in the market within the previous two years. After a successful court challenge, in 1975 the Commission eliminated this provision. Accordingly, the reference to this policy has been deleted.

7. CALL-IN BROADCAST STATION POLLS (Former Section 73.4200)

By publishing its response to an inquiry from a member of Congress, the Commission warned licensees to disclose the methodology used in any polls they conduct, and especially to point out to their audiences that call-in polls that could allow a person to "vote" more than once are not scientific in nature.

8. PRIVATE INTEREST BROADCASTS BY LICENSEES TO ANNOY AND HARASS OTHERS (Former Section 73.4205)

Here, the Commission admonished a station that had encouraged its viewers to telephone the New York Port Authority (owner of the World Trade Center, on which the station sought tower space) if they experienced interference. The Commission warned against airing broadcasts that, while serving the licensee's private interest, could result in harassment of others.

9. USE OF SIRENS AND SIMILAR EMERGENCY SOUND EFFECTS IN ANNOUNCEMENTS (Former Section 73.4240)

Mindful of potential safety hazards, the Commission urged licensees to refrain from airing siren-type sound effects in spot announcements.

10. BROADCASTS WHICH RESULT IN HARASSING AND THREATENING PHONE CALLS (Former Section 73.4120)

By publishing its letter to a licensee whose broadcast had suggested members of the public call a named individual not associated with the station with their views on an issue, the Commission cautioned licensees against broadcasting personal telephone numbers in such fashion as possibly to trigger harassing or threatening phone calls.

11. SUMMARY OF THE "UNDERBRUSH PROCEEDING"

The FCC has characterized the above policies as regulatory underbrush (*i.e.*, the policies, doctrines and interpretations that have grown up over the years around major regulations that may be redundant or no longer necessary). In several recent decisions, the Commission has taken steps to clear away some of this underbrush. For example, in addition to deleting the above policies, the Commission recently eliminated its policies on "hypoing" and use of coverage maps. In the near future, the Commission expects to review its policies governing promotions, contests, loud commercials and fraudulent billing. Additionally, in a recently released *Notice of Proposed Rule Making* on the matter of eliminating unnecessary broadcast regulations (MM Docket No. 83-842, FCC 83-37, 48 Fed. Reg. 49879 (October 28, 1983)), the Commission proposes to eliminate three other policies dealing with horse race programming and advertising. Commission action on the *Notice* is expected in 1984. (*See* Chapter IV for detailed information on all these policies.)

CHAPTER III:

ANNOUNCEMENTS

A. MECHANICAL REPRODUCTION

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

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

B. STATION IDENTIFICATION

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

The official station identification announcement must contain the station's call letters followed by the name of the city of license as specified in the station's license. The name of the licensee and the station's frequency or channel number may be included between the call letters and the city of license, but the Commission has specifically stated that no other extraneous matter may be placed directly between the call letters and the city of license. Thus, the announcement, "This is station WXXX, Acorn Broadcasting Incorporated, 750 on your AM dial, Central City," would be permissible. Not acceptable would be "WXXX, Acorn Broadcasting Incorporated, 750 on your swinging dial, your number one rocker in Central City." Rule 73.1201(b).

The FCC recently amended its dual-city identification rules to permit broadcast stations to include in their official station identification the names of any community or communities they select, so long as their community of license is named first in the station's official on-air identification.

Under the new rules, which became effective December 8, 1983, stations that want to use a multi-city identification in their official station identification may do so without either notifying or applying to the Commission. In addition, the former requirement that the additional community or communities included in a multi-city identification be located within the station's principal-city contour has been eliminated.

The new rules do not affect each station's primary obligation to serve its community of license. They have no impact on the Commission's requirements that (1) the station's main studio must be located within the community of license itself, (2) more than 50 percent of the station's programming must be originated from that main studio, (3) the community of license must receive city-grade service and (4) programming responsive to the ascertained needs of the community of license must be provided.

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

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

C. SISTER STATION PROMOTIONS

The Commission's rules provide that promotional announcements broadcast by a station for another commonly-owned or controlled broadcast station

serving the same community shall be logged as commercial announcements. Rule 73.1810(d)(3)(ii). For example, an announcement broadcast on a television station urging listeners to watch a particular program on a commonly-owned radio station serving the same community must be logged as a commercial announcement.

The Commission has ruled that "in the case of simulcasting, if the announcement relates to future programming which is not to be simulcast, the announcement shall be entered as commercial matter in the log of the station not scheduled to broadcast the future programming." Thus, an announcement broadcast simultaneously on WXXX-AM and FM urging listeners to "tune in for the final game of the state basketball tournament on WXXX-FM tonight at 8 o'clock" would be logged as a commercial announcement on WXXX-AM, if the station logged such matter. However, an announcement aired simultaneously on WXXX-AM and FM asking listeners to "tune in for the final game of the state basketball tournament on WXXX-AM and FM at 8 o'clock tonight" would not be logged as a commercial announcement.

D. SPONSORSHIP IDENTIFICATION PRACTICES

D

1. THE SPONSORSHIP IDENTIFICATION RULE

Section 317 of the Communications Act and Section 73.1212 of the Commission's rules provide that whenever a station broadcasts any material for which it has received, or will receive, any money, service or other valuable consideration, it must fully and fairly identify the person or group sponsoring the broadcast. The Commission's sponsorship identification rule and its numerous interpretative rulings are very complicated. In 1975 the Commission reissued a public notice concerning sponsorship identification which is contained in Appendix III-A. Licensees are advised to study carefully the examples given in order to comply with the Commission's guidelines. Failure to fully identify any sponsor who has furnished valuable consideration may be considered the taking of "payola" and can result in a fine or even imprisonment. (*See* Payola section in Chapter IV, page IV-40).

The sponsorship identification rules apply to all commercial matter including political broadcasts, teaser announcements and messages paid for by federal, state and local entities and local public service organizations as well as trade associations. The Commission also has cautioned stations that the required identifications must be comprehensible. There have been some complaints that television viewers have encountered some difficulties in reading video-only identifications. Although the FCC has refrained from establishing detailed rules in this regard, the licensee's obligation is to provide clear identification.

An entry in a television station's program log identifying the sponsor(s) of the program, the person(s) who paid for the announcement or the person(s) who furnished the materials or services, constitutes a representation that the appropriate sponsor identification was announced on the air. Rule 73.1810(b)(2)(i). A checkmark next to the entry is no longer required as a means of indicating that the announcement was made.

Stations should be particularly careful in observing the sponsorship identification rules when the broadcast is political or involves a controversial issue of public importance. Stations must exercise reasonable diligence in disclosing

the true identity of the person or group paying for such broadcasts. (Note, however, that a licensee confronted with undocumented allegations and undocumented rebuttal may safely accept an apparent sponsor's representations that it is a real party in interest, and not an agent. *Loveday v. FCC*, 707 F.2d 1443 (1983).) The sponsorship announcement must state that the broadcast material is "paid for" or "sponsored by" that sponsor. *See Political Broadcast Catechism* Questions 6-9, 11-13 and 46, Appendix II-E for further discussion of sponsorship identification rules in relationship to political broadcasts.

2. "TEASERS" OR "COME-ON" SPOTS

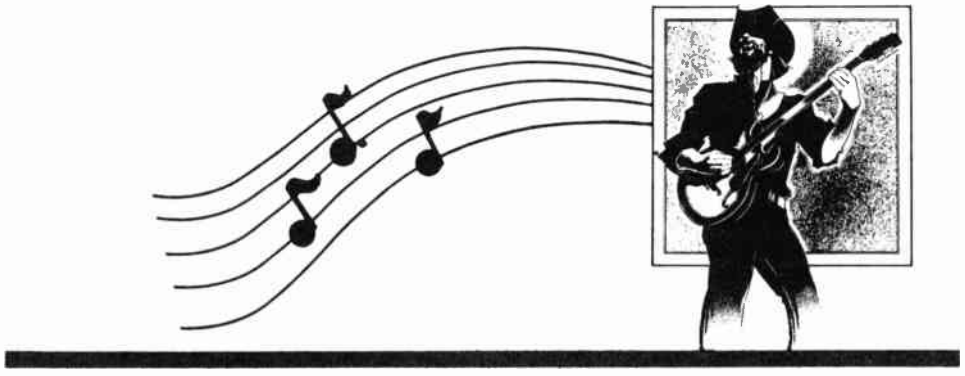
A "teaser" is in essence a short and succinct announcement using, for example, catch words, slogans, symbols, etc., designed to arouse the curiosity of the public as to the identity of the advertiser or product (to be revealed in subsequent announcements). The FCC has ruled that even though the final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

3. CONCERT PROMOTION ANNOUNCEMENTS

When a station helps promote a local concert and receives valuable consideration in exchange for the broadcast of promotional announcements, the sponsorship identification rule requires that this fact be disclosed. It also is important that concert promotion television announcements, for which consideration has been received, be logged as commercial matter. The entries must include the names of the persons who paid for the announcements.

Note that statements such as "WXXX presents John Jones" may be considered misleading if the station has no financial interest in the concert. To have a financial interest, the Commission has ruled, a station must share a portion of the financial obligation of the show or assume responsibility for production or arrangements. Without such an interest, the station is not allowed to make such announcements as: "WXXX, in association with the Concert Company, presents John Jones." However, such statements as "WXXX welcomes John Jones" or "WXXX is proud to welcome John Jones" would probably be permissible.

A further problem is presented when a station receives only a small percentage of the concert's proceeds. In 1971, the Commission ruled that when a station received only one percent of the proceeds of the concert, promotional announcements using the station's name might be misleading. 28 F.C.C.2d 348 (1971). This ruling was based on the fact that the station assumed no responsibility for production or arrangements but simply received one percent of the gross revenue.



The FCC has not ruled on the minimum amount of participation necessary for a station to be considered a co-sponsor. However, if the station is actively involved *in arranging* the concert, no financial commitment is needed to co-promote the show. For example, a station was allowed to represent itself to the public as a co-promoter when it did the following:

- helped with the selection of concert performers;
- assisted in arranging ticket outlets;
- gave advice on the concert's sound system, lighting and/or staging;
- gave suggestions about promotional appearances by concert talent in support of the concert;
- gave advice on concert advertising in newspapers, on television and on other radio stations;
- assisted in negotiating the fees of talent and support personnel and facilities;
- used station personnel to assist in the coordination of various elements of the production;
- gave advice about an appropriate hall for the performance;
- presented live broadcasts of some concerts it co-promoted; and
- organized, or helped to organize, related events preceding or following a concert in some instances.

Although in the above situation the station's degree of involvement was sufficient to allow it to present itself as a co-promoter of the show, there is no magic formula for determining the minimum amount of responsibility and/or financial investment that is necessary to be considered a co-promoter. Because of the lack of clear guidelines from the FCC, particular care should be exercised in the wording and logging of announcements promoting local concerts. Two important guidelines should be followed by the broadcaster in formulating its concert promotional announcements:

> Where the station has made no financial investment in the concert and has not devoted any effort to making the show a success, *do not* announce that "WXXX *presents* . . . ."
>
> If the station is actively involved in arranging a concert, this commitment, which may involve only limited financial investment, will probably support a station's announcement that it is at least a co-promoter of the concert.

It also is important that the licensee take care not to use these announcements to gain a competitive advantage over an independent producer. While a licensee is not prohibited from engaging in non-broadcast activities or advertising them over its facilities, it is clear a licensee may not use its broadcast facilities in a manner that forecloses competition or unfairly treats a competitor (*e.g.*, refusing to sell commercial time to a rival promoter). 42 F.C.C.2d 1027 (1973).

Although limited in number, the few Commission pronouncements regarding concert promotion should lead the careful broadcaster to at least apply common sense to its copy writing. Before you announce "WXXX presents . . ." ask: what is the station's actual position? Are you really *involved* in promoting the concert, or merely *advertising* it for the true sponsor? Each situation will depend on its own facts, and should be discussed thoroughly among appropriate station personnel or with communications counsel.

4. PUBLIC SERVICE ANNOUNCEMENTS

Public service announcements (PSAs) are announcements provided by the station without charge, that promote programs, activities or services of federal, state or local governments (*e.g.*, recruiting, sales of U.S. Savings Bonds, etc.) or the programs, activities, or services of non-profit organizations (*e.g.*, Red Cross, United Way, etc.) or any other announcements regarded as serving community interests. Announcements on behalf of "for profit" entities in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals or employees are not public service announcements. Rule 73.1810(d)(4).

In November 1980, the FCC terminated a long-pending proceeding on the subject of public service announcements. The Commission had been prompted by several public interest groups to initiate the proceeding with a view towards imposing specific obligations on broadcasters for presenting PSAs. The proposed changes included narrowing the definition of what constitutes a PSA (an effort to regulate content and subject matter) and requiring stations to air PSAs at specific times and on a parity with commercial advertising.

As urged by NAB, the Commission denied the requested changes and issued a *Report and Order* (effective November 17, 1980) encouraging broadcasters to continue to air PSAs. The Commission also decided to allow broadcasters to receive more credit for airing PSAs, if they choose to keep records of all PSAs aired.

Under the Commission's current PSA policies, both radio and television broadcasters can receive more credit for airing PSAs simply by keeping records indicating the length of time of all PSAs aired. Commercial radio licensees might find PSA records useful in the event of a license renewal challenge, but there is no requirement that they keep such records. Commercial television licensees have the option of including the total amount of PSA time in the "other" programming category of the Renewal Application Audit Form 303-C, if they are selected to complete it. Section III, Question 4 specifically asks how many PSAs were broadcast during the composite week. The audit form also asks for a breakdown of the number of PSAs related to organizations within the service area and to organizations outside the service area. Audited television licensees must submit program logs that support their PSA computations.

Note that PSAs do not have to be locally produced in order to serve the local community. Decisions as to the quantity, nature, source and scheduling of PSAs aired depend on the community to be served, and are left to the broadcaster's discretion. The national distribution of a PSA does not necessarily indicate that the announcement is not applicable to local needs. It is left to the broadcaster's discretion to determine that a nationally distributed PSA will serve the local community.

Additionally, the Commission will not distinguish between collective PSAs (*e.g.*, a community bulletin board or a grouping of community announcements) and individual announcements, as long as they fall within the PSA definition. Thus, a "community bulletin board" can be counted as PSA time.

Finally, PSAs can be used for programming in response to both the quarterly issues/programs list for commercial radio stations and the annual problems/programs list for television stations. *See* Chapter V, pages V-6 and V-7, respectively. The Commission has recognized that because PSAs are brief, catchy, repetitive announcements, they may be effective in dealing with certain community problems. It is therefore appropriate for broadcasters to use PSAs for purposes of the problems or issues/programs list. However, PSAs

mary method for responding to ascertained needs, particularly if the "problem" necessitates lengthy discussion.

E. SELECTION OF SPORTS ANNOUNCERS

A licensee is permitted to enter into a contract allowing a third party, such as an athletic team, the right to directly or indirectly choose, pay, approve and/or remove a sports announcer. However, if such an agreement is made, licensees are required to disclose the existence of such an arrangement clearly, publicly and prominently during each broadcast of an athletic event covered by the contract. The Commission believes that disclosure of such arrangements "will prevent public deception as to possible lack of objectivity based upon the private interest of the announcer." *Sports Broadcasting*, 48 F.C.C.2d 235, 237 (1974). Moreover, although licensees may enter into contracts giving third parties a voice in the selection of sports announcers, licensees have a continuing responsibility to exercise diligence to prevent announcers employed or selected by others from deliberately falsifying, distorting or suppressing facts.

F. INVITING COMMENTS FROM THE PUBLIC (Public Notice Announcements)

1. GENERAL ANNOUNCEMENTS

In the postcard renewal decision (*see* Chapter I, page I-8), the Commission changed significantly the regulations concerning the broadcast of monthly "public notice" announcements. The Commission eliminated the requirement that licensees monthly broadcast first and sixteenth day announcements, inviting comments from the public, throughout the license term. Also eliminated were modified "first and sixteenth" day announcements, previously required to be aired after all the post-filing announcements had been broadcast but prior to the Commission's granting the renewal of license.

Now licensees need only broadcast the first and sixteenth day announcements that are renewal-related, *i.e.*, the pre-and post-filing announcements. An applicant who files for renewal of a broadcast station license must broadcast announcements on that station that give notice of the filing and invite comments from the public. The Commission requires licensees to begin broadcasting these public announcements six months prior to the license expiration date. Rule 73.3580(d)(4).

The Commission eliminated the prior requirements in order to harmonize the public announcement requirements with Commission proceedings to deregulate radio. As the Commission generally scrutinizes licensee performance only at the time of license renewal, it believed these "first and sixteenth" day announcements were unnecessarily complex and confusing and the underlying purpose of these announcements could be achieved by continuing to require pre- and post-filing renewal announcements.

2. PRE-FILING ANNOUNCEMENTS

Licensees must make four (4) pre-filing announcements. Begin to broadcast the first pre-filing announcement six months prior to the expiration date of the license (two months prior to filing the renewal application). (*See* Chapter I, pp. I-9–10 for a list of expiration dates for broadcast licenses.) Pre-filing announcements should be aired on the first and sixteenth days of that month as well as on the first and sixteenth days of the following month. For example, if the license is due to expire on October 1, 1986, broadcast the announcement on April 1st and 16th and on May 1st and 16th of 1986. Only one announcement must be broadcast on each date.

a. Time of Day

Commercial TV: At least two of the announcements must be broadcast between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time).

Commercial Radio: At least two of the announcements must be broadcast between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m. (For stations which neither operate between 7 a.m. and 9 a.m. nor between 4 p.m. and 6 p.m., at least two of the announcements must be broadcast during the first two hours of broadcast operations.)

Noncommercial Educational Stations: The announcements should be broadcast at the same time as those for commercial stations, except that such stations need not broadcast the announcements during any month that the station does not operate.

b. Text of the Pre-Filing Announcement

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 LICENSE RENEWAL WITH THE FCC ON OR BEFORE (date four full calendar months prior to expiration date). WHEN FILED, A COPY OF THIS APPLICATION WILL BE AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST (period of time covered by the application), (only TV and noncommercial radio say the remainder of this paragraph) AND PROJECTIONS OF OUR PROGRAMMING DURING THE NEXT (license term**) 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 public inspection file) OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.***

3. POST-FILING ANNOUNCEMENTS

Licensees must make six (6) post-filing announcements. Broadcast the post-filing announcement on the first and sixteenth days of the month in which the application is due for filing at the FCC, and continue to run it on the first and sixteenth days of the two succeeding months. Using the previous example, if the license expires on October 1, 1986, the renewal application is due on June 1, 1986. Therefore, the post-filing announcements would be broadcast on June 1st and 16th of 1986, July 1st and 16th and August 1st and 16th of 1986. Only one announcement must be broadcast on each date.

**See* your license for this information.

**Five years for TV. Seven years for noncommercial radio.

***TV broadcast stations (commercial and noncommercial educational), in presenting the pre- (and post-) filing announcements, must use visuals with the licensee's and the FCC's addresses when this information is being orally presented by the announcer. FCC Rule 73.3580(d)(4)(iii).

a. Time of Day

Commercial TV: At least three of the post-filing announcements must be broadcast between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time), at least one announcement between 9 a.m. and 1 p.m., at least one announcement between 1 p.m. and 5 p.m., and at least one announcement between 5 p.m. and 7 p.m.

Commercial Radio: At least three of the required announcements must be broadcast between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m., at least one announcement between 9 a.m. and noon, at least one announcement between noon and 4 p.m., and at least one announcement between 7 p.m. and midnight. (For stations which do not operate between 7 a.m. and 9 a.m. or between 4 p.m. and 6 p.m., at least three of the required announcements must be made during the first two hours of broadcast operation.)

Noncommercial Educational Stations: The post-filing announcements should be broadcast at the same time as those for commercial stations, except that such stations need not broadcast the announcement during any month that the station does not operate.

b. Text of the Post-Filing Announcement

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 LICENSE RENEWAL WITH THE FCC.

A COPY OF THIS APPLICATION IS AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST (period of time covered by application), (only TV and noncommercial radio say the remainder of this paragraph) AND PROJECTIONS OF OUR PROGRAMMING DURING THE NEXT (license term**) 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 public inspection file) OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.***

**See* your license for this information.

***Five years for TV. Seven years for noncommercial radio.

****Visuals with the licensee's and the FCC's addresses must be shown by all TV licensees when this information is being presented orally by the announcer.

4. EXCEPTIONS AND MISCELLANEOUS PRE- AND POST-FILING INFORMATION

a. Text of Announcements if Previously Filed Renewal Application Not Granted

If a station has not received a grant of its previously filed renewal application by the time the next pre- and post-filing announcements are due to be broadcast, it should substitute the following paragraph for the first paragraph of each pre- and post-filing announcement:

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

b. Foreign Language Stations

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

c. Emergencies Interrupting Scheduled Announcements

If an emergency arises that precludes the airing of the announcement at the scheduled time, the announcement must be aired on the *day following the ending* of such emergency at the identical time or during the time period which the rotating order specifies.

d. Certificate of Compliance

Within seven days of completion of all the pre- and post-filing announcements, a Certificate of Compliance with the public notice announcement requirements must be placed in the public inspection file. **Stations are no longer required to file this Certificate with the** FCC. The Certificate sets forth the dates and times when the announcements were run and the text of the announcements. It should be signed by a member of the station staff. Model Certificates of Compliance that may be used by broadcast stations appear in Appendix III-B.

e. Improperly Aired Announcements

If the announcements were not broadcast on the correct dates or times, or were otherwise aired improperly, attach a statement to the Certificate which explains why the announcements were not aired properly, when the error was discovered, and the corrective measures undertaken by the station. Even if the station inadvertently failed to air an announcement on the proper day, it is important that the station broadcast the total number of pre-and post-filing announcements required by the rules.

5. MODIFICATION, ASSIGNMENT OR TRANSFER OF A BROADCAST STATION LICENSE

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

a. Time of Day

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

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

b. Information to be Broadcast

The notice that is required by FCC Rule 73.3580(d)(3), concerning applications for modification, assignment or transfer of a broadcast station license, must contain the following information:

- The name of the applicant and/or names of the seller and buyer, including the names of all partners if the applicant, seller or buyer is a partnership, and the names of all officers, directors and persons holding 10 percent or more of the capital stock or other ownership interest if the applicant, seller or buyer is a corporation or an unincorporated association.
- The purpose for which the application was filed (*i.e.*, modification, assignment or transfer of control).
- The date when the application was tendered for filing with the Commission.
- The call letters, if any, of the station, and the frequency or channel on which the station is operating or proposes to operate.
- In the case of an application for modification of a construction permit or license, the exact nature of the modification sought.
- In the case of an amendment to an application, the exact nature of the amendment.
- A statement that a copy of the application, amendment(s) and related material are on file for public inspection at a stated address in the community in which the main studio is maintained or is proposed to be located.

For more detailed information, *see* Rule 73.3580(f)(1)-(9).

c. Certificate of Compliance

An applicant seeking FCC approval to modify, assign or transfer a license may certify in the application that it has or will comply with the public notice requirements of FCC Rules 73.3580(d)(3) and (f). Rule 73.3580(h).

CHAPTER IV:

COMMERCIAL POLICIES AND PRACTICES

A. RESTRICTIONS ON CONTENT OF COMMERCIALS

1. FALSE, MISLEADING OR DECEPTIVE COMMERCIALS

A broadcast licensee obtains commercial advertisements from agencies and advertisers or it may prepare commercials itself from information supplied by the advertiser. Occasionally, the station is the advertiser, as in the case of promotional announcements or contests. This section discusses the responsibility of the licensee for fraudulent, misleading or deceptive advertising under these various conditions.

The FCC has long held that a licensee's duty to protect the public from false, misleading or deceptive advertising is an important ingredient of the station's public interest obligation. In a Public Notice issued November 7, 1961, "Licensee Responsibility with Respect to the Broadcast of False, Misleading or Deceptive Advertising," the Commission stated:

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

While the FCC's statement regarding licensee responsibility stands as a measure of the licensee's ability to serve the public interest, for most situations the Federal Trade Commission (FTC) continues to give the main guidance in the field of deceptive advertising.

The FTC has primary jurisdiction for the actual determination of unfair or deceptive advertising in all media and for the regulation of such advertising. Licensees have an obligation to become familiar with FTC regulations. They should review commercials under FTC investigation with particular care, and analyze both the FTC's allegations and the advertiser's replies.

The FTC has authority to take action against media disseminating deceptive advertising. However, the FTC generally does not institute such action. In its view, the most effective way to curb deceptive practices is to hold the advertiser primarily liable, because the advertiser is usually responsible for designing the advertising message and, therefore, is charged with knowledge of the "facts" contained in the claims made. Holding advertisers primarily liable effectively controls deceptive advertising at its source and makes enforcement easier. It is much easier to go after a single advertiser than to bring suit against numerous broadcasting stations that carry the advertising.

The FTC also has the power to regulate advertisements that are likely to mislead or deceive. It may initiate enforcement proceedings based on complaints made by the public or on its own knowledge or investigation. Unlike the FCC, the FTC has the scientific and related expertise to monitor and assess advertising for misleading or deceptive claims. Although the FTC generally acts against advertisers, not licensees, licensees who continue, after notice or after commencement of enforcement proceedings, to broadcast advertisements deemed false, misleading or deceptive by the FTC will raise serious questions about their ability to operate in the public interest, and can thereby jeopardize their licenses.

Where an action is brought based on deceptive advertising claims, the licensee will be exempt from criminal liability if it cooperates with the FTC. Section 54(b) of the FTC Act (15 U.S.C. §54) specifically exempts a "publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertising relates," from misdemeanor liability for the false advertisement of commodities potentially injurious to health, if the entity cooperates with the FTC in its investigation by furnishing the name and address of the advertiser who supplied the alleged false advertisement. In special circumstances, however, the FCC will act.

Because of the FTC's jurisdiction and expertise in this area, the FCC generally defers to it. For the most part, the FCC will not judge whether particular advertisements are false or misleading. However, the FCC will act in a clear, flagrant case, as, for example, where a licensee prepares the advertising "copy" and, therefore, exercises greater "control" over the claims made or where a station has neglected to install a preventive system to screen out potential advertising abuses.

In 1972, the FTC and FCC established liaison procedures under which both agencies exchange information and maintain regular staff contact on matters of mutual concern. The agreement provides that the FTC will exercise primary jurisdiction over unfair or deceptive advertising in all media, including the broadcast media. Under the agreement, the FCC will "continue to take into account pertinent considerations in this area of false and misleading advertising in determining whether broadcast applications for license or renewal of license shall be granted or denied and in the discharge of other statutory responsibilities."

In practice, the FCC expects licensees to realize that *when an advertisement becomes the subject of an FTC complaint*, although no final determination has yet been made that the advertisement in question is false or deceptive, a question has been raised as to its propriety, and that the licensee, therefore, *should exercise particular care* in deciding whether to accept it for broadcast.

In addition, the FCC expects that prior to accepting any advertising material "the licensee should take reasonable steps to satisfy [itself] as to the reliability and reputation of every prospective advertiser and as to [its] ability to fulfill promises made to the public over the licensed facilities."

The licensee has an *affirmative obligation* to prevent the broadcast of false, misleading or deceptive information. This obligation has been interpreted by the FCC to require:

> reasonable diligence [that] calls for the licensee to be alert to obvious areas of concern, in light of [its] own past experience, or to established policies and past rulings of the FTC.

Every station should have a policy of protecting the public in this area. The extent to which this policy is implemented depends on the size and resources of the station. The Commission requires that each licensee take cognizance of problems regarding deceptive or misleading advertising, be familiar with the important policies and developments in this area, and be responsible for determining the acceptability of advertising offered to the station.

Where the station prepares the commercial from information supplied by the advertiser, or *where the station is the advertiser*, the FCC looks for a greater degree of "diligence," because the station is in a position to directly examine the claims and, consequently, to protect the public interest.

Under the *reasonable diligence standard*, the licensee is expected to (a) be aware of past FTC/FCC activity (*e.g.*, regarding claims for baldness cures, bait-and-switch maneuvers, etc.); (b) check into the reliability and reputation of prospective local advertisers; and (c) where there may be grounds for doubt or a significant complaint, call for substantiation of any factual claim. Furthermore, the licensee should ensure that its employees and agents verify claims properly and adhere to the reasonable diligence standard.

Deciding what may be false, misleading or deceptive requires common sense as well as knowledge of appropriate guidelines from state and federal agencies. Other sources, such as the Better Business Bureau,* bulletins from state associations of broadcasters and NAB Counsel memos, may provide helpful advice.

Generally, a broadcaster should: (1) refuse advertising when there is sufficient reason to question the good faith of the advertiser, the truth of the message or compliance with the intent and spirit of the law; (2) refrain from

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*The Council of Better Business Bureaus, 1515 Wilson Blvd., Suite 300, Arlington, Virginia, publishes *Do's and Don'ts in Advertising Copy*, a comprehensive loose-leaf volume.

presenting false, misleading or deceptive advertising; and (3) avoid a material deception as to a product's characteristics, performance or appearance.

In affirming a postal fraud order against a prize contest advertiser, the United States Supreme Court in *Donaldson v. Read Magazine*, 333 U.S. 178 (1948), examined what constitutes misleading and fraudulent advertising, and enunciated broad principles that continue to be *hallmarks of responsible conduct in advertising*. The Court basically said:

- Advertising as a whole must not create a misleading impression even though every statement, separately considered, is literally truthful.
- Advertising must be written for the probable effect it produces on ordinary and trusting minds, as well as for those intellectually capable of penetrating analysis.
- Advertising must not obscure or conceal material facts.
- Advertising must not be artfully contrived to distract and divert an audience's attention from the true nature of the terms and conditions of an offer.

The entire area of false, misleading or deceptive advertising and its regulation has been a sensitive and complex one for both the FCC and the FTC. Although the two agencies have established a working liaison to handle advertising abuses, the exact lines of authority and responsibility are not always clear.

In sum, it is the policy of the FCC to (1) steer clear of content review of alleged deceptive advertising; (2) refer all complaints on the subject to the FTC; and (3) act only in clear, flagrant cases or when the FTC or the Justice Department has taken action against the station or licensee. 32 F.C.C.2d 400, 405 (1971). However, the broadcaster does have a continuing obligation to "take reasonable steps to satisfy [itself] as to the reliability and reputation of prospective advertisers." 29 F.C.C.2d 807, 813 (1971). Where the licensee is not familiar with the advertiser or its product, the licensee may, for example, contact the local Better Business Bureau or other similar organizations. The licensee also may ask for a statement or documentation of product claims from the advertising agency's counsel.

2. THE DISSOLUTION OF THE NAB CODES

On March 10, 1982, NAB *cancelled all* advertising provisions of both the Radio and Television Codes. That action was taken because of the uncertainties created by an initial unfavorable decision in the Justice Department's antitrust suit against NAB concerning the time standards of the TV Code. That lawsuit was settled in late 1982, when NAB agreed to a consent decree prohibiting it from

> adopting, maintaining, promulgating, publishing, distributing, enforcing, monitoring or otherwise requiring or suggesting adherence to any code . . . or other provision limiting or restricting:
>
> - the quantity, length or placement of non-program material appearing on broadcast television; or
> - the number of products or services presented within a single non-program announcement on broadcast television.

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

In sum, all Code standards, guidelines and operations have been dissolved and terminated. Each licensee remains the sole judge of the practices it shall follow in the public interest.

3. PROGRAM-LENGTH COMMERCIALS

a. Radio

The Commission, as part of the radio deregulation proceeding, eliminated *all* program-length commercial restrictions for commercial radio stations. Audience selection and other marketplace forces, the Commission believes, more effectively will determine the advertising policies that best serve the public.

b. Television

For television broadcasters, the Commission continues to prohibit the intermixture of commercial and programming matter. The Commission's basic concern in this area is whether a licensee has subordinated programming in the public interest to commercial programming, in the interest of saleability. The public interest should be the primary consideration in program selection. The selection of program matter that appears designed primarily to promote the product of the sponsor rather than to serve the public by either entertaining or informing it will raise serious questions as to the licensee's purpose in selecting such programming. However, the fact that a commercial entity sponsors a program that includes content related to the sponsor's products does not, in and of itself, make a program entirely commercial.

If the program content promotes an advertiser's products or services, one key question the Commission will ask is on what basis the program material was selected. If the licensee reviews a proposed program in advance and makes a good faith determination that the broadcast of the program will serve the public interest and that its information or entertainment value is not incidental to the promotion of an advertiser's products or services, absent other factors, the program will not be viewed as a program-length commercial.

In order to avoid any possible question by the FCC, care should be taken to separate completely the program's content and the sponsor's sales message. When a program is packaged and sponsored by the same company and the program content generates an interest in a subject or field related to the advertised product, *e.g.*, a program on sewing by a sewing machine manufacturer, the following practices should be avoided:

- using a person in the program content who is identifiable with the sponsor or its product or services;
- using the same person or background in both the program and commercial segments;
- identifiably using or mentioning the sponsor's product in the program segment;
- using statements or descriptions in a commercial segment that contain references to products or services discussed during the program segment.

What constitutes a program-length commercial can be a very complicated question. A Public Notice dated January 29, 1974 (44 F.C.C.2d 985), entitled "Applicability of Commission Policies on Program-Length Commercials" sets forth several examples of such programs. It is included in Appendix IV-A. The TV licensee should use these examples as a guide in reviewing its own programs.

4. "SUBLIMINAL PERCEPTION" ADVERTISING [TV]

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

5. ADVERTISING OF ALCOHOLIC BEVERAGES

There are no FCC or other federal regulations that prohibit the advertising of alcoholic beverages by radio or television stations, although some state laws prohibit these advertisements. The Commission consistently has taken the position that prohibiting broadcast advertising of alcoholic beverages is a matter for legislative determination by Congress. The Congress has enacted no law in this regard. The Commission is prohibited by the Communications Act from censoring any broadcast matter and does not direct licensees to accept or reject such advertising. However, there are federal regulations that apply *only* to beer and wine commercials, which prohibit giving the alcoholic content of either in a radio or television commercial.

6. ADVERTISING OF TOBACCO PRODUCTS

Congress has specifically banned the advertising of cigarettes and little cigars from "any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission." Any violation of this law is considered a misdemeanor, punishable by fine. *See* 15 U.S.C. §1335.

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

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

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

7. LOUD COMMERCIALS

The Commission requires that broadcasters take appropriate measures to eliminate the broadcast of objectionably loud commercials. Therefore, continuing good faith efforts should be made to avoid practices within a station's control that are common causes of undue loudness.

A proceeding concerning the loudness of commercial announcements broadcast by radio and television stations is pending before the FCC, and may result in some new directives. Also, on March 20, 1983, the Commission's Office of Science and Technology issued a technical memorandum titled "An Update on the Technology of Loud Commercial Control." The memorandum discusses the development of a new loudness level meter and loudness controller, both based on models of responses by the human ear. The Commission tested these models on a limited basis and stressed that results in the report should not be considered definitive. For the present, the FCC's "Statement of Policy Concerning Loud Commercials," 1 F.C.C.2d 10 (1965), which sets forth various methods by which loudness may be controlled by broadcasters, remains the basic source of guidance for broadcasters. The text of the statement is found at Appendix IV-B. *See also* Public Notice, FCC 75-880, dated July 29, 1975, which affirms the 1965 Notice.

B. DECEPTIVE ADVERTISING PRACTICES

1. FRAUDULENT BILLING

The fraudulent billing practices prohibited by Rule 73.1205 include all practices commonly referred to as "double billing." Most "double billing" is designed to deceive manufacturers into paying a larger share of local dealers' cooperative advertising expenditures than provided for in their agreements with local dealers. The FCC has characterized fraudulent billing as "an extremely invidious and totally unacceptable practice," because it involves participation by the licensee in a fraud. It, by itself, is considered a ground for refusal to renew a license.

Fraudulent billing violations may be as simple as issuing bills that are inaccurate or inflated to clients. It is just plain wrong to charge clients for programs or commercials that were not broadcast, or to make misrepresentations about when such materials were broadcast or about the rate charged by the station. For example, the fraudulent billing rule applies to situations where a station supplies a network or a program supplier with a document containing false information concerning the broadcast of the program or program matter supplied, including noncommercial matter. Fraudulent billing problems also arise from *schemes* between a station's employees and advertisers to defraud a third party, such as an agreement between a local advertiser and a station, or its employees, to issue false or inaccurate invoices and/or affidavits of performance to a national co-op advertiser. Additionally, the issuance of invoices on which incorrect figures can be inserted easily also can result in fraudulent billing. In all cases, the licensee must exercise "reasonable diligence" to ensure that its employees and its agents do not engage in or encourage fraudulent billing practices.

The FCC fraudulent billing rule provides:

- No licensee of an AM, FM or television station shall knowingly issue or knowingly cause to be issued to any local, regional or national advertiser,

advertising agency, station representative, manufacturer, distributor, jobber or any other party, any bill, invoice, affidavit or other document which contains false information concerning the amount actually charged by the licensee for the broadcast advertising for which such bill, invoice, affidavit or other document is issued, or which misrepresents the nature or content of such advertising, or which misrepresents the quantity of advertising actually broadcast (number or length of advertising messages), or which substantially or materially misrepresents the time of day at which it was broadcast, or which misrepresents the date on which it was broadcast.

- Where a licensee and any program supplier have entered into a contract or other agreement obligating the licensee to supply any document providing specified information concerning the broadcast of the program or program matter supplied, including noncommercial matter, the licensee shall not knowingly issue such a document containing information required by the contract or agreement that is false.
- A licensee shall be deemed to have violated this section if it fails to exercise reasonable diligence to see that its agents and employees do not issue documents containing the false information specified above.

A Public Notice released June 10, 1976, entitled "Applicability of Fraudulent Billing Rule (Revised)," appears in Appendix IV-C. The examples contained in the Notice are "not to be considered all-inclusive but merely illustrative of the application of the rule to some practices."

In another Public Notice, 56 F.C.C.2d 371 (October 6, 1975), the FCC reminded licensees of their responsibility to verify the completeness and accuracy of station bills, invoices, affidavits, etc., by checking the relevant program logs or equivalent station records. The Commission noted that some licensees had prepared bills, invoices and affidavits based on advertising contracts, start orders or announcer discrepancy sheets without checking the program logs for the relevant period to ensure that the advertising had been broadcast as represented. Such billing practices could result in the issuance of fraudulent documents in violation of Rule 73.1205, as a station may not be able to determine with complete accuracy the nature, content, quantity, duration, time of day and/or date of announcements actually broadcast.

A licensee, however, will not be absolutely liable for all errors, because the Commission does not propose "to find violations where the licensees lacked knowledge and where the false information appears to have been issued as the result of an occasional mistake not indicating a pattern or where reasonable diligence would not uncover the issuance of false information, such as carefully concealed wrong-doing."

Fortunately, there are several steps a broadcaster can take, just by looking over its traffic and accounting procedures, to help prevent fraudulent billing. Listed below are eight questions that can be asked about a station's procedures. If the response to any of them is "no," then the broadcaster should review, and probably change, that area of its operation.

- Are all invoices for commercials derived from actual station program logs rather than start orders?
- Can the station verify that every commercial for which a client is billed has been broadcast?
- Are clients billed for every commercial that is broadcast for their account?
- Are persons, other than the bookkeeper or auditor responsible for issuing invoices, prohibited from making changes to the invoices?

- Are duplicate, revised or replacement copies of invoices identified as being such?
- Are affidavits of performance properly executed before a notary public?
- Does the affiant have full knowledge of the facts contained in the affidavit of performance?
- Does the affidavit of performance correctly list the frequency and times commercials actually are broadcast?

Additionally, if the station has a policy of giving end-of-year rebates, merchandising bonuses, vacation packages or volume discounts to advertisers who purchase specified amounts of time, it is imperative that all copies of the invoice and any affidavit to co-op advertisers report that policy. In a December 17, 1976 Public Notice, the Commission announced that the use of these sales incentive plans without an appropriate disclosure on station billings, invoices and affidavits is a clear violation of the fraudulent billing rule. The reason for disclosure stems from the fact that the station does not know how its invoice will be used. For example, if the invoice is to an agency, the station does not know what agreement, if any, exists between the agency and its client. The fraudulent billing rule protects the client, who ought to be entitled to know how its advertising expenditures are affected by the relationship between the station and the agency.

The following are examples of situations that concern the Commission:

- Advertiser becomes eligible for a special vacation package upon the purchase of "X" dollars worth of spot time.
- The same situation as above, but instead of a vacation, advertiser is to receive a valuable gift.
- Advertiser receives "funny money" or "auction money" in relation to the number of dollars spent with the station for spot time, and the funny money then is used by the advertiser in an in-house auction for valuable goods, such as a $750 motorcycle, a $1,000 vacation or a new TV set.

For each of these situations, some disclosure must be included in each billing. A possible "catch-all" phrase might state as follows:

> The above statement does not include or reflect any future rebate, discount or merchandising bonus to which the advertiser may be entitled as a result of the purchase of larger amounts of time. For details concerning any sales incentive rebate discount or merchandising plan that may be applicable to this statement, call 555-XXXX.

By contrast, however, no statement is required where the "gift" to the advertiser is of nominal value, as, for example, a bottle of scotch. Similarly, use of the standard 15% (or less) agency discount requires no mention. Thus, a bill for $100 worth of spots would pass FCC scrutiny, even though the station received only $85 as a result of the agency commission. When, however, the agency commission substantially exceeds the standard 15%, some explanation is required.

Keep in mind that the use of year-end rebates as an advertising sales incentive, whether in cash, merchandise or vacation packages, may affect the station's political advertising rates. *See* Chapter II, page II-22.

2. FAILURE TO PERFORM SALES CONTRACTS

The Commission has cautioned licensees against failure to perform sales contracts. The Commission stated that a pattern of partial performance or nonperformance of advertising contracts, regardless of whether it results from willfulness or lack of adequate supervision or control, will raise questions as to the basic qualifications of the licensee.

3. NETWORK CLIPPING

The FCC has fined stations, or even denied license renewal, for "clipping" program credits, commercial announcements and network promotions from network programs. "Network clipping," basically, is the failure of the licensee to fulfill its contractual obligation to the network (including occasional networks, *e.g.*, the Hughes Sports Network) with which it is affiliated by certifying that specified material was broadcast in full when there were, in reality, cancellations or deletions.

The Commission's concern exists regardless of whether the "clipped" material consists of commercials, program content or other material, including, but not limited to, network identifications, credit announcements or promotional material provided by the network, and regardless of whether "network clipping" exists because of the licensee's knowing participation, its indifference or its failure to supervise or control its employees or agents adequately.

"Network clipping," as defined by the FCC, refers only to situations in which the network is not aware of the "clipping" because of false certifications submitted by the affiliated station. (The Commission has held that the licensee is not responsible for material deleted by the network.) If the network gives a licensee permission to delete material, such a deletion is not considered "clipping." The FCC policy on "clipping" is not intended to limit the licensee's discretion to delete any material that it believes to be indecent, profane, obscene, in bad taste or otherwise contrary to the public interest. Moreover, it does not apply to "clipping" of a few seconds' duration that occasionally results from switching or other technical problems. Whenever a station "clips" any portion of a program, such action should be accurately disclosed in the certifications to the network.

4. MISLEADING SALES PROMOTIONAL LITERATURE

a. Disclaimer Required When Citing Ratings Data

While the Federal Communications Commission traditionally evaluated complaints regarding the misuse of ratings information by licensees, it recently decided to delete this policy from its rules. (*See* former Rule 73.4035 and *Policy Statement and Order*, FCC 83-339, released Aug. 2, 1983.) Although the FCC does not condone ratings distortion, it believes alternative verification enforcement remedies already exist for the various commercial entities that are involved in purchasing broadcast advertisements. If fraudulent behavior persists, the defrauded party has legal recourse against the offending station. In addition, competing stations learning of a station's misuse of ratings data can counteract any impact of such claims by notifying the advertisers and advertising agencies that they dispute the claims being made.

Given these nonregulatory methods of dealing with ratings abuse problems, and the commercial nature of the conduct involved, the Commission decided to direct all future complaints in this area to the Federal Trade Com-

mission. In addition, all pending requests for FCC action are being forwarded to the FTC. However, the FCC will continue to consider at renewal time other government agency or court findings of a violation.

The FTC's guidelines on use of ratings data advise against such practices as giving a misleading impression of survey results or making audience claims based on unreliable or obsolete surveys. For several years, the FTC's staff took the position that broadcast stations should make a detailed statement of the possible errors and deficiencies in audience measurement data in their advertisements and sales brochures. More recently, however, the FTC's staff has taken the position that a disclaimer is adequate if it specifically mentions the name of the measurement service, states the exact date of the survey period, and incorporates by reference the various limitations and qualifications that are set forth in the audience measurement reports themselves.

To comply with FTC policy, stations might add a disclaimer along the following lines whenever they cite ratings data in their advertisements and sales literature:

> [Name of rating service and dates and time of survey cited.] Audience measurement data are estimates only and are subject to the qualifications set forth in the above report.

In addition, care should be taken to comply with restrictions that rating sources themselves impose on the use of ratings (*e.g.*, not identifying a competitor by name). *See* page IV-12 for a discussion on "hypoing." Appendix IV-D contains a statement issued on July 8, 1965 by the FTC that sets forth guidelines to be followed in order to avoid making deceptive claims of broadcast audience coverage.

b. Use of Coverage Maps

The FCC has abandoned its policy of investigating complaints concerning misleading claims of signal coverage or the use of inaccurate or exaggerated coverage maps by broadcast licensees. (*See* former Rule 73.4090, and *Policy Statement and Order*, FCC 83-339, released Aug. 2, 1983.) Although the FCC does not condone the use of inaccurate or exaggerated coverage maps or other misleading material regarding a station's coverage in connection with the sale of broadcast air time, the same considerations that led the FCC to discontinue initial involvement in the area of ratings abuse apply here. (*See* preceding section.)

Although the FCC will no longer investigate or adjudicate in the first instance complaints involving misleading or inaccurate coverage maps, the Commission will continue to consider the effect of adverse findings by a court or other government agency on the licensee's qualifications at license renewal time. Furthermore, if a licensee files a misleading coverage map with the Commission, the licensee risks losing its license and incurring criminal penalties for misrepresentation to the Commission.

Because use of exaggerated, inaccurate or misleading coverage maps still raises substantial questions about the qualifications of a licensee, broadcasters should review the following guidelines that the FCC used in the past.

The Commission has warned licensees of their obligation to be candid in the disclosure of information regarding a station's coverage and location (*i.e.*, city of license), and to refrain from publishing information that tends to be deceptive or misleading. The coverage map should accurately reflect the station's latest contours. The most common offenses are the exaggeration of the

station's primary service contour and failure to indicate areas where coverage is subject to loss from interference. For example, if an AM station's coverage map depicts its 0.5 mV/m and 0.1 mV/m contours without any explanation concerning possible interference, an advertiser normally would conclude that the station's coverage area extends to its 0.1 mV/m contour. In fact, however, the station may be subject to interference in some areas within its 0.1 mV/m contour. The FCC generally recognizes the daytime 0.5 mV/m for AM, the nighttime "interference free" 1.0 mV/m or 60 dBu for FM and the predicted Grade B for TV as the widest contours representative of a station's service area. Station coverage maps should depict wider contours, such as the 0.1 mV/m for AM and 50 Uvm/m for FM, only if stations can show that they provide adequate, interference-free signals in all areas within the wider contours. Similarly, to show nighttime coverage, AM stations should use calculated interference-free contours.

Other inaccuracies in coverage maps that have led to Commission action include:

- overstating the population in the station's coverage area;
- labelling the map as "coverage survey" without additional explanation;
- failing to identify communities on the map;
- using contours based on measurements not taken in accordance with Commission requirements;
- failing to label contours or other map features legibly; and
- failing to include a mileage scale in the legend.

Stations should verify the accuracy of existing coverage maps. One good quick check is to compare the station's coverage map with the contour map submitted to the FCC with the station's application for its present facilities.

As an added measure, in preparing promotional literature containing coverage maps, stations should determine whether they are using copyrighted material and, if so, should be sure that the necessary permission has been obtained to use the material. In virtually all instances, coverage maps purchased by stations are copyrighted; this is usually indicated by the copyright symbol on the map. No such map should be reproduced without the authority of the copyright holder. Unauthorized reproduction of copyrighted maps, even though in ignorance of the rights of the copyright holder, can subject the station to suit for infringement.

5. "HYPOING"

Activities commonly associated with "hypoing" include misuse of audience survey results, use of unreliable survey data, and tampering with survey results or distorting them in order to deceive the reader as to audience size, composition or other characteristics. Put simply, "hypoing" is any irregular activity designed to distort survey results, *e.g.*, conducting a special contest, otherwise varying the usual programming or instituting unusual advertising or other promotional efforts designed to increase audiences only during the survey period. These activities are regulated by the Federal Trade Commission.

The FTC has established general guidelines that pertain to "hypoing" and licensee responsibility. Stations must avoid using misleading references or quotes from audience surveys. This prohibition not only includes misrepresenting the data, but also extends to accurately referencing data from an out-

dated measurement and relying on surveys known to have been improperly conducted. In sum, licensees are responsible for ensuring that claims are truthful and not deceptive. *See* FTC Statement of July 8, 1965 regarding Deceptive Claims of Broadcast Audience Coverage, Appendix IV-D.

The FCC recently determined that its separate role in oversight of this area in the first instance, *i.e.*, through FCC investigation and adjudication, is not warranted. *See Policy Statement and Order*, FCC 83-339, released Aug. 2, 1983. Accordingly, all future complaints in this area should be directed to the FTC. Notwithstanding this determination, the FCC will continue to consider at renewal time the effect of adverse findings by a court or other government agency, such as the FTC. In addition, the FCC continues to expect licensees to make a good faith effort to avoid all distortion or misuse of audience ratings.

C. TIME SELLING AND SCHEDULING POLICIES

1. REFUSING TO SELL ADVERTISING

The courts have held that broadcast stations are not common carriers, and, accordingly, are not required to "permit broadcasting by whoever comes to [their] microphones." *McIntire v. Wm. Penn Broadcasting Co.*, 151 F.2d 597, 601 (1945). Thus, a licensee may refuse to sell time for products or services it finds objectionable or for copy it deems in poor taste. Additionally, a licensee may refuse to do business with parties whose credit is bad or who otherwise do not measure up to reasonable business standards.

Until 1973, whether stations could refuse to sell time for opinion or editorial advertising was an open question. That year, the United States Supreme Court, in *CBS v. DNC*, 412 U.S. 94 (1973), decided that question in the broadcaster's favor.

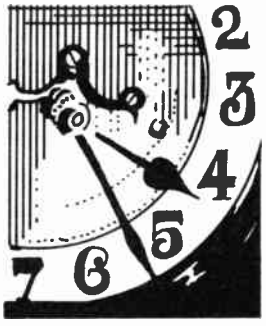
Care should be taken to note the exceptions to the general rule. First, it is obvious that stations cannot refuse to sell time to a political candidate in response to a valid Section 315 equal opportunities request. *See* Chapter II, page II-15 for information on this point, and page II-24 for a discussion of the reasonable access provisions of Section 312.

Second, the antitrust laws make it illegal for a station to refuse advertising if the purpose of the refusal is to monopolize trade or if the refusal is part of a conspiracy to restrain trade. A common problem in this respect is the "out-of-town" client. There is nothing illegal in establishing a service area of X miles from your city of license and refusing to sell advertising to clients doing business beyond that area. However, establishment of such an area should be an independent judgment on the licensee's part and should not be a result of discussions or agreements with local advertisers. For example, in a case involving the refusal of a radio licensee to carry advertising for an out-of-town (18 miles) automobile dealer after the local dealers had threatened to cancel their accounts, the FCC ordered the licensee to revise its policies because they operated "to restrain and inhibit trade and competition."

Another potential antitrust problem exists when a licensee uses its facilities to promote its non-broadcast business to gain an unfair competitive advantage in that activity. *See* page IV-42 for a discussion on promoting non-broadcast activities. In a 1968 ruling, the FCC said that a station promoting its own musical stage shows could not refuse advertising for a similar competing music show. The Commission's concern goes beyond outright refusal of advertising. It extends to situations where the station or its employees receive

more favorable rates for promoting their non-broadcast activities than are afforded to competing businesses.

In sum, any agreement or understanding among competitors which affects advertising rates or the terms and conditions of the sale of advertising time, or which has the effect of denying an advertiser or a group of advertisers access to the media, presents potentially dangerous problems. In general, stations can avoid *per se* violations of the antitrust laws by rigorously adhering to a rule that insists that all advertising policies and practices be based on the strength of an individual station's particular business needs, without regard to the policies and/or conduct of its competitors.



2. AMOUNT OF ADVERTISING TIME

There is no statute that limits the amount of commercial material that may be broadcast in any given period of time. Prior to the Commission's "postcard renewal" and radio deregulation proceedings, license renewal applicants were required to state the maximum amount of commercial matter they proposed to allow in any 60-minute segment. However, the Commission's action in these proceedings changed the FCC's *information* requirements concerning the amount of commercial matter a licensee proposed to actually broadcast. The new policies are different for radio and television, and are discussed separately below.

a. Commercial Time Standards – Radio

In its radio deregulation proceeding, the Commission decided that commercial levels for radio are more effectively regulated by audience selection and other marketplace forces. Therefore, radio broadcasters are no longer subject to any Commission-enforced obligations to limit the amount of commercial matter broadcast at any given time. The Commission also will no longer enforce its program-length commercial policies against radio broadcasters.

b. Commercial Time Standards – Television

The FCC does not have a formal rule that sets the acceptable limit of commercial matter per hour for television. However, the Commission has adopted "processing standards" to guide the staff in processing renewal applications.

Prior to the Commission's postcard renewal proceeding, a television licensee was required to indicate on old Form 303-A the number of minutes it proposed to devote to commercial matter per hour. Now, a television audit renewal application (Form 303-C) may be granted by FCC staff action if the licensee proposes not more than 16 minutes of commercial matter per hour or not more than 20 minutes per hour, if the four minute excess is for political advertising. The licensee may not exceed its 16-minute limitation in more than 10% of the station's weekly hours of operation. *See* Rule 0.281(a)(7).

With the advent of the postcard renewal application, most licensees only complete a simple five-question postcard that does not require any information concerning commercial matter. *The Commission expects television licensees to abide by the last promises they made in their applications to the Commission concerning the number of minutes of commercial matter they will broadcast per hour.*

Unlike radio, television has not been deregulated. However, on August 4, 1983, the Commission issued a Notice of Proposed Rule Making (FCC 83-313, MM Docket No. 83-670) requesting comments on a number of regulatory proposals that would amend the FCC's policies regarding commercial television

programming, commercialization, ascertainment and program logging. Until the TV deregulation proceeding is completed, television broadcasters must continue to work under existing rules, maintain program logs and place composite week logs in their public files, so that interested persons and FCC Field Inspection Officers can monitor a station's compliance with its proposed number of minutes of commercial matter.

3. JOINT SALES ARRANGEMENTS

The FCC has incorporated antitrust policy considerations in its general "public interest" standard of broadcast regulation. The Commission, however, is not limited to the strict letter of the antitrust statutes, and may go further to proscribe activities that, while not amounting to full-fledged antitrust violations, have a clear anticompetitive potential.

In this connection, the Commission has enunciated certain policies governing joint sales arrangements between broadcast stations. *See In the Matter of Combination Advertising Rates and Other Joint Sales Practices, First Report*, 51 F.C.C.2d 679 (1975) and *Report and Order*, 59 F.C.C.2d 894 (1976). In particular, these policies cover (1) the offering of "combination" advertising rates, and (2) joint representation of stations by a single sales representative.

a. Combination Advertising Rates

Combination advertising rates involve situations where an advertiser is offered a single rate to purchase time on two or more participating broadcast stations. Often, such combination rates may involve a substantial discount from the cost of purchasing time on each station separately. In this area, the FCC has adopted specific rules *prohibiting* certain types of combination rate arrangements. In addition to FCC regulations, antitrust laws may apply as well.

- *Independent Stations Serving the Same Area*

The FCC does not permit independently-owned broadcast stations serving the same area to participate in combination rate arrangements, because, under antitrust policy, each independent station in the market should be competing separately for advertising revenues. The rule applies to all independent broadcast outlets in the area, whether AM, FM or TV. Further, the Commission has defined "stations serving the same area" to mean stations that are licensed to the same city or to nearby cities whose relevant service contours overlap substantially. Where a single national sales representative acts as an agent for several stations in an area, each station must exercise reasonable diligence to ensure that the common sales representative does not offer prohibited combination rates.

- *Commonly-Owned TV and Radio Stations Serving the Same Area*

The FCC similarly does not allow combination rates involving commonly-owned TV stations and radio stations (either AM or FM) that serve the same area. While such stations are not directly competitive because of their common ownership, the Commission's rule is designed to avoid allowing radio stations any unfair advantage over other radio stations in the area that cannot provide an attractive "package" offering that includes desirable television broadcast time.

With respect to all other situations, there is no flat prohibition on combination rate arrangements. However, because such arrangements still present a potential for anticompetitive abuse, the FCC has adopted additional general guidelines to be applied on a case-by-case basis. In particular, combination rates must be carefully reviewed when offered by (1) commonly-owned AM and FM stations serving the same area, and (2) commonly-owned stations of all types serving distinct markets.

As a general matter, combination rates in such situations are permissible where:

- separate rates also are offered so that the combination rate is not absolutely required, and
- the combination rate does not result in an "unfair advantage" over other stations.

In addition, the FCC has indicated that commonly-owned AM/FM stations in the same market may use combination rates during periods of simulcasting.

While a station may offer separate rates as a step toward complying with FCC policy, there is, unfortunately, no simple definition of what constitutes an "unfair advantage" over other competing stations. For example, problems can occur where one of two commonly-owned stations enjoys a dominant position in its market, while the other station is in a weaker position in a very competitive area. Improper use of combination rates that effectively offer substantial discounts for advertising on the weaker station can enable the weaker station to garner a substantial share of available advertising revenues in its market to the detriment of other direct competitors. On the other hand, discount combination rates for commonly-owned stations may be justified on grounds of cost-savings achieved through smaller sales staffs and coordinated sales activities. Accordingly, if combination rates for commonly-owned stations are to be offered, group management should carefully review situations where one of the stations holds a dominant position to ensure that any discounts involved are reasonably cost-justified.

b. Joint Sales Representation

As with combination rates, the FCC has promulgated specific policies concerning the representation of two or more stations in the same market by a single sales representative. On the one hand, there are only a limited number of available national sales representatives, and any flat prohibition on joint representation could well deprive some broadcasters of effective assistance in soliciting national advertisers. On the other hand, however, joint representation can be anticompetitive.

Until 1981, the Commission prohibited joint representation of two non-commonly owned stations in the same market where the sales representative was either wholly or partially owned by a licensee in the same market, *i.e.*, a so-called "house rep" (referred to as the *Golden West* policy). The Commission's rationale for repealing *Golden West* is that the increase in the number of TV and radio stations has created a new and competitive marketplace that does not require strict government interference to safeguard against anticompetitive representation. All rep firms should nonetheless adhere to the Commission's admonitions:

- in representing more than one station in an area, do not offer combination rates for commonly-owned television and aural stations or offer combination rates for two separately owned stations;

- enter into separate contracts for each station represented; and
- leave up to each licensee all decisions as to contracting for the sale of time, rates, programming, format, music selection, etc.

Stations involved in any joint representation must be particularly careful to avoid involvement in indirect illegal rate-fixing. The exchange of information about future rates and charges raises potential antitrust problems and should be done only on the advice of counsel.

Moreover, although the FCC does allow multiple representation, a representative may not sell time on two separately owned stations in combination. The representative should enter into separate contracts with clients for each station represented and should leave all decisions as to contracting for the sale of time, including rates charged, to each individual licensee. 51 F.C.C.2d 679 (1975).

Listed below are some recommendations to help maximize business opportunities, minimize risks and assure compliance with the FCC's current policy:

- The repeal of *Golden West* gives rep firms a green light to acquire broadcast properties in markets where they want to continue to "rep." In this sense, they have the best of both worlds.
- Licensees of stations that prefer representation by a licensee-owned rep firm in their market can attempt to persuade the rep firm to be their sales agent.
- Station owners who have broad advertising agency contacts (perhaps together with other nonmarket owners) might even consider (if it makes good business sense) opening a rep firm in their own market or markets that they know very well. There is no FCC bar.

Remember, the Commission has stated that it will handle complaints about anticompetitive practices on a case-by-case basis. Persons alleging violations are expected to set forth the specific facts on which they rely. The parties against whom the allegations are made will be given an opportunity to comment. The allegations should indicate the way competition has been degraded. The Commission has indicated that any information brought to its attention concerning such abuses will be carefully reviewed, and appropriate steps will be taken when violations are indicated.

4. ANTICOMPETITIVE AGREEMENTS BETWEEN LOCAL BROADCAST STATIONS

a. Agreements Affecting Advertising Rates

A fundamental principle of antitrust law is that it is illegal for competitors to agree with each other as to the price at which they offer their products or services to their customers. The word "agreement" is used in its broadest sense. Thus, by no means is the word "agreement" limited to formal undertakings such as written contracts. For antitrust purposes, an "agreement" may be an informal, tacit understanding under which two parties have accepted a common approach or plan. Indeed, an illegal agreement may be found to exist where competing broadcast stations merely discuss generally their practices regarding advertising rates and then subsequently adopt parallel policies.

Because of the extreme sensitivity of and potential dangers in this area, station personnel should avoid discussing, even generally, advertising rates and practices with employees of competing stations. The reason for this policy is that such discussions can easily be misconstrued and lead to very serious

consequences. For example, even the relatively innocuous exchange of views between competing station managers that "it would be great if advertising rates could be increased for everyone"—if subsequently followed by the issuance of new, higher rate cards—could be found to be the basis of an illegal price-fixing arrangement.

Competitively sensitive subjects in the area of advertising rates and practices include both (1) the particular level of rates on a station's rate card, and (2) the station's adherence to its published rates.

Rate Card Levels

A station's published rate card sets forth the price or range of prices an advertiser pays for the purchase of time. Each station must determine independently the levels of rates on these cards. Any understanding with a competing station as to how such rates will be set is absolutely prohibited by the antitrust laws.

This rule is not limited merely to the specific dollar figures appearing on the card. For example, a more limited understanding between competitors concerning minimum rates for a particular time slot is equally illegal, even though there is no agreement as to the range of higher rate levels. Similarly, even a general understanding that each station will increase its rates in the near future, although specific amounts are not discussed, can violate the antitrust laws.

A station manager also must be alert for instances of indirect fixing of advertising rates through third parties. Because national sales representatives have substantial input in establishing certain rate levels for local stations, such organizations may be in a position to improperly "coordinate" the setting of rates by normally competing stations. A station manager must be on guard to avoid such situations, for any knowing participation in an arrangement, effectuated through intermediary sales representatives, by which the rate cards of competing stations may be "brought into line" is still an illegal price-fix.

Adherence to Rate Cards

In many markets, it is common practice for one or more stations to sell at a discount from published rates to certain advertisers. While a station *independently* may determine to eliminate such off-card selling, it is unlawful for competing stations mutually to agree to discontinue such practices and to adhere to their respective rate cards.

Under antitrust theory, discount sales off published rates are merely another form of competition whereby stations vie for major accounts. Any agreement to adhere to rate cards eliminates entirely this type of competition. Accordingly, any understanding between competing stations to eliminate off-card selling practices is, under antitrust enforcement policy, as suspect as an agreement to fix rate levels.

In this connection, station personnel also should avoid discussions of discounting and off-card rate practices with employees of competing stations.

b. Agreements Regarding Solicitation of Particular Accounts

Agreements by competing stations to allocate potential advertising accounts constitute another illegal practice, closely related to price-fixing arrangements. Such practices include an understanding under which one station agrees not to solicit or seriously go after the business of particular advertisers (perhaps those located in a certain town) in return for a promise by the other station not to compete for other designated accounts. The effect of such an arrangement is to eliminate competition between the stations with respect to

particular advertisers. Each station then has the power to set whatever rate it can extract from its assigned advertiser accounts, free from the operation of competitive market forces. Thus, such an agreement allocating accounts between competing stations is just like a price-fixing arrangement and constitutes a violation of the antitrust statutes.

c. Agreements Affecting Program Purchasing

In addition to competition for the sale of advertising time, local stations also compete with one another in *purchasing program materials* for broadcast to the public. Many of the same considerations discussed previously with respect to advertising practices apply equally in this area.

Thus, the decision of whether or how much to bid on a particular program must be made independently by a station, without consultation with its competitors. Any tacit agreement or understanding between stations that affects this decision would be an antitrust violation.

For example, an understanding between two stations in a market that one station will not attempt to pirate away programs carried the previous year by the other station would be an improper arrangement. Similarly, any agreement between the stations that neither one will bid more than a certain amount for a particular program again would be illegal.

As with advertising rates and practices, station personnel shold avoid discussions with their competitors dealing with proposed bids for program materials. Again, such discussions can be readily misconstrued and provide the basis for a charge of illegal collusion.

Antitrust law, in general, is a complex area, and licensees should note that there may be legal means of achieving appropriate business objectives without violating the antitrust laws. Stations are advised to contact competent antitrust counsel before entering into discussions on sensitive subjects such as advertising rates and terms.

5. TRADE AND BARTER ARRANGEMENTS

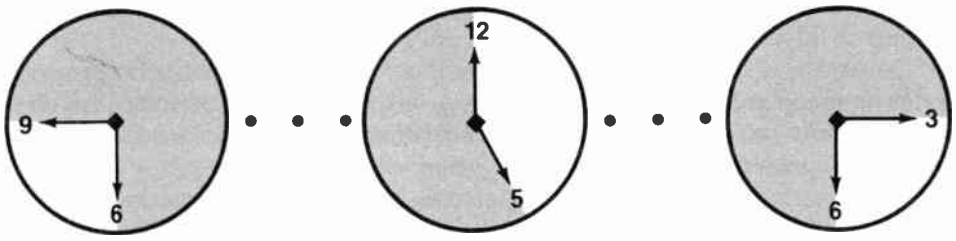
In barter or tradeout arrangements, the broadcaster, in return for consideration of various types (*e.g.*, services, merchandise, air travel, hotel accommodations, equipment, program material, etc.) gives the other party to the contract the right to buy time or a certain number of spot announcements on the station or, in the case of a "time brokerage" agreement (*see* page IV-20), the right to resell the time or spot announcements to others.

a. Logging of Tradeout Credits

Tradeout spots are commercial announcements and, for television, must be logged and computed as commercial matter. (The program logging rules for commercial radio stations were eliminated in 1981. *See* Chapter II, page II-1.) The Commission has warned that some licensees have not been complying with this requirement in circumstances where a network, program producer or station receives free transportation, prize merchandise or other goods or services in return "for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast" (Section 317(a) of the Communications Act). *The fact that a network producer or some other party receives the consideration, rather than the licensee, does not exempt such messages from the commercial category.*

b. Exemption from Filing Requirements

In 1979, the Commission eliminated the need for filing "contracts relating to the sale of broadcast time to 'time brokers' for resale," including "'barter' or 'tradeout' agreements under which the party furnishing the consideration acquires only the right to resell time for spot announcements." Rule 73.3613(d) provides that contracts relating to the sale of time to "time brokers" for resale "need not be filed, but shall be kept at the station and made available for inspection upon request."



6. TIME BROKERAGE

Time brokerage is the sale by a licensee of discrete blocks of air time to a broker who supplies the programming and sells commercial spot announcements during the brokered time period. Time brokerage has been used to provide specialized programming, particularly foreign language programming.

The Commission traditionally frowned upon the time brokerage concept, expressing concern that time brokerage would allow licensees to abdicate their responsibility to program in the public interest. Stations were required to file all time brokerage contracts with the Commission. In the 1970's the Commission relaxed its stance and required only that the contracts be kept on file at the station and made available for inspection by the FCC upon request.

In 1980, the Commission went further and decided to encourage time brokerage as a competitive mechanism enabling the market to respond to audiences otherwise denied specialized programming. The Commisson hopes that the use of time brokerage will promote creation of new program services and will broaden employment opportunities and entrepreneurial opportunities for minority groups. In this regard, licensees who refer minority job applicants to their time broker may report such references to supplement documentation of their overall Equal Employment Opportunity (EEO) efforts.

The Commission does not review time brokerage contracts or otherwise require that they be filed with the FCC. However, licensees must maintain time brokerage contracts on file in their public inspection files. *See* Appendix IV-E for a sample time brokerage contract. The sample is not meant to serve as a final document; it should be used primarily as a guide in fashioning a contract that serves the needs of the station and time broker in a particular fact situation.

In any time brokering arrangement, it is essential for the protection of the licensee that at least the following elementary issues be treated:

- preservation of licensee control over *all* program and commercial content;
- adherence of time broker to Commission rules on truth in advertising, sponsorship identification and full disclosure regarding compensatory arrangements; and
- periodic affidavits by time brokers attesting to compliance with Commission rules and policies and station standards regarding program content and continuity acceptance.

In the political advertising context, the Commission disregards the rates charged by time brokers to their *commercial advertisers* in establishing a station's lowest unit charge for political time. (*See* Chapter II, page II-22 for a discussion of the lowest unit charge provision of Section 315 of the Communications Act.) However, when a time broker sells advertising time to a *political candidate*, the rate charged affects the station's lowest unit charge. Although time brokerage can be considered a different "class" of time under Section 315, one cannot say that all time brokerage programming is of a different class from all other brokered time or from a station's regular format.

> For example, a licensee that carries one general audience format but brokers time for another general format could not establish a different lowest unit charge for each of the two formats. On the other hand, a general format station that brokered time for specialized minority or foreign language programming could show that the audience differences were such that establishment of different lowest unit charges would be reasonable. Similarly, as between brokered programs, significant differences in available audience levels could support a difference in class of advertising under the Act, while substantially similar potential audiences would be subject to the same lowest unit charge.
>
> *Policy Statement* in BC Docket No. 78-355, 82 F.C.C.2d 107, 117 at ¶ 23 (1980).

A licensee must exercise good faith discretion in deciding which brokered programming will support a different lowest unit charge from the licensee's general programming or from other brokered programming. While some brokerage operations might reduce a station's lowest unit charge for certain classes of time, the station may obtain some EEO benefit from the hiring practices of the broker to whom it has sold a block of time.

In addition, time brokering arrangements can have an impact on a station's bottom line by opening up additional sources of revenue. Program diversity on the station and greater identification with community needs and interests can result by having non-station personnel produce such programs. On the other hand, time brokerage arrangements that are not conceived and executed with particular attention to the Commission's requirements regarding program content and licensee responsibility could have serious adverse consequences for the licensee.

Remember, licensees remain ultimately responsible for the programming aired during brokered time, although individual brokers also may be held accountable for violations of the Commission's rules.

7. FUNDRAISING RULES FOR NONCOMMERCIAL BROADCASTING

Until recently, public broadcast stations were prohibited from accepting advertising of any kind. They were required to identify underwriters on the air by "name only," without mention of product lines or, in the case of television, representation of a corporate logo. Noncommercial stations also were prohibited from broadcasting the cost of admission to events publicized on the air.

In a series of recent actions, Congress and the FCC eliminated several restrictions on fundraising activities of noncommerical broadcasters. In 1981,

the Commission eliminated restrictions on the frequency and duration of on-air donor announcements. The Commission also liberalized permissible on-air identifications to include identifying information such as location, product lines and corporate logos.

In a move parallel to the deregulation of commercial radio, the Commission decided to let audience resistance and other marketplace factors dictate the frequency and length of noncommercial stations' broadcasts of auctions and other fundraising programming. There are no time limits on fundraising activities in support of station activities, and the Commission now permits noncommercial broadcast licensees to engage in remote broadcasting of events as long as no consideration is received for remote broadcasts.

In 1982, the Commission decided to allow noncommercial broadcasters to air paid promotional announcements for nonprofit groups, as long as the announcements do not interrupt regular programming. Congress previously had amended the Public Broadcasting Act in 1981 to allow noncommercial broadcasters to use visual and aural donor logos in connection with paid promotional announcements for nonprofit groups.

The Commission is exploring other ways to allow noncommercial stations to raise funds in the wake of cutbacks in funding for noncommercial broadcasting.

D. RESTRICTIONS ON CHILDREN'S TELEVISION COMMERCIALS

1. COMMERCIAL LIMITS

In its *Children's Television Report and Policy Statement*, 50 F.C.C.2d 1 (1974) (hereinafter referred to as the *Children's Television Report*), the Commission decided against adopting *per se* rules limiting commercial matter on programs designed for children.* It did take care to note, however, its concern about overcommercialization during children's programs.

To facilitate study of broadcasters' advertising practices, the Commission amended Section IV-B of FCC Form 303. Now on Form 303-C, Question 14, licensees are required to identify the number of times that commercial matter during children's programs exceeds 9½ or 12 minutes.** The Commission has stated that a licensee who has instituted a policy of adhering to the aforementioned commercial limits may rely on periodic reports from responsible personnel and need not review all program logs*** at the time of preparing an application for renewal of license. However, such a policy does not relieve licensees of the burden of recordkeeping in the first instance, and licensees are responsible for the accuracy of their representations (Question 14 of the Renewal Application Audit Form 303-C) concerning commercials on children's programs. (*See* Appendix I-B for Form 303-C, Question 14.)

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*For a description of the Commission's policy on programs designed for children, *see* Chapter II, page II-29.

**The FCC asks for the number of hourly or half-hour segments during which commercial matter exceeded the weekend 9½-minute (4¾ minutes per half-hour) or weekday 12-minute (6 minutes per half-hour) standards. The FCC is measuring only the minutes of commercial matter.

***All TV stations are required to maintain program logs. Note, however, that a rule-making proceeding is presently underway at the FCC that would deregulate TV stations in a manner similar to the deregulation of commercial radio. *See* page IV-14.

2. SEPARATION OF PROGRAM AND COMMERCIAL MATTER

The Commission, in the *Children's Television Report*, also said television stations must take special measures to ensure that an adequate separation is maintained between program content and commercial messages on children's programs. For example, one technique would be to broadcast an announcement to clarify when the program is being interrupted or is resuming after the commercial "break." Another would be to broadcast some form of visual segment before and after each commercial interruption that would contrast sufficiently with both the programming and advertising segments of the program to aid young children in understanding that the commercials are different from the program.

3. HOST-SELLING

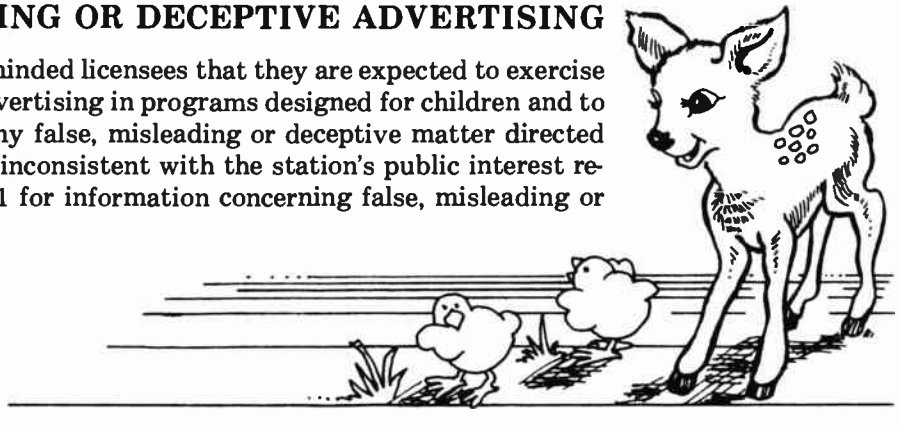
The Commission, also in the *Children's Television Report*, adopted a policy that prohibits a television station from allowing a program host, or other personality, to promote products in the children's program on which he or she appears. The Commission's policy is based on a number of factors including the following: (1) host-selling serves to interweave rather than to separate commercials from programs, and (2) it allows advertisers to take unfair advantage of the trust children place in program characters.

4. EXCESSIVE PROMOTION OF BRAND NAMES WITHIN CERTAIN CHILDREN'S PROGRAMS

Television stations also were advised in the *Children's Television Report* to exercise special caution with respect to the explicit promotion of products or the prominent display of brand names during the entertainment portion of a children's program. In particular, if products or commercial brand names are featured prominently in the body of a children's program and are unrelated to any entertainment or like purpose, it is possible that some or all of the time devoted to the products or brand names may constitute advertising that should be logged as commercial matter. While emphasizing that "not every use of a brand name or prominent display thereof necessarily constitutes advertising," the Commission offered the following example to illustrate its concern: a children's program set that features a large billboard announcing the "[Brand Name] Candy Corner" under which children are regularly given samples of the brand name candy as prizes.

5. FALSE, MISLEADING OR DECEPTIVE ADVERTISING

The Commission has reminded licensees that they are expected to exercise special care in evaluating advertising in programs designed for children and to refrain from broadcasting any false, misleading or deceptive matter directed to children, which would be inconsistent with the station's public interest responsibilities. (*See* page IV-1 for information concerning false, misleading or deceptive advertising.)



E. CONTESTS, PROMOTIONS, LOTTERIES AND GAMBLING-RELATED SPORTS

1. CONTESTS AND PROMOTIONS

A contest is an event in which one or more prizes are offered to members of the public based on chance, diligence, knowledge or skill. Whereas a lottery, which is illegal to broadcast (*see* page IV-30), contains prize, chance *and* consideration, a contest may contain only one or two of these elements.

Contests may be broadcast, so long as they are not deceptive. In fact, they might be considered useful in securing audience participation in programming. Once a broadcaster determines that a promotional plan is not a lottery, the following guidelines concerning the broadcast of contests should be followed. *See also* Appendix IV-F for standards proposed (but not adopted) by the FCC for licensee-conducted contests.

a. Licensee Responsibility

The broadcast of contest information can subject the licensee to stiff penalties if such a contest is deceptively conducted. The FCC has shown a strong interest in the manner by which broadcast stations conduct contests and promotions. FCC Rule 73.1216 states:

> A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.

Under Rule 73.1216, a "contest" includes any arrangement in which a prize is offered for award to the public. A prize can be anything of value: cash, refunds, discounts, negotiable instruments, securities, merchandise, services, tickets, trips, recording contracts, personal appearances, etc. Typically, the means of selecting a winner involve ability, skill, knowledge, chance, or similar factors or a combination of factors. The rule applies to all contests (1) *conducted by the licensee*, and (2) *broadcast to the public.*

Licensee-conducted contests not advertised to the public are outside the scope of the rule.* For example, the rule does not apply to sales contests among station employees, because such contests are a private matter between the licensee and its employees.

Broadcast stations that advertise contests for businesses, non-profit groups and others often have no involvement in the actual conduct of the contests. However, even where a licensee's only connection with a contest is to advertise for another, its responsibility is the same as that for commercial announcements in general. The licensee should ". . . take all reasonable measures to eliminate any false, misleading or deceptive matter. . . ."

**Report and Statement of Policy regarding Commission En Banc Programming Inquiry*, FCC 60-970, 25 Fed. Reg. 7291, 20 Rad. Reg. (P&F) 1901 (1960). *See also Public Notice regarding Applicability of Lottery Statute to Certain Contests and Merchandise Sales Promotions*, 18 F.C.C.2d 52 (1969).

Definition of Material Terms of a Contest

Under Rule 73.1216, the "material terms" of a contest are those factors that are significant in defining the operation of the contest. They are the factors that affect the potential contestant's decision whether to participate in the contest and how to participate and win. While the material terms of a contest depend on the nature of the contest, in general they include information about:

- how to enter or participate;
- eligibility restrictions;
- entry deadline dates;
- whether prizes can be won;
- when prizes can be won;
- the extent, nature and value of prizes;
- time and means of selecting winners; and
- tie breaking procedures. Rule 73.1216(b).

Method of Disclosing Material Terms

The material terms should be disclosed by announcements broadcast on the station conducting the contest. They should be stated whenever the station purports to set out the conditions or terms of the contest (whether on the air or in other media), but they need not be given in full with brief promotional announcements that do not purport to set out the conditions or terms of the contest.

No contest description should be false, misleading or deceptive with respect to any material term. The information given should be clear and understandable. Licensees might consider making available to contestants written rules of complicated contests. Video announcements should be in letters of sufficient size to be readily legible to an average viewer, should be shown against a background that does not reduce their legibility, and should remain on the screen long enough to be read in full by the average viewer. Similarly, audio announcements should be understandable to the average listener. Also, the nature of the station's audience should be taken into account. Licensees, therefore, should carefully review promotional material before its use to assure themselves that the material will be understood – and not misconstrued – by the station's audience.

It is the obligation of the licensee to make certain, from the beginning, that a contest does not mislead the audience. The Commission has consistently imposed heavy fines, issued short-term renewals, and even revoked station licenses where it found that rigged, deceptive or misleading contests were conducted. In connection with such contests, the Commission has pointed out that a licensee's lack of knowledge of an improperly run contest is no excuse, because a licensee is responsible for the acts of its employees and for all material broadcast over the station. Prearranging or predetermining the outcome of a supposedly fair contest with the intent to deceive the public is subject to criminal penalty under Section 508 of the Communications Act and, under Sections 312 and 503, is grounds for a fine or revocation of license.

b. Problem Contests

Problem contests fall into three main categories:

- misleading contests;
- contests adversely affecting the public interest; and
- rigged contests.

Misleading Contests

A misleading contest is one in which the station misrepresents the terms of the contest or overstates the amount that can be won. The FCC's main concern is that the licensee fully and accurately disclose the material terms of the contest and conduct the contest substantially as announced.

The Commission has listed a number of misleading practices relating to licensee-conducted contests that would raise serious questions concerning licensee responsibility. Such practices include:

- disseminating false or misleading information regarding the amount or nature of prizes;
- failing to control the contest to assure a fair opportunity for contestants to win the announced prize;
- urging participation in a contest, or urging persons to stay tuned to the station in order to win, at times when it is not possible to win prizes;
- failing to award prizes, or failing to award them within a reasonable time;
- failing to set forth fully and accurately the rules and conditions for contests on a continuing basis;
- changing the rules or conditions of a contest without advising the public or without doing so promptly;
- using arbitrary or inconsistently applied standards in judging entries;
- providing secret assistance to contestants or predetermination of winners;
- stating that winners are chosen solely by chance, when in fact chance plays little or no part;
- broadcasting false clues in connection with a contest; and
- conducting contests without adequate supervision.

Contests Adversely Affecting the Public Interest

The Commission looks with disfavor upon contests or promotions of the "treasure hunt" variety that constitute a public hazard and might cause interference with or destruction of property. Examples of contest ventures that have infringed upon the rights of property or privacy include:

- a contest that required participants to travel to a specified place in a very short time, causing traffic violations and endangering lives or damaging property;
- a contest that led listeners to choose names at random from the telephone directory and to call the persons listed at all hours of the day and night, causing great annoyance and effectively blocking the use of their telephones for normal purposes;
- the broadcast of "scare announcements" or headlines which either were untrue or were worded in such a way as to mislead or frighten the public; and
- contests that cause the accumulation of hazardous material in locations, so as to block the access to nearby commercial establishments.

Rigged Contests

It is unlawful for a station to broadcast contest information where the outcome of the contest has been predetermined. The broadcast of rigged contests is a violation of Section 508 of the Communications Act, which makes it unlawful for any person with the intent to deceive the listening public to:

- supply to any contestant in a purportedly *bona fide* contest of intellectual skill any special or secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined;
- induce or cause by means of persuasion, bribery, intimidation or otherwise any contestant in a purportedly *bona fide* contest of intellectual knowledge or intellectual skill to refrain in any manner from using knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined; or
- engage in any artifice or scheme, if the purpose of the scheme is to predetermine or prearrange in whole or part the outcome of a purportedly *bona fide* contest of intellectual knowledge, skill or chance.

c. Suggested Safeguards

Content of Broadcast Copy

The FCC has made a number of suggestions pertaining to the proper content of broadcast copy dealing with contests. Such copy should include:

- Complete information on how the public may obtain the rules.
- The beginning and termination dates of the contest.
- Entrance and participation requirements and other eligibility restrictions.
- The amount or nature of the prize. If the original prize becomes unavailable, the licensee should try to secure an equivalent prize, and if an equivalent prize cannot be secured, substitute a prize of comparable value. Also, be precise in describing just what is included as the prize; for example, a prize described only as a "vacation in France" that does not include all the elements normally included in vacations, such as air fare and lodging, would be misleading.
- If a contest involves the elements of prize and chance, there should be a statement that no purchase is necessary. (*See* page IV-31 for a discussion on "chance.") Care should be taken to avoid overstating a participant's chances of winning.
- Try not to make any changes in the rules or operation of the contest after the contest is underway. If a change of rules is necessary due to circumstances beyond the station's control, the change should be announced at the earliest possible opportunity and the impact of the change minimized in order to reduce the possibility of unfairly disadvantaging some contestants.

Contest Files

Because the FCC regularly receives complaints from disgruntled contestants concerning the manner in which contests are conducted, stations may wish to maintain appropriate written records. The following guidelines may provide an efficient security procedure.

- Maintain a separate file for each contest or promotion broadcast.
- Attach the rules and eligibility requirements to one side of the folder.

- Each prize awarded should be recorded in the file. A "receipt-release" form should be signed by the winner at the time the prize is awarded and the release placed in the folder. When awarding prizes worth $600 or more in a *station-sponsored contest*, be sure to obtain the winner's social security number in order to comply with Internal Revenue Service (IRS) regulations.
- File any letters of complaint and all responses to them.
- The file should contain copies of all broadcast material pertaining to the promotion.
- Place in the file copies of any layouts, ads, billboards or other media advertising used to promote the contest.
- The file should contain a notation verifying the days and times on which the rules and regulations were broadcast. A safe rule of thumb is to broadcast a rules announcement at some time during each day of the contest.
- If the station so desires and the winner is amenable, place in the file an agreement signed by the winner which would permit the station to use the winner's name in connection with the contest or publicizing the contest.

d. Tax Consequences of Broadcasting Contests

Whenever a licensee broadcasts a station-run contest in which a prize worth $600 or more is awarded, it must file a 1099 MISC federal tax form.* *See* I.R.C. §6041; Treas. Reg. §1.6041-a(d)(3). The broadcaster who files a 1099 MISC tax form incurs no tax liability, and is simply complying with a law that requires the licensee who conducts a *station-run promotion* to inform the IRS of the identity of a contestant who has won a taxable prize. It is important to stress that the broadcaster's duty to file a 1099 MISC form attaches only to station-sponsored contests, and not to promotions in which the licensee airs a paid advertisement for a non-station affiliated contest promoter. If the broadcaster is required to file a 1099 MISC form, it should be certain to acquire the contestant's social security number prior to awarding the prize, because it is necessary to report the winner's social security number on the tax form.

A broadcaster is entitled to deduct from its taxable income the amount of money spent in conducting a station-sponsored contest, such as the money spent to purchase prizes. I.R.C. §162. So long as such expenses are "ordinary" and "necessary" costs incurred in the course of business, the IRS fixes no dollar limit on deductibility.

e. Permission to Broadcast the Contestant's Voice

Prior to recording a telephone conversation for broadcast, *or before broadcasting* such a conversation *live*, the licensee must inform any party to the conversation of the intention to broadcast the call. Rule 73.1206. The FCC allows an exception where such a party is aware or may be presumed to be aware from the circumstances of the conversation that it is likely to be broadcast. Awareness is presumed only when the other party originates the call and it is obvious that the call is in response to a program that customarily broadcasts the telephone conversations. *Broadcast of Telephone Conversations*, 23 F.C.C.2d 1 (1970). The purpose of the rule is to give the answering party an opportunity while not on the air to refuse to have the conversation broadcast. The initiation

*Contact the local IRS office listed in the telephone directory in order to obtain 1099 MISC forms.

of a live broadcast of a conversation with the intention of seeking the other party's permission for the broadcast *once the person answers* the phone *or at some point during* the conversation violates Rule 73.1206.

It is important to remember the requirements of Rule 73.1206 when planning a promotion in which contestants are selected at random from the telephone directory and called at home as part of the contest. The contestant's prior consent must be obtained. If the licensee broadcasts the contestant answering the phone with a "hello" and has failed to receive permission, it has failed to comply with the rules. Even if a contestant voluntarily submits a postcard with his or her phone number on it in order to participate in a "Calling for Cash" contest, the broadcaster would be well advised to obtain the entrant's permission before airing or recording the telephone conversation.

f. Logging and Sponsorship Identification Requirements

For television stations, logging contest and promotional material is really no different from logging any other sort of commercial matter or station promotion. For example, if a television station is broadcasting a contest or promotional message for a sponsor, the paid announcements must include appropriate sponsorship identification and must be logged by the television station as commercial matter. However, *station-sponsored contests* are treated like any other station promotion and need not be logged at all.

Commercial radio stations are no longer required to maintain program logs. *See* Chapter II, page II-1. However, paid announcements on these stations must include appropriate sponsorship identification.

Most questions concerning logging and/or sponsorship identification stem from the mention or identification of prizes in station contests and promotions. Very often, prizes are furnished by local merchants, without charge to the station. Whether mention or identification of prizes furnished by local merchants must include appropriate sponsorship identification and, in the case of television stations, be logged as commercial matter depends on how the prize is mentioned or described. If the mention or description goes beyond an identification that is "reasonably related" to the use of the item as a prize, the prize mention must be logged by TV stations as commercial matter, and an appropriate sponsorship identification must be broadcast by all stations (*e.g.*, "prizes furnished by Joe's Appliance Store in return for promotional consideration").

The following examples illustrate the type of identification that does not have to be logged by TV stations and the type that must be logged and/or appropriately identified:

- A refrigerator is furnished by X for use as a prize on a give-away show, with the understanding that a brand identification will be made at the time of the award. In the presentation, the master of ceremonies briefly mentions the brand name of the refrigerator, its cubic content, and such other features that serve to indicate the magnitude of the prize. No commercial time must be logged because such identification is reasonably related to the use of the refrigerator on a give-away program in which the costly or special nature of the prizes is an important feature.

- In addition to the identification given in the previous example, the master of ceremonies says: "All you folks sitting there at home should have one of these refrigerators in your kitchen," or "Friends, you ought to go out and get one of these refrigerators." Commercial time must be logged by TV stations because each of these statements is a sales "pitch" not reasonably

related to the giving away of the refrigerator on this type of program. Also, an appropriate sponsorship identification must be broadcast.

For additional examples, *see* Appendix III A.

Of course, if the station purchases prizes (without any special discounts), the sponsorship identification or commercial matter logging requirements would not apply.

2. Lotteries

a. The General Prohibition

A broadcaster is prohibited by federal law from broadcasting not only lottery promotions or advertisements, but also any information pertaining to a lottery. 18 U.S.C. §1304 (1976). Lotteries also violate FCC regulations. *See* Rule 73.1211. The potential penalties imposed by the FCC for violating the federal lottery laws range from a fine to a short term license renewal or even license revocation.

No matter how slight the reference to a lottery is in an advertisement, the broadcast of that advertisement is prohibited. If the event is in fact a lottery, a veiling or omission of the scheme's details in an advertisement renders it objectionable nonetheless. The lottery laws prohibit public service announcements as well as paid commercials. Furthermore, it does not matter who *sponsors* the lottery. The lottery prohibition includes those conducted by churches, schools and other public service groups. Thus, a station should not broadcast any information that in any way advertises or promotes a lottery, for example: (1) a plea to enter the lottery; (2) when and how to enter; (3) where, how or when the winner will be selected; or (4) a list of the winners.

It should be noted that regardless of the legality of a promotional plan under state law, if it is a lottery under federal law, the broadcast of any advertisement would be illegal. However, certain state-operated lotteries have been specifically exempted from the broadcast lottery laws. (*See* page IV-36.)

b. Licensee Responsibility

A broadcaster may face fines or renewal difficulties if the station broadcasts lotteries. It is the broadcaster's duty to exercise reasonable diligence to ensure that broadcast facilities are not used for the dissemination of lottery information or the promotion of lotteries. This means that a broadcaster must take all reasonable steps to learn whether a promotion *in its actual operation* is being conducted as a lottery. A licensee cannot escape liability for violations of federal lottery laws by claiming that employees misunderstood station policy or that an advertiser deliberately chose not to conduct the promotion as originally advertised. Station policies prohibiting the broadcast of lottery information must be effectively enforced by the licensee.

c. Elements of a Lottery

The traditional elements of a lottery are (1) prize, (2) chance and (3) consideration. All three must be present at the same time to constitute a lottery. If any element is missing in a promotional plan, it does not constitute a lottery under federal law.

Prize

A prize is anything of value offered to the contestant. It is irrelevant what the prize is, how little its value may be, or whether the prize is in the form of a price discount or refund. If there is no prize, there can be no lottery.

Chance

The element of chance may appear in two forms. First, the winner may be selected by chance. Second, the value of the prize may be determined by chance. Either form alone is sufficient to constitute the element of chance. Both forms need not be present in the same promotion for chance to exist.

1. Winner Selected by Chance

The element of chance is present in contests or promotions in which the prize is awarded to a person whose selection depends in whole or in part upon chance rather than the contestant's skill or other factors within the contestant's control. Generally, if the winner of a contest is determined solely on the basis of the contestant's skill or other factors within the contestant's control, or the entrant is allowed to research the answer to a question, the element of chance will not be present.

For example, chance exists in promotions in which the winner is determined by a drawing or wheel spinning, by being the fifth person to call the station or by being at a given spot in a business establishment when a bell rings. Similarly, future predictions and any type of guessing contests involve chance.

Some promotions – which at first glance appear to be based on skill – have been determined by the FCC to be based on chance. A small segment of the population may have expertise in predicting the final scores of sporting contests, such as the Super Bowl, or guessing the number of votes a candidate will receive, but for the general public the element of chance is paramount. An exception exists for horse racing, dog racing and jai alai,* which allows the broadcast of advertisements that encourage people to attend these activities.

Most baby contests and beauty pageants have been held to involve the element of skill. However, it is important that the criteria upon which the judges base their decision be carefully delineated.

Finally, chance may be present in a contest that initially involved skill. This may occur when a contest operator fails to adopt, announce or follow appropriate standards for judging the entries or selecting the winner so that chance actually determines the outcome of a promotion. For example, if a "best slogan" contest is advertised, but the winner is actually selected by a drawing, the element of chance is present.

2. Value of Prize Determined by Chance

Even if the winner is not determined by chance, the element of chance will be present in promotions in which the amount of the prize is determined by chance. For example, everyone who purchases a certain product at a local supermarket is entitled to select a prize from a grab bag of prizes ranging in value from a few cents to several dollars. Since everyone is a winner, the winner is not determined by lot or chance, but the value of the prize is determined by chance. Thus, the promotion is a lottery. *Public Clearing House v. Coyne*, 194 U.S. 497 (1904).

Currently there is no FCC ruling that authoritatively states that offering prizes of similar cash value (such as a grab bag containing spatulas, potato peelers and can openers) is sufficient to eliminate the element of chance or if it

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*Jai alai: (hī a lī') A Spanish game played by one or two persons on a side, with each player equipped with a curved wicker racket. The game is played with a ball, which is alternately hurled from the racket against a wall, caught in the racket by the opponent, and again hurled against the wall. This game is especially popular in Florida.

is necessary for all participants to be offered identical prizes (red coffee mugs). This is a gray area of the lottery law, and it would be wise for a broadcaster to consult counsel should an issue of this type arise.

3. Tie Breaking Procedures

A promotional plan that initially involves a participant's skill may succumb to the element of chance if tie breaking procedures are conducted on a random basis. For example, if six contestants tie in a "best slogan" contest that was based on writing skill, but a name is drawn out of a hat to break the tie, the element of chance would arise. Thus, the tie breaking procedure should involve a further test of skill if the element of chance is to be avoided. The reverse of this example also would be a lottery. For example, if there were first a drawing and the selected contestant were required to answer a history question based on skill before receiving a prize, then the contest would be considered a lottery.

4. Chance Checklist

The following examples generally constitute the element of chance:

- Guessing Contests:
  - Guess the Number of Beans in a Jar
  - Guess the Score of a Sporting Event
  - Guess the Amount of Money Collected in a Charity Drive
  - Guess the Weight or Measure
- Wheel Spinning or Fishing for Prizes of Different Values
- Prize if Receipt has a Red Star
- Prize if Bell Rings When Customer Makes a Purchase
- Breaking a Tie by Flipping a Coin
- Prize to Every Tenth Purchaser.

The following examples generally *do not* constitute the element of chance:

- Winner Selected on the Basis of the Contestant's Skill:
  - Best Slogan, Best Jingle, Best Name
  - Treasure Hunts Based on Deciphering Clues
  - Word Puzzles
  - Answer the Question and Win
  - Beauty Pageants
  - Dance Competitions
- Every Purchaser Receives an Identical Prize, Discount or Refund
- Prize or Discount with No Obligation to Make a Purchase
- Prize or Discount with Purchase if Customer Mentions that he or she Heard an Advertisement
- Breaking a Tie by an Additional Test or Skill
- Prize to the First Twenty Purchasers (in theory, the contestant can "camp out" at a store to ensure being among the first twenty purchasers – as such, chance is absent).

Consideration

Of the three elements necessary for a lottery, the element of consideration presents the greatest difficulties. Basically, consideration is an item of value – money, substantial time or energy – that a contestant must expend in order to participate in a promotional plan. The Commission has stated that consideration is present in any contest or promotion that requires a contestant to (1) "furnish any money or thing of value"; (2) "have in [his or her] possession any product sold, manufactured, furnished or distributed *by a sponsor* of a program broadcast" by a station (Rule 73.1211(b)); or (3) meet any other requirement that involves a substantial expenditure of time and effort by the contestant.

1. Payment Necessary to Participate – Substitution of "Reasonable Facsimile" for Proof of Purchase

Determining whether or not money is paid to enter a promotion usually presents no problem. However, it is very important to note that in a contest or promotion in which a contestant must make a purchase in order to participate, the purchase price constitutes a payment of money and, therefore, consideration. The U.S. Supreme Court has ruled that the fact that a purchaser receives the full value for money paid in making a purchase in order to participate in a contest does not eliminate the presence of consideration. *Horner v. United States*, 147 U.S. 449 (1893). The Court held that the purchase price was consideration on the theory that part of the price was allocated to the item purchased and part to the chance to participate. *Id.* at 463.

The guideline that possession of a particular product constitutes consideration should be qualified to the extent that, if the product is furnished to the contestant at no cost by the sponsor as part of the promotion, possession of the product will not constitute consideration. Also, the U.S. Postal Service, which also has the power to enforce certain federal lottery laws, has noted a general exception to this rule in contests that require evidence of purchase with each entry (*e.g.*, submission of box top or label). If a participant also may enter by submitting a plain piece of paper on which is written the name of the product or some other specified term, or if the entrant may submit a reasonable facsimile of the box top, label, entry blank, etc., consideration may not be present. Facsimiles must be simple to make based on information supplied in advertisements for the contest. A complete description of the rules of entry also should be included in the contest advertisements.

2. Purchasers and Non-Purchasers on Equal Ground – Availability of Entry Blanks

Entry slips may be distributed with purchases if the contest also provides a means for obtaining a "free entry" to participate without a purchase. The FCC has emphasized that the non-purchaser must not be disadvantaged in any way and that free entry must be available on an equal basis to that enjoyed by contestants who make a purchase. For example, placing entry slips that are freely available to non-purchasers in front of the counter places buyers and non-buyers on equal ground. This may not be the case, however, if entry blanks are placed behind the counter, because this may discourage non-purchasers from entering the contest without making a purchase.

3. Expending Time and Effort as Consideration

Expending substantial time and effort in order to enter a contest is a form of consideration. For example, requiring that an entrant test drive a vehicle in order to enter a promotion has been determined to be consideration.

Broadcasters can rely on several definite rulings in determining whether or not consideration is present. First, the U.S. Supreme Court has ruled that simply listening to or viewing a program does not constitute consideration. *FCC v. American Broadcasting Co.*, 347 U.S. 284 (1954). Second, the U.S. Court of Appeals has ruled that the mere act of going to a store solely for the purpose of picking up a card in order to participate in a promotion does not constitute consideration. *Caples Co. v. United States*, 243 F.2d 232 (D.C. Cir. 1957). The U.S. Postal Service, which has powers similar to the FCC to define certain lottery matters, has stated that if a participant is required to visit the store to obtain an entry blank and also to be present for a subsequent, scheduled drawing, consideration would not be present. However, in the latter situation, the time of the drawing must be pre-announced and the drawing held on time. If the drawing were delayed or held at an unannounced time, thus requiring a long and continuous presence of the contestant, a substantial expenditure of time and effort would have occurred and consideration would be present.

4. Eligibility Requirements

Certain eligibility requirements, by their very nature, constitute consideration. For example, requiring a contestant to be a savings account holder in order to be eligible to participate in a promotion has been ruled to be a form of consideration, based on the fact that the deposit of money into a savings institution for an indeterminate period of time is an item of sufficient value. Other eligibility requirements such as possession of a driver's license, residing in a particular area, attaining the age of eighteen, or calling from a telephone that has a certain exchange do not present problems of consideration.

5. Consideration Must Flow to the Promoter

No lottery exists if there is no flow of consideration from the contestant to the contest promoter or co-promoters. This concept is best illustrated by two examples. First, suppose an automobile dealer, as part of a display at a county fair, conducts a drawing and awards the winner a new car. To enter, a person must visit the dealer's display at the fair and fill out a free entry blank. Everyone must purchase an admission ticket to enter the fair, but the automobile dealer will receive none of the revenues from the sale of admission tickets. This contest will not be considered a lottery because, even though the contestants must pay to enter the fair, *the consideration does not flow* directly or indirectly to the automobile dealer, who is promoting the drawing.

In the next example, suppose that a radio station has broadcast a contest in which the winner will be determined solely on the basis of a random drawing from golf scorecards mailed to the station. Although the contestants must have paid a greens fee or country club membership in order to obtain a scorecard and play a round of golf, they paid no money (consideration) to the radio station in order to enter the contest. Thus, the promotion is not a lottery. Notice that, had the golf course sponsored the contest, consideration would have flowed from the contestants to the promoters, and a lottery would have existed. *See Greater Indianapolis Broadcasting Co., Inc. (WXLW)*, 44 F.C.C.2d 37 (1973).

Remember, if consideration does *not* flow to the promoter or co-promoter (note that participating sponsors are considered "co-promoters") of the promotion, then there is no prohibition against broadcasting it. In other words, if a station sponsoring a raffle receives no consideration but rather donates all proceeds to a non-promoting third party, such as a charity, then under the FCC's ruling in *Greater Indianapolis Broadcasting*, there is no lottery. This ruling applies even if a portion of the proceeds goes to defray costs, *i.e.*, for printing, compensation, prizes, etc. Under these facts, the station would be able to

advertise and/or broadcast information concerning the promotional activity without incurring liability for violating the lottery laws. Keep in mind, however, that the charity or third party to whom the consideration flows must *not* be a promoter or sponsor of the promotion in any way.

In sum, a licensee should carefully study each promotion before hastily concluding that the *Greater Indianapolis Broadcasting* ruling applies. Even if a broadcaster or advertiser is one of numerous co-sponsors, the fact that it is entitled to a share of the profits by serving as co-promoter will cause the element of consideration to appear. If there is doubt whether the *Greater Indianapolis Broadcasting* ruling applies to a particular fact situation, a broadcaster should seek advice of counsel.

6. Consideration Checklist

The following examples generally constitute consideration:

- Payment of Entry Fee*
- Must Purchase Sponsor's Product
- Must Submit Box Top, Label or Wrapper to Enter*
- Admission Ticket as Entry Blank*
- Cash Register Receipts as Entry Blank*
- Entry Fee to Play Bingo
- Test Drive Required to Enter
- Prize, Discount or Refund Awarded After Purchase
- Must Be a Savings Account Holder to Enter*
- Must Show a Credit Balance at Contest Promoter's Store to Enter
- Payment to Join a "Pyramid" Club
- "Las Vegas" Night (real money is exchanged for "play" money that is used for gambling at games of chance; play money winnings are used for bidding in an auction of donated merchandise)
- Prize to Every Tenth Purchaser.

The following examples generally *do not* constitute consideration:

- Must Be Present to Win
- Listening for One's Name to be Called
- Visiting Sponsor's Store to Obtain Free Entry Blank
- Cost of Postage Stamp to Mail Entry Blank
- Cost of Postcard Serving as Entry Blank
- Substitution of a "Reasonable Facsimile" for Box Top, Wrapper or Label
- Eligibility Requirements:
  - Possession of Driver's License
  - Possession of Social Security Card
  - Must Be a Particular Age to Enter
  - Possession of Credit Card (so long as no purchase necessary to obtain card, and no fee charged for merely owning the card)
- Bingo Game Without Fee to Enter
- Prize or Discount With No Obligation to Make a Purchase
- Radio or Television Auctions to Raise Money.

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*Asterisked items generally constitute "consideration" only if the consideration, *i.e.*, proceeds, *flow* to the sponsor(s) of the promotion. *See* preceding section.

d. Summary of Guidelines on Defining a Lottery

From the above comments, it is apparent that determining what is or is not a lottery can be difficult. However, if a particular promotion is carefully analyzed step by step with due thought, most lottery problems can be readily resolved. In analyzing a particular scheme, set out all the details of the plan and then determine:

Prize:

Is there a prize? Is anything of value being offered to the contestant? If the answers are yes, then go on to "chance."

Chance:

(a) Is the winner selected on the basis of chance rather than on the basis of the participant's skill or other factors within his or her control?

(b) Is the amount of the prize determined by chance? Does the contestant have the chance of winning any one of a number of prizes of differing values?

If the answer to (a) or (b) is yes, proceed to "consideration."

Consideration:

Must the contestant expend money or a substantial amount of time or effort in order to qualify for the contest? Do the requirements for participation constitute consideration? Is consideration flowing directly or indirectly to the promoter(s)?

If it is determined that all three elements—prize, chance and consideration—are present in a promotional plan, then *under no circumstances* should the plan be given broadcast time.

e. Lottery Exceptions

State-Operated Lotteries

A broadcaster may air advertisements, lists of prizes and other information concerning a *state-conducted* lottery so long as two conditions are met: (1) the licensee must be located* in a state that conducts such a lottery; and (2) the lottery information broadcast concerns the lottery in the licensee's home state or in an adjacent state that also conducts such a lottery. 18 U.S.C. §1307 (1976). For example, a station in New York, which conducts a lawful state lottery, can broadcast advertisements concerning the New York state lottery as well as the state lotteries of New Jersey, Pennsylvania, Massachusetts and Connecticut, since these states are adjacent to New York and also conduct state lotteries. However, the exemption would not permit a station in Virginia to promote the state-operated lottery in Maryland. Although Virginia is adjacent to Maryland, Virginia does not conduct a state lottery.

For the purposes of Section 1307, "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States. "Lottery" under this section means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds, in whole or in part, to one or more chance takers or ticket purchasers. This definition does not include the placing or accepting of bets or wagers on sporting events or contests.

*It is the licensed location of a station, rather than the actual location of a transmitter or studio, to which the exemption applies.

Fishing Contests

Certain fishing contests have been specifically exempted from the federal prohibitions on broadcasting lotteries. 18 U.S.C. §1305 (1976). However, this exemption only applies where "the fishing contest is a self-liquidating type of undertaking, whose receipts are fully consumed in defraying the actual costs of operation and are not intended or used for any other collateral purpose such as establishment of a fund for civic, philanthropic, or charitable objects, no matter how benevolent or worthy." Any fishing contest conducted for the profit or personal gain of any individual or organization is not exempt from the federal law prohibiting the broadcast of lottery information.

Horse Racing, Dog Racing and Jai Alai

The bettor's handicapping skill and knowledge in placing a wager have been construed to eliminate the element of chance in horse racing, dog racing and jai alai. Due to this supposed application of skill to determine the winner of these sporting events, such competitions may be broadcast and legally advertised without running afoul of the lottery laws.

There is no *express* federal law or FCC rule which prohibits the broadcasting of horse race and similar information. However, over the years the Commission has issued a series of policy statements concerning the broadcast of horse race programming and advertising. (*See* Rules 73.4125 and 73.4126.)

In 1964, the Commission rejected the idea of specific rules and, in lieu thereof, adopted a policy statement to deal with the broadcast of horse racing on a case-by-case basis. That policy is designed (1) to preclude the broadcast of information which could aid illegal gambling operations, and (2) to permit the legitimate broadcast of horse racing news and information.

Under this policy, at renewal time the FCC may question what interest is being served by stations which *regularly* engage in one or more of the following practices:

- Broadcasting a full program of races from a race track, simultaneously with their running.
- Broadcasting detailed changes in pre-race information, such as post positions, jockeys, probable odds and scratches prior to the race.
- Broadcasting off-times as soon as the information is available, or shortly thereafter.
- Broadcasting race results and prices paid on a race before the next race has been run at the same track on the same day.
- Broadcasting horse race information sponsored by publishers of "scratch-sheets" or other publications giving detailed horse racing information by touts, or other persons whose activities may result in aiding illegal gambling or furnishing information to illegal gamblers or bookmakers.

The Commission's concern is with primarily those stations that may *regularly* engage in the above types of programming – and not with isolated instances or sporadic broadcasts. The Commission does not intend to inhibit the broadcast of any race or races, or full information about any races that are of interest to the listening public. Furthermore, the Commission's policy is not intended to inhibit in any way the broadcasting of advertising or publicity material designed to attract persons to attend race tracks.

The most recent Commission horse racing policy statement (Rule 73.4126) was issued in 1979. It concerned an application by a New York State FM station for Subsidiary Communications Authorization (SCA) to transmit horse

racing information to legally authorized off-track betting parlors. The Commission granted the request.

On October 21, 1983 the FCC released a Notice of Proposed Rule Making (FCC 83-37, MM Docket No. 83-842) requesting comments on the proposal to eliminate or substantially modify the above-stated policies concerning horse race programming and advertising. FCC action on this item is expected in 1984.

Off-Track Betting (OTB) Ads

In a decision involving the New York State Off-Track Betting Corporation, the Commission held that where a state has established a betting operation for the purpose of raising revenues and combating illegal gambling, broadcast licensees may air "appropriate advertisements." *In re Broadcasting of Information Concerning Horse Races*, 41 F.C.C.2d 172 (1973). "Appropriate advertisements" include those that encourage patronage of state-operated off-track operations or explain how to use OTB facilities. The Commission said that the advertisements must be consistent with both purposes of the state's program of legalized betting – the raising of funds and the suppression of illegal gambling. It emphasized that the ruling would be subject to further modification if such advertising were to benefit illegal gambling interests.

In addition to reviewing its horse race programming policies (*see* above), the Commission is considering eliminating or substantially revising its policy that restricts the broadcast of off-track betting advertisements. (*See* Rule 73.4130)

f. Lotteries as Editorial and News Topics

The FCC is willing to permit full discussion of the policy issues concerning lotteries in general, establishment of a state-operated lottery, or public debate about proposed lottery legislation. However, the type of information that may be broadcast once a lottery is in operation or has been established is severely restricted (except for an existing state-operated lottery). For example, when dealing with an existing lottery, a broadcaster should refrain from a news story announcing where tickets may be purchased or how the winning ticket will be drawn. However, a permissible news feature would include a human interest story about the winner or how the ticket sale proceeds will be distributed. Such information may be broadcast so long as it is not with the intent of advertising or directly promoting a lottery, or results therein.

The Commission has stated that the following types of information may be broadcast, provided that the broadcast is not intended to or does not result in advertising or directly promoting a lottery:

- Editorials concerning the policy issues involved in the enactment into law of a bill establishing a state-sponsored lottery, when such editorials are not used as a sham to avoid the prohibition or directly promote a lottery.
- News reports concerning the following:*
  - How lottery proceeds will be used, unless such reports are used as a sham to promote a lottery.
  - The relationship of a lottery to the support of education.
  - A legislator's proposals concerning lotteries.

**In re Broadcasting of Information Concerning Lotteries, Supplementary Delcaratory Ruling*, 21 F.C.C.2d 846 (1970).

  - Speeches by public officials, such as a statement before a Congressional Committee describing the operation of a state-sponsored lottery and stating that banks were rendering a public service by selling tickets.
  - Human interest stories about winners.
  - Illegal lotteries or other illegal gambling (not tending to aid or facilitate planning or operation) including exposure and descriptions of illegal lotteries, the attitude of law enforcement officials and effects of illegal gambling on society.
- Panel discussions on policy issues involved in the establishment of a state-sponsored lottery with participation by proponents and opponents of the lottery and questions and comments from a studio audience.
- Documentary programs including statements by public officials and citizens favoring or opposing a lottery, a description of that lottery and use of the proceeds, and results of opinion polls on the lottery.
- *Bona fide* interviews with winners, consisting of topics of general interest, such as the number of tickets they purchased, their expectations of winning a prize, their reactions upon learning that they held winning tickets, and what they did or intend to do with the prize money. Note that the broadcast of such interviews would be improper if it becomes clear by their repetition that the interviews are shams intended as promotional features, rather than being a part of a licensee's good faith judgment that the information serves the interests of its area.
- Editorial advertising by groups who wish to make their views known in areas where the establishment of a lottery is an issue of public importance and concern. It is important to remember that the fairness doctrine may apply in such a situation.

3. ADVERTISING OF CASINOS

A broadcaster is prohibited by federal law [18 U.S.C. §1304 (1976)] and by FCC Rule 73.1211 from broadcasting not only lottery promotions or advertisements, but also any information pertaining to a lottery. The law and the rule are applicable to advertising for and by casinos.

It is the opinion of the FCC staff that, under these federal restrictions, any video depiction of, or audio reference to, gambling activities that take place in a casino are unacceptable in broadcast commercials for hotels with casinos, even though the casinos may be legal under state law.

The FCC staff's interpretation similarly would apply to broadcast commercials for airlines, travel agents, governmental tourism bureaus, etc., depicting casino gambling activities or referencing such activities, no matter how brief or fleeting the depiction or reference.

Advertising of hotels with casinos may focus upon non-gambling activities and facilities available at the hotel. These could include, for example, restaurants, floor shows, lounges, shops, sports facilities, types of room accommodations, etc.

If the word "casino" is part of the actual name of the hotel, it may be included in broadcast advertising when the full name of the hotel is stated or shown, for example, "Rex Hotel & Casino."

Persons who violate the federal ban are subject to prosecution by the U.S. Department of Justice and may be punished by a fine of up to $1,000 and/or up to one year's imprisonment. Additionally, FCC penalties for violations may range from forfeitures (fines) to revocation of license.

F. PAYOLA AND CONFLICTS OF INTEREST

1. PAYOLA, PLUGOLA AND CONFLICTS OF INTEREST

a. Payola

Potential for payola exists at every station. It is incumbent upon all licensees to exercise diligence in preventing payola. Sections 317 and 507 of the Communications Act define "payola" as accepting, paying and agreeing to accept or pay any money, services or other valuable consideration for the inclusion of any matter in a broadcast without disclosure of the fact before the broadcast to the program producer or the broadcaster. Payola takes many forms, ranging from accepting cash from a distributor or independent promoter of phonograph records for playing certain records on a program to accepting free meals from a restaurant in return for on-the-air use or mention of a product, service or person. Each violation is subject to a fine of not more than $10,000 or imprisonment of not more than one year or both.

b. Plugola

The FCC has defined plugola as the promotion or "plugging" on the air of goods or services in which someone responsible for including the promotional material in the broadcast, such as the program director, performer or even the licensee itself, has a financial interest. Thus, plugola involves an indirect benefit flowing to persons responsible for program selection. It is permissible only when (1) the plug is logged as commercial matter – where program logs are required; (2) management is aware of the interest; (3) proper sponsorship identification is provided; and (4) the employee involved discloses his or her interest, if any, which means, as a practical matter, that management must be informed of the nature as well as the mere existence of the employee's interest.

The Commission expects broadcasters to exercise "reasonable diligence" in learning about the existence of plugola among its employees. However, the Commission has refused to go so far as to require a licensee to be the "guarantor of disclosure" of every instance of conflict of interests affecting program content.

If conflicts of interest in the form of outside economic interests of station personnel are not otherwise prohibited by the licensee, then the station should insulate personnel with outside interests from the process of program selection. When complete insulation cannot be achieved, the Commission has said that a licensee should take precautionary measures to ensure that no program matter is presented as a result of such practices. Although the Commission has exempted commercials and feature films from its plugola policies, broadcasters should take special care for all other programs, including public affairs and news, when plugola might be involved.

Concluding that it would be difficult to devise a rule that covered the important elements of plugola without either going too far in regulating broadcasters or leaving large loopholes, the Commission stated that it would review future plugola violations on a case-by-case basis. Remember, the FCC's plugola policies stem from two basic notions: (1) that management be made aware of any plugging of goods or services for which there is a financial interest held by the licensee, an announcer or performer, and (2) that the public be made aware of the interests.

c. Suggested Preventive Measures

To aid broadcasters in identifying potential problems in the area of payola and plugola, listed in Appendix IV-G are common practices that fall under the scope of payola prohibitions. Appendix IV-H contains suggested guidelines for use in a station's dealings with record companies and record promoters. Appendix IV-I is a memorandum that may be circulated to secure information from pertinent employees concerning their outside business interests and activities.

Many licensees require that an affidavit of the type included in Appendix IV-J be executed at least once a year. Keep in mind, however, that the periodic execution of affidavits may not be enough. The Commission, for example, has said the licensee of a station that plays records that are heavily promoted must be extremely sensitive to the risks of improper influence and, accordingly, may not rely solely on the periodic execution of affidavits. However, an affidavit is a handy tool for making sure that employees have read the applicable laws and regulations and have agreed to abide by them. Subject to advice of counsel, stations not now doing so may wish to adopt this or a similar form of affidavit.

Appendices IV-K and IV-L set forth Sections 317 and 507 of the Communications Act, respectively, and Appendix IV-M contains the FCC's Sponsorship Identification Rule. These appendices also should be studied carefully.

As with virtually every area of regulation, the station licensee will be held responsible for the conduct or misconduct of its employees. Prudence suggests the desirability of establishing and enforcing a comprehensive procedure for guarding agaist payola and plugola at all staff levels. By the same token, however, it must be remembered that overzealous surveillance (*e.g.*, a wiretap of an employee's telephone) can result in criminal and other liability. In short, payola and plugola are areas where a licensee's preventive program must be carefully considered.

d. Recognizing Payola and Plugola: A Short Quiz

The following questions and answers suggest guidelines for all those concerned with the selection and presentation of music and other program matter.

- **Q.** If a record company flies a program director and his or her spouse to another city to see its artist in concert, is that considered payola?

  A. "Probably yes." A trip to Las Vegas to see the opening of a particular artist's show constitutes payola to the powers that be at the FCC. The same is true if a record company flies a program director, announcer or music director to another city to see a sporting event or to purchase a new wardrobe.

- **Q.** Can a program director accept gifts from record companies for Christmas and, if so, is there a value limit of $25 on them?

  A. As a general matter, a program director may accept a gift at Christmas time. The $25 limitation is arbitrary but, nevertheless, has come to be a standard of the industry. The rationale is that the more expensive the gift, the greater the inducement to "return the favor" to the record company so that the record company, rather than the program director, becomes the benefactor. In other words, a Christmas gift should be reasonably priced, as opposed to a luxury item. However, any gift received by any disc jockey, program director or music director should be reported to the station's management.

- Q. If a radio station should employ a person who owns a record store or an interest in a record store, and this person is on the air, is this illegal?

  A. Each broadcast station should have an affirmative policy with respect to a playlist and how the playlist is derived. So long as the individual having an interest in a record store has no influence over and does not participate in the selection of the music to be played over the air, there is no aura of payola or plugola. On the other hand, if the person owning the record store does participate in the selection of music to be played over the station, a strong presumption arises that this individual's objectivity and impartiality may be suspect.

- Q. Is it permissible for music directors, program directors and disc jockeys to let promotion people buy them lunch or dinner?

  A. A business and/or luncheon meeting is certainly permissible. In today's business world, business luncheons and dinners are commonplace and there is no reason why radio station personnel should be singled out and chastised for such a business practice. This means that a record promoter is certainly free to invite a disc jockey, music director and/or program director to lunch or dinner without fear of a payola smear. The same is true if the invitation also extends to the spouse of the disc jockey, program director and/or music director. On the other hand, a quick flight to Los Angeles, Chicago, Las Vegas, etc., for a "unique night on the town" is beyond the realm of reasonableness and would constitute payola. Once the luncheon and/or dinner leaves the realm of reasonableness and becomes extraordinary, the payola presumption rises.

- Q. Are program directors or consultants permitted to attend record company seminars or meetings?

  A. So long as there is a legitimate business purpose for such a meeting, it is permissible for a program director and/or consultant to attend. On the other hand, if the purpose of the meeting is simply to frolic in the sun and surf, then once again, that ominous payola cloud hangs overhead. Before any music director or consultant consents to attend a record company seminar, he or she should request a written statement from the record company spelling out the business purpose for the invitation and the participation in discussions, panels, etc. expected from the invitee. The consultant music director or program director should then respond to the letter confirming the business purpose and the fact that the invitee will in fact be participating in a meaningful business meeting.

2. PROMOTION OF NON-BROADCAST ACTIVITIES

While the discussion in the preceding sections has focused on practices affecting competition among broadcast stations, antitrust problems also may arise from a broadcaster's relationship with its other non-broadcast business interests. To be sure, there is nothing inherently illegal or improper about a station licensee or its employees engaging in non-broadcast activities. However, at the same time, broadcast facilities may not be employed as a trade weapon against competitors in the non-broadcast field.

One problem area involves the advertisement and promotion of a local business concern that is owned by the broadcast licensee. While the licensee may certainly carry advertisements for its own non-broadcast business interests, it must treat other competitors fairly. Thus, it may not make substantially more time available for its own business than for other similarly situated firms, nor

discriminate by charging higher rates to others. Similarly, a station employee may not unfairly promote his or her own outside enterprises, as, for example, where a radio disc jockey plugs dances or concerts in which he or she has a financial interest. Thus, it is possible that a station or its employees could comply with FCC plugola disclosure requirements and still be vulnerable to antitrust liability.

Another area of concern, in addition to simply advertising and promoting the licensee's non-broadcast interests, arises from what are known as "reciprocal dealing" practices. One type of "reciprocal dealing" occurs where the station licensee induces customers to patronize its non-broadcast businesses by offering special discounts for advertisements carried over the broadcast facilities. For example, the FCC has ordered a broadcast licensee to refrain from offering free spot announcements as an inducement to purchase the licensee's background music service. Such practices, the Commission ruled, give the licensee an unfair competitive advantage in the non-broadcast music service business.

CHAPTER V:

OTHER OPERATING POLICIES AND PRACTICES

A. LOCAL PUBLIC INSPECTION FILE: RETENTION AND COPYING REQUIREMENTS

1. LOCAL PUBLIC INSPECTION FILE

The FCC requires that certain records be maintained in a local file for public inspection at either "the main studio of the station, or any accessible place" during regular business hours. Rule 73.3526. The records that must be made available to the public and the period of time such records must be retained by radio and television stations are set forth in Appendix V-A. Each station should periodically review its local public inspection file to ensure that all of the documents listed in Rule 73.3526 are included.

Station managers should instruct all staff members who maintain the file that members of the public have an absolute right to inspect the file during normal business hours. (If your business office is open from 9:00 a.m. to 5:00 p.m., or other regular hours, you may require that the file be inspected only during those hours.) While a station may require personal identification (names and addresses) of those wanting to inspect the public file, it may not require members of the public to specify the particular documents they wish to

inspect. Appendix V-B contains a suggested memorandum for distribution to the station's staff concerning the local public inspection file. Appendix V-C is a suggested form that stations might ask persons desiring to inspect the file to fill out.

Stations are required to make copies of materials in the local public file for parties willing to pay the reasonable costs of reproduction. Rule 73.3526(f) provides that "[r]equests for machine copies shall be fulfilled at a location specified by the applicant, permittee or licensee, within a reasonable period of time which, in no event, shall be longer than seven days unless reproduction facilities are unavailable in the applicant's, permittee's or licensee's city of license." (If reproduction facilities are unavailable in its city of license, a broadcaster may use a longer period if necessary.) Stations have the choice of reproducing the materials themselves or sending them to an independent contractor. Appendix V-D contains a suggested form that stations might ask parties to complete if they desire reproduction of materials. Stations must honor all requests made in person. Requests made by mail need not be honored, although a station may do so if it chooses.

Broadcasters should be aware that recent deregulatory changes have not de-emphasized the importance of the public file. In the radio deregulation decision, the FCC reiterated the importance of the public inspection file and stressed that "continued reliance on the public file as an index to the general programming responsibilities of licensees does not constitute a significant departure from our present system."

In the so-called "postcard renewal" decision, the Commission once again focused attention upon broadcasters' public file obligations. Broadcasters filing the new Simplified Renewal Application (SRA) must certify that their public inspection files are complete and up-to-date. In adopting the new renewal procedures, the FCC published a list of "particularly important" public file documents that FCC Field Operations Bureau inspectors will check during random inspections of broadcast operations. *See* page V-5 for the FCC's Field Operations Bureau Checklist for Maintaining Public Inspection Files. Keep in mind that all required documents, not just those listed on the Checklist, must be kept in the public file. Thus, deregulation notwithstanding, the FCC still requires broadcasters to maintain numerous documents in the public file.* As you assess the completeness of your public file, bear in mind that there may be relief in sight. NAB has filed a petition requesting the FCC to reassess all public file requirements with a view toward lessening superfluous paperwork burdens that such requirements impose upon licensees.

2. PUBLIC INSPECTION AND REPRODUCTION OF PROGRAM LOGS

a. Television and Noncommercial Radio Stations

Although program logs for commercial television and noncommercial radio and television stations are not part of the regular file for public inspection, they must be made available for public inspection upon request. Public inspection and reproduction must be made available at a location convenient

*In the event of an assignment or transfer of either a license or construction permit, the seller of the station has the responsibility for maintaining the local file until the Commission approves the assignment and the assignment is consummated. When this occurs, the new owner then has the responsibility for maintaining the local file and must see that all documents required to be maintained before as well as after the assignment are in the file. Rule 73.3526(b).

and accessible to the residents of the community in which the station is licensed. *See* Rules 73.3526(a)(10), 73.3527(c)(3) and 73.1850.

The following procedural requirements, as listed in Rule 73.1850(b), apply to requests for inspection:

- Parties wishing to inspect program logs must make a prior appointment with the licensee and, at the time, identify themselves by name and address, identify the organization they represent, if any, and state the general purpose of the examination. (The Commission has indicated that if an entire class in a communications course sought access to the logs, a station would be allowed to schedule the visit and, if necessary, place reasonable limitations on the number of students.)
- An accessible and convenient location for the inspection may be specified by the licensee, and, at its option, the licensee may make exact copies available instead of the original program logs.
- Copies of the logs must be made available to the party desiring to inspect the logs; however, such party must pay the reasonable costs of reproduction. If the station uses its own facilities to duplicate the logs for the party requesting them, the cost of duplication charged to the party must not include any element of profit for the station – in other words, the copies must be furnished "at cost." If the station uses an outside copy service, the service may charge its usual rates. The FCC insists that it will not condone any attempts to defeat the purpose of the rule by selecting a company that makes copies for more than the going rate in the area.
- An inspecting party must have a reasonable time in which to inspect the logs. The licensee may condition any further inspection, if requested, upon the party's willingness to either duplicate the logs at the party's own expense or reimburse the licensee for whatever reasonable expense is incurred if supervision is deemed necessary.
- No log need be made available for public inspection until 45 days have elapsed from the day covered by the log.
- Any information contained in the log which is not required by the Commission may be removed before making the log available for public inspection.

A suggested form for the "Program Log, Public Inspection Request" is contained in Appendix V-E. The retention period for television program logs is two years,* except for composite week logs, which must be retained for at least seven years.** *See* Rules 73.1840(a) and 73.3526(e).

Where good cause exists, the licensee may refuse to permit inspection of the station's logs. For example, if the request for inspection represents an attempt at harassment (a representative of an organization is not engaged in harassment simply because the organization is known to be hostile to the sta-

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*A station may want to retain its program logs for up to five years, depending on the date of its renewal application. At renewal time, the program logs for the selected composite week will cover a five-year period, and unless all logs for the past five-year license term are available, a station may not be able to select those logs required to be placed in the public file for the composite week.

**Note that the television license term was extended to five years and that the rules specifically require the retention of all material relating to renewals (which includes composite week logs) until final Commission action on the second renewal application following the application in question. Thus, composite week logs actually must be kept for at least *ten* years. The Commission has indicated that it will update the composite week log and public file rules to correspond to its deregulatory action, but, until it has done so, stations should keep the logs for ten years.

tion; harassment relates primarily to unreasonableness), or if the request is unduly burdensome, or if a competitor of the station or of its advertisers makes a request based solely on private, competitive considerations, then the licensee may refuse the request.

Where a television station uses an automatic logging device or another system that does not provide for written program logs, the licensee is required to retain copies of the station's pre-logs or operating schedules, which have been updated and certified as correct, or the recordation produced by an automatic maintenance of program logging data device (*i.e.*, tapes or encoded printouts). Rule 73.1850(b)(6). For encoded material, the licensee must provide a code translation key so that the inspecting party can interpret the log.

b. Commercial Radio Stations

As stated in Chapter II, *Program Logs*, the FCC's radio deregulation decision eliminated the requirement that commercial radio stations maintain program logs.

Licensees, in their discretion, may maintain program logs for business purposes (such as billing records), but are under no FCC obligation to do so and need not allow the public to examine such logs. Emergency Broadcast Service announcements must be logged in the radio station's *operation* logs.

c. Field Operations Bureau Public File Checklist

The following chart specifies what public file documents will be inventoried by FCC inspectors.

	Commercial Television	Noncommercial Radio & TV	Commercial Radio
Construction permit or program test authority application, if filed within at least the last seven years.*	•	•	•
Two latest renewal applications.	•	•	•
Ownership reports covering at least the last seven years.*	•	•	•
Annual employment reports for at least the last seven years.*	•	•	•
Two latest equal employment opportunity model programs.	•	•	•
"The Public and Broadcasting – A Procedure Manual."	•	•	•
File for time requests made in the last two years by political candidates. (According to the FCC, this file may be empty, if there were no time requests.)	•	•	•
Letters received from members of the public for the last three years.**	•		•
Statement of TV program service.*	•		
Composite week logs for at least the last seven years.*	•		
Annual problems/programs lists for at least the last seven years.*	•	•	
Leader interview documentation for at least the last seven years.*	•	•	
Two most recent community leader checklists.	•	•	
General public survey (if noncommercial, documentation required for at least the last seven years).*	•	•	
Statement of sources consulted and ascertainment methodology.*	•	•	
Community composition documentation.*	•	•	
Quarterly issues/programs lists.*			•

*This material should be retained until final FCC action on the second renewal application following the application or other material in question. Rule 73.3526(e). For useful guidance in developing a records retention system, *see* Appendix V-F.

**The FCC recently proposed to eliminate the requirement that licensees retain letters from the public and make them available for public inspection. A final decision on the proposal had not been issued by the date this publication went to press.

B. ASCERTAINMENT OF COMMUNITY NEEDS AND PROBLEMS

1. COMMERCIAL RADIO (Quarterly Issues/Programs List)

The United States Court of Appeals for the District of Columbia Circuit upheld the FCC's decision to eliminate formal reporting requirements relating to ascertainment. Prior to radio deregulation, all stations had to perform surveys of community leaders and the general public to determine the needs and interests of their communities in order to develop programming to help meet those needs. The FCC established certain guideline "numbers of interviews" that would satisfy its ascertainment requirements.

Commercial radio stations are no longer required to undertake formal ascertainment. Instead, commercial radio licensees and applicants for new radio stations, for the assignment or transfer of existing stations or for changes in the coverage area of existing stations must determine the important issues in their communities, but may do so by any reasonable means. Note that "deregulation" does not mean that licensees are no longer required to maintain contact with their communities. The only change is that *licensees*, not the Commission, now may determine the methods of making the contacts.

Under the revised FCC rules, commercial radio licensees are obligated to maintain a Quarterly Issues/Programs List. *See Second Report and Order* in BC Docket 79-219 (FCC 84-67), adopted March 1, 1984. This list is similar to the Annual Problems/Programs List required under prior Commission rules. A major difference, however, is that the new Quarterly Issues/Programs List need not be routinely filed with the Commission. Rather, on the first day of each calendar quarter (*i.e.*, July 1, October 1, January 1 and April 1) a list of at least five to ten community issues addressed by the station's programming during the preceding three-month period is placed in the station's local public inspection file. *See* Appendix V-G for a model Quarterly Issues/Programs List.

The Issues/Programs List should, in narrative form, contain a brief description of how each issue was treated, *i.e.*, public service announcements or programs. It also should give a description of the programs including the time, date and duration of each program. These lists must be retained for the entire license renewal period (seven years).

The Commission is no longer concerned with how an applicant or broadcaster becomes aware of community issues, so long as such issues are identified and adequate responsive programming is proposed or offered. In selecting issues, a station should consider its listeners and their interests, as well as what services are provided by other stations in its community. Stations in smaller communities usually will be more broadly based in their programming. In larger markets with more stations, broadcasters generally have greater flexibility in choosing which issues to cover.

A licensee must list those programs or program series which exemplified the station's efforts to address each issue cited during the preceding three months. Any objections raised concerning these efforts must be directed, as the Commission says, to "the realities of the program proposal of applicants," or the "responsiveness" of licensees, rather than to the ritual of ascertainment.

It therefore is important for broadcasters to use good faith in identifying the issues and providing responsive programming. Broadcasters are *not* acting in good faith if they "wall themselves off" from their communities. They should be accessible and maintain personal contacts with community leaders. However, the FCC will no longer routinely dictate precisely how broadcasters must maintain or document those contacts.

2. COMMERCIAL AND NONCOMMERCIAL TELEVISION

Formal ascertainment still is required for:

- Noncommercial TV stations (excluding stations whose programming is wholly "instructional").
- Commercial TV stations (excluding stations licensed to communities outside metropolitan statistical areas and with populations of 10,000 people or fewer).

The FCC is considering eliminating formal ascertainment for these stations. Ascertainment is *not* required in support of applications for construction permits (Form 301) for these stations, although it is required when filing for a station's license or license renewal.

Under the current rules, every commercial and noncommercial television licensee is under a *continuing obligation to formally ascertain* the significant needs and interests of the station's service area. Except for renewal applicants, all parties filing commercial applications that require ascertainment surveys should follow the guidelines established by the Commission in its 1971 *Primer on Ascertainment of Community Problems by Broadcast Applicants* (Appendix V-H).

Commercial renewal applicants are to comply with the requirements outlined in the Commission's 1976 *Primer on Ascertainment of Community Problems by Broadcast Renewal Applicants* (Appendix V-I). Of major importance to smaller market broadcasters is the exemption for renewal applications filed by stations licensed to cities with 10,000 or fewer people which are not within a Metropolitan Statistical Area (MSA). These exempted licensees may choose the method by which ascertainment of the area's needs and interests will be performed. Note that the exemption does not excuse these broadcasters from performing ascertainment. Thus, while the *Primer* excludes certain licensees from formal filing requirements, exempted stations may wish to keep some records concerning their ascertainment efforts so that any Commission inquiry concerning ascertainment may be answered quickly and without difficulty.

Under the new renewal ascertainment procedures, each licensee must prepare an annual listing of its area's problems and the programs broadcast to meet those problems. This list is to be placed in the public file on the anniversary date of the station's filing for license renewal, and each list is to be submitted with the station's renewal audit form application, if the station is selected to complete the form. To reduce administrative difficulties associated with this annual reporting requirement, some broadcasters have developed a system whereby a list of major problems ascertained is kept on a current basis, with pertinent program information recorded daily under each such problem. This information then can be quickly and easily retrieved at the end of the twelve-month period. A notebook divided into separate sections for each problem is one convenient way of organizing the material.

The following is an outline of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Renewal Applicants*, which concisely sets forth the basic requirements of that document:

I. General Ascertainment Requirements.
   A. Period and scope of community survey.
      1. Survey of community leaders must be done on a continuing basis. General public survey can be either on-going or within some specific period during the license term.

2. Primary emphasis of community leader survey on community of license, secondary emphasis outside that area.* In no event is a station required to survey beyond 75 miles, and it may omit communities within its service area for good reason, *e.g.*, service provided by local stations. Survey of general public is limited to city of license.
3. Stations licensed to communities of 10,000 or less which are not part of an MSA are exempted from all requirements of the *Primer* except the annual listing of problems and programs. Noncommercial ten-watt radio stations also are exempted.**

B. Purpose of survey is to ascertain problems, needs and interests of the public. It is also permissible to ask about programming practices, but this is not basic purpose of survey.

C. Compositional data on city of license.
1. Stations now must have the following data in their public file (which should be updated as new data becomes available):
   a. Total population.
   b. Numbers and proportions of:
      (i) males and females;
      (ii) minorities;
      (iii) youths (17 and under); and
      (iv) elderly (65 and older).

II. Community Leader Survey.

A. The first nineteen institutions and elements listed below *must* be covered by community leader surveys, unless it can be shown that a category is wholly inapplicable to the station's area. Other groups representing significant elements of the community also must be interviewed. Groups not listed, however, must make themselves known to the station.
1. Agriculture
2. Business
3. Charities
4. Civic, Neighborhood and Fraternal Organizations
5. Consumer Services
6. Culture
7. Education
8. Environment
9. Government (Local, County, State and Federal)
10. Labor
11. Military
12. Minority and Ethnic Groups

*Where a survey includes parts of the service area outside the community of license, responses to the survey from residents of the community of license should be tabulated separately.

**Exempt stations still are required to ascertain the problems of their service areas, but the FCC will avoid any inquiry into how these stations discern which particular problems are to be covered.

13. Organizations of and for the Elderly
14. Organizations of and for Women
15. Organizations of and for Youth (including Children) and Students
16. Professions
17. Public Safety, Health and Welfare
18. Recreation
19. Religion
20. Other

B. Number of leaders that should be consulted during license term to ensure quantitative sufficiency of survey.*

Population of City of License	Leader Interviews
Under 25,001	60
25,001 to 50,000	100
50,001 to 200,000	140
200,001 to 500,000	180
Over 500,000	220

C. Conducting the community leader survey.
1. May not be conducted by professional research firm.
2. Up to 50% of interviews conducted in connection with the renewal application may be conducted by non-management level employees under direction and supervision of principal or management level employee.
3. In addition to formal ascertainment interviews, stations may take credit for interviews conducted during business meetings, luncheons, on-the-air broadcasts and news interviews.
4. Joint consultations between licensees and community leaders are permitted where:
   a. All leaders are on roughly an equivalent plane.
   b. Leaders have ample opportunity to express their opinions on the problems, needs and interests of the community.
   c. Each licensee has the opportunity to question each leader.
5. Face-to-face interviews are preferred, but the telephone may be used, particularly for outlying areas, as long as there is no over-reliance on the use of the phone.

*These numbers were suggested by the FCC in its 1976 *Primer* when radio and television license terms were three years. It may be wise to do more interviews under the current five-year (TV) and seven-year (radio) terms. For example, if the station is licensed to a city that has 300,000 people, the station should consider conducting 300 leader interviews, or roughly 60 per year.

D. Documentation of community leader interviews.
   1. Within 30-45 days of each interview, the station must place the following interview report in its public file.*
      a. Name and address of leader.
      b. Institution or element represented.
      c. Date, time and place of interview.
      d. Problems, needs or interests discussed (leader can request confidentiality of this information).
      e. Name of interviewer. (If non-management level employee, the station also must include name of principal or management person who reviewed the employee's report and date of review.)
   2. On filing for license renewal, if completing a "Renewal Audit Form," the station must submit a checklist showing the number of leaders interviewed during the license term in the nineteen enumerated categories and the number of minorities and women interviewed. Stations filing the "postcard renewal" form need only place this information in the public file.**

III. General Public Survey.***
   A. Conducting the public survey.
      1. Must consult with random sample of public in the community of license.
      2. No set number or formula has been adopted by the FCC.
      3. Interviews may be conducted by a professional research service, principals or station employees. Non-management level employees must be supervised by superiors.
   B. Documentation to be placed in public inspection file.
      1. Description of method used to ensure random sampling of the general public.
      2. Number of people consulted.
      3. Results of ascertainment survey.

IV. Programming.
   A. Station does not have to treat all problems ascertained.
   B. Problems may be treated in public affairs or informational programs, news and public service announcements, but the latter two categories should not be used exclusively.

**See* Suggested Community Leader Contact Form, Appendix V-J.
***See* Sample Community Leader Annual Checklist, Appendix V-K.
****See* Suggestions for the Survey of the General Public, Appendix V-L.

C. Documentation of programming efforts to meet the ascertained community problems.
   1. Annually on the anniversary of the renewal filing date, all television and nonexempt noncommercial educational stations must place in the public file a list of no more than ten significant problems ascertained during the previous year. (Keep in mind that stations are not required to list as many as ten problems.)
   2. As to each problem, the licensee must list typical and illustrative programs broadcast in response to those problems, including title, source, type, brief description, time of broadcast and duration.

3. NONCOMMERCIAL RADIO

Noncommercial radio stations that broadcast at ten watts and/or are wholly instructional in their programming are exempt from the FCC's requirement to conduct formal ascertainment procedures. These applicants and existing licensees may use any reasonable methods designed to provide them with an understanding of the problems, needs and interests of their service areas. A narrative statement detailing the sources consulted and the methods followed in conducting the station's ascertainment of community needs and interests, and summarizing principal needs and interests discovered through that survey, must be placed in the public inspection file at such time as its renewal application would ordinarily be filed with the FCC. In the case of applications other than renewal of license, the narrative statement is to be placed in the public inspection file at the time the application is filed. If called for by the application, this statement is to be filed with the Commission. *See* Rule 73.3527(b).

C. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Rule 73.2080 requires that licensees afford equal employment opportunities for all qualified persons without regard to race, color, religion, national origin or sex. The rule embodies two concepts: nondiscrimination and affirmative action. It is not enough for a licensee to claim that it does not discriminate in its employment and personnel practices. Because traditional employment practices can have discriminatory effects, licensees must do more. All employment and personnel practices must be carefully scrutinized, and those that are found to have a discriminatory impact on women and minorities must be corrected. Licensees also must take positive steps to provide equal employment opportunities for everyone.

Licensees with five or more full-time employees (employees who work at least 30 hours per week) are required to file on or before May 31 of each year an Annual Employment Report (FCC Form 395). In addition, licensees with five or more full-time employees must file a formal written Equal Employment Opportunity (EEO) program with the Commission at the time of renewal (FCC Form 396). If minorities constitute less than five percent, in the aggregate, of the labor force in the applicant's labor recruitment area, a program for minority group members need not be filed. Stations with fewer than five full-time

employees also are exempt from this filing requirement. This does not mean, however, that these exempt stations do not have to adopt a policy of nondiscrimination and affirmative action. They too must design and implement an EEO program.

The Commission has adopted processing guidelines for staff review of uncontested applications for renewal of licenses for stations with five or more full-time employees. They are as follows:

- Stations with five to ten full-time employees will have their EEO programs reviewed if minority groups and/or women are not employed on their full time staffs at a ratio of 50 percent of their local labor force representation overall and 25 percent of their local labor force representation in the upper-four Form 395 job categories.*
- Stations with eleven or more full-time employees will have their EEO programs reviewed if minority groups and/or women are not employed full time at a ratio of 50 percent of their representation in the local labor force both overall and in the upper-four job categories.*
- All stations with 50 or more full-time employees will have their EEO programs reviewed.

"Local labor force" refers to the Metropolitan Statistical Area (MSA) in which the station is licensed.** If the station is not licensed to a community within an MSA, local labor force refers to the county in which the station is licensed. If labor force statistics are unavailable, the staff will use population figures. Labor force statistics should be based on information derived from the local Chamber of Commerce, state labor division data or U.S. Census Bureau records. The regional office of the licensee's state employment service may be a useful source of information on these statistics, and is the source most often relied upon by the Commission staff.

To illustrate the way the staff processing standards are applied, assume the station is located in an MSA in which women comprise 40 percent of the labor force and all minority group members combined comprise 20 percent of the labor force. The station employs 60 full-time staffers, with 40 in the upper-four job categories. The station's affirmative action program would be reviewed if its employment percentages failed to meet any of the four following tests:

- at least 20% (or 12) women employees overall;
- at least 10% (or 6) minority employees overall;
- at least 20% (or 8) women in the top four job categories;
- at least 10% (or 4) minority employees in the top four job categories.

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*The FCC's 50%-25% or 50%-50% processing standards are not the same as those which would be used by other local, state and federal agencies in determining whether a station is in compliance with other anti-discrimination laws. If a discrimination complaint should be filed against a station before the U.S. Equal Employment Opportunity Commission (EEOC), for example, and the station's employment statistics meet the Commission's minimum processing standards, the EEOC still might find "reasonable cause" to believe that a violation of Title VII of the Civil Rights Act of 1964 exists.

The fact that a station meets or exceeds the FCC's minimum standards is, of course, no guarantee that it will not be the target of a petition to deny. For this reason, we stress the importance of adequate record-keeping so that the licensee will be able to demonstrate the station's affirmative equal employment efforts should it become necessary to do so.

**Where a station is located in a Primary Metropolitan Statistical Area (PMSA) which is part of a Consolidated Metropolitan Statistical Area (CMSA), the Commission staff has indicated that it will look in the first instance to the PMSA, but that in certain circumstances it may accept a showing that a larger area may be the appropriate local labor force area.

Licensees should not confuse the Commission's processing standards with the establishment of goals or quotas. If a station's employment percentages do not meet the processing guidelines the Commission will review its EEO program to determine whether or not the station has made a good faith effort to increase the pool of qualified minority and female applicants for hire and to determine if it has attempted to implement the provisions of the equal employment opportunity rules in general. Acceptable explanations for an employment profile that does not fall within the statistical processing guidelines might be, depending on the circumstances of the case, that a station's low minority or female employment statistics in top jobs reflect a lack of turnover in those jobs and thus a lack of opportunity to improve the numbers, or simply that, despite substantial recruitment efforts, qualified minority or female applicants could not be found. Ordinarily, however, the staff will concentrate primarily on the station's equal employment program to determine whether it is "passive"—that is, if it commits the station to no more than nondiscrimination—or whether it contains an acceptable "corrective action plan" to raise the levels of minority and female employment. If the staff, after inquiry of the licensee, finds neither an explanation for the low employment figures nor an acceptable corrective action plan to eliminate them, the renewal application most likely will be referred to the Commission.

Referral of a renewal application to the Commission for further review might result in a variety of actions, ranging from a requirement that the licensee submit more employment information to a Commission order requiring the station to adopt employment goals and timetables, possibly accompanied by a short term renewal. In some cases, a renewal application could be designated for hearing, although this probably would occur only where there also are other aggravating problems.

For a more detailed analysis and explanation of the Commission's EEO rules and their application, obtain a copy of the NAB's booklet *A Broadcaster's Guide to Designing and Implementing an Effective EEO Program*, available through the NAB's Publications Department. In addition, *see* Appendix V-M for the FCC's Equal Employment Opportunity Program Guidelines and Model Program.

D. CITIZENS' AGREEMENTS

Licensees have an obligation to seek out the views of the public served by their stations, to weigh those views and to present a broadcast service consistent with the public interest. However, the Commission, in its policy statement on *Agreements Between Broadcast Licensees and the Public*, 57 F.C.C.2d 42 (1975), stated that the determination of whether to discuss or enter into agreements regarding the station's operation and program service is left to the discretion of the licensee. A licensee is under no obligation to "negotiate" with a citizen's group. Since ultimate responsibility with respect to programming and station operation rests with the individual licensee, the licensee cannot, even unilaterally, foreclose its discretion and continuous duty to determine the public interest and to operate in accordance with that determination.

All written citizens' agreements must be placed in the station's public file. Rule 73.3526(a)(1) defines a "citizen agreement" as follows:

> [A] citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily noncommercial purposes. This definition includes those agreements that deal with goals or proposed practices directly or indirectly affecting station operation in the public interest, in areas such as – but not limited to – community ascertainment, programming, and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation, syndication, program supply contracts and so on. However, the mere inclusion of commercial terms in a primarily noncommercial agreement – such as a provision for payment of fees for future services of the citizen-parties – would not cause the agreement to be considered commercial for purposes of this section.

The Commission, in its policy statement, stated that to avoid unnecessary government interference, it would examine written citizens' agreements only if they were incorporated into the licensee's renewal application or other applications. Such agreements will be treated in the same manner as normal licensee representations. While the Commission will accept a statement that an agreement satisfies objections which otherwise might have generated a petition to deny, it will not give effect to an agreement purporting to preclude the filing of a petition to deny.

E. NETWORK RULES

1. IN GENERAL

Section 3(p) of the Communications Act defines a network ("chain broadcasting") as the "simultaneous broadcasting of an identical program by two or more [inter]connected stations." The Commission has clarified this definition with respect to radio to include essentially all program sources that feed program material to AM or FM stations entirely or chiefly by interconnection so that the program service is capable of simultaneous presentation. Under this definition, for example, both the Associated Press Radio (APR) and United Press International Audio (UPIA) would be considered networks insofar as the material they provide, such as their hourly newscast of about five minutes, is suitable for simultaneous broadcast.

Every station, whether radio or television, must file all network affiliation contracts, agreements or understandings with the FCC, except that network affiliation contracts need not be filed where the network provides service fewer than five days a week during less than eight months a year. Also, television licensees need not file agreements that involve interconnection but that cover only one or two individual programs or episodes (such as "bowl" games supplied by interconnected regional networks).

The initial filing should consist of a written instrument containing all of the terms and conditions of the station's affiliation with the network. It is not sufficient merely to refer to any other paper or document (*i.e.*, a contract,

agreement or understanding) that is not provided in the initial filing. Subsequent filings simply may consist of documents concerning renewal, amendment or change, as the case may be, of a particular contract previously filed. The earlier filed instrument need not be resubmitted. The Commission also requires notification by the station if its network affiliation is cancelled or terminated. Finally, the Commission requires the filing of transcription agreements or contracts for the supplying of film for television stations which specify option time. Other agreements for the supplying of film for television, and contracts granting the right to broadcast music (*e.g.*, ASCAP, BMI), need not be filed.

The Commission's territorial exclusivity rule prohibits a station from obtaining the right to the exclusive use of a network service beyond that station's primary service area (for radio) or its community of license (for television). A station may obtain "first call" rights within this area, but other stations must remain free to air uncleared programs.

2. RADIO RULES

The Commission, in March 1977, repealed all of its network radio rules except the one discussed above dealing with territorial exclusivity and the modified filing requirement. It also repealed the "small market policy," which had limited the number of permissible affiliations with a single network company in small markets. The Commission's *Statement of Policy on Network Radio*, emphasizes the licensee's non-delegable duty to choose independently all programming for broadcast (*i.e.*, retaining the right to reject network programming). The Commission urged stations to consider the public interest benefits of diversity in selecting non-local programming sources; economic considerations should not be the sole determinant of which source, if any, the licensee chooses to use. Licensees, the Commission stated, also should not enter into excessively long-term contracts.

Networks, in turn, should not infringe on the licensee's ability to choose programs from other sources (including other networks), should not use option time practices extensively and should not seek to influence station non-network rates. Networks also should make their programming as widely available as possible by offering uncleared units to other stations, by trying to have other stations present programs when "wild-spotting" results in the broadcast of only the commercial content, by re-examining policies governing affiliation with stations some distance from existing affiliates and by reviewing cases where affiliates that present little or no network programming prevent other stations from securing an affiliation.

3. TELEVISION RULES

The rules governing network television practices prohibit agreements that (1) bar stations from affiliating with two or more networks; (2) extend beyond a two-year period (plus six months' advance time); (3) include any option time provisions (hindering the affiliate from scheduling programs before the network decides on the use of time or giving the network the right to preempt station-scheduled programs); (4) do not permit affiliates to reject any or all network programming; or (5) permit the networks to control station non-network rates or to represent the station in the sale of non-network time. *See* Rule 73.658.

The network television rules also prohibit a network from syndicating programs presented over the network or from having a financial interest in pro-

grams that it does not solely produce. (Networks may engage in foreign syndication of programs that they solely produce.) These rules seek to make network programs more equally available to independent stations in certain three-station markets (*i.e.*, those with two VHF network affiliates and one or more independent VHF stations). In this regard, the Commission has said that networks should take every reasonable step to make their programming as widely available as possible, especially to smaller market stations.

In a recent tentative decision, the FCC proposed to abolish its financial interest rule, which prohibits the television networks from acquiring commercial interests in independently produced programming. It also proposed to narrow much of its prohibition against network syndication. The limited syndication rules it proposed to retain are aimed at preventing warehousing (*i.e.*, the withholding of prime time entertainment programming from syndication) which could be used to place independent stations at a disadvantage. It is far from clear, however, that the rule changes will be implemented in the form proposed in the tentative decision.

The present network television rules also govern network ownership of stations in certain communities and "dual network" operations. No license can be granted to a network organization for a television broadcast station in any locality where there are so few stations, or the existing stations are of such unequal desirability (in terms of coverage, power, frequency or other related matters), that competition would be substantially injured from such licensing. Also, a network organization is forbidden to maintain more than one network of television broadcast stations, unless the dual networks are not operated simultaneously, or unless there is no substantial overlap in the territory served by the group of stations comprising each network.

For a discussion on the Prime Time Access Rule, *see* Chapter II, page II-31.

F. MULTIPLE OWNERSHIP RULES

The FCC amended its multiple ownership rules, which are directed toward limiting concentration of control of mass media.* These rules include the "seven station," "duopoly," "one-to-a-market," "newspaper/broadcast cross-ownership," "regional concentration of control" and "TV/cable cross-ownership" rules. *See* Rule 73.3555, which, effective June 6, 1984, replaces former rules 73.35(AM), 73.240(FM) and 73.636(TV); and Rule 76.501(cable).

The Commission's multiple ownership rules and policies, except the "seven station" rule and certain aspects of the newspaper/broadcast cross-ownership rule, are prospective in nature. As such, existing ownership combinations do not violate the rules because these properties had been rightfully acquired prior to each rule's adoption.

*On March 29, 1984, the FCC revised its multiple ownership attribution rules (*See Report and Order* in Dockets 20521, 20548, BC Docket 78-239, MM Docket 83-46 (FCC 84-115), 49 Fed. Reg. 19482 [May 8, 1984]). It raised the basic ownership benchmark for attribution from one percent to five percent. It also raised the attribution benchmark for "passive" investors from five percent to ten percent. In addition, the Commission clarified the status of non-voting stock and limited partnership interests as non-attributable interests, and provided relief from attribution to officers and directors whose duties are not related to any licensee or its operations.

The discussion of the multiple ownership rules in this section provides a general overview. To determine whether a particular factual situation complies with the Commission's policies on multiple ownership, it usually will be necessary to study the text of the rules and, in many instances, to obtain the advice of counsel.

1. GENERAL GUIDELINES

Under each of the following multiple ownership rules, a party may not directly or indirectly "own, operate or control" a prohibited combination. Therefore, a person having a "reportable interest" (an interest of five percent or greater in a corporate licensee, or a stockholder, officer or director) in one station may not have a reportable interest in another station or newspaper which could not be commonly owned under the multiple ownership rules, nor may that person be a principal, officer or director of the conflicting station's licensee or the licensee's parent company. A General Manager, while not classified as having a "reportable interest," has been deemed by the Commission to have "control" of a station and as such joins stockholders, officers and directors in being precluded from participating in certain activities under these rules.

Under current rules, the Commission generally will not be concerned with non-reportable ownership interests of less than five percent (except under its cross-interest policy, which is explained later in this section). Therefore, although a firm could not own five percent of both ABC and CBS (because it would have a reportable interest in more than seven stations in each service), it could own five percent or more in one such network and less than five percent in the other, as the latter interest would not be reportable. Certain financial institutions, such as banks, mutual funds and insurance companies, now may own up to ten percent of the outstanding voting stock in broadcast corporations under a special exemption to the multiple ownership rules.

2. SEVEN STATION RULE

The "seven station" rule establishes an absolute limit on an individual's broadcast ownership. No party may have an interest in more than seven broadcast stations in each service – that is, a total of 21 stations, of which no more than seven may be AM, seven FM and seven TV (only five of which may be VHF).

On September 22, 1983, the Commission initiated a proceeding seeking comments on a proposal to either eliminate or modify this "seven station" rule. *See Notice of Proposed Rule Making* in Gen. Docket 83-1009 (FCC 83-440), 48 Fed. Reg. 50907 (Nov. 4, 1983). As of May 1984, the FCC had not acted on this item.

3. DUOPOLY RULE AND CROSS-INTEREST POLICY

The "duopoly" rule prohibits any party from owning two or more stations in the same service (*i.e.*, AM, FM or TV) if there is an overlap of the station's duopoly contours. Thus, two AM stations may not be commonly owned if their 1.0 mV/m daytime groundwave contours overlap; for FM, the 1.0 mV/m contours are used; and for TV, the duopoly standard is the Grade B contour.

While not a multiple ownership rule, the Commission's "cross-interest" policy has the effect of such. The cross-interest policy, designed to ensure "arms-length" competition, prohibits any interest in two stations in the same service (for example, two FMs) in the same area or market. Therefore, a party

may not have an interest in two television stations licensed to the same community, nor hold an interest in one television station and lend money to another local television station. This policy, however, does not bar cross service (AM/FM, AM/TV, FM/TV) interests.

4. ONE-TO-A-MARKET RULE

The so-called "one-to-a-market" rule prohibits the direct or indirect ownership, operation or control of both a radio station (AM or FM) and a television station, if the AM's 2.0 mV/m or the FM's 1.0 mV/m contour encompasses the entire community of license of the television station, or if the television's Grade A contour encompasses the entire community of license of the AM or FM station. This rule also prohibits the direct or indirect ownership, operation or control of both a broadcast station (AM, FM or TV) and a daily newspaper, if the AM's 2.0 mV/m or the FM's 1.0 mV/m or the TV's Grade A contour encompasses the entire community in which such newspaper is published.

However, there is an exception for UHF and radio stations. The Commission will consider, on a case-by-case basis, applications for the common ownership of one or more radio stations and a UHF television station in the same market. *See Report and Order* in BC Docket 79-233 (FCC 82-114), released April 16, 1982, 51 Rad. Reg. 2d (P & F) 401. Note that there is no prohibition with regard to ownership of AM-FM combinations.

5. REGIONAL CONCENTRATION OF CONTROL RULE

The regional concentration of control rule was deleted by Commission action on April 11, 1984. It prohibited any party from owning three broadcast stations where any two were within one hundred miles of the third, if there was primary service (0.5 mV/m for AM, 1.0 mV/m for FM, and Grade B for television) overlap of any of the station's signals. Under this rule, AM-FM combinations licensed to the same market were counted as one station. This was a two-part rule—both the distance and the overlap criteria must have been met before an acquisition of power increase was barred. Application of the "regional concentration" rule was determined by drawing a triangle city-to-city among the commonly owned stations. If any two sides of the triangle were one hundred miles or shorter and there was primary service overlap on any side of the triangle, the ownership pattern was prohibited.

The same exception for UHF and radio stations to the Commission's one-to-a-market rule, as discussed in the previous section, applied here. The Commission considered, on a case-by-case basis, applications for the common ownership of one or more radio stations and a UHF television station in the same market.

6. NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE

Common ownership of a radio or television station and a daily newspaper (*i.e.*, published at least four times weekly) is prohibited if the contour for the AM (2.0 mV/m), FM (1.0 mV/m) or TV (Grade A) encompasses the entire community in which the newspaper is published.

The Commission decided against newspaper/broadcast cross-ownership divestiture in all but the most egregious cases, *Second Report and Order* in Docket 18110 (FCC 75-104), 50 F.C.C.2d 1046 (1975). Effective January 1, 1980, the Commission ordered limited divestiture under its "newspaper/broadcast" rule for sixteen newspaper/broadcast combinations considered to be the

most serious cases of common ownership and monopoly, *i.e.*, where communities were served only by one newspaper and broadcast station (or stations) under common ownership. The *Order*, in its entirety, had been upheld in June 1978 by the United States Supreme Court.

7. TV/CABLE CROSS-OWNERSHIP RULE

The Commission prohibits the ownership of a "reportable interest" in both a cable system and a television broadcast station if the station places a Grade B contour over any part of the service area of the cable system. A "reportable interest" is an interest of five percent or greater in a corporate licensee. Also, no cable television system may carry the signal of any television station if the cable system directly or indirectly owns, operates, controls or has any interest in a national television network. Rule 76.501.

As of the date of this publication, the Commission was considering relaxation of its cable ownership restrictions. It abandoned its proposal to require divestiture of all television stations that have a predicted Grade B contour over co-owned cable systems. *See Third Report and Order* in Docket 20423 (FCC 84-114), adopted March 29, 1984. Those cable system/broadcast station cross-interests existing on or before July 1, 1970, and considered "non-egregious"—*i.e.*, the station is not the only commercial broadcast station providing principal community service to the cable community—do not have to divest their cross-owned interests. However, the Commission deferred action on the "egregious" situations pending conclusion of its proceeding involving re-evaluation of Rule 76.501. The FCC has proposed to eliminate its ban on common ownership of cable systems and national television networks. *See Notice of Proposed Rule Making* in CT Docket 82-434, 91 F.C.C.2d 76 (1982).

G. MAIN STUDIO REQUIREMENTS

1. ESTABLISHMENT OF MAIN STUDIO; PROGRAM ORIGINATION REQUIREMENTS

Each radio and television station is required to establish and maintain a main studio within the boundaries of its community of license. A majority of each station's programming (defined as more than 50% of the minutes on the air, not the number of separate programs) must originate from the main studio. Rules 73.1120, 73.1125 and 73.1130.

If a station is actually licensed to more than one community, it must establish a main studio in each community of license. Rule 73.1120(c). The fact that a station may identify on the air with more than one community does not invoke a multiple main studio requirement; the station actually must be licensed to multiple communities before more than one studio is required.

A station may establish one or more auxiliary studios at any location, provided that it complies with the quantitative main studio origination requirement.

The Commission publicly has announced that it will not readily grant waivers of the main studio rule and that it may revoke program test authority for new stations that fail to construct a main studio in their community of license. The Commission, however, generally will waive the origination requirement with respect to recorded entertainment programming only; but

there still must be a main studio in the community of license for the origination of nonentertainment programming.

2. RELOCATING A MAIN STUDIO

The Commission always must be notified promptly after any change in the location of a station's main studio, even to a location within the community of license.

Relocation from any location to a location within the community of license is permitted without prior authority, subject only to the notification requirement. Relocation to a place outside the community of license may not be effectuated without the Commission's prior consent, with the following exceptions:

- An AM station may locate its main studio at its transmitter site, regardless of whether the transmitter is within or outside the community of license.
- An FM station that is commonly owned with an AM station may locate its FM main studio at the AM transmitter site, but only if the AM main studio is at the transmitter site and only if both the AM and FM stations are licensed to the same community. This exception does not permit location of the FM main studio at an FM transmitter site outside the community of license, unless the transmitter and studio of the sister AM station are at the same location.

When either of these two exceptions apply, the Commission still must be notified of where the station's main studio is located and any time that the main studio location is changed.

H. STATION OPERATING AUTHORIZATIONS

The Commission's rules require that every station post its license or other operating authorization at the principal transmitter control point, at an extension meter location or at the transmitter itself, in a readily visible location.

The types of operating authorizations include:

- the construction permit, when a new station is under construction or an existing station is being modified;
- the station license, including any renewal certificate;
- any pre-sunrise or post-sunset service authorization issued to an AM station;
- auxiliary broadcast licenses (remote pickups, studio transmitter links, etc.);
- temporary operating authorizations, often in the form of a telegram, including special temporary authority (STA), program test authority for stations with directional antennas, equipment test authorizations for special hours or special field test authorizations; and
- Emergency Broadcast System (EBS) authorization.

Photocopies should be posted at any authorized control point where original licenses are not posted.

In addition, the original of any operator license or permit must be posted at the transmitter control point or extension meter location where that opera-

tor is on duty, regardless of whether the operator is employed full or part time or on a contract basis. Where an operator works at more than one location, FCC Form 759 may be posted instead of the permit itself to verify the existence of a permit. Licenses and verification notices may be posted on the wall or kept bound in a notebook.

I. RADIO OPERATOR REQUIREMENTS

1. DUTY OPERATORS

The Communications Act of 1934 requires that all broadcast station transmitters be operated under the immediate supervision and control of a person holding an FCC commercial operator license or permit. All entries in technical logs must be made by a licensed operator. Any class of radiotelephone or radiotelegraph operator permit, including a Restricted Radiotelephone Operator permit obtained without an examination, but excluding a Marine Radiotelephone Operator Permit, qualifies.

Although the licensed operator may be on duty at a remote control point rather than at the transmitter itself, completely unattended operation of broadcast transmitters, even with automatic transmission systems, is never permitted. In addition, the repair and maintenance of broadcast transmitters requires some kind of FCC operator permit. In this respect, the former rule requiring a First Class Radiotelephone Operator Permit has been eliminated. Broadcast auxiliary stations may be operated and maintained without any operator permit.

2. CHIEF OPERATORS

All broadcast stations, AM, FM and TV alike, must have a Chief Operator, who must be designated as such in writing. A copy of the designation must be posted at the station (or posted with the license).

A Chief Operator must be available at all times. Accordingly, a substitute or acting Chief Operator must be designated in the event of illness, vacation or other absence of the primary Chief Operator.

The Chief Operator and any alternate must have an FCC operator permit, which may be any class of radiotelephone or radiotelegraph operator permit, including a Restricted Radiotelephone Operator Permit, except a Marine Radiotelephone Operator Permit.

The Chief Operator may be a full-time or part-time employee. That decision is up to the licensee, provided that the Chief Operator works enough hours to perform the required duties. In addition, FM stations and nondirectional AM stations operating with 10 kilowatts or less may elect to hire Chief Operators on a contract rather than an employment basis. Agreements with contract operators must be in writing and kept available for Commission inspection in the station's files.

The principal duty of the Chief Operator is to make sure that the station's technical operation is in compliance with the Commission's rules and the terms of the station's license. Specific obligations include:

- Inspecting the transmission system, and calibrating and adjusting monitors and remote control systems as required. Inspecting transmission systems and other facilities (which used to be required on a weekly basis) now

may be made at the discretion of the licensee, but the licensee remains responsible for compliance with the Commission's technical requirements at all times. Rules 73.1580 and 73.1870.

- Making or supervising periodic field strength measurements required of AM stations.
- Generally supervising required entries in technical logs and records, including reviewing specifically the station's technical log or other technical records, and noting any discrepancies and corrective action taken. The Chief Operator also should sign the records after reviewing them and note the date of each review of any records where he or she did not make the entries personally.
- Making or supervising periodic measurements of the field strength of AM stations, as required by the FCC rules and the terms of AM station licenses.

J. REQUIRED RECORDS

1. STATION TECHNICAL LOG

Stations are required to keep only one official technical log under current FCC rules. These logs must be retained for two years. The prior rules that required separate program, operating and maintenance logs have been eliminated. Stations wishing to keep more records than the FCC requires are free to do so.

The log that still must be kept for technical information must include the following:

- Readings of transmitter parameters as may be required by the Commission's rules and the station's license. (Directional AM stations lacking FCC-approved sampling systems are required to take readings more often than other stations.)
- The receipt or transmission of any test of the Emergency Broadcast System (EBS).
- Records of any malfunction of antenna lights, including the time of reporting it to the FAA and of repairing it.
- Any other records required by the individual station's license.
- Any records required by the local Engineer-in-Charge of the local FCC Radio District (who may impose special requirements in the event of deficient operation or interference with another station).

2. EQUIPMENT PERFORMANCE MEASUREMENTS

AM and FM stations are required to make audio proof-of-performance measurements of all main and alternate main (but not auxiliary) transmitters at least once a calendar year, with no two sets of tests more than fourteen months apart. Additional tests must be made whenever a transmitter is modified or replaced, and within the four-month period preceding the filing of an application for renewal of license. Rules 73.1590 and 73.1690. AM stations also are required to measure spurious emissions.

TV stations do not have a set timetable for making audio proofs, but should make them often enough to ensure compliance with applicable technical standards. Also, these tests must be made upon modification or replacement of a transmitter.

Any qualified individual may conduct proof-of-performance measurements. Records must be kept of the data from the measurements, along with a description of the instruments and procedures used, the date the measurements were made and the signature of the person who made the measurements. Results of measurements must be retained in the station's *private* files for two years and must be furnished to the FCC upon request.

An NAB booklet entitled *Audio Frequency Proof-of-Performance Measurements* (E-405) is available from the NAB Science & Technology Department. It contains the text of the FCC rules governing audio proofs and a set of recommended test procedures.

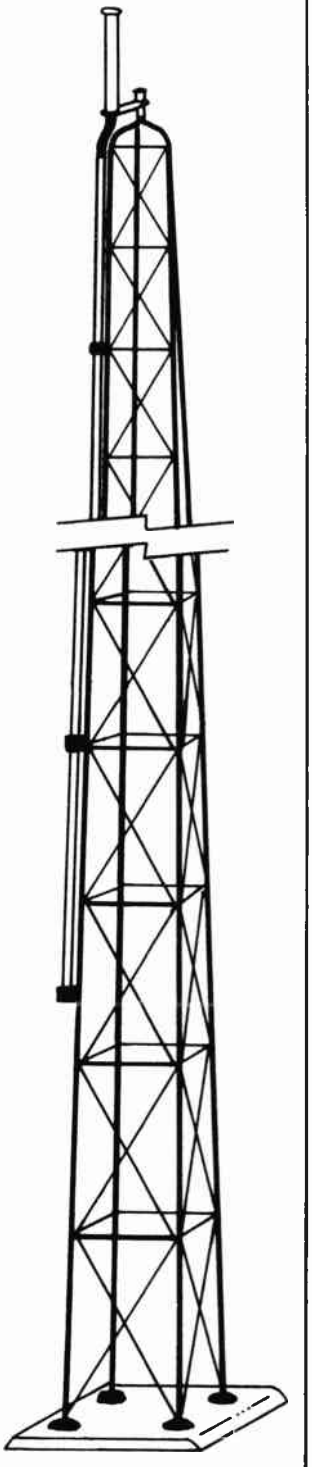
3. ANTENNA RESISTANCE MEASUREMENTS [AM]

The license of every AM station specifies an antenna resistance, which is one of the elements used in the formula to determine the power level at which the station is operating when power is measured by the direct method (the normal method of operation).

A station's antenna resistance may change for any number of reasons. One of the most common is a change in the tower structure, including the mounting of an additional antenna (even as small as a land mobile or remote pickup antenna) on the tower.

Whenever the antenna resistance changes, the licensee must begin determining power by the indirect method. It then must redetermine the resistance and report the results to the FCC in an application (FCC form 302 for commercial stations, or form 341 for noncommercial stations) for authority to resume measurement by the direct method. Rule 73.45.

The antenna resistance determination requires a discrete series of measurements over a band of frequencies, which then must be plotted on a graph. A person with technical experience generally is needed, although no FCC operator permit is required.



4. DIRECTIONAL ANTENNA PROOF-OF-PERFORMANCE [AM]

Directional AM stations from time to time must measure in different directions and distances from the transmitter the field strength of their signals to establish that the directional patterns of their signals are in fact what they are supposed to be under the terms of their licenses. There are three kinds of proof-of-performance measurements:

- **Complete proof.** This is the most comprehensive proof. It is required for a new station or for major changes or adjustments in an existing station. *See* Rules 73.151 and 73.186. It involves measurements on at least 20 points on each radial at distances specified in the FCC's rules.
- **Partial proof.** This series of tests is less comprehensive. It primarily is intended for comparison with the last full proof to determine if any changes have occurred. It requires only ten measurements on each radial at wider spaced distances.
- **Skeleton proof.** This is the least elaborate of the series. It involves at least three measurements on each of the radials established in the latest complete proof. It is used for verification of the validity of the monitoring points. Rule 73.154(b).

Periodic partial and/or skeleton proof-of-performance measurements are required for directional AM stations operating under certain conditions. Par-

ticularly, they must be done for remote control operation, in which case a partial proof must accompany an application for remote control authority, unless the station has an approved sampling system. Also, when sampling systems or antenna monitors are changed or replaced, a proof may be required. Rules 73.66, 73.68 and 73.69 spell out some situations in which proofs are required and the type of proof required in each instance.

K. STATION TECHNICAL SPECIFICATIONS

1. FREQUENCY MEASUREMENTS

Stations are required to maintain their frequencies within the following tolerances:

- AM: ± 20 Hz
- FM: ± 2 kHz
- Class D (10-watt) Noncommercial FM: ± 3 kHz
- TV: ± 1 kHz
- Low Power TV: ± 0.02%, ± 0.002% or ± 1 kHz. (*See* Rule 74.761.)

A licensee may measure the frequency of its station by any means and as often as it wishes, but the licensee is responsible for the station's remaining within the tolerances specified above at all times. Lack of knowledge of a deviation is not an excuse for noncompliance.

Common ways to measure frequency are by retaining an outside professional measuring service, measuring with a frequency counter or using a frequency monitor. (Frequency monitors at one time were mandatory but now are optional.)

The standard reference source for frequencies is a signal from the National Bureau of Standards transmitted on stations WWV, WWVB, WWVH and WWVL. Thus, any instrument used by a licensee to measure frequency should be calibrated against one of these stations. It particularly is important that a frequency monitor of the type formerly used by all stations be calibrated carefully and often, because it is likely to be less stable than a more elaborate professional measuring instrument.

2. STATION POWER

The transmitter output power of a broadcast station must be maintained as closely as possible to the licensed value, but must always remain within the following limits (Rule 73.1560):

- AM: 90%-105%
- AM (Pre-Sunrise or Post-Sunset): 0%-105%
- FM: 90%-105%
- TV: 80%-110%.

TV stations may maintain aural power at any level they choose, but at not more than 22% of visual power.

AM licensees must be careful to maintain power at the actual power level specified in their licenses, which may be less than the "nominal" power. For example, the license for a "1 kw" station may specify an actual power limit of 940 watts to protect other stations from interference.

3. FIELD STRENGTH [AM]

AM stations that operate with directional antennas are subject to limits on the strength of their signals in specified directions (known as "radials") from their transmitters. These limitations are spelled out on the station license.

Most directional stations are required to measure field strengths at monitoring points specified in their licenses once every 30 days. Some station licenses require more frequent measurements.

4. MODULATION

Broadcast stations must limit modulation as follows (Rule 73.1570):

- AM: 125% positive, 100% negative. (*Note*: The 125% is an absolute ceiling that may *never* be exceeded at any time on any peak. Automatic Transmission Systems [ATS] must maintain this limit. Rule 73.142.)
- FM: 100% (up to 110% for stereo FM stations transmitting subsidiary subcarrier services).
- TV: aural – 100% (*see* Rule 73.1570 for multichannel sound operation) visual – per Figures 6 and 7 of Rule 73.699.

5. MINIMUM HOURS OF OPERATION

All commercial broadcast stations must operate for a minimum number of hours a week. Rule 73.1740. For AM and FM stations, Sundays are exempt from the requirements. The required minimums are:

- Daytime AM: At least ⅔ of the authorized hours of operation between 6 a.m. and 6 p.m.
- Fulltime AM: At least ⅔ of the hours between 6 a.m. and 6 p.m., plus ⅔ of the hours between 6 p.m. and 12 midnight.
- FM: At least ⅔ of the hours between 6 a.m. and 6 p.m., plus ⅔ of the hours between 6 p.m. and 12 midnight.
- TV: At least two hours per day and 28 hours per week, not including test patterns or audio-only programming.

In emergency situations, daytime AM stations may remain on the air at night, and AM stations with different day and night facilities may use their daytime facilities at night, as provided in Rule 73.1250(f). Such operation is permitted, however, "only if unlimited time service from other stations is nonexistent, inadequate from the standpoint of coverage, or not serving the public need." Music may be used to fill in between emergency announcements, but no commercial matter may be broadcast when a station is operating with facilities in excess of those normally authorized.

6. TOWER LIGHTING AND PAINTING

Most station licenses require painting and lighting of the radio tower in a specified manner. Painting requirements specify alternate bands of white and

aviation orange in a certain pattern. *See* Rules 17.23 and 17.39-17.42. These rules specify color bands equal to approximately one-seventh the height of the tower with a maximum vertical length of 100 feet and a minimum vertical length of 1-1/2 feet. The top and bottom bands must be aviation orange. Towers over 100 feet must have two additional bands for each additional 200 feet in height.

Lighting specifications may require some fixed and some flashing red beacons or high intensity flashing strobe lights. Where strobe lights are used, painting is not required.

If a station's tower is less than 200 feet tall and is located far enough from the nearest aircraft landing area, it may be possible to have painting and lighting conditions removed from its license. The Antenna Survey Branch of the FCC's Field Operations Bureau may be contacted for further information. As a general rule, the FCC will go along with any relief agreed to by the Federal Aviation Administration (FAA).

If more than one station shares a common tower, the licensees of all users will have painting and lighting requirements. It is permissible, however, for all users to delegate responsibility for painting and lighting to one licensee. Agreements to that effect must be in writing and kept available for FCC inspection upon request. Rule 73.1213.

A publication entitled *Radio and Television Towers—Maintaining, Modifying and Managing* (E624: November, 1976) is available from the NAB Office of Science & Technology to assist stations with the requirements applicable to towers, including physical factors involved with AM directional arrays.

L. NOTIFICATIONS

Certain disruptions in normal operation and certain events during the construction of new and changed facilities require notice to the Commission. They include:

- Change of location of a *main studio* to a point within the community of license. *See* page V-20.
- Establishment or change of any *remote control point. See* page V-27. Directional AM stations generally require an application rather than just notice.
- Change of *mailing address*. Rule 1.5.
- **Tower lighting failure.** The failure of the light at the top of a tower or of any flashing beacon on a tower must be reported within 30 minutes of discovery to the nearest FAA Flight Service Station or other FAA office (not the FCC). Rule 17.48(a). The notification must include identification of the light that failed and when repair is expected.
- **Failure of required monitors or meters.** Where a required meter (including plate voltage, plate current, antenna current, output power meters and directional AM antenna monitors) fails and cannot be repaired or replaced within 60 days, the Engineer-in-Charge of the local FCC Radio District must be notified. Rule 73.3549. While the meter is out of service, an alternate means of measuring the required parameter must be used. If an AM antenna monitor is out of service, field strength measurements at monitoring points must be taken every seven days.

- **Minimum hours of operation.** If a station goes off the air altogether or is unable to maintain the minimum required hours of operation for its class (*see* page V-25), notification must be given to the FCC in Washington, D.C. on the tenth day. The FCC also must be notified when normal operation resumes. Within 30 days of non-complying operation, a written request must be made to the FCC in Washington, D.C. for authority to remain silent or to operate for fewer than the required hours, as the case may be.

- **Equipment and Program Tests.** During the construction of new or changed broadcast facilities, a station may begin *equipment tests* after giving notice to the FCC in Washington, D.C. Rule 73.1610. Equipment tests involve the transmission of test signals only, not regular programming.

  When equipment tests have been completed and a proof-of-performance has been successfully completed, *program tests* may begin. Rule 73.1620. Program tests include the transmission of regular station programming. Program test authority permits a station to broadcast normal programming, and remains valid unless and until modified or revoked by the FCC. The FCC has the right to modify or revoke program test authority without the right to a hearing. Complaints from the public concerning interference constitute the most common reason for FCC modification or cancellation of program test authority.

  Nondirectional AM and FM and *all TV stations* may begin program tests upon giving notice to the FCC in Washington, D.C. An application for license to cover construction permit must be filed within ten days after program tests begin.

  Directional AM and FM stations may not begin program tests until they file an application for license to cover construction permit, request program test authority in that application and receive an affirmative response from the FCC. An application for license by a directional AM station must include a directional proof as well as audio equipment performance measurements. An FM construction permit may contain a condition requiring the submission of similar data.

If at any time a licensee cannot comply with the FCC's technical rules due to circumstances beyond its control, then the licensee or its representative should contact the FCC's Mass Media Bureau (*see* Chapter VIII for FCC functional listings) for special instructions or special temporary operating authority.

M. REMOTE CONTROL AND EXTENSION METERING

When a transmitter is operated by direct control, the operator on duty must be able to see the transmitter and read its meters while performing his or her other duties. If the transmitter is located at a distance from the station's studios, the transmitter may be controlled from a remote location (including, but not limited to, the main studio). Nondirectional AM and all FM and TV stations may establish remote control points wherever they like as long as they are under the control of the licensee and protected from access by unauthorized persons, provided that all required control functions can be accomplished at each control point and the FCC in Washington, D.C. is notified of the location of each point. Directional AM stations must apply to the FCC for authority to establish remote control points.

At a remote control point, the operator on duty must be able to perform all the functions required of an operator on duty at the transmitter itself. In the event of failure of the remote control system, the transmitter must be shut off immediately. If meter readings are lost or detected as inaccurate, and if the malfunction cannot be corrected within one hour, the station must go off the air. Rules 73.67(a)(3), 73.273(a)(3) and 73.676(a)(3).

The FCC currently (Summer 1984) has its remote control rules under review in a rulemaking proceeding which proposes to reduce the number of functions the operator must be able to perform at a remote control point and increase the grace period an operator has within which to reach the transmitter in the event of remote control equipment failure. The proposals also would allow any wireline or radio technology to be used to transmit data in either direction between the transmitter and remote control point.

If the transmitter is in the same building where an operator is on duty and the operator on duty cannot readily observe the transmitter (for example, where the studio and transmitter are on different floors [one floor above or below] of the building), then extension metering may be used. With extension metering, each required transmitter parameter is displayed by a separate meter at the extension location, which is hard wired to the transmitter itself. No prior consent from or notification to the FCC is required for such installation and use. Rule 73.1550.

N. EMERGENCY BROADCAST SYSTEM

Rules 73.901-73.962 govern the Emergency Broadcast System (EBS). To participate effectively in the EBS and to meet the FCC's requirements, all broadcast stations should retain the following materials:

- EBS Checklist* (to be available at broadcast operation locations);
- FCC Special Instruction Card (to be posted at AP/UPI teletype machines);
- EBS Authenticator List – Red Envelope (issued every January 1 and July 1 and effective only for the current six-month period);
- State EBS Plan (including the State Relay Network and Operational Area maps indicating monitoring assignments);
- Local Operational Area EBS Plan;
- FCC EBS Rules and Regulations (Subpart G, Part 73); and
- List of State and Operational Area chairmen.

All materials listed above can be obtained from the Emergency Communications Division, FCC, Washington, D.C. 20554, (202) 634-1600.

In addition, all radio and TV licensees must:

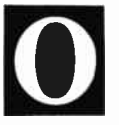
- INSTALL an EBS encoder and decoder at a normal duty station for the purpose of generating and receiving EBS tests and activations (co-located stations need only have one set of equipment and ten-watt educational FM stations need only have a decoder);

*There are two types of EBS checklists – one for participating stations and another for non-participating stations. Those stations in possession of an EBS authorization are designated as participating stations and are to remain on the air during a national level EBS activation. Non-participating stations go off the air. The EBS Checklist summarizes instructions and procedures that stations should follow during national, state and local EBS tests and activations.

- CONDUCT a weekly on-the-air EBS test at random times and days between the hours of 8:30 a.m. and local sunset;*
- MONITOR at least one other broadcast station (preferably the station designated in the state or local EBS plan) to receive that station's national, state and local EBS tests and activations;
- LOG (in the station operating log) transmission and receipt of all EBS tests and activations;
- ENSURE that station personnel are familiar with national, state and local EBS procedures – as described in the FCC's Rules, EBS Checklist and state and local EBS plans; and
- INVESTIGATE any failure to receive the weekly EBS test.

The EBS can be used successfully if all broadcasters understand the rules concerning the system's operation.

O. OTHER TECHNICAL REQUIREMENTS



1. "TONE CLUSTERS" AND OTHER AUDIO ATTENTION-GETTING DEVICES

In response to numerous inquiries, the Commission issued a Public Notice on July 2, 1976, concerning the propriety of transmitting audio tones to gain attention of listeners and viewers for important news bulletins, local weather announcements and other situations that may call for the interruption of regularly scheduled programming but do not warrant the activation of the state or local Operational Area Emergency Broadcast System (EBS). The Commission stated that it has no objection to the use of such tones provided they are removed from the audio tones used for EBS interstation signaling (853 and 960 Hz) and not "presented, tested, announced or promoted in a way that confusion with the EBS would be created in the minds of the public."

The Notice stated that in keeping with the Commission's policy against the use of broadcast frequencies for strictly point-to-point communications, any use of such tones for receiver control purposes must be *secondary* to the basic purpose of informing the general public using conventional receivers. This means that the use of audio tones as an attention-getting device must be of primary benefit to the general public, and of only incidental benefit to persons with special circuitry receivers designed to demute upon transmission of the particular audio tones employed.

2. VISUAL CAPTIONING OF EMERGENCY MESSAGES [TV]

Television stations must provide visual captioning and companion aural announcements of EBS messages as a service to the deaf. Rule 73.1250(h). Television licensees may use any method of visual presentation that results in legible messages conveying the essential information. Simultaneous transmission of visual and aural emergency information is not required, but if the visual notification is delayed, it should not be unreasonably delayed so that a

*A recent change in the FCC's rules now permits stations to participate in a state or local coordinated EBS test once per month *in lieu* of a weekly test.

hearing impaired person would not have time to take reasonable and constructive precautions with regard to the emergency. Where EBS has not been activated, only visual captioning need be provided.

Licensees broadcasting primarily in a foreign language are required to transmit emergency information visually in both English and the foreign language. The Commission concluded that aural transmission is not necessary because the blind may receive this information via radio.

P. LOW POWER TELEVISION

In 1982, the Commission voted to establish a low power television (LPTV) service to provide new broadcast programming and ownership opportunities. The service is designated to operate on a secondary non-interference basis to full-service TV stations.

Except for strict compliance with technical standards to minimize radio frequency interference, the LPTV service essentially is unregulated, based on the Commission's belief that marketplace forces should dictate such operational aspects as programming in a new service whose viability is undetermined.

The distinction between translators and low power stations is that the former rebroadcast a full-service station's signal while the latter *may* originate programming, but are not required to originate at all or to build studio facilities. Low power broadcast is defined in the FCC's rules.

There are no ascertainment obligations or program log requirements imposed on low power television service licensees; however, maintenance logs must be kept. Subscription television (STV) carriage is permitted, and carriage of low power television stations by cable systems is not mandatory.

The broadcast of obscene material and lotteries is prohibited. Low power stations have Fairness Doctrine obligations and must provide reasonable access for legally qualified candidates for federal elective office in relation to the station's origination capacity. Translators and low power stations also are subject to copyright laws and must obtain rebroadcast consent.

Appendix V-N contains the FCC's fact sheet that more fully outlines the LPTV rules. A *Notice of Proposed Rule Making* in MM Docket No. 83-1350 (FCC 93-593), released December 23, 1983 may affect the processing procedures for low power television and television translator applications.

Q. FM SUBCARRIER OPERATION

FM stations are permitted to use subcarrier technology to take advantage of the full capacity of the spectrum bandwidth for which they are licensed. Technologically, a subcarrier is created by modulating that portion of the total channel bandwidth not needed for the main audio service of the station. Subcarrier technology is used to create stereo sound on FM stations but also may be used for other purposes, including audio, data or slow-scan video services. Subcarrier signals other than standard stereo cannot be received by ordinary

FM receivers, but, rather, require special receivers tuned to both the station and the subcarrier channel desired.*

In May 1983, in BC Docket No. 82-536, the FCC eliminated most restrictions on the use of FM subcarriers. No prior authorization from the Commission is needed any longer for subcarrier transmissions, unless the activity involved is legally classified as common carriage (*see* below). In all other respects, the former regulation requiring application for a subsidiary communications authorization (SCA) has been eliminated. There are no specific technical standards for subcarrier operation, except for standardization of stereo sound, a total bandwidth limitation of 99 kHz, a limit of twenty percent modulation for all non-stereo subcarriers taken together and a prohibition against interference to any other radio station or service. There also are treaty restrictions that further restrict the subcarrier bandwidth available to stations within 199 miles of the U.S.-Mexican border.

Licensees of both commercial and noncommercial educational FM stations** may provide subcarrier services in a broadcast or non-broadcast mode and may provide services themselves or may lease capacity to others. If the activity involved is legally classified as common carriage, the licensee must obtain prior authority from the FCC's Common Carrier Bureau and also may have to obtain state authorization to operate. If the activity is private in carriage, notice must be given to the FCC's Private Radio Bureau in Gettysburg, Pennsylvania. State regulatory agencies may not prohibit FM stations from providing common carrier services via subcarrier signals.

R. AM CARRIER OPERATION

It is possible to transmit data not discernible by users of ordinary receivers on AM stations as well as FM stations, by methods such as quadrature modulation of the AM carrier or by subaudible tones. The quadrature modulation scheme is similar to that used to switch the receiver to operate in some AM stereo systems.

The Commission's rules authorize AM carrier operations for utility load management purposes only, but a rulemaking proceeding is pending (Summer 1984) that proposes removing restrictions on the purposes for which signals are used.

AM carrier operation requires no prior authority from the FCC, although if the proposed rules are adopted, the same common carrier and private carrier rules that apply to FM stations will apply to AM stations (*see* previous section). An exciter for AM carrier operation need not be type accepted and will not void the type acceptance of a station's transmitter if it is designed for use with that transmitter and the transmitter is not modified electrically or mechanically when the new exciter is installed.

No specific technical standards have been adopted for AM carrier signals, but they are subject to a general restriction of not degrading the station's broadcast service and not causing interference to any station in any radio service.

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*The FCC recently granted a request for declaratory ruling allowing the manufacture, sale or lease of a self-tunable SCA receiver.

**Noncommercial educational FM stations are permitted to use their subcarriers to offer commercial services.

S. TV TELETEXT

Teletext is a means for transmitting data signals over a TV station, using the vertical blanking interval of the picture (the black line that is visible when the vertical hold on a receiver is out of adjustment). It can be used to transmit any kind of information, from electronic print displays of news and sports scores to computer software.*

In March 1983, the Commission authorized teletext operation by television stations.** It adopted no specific system standards, leaving it to the marketplace to select one or more systems for use. Instead, there are broad operating limits, such as the maximum intensity of the signal and a restriction against interference with the main program service of the host TV station or with any other station. In addition, teletext currently may be transmitted only on lines 14-18 and 20 of the vertical blanking interval. Over a period of years, lines 10-13 will be made available, as older receivers that might receive interference if those lines are used are retired.

Line 21 of the vertical blanking interval is used to transmit closed captions for the hearing-impaired and is precluded from general teletext use until 1988.

There are no restrictions on the kinds of material that may be transmitted via teletext, provided that it is intended for visual display, although a *Notice of Proposed Rule Making* concerning the visual display limitation is pending.* Licensees may provide teletext services themselves or may lease their facilities to others. Where teletext operations are deemed common or private carriage, the same prior application or notification requirements that apply to FM stations apply to television stations. (*See* page V-31.)

The FCC has declined to require cable television systems to carry teletext offerings by broadcast stations. However, a petition for reconsideration of this decision is pending (Summer 1984). In addition, the FCC does not restrict cable systems from offering their own teletext services.

Public television stations are not restricted from carrying commercial material in the teletext mode. There are no restrictions on any station as to whether teletext may be offered free to the public or on a subscription basis.

T. STEREOPHONIC SOUND

1. AM STATIONS

AM stations may offer stereophonic audio service to the public without prior authority from or notice to the Commission.

There are minimum uniform technical performance standards for AM stereo, and at least four systems are available on the market. AM stereo exciters must be type accepted by the Commission's Equipment Authorization

*On March 8, 1984, the Commission released a *Notice of Proposed Rule Making* in MM Docket 84-168 (FCC 84-50), 49 Fed. Reg. 10556 (March 21, 1984), in an action intended to increase development of vertical blanking interval technology. Specifically, it seeks comments on its proposal to authorize any television station to offer any data transmission services (*i.e.*, paging, raw data transmission and computer software) on the vertical blanking interval either on a private or common carrier basis.

**_Report and Order_, 53 Rad. Reg. 2d (P&F) 1309 (1983).

Branch prior to use – an authorization that is generally obtained by the manufacturer, rather than the station licensee.

2. FM STATIONS

FM stations also may offer stereophonic audio service to the public without prior authority from or notice to the Commission.

In contrast to AM radio, there is a single uniform FM stereo system that uses a 19 kHz subcarrier for a pilot light signal and centers a stereo subcarrier channel at 38 kHz. FM stereo exciters must be type accepted by the Commission's Equipment Authorization Branch prior to use. Generally, the manufacturer will apply for such type acceptance.

3. TELEVISION (Multichannel Sound)

The Commission adopted very general technical rules that allow the television aural baseband to be used for television sound, second language programming and any other broadcast or non-broadcast uses.

Under the new rules, the Commission will:

- allow for marketplace competition in multichannel sound (MTS) services, but protect the frequency used for the pilot carrier that activates the industry-recommended BTSC MTS system;
- permit noncommercial educational stations to use their non-public subcarriers commercially;
- encourage non-broadcast use of subcarriers, such as paging, but require coordination with the appropriate FCC bureaus; and
- not apply the Fairness Doctrine or other equal opportunities provisions of the Communications Act to subcarriers that require special (non-consumer) equipment to be received.

The question of whether cable television systems will be required to carry the stereophonic audio, second audio program channel or other ancillary services will be considered in a Further Notice of Proposed Rule Making.

CHAPTER VI:

CABLE TELEVISION RULES GOVERNING BROADCAST SIGNAL CARRIAGE

The FCC administers complex rules governing the carriage of commercial television broadcast signals by cable television systems. These rules are set forth in Part 76 of the Commission's rules. Although the Commission has relaxed portions of its cable television rules by deleting its distant signal limits and syndicated program exclusivity protections, the rules governing mandatory carriage of certain local signals ("must carry" rules) and non-duplication of network and certain sports programming remain.

The rules differ depending on the size of the market in which the cable system is located (a 35-mile specified zone). Specifically, they differentiate among the top 100 markets, the smaller television markets (hundred plus [100+] markets) and areas outside all television markets. The top 100 markets are considered as "major television markets" for must carry purposes. Stations should consult the market rank listing established by the Commission in 1972 (Appendix VI-A) to identify what market size category they fall into in order to determine which rules will apply to cable systems in their markets. The Commission's market rank listing for purposes of the cable television rules is not revised annually. It may be revised only through a rulemaking proceeding, which procedure generally has been used to add a new 35-mile specified zone to an existing market. There have, of course, been significant changes in the actual top 100 markets since 1972, but the rules apply on the basis of the 1972 list rather than current realities.

While at first glance these rules may appear difficult to work with, they are relatively easy to understand once the market category is determined. The outline format that follows is designed to simplify the maze of cable television rules governing broadcast signal carriage, non-duplication and carriage of sports events.

In using the outline, keep in mind that, although the Commission defines a cable system in terms of common ownership or control and technical integration (namely, the head-end concept) rather than community boundaries, the signal carriage rules apply on a community-by-community basis. Thus, a cable system with one head-end serving three communities is regarded by the Commission as one cable system with three "system community units." Discrete unincorporated areas are considered separate community units. Consequently, there may be more than one unit in a large, populous county.

The must carry rules apply to the individual community or "system community unit" and may affect each system community unit differently. For this reason, a station may be entitled to carriage in *some* communities served by a single cable system, but not in others. For example, a single cable system serving two communities, one within a station's market (35-mile specified zone) and one outside the specified zone, would be obliged to carry market signals in the system community unit within the specified zone but, in certain cases, not the signals in a system community unit located outside the specified zone. As noted in the following outline, a station's right to carriage may depend not only on its market but also, in certain circumstances, on its predicted signal strength contour or its inclusion on the FCC's official list of significantly-viewed signals. The relevant question for each station is not necessarily what systems must carry its signal but, rather, what *community units* must carry its signal.

In some cases, a system community unit's obligations under the rules depend on whether a television station's predicted Grade B contour encompasses a particular community. As of August 26, 1977, all references to predicted dicted signal strength contours in the cable television rules are to the predicted contours as determined by the revised propagation curves adopted by the Commission in 1975. Formerly, the cable rules had continued to refer to the predicted contours as determined by propagation curves adopted by the Commission in 1952 and amended in 1970. The predicted contours based on the 1970 curves continue to be used to determine certain "grandfather" rights. Thus, to avoid confusion, the contours based on the 1975 curves will be referred to as the "revised" contours, and the contours based on the 1970 curves will be referred to as the "former" contours.

A. REQUIRED CARRIAGE [TV]

1. TOP 100 MARKET STATIONS

Top 100 market stations (considered as major television markets for must carry purposes) must be carried upon request of the station licensee by cable system community units:

- Located wholly within the station's 35-mile specified zone.
- Located partially within the station's 35-mile specified zone, unless the cable community is a designated community of another top 100 market.

- Located within the 35-mile specified zone of another community that is a designated community of the same top 100 hyphenated television market. For example, a San Francisco station must be carried upon request within the 35-mile specified zones of Oakland and San Jose as well as San Francisco, because Oakland and San Jose both are designated communities of the San Francisco-Oakland-San Jose hyphenated market.
- Located wholly or partially within the revised Grade B contour of the station but outside the 35-mile specified zones of all television markets, unless the cable community is located wholly or partially inside the 35-mile zone of any other commercial television station's community of license.
- Located within the former Grade B contour of the station, provided the cable system was carrying or authorized to carry the station and was subject to a valid request for mandatory carriage from the station before August 26, 1977.
- Located in counties in which the station is listed by the Commission as significantly viewed. *See* Appendix B to the *Memorandum Opinion and Order on Reconsideration of Cable Television Report and Order*, 36 F.C.C.2d 378 (1972).
- In which an appropriate independent professional audience survey shows that the station is significantly viewed. *See* Rule 76.54.*

2. SMALLER MARKET STATIONS

Smaller (hundred plus [100+]) market stations must be carried upon request of the station licensee on cable system community units:

- Located wholly or partially within the station's 35-mile specified zone.
- Located wholly or partially within the 35-mile zone of other communities generally considered to be part of the same hundred plus television market. For example, a Burlington, Vermont, station must be carried upon request within the 35-mile specified zone of Plattsburg, New York, as well as Burlington, because Plattsburg is considered part of the same market. (This parallels the hyphenated market rule for major television markets. Smaller hyphenated markets can change without the rulemaking procedure required in major market stations.)
- Located wholly or partially within the revised Grade B contour of the station but wholly outside the 35-mile specified zone of any top 100 television market.
- Located wholly or partially within the former Grade B contour of the station, provided the cable system was carrying or authorized to carry the station and was subject to a valid request for carriage from the station before August 26, 1977.
- Located in counties in which the station is listed by the Commission as significantly viewed.
- In which an appropriate independent professional audience survey shows that the station is significantly viewed. *See* Rule 76.54.

*New stations that began broadcasting after this list was compiled may establish that they are significantly viewed on a county-wide basis. Then existing stations may establish significantly viewed status on a system-wide or community-unit basis.

3. EDUCATIONAL TV (ETV) STATIONS

Educational TV (ETV) stations must be carried upon request by all cable system community units:

- Located within their revised Grade B contours.
- Located within their former Grade B contours, provided the system was carrying or authorized to carry the station and was subject to a valid request for mandatory carriage from the ETV station in question before August 26, 1977.
- Located within the ETV station's 35-mile zone but outside all television markets.

4. TRANSLATORS

Translators of 100 watts or higher power serving the cable community and educational TV translators of 5 watts or higher power serving the cable community must be carried upon request, *except*:

- A cable system that is carrying the signal of the originating station or is located, in whole or in part, within the revised Grade B contour of another station carried by the system, the programming of which would be substantially duplicated by the translator (*e.g.*, an affiliate of the same network), is not required to carry such translators.
- Cable systems that commenced operation on or before March 30, 1972, are not required to carry educational TV translators.

5. SATELLITE STATIONS

Satellite stations are entitled to the same carriage rights as regular television stations, except that a cable system located either in whole or in part within the Grade B contours of both a satellite and its parent station is given the option of carrying either the satellite or the parent.

6. MANNER OF CARRIAGE

Stations that are required to be carried upon request must be carried:

- Without material degradation in signal quality.
- On the channel on which the station transmits, unless technically infeasible.
- Only on one channel (except when the station is receiving non-duplication protection), if so requested by the station.
- Without deletion or alteration of any portion of any particular program.* Rule 76.55.

*A cable system must carry any television program in its entirety (including all commercial messages), even if the station from which the program originally is broadcast has no must carry rights.

7. DEFINITIONS AND OTHER MATTERS

- The "35-mile specified zone" consists of the area extending 35 air miles from the reference point of the station's community as listed in the Commission's rules. Rule 76.53. Where no reference point is given, the geographic coordinates of the main post office in the station's community of license should be used.
- The revised Grade B contour is the field intensity contour defined in Rule 73.683(a) of the rules as amended on May 29, 1975. As of August 26, 1977, all references to the Grade B contour in the cable television rules are to the *revised* Grade B contour.
- The former Grade B contour is the field intensity contour defined in Rule 73.683(c) as adopted in 1952 and amended in 1970. Until August 26, 1977, all references to the Grade B contour in the cable television rules were to the former Grade B contour.
- "Significantly viewed" means for full or partial network stations a weekly share of at least 3% and net weekly circulation of at least 25% in non-cable households. For independent stations, it means a weekly share of at least 2% and a net weekly circulation of at least 5% in non-cable households.
- Stations must request carriage in order to be entitled to carriage under the rules.
- Stations must request on-channel or single-channel carriage in order to be entitled to such carriage under the rules.
- Low power television (LPTV) stations are not required to be carried.
- Effective in 1981, the Commission repealed its rules limiting the "distant" signals cable systems could carry in addition to "must carry" signals. However, carriage of signals that would not have been permitted under the "distant signal" rules may subject a system to increased copyright royalty fees.
- The Commission's "must carry" rules were under review by the United States Court of Appeals for the District of Columbia Circuit when this publication went to press. The court had remanded the case to the FCC, while still retaining jurisdiction over it. *See Quincy Cable TV v. FCC*, No. 83-1283 (D.C. Cir. Mar. 30, 1983).

B. NON-DUPLICATION AND PROGRAM EXCLUSIVITY (SPORTS BLACKOUTS) [TV]

1. NETWORK PROGRAM NON-DUPLICATION PROTECTION

a. Cable Systems on which a Station is Entitled to Protection

- **Top hundred market stations** are entitled to protection on all cable system community units comprising all or part of a cable system with 1,000 or more subscribers which are located within the station's 35-mile market zone.
- **Smaller (hundred plus) market stations** are entitled to protection on all cable system community units comprising all or part of a cable system with 1,000 or more subscribers which are located within a 55-mile radius zone measured from the market's reference point (namely, the 35-mile "primary zone" plus 20 miles).

b. Programs for which a Station is Entitled to Protection

- Generally, programs supplied by a national or regional,* commercial or noncommercial television network and transmitted by a cable system simultaneously with the local station's broadcast of the programs must be accorded non-duplication protection upon proper notification (*see* page VI-7) if:
  - For *top hundred market* stations, the cable system community unit is located within the 35-mile zone of the local station but not within the 35-mile zone of the station transmitting the duplicative network program.
  - For *smaller (hundred plus) market* stations:
    1. The cable community unit is located within the 35-mile zone of the local station, but not within the 35-mile zone of the station transmitting the duplicative network program.
    2. The cable system community unit is located outside the local station's 35-mile "primary" zone but inside its 55-mile "secondary" zone, and not within either the 35- or 55-mile zone of the station (including both top hundred and hundred plus market stations) transmitting the duplicative network program.

  (*See* Appendix VI-B for illustrations of the operation of the rule.)

- Exceptions:
  - If the station broadcasts the program in black and white, a cable system need not provide protection when the lower priority station broadcasts the program in color.
  - Cable systems need not provide non-duplication protection for one hour following the scheduled completion of a live sporting event broadcast by either the local station or another distant station retransmitted by the cable system.
  - Cable systems need not delete duplicative network programming carried on a station that is listed as significantly viewed in the county in which the cable system is located or is shown to be significantly viewed in the community of the cable system by an appropriate independent professional audience survey. *See* Rule 76.54.
  - The FCC generally will recognize and give full effect to private agreements between television stations and cable systems providing for different kinds of non-duplication protection. However, this is true only in so far as these agreements do not violate another FCC rule or the public interest. For example, an agreement to black out distant significantly viewed signals would not be enforced by the Commission. *See* Rule 76.92(g).

c. Translators

- Translators of 100 watts or higher power are entitled to non-duplication protection on cable systems located in the translator's community of license, if the station the translator is retransmitting places a Grade B contour over the cable community and if the reference point of the station to be deleted is more than 55 miles from the cable community.

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*The most common regional networks are regional sports networks.

- A cable system located in whole or in part within the specified zone of any television broadcast station or within the secondary zone of a smaller market station is not required to delete the duplicated network programming of a 100 watt or higher power station that is licensed to the cable system's community.

d. Notification Requirements

A station is not entitled to protection unless it gives appropriate written notices to the cable systems upon which it is requesting protection.

- Information to be included in the notice:
  - –The day, date and beginning and end times of the program to be protected.
  - –The day, date and beginning and end times of the program to be deleted.
  - –The call letters and channel numbers of the station on which the duplicated program is carried.
- When a station must notify a cable system of its request for non-duplication protection:
  - –At least monthly, no later than six days before the calendar month for which protection is requested, or, in the alternative,
  - –Weekly, no later than the Monday preceding the calendar week (Sunday through Saturday) for which protection is requested.
  - –Changes in monthly notification requests must be submitted six days prior to the broadcast of the program to be protected.
  - –In the event of changes which render non-duplication protection unnecessary, the station requesting protection must notify the affected cable system as soon as possible.

(A sample network exclusivity request form is attached as Appendix VI-C.)

e. Same Day Non-Duplication Protection

When, pursuant to a grant of special relief, a station is entitled to same day, rather than simultaneous, non-duplication protection, the following limitations apply:

- Non-duplication protection need not be provided if it would leave available for cable retransmission the programs of only one network.
- A cable system need not delete a program retransmitted in prime time (6-11 p.m. Eastern time) if the station requesting protection broadcasts the program in whole or in part outside the prime time period for the time zone involved.

2. CARRIAGE OF LIVE SPORTS EVENTS

A cable system located in whole or in part within the 35-mile specified zone of a broadcast station may not carry a live broadcast of a sports event that is taking place in the community to which the station is licensed if the sports event is not broadcast by a station that the cable system is required to carry.

If no television station is licensed to the community in which the sports event is taking place, the applicable specified zone is that of the television station licensed to the community with which the sports event or local team is identified or, if neither is identified with a particular community, the nearest community to which a television station is licensed.

Cable systems are not required to delete sports broadcasts from stations lawfully carried by the system prior to March 31, 1972.

a. Notification Requirements

- The request must be made by the holder of broadcast rights to the event or its agent. A station that holds broadcast rights to a local team's games need not have the rights to broadcast each particular game in order to request protection. For example, a station holding broadcast rights to the games of the local baseball team but which is not permitted to broadcast weekday night home games, may request that local cable systems not carry the local weekday night games on distant signals. However, protection would not be available to other stations in the same community which hold no broadcast rights to the local team's games.
- Requests to delete sports broadcasts must include the following information:
  - For deletion of programs from signals normally carried by the cable system:
    1. Name and address of the requesting station.
    2. The date, time and expected duration of the sports event.
    3. The call letters of the station from which the deletion is to be made.
  - For deletion of programs from broadcast signals not regularly carried by the cable system:
    1. The name and address of the requesting station.
    2. The date, time and expected duration of the event.
- Time of notification:
  - As to regularly scheduled events, notice must be received by the cable system no later than the Monday preceding the calendar week (Sunday through Saturday) during which the program deletion is to be made.
  - As to events not regularly scheduled or revisions to prior notices, notice must be received by the cable system 24 hours after the time the telecast to be deleted is known, but never later than 24 hours before the event is to be broadcast.

C. CABLE CARRIAGE OF RADIO SIGNALS [AM-FM]

The Commission has no rules governing cable carriage of radio signals. Radio signals that are carried usually are listed on the cable operator's Form 325, Schedule II.

D. COPYRIGHT ROYALTY DISTRIBUTION

Under the Copyright Act of 1976, cable systems have a compulsory license that allows them to carry distant television signals without the permission of, or direct payments to, the television stations being carried. The com-

pulsory license requires that cable systems pay royalties into the U.S. Treasury each year based upon semi-annual statements of account that they must file with the U.S. Copyright Office. Smaller cable systems pay a flat fee or a percentage of their revenues regardless of how many broadcast stations they carry, but for larger cable systems, the amount of these royalties depends on the number of distant signals carried.

The Copyright Act gives the Copyright Royalty Tribunal (CRT)* two functions with respect to these royalties: (1) to adjust the rates every five years for inflation and whenever necessary to reflect changes in the cable television rules of the FCC; and (2) to distribute the royalties collected each year after conducting an annual proceeding to determine which claimant groups (such as broadcasters, movie producers and professional sports leagues) should get how much of the total.

The Copyright Act required cable systems to start paying royalties for distant signal carriage in 1978, the first year for which the CRT had to decide how to divide what was collected. The 1978 proceeding finally was concluded in 1982. The 1979, 1980, 1981 and 1982 proceedings were pending when this publication went to press, and the 1983 proceeding will start before the end of 1984.

To be potentially eligible to receive royalties for a given year, radio and television stations must have been carried as a distant signal by at least one cable system during the year in question. In addition, such radio and television stations must file royalty claims with the CRT by July 31 of each year in order to be eligible to receive royalties for the previous calendar year; for example, royalty claims for distant cable carriage in 1983 must be filed with the CRT by July 31, 1984. Claims must include examples of carriage as a distant signal and other information. Details as to how to file may be obtained from the CRT ([202] 653-5175) or from the NAB Legal Department ([202] 293-3560).

The NAB has served as representative to many radio and television stations which have authorized NAB to represent them in the CRT proceedings. Royalties collected by NAB from the CRT are distributed by NAB only to those stations that have filed claims with the CRT and have authorized NAB to represent them and to deduct a share of the expenses of the representation. Stations also have the option of representing themselves before the CRT.

*The CRT is a small federal agency created by the Copyright Act. At full strength it has five commissioners appointed by the President, though at this writing there were legislative proposals to reduce the number of commissioners to three.

CHAPTER VII:

REGULATION OF NONCOMMERCIAL EDUCATIONAL BROADCASTERS

Noncommercial educational, or public, broadcasters are generally subject to the same regulatory and statutory requirements as their commercial counterparts. They are required to maintain logs, to file most of the same reports and to obtain prior FCC authorization for construction of facilities and licensee transfer of control. They also are subject to the same equal time and fairness rules. The major differences in the regulatory and statutory treatment relate to the limitations on the eligibility of entities to hold noncommercial authorizations and the requirement that they provide a nonprofit, noncommercial service. In addition, public broadcasters are subject to several restraints and obligations as a result of their receipt of financial assistance from the Corporation for Public Broadcasting (CPB). Set forth below are the unique requirements imposed on public broadcasters, followed by a brief outline of the other differences between the regulatory treatment of public broadcasters and commercial broadcasters.

A. ELIGIBILITY

Under Rules 73.503 and 73.621, noncommercial educational stations:

> will be licensed only to nonprofit organizations upon a showing that the proposed station will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service.

These rules establish three classes of eligible licensees: (1) educational institutions, such as colleges, school boards and similar *bona fide* instructional institutions; (2) nonprofit, educational organizations, such as nonprofit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code; and (3) municipal corporations where there is no independently constituted educational organization responsible for the municipality's educational program. Religious organizations are eligible to hold noncommercial licenses if the operation of the station is part of the educational, as distinguished from the religious, aspects of the organization's activities. The Commission will review the programming proposals of religious organizations to ensure that this test is met. It also will look at the programming proposals of nonprofit organizations to ensure that they are proposing an educational program schedule. While the Commission requires that these programs be educational, it takes a relatively broad view of that term, and the term includes education in the broadest sense – not merely instructional programming.

B. PROGRAM SERVICE MUST BE NONPROFIT AND NONCOMMERCIAL

For many years, the Commission did not define precisely what it meant by a nonprofit, noncommercial service. As a result, questions arose as to whether stations could acknowledge on the air contributions from corporations and others or whether they were required to do so under Section 317 of the Act and Rule 73.1212. In 1980, after a prolonged proceeding, the Commission adopted its "consideration received" rule which permitted public broadcasters to acknowledge contributors and to make other announcements as long as the public broadcaster did not receive consideration, directly or indirectly, for the making of the announcement. In 1981, Congress enacted the Public Broadcasting Amendments Act which permitted public broadcasters to make nonpromotional announcements concerning contributions that they receive, but prohibited the broadcast of certain advertisements. These statutory provisions were incorporated into the Commission's "consideration received" rule.

1. THE "CONSIDERATION RECEIVED" RULE

The "consideration received" rule prohibits any noncommercial station from broadcasting promotional announcements on behalf of a for-profit entity when the station either receives, or reasonably anticipates receiving, consideration for the broadcast of the announcement. For purposes of this rule, "consideration" means anything of value provided to the licensee, its principals or em-

ployees, including programming material and funds, and services or goods used for programming (*e.g.*, studio equipment, props for sets, costumes, travel, etc.).

Both express and implied agreements to broadcast promotional announcements for consideration are forbidden and the FCC will look at the circumstances surrounding the transaction to determine whether an implied agreement exists. For example, when an announcement promoting the goods or services of a for-profit entity is closely preceded or followed by a donation from that entity, the FCC may inquire as to whether the "donation" was actually consideration for the announcement. On the other hand, an announcement acknowledging the free or discounted use of commercial premises for remote broadcasts, fundraising activities and other purposes would not be prohibited. However, excessive promotion of the establishment making the contribution might be viewed as evidence that an agreement for such promotion exists. Of course, any use actually conditioned on promotion of the commercial enterprise by the licensee is prohibited.

When no consideration is received, or anticipated, licensees may broadcast any promotional announcement they believe is in the public interest. Public broadcasters may make announcements concerning community events and may promote participation in various activities, even if run by a profit-making entity.

2. ANNOUNCEMENTS ON BEHALF OF OTHER NON-PROFIT ORGANIZATIONS

The "consideration received" rule does not apply to promotional announcements made on behalf of nonprofit organizations, including announcements promoting fundraising activities. Therefore, stations may broadcast promotional announcements for nonprofit organizations. A station may not, however, substantially alter or suspend regular programming in order to engage in fundraising activities on behalf of any entity other than itself. Thus, noncommercial licensees may not broadcast auctions or other fundraising programs for other nonprofit organizations.

3. PROMOTION OF STATION-RELATED GOODS AND SERVICES

Because noncommercial broadcasters may promote goods, services and activities of non-profit entities, they may promote their own goods, services and activities whether or not they are program related. Such announcements, however, are subject to the general FCC policy prohibiting a licensee from using its facilities primarily for its private economic interest rather than the public interest. Thus, incessant announcements promoting the sale of goods for the station's benefit could pose a problem.

4. DEFINING "DONOR ANNOUNCEMENTS"

What constitutes a "donor announcement" is, in the first instance, left to the good faith discretion of the public broadcaster. The FCC will act only where the licensee acts unreasonably. Donor announcements may not include qualitative or comparative language. However, the Commission does allow the broadcast of specific brand or trade names and product or service listings. *See Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations* in Docket No. 21136 (FCC 84-105), 49 Fed. Reg. 13534 (April 5, 1984).

Donor acknowledgments may include:

- a logogram or slogan that identifies but does *not* promote the donor;
- the donor's location;
- value neutral descriptions of the donor's product line or service; and
- the donor's trade name(s), product or service listings that aid in identifying the donor.

5. GENERIC UNDERWRITING CREDITS

Where a program is sponsored by a few major contributions and numerous minor contributions, public broadcasters may specifically identify the major contributors and generally acknowledge the others, provided such announcement contains a statement advising the public that a complete list of contributors is maintained and available from the station or program distribution entity, PBS, CEN, etc. Such an underwriting credit might read: "Major funding for this program has been provided by XYZ, Inc. and ABC Company. A number of small grants have been made by various businesses, groups and individuals. A list of all contributors is available from this station." A determination of the substantiality of contributions should be based on the proportion which such contributions bear to the total cost of producing the program in question.

6. TIMING

Underwriting credits, acknowledgements of contributions and other announcements may not interrupt regular programming. Thus, it is permissible to broadcast acknowledgements and announcements at the beginning and end of programs, between identifiable segments of long programs, or, in the absence of identifiable segments, during station breaks in programming that do not disrupt the flow of programming.

7. FUNDRAISING ACTIVITIES

Except for the prohibition against interrupting programming for fundraisers for others and the restriction on underwriting credits, the Commission has imposed no limits on a public broadcaster's own fundraising activities. It may devote as much time to pledge weeks and auctions as the station deems appropriate. The Commission's view is that marketplace forces will preclude abuses by public stations and that excessive fundraising activity will prove counterproductive.

8. POLITICAL ENDORSEMENTS AND EDITORIALS

Sections 399 and 399A of the Public Broadcasting Act prohibit the broadcast of any material which expresses "the views of any person with respect to any matter of public importance or interest" or supports or opposes any candidate for public office if consideration is received for the broadcast. These sections do not prohibit the underwriting of a public affairs program, at least where the program is not designed to espouse the views of the underwriter. Section 399 also prohibits the public broadcasters that receive grants from CPB from editorializing. The United States District Court for the Central District of California has ruled that this prohibition is unconstitutional as a violation of the First Amendment. The Department of Justice has sought

Supreme Court review of that decision, and a ruling from the U.S. Supreme Court is expected by July 1984.

C. USE OF FACILITIES OR SERVICES FOR REVENUE GENERATION

Section 399B of the Public Broadcasting Act permits public broadcasters to provide facilities and services in exchange for remuneration, so long as those uses do not "interfere with the provision of public telecommunications services by such station." Neither the Act nor its legislative history provides detailed guidance as to when the use of facilities or the provision of service will interfere with the provision of public broadcast services.

Where a public broadcasting licensee uses its facilities for revenue generation by making it available to others, the station is required to comply with the CPB-developed accounting procedures designed to identify these revenues and associated costs. In addition, stations that pay federal income taxes on "unrelated business income" derived from these uses are required to repay to CPB an amount equal to the tax paid. This obligation attaches to the licensee itself and does not apply to subsidiary corporations which may pay federal income tax on such "unrelated business income."

D. MISCELLANEOUS PUBLIC BROADCASTING ACT REQUIREMENTS

1. OPEN MEETINGS

Any public broadcast station that receives any funds from CPB is required, as a condition of receiving that money, to hold open public meetings of its governing body (*i.e.*, Board of Directors, Board of Trustees), any advisory bodies and any committees of either the governing or advisory body. No one attending the meeting may be required to register his or her name or provide any other information.

These bodies may hold closed sessions to consider matters relating to (a) individual employees (not general employment practices), (b) proprietary information, (c) litigation and other matters requiring the confidential advice of counsel, (d) commercial or financial information obtained from another person on a confidential or privileged basis, or (e) the purchase of property or services wherever the premature exposure of information concerning such purchase may compromise the licensee's position. Where a meeting is closed, the licensee is required, within a reasonable period of time, to make available to the public a written statement explaining the reasons for closing the meeting.

2. FINANCIAL REPORTS

Any public broadcasting station that receives funds from CPB is required, as a condition of receiving those funds, to make available for public examination copies of the financial reports required by CPB and any audits or other information regarding station finances submitted to CPB.

3. COMMUNITY ADVISORY BOARDS

Public broadcast stations, other than those licensed to a state or public agency, are required, as a condition of receiving funds from CPB, to have community advisory boards to review the programming goals of the station, the service provided by it and other significant policy decisions concerning the station. The composition of the advisory board must reasonably reflect the population make-up of the community served by the station and the various economic, cultural and other groups within that community. The advisory board must meet at regular intervals and the members of the board are expected to attend the meetings. As the name indicates, these boards are advisory only, and ultimate responsibility for decisions at the station still rests with the licensee.

E. OTHER DIFFERENCES BETWEEN NONCOMMERCIAL AND COMMERCIAL LICENSEES

The other differences between the regulatory treatment of noncommercial and commercial licensees are as follows:

- The multiple ownership rules do not apply to public broadcasters.
- Public broadcasters are prohibited from providing subscription or pay television service as a general rule. However, the FCC recently ruled that it would look at requests by noncommercial stations to engage in STV operation on a case-by-case basis.
- Public television broadcasters are not subject to minimum operating schedules or minimum power requirements.
- The program logging requirements for public broadcasters differ from those for commercial television broadcasters in that they reflect the programming categories listed in the application forms for noncommercial licensees. In addition, rather than identifying sponsors, public broadcasters are required to identify underwriters and other contributors. In other respects, the program logging requirements are the same as those contained in the commercial television logging rules.
- Because public broadcasters are prohibited by Section 399 from editorializing, the political editorial rule does not apply. However, the personal attack rule does apply.
- The provision of the Commission's rules relating to lowest unit charge for political candidates is inapplicable, because public broadcasters are precluded from charging candidates for the use of time. However, public broadcasters are permitted to charge for program production expenses incurred in connection with the candidate's use.
- Public broadcasters are required to maintain essentially the same local public inspection files as commercial stations. A public broadcaster's file also should include the list of contributors in any generic underwriting credit. *See* Page VII-4.
- Public broadcasters, both radio and television, still are required to ascertain community needs, although there is a rulemaking proceeding outstanding which would relieve them of this obligation. Under the ascertain-

ment rules, public broadcasters are required to maintain in their public files appropriate documentation relating to their efforts to conduct requisite ascertainment interviews. This includes efforts to interview a representative cross section of community leaders as well as to consult with members of the general public.

As to community leaders, public television broadcasters must include a community leader checklist of those leaders interviewed during the current license term which reflect those elements found on the sample community leader checklist. In addition, reports of interviews with community leaders must be placed in the public inspection file within a reasonable time after the interview. These interviews need not be conducted by station management, but management must review the interviews conducted by others. Public broadcasters have fairly broad discretion to determine the format of these interviews. However, the interviews must deal with community needs and problems, not programming preferences.

As to consultations with members of the general public, an applicant for other than renewal of license must conduct a random survey of the general public in its community of license within six months prior to filing its application. Television renewal applicants, however, may, at their option, conduct a random general public survey, periodic call-in programs, periodic public meetings or a combination of the latter two methods in fulfillment of this requirement. Radio applicants may use any reasonable means to ascertain community problems and issues.

Responsibility in cases of assignment or transfer and records' location and retention period requirements are the same as those applicable to commercial broadcasters.

- Noncommercial stations need not broadcast the announcements concerning the filing of applications required by Rule 73.3580, if they are not operating during the month the notice must be broadcast. The newspaper publication requirements of Rule 73.3580 are applicable to new applicants for broadcast stations and to broadcasters who are not operating during the month when the public notice is required to be broadcast.
- Public broadcasters use different forms for applications for construction permits, applications for licenses to cover construction permits, renewal applications and ownership reports.

CHAPTER VIII:

OBTAINING ADVICE AND INFORMATION FROM THE FCC

A. FCC FUNCTIONAL TELEPHONE LISTINGS

Broadcasters who need to contact the FCC often do not know whom to call. To enable broadcasters to call the right person at the right number on the first try, we have prepared the following FCC functional telephone listings. For each of the common areas of concern to broadcasters, a name and telephone number are listed. Unless otherwise indicated, each listing applies to AM, FM and TV. As there are frequent changes in Commission personnel and staff assignments, some of the functional telephone listings may be out of date—if the person you call is no longer with the FCC, ask the staff person with whom you speak to help you locate a person to answer your inquiry.

FCC business hours are 8:00 a.m. to 5:30 p.m., EST (or, in summer, EDT). The area code for all listed FCC Washington offices is 202. The FCC Monitoring Watch Officer is on duty to handle emergency calls after hours, on weekends and on holidays. The number to call during these hours is 632-6975. Stations having TWX service also can communicate with FCC staff via teletypewriter message. The FCC TWX number is 710-732-0610.

The FCC has established the Consumer Assistance and Small Business Office to assist members of the public (including licensees) in dealing with the

FCC. Accordingly, if you are unsure which FCC office has the information you need, do not hesitate to call or write to:

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

Keep in mind as you use this list that there are many matters on which the FCC can provide helpful information, but, in many cases, is prohibited by law from doing so. Most help will be given on status checks of applications, application requirements and deadline and timetable questions. Generally speaking, the FCC's *ex parte* rules discourage telephone calls involving a contested adjudicatory or rulemaking proceeding. Contested proceedings are those that involve competing claims (*e.g.*, FM or TV channel assignments, comparative hearings).

If your question concerns an interpretation of Commission rules, especially in an area where the decision is left to the discretion of the licensee, the Commission staff will give "hints" or guidelines on how to resolve the problem, but seldom, if ever, a definitive answer. Remember, the staff cannot predict how the Commissioners would rule on a particular problem. Generally, the advice given will be very conservative and will consist of informal interpretations based on the outcome in similar situations in the past.

Additionally, note that a check with your field office may save a long-distance call. Field offices are listed in section D of this Chapter. The local office can handle general engineering, interference and operator license questions, and has available all major FCC reporting forms and applications.

Of course, the NAB Legal Department always is available to provide general assistance and information. Normal NAB business hours are 9:00 a.m. to 5:00 p.m., EST (or, in summer, EDT). Call (202) 293-3560.

General FCC Information is most easily obtained from the **Consumer Assistance and Small Business Office** ..... (202) 632-7000 or 632-7260
Daily News Release (Recorded Message) ..... (202) 632-0002

For specific questions:	**Call:** Area Code 202 unless otherwise noted
Advertising	632-7048
(False and misleading advertising qustions call FTC)	523-3598
Allocations Branch (in Mass Media Bureau)	634-6530
Alien Restricted Permits (Regional Services)	632-7240
Antenna Structures and Towers	632-7521
Applications	
Assignments & Transfer	
Audio	254-9570
Video	632-6357
Construction Permit, Extensions, Existing Stations, New Stations, Major and Minor Changes	
for AM	632-3954
for FM	632-6908
for TV	632-6357

For specific questions:	**Call:** Area Code 202 unless otherwise noted
New Station-Forms	632-7000 or 632-7260
Renewals	
for AM	254-9572
for FM	632-7010
for TV	632-6417
AM Branch (in Mass Media Bureau)	254-9570
Audio Services Division (in Mass Media Bureau)	632-6485
Auxiliary Service Branch (in Mass Media Bureau)	634-6307
Bills (Legislative)	632-6405
Bulletins, Request for (other than those supplied at field installations)	632-7260
Cable TV Branch (in Mass Media Bureau)	632-6480
Call-Sign Desk	634-1923
Cellular Radio (Mobile Services)	632-6400
Citizens Band Information	632-4964
Commercials	632-7551
Commission Proceedings, Tape Recordings	632-7000
Complaints Branch (in Mass Media Bureau)	632-7048
Contests	
Advertising of	632-7049
Station-Run	632-7049
Television Advanced Technologies Distribution Services (in Mass Media Bureau)	632-9356
Dockets	632-7535
Educational FM	632-3954
Engineering	632-6908
Educational TV	632-6357
Emergency Broadcast System (EBS)	634-1600
Enforcement Division (in Mass Media Bureau)	632-6968
Equal Employment Opportunity (EEO) (in Mass Media Bureau)	632-7069
Examinations (Radio Operator Licensing)	
Washington, D.C. area	(301) 926-2728
Outside Washington, D.C.	632-7240
Fairness Doctrine (in Mass Media Bureau)	632-7586
Forfeiture/Fines (Collection of)	632-6444
Forms– If you don't know the form number	632-7000
To order forms by number	632-7272
FM Branch (in Mass Media Bureau)	632-6908
Fraudulent Billing	632-7551
Frequency Information (License Division)	632-7136
Harrassing Telephone Calls	632-7553
Hearing Branch (in Mass Media Bureau)	632-6402
Hearing Calendar	632-7680
Information	
General	632-7000 or 632-7260
Technical Research	632-7040
Inspection of Station	632-7014
Intercity Relay–**Microwave Link** (FM Branch)	632-6908
Interference	Contact your local field office
Investigations Branch (in Mass Media Bureau)	632-7595

For specific questions:	**Call:** Area Code 202 unless otherwise noted
Legal Information	
Conflict of Interests Interpretations	632-6990
Court Cases	632-7112
FCC Rules (Legal Interpretation)	632-6990
General Counsel	632-7020
Legislative Office	632-6405
Library	632-7100
License Renewal	
for AM	254-9572
for FM	632-7010
for TV	632-6417
Logs	
Programming, operating, maintenance and retention of logs	632-7048
Lotteries	632-3860
Low Power Television (in Mass Media Bureau)	632-3894
Personnel Locator	632-7106
Policy Analysis Branch (in Mass Media Bureau)	632-6302
Policy and Rules	632-5414
Political Broadcasting (in Mass Media Bureau)	632-7586
Press Relations	254-7674
Programming	632-7048
Public Reference Room (in Mass Media Bureau)	632-6334
Publications	
Federal Regulations and Rules	632-7148
FCC Reports	632-0426
Refund of Fees	632-6900
Religious Petition (Rm 2493)	632-7000 or 632-3860
Remote Pickups	632-3894
Renewal Problems	
for AM	632-3954
for FM	632-6968
for TV	632-6357
Reports	
Employment (Form 395)	632-7069
Ownership (Form 323)	632-7258
Review Board	632-7180
Satellite	
Coordination and Interference	653-8107
Facilities	632-7265
SCAs, Stereo	632-7166
Secretary of FCC	632-6410
Station Location (License Division)	632-7136
Status of Application (License Division)	632-6334/5
Studio-Transmitter Links (STL)	632-7698
Subscription TV	632-6357
Technical & International Branch (in Mass Media Bureau)	632-9660
Telephone Conversations (recording of)	632-6990
Transfer Problems	632-9356
Translators/Boosters (FM & TV)	632-3894
TV Branch (in Mass Media Bureau)	632-6357
Video Services Division (in Mass Media Bureau)	632-6993

B. MASS MEDIA BUREAU

On September 14, 1982, the Commission voted to establish a new Mass Media Bureau, consolidating the Broadcast and Cable Television Bureaus. The Mass Media Bureau provides a single, integrated organizational structure for administering Commission policies regarding traditional broadcasting, cable television and emerging video technologies. The Mass Media Bureau is organized along functional lines, with four Divisions: Audio Services, Enforcement, Policy & Rules and Video Services.

James McKinney, Chief 632-6460
Roderick K. Porter, Deputy Chief – Operations
William Johnson, Deputy Chief – Policy
William Hassinger, Engineering Assistant
John Kamp, Legal Assistant
Donna Searcy, Information Specialist
Marilyn J. McDermett, Asst. Chief, Management & Personnel 632-7191

1. AUDIO SERVICES DIVISION

Larry D. Eads, Chief 632-6485
Dennis Williams, Assistant Chief
W. Jan Gay, Assistant Chief
Data Management Staff
  John J. Boursy, Supervisory Electronics Engineer 634-6315
Public Reference Room
  Mary McDonald, Supervisor 632-7566
Contact Representatives 632-6334
  Sharon Jenkins
  Sandralyn Adams
AM Branch
  Harold J. Morgan, Chief 254-9570
  Vacant, Assistant Branch Chief
  James Ballis, Supervisory Electronics Engineer 632-7010
  Henry Straube, Supervisory Electronics Engineer
  Myra Kovey, Supervisory Attorney Advisor 254-9570
  Thomas N. Albers, Supervisory Attorney Advisor
FM Branch
  Raymond A. LaForge, Chief 632-6908
  Hugh M. Reed, Assistant Branch Chief
  George A. Enuton, Supervisory Electronics Engineer
  Robert Greenberg, Supervisory Electronics Engineer
  Gordon Malick, Supervisory Attorney Advisor
  Mark L. Solberg, Supervisory Attorney Advisor
  Ann Spencer, Supervisory Applications Examiner 632-7136
Auxiliary Services Branch
  E.C. Gursky, Chief 634-6307

2. ENFORCEMENT DIVISION

Charles W. Kelley, Chief 632-6968
Mary Catherine Kilday, Assistant Chief 632-7551
Complaints and Investigations Branch
  Edythe Wise, Chief 632-7048

Equal Employment Branch
Glenn A. Wolfe, Chief 632-7069
Fairness/Political Broadcasting Branch
Milton O. Gross, Chief 632-7586
Hearing Branch
Charles Dziedzic, Chief 632-6402

3. POLICY AND RULES DIVISION

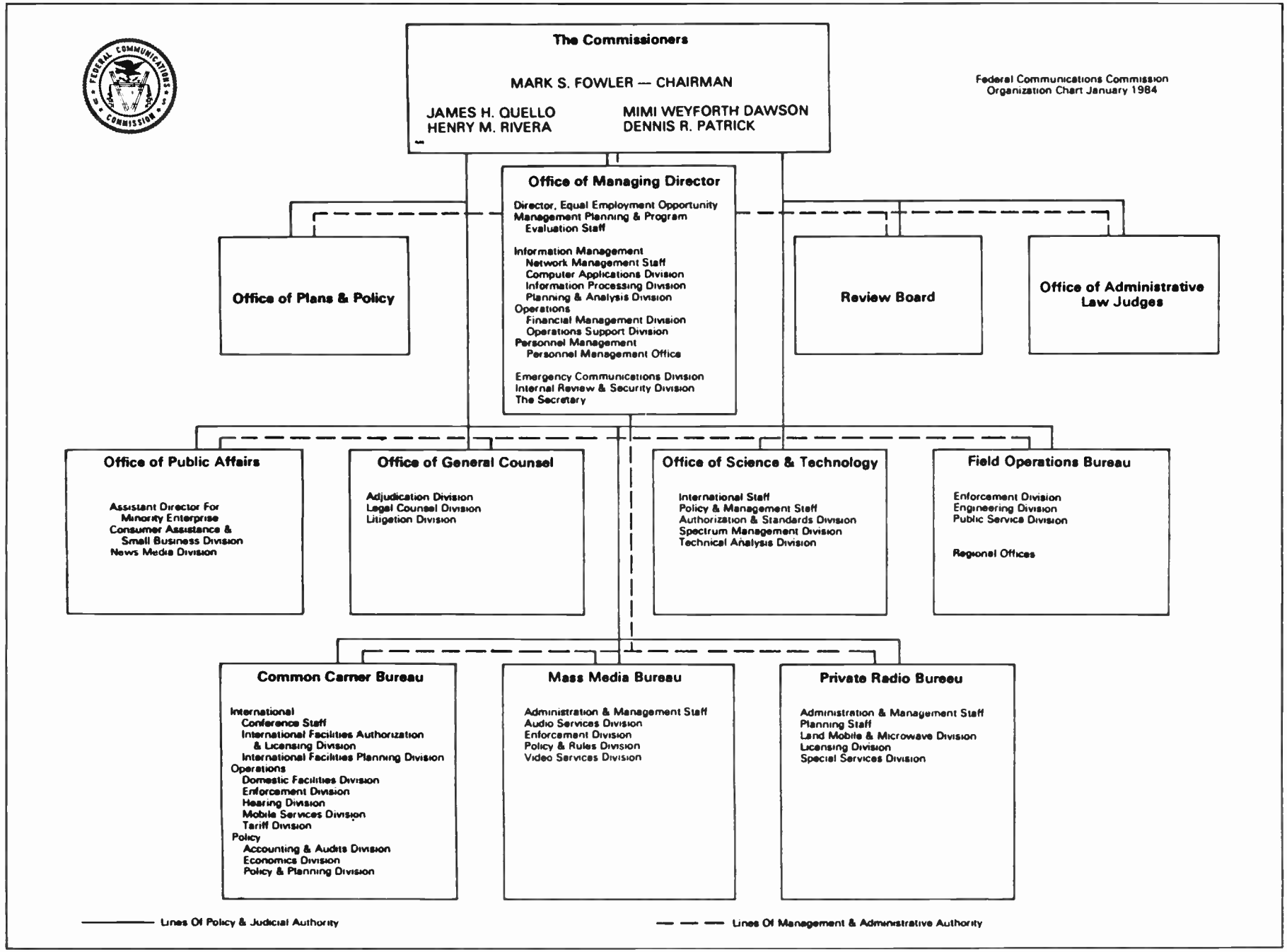
Charles Schott, Chief 632-5414
Martin Blumenthal, Assistant Chief
Wilson LaFollette, Assistant Chief (International)
Legal Branch
Robert H. Ratcliffe, Chief 632-7792
Technical & International Branch
Ralph A. Haller, Chief 632-9660
John Reiser, Supervisory Electronics Engineer
Charles H. Breig (High Frequency Coordination Matters) 254-3394
Policy Analysis Branch
Bruce Franca, Chief 632-6302
Allocations Branch
Mark Lipp, Chief 634-6530

4. VIDEO SERVICES DIVISION

Roy J. Stewart, Chief 632-6993
James J. Brown, Assistant Chief
Stephen F. Sewell, Assistant Chief
Television Branch
Clay Pendarvis, Chief 632-6357
Gordon Oppenheimer, Supervisory Attorney Advisor
Low Power Television Branch
Barbara K. Kreisman, Chief 632-3894
Molly Fitzgerald, Supervisory Attorney Advisor
Paul L. Marrangoni, Supervisory Electronics Engineer
Distribution Services Branch
Stuart B. Bedell, Chief 632-9356
Cable Television Branch
Stephen Ross, Chief 632-7480
Ron Parver, Supervisory Attorney Advisor
Angela Green, Supervisory Attorney Advisor
John Wong, Supervisory Electronics Engineer 254-3420

C. REFERENCE GUIDE TO FCC ORGANIZATION

As of May 1, 1984 (Area Code 202)
Mark Fowler, Chairman 632-6600
James H. Quello 632-7557
Mimi Weyforth Dawson 632-6446
Henry Rivera 632-6996
Dennis Patrick 632-7117



D. FIELD OFFICE LOCATIONS AND FACILITIES

1. REGIONAL DIRECTORS

Atlanta Regional Director

Carl E. Pyron
Federal Communications Commission
101 Marietta Tower, Room 2111
Atlanta, Georgia 30303
Phone: (404) 221-6500
Mailing Address:
P.O. Box 1775
Atlanta, Georgia 30301

Boston Regional Director

Gerard Sarno
Federal Communications Commission
1500 Customhouse
165 State Street
Boston, Massachusetts 02109
Phone: (617) 223-7226

Chicago Regional Director

Kent T. Crawford
Federal Communications Commission
Park Ridge Office Center, Room 306
1550 Northwest Highway
Park Ridge, Illinois 60068
Phone: (312) 353-0368

Kansas City Regional Director

Samual B. Stelk
Federal Communications Commission
Brywood Office Tower – Room 320
8800 East 63rd Street
Kansas City, Missouri 64133
Phone: (816) 926-5179

San Francisco Regional Director

Richard I. Vaughan
Federal Communications Commission
211 Main Street – Room 537
San Francisco, California 94105
Phone: (415) 974-0702

Seattle Regional Director

William E. Johnson
Federal Communications Commission
3244 Federal Building
915 Second Avenue
Seattle, Washington 98174
Phone: (206) 442-5544

2. DISTRICT OFFICES

Anchorage District Office

James E. Sutherland, EIC
Federal Communications Commission
1011 E. Tudor Rd., Room 240
P.O. Box 102955
Anchorage, Alaska 99510
Phone: (907) 563-3899
(907) 561-1550 (Recorded Information)

Atlanta District Office

Angelo R. Ditty, Jr., EIC
Federal Communications Commission
Room 440, Massell Building
1365 Peachtree Street, NE
Atlanta Georgia 30309
Phone: (404) 881-3084/5
(404) 881-7381 (Recorded Information)

Baltimore District Office

Robert M. Mroz, EIC
Federal Communications Commission
1017 Federal Building
31 Hopkins Plaza
Baltimore, Maryland 21201
Phone: (301) 962-2729
(301) 962-2727 (Recorded Information)

Boston District Office

Vincent F. Kajunski, EIC
Federal Communications Commission
1600 Customhouse
165 State Street
Boston, Massachusetts 02109
Phone: (617) 223-6609 (PS)
(617) 223-0689 (ENF & ENGR)
(617) 223-6607/8 (Recorded Information)

Buffalo District Office

David Viglione, EIC
Federal Communications Commission
1307 Federal Building
111 West Huron Street
Buffalo, New York 14202
Phone: (716) 846-4511/2
(716) 856-5950 (Recorded Information)

Chicago District Office

Russel D. Monie, EIC
Federal Communications Commission
230 S. Dearborn St., Room 3940
Chicago, Illinois 60604
Phone: (312) 353-0195
(312) 353-0197 (Recorded Information)

Dallas District Office

James D. Wells, EIC
Federal Communications Commission
Earle Cabell Federal Building
U.S. Courthouse, Room 13E7
1100 Commerce Street
Dallas, Texas 75242
Phone: (214) 767-0761
(214) 767-0764 (Recorded Information)

Denver District Office

Dennis Carlton, EIC
Federal Communications Commission
12477 West Cedar Drive
Denver, Colorado 80228
Phone: (303) 234-6977
(303) 234-6979 (Recorded Information)

Detroit District Office

Irby C. Tallant, EIC
Federal Communications Commission
1054 Federal Building
231 W. LaFayette Street
Detroit, Michigan 48226
Phone: (313) 226-6078
(313) 226-6077 (Recorded Information)

Honolulu District Office

Jack Shedletsky, EIC
Federal Communications Commission
Prince Kuhio Federal Building
300 Ala Moana Blvd., Room 7304
P.O. Box 50023
Honolulu, Hawaii 96850
Phone: (808) 546-5640 (Dial Direct)

Houston District Office

Daniel A. Cantrell, EIC
Federal Communications Commission
New Federal Office Building
515 Rusk Avenue, Room 5636
Houston, Texas 77002
Phone: (713) 229-2748
(713) 229-2750 (Recorded Information)

Kansas City District Office

James A. Dailey, EIC
Federal Communications Commission
Brywood Office Tower – Room 320
8800 East 63rd Street
Kansas City, Missouri 64133
Phone: (816) 926-5111
(816) 356-4050 (Recorded Information)

Long Beach District Office

Lawrence D. Guy, EIC
Federal Communications Commission
3711 Long Beach Blvd., Room 501
Long Beach, California 90807
Phone: (213) 426-4451
(213) 426-7886 (Recorded – PS)

Miami District Office

John L. Theimer, EIC
Federal Communications Commission
8675 N.W. 53rd Street
Miami, Florida 33166
Phone: (305) 350-5542
(305) 593-0399 (Recorded Information)

New Orleans District Office

James Hawkins, EIC
Federal Communications Commission
1009 F. Edward Hebert Federal Bldg.
600 South Street
New Orleans, Louisiana 70130
Phone: (504) 589-2095
(504) 589-2094 (Recorded Information)

New York District Office

Alexander J. Zimny, EIC
Federal Communications Commission
201 Varick Street
New York, New York 10014
Phone: (212) 620-3437/8
(212) 620-3435 (Recorded – ENF)
(212) 620-3436 (Recorded – PS)

Norfolk District Office

J. Jerry Freeman, EIC
Federal Communications Commission
Military Circle
870 N. Military Highway
Norfolk, Virginia 23502
Phone: (804) 441-6472
(804) 461-4000 (Recorded Information)

Philadelphia District Office

Ennis C. Coleman, Jr., EIC
Federal Communications Commission
One Oxford Valley Office Building
2300 East Lincoln Highway, Suite 404
Langhorne, Pennsylvania 19047
Phone: (215) 752-1324
(215) 752-1323 (Recorded Information)

Portland District Office

George F. Wager, EIC
Federal Communications Commission
1782 Federal Office Building
1220 S.W. Third Avenue
Portland, Oregon 97204
Phone: (503) 221-4114
(503) 221-3097 (Recorded Information)

St. Paul District Office

Garrett Lysiak, EIC
Federal Communications Commission
691 Federal Bldg. & U.S. Courthouse
316 North Robert Street
St. Paul, Minnesota 55101
Phone: (612) 725-7810
(612) 725-7819 (Recorded Information)

San Diego Office

William H. Grigsby, Jr., EIC
Federal Communications Commission
7840 El Cajon Blvd. – Room 405
La Mesa, California 92041
Phone: (619) 293-5478
(619) 293-5460 (Recorded Information)

San Francisco District Office

Serge Marti-Volkoff, EIC
Federal Communications Commission
423 Customhouse
555 Battery Street
San Francisco, California 94111
Phone: (415) 556-7701/2
(415) 556-7700 (Recorded Information)

San Juan District Office

William C. Berry, EIC
Federal Communications Commission
San Juan Field Office
747 Federal Building
Hato Rey, Puerto Rico 00918
Phone: (809) 753-4567
(809) 753-4008 (Recorded Information)
(809) 753-4633 (Dial Direct)

Seattle District Office

Gary P. Soulsby, EIC
Federal Communications Commission
3256 Federal Building
915 Second Avenue
Seattle, Washington 98174
Phone: (206) 442-7653/4
(206) 442-7610 (Recorded Information)

Tampa Office

Ralph M. Barlow, EIC
Federal Communications Commission
Interstate Building – Room 601
1211 N. Westshore Blvd.
Tampa, Florida 33607
Phone: (813) 228-2872
(813) 228-2605 (Recorded Information)

3. EQUIPMENT CONSTRUCTION AND INSTALLATION BRANCH

Powder Springs ECIB
William L. Kilpatrick, Chief
Equipment Construction &
Installation Branch
Federal Communications Commission
3600 Hiram-Lithia Spring Road, S.W.
P.O. Box 65
Powder Springs, Georgia 30073
Phone: (404) 943-6425

4. OFFICE OF SCIENCE AND TECHNOLOGY

7435 Oakland Mills Road
P.O. Box 429
Columbia, Maryland 21045
Phone: (301) 725-1585

5. FCC FEE REFUND UNIT

1919 M Street, N.W., Room 452
Washington, D.C. 20554
Phone: (202) 653-8515

6. FIELD OPERATIONS BUREAU

Richard M. Smith, Chief
Federal Communications Commission
1919 M Street, N.W., Room 734
Washington, D.C. 20554
Phone: (202) 632-6980

E. FCC TELEPHONE DIRECTORY

The Commission has published a general telephone directory containing organizational, functional and alphabetical name listings. The booklet may be obtained by sending $.50 per directory plus $1.10 postage and handling charge to:

International Transcription Service
1919 M Street, N.W., Room 246
Washington, D.C. 20036
Telephone (202) 296-7322

Check or money order must be included when ordering.

F. TAPE RECORDINGS OF FCC MEETINGS

Video and audio tape recordings of Commission open meetings, FCC tutorials and other open FCC sessions may be obtained from:

The Prism Corporation
4545 42nd Street, N.W., Suite 109
Washington, D.C. 20016
Telephone (202) 686-8250

The Prism Corporation will provide both tape recordings and search service. Search fees will be on a time basis. A schedule of fees can be obtained from the above address.

G. NON-FCC LISTINGS OF INTEREST

	(Area Code 202)
U.S. Government Information	655-4000
Congressional Committees	
House Subcommittee on Telecommunications	225-9304
Senate Subcommittee on Communications	224-8144
Federal Trade Commission	523-3598
Advertising	724-1499
Bureau of Consumer Protection	523-3238
Government Printing Office	
Publications Information (orders & inquiries)	783-3238
National Telecommunications and Information Administration (NTIA)	377-1840
International Affairs	377-1866
U.S. Copyright Office	
Public Information	287-8700
U.S. Copyright Royalty Tribunal	653-5175
U.S. Trademark Office	
Information	(703) 557-3551

H. NAB DEPARTMENTS

	Dial (202) 293-
Station Services	3580
Broadcast Management	5122
Convention & Meetings	3540
Government Relations	2150
Legal	3560
Library	3578
Membership (Radio)	3590
Membership (TV)	4066
Minority & Special Services	3534
President	3516
Production	3539
Public Affairs	3570
Publications	3529
Radio	4955
Research & Planning	5104
Science & Technology	3557
Secretary/Treasurer	3520
TARPAC	2154
Television	5110

APPENDICES

APPENDICES

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FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

CHANGE IN OFFICIAL MAILING ADDRESS FOR BROADCAST STATION

Mail to: Federal Communications Commission
Broadcast License Division
Washington, D. C. 20554

1. Licensee Name:

_____

2. Street Address or Post Office Box:

_____

3. City, State, and Zip Code:

_____

4. Call Sign:

Section 1.5 of the Commission Rules requires a permittee/licensee to keep the Commission informed of any change in mailing address in order that the station may be served documents or other official papers without delay.

Only one mailing address can be maintained for each broadcast station.

Due to lack of space the mailing address cannot contain an individual name (unless the licensee is an individual).

Section III

Statement of Program Service

Definitions

The definitions set out below are to be followed in furnishing the information called for by the questions in this Section. The inclusion of various types and sources of programs in the paragraphs which follow is not intended to establish a formula for station operation, but is a method for analyzing and reporting station operation.

1. A. *Sources* of programs are defined as follows:

(i) A *Local Program* is any program originated or produced by the station, or for the production of which the station is substantially responsible, and which also employs live talent more than 50 percent of the time. Such a program, taped, recorded or filmed for later broadcast shall be classified as local. A local program fed to a network shall be classified by the originating station as local. All non-network and non-syndicated news programs may be classified as local. Programs primarily featuring syndicated or feature films, or other non-locally recorded programs shall not be classified as local, even though a station personality appears in connection with such material. However, identifiable units of such programs which are live and separately logged as such may be classified as local (e.g., if during the course of a feature film program a non-network 2 minute news report is given and logged as a news program, the report may be classified as local).

(ii) A *Network Program* is any program furnished to the station by a network (national, regional or special). Delayed broadcasts of programs originated by networks are classified as network.

(iii) A *Recorded Program* is any program not defined in (i) and (ii) above, including without limitation, syndicated programs, taped or transcribed programs, and feature films.

B. *Types* of programs are defined as follows:

(i) *News Programs* include reports dealing with current local, national and international events, including weather and stock market reports; and commentary, analysis or sports news when it is an integral part of a news program.

(ii) *Public Affairs Programs* are programs dealing with local, state, regional, national or international issues or problems, including, but not limited to talks, commentaries, discussions, speeches, editorials, political programs, documentaries, minidocumentaries, panels, round-table and vignettes and extended coverage (whether live or recorded) of public events or proceedings, such as local council meetings, congressional hearings and the like.

(iii) *All Others* (excluding entertainment and sports) include all other programs which are not intended primarily as entertainment (e.g., music, drama, variety, comedy, quiz, etc.). This category does not include play-by-play and pre- or post-game related activities and separate programs of sports instruction, news, or information (e.g., fishing opportunities, golfing instructions, etc.).

(iv) *Programs Designed for Children* include programs originally produced and broadcast primarily for an audience of children twelve years old and under. This does not include programs originally produced for a general or adult audience which may nevertheless be significantly viewed by children. (The definition of "Programs Designed for Children" is not applicable for the purpose of logging, but is applicable only to Questions 6, 14, and 17.

Note. — If a program contains two or more identifiable units of program material which constitute different program types as herein defined, each such unit may be separately classified.

C. *Commercial Matter* includes commercial continuity (network and non-network) and commercial announcements (network and non-network) as follows:

(i) *Commercial Continuity* is the advertising message of a program sponsor.

(ii) A *Commercial Announcement* is any other advertising message for which a charge is made, or other consideration is received.

APPENDIX I-B-2

Section III **Statement of Program Service**

(1) Included are:

(i) "bonus spots"
(ii) "trade-out spots"
(iii) Promotional announcements by a commercial broadcast station for or on behalf of another commonly owned or controlled broadcast station serving the same community. See Report and Order in Docket No. 20588, 59 F.C.C. 2nd 594, 41 FR 22055 (1976)
(iv) Promotional announcements of a future program where consideration is received for such an announcement or where such announcement identifies the sponsor of the future program beyond mention of the sponsor's name as an integral part of the title of the program (e.g., where the agreement for the sale of the time provides that the sponsor will receive promotional announcements, or when the promotional announcement contains a statement such as TOMORROW SEE — (NAME OF PROGRAM) — BROUGHT TO YOU BY — (SPONSOR'S NAME)).

(2) *Other announcements* including but not limited to the following are not commercial announcements:

(i) Promotional announcements, except as defined above.
(ii) Station identification announcements for which no charge is made.
(iii) Announcements of taped, filmed or recorded material.
(iv) Public service announcements.
(v) Announcements made pursuant to Section 73.1212(d) of the FCC Rules that materials or services have been furnished as an inducement to broadcast a political program involving the discussion of controversial public issues.
(vi) Announcements made pursuant to the local notice requirements of Section 73.3580 ("Local Notice of Filing of Applications"), Section 73.3594 ("Local Notice of Designation of Hearing") and Section 73.1202 ("Public Notice of Licensee Obligations") of the FCC Rules.

2. A *Public Service Announcement* is any announcement (including network) for which no charge is made and which promotes programs, activities or services of federal, state or local governments (e.g., recruiting, sales of bonds etc.) or the programs, activities or services of nonprofit organizations (e.g., UGF, Red Cross blood donations, etc.) and other announcements regarded as serving community interests, excluding time signals, routine weather announcements and promotional announcements.

3. A *Program* is an identifiable unit of program material, logged as such, which is not an announcement as defined above (e.g., if, within a 30 minute entertainment program, a station broadcasts a one-minute news and weather report, this news and/or weather report may be separately logged and classified as a one-minute news program and the entertainment portion as a 29 minute program).

4. *Network Programs.* Where information for the composite week is called for herein with respect to commercial matter or program type classification in connection with network programs, the applicant may rely on information furnished by the network.

5. Replies relating to future operation constitute representations against which subsequent operation of the station will be measured. Accordingly, beginning with this upcoming license term and *until the filing of the station's next Renewal Application Audit Form*, if the station substantially alters its programming or commercial practice, the applicant should notify the Commission of such changes at that time; otherwise it is presumed that the station is being operated substantially as proposed. Since the filing of the audit form is determined by random selection, the next time that your station will be audited is not predetermined.

6. Applicants in preparing Questions 6, 7B, 8B, 13B, 13C, 15 and 16 should limit Exhibit 6 to three pages; Exhibits 7B and 8B to six pages each; and Exhibits 13B, 13C, 15 and 16 to two pages apiece. Applicants may, at their option, supplement information contained in exhibits submitted as part of Section III by placing additional material in their public inspection file. Such additional material shall be identified as a continuation of the particular exhibit and is subject to inspection by the public and the Commission.

Section III **Statement of Program Service**

Call Letters: _____

1. Has the applicant placed in its public inspection file at the appropriate times the required documentation relating to its efforts to ascertain community problems, needs and interests?

☐ Does not apply ☐ Yes ☐ No

If No, attach as Exhibit III-1 a complete statement of explanation.

2. Attach as Exhibit III-2 applicant's community leader checklist for the preceding license term.

☐ Does not apply

3. Has the applicant placed in its public inspection file at the appropriate times its annual list of those problems, needs and interests which, in the applicant's judgment, warranted treatment by its station and typical and illustrative programming in response thereto?

☐ Yes ☐ No

If Yes, attach those listings as Exhibit III-3.
If No, attach as Exhibit III-3 a complete statement of explanation.

4. A. State, for composite week:

(a) The total number of public service announcements broadcast. _____

(b) The number broadcast between 8 a.m. and 11 p.m. _____

B. Of the total number of public service announcements broadcast during the composite week state the number, which in the licensee's judgment:

(a) were primarily designed to promote programs, activities or services of organizational units located *in the service area*. _____

(b) were primarily designed to promote programs, activities or services of organizational units located *outside the service area*. _____

(c) do not readily fall into either (a) or (b) and/or are a combination of both. _____

C. Attach as Exhibit III-4 one exact copy of the program logs for the composite week used as a basis for responding to questions 4, 13 and 14 herein. Applicants using automatic program logging devices must comply with the provisions of Section 73.1810(k)(3) of the FCC Rules.

5. A. Was the applicant affiliated with one or more national television networks during the past license period?

☐ Yes ☐ No

If Yes, give the name(s) of the network(s).

APPENDIX I-B-4

Section III **Statement of Program Service**

B. If the applicant had more than one such affiliation, which network was its principal source of network programs _____ .

C. If a network affiliate, did the applicant regularly carry (i.e., carry more than 50%) the available news and public affairs programs offered by the network during the current license period?

News	☐ Yes	☐ No
Public Affairs	☐ Yes	☐ No

6. Attach as Exhibit III-6, a brief description of programs, program segments or program series broadcast during the license period which were designated for children 12 years old and under. Indicate the source, time and day of broadcast, the frequency of broadcast and program type.

7. In the applicant's judgment, does the information supplied in the annual listings of typical and illustrative programs and program segments broadcast to help meet the significant problems and needs of the service area for the current period, and the information supplied in questions 4, 5 and 6 above, adequately reflect its programming during the current license period?

☐ Yes ☐ No

If No, attach as Exhibit III-7 such additional information, including the listing of entertainment programs the applicant considers to be of special merit, as may be necessary to describe accurately and present fairly its program service.

Section III Statement of Program Service **Commercial TV**

Call Letters _____

8. Indicate the amount of time the applicant has devoted to the categories below during the composite week of the past license term. Commercial time should be excluded in all computations except for the entries in columns 2, 6 and 10 of the "TOTAL TIME OPERATING" line (line a).

WEEK DATA	FROM 6 AM TO MIDNIGHT				FROM 6 PM TO 11 PM (5 PM TO 10 PM CENTRAL AND MOUNTAIN TIME)				FROM MIDNIGHT TO 6 AM			
	ALL PROGRAMS		LOCAL PROGRAMS ONLY		ALL PROGRAMS		LOCAL PROGRAMS ONLY		ALL PROGRAMS		LOCAL PROGRAMS ONLY	
	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating
(1)	(2)	(3)2/	(4)1/	(5)2/	(6)	(7)3/	(8)1/	(9)3/	(10)	(11)4/	(12)1/	(13)4/
a. TOTAL TIME OPERATING		100%				100%				100%		
b. NEWS 1/												
c. PUBLIC AFFAIRS 1/												
d. ALL OTHERS *(Exclusive of entertainment and sports)* 1/												

1/Excluding Commercials.
2/Percentages are of the total minutes of operation reported at the top of column 2.
3/Percentages are of the total minutes of operation reported at the top of column 6.
4/Percentages are of the total minutes of operation reported at the top of column 10.

8b. If the applicant's composite week programming varied substantially from the relevant programming representations made to the Commission, attach as Exhibit III-8b a statement explaining the variation(s) and reasons therefor.

Section III **Statement of TV Program Service**

9. Indicate the minimum amount of time the applicant proposes to devote normally each week to the categories below. Commercial time should be *excluded* in all computations except for the entries in columns 2, 6 and 10 of the total time operating line (line a).

ANTICIPATED TYPICAL WEEK DATA	FROM 6 AM TO MIDNIGHT				FROM 6 PM TO 11 PM (5 PM TO 10 PM CENTRAL AND MOUNTAIN TIME)				FROM MIDNIGHT TO 6 AM			
	ALL PROGRAMS		LOCAL PROGRAMS ONLY		ALL PROGRAMS		LOCAL PROGRAMS ONLY		ALL PROGRAMS		LOCAL PROGRAMS ONLY	
	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating	Minutes Of Operation	Percentage Of Total Time Operating
(1)	(2)	(3)2/	(4)1/	(5)2/	(6)	(7)3/	(8)1/	(9)3/	(10)	(11)4/	(12)1/	(13)4/
a. TOTAL TIME OPERATING		100%				100%				100%		
b. NEWS 1/												
c. PUBLIC AFFAIRS 1/												
d. ALL OTHERS *(Exclusive of entertainment and sports)* 1/												

1/Excluding Commercials.
2/Percentages are of the total minutes of operation reported at the top of column 2.
3/Percentages are of the total minutes of operation reported at the top of column 6.
4/Percentages are of the total minutes of operation reported at the top of column 10.

FCC 303-C (Page 7)
September 1981

Section III **Statement of Program Service**

Call Letters _____

10. A. Provide the applicant's proposals for a typical week of:

(a) the minimum number of public service announcements that the applicant proposes to broadcast _____

(b) the number to be broadcast between 8 a.m. and 11 p.m. _____

B. Of the total number of public service announcements which the applicant proposes to broadcast in a typical week provide the number which will be primarily designed to promote programs, activities or services of organizations or organizational units located:

In the service area _____
Outside the service area _____

11. State the number of 60 minute segments during the composite week, beginning with the first full clock-hour and ending with the last full clock-hour of each broadcast day, containing the following amounts of commercial matter:

A. Up to and including 8 minutes _____

B. Over 8 and up to and including 12 minutes _____

C. Over 12 and up to and including 16 minutes _____

D. Over 16 minutes _____

Attach as Exhibit III-11, a list of each segment in category D above, specifying the amount of commercial time in the segment and the day and time of broadcast.

12. State the number of 60 minute segments in the 6 p.m. — 11 p.m. (5 p.m. — 10 p.m. Central and Mountain Time) period during the composite week containing the following amounts of commercial matter:

A. Up to and including 8 minutes _____

B. Over 8 and up to and including 12 minutes _____

C. Over 12 and up to and including 16 minutes _____

D. Over 16 minutes _____

Attach as Exhibit III-12, a list of each segment in category D above, specifying the amount of commercial time in the segment and the day and time of broadcast.

13. A. In the applicant's judgment does the information supplied in questions 11 and 12 adequately reflect its commercial practices? ☐ Yes ☐ No

B. If No, attach as Exhibit III-13 additional material to adequately describe the commercial practices.

C. If the applicant's commercial practices for the period covered by questions 11 and 12 varied from the representations made to the Commission, attach as Exhibit III-13C a statement explaining the variations and reasons therefor.

APPENDIX I-B-8

Section III **Statement of Program Service**

14. In Exhibit III-14, submit each 1 hour or ½ hour segment of programming designed for children 12 years old and under broadcast during the license period which contained commercial matter in excess of:

    A. 12 minutes per hour or 6 minutes per ½ hour, Monday through Friday; or

    B. 9½ minutes per hour or 4¾ minutes per half-hour, Saturday and Sunday

    For each programming segment so listed, indicate the length of the segment (i.e., one hour or ½ hour) and amount of commercial matter contained therein.

15. What is the maximum amount of commercial matter in any 60 minute segment which the applicant proposes normally to allow?

    If the applicant proposes to permit the amount to be exceeded at times, state in Exhibit III-15 under what circumstances and how often this is expected to occur, and the limits that would then apply.

16. What is the maximum amount of commercial matter in any 60 minute segment between the hours of 6 p.m. — 11 p.m. (5 p.m. — 10 p.m. Central and Mountain Time) which the applicant proposes normally to allow?

    If the applicant proposes to permit this amount to be exceeded at times, state in Exhibit III-16 under what circumstances and how often this is expected to occur, and the limits that would then apply.

17. A. What is the maximum amount of commercial matter per hour the applicant proposes to allow in programs broadcast on weekdays (Monday through Friday) which are designed for children twelve years old and under?

    If the applicant proposes to permit this amount to exceed 12 minutes, state in Exhibit III-17A under what circumstances and how often this is expected to occur, and the limits that would then apply.

    B. What is the maximum amount of commercial matter per hour, the applicant proposes to allow in programs broadcast on weekends (Saturday and Sunday) which are designed for children twelve years old and under?

    If the applicant proposes to permit this amount to exceed 9½ minutes, state in Exhibit III-17B under what circumstances and how often this is expected to occur, and the limit that would then apply.

NOTE: Unless otherwise indicated, it is assumed that proportional commercial time limits apply to ½ hour segments for the purposes of this question.

Section IV **Certification**

Call Letters: _____

The APPLICANT hereby waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by the license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and are incorporated herein.

This application must be signed in accordance with the requirements of Section 73.3513, "Signing of Applications".

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.
U.S. CODE, TITLE 18, SECTION 1001.

Certification

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this day of , 19

Name of Applicant

Signature

Title

** FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT **

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579,
DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3).

FEDERAL COMMUNICATIONS COMMISSION
Mass Media Application and Report Forms

(July 29, 1983)

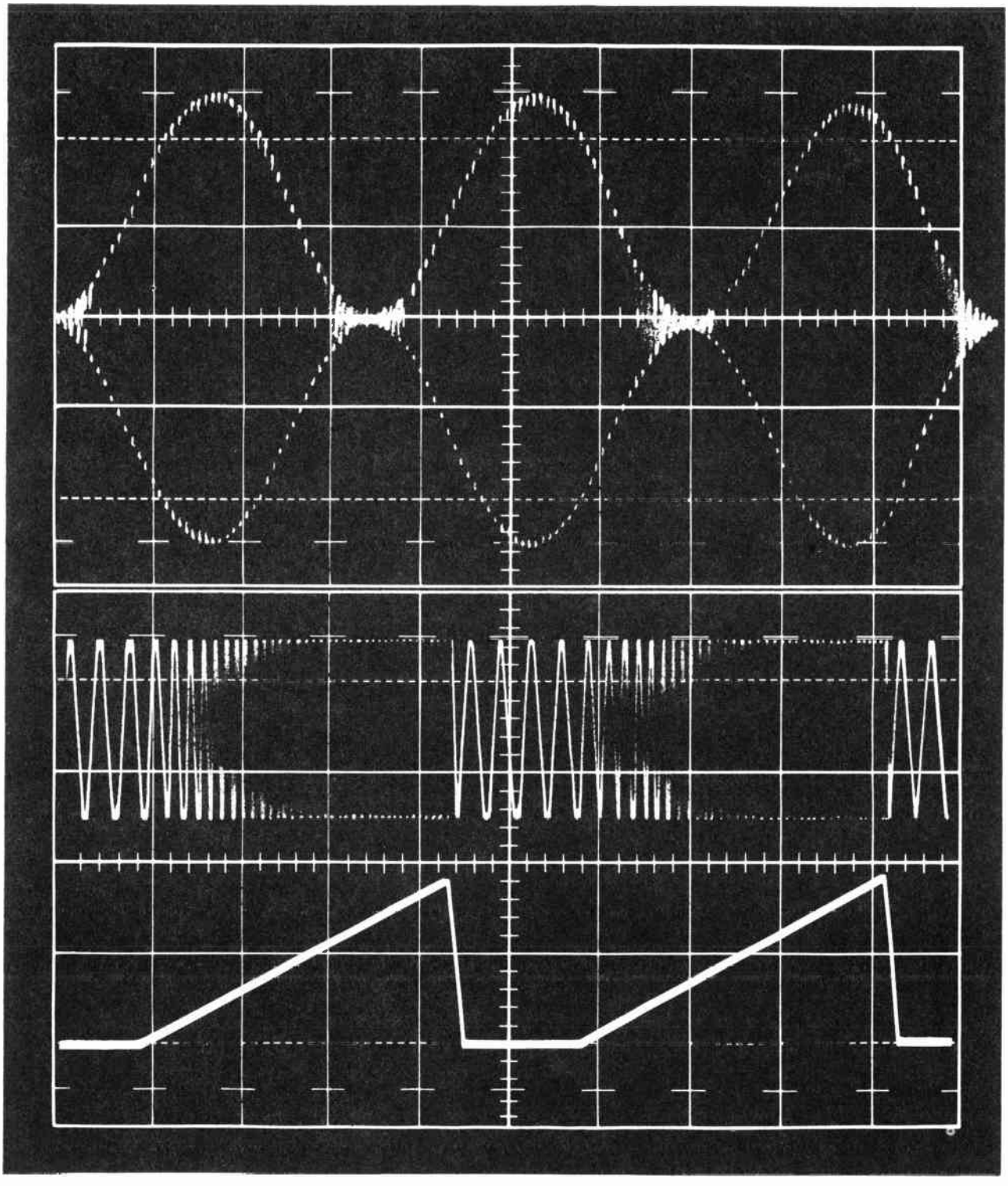
FCC FORM #	TITLE	CURRENT EDITION DATE	PREVIOUS EDITIONS ACCEPTABLE
301	Application For Construction Permit For Commercial Broadcast Station	January 1982	None
301-A	Application For Authority To Operate A Broadcast Station By Remote Control Or To Make Changes In A Remote Control Authorization	August 1982	October 1980
302	Application For New Broadcast Station License	June 1981	March 1977
303-C	Renewal Application Audit Form For Commercial TV Broadcast Stations	September 1981	None
303-N	Renewal Application Audit Form For Noncommercial Educational AM, FM And TV Broadcast Stations	September 1981	None
303-S	Application For Renewal Of License For Commercial and Noncommercial AM, FM or TV Broadcast Station (Postcard Renewal Form)	February 1983	September 1981
308	Application For Permit To Deliver Programs To Foreign Broadcast Stations	August 1983	None
309	Application For Authority To Construct Or Make Changes In An International, Experimental Television, Experimental Facsimile, Or Developmental Broadcast Station	June 1982	June 1980
310	Application For An International, Experimental Television, Experimental Facsimile, Or A Developmental Broadcast Station License	February 1977	None
311	Application For Renewal Of An International, Experimental Television, Experimental Facsimile, Or A Developmental Broadcast Station License	February 1983	February 1978
313	Application For Authorization In The Auxiliary Broadcast Services	August 1981	None
313-R	Application For Renewal of Auxiliary Broadcast License (Short Form)	September 1982	None
314	Application For Consent To Assignment Of Broadcast Station Construction Permit or License	March 1983	None
315	Application For Consent To Transfer Of Control Of Corporation Holding Broadcast Station Construction Permit Or License	March 1983	None
316	Application For Consent To Assignment of Radio Broadcast Station Construction Permit Or License Or Transfer Of Control Of Corporation Holding Radio Broadcast Station Construction Permit Or License	July 1983	October 1981
318	SCA Application	Cancelled	
323	Ownership Report	June 1983	August 1981
323-E	Ownership Report For Noncommercial Educational Broadcast Station	June 1981	January 1978

APPENDIX I-C-2

FEDERAL COMMUNICATIONS COMMISSION
Mass Media Application and Report Forms

(July 29, 1983)

FCC FORM #	TITLE	CURRENT EDITION DATE	PREVIOUS EDITIONS ACCEPTABLE
330-L	Application For Instructional Television Fixed Station License	March 1977	September 1970
330-P	Application For Authority To Construct Or Make Changes In An Instructional Television Fixed And/Or Response Station(s) and Low Power Relay Station(s)	October 1982	June 1976
330-R	Application For Renewal Of Instructional Television Fixed Station And/Or Response Station(s) and Low Power Relay Station(s) License	January 1983	May 1977
340	Application For Authority To Construct Or Make Changes In A Noncommercial Educational Broadcast Station	January 1983	None
341	Application For A New Noncommercial Educational Broadcast Station License	January 1983	None
345	Application For Consent To Assignment Of Broadcast Translator Station Construction Permit Or License	October 1977	May 1976
346	Application For Authority To Construct Or Make Changes In A Low Power TV, TV Translator, Or FM Translator Station	September 1982	None
347	Application For TV Or FM Broadcast Translator Station License	June 1981	February 1977
348	Application For Renewal Of TV Or FM Broadcast Translator Station License	September 1983	None
349-L	Application For An FM Booster Station License	October 1977	April 1977
349-P	Application For Authority To Construct Or Make Changes In An FM Booster Station	October 1977	June 1977
349-R	Application For Renewal Of FM Booster Station License	November 1977	June 1977
395	Annual Employment Report	January 1983	None
396	Equal Employment Opportunity Program (Ten Point Program)	February 1983	None
396-A	Model EEO Program (Five Point Program)	April 1982	None
701	Application For Extension Of Construction Permit Or To Replace Expired Construction Permit	December 1982	April 1980



Provided by
Field Operations Bureau

July 1982*

AM & FM Broadcast Station Checklist

*Editors' note: Since July 1982, the Commission has deleted or substantially modified many of its AM and FM broadcast rules. This Checklist has been revised to reflect these changes as of May 22, 1984.

Partial Index By Subject To Rules For AM & FM Broadcast Stations

Since rules are subject to periodic revisions, listings should be checked with recent rule changes as they occur. This is not a complete listing of all rules to which stations may be subject.

TSA = Terms of Station Authorization
GEP = Good engineering practice

1. Station Document & Records	AM	FM
☐ License, CP, Renewal, Program test posted	73.1230 [a]	73.1230 [a]
☐ Operator licenses posted or 759 posted	73.1230 [b]	73.1230 [b]
☐ Remote control, SCA, Auxiliary, alternate, PSA authority	73.1230 [a]	73.1230 [a]
☐ Designated chief operator agreement posted	73.1870 [a]	73.1870 [a]
☐ Contract chief operator agreement	73.1870[b][2]	73.1870 [b]
☐ Antenna impedance measurement	73.1225 [c]	—
☐ Field strength measurement for directional systems	73.1225 [c]	—
☐ Letter approving transmitter modifications	73.1230 [a]	73.1230 [a]
☐ Contracts for SCA, brokers, etc.	73.1226 [c	73.1226 [c]
☐ Logs and Records available	73.1225 [c]	73.1225 [c]
☐ Station available for FCC inspection	73.1225 [a]	73.1225 [a]
☐ Logs relinquished to Commission on request	73.1226 [a]	73.1226 [a]

2. New Station Notices To Be Filed		
☐ Equipment test notice with Washington and EIC	73.1610	73.1610
☐ Program test authority advance notice with Washington or authorized for DA	73.1620	73.1620
☐ Request for inspection with EIC	73.1610	73.1610

3. Transmitter

☐ Transmitter acceptable/or as shown on license	73.1665	73.1665
☐ Operating power correct	73.1560 [a]	73.1560 [b]
☐ Function of Meters labeled	73.58 [d]	73.258 [d]
☐ Meters accurate	73.1215 [f]	73.1215 [f]
☐ Meter(s) proper scale/range all powers	73.1215	73.1215
☐ Interlock and safety provisions	73.49	73.49
☐ Power adjustment capability	73.40	73.317 [a] [8]
☐ Efficiency O.K.	73.46 [a]	GEP
☐ Transmitter efficiency factor available	—	73.267 [a] [3]
☐ Transmitter modifications approved	73.1690	73.1690
☐ Frequency in tolerance (AM—20 Hz, FM—2000 Hz)	73.1545 [a]	73.1545 [b]
☐ Modulation within tolerance (generally 85—100%)	73.1570	73.1570
☐ Compression/limiting not excessive	73.1570 [c]	73.1570 [c]

4. Studio and Control Point

☐ Main studio location as licensed	73.1125	73.1125
☐ Operator's primary duty is operation of transmitter	73.1860 [d]	73.1860 [d]
☐ Remote control point secure	73.67 [a] [1]	73.275 [a] [1]
☐ Function of meters labeled	73.58 [d]	73.258 [d]
☐ Equipment/wiring—good engineering practice	73.49	73.317
☐ Transmitter/metering equipment visible to operator	73.1860 [b]	73.1860 [b]
☐ EBS alarm visible or audible	73.932 [a]	73.932 [a]
☐ EBS check lists immediately available	73.908	73.908
☐ Extension meters visible	73.1550 [a] [3]	73.1550 [a] [3]
☐ Operators instructed on performance adjustments or instructions and limits posted at operating position	73.1860 [c]	73.1860 [c]
☐ Operator can monitor/control SCA program	—	73.295 [c]

5. Tower and Antenna

☐	Authority obtained for change in radiating system	73.45	73.257 [b]
☐	Correct color (TSA—terms of station license)	17.23	17.23
☐	Correct number of bands (TSA)	17.23	17.23
☐	Lighting agrees with license	TSA	TSA
☐	Top and flashing lights work or FAA notified	17.48 [a]	17.48 [a]
☐	Photocell and flashing mechanism	TSA	TSA
☐	Radials protected and in good condition	73.189 [b] [4] & [5]	—
☐	Antenna & transmission line not exposed	73.49 [a]	—
☐	Base fence secure and grounded	73.49 [a] [8]	—
☐	Tuning house secure	73.49 [a] [8]	—
☐	Base ammeter 2% calibration to remote	73.57 [d] [3]	
☐	Weeds cut in antenna area	GEP	—
☐	Satisfactory field strength at 1 mile	73.189 [b] [2]	—
☐	Spurious or harmonic emissions attenuated	73.44	73.317 [a]
☐	Base meters in range for all powers	73.58 [a]	—
☐	Remote antenna current pickup point located at, but below main meter	73.57 [b]	—
☐	Directional System Tolerances	73.62	

6. EBS

☐	Receiver decoder installed and working	73.932 [a]	73.932 [a]
☐	Weekly test transmissions made unscheduled	73.961 [c]	73.961 [c]
☐	EBS tests being received	73.932 [c]	73.932 [c]
☐	Check list immediately available	73.908	73.908
☐	Equipment loan inventory O.K.	Terms of loan agreement	
☐	EBS tone encoder installed/working	73.932 [b]	73.932 [b]
☐	Monitoring correct station assignment	73.932 [a]	73.932 [a]

7. Remote Control Operation

☐ Positive on/off and failsafe circuits	73.67 [a] [2]	73.275 [a] [2]
☐ Transmitter secure	73.67 [a] [1]	73.275 [a] [1]
☐ Remote meters have true calibration or charts	73.67 [a] [7]	73.275 [a] [7]
☐ Remote meter correct scales	73.67 [a] [6]	73.275 [a] [6]
☐ Remote meters calibrated weekly	73.67 [a] [5]	73.275 [a] [5]
☐ Remote meters agree within 2%	73.67 [a] [5]	73.275 [a] [5]
☐ Power can be adjusted	73.67 [a] [4]	73.275 [a] [4]
☐ Phase & base current for each pattern as required	73.1830 [a] [2] [iv]	—
☐ Termination of remote control within one hour when required because of inaccurate readings	73.67 [a] [3]	73.275 [a] [3]
☐ Antenna monitor type approved for remote reading	73.69 [a]	—
☐ DA antenna skeleton proof conducted annually	73.66 [c]	—
☐ Modulation continuously monitored if limiter not used (reading negative modulation if AM)	73.67 [a] [8]	73.275 [a] [8]
☐ Provision to Monitor/Control SCA	—	73.275 [a] [4]

8. Extension Metering

☐ Transmitter accessible within 100 feet	73.1550 [a] [2]	73.1550 [a] [2]
☐ All required meters extended	73.1550 [b]	73.1550 [b]
☐ Meters have correct scales	73.1550 [a] [6]	73.1550 [a] [6]
☐ Extension meters calibrated weekly	73.1550]c]	73.1550 [c]
☐ Extension meters agree within 2%	73.1550 [c] [3]	73.1550 [c] [3]
☐ Extension meters operate continuously	73.1550 [a] [5]	73.1550 [a] [5]
☐ Modulation indicators installed	73.1550 [b]	73.1550 [b]

9. Operating Log

☐ Logs retained for 2 years	73.1840	73.1840
☐ Signed at start and end of duty	73.1800 [a]	73.1800 [a]
☐ Reviewed, signed and dated by designated chief	73.1870 [c] [3]	73.1870 [c] [3]

☐ Pages numbered and dated	73.1800 [b]	73.1800 [b]
☐ Indicated advanced or nonadvanced times	73.1800 [b]	73.1800 [b]
☐ Time of power to antenna	73.1820 [a] [2] [i]	73.1820 [a] [3] [i]
☐ Daily tower light observation	73.1820 [a] [1] [ii]	73.1820 [a] [1] [ii]
☐ If tower lights out, indication FAA notified	73.1820 [a] [1] [ii] 17.49 [c] [4]	73.1820 [a] [1] [ii] 17.49 [c] [4]
☐ Adjustments to transmitter parameters	73.1820 [a] [2] [i]	73.1820 [a] [3] [i]
☐ Plate voltage and plate current	73.1820 [a] [2] [i]	73.1820 [a] [3] [i] [A]
☐ Antenna current or common point current	73.1820 [a] [2] [i] [B]	—
☐ Antenna monitor sample current, ratio or ratio deviation	73.1820 [a] [2] [iii] [B]	—
☐ Phase indications	73.1820 [a] [2] [iii] [A]	—
☐ Transmission line meter for direct power	—	73.1820 [a] [3] [i] [B]
☐ Meter readings without modulation	73.1820 [a]	—
☐ No variation in readings for long perids	GEP	GEP
☐ Entries for commencement at each mode and at 3 hour intervals	73.1820 [a] [2]	73.1820 [a] [3]
☐ Efficiency factor derivation, Ep X Ip for indirect power	73.1820 [a] [2] [ii]	—
☐ EBS Tests transmitted and received	73.961 73.1820 [a] [1] [iv]	73.961 73.1820 [a] [1] [iv]
☐ Corrections made properly	73.1800 [c]	73.1800 [c]

10. Maintenance Logs

☐ Logs available upon request	73.1225 [c] [1] [i]	73.1225 [c] [2] [i]
☐ Logs retained for 2 years	73.1840	73.1840

☐ Signature, date & time of inspection	73.1830 [b]	73.1830 [b]
☐ Weekly transmitter system inspection results	73.1830 [a] [2] [vi]	73.1830 [a] [3] [iv]
☐ Weekly calibration of base and remote reading antenna/common point RF meters	73.1830 [a] [2] [i]	—
☐ Time and date of auxiliary transmitter tests	73.1830 [a] [1] [i]	73.1830 [a] [1] [i]
☐ Frequency check results & methods used	73.1830 [a] [1] [iii]	73.1830 [a] [1] [iii]
☐ Calibration of automatic recorders	73.1830 [a] [1] [ii]	73.1830 [a] [1] [ii]
☐ Calibration of remote control meters	73.1830 [a] [1] [v]	73.1830 [a] [1] [v]
☐ Calibration of extension meters	73.1830 [a] [1] [iv]	73.1830 [a] [1] [iv]
☐ Calibration of antenna monitor if called for by manufacturer	73.1830 [a] [2] [ii]	—
☐ Time & date of removal of meters and monitors	73.1830 [a] [1] [viii]	73.1830 [a] [1] [viii]
☐ Quarterly tower light inspection	73.1830 [a] [1] [vi]	73.1803 [a] [1] [vi]
☐ Experimental operation	73.1830 [a] [1] [vii]	73.1830 [a] [1] [vii]
☐ Field strength measurements	73.1830 [a] [2] [iii]	—
☐ Common point current 3 days per week between 44—76 hours apart	73.1830 [a] [2] [iv] [A]	—
☐ Base current, Ratio, % deviations 3 days per week between 44—76 hours apart	73.1830 [a] [2] [iv] [B]	—
☐ Antenna monitor sample current, ratio, % deviation 3 days per week between 44—76 hours apart	73.1830 [a] [2] [iv] [C]	—
☐ Phase indications & deviations in degrees 3 days per week between 44—76 hours apart	73.1830 [a] [2] [iv] [D]	—
☐ Calibration of power output meter	—	73.1830 [a] [3] [i]
☐ Corrections made properly	73.1800 [c]	73.1800 [c]

11. Program Log NCE Stations Only

☐ Indication of advanced/nonadvanced time	73.1800 [b]	73.1800 [b]
☐ Logs retained for 2 years	73.1840	73.1840
☐ Operator signature at start and end of duty	73.1800 [a]	73.1800 [a]
☐ Pages numbered and dated	73.1800 [b]	73.1800 [b]
☐ Key to abbreviations contained in log	73.1800 [b]	73.1800 [b]
☐ Station ID times shown	73.1810 [f] [4] [i]	73.1810 [f] [4] [i]
☐ Sponsor name shown in log (not brand name)	73.1810 [f] [2]	73.1810 [f] [2]
☐ Program name, start and end times indicate	73.1810 [f] [1]	73.1810 [f] [1]
☐ Political affiliation for political programs and talks	73.1810 [f] [1] [v]	73.1810 [f] [1] [v]
☐ Entry clarifying source of program (e.g., net, local, rec.)	73.1810 [f] [1] [iv]	73.1810 [f] [1] [iv]
☐ Entry clarifying type of program [e.g., pol., ED, EDIT.)	73.1810 [f] [1] [iii]	73.1810 [f] [1] [iii]
☐ PSA's show party for whom made	73.1810 [f] [3]	73.1810 [f] [3]
☐ Entry of Pre-Grant announcement (73.3580)	73.1810 [f] [4] [iii]	73.1810 [f] [4] [iii]
☐ Corrections made properly	73.1800 [c]	73.1800 [c]
☐ Logs orderly and legible	73.1800 [b]	73.1800 [b]
☐ Name and political affiliation for political announcements	73.1810 [f] [4] [ii]	73.1810 [f] [4] [ii]
☐ Announcement of prerecorded material	73.1810 [f] [4] [iv]	73.1810 [f] [4] [iv]

12. Public Inspection File

☐ Records at accessible location	73.3526 [d]	73.3526 [d]
☐ Applications tendered after May 13, 1965	73.3526 [a] [1]	73.3526 [a] [1]
☐ Ownership reports filed after May 13, 1965	73.3526 [a] [3]	73.3626 [a] [3]
☐ Political use requests	73.1940 [d]	73.1940 [d]

☐ Annual employment reports	73.3526 [a] [5]	73.3526 [a] [5]
☐ Public and Broadcasting Procedural Manual	73.3526 [a] [6]	73.3526 [a] [6]
☐ Letters from public as required	73.1202 [e]	73.1202 [e]
☐ Issues/Programs list	73.3626 [a] [14]	73.3526 [a] [14]
☐ Materials available for reproduction	73.3526 [f] [e] [2]	73.3526 [f]
☐ Materials retained for proper period	73.3526 [e]	73.3526 [e]
☐ Donor announcement for non-commercial stations	73.1810 [f] [2]	73.1810 [f] [2]

13. Automatic Logging

Operating Log

☐ Accurately calibrated, time, date and circuit functions	73.1820 [b]	73.1820 [b]
☐ Autologger does not affect accuracy	73.1820 [b] [1]	73.1820 [b] [1]
☐ Equipment accuracy	73.1820 [b] [2]	73.1820 [b] [2]
☐ Weekly calibration of logger	73.1820 [b] [3]	73.1820 [b] [3]
☐ Aural alarm circuit	73.1820 [b] [4]	73.1820 [b] [4]
☐ Parameters read continuously or at least once each 30 minutes	73.1820 [b] [5]	73.1820 [b] [5]
☐ Logger located at control point	73.1820 [b] [6]	73.1820 [b] [6]
☐ Logger located in vicinity of operator	73.1820 [b] [7]	73.1820 [b] [7]
☐ Conforms with 73.1215 (arbitrary scales not authorized)	73.1820 [b] [8]	73.1820 [b] [8]
☐ No alterations after entry recorded	73.1800 [d]	73.1800 [d]

Program Log NCE Stations Only

☐ Information available for partial logging	73.1810 [l]	73.1810 [l]
☐ Certificate of auto logging by operator	73.1810 [j] [3]	73.1810 [j] [3]
☐ No alterations after entry recorded	73.1800 [d]	73.1800 [d]
☐ Certificate of logging data	73.1810 [k]	73.1810 [k]
☐ All required information available	73.1810 [l]	73.1810 [l]

14. Radio Operator

☐	Chief operator full or contract	73.93	73.265
☐	Duty operators licensed	73.1860 [a]	73.1860 [a]

15. Other Operating Requirement

☐	Required station identification	73.1201 [a]	73.1201 [a]
☐	Sponsors identified on air	73.1212	73.1212
☐	Presunrise operation at prescribed time and power	73.99	—
☐	Time, power and modes of operation correct	73.1745	73.1745
☐	Transmitting phone call requirements	73.1206	73.1206
☐	Rebroadcasting other stations	73.1207	73.1207
☐	Delayed-recorded broadcast announced	73.1208 [a]	73.1208 [a]
☐	No fraudulent billing	73.1205	73.1205
☐	EEO Compliance	73.2080	73.2080
☐	Compliance with rules re: personal attacks and political editorials	73.1920 73.1930	73.1920 73.1930
☐	Letter to Commission describing emergency operation	73.1250 [e]	73.1250 [e]
☐	Licensee conducted contest	73.1216	73.1216

16. Equipment Performance Measurements

☐	EPM available for inspection	73.1590	73.1590
☐	EPM available for two (2) years	73.1590	73.1590
☐	EPM made yearly (14 months) and four (4) months prior to renewal	73.1590	73.1590
☐	Description of equipment and method used	73.1590	73.1590
☐	Signed & dated by engineer making measurements	73.1590	73.1590
☐	EPM made through all circuits without compression or limiting	73.1590	73.1590

17. AM Measurements

	Required In Proof	Required Specifications
☐ Data and curves for frequency response for 50 to 7500 Hz at 25, 50 & 85% (& 100% modulation if obtainable)	_____	73.40 [a] [2]
☐ Data and curves for harmonic distortion for 25, 50 & 85% (& 100% modulation if obtainable) at 50, 100, 400, 1000, 5000 & 7500 Hz	_____	73.40 [a] [2]
☐ % carrier amplitude regulation for 25, 50 & 85% (& 100% modulation if obtainable) at 400 Hz	_____	73.40 [a] [4]
☐ Hum & noise referenced to 100% modulation at 400 Hz	_____	73.40 [a] [5]
☐ Spurious & harmonic radiation check	_____	73.44

18. FM Measurements

☐ Information for frequency response for 50, 100, 400, 1000, 5000, 10,000 and 15,000 Hz at 25, 50 & 100% modulation	73.1590	73.317 [a] [2]
☐ Harmoic distortion for 50, 100, 400, 1000 & 5000 Hz at 25, 50 & 100% modulation, also harmonics at 100% modulation for frequencies of 10,000 & 15,000 up to 30,000 Hz	73.1590	73.317 [a] [3]
☐ FM noise in the band from 50 to 15,000 Hz below 100% modulation	73.1590	73.317 [a] [4]
☐ AM noise in the band from 50 to 15,000 Hz below 100% modulation	73.1590	73.317 [a] [5]
☐ Stereo parameters	73.128	73.322

19. Directional Antenna System

	AM	FM
☐ Field strength measurements made according to license	73.61	—
☐ Field strength meter available and working	73.61 [a] [1]	—
☐ Base current, sample loop current, phase angle agree with license	73.62	—
☐ Antenna monitor installed and working	73.69	—
☐ Field strength measured less than licensed maximum at monitoring points	TSA	—

☐ Sample loop meters have calibration chart or scales when used as remote non DA antenna meter	73.57 [f]	—
☐ Monitor point satisfactory location and adequately described on license	GEP	—
☐ Antenna monitoring type-approved	73.69 [a]	—
☐ Approved sampling system O.K. if required	73.68	—

20. Stereo & SCA Operation

☐ Stereo pilot checked as often as necessary to ensure that it is kept within 2 Hz of the authorized frequency	—	73.297 [b]
☐ Stereo pilot injection 8 to 10%	—	73.322 [b]
☐ Stereo pilot frequency within 2 Hz	—	73.322 [b]
☐ Stereophonic subcarrier suppressed to less than 1% modulation of main carrier	—	73.322 [e]
☐ SCA—10% modulation if stereo used	—	73.322 [j]

21. Automatic Transmission Systems

☐ Authorization to use ATS	73.140 [c]	73.340 [c]
☐ ATS personnel licensee employees	73.146 [a]	73.346 [a]
☐ ATS personnel can perform monitoring & duties	73.146 [f]	73.346 [f]
☐ ATS personnel fully instructed on duties	73.146 [g]	73.346 [g]
☐ Tower lights checks either manual or automatic	73.146 [c] [3]	73.346 [c] [3]
☐ Only manual turn on used	73.140 [e]	73.340 [e]
☐ ATS operator holds at least RP	73.146 [a]	73.346 [a]
ATS control functions		
☐ Power adjust automatic	73.142 [b] [2]	73.342 [b] [2]
☐ Modulation adjust automatic	73.142 [b] [3]	73.342 [b] [3]
☐ Mode switching clock O.K. if needed	73.142 [d]	—
☐ Mode switching completely automatic	73.142 [d]	—
☐ Modulation control for SCA if used	—	73.342 [c]
☐ ATS auxiliary/alternate trans. O.K. if used	73.142 [g]	73.342 [g]

☐ Minimum modulation maintained	73.142 [b] [3]	73.342 [b] [3]
☐ Provision for indirect power function if used	—	73.342 [b] [1]
☐ ATS test system functioning	73.142 [i]	73.342 [i]
ATS turn off and fail-safe functions		
☐ Over power uncorrected over 3 minutes	73.144 [a]]1]	73.344 [a] [1]
☐ Over modulation uncorrected over 3 minutes	73.144 [a] [2]	73.344 [a]]2]
☐ Clock for mode switching fails over 3 minutes	73.144 [a] [3]	—
☐ Loss of turn-on or turn-off control	73.144 [a] [4]	73.344 [a] [4]
☐ Loss of alarm device functioning	73.144 [a] [5]	73.344 [a] [5]
☐ Loss of alarm sampling circuits	73.144 [a] [6]	73.344 [a] [6]
ATS alarm functions		
☐ Loss of signal (carrier or program) 3 min.	73.146 [c] [1]	73.346 [c] [1]
☐ Power below 90% authorized over 3 minutes	73.146 [c] [2]	73.346 [c] [2]
☐ Tower lighting failure if alarms used	73.146 [c] [3]	73.346 [c] [3]
ATS monitoring and alarm points		
☐ On/off controls functioning	73.146 [b] [1]	73.346 [b] [1]
☐ Off-air SCA program monitor for SCA	—	73.346 [b] [2]
☐ Off-air monitor	73.146 [b] [2]	73.346 [b] [2]
☐ Aural alarm signal functioning	73.146 [b] [3]	73.346 [b] [3]
☐ Point accessible & under licensee control	73.146 [a]	73.346 [a]
☐ Point controls protected from unauthorized operation	73.146 [a]	73.346 [a]
☐ EBS facilities provided as needed	73.146 [f]	73.346 [f]
☐ Licenses and ATS authorization posted	73.146 [h]	73.346 [h]

22. Auxiliary Broadcast Stations

Remote Pickup Stations

☐ License power not exceeded	74.461
☐ Frequency within tolerance	74.464

☐	License posted or attached to transmitter	74.467 [a] or [b]
☐	Frequency monitors and checks	74.465
☐	Station identification given	74.482
☐	Remote control operation	74.434
☐	% modulation indicator or automatic modulation control	73.434 [a] [1]
☐	On/off control of RF stage	74.434 [a] [2]
☐	Protected against unauthorized operation	74.434 [a] [3]
☐	Operator requirements	74.468
	Aural Broadcast STL and Intercity Relay Stations	
☐	+5% licensed power not exceeded	74.534
☐	Directional antenna required	74.536
☐	Frequency tolerance for offset operation	74.502 [a]
☐	Frequency tolerance of 0.005% maintained	74.561
☐	Station license posted	74.564
☐	Frequency monitors and measurements	74.562
☐	Station identification	74.582
☐	Remote control operation	74.533 [a]
☐	Operated under control of licensee	74.533 [a] [1]
☐	RF or control activated device showing Tx is radiating	74.533 [a] [2]
☐	On/off control of RF stage	74.533 [a] [3]
☐	Protected against unauthorized operation	74.533 [a] [4]
☐	Unattended operation	74.533 [b]
☐	Protected against improper operation	74.533 [b] [2]
☐	Protected against unauthorized operation	74.533 [b] [3]
☐	Observations made at receiving end at intervals not exceeding 30 hours	74.533 [b] [4]

NAB/RAB SUGGESTED COMMERCIAL RECORDKEEPING FORM

Page _____

STATION

Day _____

DAILY COMMERCIAL RECORD

Date _____

Time Zone _____

	TIME OF BROADCAST	DURATION	SPONSOR(S)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			

	OPERATOR OR ANNOUNCER	ON	OFF
1.			
2.			
3.			
4.			

COMMENTS: _____

§ 73.1800 General requirements relating to logs.

(a) The licensee of each station shall maintain logs as set forth in §§ 73.1810, 73.1820 and 73.1830. Each log shall be kept by the station employee or employees (or contract operator) competent to do so, having actual knowledge of the facts required. The person keeping the log must make entries that accurately reflect the operation of the station. In the case of program and operating logs, the employee shall sign the appropriate log when starting duty and again when going off duty and setting forth the time of each. In the case of maintenance logs, the employee shall sign the log upon completion of the required maintenance and inspection entries. When the employee keeping a program or operating log signs it upon going off duty or completing maintenance log entries, that person attests to the fact that the log, with any corrections or additions made before it was signed, is an accurate representation of what transpired.

(b) The logs shall be kept in an orderly and legible manner, in suitable form and in such detail that the data required for the particular class of station concerned are readily available. Key letters or abbreviations may be used if proper meaning or explanation is contained elsewhere in the log. Each sheet shall be numbered and dated. Time entries shall be made in local time and shall be indicated as advanced (e.g., e.d.t.) or non-advanced time (e.g., e.s.t.).

(c) Any necessary corrections of a manually kept log after it has been signed in accordance with paragraph (a) of this section shall be made only by striking out the erroneous portion and making a corrective explanation on the log or attachment to it. For program logs, such corrections shall be dated and signed by the person who kept the log or the program director, or the station manager or an officer of the licensee. For operating and maintenance logs, such corrections shall be dated and signed by the person who kept the log or the station technical supervisor, the station manager, or an officer of the licensee.

(d) No automatically kept log shall be altered in any way after entries have been recorded. When automatic logging processes fail or malfunction, the log must be kept manually for that period and in accordance with the requirements of this section.

(e) No log, or portion thereof, shall be erased, obliterated or willfully destroyed during the period in which it is required to be retained. (Section 73.1840, Retention of logs.)

(f) Entries shall be made in the logs as required by §§ 73.1810, 73.1820 and 73.1830. Additional information such as that needed for administrative or operational purposes may be entered on the logs. Such additional information, so entered, shall not be subject to the restrictions and limitations in the FCC's rules on the making of corrections and changes in logs and may be physically removed, without otherwise altering the log in any way, before making the log a part of an application or available for public inspection.

(g) The operating log and the maintenance log may be kept individually on the same sheet in one common log, at the option of the licensee.

(h) Application forms for licenses and other authorizations require that certain operating and program data be supplied. These application forms should be kept in mind in connection with maintenance of station program and operating records.

[43 FR 45850, Oct. 4, 1978, as amended at 46 FR 13907, Feb. 24, 1981]

§ 73.1810 Program logs.

COMMERCIAL STATIONS

(a) Commercial TV stations shall keep a program log in accordance with the provisions of § 73.1800 for each broadcasting day which, in this context, means from the station's sign-on to its sign-off.

(1) Commercial AM and FM stations are *not* required to keep program logs.

(b) *Entries.* The following entries shall be made in the program log:

(1) *For each program.* (i) An entry identifying the program by name or title.

(ii) Entries which indicate the time each program begins and ends. If programs are broadcast during which separately identifiable program units of a different type or source are presented, and if the licensee wishes to count such units separately, the beginning and ending time for the longer program need be entered only once. The program units which the licensee wishes to count separately shall then be entered underneath the entry for the longer program, with the beginning and ending time of each such unit.

(iii) An entry classifying each program as to type, using the definitions given in paragraph (d)(1) of this section.

(iv) An entry classifying each program as to source, using the definitions set forth in paragraph (d)(2) of this section. (For network programs, also give name or initials of the network, e.g., ABC, CBS, NBC, Mutual.)

(v) An entry for each program presenting a political candidate, showing the name and political affiliation of such candidate.

(2) *For commercial matter.* (i) An entry identifying: The sponsor(s) of the program, the person(s) who paid for the announcement or the person(s) who furnished materials or services. The entry shall constitute a representation that identification was announced on the air as required by section 317 of the Communications Act and § 73.1212 of the FCC's rules. See paragraph (d)(3) of this section for the definition of commercial matter.

(ii) An entry or entries showing the total dura-

tion of commercial matter in each hourly time segment (beginning on the hour) or the duration of each commercial message (commercial continuity in sponsored programs, or commercial announcements) in each hour. See paragraph (d)(3)(iii) of this section concerning computation of commercial time.

(3) *For public service announcements.* An entry showing that a public service announcement (PSA) has been broadcast together with the name of the organization or interest on whose behalf it is made. See paragraph (d)(4) of this section for definition of a public service announcement.

(4) *For other announcements.* (i) An entry of the time that each required station identification announcement is made (pursuant to § 73.1201).

(ii) An entry for each announcement presenting a political candidate, showing the name and political affiliation of such candidate.

(iii) An entry for each announcement made pursuant to the local notice requirements of §§ 73.3580 (pre-grant), 73.3594 (designation for hearing) and 73.1202 (licensee obligations), showing the time it was broadcast.

(iv) An entry for each announcement made pursuant to § 73.1208 concerning the broadcast of taped, filmed or recorded material.

(5) *For Emergency Broadcast System Operations.* An entry for tests of the EBS procedures pursuant to the requirements of Subpart G of this part and the appropriate station EBS checklist, unless such entries are consistently made in the station operating log.

(c) *National network programming.* A station broadcasting the programs of a national network which will supply it with all information as to such programs for the composite week need not log such data but shall record in its log the time when it joined the network, the name of each network program broadcast, the time it leaves the network, and any non-network matter broadcast which is required to be logged. The information supplied by the network for the composite week which the station will use in its renewal application, shall be retained with the program logs and associated with the log pages to which it relates.

(d) *Definitions*—(1) *Program type.* The definitions of the first eight types of programs (i) through (viii), below, are intended not to overlap each other and will normally include all the various programs broadcast. Definitions (ix) through (xi) are subcategories and the programs classified thereunder will also be classified under one of the appropriate first eight types. There may also be further duplication within types (ix) through (xi) (e.g., a program presenting a candidate for public office, prepared by an educational institution, would be classified as public affairs (PA), political (POL) and educational institution (ED)).

(i) *Agricultural programs* (A) include market reports, farming or other information specifically addressed, or primarily of interest to the agricultural population.

(ii) *Entertainment programs* (E) include all programs intended primarily as entertainment, such as music, drama, variety, comedy, quiz, etc.

(iii) *News programs* (N) include reports dealing with current local, national, and international events, including weather and stock market reports; and commentary, analysis and sports news when an integral part of a news program.

(iv) *Public affairs programs* (PA) are programs dealing with local, State, regional, national, or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, roundtables, vignettes, and extended coverage (whether live or recorded) of public events or proceedings, such as local council meetings, congressional hearings and the like.

(v) *Religious programs* (R) include sermons or devotionals; religious news; and music, drama and other types of programs designed primarily for religious purposes.

(vi) *Instructional programs* (I) are primarily intended to instruct. They further the appreciation or understanding of such subjects as literature, music, fine arts, history, geography, the natural and social sciences, hobbies and occupations and vocations.

(vii) *Sports programs* (S) include play-by-play and pre-game or post-game related activities and separate programs of sports instruction, news or information (e.g., fishing opportunities, golfing instruction, etc.)

(viii) *Other programs* (O) include all programs not falling within definitions (i) through (vii).

(ix) *Editorials* (EDIT) include programs presented for the purpose of stating opinions of the licensee.

(x) *Political programs* (POL) include those which present candidates for political office or which give expressions (other than in station editorials) to views on such candidates or on issues subject to public ballot.

(xi) *Educational Institution programs* (ED) include those prepared by, in behalf of, or in cooperation with, educational institutions, educational organizations, libraries, museums, PTA's, or similar organizations. Sport programs shall not be included.

(2) *Program source*—(i) *A local program* (L) is any program originated or produced by the station or for the production of which the station is primarily responsible, employing live talent more than 50 percent of the time. Such a program, taped, recorded or filmed for later broadcast, shall be classified as local. A local program fed to a network shall be classified by the originating station as local. Programs primarily featuring records, tapes, syndicated or feature film or other nonlocally recorded programs, shall be classified as recorded (REC) even though a station announcer appears in connection with such materi-

al. However, identifiable units of such programs which are live and separately logged as such may be classified as local. For example, if during the course of a program featuring records or films, a nonnetwork 2-minute news report is given and logged as a news program, the report may be classified as local.

(ii) *A network program* (NET) is any program furnished to the station by a network (national, regional or special). Delayed broadcasts of programs originated by networks are classified as network.

(iii) *A recorded program* (REC) is any program not otherwise defined in this paragraph including, without limitation, those using recordings, tapes or films.

(3) *Commercial matter* (CM) includes commercial continuity (network and nonnetwork) and commercial announcements (network and nonnetwork) as follows: (Distinction between continuity and announcements is made only for definition purposes. There is no need to distinguish the two types of commercial matter when logging.)

(i) *Commercial continuity* (CC) is the advertising message of a program sponsor.

(ii) *A commercial announcement* (CA) is any other advertising message for which a charge is made, or other consideration is received. Included are bonus spots, trade-out spots, promotional announcements of a future program where consideration is received for such an announcement or where such announcement identifies the sponsor of a future program beyond mention of the sponsor's name as an integral part of the title of the program, and promotional announcements broadcast by any AM, FM or TV station for another commonly owned or controlled station serving the same community.

(iii) *Computation of commercial time:* Duration of commercial matter shall be as close an approximation to the time consumed as possible. The amount of commercial time scheduled will usually be sufficient. It is not necessary, for example, to correct an entry of a 1-minute commercial to accommodate varying reading speeds even though the actual time consumed might be a few seconds more or less than the scheduled time. However, it is incumbent upon the licensee to ensure that the entry represents as close an approximation of the time actually consumed as possible. For certain sponsored programs, it is difficult to measure the exact length of what would be considered as commercial matter, e.g., some sponsored religious and political programs. For such programs, the licensee is not required to compute the amount of commercial matter, but merely to log and announce the program as sponsored. This exception does nor apply to any program advertising commercial products or services, not to any commercial announcements.

(4) *Public service announcement* (PSA) in one for which no charge is made and which promotes programs, activities or services of Federal, State or local governments (e.g., recruiting, sales of U.S. Savings Bonds, etc.) or the programs, activities or services of nonprofit organizations (e.g. UGF, Red Cross, Blood Donations, etc.) or any other announcements regarded as serving community interests.

NONCOMMERCIAL EDUCATIONAL STATIONS

(e) A program log for stations licensed or operating as noncommercial educational stations shall be kept in accordance with the provisions of § 73.1800 for each broadcast day, which, in this context means from the station's sign-on to its sign-off.

(f) *Entries:* The following entries shall be made in the program log:

(1) *For each program.* (i) An entry identifying the program by name or title.

(ii) Entries which indicate the time each program begins and ends. If programs are broadcast during which separately identifiable program units of a different type or source are presented, and if the licensee wishes to count such units separately, the beginning and ending time for the longer program need be entered only once. The program units which the licensee wishes to count separately shall then be entered underneath the entry for the longer program with the beginning and ending time of each such unit.

(iii) An entry classifying each program as to source using the definitions set forth in paragraph (h)(1) of this section. (For network programs, also give name or initials or network, e.g., PBS, NPR, etc.)

(iv) An entry classifying each program as to type, using the definitions set forth in paragraph (h)(2) of this section.

(v) An entry for each program presenting a political candidate, showing the name and political affiliation of such candidates.

(2) *For donor announcements.* An entry giving the name(s) of any donor(s) or person(s) furnishing money, service or other valuable consideration, in accordance with the provisions of §§ 73.503, 73.621, including Notes, and § 73.1212, respectively; and the entry shall constitute a representation that identification was announced on the air in accordance with the provisions of those sections and section 317 of the Communications Act. As an alternative to giving the name, an entry of the word "Donor(s)" may be made, provided that the log shall clearly indicate that the name of the donor(s) or person(s) is retained in the station's public file. Such information for a given series of programs need be entered in the public file only once: *Provided,* The information is identical for each program in the series. The information shall be retained in the public file for a period of two years. Program logs submitted to the FCC must include a list of the names of donors indicated thereon.

(3) *For public service announcements.* An entry showing that a public service announcement (PSA) has been broadcast, together with the name of the organization or interest on whose behalf it is made. See paragraph (h)(3) of this section for definition of a public service announcement.

(4) *For other announcements.* (i) An entry of the time that each required station identification announcement is made pursuant to § 73.1201.

(ii) An entry for each announcement presenting a political candidate showing the name and political affiliation of such candidate.

(iii) An entry for each announcement made pursuant to the local notice requirements of §§ 73.3580 (pre-grant) and 73.3594 (designation for hearing), showing the time it was broadcast.

(iv) An entry for each announcement made pursuant to § 73.1208 concerning the broadcast of taped, filmed or recorded material.

(5) *For emergency broadcast system operations.* An entry for each test of the EBS procedures pursuant to the requirements of Subpart G of this part and the appropriate station EBS checklist, unless such entries are consistently made in the station operating log.

(g) *Network programming.* A station broadcasting the programs of a network (see "network program," paragraph (h)(1)(iii) of this section) which will supply it with all information as to such programs necessary for the "full week of operation" (FCC form 342) need not log such data but shall record in its log the name of each network program broadcast, the time the program was broadcast (beginning and ending) and any non-network matter broadcast which is required to be logged. The information supplied by the network for the "full week" which the station will use in its renewal application shall be retained with the program logs and associated with the log pages to which it relates.

(h) *Definitions*—(1) *Program source*—(i) *A local program* (L) is any program originated or produced by the station or for the production of which the station is primarily responsible, employing live talent more than 50 percent of the time. Such a program, taped, filmed or recorded for later broadcast, shall be classified as local. A local program fed to the network shall be classified by the originating station as local.

(ii) *A record program* (REC) (radio only) is any program not falling within the definition of "local" above, which utilizes records, transcriptions or taped music, with or without commentary by a local announcer or other station personnel.

(iii) *A network program* (NET) is any program furnished to the station by a network (national, regional or special). Delayed broadcasts of programs originated by networks are classified as network.

(iv) *Other programs* (OTHER) are any programs not defined above, including, without limitation, syndicated and feature films, and taped or transcribed programs.

(2) *Program type*—(i) *Instructional* (I) include all programs designed to be utilized by any level of educational institution in the regular instructional program of the institution. In-school, in-service for teachers and college credit courses are examples of instructional programs.

(ii) *General educational* (GEN) is an educational program for which no formal credit is given.

(iii) *Performing arts* (A) is a program in which the performing aspect predominates such as drama or concert, opera or dance.

(iv) *News* (NS) programs include reports dealing with current local, national and international events, including weather and stock market reports; and commentary, analysis or sports news when an integral part of a news program.

(v) *Public affairs* (PA) includes programs dealing with local, state, regional, national or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, political programs, documentaries, mini-documentaries, panels, roundtables, vignettes and extended coverage (whether live or recorded) of public events or proceedings such as local council meetings, congressional hearings, and the like.

(vi) *Light entertainment* (LE) includes programs consisting of popular music or other light entertainment.

(vii) *Other* (O) includes all programs not falling within the definitions of Instructional, General Education, Performing Arts, News, Public Affairs or Light Entertainment. Sports programs should be reported as "Other."

(3) *Public service announcement* (PSA) is one which promotes programs, activities, or services of Federal, State or local governments (e.g., recruiting, sales of U.S. Savings Bonds, etc.) or the programs, activities or services of nonprofit organizations (e.g., UGF, Red Cross, Blood Donations, etc.), or any other announcement regarded as serving community interest. See, however, §§ 73.503(d) and 73.621(e) with respect to the preclusion of announcements promoting the sale of a product or service.

ALL STATIONS, COMMERCIAL AND NONCOMMERCIAL

(i) *Manually kept logs.* Entries on a manually kept log may be made either at the time of or prior to broadcast. The employee responsible for keeping the log shall sign the log when starting duty and when going off duty and enter the time of each. If entries are preprinted prior to broadcast and any deviation therefrom occurs in what was actually broadcast, an appropriate correction must be made on the log. When the employee keeping the log signs the log upon going off duty, that person attests to the fact that the log, with any corrections or additions made before he

signed off, is an accurate representation of what was actually broadcast.

(j) *Automatically kept logs.* (1) Entries on an automatically kept program log may be made by automatic logging instruments with sequential language printouts corresponding to manually kept log entries.

(2) An employee on duty shall be responsible for the automatic logging process and the keeping of the log. In the event of failure or malfunctioning of the automatic logging process, the person responsible for the log shall make the required entries in the log manually.

(3) The employee responsible shall sign the log, or a separate page to be affixed to the log, when starting duty and when going off duty and enter the time of each. The signature when going off duty constitutes a certification that, as to the automatic printout part of the log, the employee checked the automatic logging equipment periodically throughout the tour and that to the best of his knowledge and belief, at no time during his tour did it fail or malfunction, unless otherwise noted above the signature; and that, as to any part of the log which was kept manually with any corrections or additions made thereon before signing off duty, it was an accurate representation of what was actually broadcast.

(k) *Automatic maintenace of logging data.* (1) An employee on duty shall be responsible for any automatic maintenance of data and the keeping of the log. In the event of failure or malfunctioning of the said automatic process, the employee responsible for the log shall make the required entries in the log manually at that time.

(2) The employee responsible shall sign, on a separate page to be affixed to the logging data, when starting duty and when going off duty and enter the time of each. The signature, when going off duty, constitutes a certification that the employee periodically checked the automatic maintenance of data equipment throughout the tour and to the best of his knowledge and belief it did not fail or malfunction, unless otherwise noted above the signature. The signature further certifies that any part of the log which was kept manually is an accurate representation of what was actually broadcast.

(3) The licensee shall extract any required information from automatically maintained program logging data for days specified by the FCC or its duly authorized representative and submit it in written form, together with the underlying recording, tape or other means employed, within such time as the FCC may specify.

(l) *Information required.* The licensee, whether employing manual logging, automatic logging or automatic maintenance of logging data, or any combination thereof, must be able to accurately furnish the FCC with all information required to be logged.

[43 FR 45851, Oct. 4, 1978, as amended at 45 FR 6402, Jan. 28, 1980; 46 FR 13907, Feb. 24, 1981; 47 FR 24580, June 7, 1982]

PUBLIC NOTICE

A Joint Public Notice By The Federal Communications Commission And The Federal Election Commission

FCC 78-419
95369

June 19, 1978 - BC

SPONSORSHIP IDENTIFICATION AND CANDIDATE AUTHORIZATION NOTICES

1. Through this Joint Public Notice, the Federal Communications Commission and the Federal Election Commission intend to inform broadcast licensees and persons purchasing political broadcast time of ways of complying with both the FCC Rules concerning sponsorship identification and the FEC requirements for candidate authorization notices. 1/ Although the FCC requirements apply specifically to licensees and the FEC Rules apply to Federal candidates, their committees and other persons purchasing political broadcast time, the parties may agree between themselves to use one of the announcements listed in paragraph 4 below in satisfaction of both of these requirements. 2/

2. Under the terms of the Communications Act of 1934, as amended, 3/ and the FCC Rules, 4/ any broadcast time which is paid for or sponsored by a particular person or group must be accompanied

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1/ This Notice is intended to supplement FCC Public Notice 76-731 (August 3, 1976) and FEC Notice 1976-55, 41 F.R. 45954, (October 18, 1976).

2/ Section 315 of the Communications Act provides that a licensee shall have no power of censorship over "uses" of a broadcasting station by legally qualified candidates for public office. A "use" is defined as an appearance by a candidate, either orally or visually, during which he or she is identified or identifiable to the listening or viewing audience. In light of this provision, a licensee may not demand that a proposed political broadcast on which a candidate appears comply with the FEC requirements for candidate authorization notices. Of course, if the broadcast does not contain the correct notice of candidate authorization, the candidate or other person submitting the broadcast may be subject to penalties under the Federal Election Campaign Act. An exception is made to the no censorship provision, however, to allow licensees to require that proposed broadcasts comply with FCC Rules, since liability for incorrect sponsorship identification rests with the licensee. 47 U.S.C. §317.

3/ 47 U.S.C. §317.

4/ 47 C.F.R. §73.1212.

by an announcement to that effect. In addition, any political broadcast matter, or any matter which discusses a controversial issue of public importance, which is furnished to a station as an inducement for broadcast, must contain an announcement that it was furnished and by whom. Such announcement must appear or be heard either at the beginning or at the end of the furnished broadcast matter, except that the sponsorship identification must be given at both the beginning and the end of any such broadcast which exceeds five minutes in length.

3. The Federal Election Campaign Act, as amended, 5/ and the FEC Rules 6/ provide that broadcast communications which expressly advocate either the election or defeat of a "clearly identified" candidate 7/ must announce, in a manner which will give actual notice to the listener or viewer, that the broadcast was authorized by a particular candidate or not authorized by any candidate.

4. The following authorization notices and sponsorship identification announcements, in the situations described, comply with both the FCC and FEC regulations:

I. Broadcast communication which is authorized by and financed (or furnished) by the candidate or the candidate's authorized committee:

(1) "Paid for by [Name of candidate or committee]."

or

(2) "Paid for and authorized by [Name of candidate or committee]."

or

(3) "Sponsored by [Name of candidate or committee]."

or

(4) "Furnished by [Name of candidate or committee]."

5/ 2 U.S.C. §441d.

6/ 11 C.F.R. §110.11.

7/ See 2 U.S.C. §431(q) for definition of "clearly identified" candidate.

NOTE: Where a candidate or his committee is paying for or furnishing broadcast matter, authorization by the candidate is assumed and need not be specifically stated.

II. Broadcast communication which is authorized by the candidate or the candidate's authorized committee, but financed (or furnished) by a third party:

(1) "Paid for by [Name of third party] and authorized by [Name of candidate or committee]."

or

(2) "Sponsored by [Name of third party] and authorized by [Name of candidate or committee]."

or (where appropriate)

(3) "Furnished by [Name of third party] and authorized by [Name of candidate or committee]."

III. Broadcast communication which is financed by a third party 8/ and not authorized by any candidate or any candidate's authorized committee:

(1) "Paid for by [Name of sponsor/payor] and not authorized by any candidate."

or

(2) "Sponsored by [Name of sponsor/payor] and not authorized by any candidate."

or (where appropriate)

(3) "Furnished by [Name of person or group furnishing broadcast] and not authorized by any candidate."

8/ If the third party is a political committee, the name of any connected organization must be included in the Notice. See FEC Notice 1976-55, 41 F.R. 45954 (October 18, 1976), Examples 3 and 5.

5. The following additional announcement is required by the FECA 9/ in any of the above situations if the communication (1) is financed by a political committee and (2) solicits political contributions:

> "A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C."

6. The notice requirements of the FECA 10/ and the FEC Rules 11/ supersede and preempt any state statute which attempts to impose additional notices on political advertising by Federal candidates or committees. 12/

7. A copy of this Public Notice is being sent to all broadcast licensees of the FCC. For further information interested parties may contact the FCC at (202) 632-7586 or the FEC at (800) 424-9530.

9/ 2 U.S.C. §435; 11 C.F.R. §102.13.

10/ 2 U.S.C. §§435 and 441d.

11/ 11 C.F.R. §§102.13 and 110.11.

12/ 2 U.S.C. §453; 11 C.F.R. §108.7; FEC Advisory Opinion 1978-24.

NAB FORM PB 11 FEBRUARY 1984

AGREEMENT FORM FOR POLITICAL BROADCASTS

STATION and LOCATION _____ 19____

I, _____ (being) (on behalf of) _____

_____

a legally qualified candidate of the _____ political party for the office of _____

_____

in the _____ election to be held on _____, do hereby request station time as follows:

LENGTH OF BROADCAST	HOUR	DAYS	TIMES PER WEEK	TOTAL NO. WEEKS	RATE

DATE OF FIRST BROADCAST	DATE OF LAST BROADCAST

Total Charges: _____

The broadcast time will be used by _____
I represent that the advance payment for the above-described broadcast time has been furnished by

_____

_____ and you are authorized to so describe that sponsor in your log and to announce the program as paid for by such person or entity. The entity furnishing the payment, if other than an individual person, is: ( ) a corporation; ( ) a committee; ( ) an association; or ( ) other unincorporated group. The names and offices of the chief executive officers of the entity are: _____

_____

_____

It is my understanding that: If the time is to be used by the candidate himself within 45 days of a primary or primary runoff election, or within 60 days of a general or special election, the above charges represent the lowest unit charge of the station for the same class and amount of time for the same period; where the use is by a person or entity other than the candidate or is by the candidate but outside the aforementioned 45 or 60 day periods, the above charges do not exceed the charges made for comparable use of such station by other users.

It is agreed that use of the station for the above-stated purposes will be governed by the Communications Act of 1934, as amended, and the FCC's rules and regulations, particularly those provisions reprinted on the back hereof, which I have read and understand. I further agree to indemnify and hold harmless the station for any damages or liability that may ensue from the performance of the above-stated broadcasts. For the above-stated broadcasts I also agree to prepare a script or transcription, which will be delivered to the station at least _____ before the time of the scheduled broadcasts; (*note:* the two preceding sentences are not applicable if the candidate is personally using the time).

Date: _____ _____
(Candidate, Supporter or Agent)

Accepted / Rejected by _____ Title _____

This application, whether accepted or rejected, will be available for public inspection for a period of two years in accordance with FCC regulations (Sections 73.3526 and 73.1940(d).)

LAWS AND REGULATIONS GOVERNING POLITICAL BROADCASTS

From the Communications Act of 1934, as amended.

Section 312. (a) The Commission may revoke any station license or construction permit—

* * *

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Section 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(1) during the forty-five days preceeding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(2) at any other time, the charges made for comparable use of such station by other users thereof.

(c) For the purposes of this section.

(1) The term "broadcasting station" includes a community antenna television system.

(2) The terms "licensee" and "station licensee" when used with respect to a community antenna television system, mean the operator of such system.

(d) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

From the Rules of the Commission Governing Radio Broadcast Services. (The foregoing Sections of the Communications Act govern any inconsistencies between the following rules and those Sections).

Section 73.1940. Broadcasts by candidates for public office.

(a) Definitions. (1) A legally qualified candidate for public office is any person who:

(i) has publicly announced his or her intention to run for nomination or office;

(ii) is qualified under the applicable local, state or federal law to hold the office for which he or she is a candidate; and,

(iii) has met the qualifications set forth in either subparagraphs (2), (3), or (4), below.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in subparagraph (1) above, the person:

(i) has qualified for a place on the ballot, or

(ii) has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those states or territories (or the District of Columbia) in which they have met the requirements set forth in paragraph (a)(1) and (2) of this rule: Except, that any such person who has met the requirements set forth in paragraph (a)(1) and (2) in at least 10 states (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all states, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a)(1) above, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those states or territuries (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a)(1) above,

(i) he or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that state, territory or the District of Columbia, or

(ii) he or she has made a substantial showing of bona fide candidacy for such nomination in that state, territory or the District of Columbia. Except, that any such person meeting the requirements set forth in paragraph (a)(1) and (4) in at least ten states (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all states, territories and the District of Columbia for purposes of this Act.

(5) The term "substantial showing" of bona fide candidacy as used in paragraphs (a)(2), (3) and (4) above means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

(b) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed (1) during the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period, and (2) at any other time, the charges made for comparable use of such station by other users thereof. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office. (3) This paragraph shall not apply to any station which is not licensed for commercial operation.

(c) Discrimination between candidates. In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office tu broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) Records, inspection. Every licensee shall keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. When free time is provided for use by or on behalf of such candidates, a record of the free time provided shall be placed in the political file. All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years.

(e) Time of request. A request for equal opportunities must be submitted tu the licensee within one week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred: provided, however, that where the person was not a candidate at the time of such first prior use, he shall submit his request within one week of the first subsequent use after he has become a legally qualified candidate for the office in question.

(f) Burden of proof. A candidate requesting equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

Section 731810 Program Log: [Television and noncommercial radio only. Commercial AM and FM stations are *not* required to keep program logs.]

(b) the following entries shall be made in the program log. * * *

(1)(v) An entry for each program presenting a political candidate, showing the name and political affiliation of such candidate. * * *

(2)(i) An entry identifying (a) the sponsor(s) of the program, (b) the person(s) who paid for the announcement, or (c) the person(s) who furnished materials or services, and the entry shall constitute a representation that identification was announced on the air. * * *

(4)(ii) An entry for each announcement presenting a political candidate, showing the name and political affiliation of such candidate.

Political Broadcast Catechism

10th Edition
Prepared for members of the
National Association of Broadcasters

Additional copies of the NAB *Political Broadcast Catechism* are available from NAB Services, 1771 N Street, N.W., Washington, D.C., 20036. Call 800/368-5644 for price information.

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Political Broadcast Catechism

Foreward

This "1984" edition of the NAB *Political Broadcast Catechism* fulfills the fears of George Orwell in his now famous novel, *1984*. Big Brother is alive and well in looking over the shoulders of every broadcaster in America. The Communications Act continues to dictate fundamental political broadcast programming decisions. The Federal Communications Commission and the courts still stand as the ultimate arbiters of fairness, equality and reasonableness in the coverage of political campaigns and controversial issues.

On the other hand, the broadcast industry has inched closer to achievement of full First Amendment rights and relief from federal content control. "Deregulation" is the watchword at the FCC. The Commission even has gone so far as to recommend repeal of the equal time, lowest unit charge, and reasonable access provisions of the Communications Act. An influential senator has introduced legislation and launched a campaign to repeal Section 315 and the Fairness Doctrine. The merger of print and electronic media has prompted support of broadcasters' efforts by the newspaper industry.

This year also is an election year. To provide broadcasters with the latest rules, regulations and interpretations governing political broadcasting, NAB has published this Tenth Edition of its *Political Broadcast Catechism*. The *Catechism* consolidates into one document material necessary to a broadcaster in making informed decisions in the area of political broadcasting. Because the Commission places great importance on broadcasters' responsible execution of their obligations in this area, we urge each station licensee to be sure its employees are thoroughly familiar with the station's obligations.

We would like to express our appreciation to James J. Popham, Esq., who undertook the responsibility of revising this Tenth Edition of the *Catechism* to reflect changes in the law and its interpretation which have occurred since 1980.

We also advise all stations to be aware that the Commission undoubtedly will issue important new interpretations of its rules as the 1984 campaign progresses. Station licensees and personnel handling political broadcast matters should be alert to and review memos from NAB and their counsel concerning significant rulings during the 1984 campaign. For example, in a decision urged by NAB and welcomed by broadcasters, the Commission has ruled that debates between political candidates may be considered exempt from the equal opportunities requirement even when the debate is arranged by a broadcast station. This significant ruling was upheld on appeal by the United States Court of Appeals for the District of Columbia Circuit. Similarly, Commission policy with respect to "grid card" advertising rates, now common in the television industry, is not well-defined. We expect some clarification on "grid cards" and lowest unit charge during the 1984 campaign.

Because the basic provisions of the Communications Act governing political broadcasting, specifically Sections 312 and 315, have not been amended in over ten years, most broadcasters have developed a sound working knowledge of the political broadcasting and Fairness Doctrine requirements. Over the past four years, however, the Commission has further refined its interpretations of the Act and its rules in areas of critical concern. For example, the concept of reasonableness as applied to federal candidates' right to "reasonable access" to broadcast facilities has been defined in greater detail, thereby reducing broadcaster discretion. The responsibility of broadcasters to cover state and local elections has been re-emphasized recently by the Commission. Important questions involving the rights of political action committees have been resolved. Finally, the rights of individual states to adopt and enforce more stringent political broadcast regulations have been reviewed and defined by the courts.

The Commission itself is expected to publish a revised primer on political broadcasting to update its *New Primer on Political Broadcasting*, 69 F.C.C.2d 2209 (1978).

The *Catechism* is divided into two sections which can be summarized as follows:

I. Political Broadcasts Under Sections 312 and 315 of the Communications Act —

- the obligations of broadcast licensees under the Communications Act generally and as affected by the Campaign Communications Reform Act;
- the regulations of the FCC concerning

political broadcasting;

- the FCC guidelines implementing the Campaign Communications Reform Act; and
- FCC and court decisions in the political broadcast area.

II. The Fairness Doctrine —

- the obligations of broadcast licensees in the political broadcast area as affected by the Fairness Doctrine;
- the personal attack and political editorializing rules of the FCC;
- the quasi-equal opportunities or "Zapple" doctrine;
- controversial issues in general; and
- FCC and court decisions in the area of the Fairness Doctrine as it applies to political broadcasts.

In the dynamic area of political broadcasting, the *Catechism* cannot set forth definitive conclusions on every possible question or anticipate every question which may arise. Campaign practices, broadcast station operation, and rules themselves interrelate in an ever changing fashion to produce new questions throughout campaign periods. The *Catechism* should be viewed as a basic reference tool for the station licensee and all employees involved in political broadcasting. It provides a guide to handling fundamental questions where reliable answers have been provided by previous Commission decisions. It also should serve to alert stations that a problem or question exists which requires consultation with station counsel. Stations are encouraged to use the *Catechism's* index to facilitate their finding answers to questions which might arise.

I. Political Broadcasts Under Sections 312 and 315 of the Communications Act

A
The Communications Act and FCC Political Broadcast Rules and Regulations

1. **Q.** What does the Communications Act say about political broadcasts?

A. Sections 312(a) and 315 are the principal provisions of the Communications Act relative to political broadcasting. In addition, the sponsorship identification requirements of Section 317 of the Act also apply to political broadcasts. Sections 312(a), 315 and 317 are set forth on pages 50-51.

2. **Q.** What Commission or other official rules and regulations implement Sections 312(a) and 315 of the Communications Act?

A. The Commission has adopted rules to implement Section 315. Section 73.1940 of the rules applies to all types of broadcast stations, commercial and non-commercial. Section 73.1940 appears on page 50. The Commission also has published a *New Primer on Political Broadcasting*, 69 F.C.C.2d 2209 (1978). It provides a comprehensive review of the Commission's political broadcast rules and policies. The Commission is in the process of updating and revising its primer.

Logging

3. **Q.** What are the logging requirements for political broadcasts?

A. The Commission has eliminated the requirement that commercial radio stations maintain program logs. Similar proposals eliminating the logging requirements for television stations and non-commercial radio stations also are under consideration by the Commission. However, television stations and non-commercial radio stations must log political announcements as any other announcement *(e.g.* sponsor, duration, etc.) Additionally, in the case of a political program or announcement, the log entry must show the name and political affiliation of the candidate. No entry is required for programs which are exempt under Section 315. (See FCC Rule Section 73.1810(b), reprinted at page 50.)

Record Retention

4. **Q.** Is the licensee required to keep a script or recording of political announcements or programs?

A. FCC Rules do not require that stations keep scripts or recordings of political announcements or programs. Stations may wish to keep recordings or scripts, however, as a safety factor in the event of a complaint or controversy involving a political announcement or program. FCC Rules do require that scripts or summaries of editorials endorsing or opposing political candidates be made available to opposing candidates. (See FCC Rule Section 73.1930, and Q. & A. 190).

5. **Q.** What political broadcast records must be kept?

A. Section 73.1940(d) requires stations to keep and allow public inspection of all requests for political broadcast time made by or on behalf of candidates. The rule also requires that a notation showing the disposition of the request by the station and the charges made for any advertising sold be kept and made available for public inspection. The records must be retained for two years.

Requests and disposition of requests for political broadcast time are subject to public inspection and copying during normal business hours in accord with the Commission's public file rules. Stations do not have to provide political broadcast file information by telephone or by mail unless they choose to do so. If they do, they should furnish such information on a nondiscriminatory basis to all candidates.

Sponsorship Identification

6. **Q.** What Commission rules govern sponsorship announcements for political broadcasts?

A. The Commission's sponsorship identification rule (Section 73.1212) implementing Section 317, applies to political announcements and programs. The Rule in its entirety is set forth on pages 51-52. The Commission also has issued a *Public Notice* entitled "Applicability of Sponsorship Identification Rules" illustrating how the rule applies with respect to political and controversial issue announcements and pro-

grams, as well as other sorts of programming. It is published at 40 Fed. Reg. 41936 (September 9, 1975.)

As set forth in greater detail in the following questions, the Rule requires a specific identification of the person or group sponsoring the political announcement or program. Therefore, the announcement "this is a paid political broadcast" would not fulfill the requirement of the Rule. Some stations do use such an announcement to disassociate themselves from the political views expressed, but further identification of the sponsor still is required.

7. Q. Do the following announcements satisfy the sponsor ID rules: "State Citizens for Smith" and "Authority of Smith Committee?"

A. No. In a Public Notice issued jointly by the FCC and the Federal Election Commission on June 19, 1978 (FCC 78-419), the Commission stressed that paid political announcements or programs must be announced in the statutory language of Section 317. Mere mention of the sponsoring organization is not sufficient. The announcement must state that the broadcast matter is "paid for" or "sponsored by" that sponsor. Thus, the above-mentioned announcements should read "Paid for by (or "sponsored by") State Citizens for Smith" and "Paid for by (or "sponsored by") Smith Committee."

8. Q. Is the announcement "Paid for by a lot of people who want to see Sam Grossman elected to the United States Senate" sufficient to satisfy sponsorship identification?

A. No. The language is too general. It does not convey to listeners and viewers that the announcement is sponsored by a specific entity, *i.e.*, committee, organization, association, etc. supporting Mr. Grossman's candidacy. In other words, the public must be informed that the sponsor is a specific person or entity, where the announcement is not clear otherwise. (Letter to *KOOL Radio-Television, Inc.*, 26 F.C.C.2d 42 [1970].)

9. Q. Must the announcement also specify whether it is or is not authorized by a particular candidate?

A. Yes. The Federal Election Campaign Act (2 U.S.C. sec. 441d) and the Federal Election Commission's rules (11 C.F.R. sec. 110.11) require that whenever any person makes an expenditure or solicits any contribution for the purpose of financing, communications expressly advocating either the election or the defeat of a "clearly identified" candidate through any broadcasting station, such communications must make clear whether the broadcast was authorized by a particular candidate or not authorized by any candidate. (See Joint Public Notice of FCC and FEC, FCC 78-419, June 19, 1978.) State election laws affecting political broadcasts by candidates for state or local office vary from state to state.

10. Q. Are there special requirements for announcements which solicit political contributions?

A. No. The 1979 amendments to the Federal Election Campaign Act repealed the requirements that solicitations must state that the committee's report is filed with the Federal Election Commission.

11. Q. Are stations required to announce the names of the officers of organizations or groups which sponsor political programs or announcements?

A. No. While Section 73.1212(e) of the Commission's Rules requires stations to maintain a list of the names of such officers, FCC Rules do not require any announcement of their names. Some state and local jurisdictions, however, do require the announcement of such information in political advertising for *non-federal* candidates. The constitutionality of stricter state sponsorship identification requirements for state and local political broadcasts has been upheld. (*KVUE v. Moore*, 709 F.2d 922 [5th Cir. 1983].) Stations should check local law concerning state requirements.

Keep in mind, however, that the FCC and the Federal Election Commission (FEC) have preempted state laws which attempt to impose stricter requirements on political advertising by candidates for *federal* office.

12. Q. Must a station disclose that material used in newscasts or other programming has been supplied to the station by a candidate?

A. Yes, paragraph (d) of the Commission's sponsorship identification rule provides that such an announcement must be made in the case of any political or controversial discussion of programming for which any records, transcriptions, talent, scripts, or other material or services have been provided as an inducement to the broadcasting of such programming.

However, the Commission has ruled that with respect to the use of candidate-supplied material in *bona fide* newscasts, it will apply the rule only to audio tape or film furnished by the candidate. The rule will not be applied to printed matter, such as news releases or advance copies of speeches. (*First Report,* Docket No. 19260, 36 F.C.C.2d 40 [1972].)

13. Q. Must the sponsorship identification announcement be computed as commercial time and, thus, included within the candidate's spot or program time?

A. Yes. Sponsorship identification announcements always are considered commercial time and must be computed as such. Stations are reminded that they may not discriminate among candidates in this respect.

B
The "Legally Qualified" Candidate

14. Q Who is a legally qualified candidate for public office?

A. The Commission's Rules define a "legally qualified candidate" as follows:

(1) A legally qualified candidate for public office is any person who:

(i) has publicly announced his or her intention to run for nomination or office;

(ii) is qualified under the applicable local, state or federal law to hold the office for which he or she is a candidate; and,

(iii) has met the qualifications set forth in either subparagraphs (2),(3), or (4), below.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in subparagraph (1) above, that person:

(i) has qualified for a place on the ballot, or

(ii) has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a *bona fide* candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those states or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (1) and (2) of this rule: Except, that any such person who has met the requirements set forth in paragraphs (1) and (2) in at least 10 states (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all states, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (1) above, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those states or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (1) above, (i) he or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that state, territory or the District of Columbia, or

(ii) he or she has made a substantial showing of bona fide candidacy for such nomination in that state, territory or the District of Columbia; Except that any such person meeting the requirements set forth in paragraphs (1) and (4) in at least ten states (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all

states, territories and the District of Columbia for purposes of this Act.

15. Q. Need a candidate be on the ballot to be legally qualified?

A. Not always. The term "legally qualified candidate" includes persons not listed on the ballot if (1) they have committed themselves publicly to seeking election as a "write-in" candidate, (2) they are eligible under applicable law to be voted for by writing their names on the ballot, by sticker, or by other method, and (3) they make a substantial showing that they are *bona fide* candidates for election or nomination. (*Legally Qualified Candidates for Public Office*, 43 RR 2d 905.)

16. Q. What constitutes a "substantial showing" that an individual is a *bona fide* candidate?

A. The term "substantial showing" of *bona fide* candidacy as used in paragraphs (2), (3) and (4) of Q. & A. 14 means evidence that a person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager.) Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing. (See FCC Rule 73.1940 (a)(5), reprinted on page 50.)

17. Q. Where a name is on the ballot, must it be presumed that the individual is a legally qualified candidate for public office?

A. Not always. In some states individuals may campaign for the position of delegate to a party convention. Although their names may appear on the ballot, it has been held that such positions are not a "public office." Thus, "candidates" for the position of delegates in these states are not candidates for public office and are not, therefore, entitled to the rights afforded to legally qualified candidates for public office described by federal law. Be sure to check your local laws on this point, as these laws may differ from federal law.

18. Q. Who has the burden of proof in establishing whether a person is a legally qualified candidate?

A. A candidate requesting equal opportunity of a licensee, or a candidate complaining to the FCC of a licensee's non-compliance with Section 315, has the burden of proving that he and his opponent are legally qualified candidates for the same public office (FCC Rule 73.1940.)

19. Q. May a station deny a candidate "equal opportunity" because it believes that the candidate has no possibility of being elected or nominated?

A. No. Section 315 does not permit any such subjective determination by the station with respect to a candidate's chances of nomination or election. (Letter to *CBS, Inc.*, 40 F.C.C. 244 [1952].)

20. Q. May a person be considered a legally qualified candidate where he or she has made only a public announcement of his or her candidacy and has not yet filed the required forms or paid the required fees for securing a place on the ballot in either the primary or general election?

A. The answer depends on applicable state law. In some states persons may be voted for by the electorate whether or not they have gone through the procedures required for getting their names placed on the ballot itself. In such a state, the announcement of a person's candidacy — if determined to be *bona fide* — is sufficient to bring him or her within the purview of Section 315. (*Flory v. FCC*, 44 U.S.L.W. 2331 [December 23, 1975].) In other states, however, candidates may not be "legally qualified" until they have fulfilled certain prescribed procedures. (Letter to *Senator Earle C. Clements*, 23 F.C.C. 2d 751 [1954].)

21. Q. May an incumbent, or even a non-incumbent political figure, be considered a legally qualified candidate for nomination as his party's candidate for President of the United States prior to the time he publicly announces that he is a candidate for that nomination?

A. Yes. A formal declaration of candidacy is not necessarily essential to satisfy the public announcement requirement. A candidate will be considered to have made a public announcement of his or her candidacy if he or she "has

engaged to a substantial degree in activities commonly associated with political campaigns." Such activities would include making campaign speeches, distributing campaign literature, issuing press releases, and establishing a campaign committee and campaign headquarters. However, in 1979 the Commission held that Ronald Reagan had not made a substantial showing of candidacy despite his failure to disavow his candidacy to the Federal Election Commission, the filing of a statement of organization by his campaign committee with the Federal Election Commission, and a public statement by the head of his campaign committee that Mr. Reagan had decided to run.

22. Q. Must a person prove his or her legal qualifications prior to the date set for nomination or the actual election?

A. Yes. However, once the date of nomination or election has passed, it cannot be said that one is still a "candidate." The holding of the primary or general election terminates the possibility of affording "equal opportunity," thus mooting the question of the rights, if any, the claimant might have been entitled to under Section 315 before the election. (Letter to *Socialist Workers' Party*, 40 F.C.C. 281 [1956], *appeal dismissed sub nom. Daly v. U.S.*, Case No. 11,946 U.S.C.A. 7th Cir. [1957], *cert. denied,* 355 U.S. 826 [1957].) In any event, all requests by political candidates for "equal opportunities" under Section 315 must be submitted within one week of the day on which the first prior use occurred. (FCC Rule 73.1940, reprinted on page 50.)

23. Q. Under the circumstances stated in the preceding question, is any post-election remedy available to the candidate under Section 315?

A. None, insofar as a candidate may desire retroactive "equal opportunity." But this is not to suggest that a station can avoid its statutory obligation under Section 315 by waiting until an election has been held and only then disposing of demands for "equal opportunities."

24. Q. When a state attorney general or other appropriate state official having jurisdiction to decide a candidate's legal qualification has ruled that a candidate is not legally qualified under local election laws, can a licensee be required to afford such person "equal opportunity" under Section 315?

A. In such instances, the ruling of the state attorney general or other official will prevail, absent a judicial determination. (Telegram to *Ralph Muncy* 23 F.C.C.2d 766 [1956]; letter to *Socialist Workers' Party*, 40 F.C.C. 280 [1956]; *In re Lester Posner*, 15 F.C.C.2d 807 [1968].)

C
What Constitutes a "Use" of Broadcast Facilities?

As a general rule, any *use* of broadcast facilities by a legally qualified candidate imposes an obligation on broadcast station licensees to afford equal opportunities to all other candidates for the same office. However, exemptions are provided in Section 315 for appearances by a legally qualified candidate on any

(1) *bona fide* newscast,
(2) *bona fide* news interview,
(3) *bona fide* news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
(4) on-the-spot coverage of *bona fide* news events (including, but not limited to, political conventions and activities incidental thereto.)

It should be noted that the term "use" of broadcast facilities is of critical importance in determining what rights and responsibilities accrue to candidates and broadcasters. Whether a broadcast is a "use" decides whether a station may censor the broadcast. (See Section H, "Limitations As To Use of Facilities by a Candidate," p. 20.) It also determines whether the lowest unit charge provision in Section 315(b) applies (see Section J, "What Rates May Be Charged Candidates," p. 23), and whether a candidate's broadcast will entitle his or her opponent to equal opportunities under Section 315 (discussed in this section, p. 11). In addition, "reasonable access" will be provided only for a "use" by a candidate for federal office. (See Section K, "Reasonable Access," p. 35.)

25. Q. A legally qualified candidate for public office appears in a broadcast in a capacity other than as a candidate (*e.g.*, as a movie actor.) Are the candidate's opponents entitled to equal opportunity for such appearances?

A. Yes. Section 315 does not distinguish between types of uses. For example, a weekly report of a congressman to his constituents via radio or television is a broadcast by a legally qualified candidate for public office as soon as he becomes a candidate for reelection. His opponent must, therefore, be given equal opportunity for time on the air. If an actor becomes a legally qualified candidate for public office, the telecast of his movies thereafter will be a use, entitling his opponents to equal time, if the actor is identifiable in the movies. (*Adrian Wiess [Ronald Reagan films]*, 58 F.C.C.2d 342 [1976], *review denied* 58 F.C.C.2d 1889 [1976]; *Pat Paulsen*, 33 F.C.C.2d 385 [1972], *aff'd sub nom. Paulsen v. FCC*, 491 F.2d 887 [9th Cir. 1974].)

26. Q. If a candidate appears on a variety program for a brief bow or statement, are his or her opponents entitled to "equal opportunities" on the basis of such an appearance?

A. Yes. Such an appearance, no matter how brief or perfunctory, is a "use" of a station's facilities within Section 315.

27. Q. A non-candidate reads a political script while the candidate is shown either on silent film, by a photograph over the screen, or sitting in the studio. Are the candidate's opponents entitled to equal opportunities?

A. Yes. The appearance of any candidate in any of these three situations constitutes a "use" of the station's facilities, thus entitling opposing candidates to equal opportunities. (Letter to *Harry M. Plotkin*, 23 F.C.C.2d 758 [1966].)

28. Q. A public service television announcement was taped featuring a singing group of about 100 people, many of whom were well known celebrities in various fields. No one's name was mentioned nor were any voices separately identifiable. One of the participants later became a legally qualified candidate for public office. In the PSA, he is visible in two video shots both of which were of a few seconds' duration and at long range. Did these PSA's constitute a "use"?

A. No. Since the duration of the shots was too fleeting and the camera range too distant for the candidate to be readily identified in the group of 100 persons, his appearances were not a "use" within the meaning of Section 315(a) of the Communications Act. (Letter to *National Urban Coalition*, 23 F.C.C.2d 123 [1970].) The NAB Legal Department believes this ruling to be highly significant because by stressing the word "readily identifiable" the Commission appears to have rejected an absolute standard whereby Section 315 rights would arise in every case where a candidate might possibly be identifiable.

Additionally, the FCC's Mass Media Bureau recently ruled that appearances by legally qualified presidential and vice-presidential candidates for no longer than two to three seconds in broadcast commercial advertisements for *Time* magazine come within the "fleeting use" exception to Section 315 and do not constitute a "use" of the airwaves triggering "equal opportunity" rights for legally qualified opponents of those candidates. (Letter issued January 31, 1984 by the Chief, Fairness/Political Programming Branch, Enforcement Division, Mass Media Bureau.) *Time* had requested the ruling because promotional spots included the magazine's covers, on which candidates are sometimes featured.

Employee Candidates

29. Q. A television station uses a booth announcer to supply the audio portion of station identification announcements, public service announcements, and commercial announcements. The announcer is always "off-camera" and never identifies himself/herself. If he/she became a legally qualified candidate for city council, would opposing candidates for city council be entitled to equal opportunity?

A. As long as the announcer's voice is not well-known or familiar to listeners, the announcer's voice overs for commercials, public service and station identification announcements would not constitute a use. (*Letter to WNEP*, 40 F.C.C. 431 [1965].) However, if the announcer is identified by name or his or her voice is identifiable due to listener familiarity, the announcer's appearance would constitute a "use" under Section 315. (*Letter to KUGN*, 40 F.C.C. 293 [1958]; *Letter to KTTV*, 40 F.C.C. 279 [1956].) The question whether the announcer's voice is in fact so well known that it is identifiable to the general public is a matter for the licensee's reasonable good faith judgment. (*Letter to A. W. Davis*, 17 F.C.C.2nd 613 [1969].)

30. Q. What alternatives are available to a station with a readily identifiable on-air employee who becomes a legally qualified candidate for public office?

A. The station has three alternatives:

(1) Leave the employee on the air and be fully prepared to afford equal opportunity to any opposing candidate for the employee's appearances. However, note that the opposing candidates must request equal opportunities within seven (7) days of the employee's appearance. Furthermore, the station has no obligation to inform opposing candidates of their rights to equal opportunities when an employee-candidate appears on the air. Upon a timely request, opposing candidates would be entitled to free time equal to that of the employee's appearance.

(2) Seek a waiver from the employee-candidate's opponent(s). The Commission will recognize waivers of equal opportunity rights in employee-candidate situations where the employee-candidate agrees to make no reference, directly or indirectly, to his or her candidacy during on-the-air appearances. Opposing candidates may refuse to grant such waivers.

(3) Remove the employee from the air for the duration of his or her candidacy.

D
What Programs Are Exempt From Section 315?

As indicated above, Section 315 provides that appearances by legally qualified candidates on specified types of news programs are deemed not to be a "use" of broadcast facilities within the meaning of that section. In determining whether a particular program is within the scope of one of these specified news-type programs, the basic question is whether the program meets the standard of "*bona fide*." To establish whether such a program is, in fact, a "*bona fide*" program, the following considerations, among others, may be pertinent: (1) the format, nature and content of the program; (2) whether the format, nature and content of the program have changed since its inception and, if so, in what respects; (3) who initiates the program; (4) who produces and controls the program; (5) when was the program initiated; (6) is the program regularly scheduled; and (7) if the program is regularly scheduled, the time and day of the week when it is broadcast.

It should be noted that although a particular news program may be exempt from the operation of Section 315, the station, nevertheless, may be subject to the obligations of the fairness doctrine whenever such an exempt program involves the discussion of a controversial issue of public importance. (For a discussion of the fairness doctrine, see Part II, p. 39.) However, if it is established that the candidate's broadcast appearance constitutes a non-exempt Section 315 "use," the station's only obligation is to comply with the requirements of equal opportunity; thus, the station has no general fairness doctrine obligations arising out of a non-exempt Section 315 "use" by a candidate. Generally speaking, the obligations of Section 315 and of the fairness doctrine are mutually exclusive.

31. Q. Is a candidate's appearance in a news program a "use" of broadcast facilities requiring the station to provide equal time?

A. Newscasts, news interviews, news documentaries, and on-the-spot coverage of news events generally do not constitute "uses" of broadcast facilities. Where such news programs are *bona fide*, one must consider numerous factors such as the format, nature and content of the program, who produces and controls the program, whether the program is regularly scheduled, etc.

32. Q. In a newscast a station interviews several opposing candidates for public office. They discuss their positions on a local bond issue as well as on their own campaigns. Although their appearances are exempt, does the fairness doctrine apply?

A. Yes. The fairness doctrine applies to exempt programs which involve discussions of controversial issues of public importance. (For a discussion of the fairness doctrine, see Part II, p. 39.) However, appearances by candidates in non-exempt programs do not give rise to fairness doctrine obligations. The station need only comply with the requirements to provide equal opportunity where candidates, uses of facilities are involved. In sum, either the fairness doctrine or Section 315 applies, but not both to the same program.

33. Q. The station has broadcast a news interview program on a regular schedule for two years. The program includes interviews which deal with news-related problems, issues and events. The show is produced and its content is completely controlled by the station. Is such a program exempt as a *bona fide* news interview program?

A. Yes. The Commission recently held that "This Week with David Brinkley" was a *bona fide* news and news interview program. A *bona fide* news interview program must be regularly scheduled and follow an interview (question and answer) format, and the content, format and participants must be controlled by the broadcaster. Other examples of *bona fide* news interview programs include "Meet the Press" and "Face the Nation." Programs including both news and news interviews such as the "Today" show and "Good Morning America" also have been determined to be exempt as *bona fide* news interview programs.

34. Q. Can a news interview program scheduled to begin only eleven weeks before the start of an election campaign qualify as an exempt program under Section 315 during that campaign?

A. No. Under the particular facts of this case the Commission said that it could not rule that the program was exempt. They emphasized that their "rulings favoring exemption have been limited to programs broadcast over a substantial period of time in the past." (Letter to *WIIC*, 33 F.C.C.2d 629 [1972].)

35. Q. Certain networks had presented over their facilities various candidates for the Democratic nomination for President on the programs "Meet the Press," "Face the Nation" and "College News Conference." Said programs were regularly scheduled and consisted of questions being asked of prominent individuals by reporters and others. Would a candidate for the same nomination in a state primary be entitled to "equal opportunity"?

A. No. The programs were regularly scheduled, *bona fide* news interviews and were of the type which Congress intended to exempt from the "equal opportunities" requirement of Section 315. (Letter to *Andrew J. Easter*, 40 F.C.C. 307 [1960]; letters to *Charles V. Falkenberg*, 40 F.C.C. 310 [1960]; letter to *Congressman Frank Kowalski*, 40 F.C.C. 355 [1962].)

36. Q. The Democratic nominee for Vice President is interviewed on a regularly scheduled program which often deals with newsworthy topics and presents interviews with newsworthy individuals, but on other occasions consists of entertainment programming and a conventional talk show format. Would other legally qualified candidates for Vice President be entitled to "equal opportunities"?

A. Yes. The program is not exempt as a *bona fide* news interview program because the entire program is not always devoted to coverage of news events. To be exempt, a program must deal with newsworthy topics and individuals on a regularly scheduled basis. Thus, for example, the Commission has ruled that the "Tomorrow" show was not exempt. Similarly, the Commission ruled that the "Phil Donahue Show" is not a *bona fide* news interview program. The Commission noted that the Donahue show often included entertainment and other "talk show" features, rather than materials selected purely on the basis of newsworthiness.

37. Q. A station broadcasts a news interview program in which interviewees and topics are selected strictly on the basis of newsworthiness. However, the station permits members of the audience and callers to make comments and ask questions of the interviewee. Can this program be exempt as a *bona fide* news interview program?

A. No. In such cases, the broadcaster's news and journalistic judgment is not the controlling factor. Call-in shows where listeners are permitted to comment or shows in which the audience is allowed to participate prevent the broadcaster from retaining full control over the content of the program. Thus, such programs are not exempt. (*Jane Steiner*, 7 F.C.C.2d 857 [1967]; *Multimedia Program Productions, Inc.*, 84 F.C.C.2d 738 [1981].)

38. Q. A sheriff who was a candidate for nomination for U.S. Representative in Congress conducted a daily program, regularly scheduled since 1958, on which he reported on the activities of his office. Would his opponent be entitled to "equal opportunity"?

A. Yes. In light of the fact that the format and content of the program were determined by the sheriff and not by the station, the program was not of a type intended by Congress to be exempt from the "equal opportunities" requirement of Section 315. (*Letter to WCLG*, 40 F.C.C. 308 [1960].)

39. Q. A local station has determined to cover a debate between two opposing candidates arranged by a local civic association based strictly on the station's judgment that the debate is a newsworthy event. Neither the station nor the candidates have any control over the format of the debate. After the debate, several opposing candidates for the same office approach the station and request equal opportunities for airtime. Must the station give them such equal opportunities?

A. No. In 1975, the Commission overruled prior precedent and indicated that it would consider *live* coverage of political debates exempt from the equal opportunities requirement as on-the-spot coverage of a *bona fide* news event. Again, the station must make its determination to cover the debate based strictly on its judgment that the event is newsworthy.

40. Q. A station decides to arrange and broadcast a debate between two opposing candidates at the station's studio. The debate will be moderated by station personnel. Is this debate exempt as on-the-spot coverage of a *bona fide* news event even though it is arranged and controlled exclusively by the station?

A. Yes. In its latest ruling on the subject of debates, the Commission further liberalized its interpretation of the news coverage exemption to include debates arranged and controlled by stations themselves. (*In re Petitions of Henry Geller and National Association of Broadcasters and the Radio-Television News Directors Association*, ____ F.C.C.2d _____, FCC 83-529 [November 16, 1983].) The United States Court of Appeals for the District of Columbia Circuit has upheld this decision.

41. Q. A station tapes a debate like those described in questions 39 and 40 and broadcasts the taped debate in its entirety on a delayed basis. Although the debate, if broadcast live, would be exempt from the equal opportunities provision of Section 315 as "on-the-spot coverage of a *bona fide* news event," is the exemption lost automatically if the debate is taped and broadcast on a daily basis?

A. No. The Commission has stated that "the delayed broadcast of *bona fide* news events does not necessarily remove the Section 315 exemption from that broadcast." More recently, the Commission stated that a broadcaster's good faith determination to delay or rebroadcast a newsworthy debate later than the day after the event to maximize audience potential may come within the exemption. This standard eliminates the prior twenty-four hour limitation where the Commission would question a delay that exceeded more than one day, absent unusual circumstances. Thus, a broadcaster may make a reasonable, good faith judgment as to the need for a delayed rather than a live broadcast and "judge the applicability of the exemption in terms of the current newsworthiness of the event." (*Delaware Broadcasting Co.*, 60 F.C.C.2d 1030 [1976], *aff'd sub nom. Office of Communications of the United Church of Christ v. FCC*, 590 F.2d 1062 [D.C. Cir. 1978]; *In re Petitions of Henry Geller*, _____ F.C.C.2d _____, FCC 83-529 [November 16, 1983].)

42. Q. What is necessary for a broadcast to be exempt as on-the-spot coverage of a *bona fide* news event?

A. Coverage need not be live nor must the event necessarily be covered in its entirety. Any news event is eligible for on-the-spot coverage, not only candidate debates and news conferences. To understand the scope of this exemption it is necessary to understand the meaning of "coverage" and how the Commission looks to licensee reasonableness and good faith. Coverage refers to the role of the broadcaster as observer and reporter, rather than as sponsor or participant. (But see Q. & A. 40 regarding station-sponsored debates.) Reasonableness measures the method of coverage used by the broadcaster against the newsworthiness of the event being covered. Broadcaster good faith means not using broadcast coverage to favor a particular candidate.

43. Q. Are acceptance speeches by successful candidates for nomination for the candidacy of a particular party for a given office a use by a legally qualified candidate for election to that office?

A. Generally no. If the broadcast of an acceptance speech is on-the-spot coverage of a *bona fide* news event, then opponents of the candidate would not be entitled to equal opportunities. However, should a candidate buy broadcast time for his acceptance speech, then it would appear that the speech would not be exempt from Section 315, and equal opportunities would have to be afforded to his opponents.

44. Q. When a station, as part of a *bona fide* newscast, uses film clips showing a legally qualified candidate participating as one of a group in official ceremonies and the newscaster. in commenting on the ceremonies, mentions the candidate and others by name and describes their participation, has there been a "use" under Section 315?

A. No. Such an appearance clearly would fall within the exemption for *bona fide* newscasts under Section 315.

45. Q. Does an appearance on a program such as a Congressman's Weekly Report attain exempt status when the Weekly Report is broadcast as part of a program not subject to the equal opportunities provision, such as a *bona fide* newscast?

A. No. A contrary view would be inconsistent with the legislative intent, and recognition of such an exemption would, in effect, subordinate substance to form. (Letter to *Congressman Clark W. Thompson*, 40 F.C.C. 328 [1962]; letter to *Congressman Clem Miller*, 40 F.C.C. 353 [1962].)

46. Q. Are appearances by a candidate in press release type film clips or audio tapes prepared and supplied by him to the station and broadcast as part of the station's regularly scheduled newscasts "uses" within the meaning of Section 315?

A. Not generally. While the preceding rulings clearly do not exempt the use of candidate-supplied programs in newscasts, it must be assumed that broadcast of such film clips or tapes as part of an exempt newscast would not constitute "uses" under Section 315 where the station has exercised some degree of journalistic discretion in its use of the material. However, since the clips and tapes were supplied by the candidate as an inducement to their broadcast, an appropriate sponsorship identification announcement would be required under the Commission's rules. (FCC Rule 73.1212, reprinted on pages 51-52.)

47. Q. Is coverage of a press conference held by a candidate for public office exempt from the equal opportunities requirement of Section 315 of the Act?

A. Yes. When considered newsworthy in the *bona fide* news judgment of the broadcaster, press conferences of the president and all other candidates for political office broadcast live and in their entirety qualify for exemption as "on-the-spot coverage of a *bona fide* news event." (*Aspen Institute Program on Communications*, 55 F.C.C.2d 697 [1975]; *Kennedy For President Committee v. FCC*, 636 F.2d 417 [D.C. Cir. 1980]; *National Unity Campaign v. John Anderson*, 88 F.C.C.2d 467 [1980].)

48. Q. Is a broadcast of a report of the President to the American people concerning specific, current, and extraordinary international events a "use" entitling other presidential candidates to equal time?

A. No. A 1956 ruling held that President Eisenhower's address on the Suez Crisis was exempt because the "equal time" provision is not applicable when the President uses the air waves in reporting to the nation on an international crisis. The Commission later found that there was nothing in the legislative history of the 1959 amendment to change this holding and in a similar instance found that President Johnson's report on the replacement of the head of the Soviet Union and the explosion of a nuclear device by Communist China was a *bona fide* news event of an extraordinary nature within the exemption of Section 315. (Letter to *Dean Burch*, 40 F.C.C. 408 [1964].) Generally, such reports will be exempt if they constitute on-the-spot coverage of *bona fide* news events.

E
When Are Candidates Opposing Candidates?

49. Q. What public offices are included within the meaning of Section 315?

A. Under the Commission's Rules, the equal opportunities provision of Section 315 is applicable to both primary and general elections for public offices. Public offices include all offices filled by special or general election on a municipal, county, state or national level. The provision also applies to the nomination as a candidate for such office by any recognized party. (But see Q. & A. 17, which indicates that delegates to party conventions may not be considered candidates for public office.)

50. Q. If the station makes time available to candidates seeking the nomination of one party for a particular office, does Section 315 require that it afford equal opportunities to the candidates seeking the nomination of other parties for the same office?

A. No. The Commission has held that, while both primary elections or nominating conventions and general elections are comprehended within the terms of Section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties, and, therefore, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. (Letter to *KWFT*, 40 F.C.C. 237 [1948]; letter to *Arnold Peterson*, 40 F.C.C. 240 [1952]; letter to *WCDL*, 40 F.C.C. 259 [1953]; letter to *Richard B. Kay*, 24 F.C.C.2d 246 [1970].) Of course, these rulings do not affect a federal candidate's right to reasonable access under the provision of Section 312(a). (See "Reasonable Access" Part I, Section K, p. XX.)

51. Q. Are candidates for positions of authority in a political party considered candidates for public office?

A. Candidates for the position of nominee of a political party for election to a public office are considered candidates for that office. (See *Kay v. FCC*, 443 F.2d 638 [D.C. Cir. 1970].) A candidate for election to a party's county committee, however, is not seeking public office, but a party position. (*Malcolm Cornell*, 31 F.C.C.2d 649 [1971].) Whether the position of party delegate to a national party nominating convention is considered a public office is a question on which the Commission will give deference to the appropriate state officials. (See *KNBC-TV*, 23 F.C.C.2d 765 [1968]; *Russell H. Morgan*, 58 F.C.C.2d 964 [1976].)

52. Q. If there is only one candidate for each party's nomination for a particular office in the primary and one candidate makes a use of a station's facilities, must the station afford equal opportunities to the other party's candidates prior to the actual primary election?

A. The answer depends on state law as to when a candidate is deemed nominated. For example, if a state has a provision to the effect that all persons designated for uncontested offices in a primary election will be deemed nominated without balloting, the two candidates of opposing parties would become opposing candidates before the ballots were cast in a primary election. However, the FCC has interpreted one such situation in New York and refused to grant "equal opportunities" since at the time the candidate used the station's facilities it was still possible under New York law to file petitions requesting the opportunity to write in the name of an undesignated candidate, and thus the candidates were not deemed nominated. (Letter to *Mrs. Eleanor Clark French*, 40 F.C.C. 417 [1964]; letter to *Martin R. Fine*, 24 F.C.C.2d 464 [1970].

53. Q. Is the subject of a recall election a candidate for public office?

A. Where the ballot offers only the choice of recalling or not recalling an officeholder, the incumbent official is not a legally qualified candidate for public office. Although no equal opportunity rights apply to such an election, the fairness doctrine would apply. (*New Primer on Political Broadcasting*, 69 F.C.C.2d 2209, 2237 [1978].) Where the ballot includes both the question concerning whether an official should be recalled and candidates to succeed the incumbent if he is recalled, the incumbent and all challengers will be considered legally qualified candidates. (*KOAA-TV*, 68 F.C.C.2d 79 [1978].)

F
Programs Within The Scope of Section 315

54. Q. Does Section 315 apply to one speaking for or on behalf of the candidate, as contrasted with the candidate speaking on behalf of himself or herself?

A. No. Section 315 applies *only* to legally qualified candidates. Candidate A has no legal right to demand time where B, not a candidate, has spoken against A or in behalf of another candidate. (*Felix v. Westinghouse Radio Stations*, 186 F.2d 1 [3d Cir. 1950], *cert. denied*, 341 U.S. 909 [1951].) However, in the above described circumstance the Commission's so-called "Zapple" doctrine may afford quasi-equal opportunities to supporters or representatives of a candidate. (See "Quasi-Equal Opportunities", Part II, Section C, p. 45.)

55. Q. Does Section 315 apply to broadcasts by a legally qualified candidate where such broadcasts originate and are limited to a foreign station whose signals are received in the United States?

A. No. Section 315 applies only to stations licensed by the FCC. (Letter to *Gregory Pillon*, 40 F.C.C. 267 [1965].)

G
What Constitutes Equal Opportunities?

56. Q. If a station sells time to Candidate A, must the station give free time to opposing candidates who request it?

A. No. The law requires equal opportunities for candidates — not "equal time." Other candidates must be provided the opportunity to *purchase comparable* time at an equal rate. (But see Q. & A. 58 which indicates that employee-candidate "uses" may trigger equal opportunity rights in opposing candidates to *free* comparable time. Q.'s & A.'s 29-30 also discuss such employee-candidate "uses".)

57. Q. Is a station's obligation under Section 315 met if it offers a candidate the same amount of time an opposing candidate has received, where the time of the day or week afforded the first candidate is superior to that offered his opponent?

A. No. The station in providing equal opportunities must consider the desirability of the time segment alloted as well as the amount of time. Whereas a station is not required to afford candidate B exactly the same time of day on exactly the same day of the week as candidate A, it must offer time segments of comparable desirability. Desirability is based primarily on the exposure provided the candidate. Exposure invariably is a function of potential audience at the time the candidate appears.

58. Q. An announcer-candidate conducted a 45-minute interview program Monday through Friday. His opponent requested equal opportunity in the form of spot announcements equal to the total on-air time of the announcer-candidate. Was the opponent entitled to the spot announcements?

A. No. The opponent was technically entitled to the same amount of free time in comparable time periods to those used by the announcer-candidate. The FCC noted, however, that in such complex circumstances it will leave the working out of the mechanics of the problem to the parties subject to the rule of reason. (Letter to *RKO General, Inc.*, 25 F.C.C.2d 117 [1970].)

59. Q. Must a station advise a candidate by mail or telephone that time has been sold to other candidates?

A. No. It is the candidate's obligation to derive this information from the station's political file. It should be noted again that a station is required to keep a public record of all requests for time by or on behalf of political candidates, together with a record of the disposition and the charges made, if any, for each broadcast. (FCC Rule 73.1940(d), reprinted on page 50.)

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

60. Q. Must a station advise a candidate that it has given free time to opposing candidates?

A. No. However, if the station told the candidates that time would not be sold on or the day before election day and then sold or gave time on those days to a candidate, it would be obligated to notify opposing candidates sufficiently in advance to give them a reasonable opportunity to request equal time. In all other cases, it is the candidate's obligation to derive from the station's public file information concerning time sold or given to other candidates.

61. Q. A licensee offered broadcast time to all the candidates for a particular office for a joint appearance. If one candidate rejects the offer and the other candidates accept and appear, would the first candidate be entitled to equal opportunity because of the appearances of those candidates who accepted the offer?

A. Yes, provided the request is made by the candidate within the one-week period specified by the Rules. The Commission has stated: "Where the licensee permits one candidate to use his facilities, Section 315 then — simply by virtue of *that* use — requires the licensee to 'afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.'" (Letter to *Nicholas Zapple*, 40 F.C.C. 357 [1962].)

62. Q. A station intends to devote a block of time on a sustaining basis for use by candidates for various offices. May the licensee require candidates to waive "equal opportunities" if they are unable, fail or do not wish to appear on the particular program?

A. Yes. A licensee may make such an offer of free time contingent on all candidates' agreeing to appear or to waive their rights to equal opportunities. It further may ask the candidates who agree to appear on the program to waive any rights to equal opportunities if, for any reason, they are subsequently unwilling or unable to appear on the program. It would then be up to the candidates to determine whether to waive or make some other decision based on their rights under Section 315. Waivers given with full knowledge of the relevant facts concerning the broadcast (and assuming, of course, that the disclosed broadcast conditions were adhered to) generally would be binding.

If one or more of the candidates will not waive or wishes to attach some other conditions, the matter then becomes one for the licensee's judgment of what, under the circumstances, best would serve its area's needs. For example, in some circumstances, because of the importance of the race in its area, a licensee might decide that it would continue to be worthwhile to present the program, and then afford one candidate time at a later date. (Letter to *Kirkland, Ellis, Hudson, Chaffetz & Masters*, 5 F.C.C.2d 479 [1966].)

63. Q. Under the circumstances stated in the preceding question, may the licensee make a factual report to all candidates that a particular candidate has refused to sign a waiver, and that the offer of free time is withdrawn?

A. Yes. Withdrawal of the offer is not precluded by Section 315, but rather is a matter for the licensee's good faith and reasonable judgment. However, the Commission has stressed that any candidate who does not agree to the terms of the licensee's offer is exercising rights expressly bestowed upon him by the Congress. It, therefore, would be inappropriate for the licensee to impute blame to such a candidate, or to indicate that the candidate was acting improperly. What is involved are the perfectly proper judgments, both by the candidate as to his Section 315 rights and the by licensee as to what best will serve its audience under the circumstances.

For similar reasons, a licensee could not properly use a threat to blame failure of the negotiations on a particular candidate as a means to dictate the format of the program. Any such dictation would constitute prohibited censorship over an important facet of "the material broadcast." (Letter to *Kirkland, Ellis, Hudson, Chaffetz and Masters*, 5 F.C.C.2d 479 [1966].)

64. Q. Two out of four candidates of the same party in a primary election were given free time by a television station for a one-half hour face-to-face debate. The other two candidates were offered free time in comparable time segments to engage in a one-half hour debate or talk in separate 15-minute programs. The two candidates not in the original debate protested to the Commission and stated that all four should be included in the same debate. Was the equal opportunity requirement met by this station when it did not grant this demand?

A. Prior to the Commission's November 1983 debate ruling, it could be said that the station fulfilled the requirements of the equal opportunity provision when it offered all candidates equal amounts of time free of charge in comparable time periods. Section 315 does not include the right to appear on the same program with other candidates since a station cannot compel political candidates to appear on the same program. (*In re Messrs. William F. Ryan and Paul O'Dwyer*, 14 F.C.C.2d 633 [1968]; *In re Constitutional Party and Frank W. Gaydosh*, 14 F.C.C.2d 255 [1969], petition for reconsideration denied, 14 F.C.C.2d 861 [1968].) Current law modifies this answer. Now, station-sponsored debates are exempt from the equal opportunities requirement. See Q. & A. 40.

65. Q. If one political candidate buys station facilities more heavily than another, is a station required to call a halt to such sales because of the resulting imbalance?

A. No. Section 315 requires only that all candidates be afforded an equal opportunity to use the facilities of the station. (Letter to *Mrs. M.R. Oliver*, 40 F.C.C. 253 [1952].) Of course, a station may wish to set some limits in order to insure its ability to provide reasonable access to federal candidates.

66. Q. If a station has a policy of confining political broadcasts to sustaining time, but has so many requests for political time that it cannot handle them all within its sustaining schedule, may it refuse time to a candidate whose opponenet has already been granted time, on the basis of its established policy of not cancelling commercial programs in favor of political broadcasts?

A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunity" requirement of Section 315. (Letter to *Stephens Broadcasting Co.*, 11 F.C.C. 61 [1945].)

67. Q. If one candidate has been nominated by parties A, B, and C, while a second candidate for the same office is nominated only by party D, how should time be allocated as between the two candidates?

A. Section 315 has reference only to the use of facilities by persons who are candidates for public office and not to the political parties which may have nominated such candidates. Accordingly, if broadcast time is made available for the use of a candidate for public office, the provisions of Section 315 require that equal opportunity be afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (Letter to *Thomas W. Wilson*, 40 F.C.C. 235 [1946].)

68. Q. If a person who is a candidate for both governor and state senator appears in a broadcast promoting his race for the governorship, is a senatorial opponent entitled to equal opportunities?

A. Yes. Any Section 315 use by the candidate would require that equal opportunity be accorded all legally qualified candidates who are opposing him for *either* office, even though his appearance was allegedly as a candidate for governor and was devoted to that contest. (Letter to *KATC*, 28 F.C.C.2d 403 [1971].)

69. Q. If a station broadcasts a non-exempt program sponsored by a commercial advertiser which includes one or more qualified candidates as speakers or guests, what are its obligations wtih respect to affording equal opportunities to other candidates for the same office?

A. If a station receives payment from any third person, regardless of the nature of the third party or its relationship to the candidate, for the time in which a candidate appears, that constitutes paid time and opponents of that candidate are entitled to purchase time, not receive it free. (*Carter/Mondale Reelection Committee, Inc.*, 81 F.C.C.2d 409 [1980].)

70. Q. Where time charges for a 15-minute special program featuring speeches by political candidates are not paid for by the candidates but by a labor union, what are a station's obligations with respect to affording "equal opportunities" to other candidates for the same office?

A. Where a political committee organization, such as a union, purchases time specifically on behalf of candidates, opposing candidates are not entitled to free time. (Telegram to *Thomas J. Dougherty*, 40 F.C.C. 426 [1954]; see also Q. and A. 69.)

71. Q. Where a candidate for office in a state or local election appears on a national network non-exempt program, is an opposing candidate for the same office entitled to equal opportunity over stations which carried the original program and serve the area in which the election campaign is occurring?

A. Yes. Under such circumstances an opposing candidate would be entitled to time on such stations. (Letter to *Senator Monroney*, 40 F.C.C. 251 [1952].)

72. Q. In affording "equal opportunities," may a station limit the use of its facilities solely to the use of a microphone?

A. A station must treat opposing candidates the same with respect to the use of its facilities, and if it permits one candidate to use facilities over and beyond the microphone, it must permit a similar usage by other qualified candidates. (Letter to *D.L. Grace*, 40 F.C.C. 297 [1958].)

73. Q. May a station meet its "equal opportunity" obligation by insisting on a live appearance of the candidate?

A. No. Some candidates may prefer to participate by pre-recorded video tape or film. Requiring a live appearance would constitute censorship in violation of Section 315. (Letter to *WOR-TV*, 40 F.C.C. 376 [1962].)

74. Q. A station broadcasts promotional announcements promoting a program and mentioning by name a candidate for U.S. Congress scheduled to appear on the program. The congressman's opponent requests equal opportunity not only for the congressman's appearance on the show, but also for the promotional announcements. Must the station provide "equal promotional time" in order to fulfill its obligation to provide equal opportunity?

A. Yes. In a staff ruling, the Commission's Broadcast Bureau ruled that a station is obligated to provide promotional announcements to promote the opposing candidate's appearance in satisfaction of his rights to equal opportunity. The Bureau apparently considered a lack of promotional announcements similar to those provided the congressman would prevent the opponent from reaching a comparable audience in his appearance. (*Robert H. Benjamin*, 51 R.R.2d 91 [1982].)

H
Limitations As To Use of Facilities by a Candidate

75. Q. May a station delete material in a broadcast by a candidate because it believes the material contained therein is, or may be, libelous?

A. No. Any such action would entail censorship which is expressly prohibited by Section 315 of the Communications Act. (*Farmers Educational and Cooperative Union of America v. WDAY, Inc.*, 360 U.S. 525 [1959].)

76. Q. If a station has agreed to provide (or is obligated under the equal opportunity provision of Section 315 to provide) a candidate with broadcast time, can the station then refuse to carry the candidate's particular broadcast matter if it learns that the candidate's appearance will involve the expression of highly inflammatory or extremely unpopular points of view which other individuals claim will incite a violent social reaction?

A. No. The Commission has stated that even in a situation where a candidate's appearance involves the expression of opinions which can be characterized as highly offensive or inflammatory, such as blatant racial slurs, the no censorship provision of Section 315 prohibits a station's refusal to carry the broadcasts. In the Commission's judgment, "[a] contrary conclusion would permit anyone to prevent a candidate from exercising his rights under Section 315 [simply] by threatening a violent reaction." As stated by the Commission, "the public interest is best served by permitting the expression of any views that do not involve a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest." (See letter to *Mr. Lonnie King, Atlanta NAACP*, F.C.C. 72-711 [1972].)

77. Q. If a candidate does make libelous or slanderous remarks, is the station liable therefore?

A. No. A broadcast station licensee who does not directly participate in the libel is free from liability which might otherwise be incurred under state law. Section 315 precludes a licensee from censoring a candidate's statements, and the United States Supreme Court has ruled that Congress could not have intended to compel a station licensee to broadcast libelous statements and at the same time subject the licensee to the risk of damage suits. (*Farmers Educational and Cooperative Union of America v. WDAY, Inc., supra*, at Q. & A. 75.) Remember! This insulation from liability applies only with respect to a "use" by a legally qualified candidate for public office.

78. Q. Candidate B made an agreement with a station that he would receive equal opportunity free because of the appearance of an opposing Candidate A. Candidate B desired to have some high school students sing and entertain on the program he would broadcast under his equal opportunity rights. During the program, he also wanted to have the keys to a car presented to the winner of the automobile by a member of a merchant's association. Does Section 315 prohibit the station from restricting the appearance by an opposing candidate, and, if any of these persons thus appearing utter libelous statements, does Section 315 guarantee immunity to the station from civil action based on these utterances?

A. Yes to both questions. The Commission held in this case that where a candidate's personal appearance, either vocal or visual, is the focus of the program presented, the program constitutes a Section 315 "use" and the station is prohibited from censoring the candidate's choice of program material. The Commission

stressed that this general rule will be applied in circumstances where the candidate's personal appearance is substantial in length and integrally involved in the program, and where the program is under the control and direction of the candidate. (*In re Gray Communications Systems, Inc.*, 14 F.C.C.2d 766 [1968], *Herald Publishing Company*, 14 F.C.C.2d 767 [1968]; *petition for reconsideration denied, In re Gray Communications Systems, Inc.*, 19 F.C.C.2d 532, 534 [1969].)

79. Q. Does the same immunity apply in a case where the chairman of a political party's campaign committee, not himself a candidate, broadcasts a speech in support of a candidate?

A. No. The no censorship provision of Section 315 applies only to broadcasts which involve "uses" by legally qualified candidates. Therefore, since a station may censor the political speeches of persons other than legally qualified candidates, the licensee may be held liable for slanderous or libelous statements of a non-candidate if it does not require that the offensive statements be deleted. (*Felix v. Westinghouse Radio Stations*, 186 F.2d 1 [3d Cir. 1950], *cert. denied*, 341 U.S. 909 [1950].)

80. Q. May a licensee require a candidate for public office to sign an indemnification agreement?

A. No. The Commission has ruled that in view of the decision in the *WDAY* case, a requirement for indemnification serves no purpose and may be inhibiting in the candidate's use of a station. The Commission believes that "the courts would hold a licensee free from liability for any claim arising out of a 'use' by a candidate where a licensee was unable under the no censorship provision of Section 315 to prevent the act which gave rise to the claim" and that "the cost of defending a suit where there is no liablilty is part of the normal cost of doing business which a licensee assumes in the operation of its station." (*Humphrey Campaign*, 37 F.C.C.2d 57 [1972].)

81. Q. Although a licensee clearly may not require a candidate to indemnify a station for any liablilty arising from his statements during his "use" of the licensee's station, may the licensee require indemnification for any liability arising from other aspects of the candidate's broadcast, *e.g.*, statements by supporters who appear with the candidate or background music for which the station is not licensed?

A. No. The Commission has ruled that if a use is present, the no censorship provision of Section 315 applies "to *all* program material presented as part of the candidate's use...with no right of prior approval by the licensee." (*Gray Communications Systems, Inc.*, 19 F.C.C.2d 532, 535 [1969]; *Humphrey Campaign*, 37 F.C.C.2d 576 [1972].) For general guidelines regarding when a "use" is present, see Q. & A. 100.

82. Q. If a candidate secures time under Section 315, must he talk about a subject directly related to his candidacy?

A. No. The candidate may use the time as he deems best. To deny a person time on the grounds that he was not using it in furtherance of his candidacy would be an exercise of censorship prohibited by Section 315. (Letter to *WMCA, Inc.*, 40 F.C.C. 241 [1952].)

83. Q. If a station makes time available to an office-holder who is also a legally qualified candidate for reelection and the office-holder limits his talks to nonpartisan and informative material, may other legally qualified candidates who obtain time be limited to the same subjects or the same type of broadcast?

A. No. Other qualified candidates may use the facilities as they deem best in their own interest. (Letter to *Congressman Allen Oakely Hunter*, 40 F.C.C. 246 [1952].)

84. Q. May a licensee ask the candidate to submit a tape of his program in advance?

A. Yes. A broadcaster may ask for an advance tape to learn whether the broadcast would be a use, to learn whether a paid broadcast carries the proper sponsorship identification, to ensure that the broadcast is of the agreed upon length, is of broadcast quality and meets other technical and scheduling requirements. When asking for a tape in advance, the broadcaster must inform the candidate that licensees may not censor the content of a use. Note that a broadcaster may never require an advance *script* of the program as a precondition of the candidate's use.

85. Q. What can a station do if a candidate contemplates a speech including obscene or defamatory passages?

A. In a recent FCC staff memorandum submitted by Chairman Fowler to Congressman Luken on January 19, 1984, the staff indicated

its view that the "no censorship" prohibition of Section 315 does not require a broadcaster to carry candidate "uses" if they contain obscene or "indecent" material. Hence, the memorandum suggests that a broadcaster who airs a candidate "use" containing obscene or indecent material would not be immune from criminal or other sanctions as a result of such carriage. As of the date of this publication, the full Commission had not had occasion to formally endorse the staff position in a ruling.

The staff position regarding obscene material does not take into account defamatory passages. Thus, licensees may attempt to persuade candidates to delete defamatory passages, but they must carefully avoid imposing any requirements which have a "chilling effect" on candidates' rights to use broadcast facilities without censorship. For example, it may be permissible for a licensee to "educate" a candidate about the consequences (*e,.g.*, a lawsuit) if he or she goes ahead and includes defamatory remarks in his or her use. However, if the candidate insists, the licensee is obligated by Section 315 to permit the candidate to broadcast the spot uncensored, regardless of the consequences for the candidate.

86. Q. Is it censorship for a broadcaster to delete part of the content of a use in order to insert sponsorship identification?

A. It depends. A broadcaster may reject the political advertisement if it does not contain proper sponsorship identification. However, if a broadcaster deletes part of the content of a use in order to insert sponsorship identification, then this may raise questions as to whether it is censoring part of the use.

87. Q. Must a station grant an equal time request from a candidate who delays making his request until a day or two before the election in order to saturate pre-election broadcast time?

A. The Commission has indicated that where a candidate waits until a day or two before the election to request equal opportunities under Section 315, a licensee would be justified in denying the purchase of time *equal* to that used by an opposing candidate during the week preceding the request. In such cases, the Commission will consider that a licensee has provided "equal opportunities" if it affords less than precisely equal time to the candidate making the last minute requests for equal opportunities. Licensees should keep in mind that "[t]he thrust of this so-called 'eleventh hour rule' is that a licensee will not be expected to accommodate last minute equal opportunities requests made by parties who have sat on their Section 315 rights in situations where the grant of such requests would seriously interfere with the licensee's duty to program in the public interest, or where such a grant would give the last minute purchaser an unfair advantage over prior use candidates by allowing the purchaser to saturate broadcast time during the last few days before an election." (*Summa Corporation* [KLAS], 49 F.C.C.2d 443, 448 [1974]; *Honorable Allen Oakley Hunter*, 40 F.C.C. 246 [1952].)

88. Q. May a station require political candidates to pay in advance for all time purchased?

A. Yes. Because of the nature of political campaigns, a requirement of advance payment is reasonable. Indeed, the NAB agreement form for political broadcasts provides for advance payment. (See pages 48-50.) Stations may extend credit to candidates if they wish, but in such cases all opposing candidates should be treated uniformly.

I
Period Within Which Request Must Be Made

89. Q. When must a candidate make a request of the station for opportunities equal to those afforded his or her opponent?

A. The request must be made within one week of the day on which the first prior use giving rise to the right of equal opportunities occurred. If the person was not a candidate at the time of such first prior use, his or her request must be made within one week of the first subsequent use after he or she became a candidate. (FCC Rule 73.1940(e), reprinted on p. 50.)

90. Q. A United States Senator, an unopposed candidate in his party's primary, had been broadcasting a weekly program entitled "Your Senator Reports." If he becomes opposed in his party's primary, would his opponent be entitled to request "equal opportunities" with respect to all broadcasts of "Your Senator Reports" since the time the incumbent announced his candidacy?

A. No. A legally qualified candidate announcing his candidacy for the above nomination would be entitled to "equal opportunity" only for the broadcast of "Your Senator Reports" which was aired during the week preceding the opponent's announcement of his candidacy. (Letter to *Senator Joseph C. Clark*, 40 F.C.C. 332 [1962].)

91. Q. A, B and C were all legally qualified candidates for the same public offices as of August 29. A approached the station licensee for purchase of broadcast time and appeared on September 1. On September 5, B requested equal opportunity to respond to A's use, and C made a similar request on September 10, claiming his request to be timely made within 7 days of B's request. The licensee granted B's request but not C's. C appealed to the Commission to compel the licensee to afford him equal time. Must the licensee grant the request?

A. The licensee properly refused C's request, that request being made more than 7 days after A's first prior use. There of course is no validity to the claim that the request was made within 7 days of B's request for time.

92. Q. Under the same facts above, D became a legally qualified candidate for the same public office on September 10. On September 15, B appeared on the licensee's station in compliance with his earlier request. The next day, September 16, D requested equal opportunity to respond to B, which request was promptly rejected by the licensee who contended that D's request was made more than 7 days after A's first prior use. Must the licensee grant D's request?

A. The licensee was incorrect in refusing D's request. D, who became a legal candidate after A's first prior use, may properly request equal time within 7 days of a subsequent use, which in this case was B's appearance on September 15.

93. Q. Four days prior to an announced broadcast use by a political candidate, one of the candidate's opponents for the same office requested time based on that specific future use. The station denied the request because the opponent had not asked for equal opportunity within one week after the day on which the prior use occurred. Had the opposing candidate complied with the 7-day rule with his request made prior to the broadcast?

A. Yes. The Commission has always considered as valid and appropriate an equal opportunity request made prior to a Section 315 broadcast *if the request is based on a specific future use which was known or announced prior to the actual broadcast.* (Letter to *Socialist Workers' Party*, 15 F.C.C.2d 96 [1968].) A blanket request as to "all future appearances of candidate X" would probably lack the specificity to be treated as a valid request for equal opportunities. However, where a station allows a candidate to use its facilities in a "fixed and continuing pattern," such as the sale of a spot announcement schedule, an opponent's equal opportunity request will cover the seven days prior to the request and all later uses already scheduled. (*KLAS-TV*, 42 F.C.C.2d 894 [1973].)

J
What Rates May be Charged Candidates?

Section 315 was amended by the Campaign Communications Reform Act so as to affect the rate practices applicable to certain political broadcasts. Section 315(b) requires that during the 45 days preceding a primary election and during the 60 days preceding a general or special election,* the charges made for the use of a broadcasting station by any person who is a legally qualified candidate for any public office cannot exceed the lowest unit charge of the station for the same class and amount of time for the same period. At any other time the charges made for a use by a legally qualified candidate are to be those which would be made for a comparable use of the station by other users. Thus, the effect of this amendment was to create two classes of charges applicable to political broadcasting — lowest unit charge and comparable use charge. In order to avoid confusion we will discuss each of these classes separately.

*The 45 and 60 day periods include election day. (Letter to *Glenn J. Sedam, Jr.*, FCC Report No. 10869, Aug. 17, 1972.)

Lowest Unit Charge

94. Q. What is the meaning of the term "lowest unit charge"?

A. The term "lowest unit charge" refers to the full statutory phrase "lowest unit charge of the station for the same class and amount of time for the same period." The term "class" refers to rate categories such as fixed-position spots, preemptible spots, run-of-schedule and special-rate packages. The term "amount of time" refers to the unit of time purchased, such as 30 seconds, 60 seconds, 5 minutes or 1 hour. The term "same period" refers to the period of the broadcast day such as prime time, drive time, class A, class B or other classifications established by the station. The term "lowest unit charge" also provides the candidate with the benefit of all discounts, frequency and otherwise, offered to the most favored commercial advertiser for the same class and amount of time for the same period, without regard to the frequency of use by the candidate.

95. Q. To whom does the lowest unit charge provision of Section 315(b)(1) apply?

A. The lowest unit charge provision applies to all persons who meet the requirements of a "legally qualified candidate," as discussed in Part I, Section B on p. 8. Thus, any legally qualified candidate for any public office, federal, state or local, is eligible to receive the lowest unit charge.

96. Q. When does the lowest unit charge provision apply?

A. Three circumstances must coexist in order to trigger application of the lowest unit charge. First, the actual use of broadcast time must occur within the 45 days before a primary or primary run-off election or within the 60 days before a general or special election; second, the use *must* involve a personal appearance by the candidate through his voice or image; and third, the candidate's appearance must be "in connection with his campaign." If the broadcast use does not include *all three* of these elements, the lowest unit charge provision does not apply.

97. Q. A person is a legally qualified candidate for nomination for the presidency. He is running in the primary election of a state in the eastern part of the United States. During the period of 45 days before that primary election he wishes to purchase time on stations in that state and on stations in each of three western states. The situation with regard to each of the western states is as follows: (1) in state A, a presidential primary election has already been held in the state; (2) in state B, the delegates to the national nominating convention have already been selected by a state convention; (3) in state C, a presidential primary election is yet to be held in the state, the person is running in that primary, but that primary will occur more than 45 days after the proposed use of the stations in state C. On what stations is the candidate entitled to the lowest unit charge?

A. He is entitled to the lowest unit charge only on the stations in the eastern state where he is running in the primary election. In the western states he would be entitled to rates on a "comparable use" basis under the provisions of Section 315(b)(2). The intent of the lowest unit charge provision is that it is to apply only in situations where an election is being held in the service area of the station on which time is being purchased. If the person in this case subsequently receives the nomination of his party at its national convention, then under the provisions of Section 315(b)(1) he would be entitled to the lowest unit charge in stations in all of the 50 states during the 60-day period preceding the presidential election.

98. Q. Is a candidate for nomination by a convention or a caucus of a political party held to select a nominee entitled to lowest unit charge?

A. Yes. Where there is an open meeting in which members of the general public at large may express their preferences for specific candidates by selecting delegates to attend a nominating convention, the lowest unit charge provision applies to the candidate for the office at issue who wants to influence the public to select delegates favorable to him. (See *Reagan for President Committee*, *80* F.C.C.2d 225, [1980].)

99. Q. A state law requires stations to provide the lowest unit charge 90 days prior to elections. Which rule should a station follow, the state law or the federal law requiring the lowest unit charge 45 days before primaries and 60 days before general elections?

A. Stations must comply only with the federal law. State requirements concerning political broadcast advertising rates are preempted by

the federal law. (*KVUE v. Moore*, 709 F.2d 922 [5th Cir. 1983].) Note, however, that this does not necessarily mean that every state requirement concerning political broadcasting is preempted by federal law. (See Q. & A. 11.)

100. Q. How long must a candidate appear in the particular program or spot announcement, in order to qualify the broadcast matter for lowest unit charge treatment?

A. The determination as to whether the lowest unit charge applies to a particular purchase of broadcast time by or on behalf of a candidate generally does not depend upon the particular length of a candidate's appearance in the broadcast. In the case of *spot announcements*, the Commission has specifically ruled that the same standards which establish whether a candidate's appearance is sufficient to constitute a "use" under the equal opportunity provisions of Section 315 also should be applied to determine whether a spot announcement is a broadcast "use" eligible for lowest unit charge treatment; thus, any appearance by the candidate in a spot announcement in which he or she is identified or identifiable through his or her voice or image qualifies the spot announcement for the lowest unit charge. (Letter to *Charles F. Dykas*, FCC Report No. 10796, July 19, 1972.) The Commission has given no ruling as to the situation of a candidate's appearances in broadcast *programs*, but it seems clear that an appearance by a candidate in a program which is sufficient to invoke the no censorship provisions of Section 315 will also serve to qualify the program for lowest unit charge treatment; thus, where a candidate's appearance, either visual or vocal, in a program is substantial in length, integrally involved in the program, exists as the focus of the program and is part of a program under the direction and control of the candidate, the lowest unit charge will apply. Conversely, when a candidate's appearance is only an incidental inclusion in a program on which another person is the central figure, the lowest unit charge may not apply. (*In re Gray Communications System, Inc.*, 14 F.C.C.2d 766 [1968].)

101. Q. Does the lowest unit charge provision apply to political broadcasts by groups, organizations or persons other than candidates?

A. No. As stated in Q.'s & A.'s 95 and 96, the lowest unit charge provision applies only to broadcast appearances by candidates for public office. If a group presents a political broadcast which contains no identified or identifiable appearance by a legally qualified candidate for public office, the lowest unit charge does not apply.

102. Q. A local businesswoman appears in spot announcements promoting her furniture store. Subsequently, she becomes a candidate for public office. Will these spots for her store qualify for the lowest unit charge?

A. No. Since these spot announcements are not made "in connection with her campaign" for public office, they do not qualify for the lowest unit charge. However, in terms of equal opportunity rights of her opponents, these spot announcements would constitute a "use" by the candidate.

103. Q. If a candidate is identified or identifiable, but her appearance is solely limited to making the sponsorship identification announcement, is this sufficient to make the entire spot announcement a "use" by that candidate?

A. Yes. The Commission has held whenever a candidate makes any appearance in a political spot announcement in which she is identified or identifiable by voice or picture, the entire announcement is a "use" by that candidate. (Letter to *WITL*, July 2, 1975.)

104. Q. May a station with both "national" and "local" rates (if they are lower than its "national" rates charge a candidate falling within the purview of Section 315(b)(1) its lowest rate charge based on its national rates regardless of whether a candidate is running for municipal, county, state or national office?.

A. No. The calculation of the lowest unit charge must be based on its "local" rates (if they are lower than its "national" rates) regardless of whether a candidate is running for municipal, county, state or national office. "National" and "local" are not viewed as different "classes" of service under the provisions of Section 315(b)(1).

105. Q. In computing the lowest unit charge under the provisions of Section 315(b)(1), is the calculation based on the rate card of the station or on the rates actually charged by the station if they differ from those on the rate card?

A. The calculation is based on whatever will give the lowest unit rate for the same class and amount of time during the same period of the day. If use of the rate card gives the lowest unit rate, the rate card is the basis used. If use

of the actual charges gives the lowest unit rate, actual charges are used in determining rates for candidates.

106. Q. A station has over a period of years had a spot announcement contract with a particular commercial advertiser and has renewed the contract from time to time with unchanged rates set at the time the contract was entered into although the rates of the station to other advertisers have increased. May the station, in determining the lowest unit charge, disregard the rates given to the advertiser with the rate protection agreement and focus solely on the current rates generally offered to advertisers?

A. No. The station must compute the charge to the candidate on the basis of whatever rates give the lowest unit charge for the same class and amount of time for the same period. Since the advertiser with the long standing contract is being given the lowest station rate, his rates must be taken into account in computing the lowest unit charge.

107. Q. What would be some concrete examples of the way in which frequency discounts are included in a determination of the lowest unit charge?

A. Set forth below are four examples of the manner in which discounts are taken into account in determining the lowest unit charge.

(a) A licensee sells one fixed-position, 1-minute spot in prime time to commercial advertisers for $15. It sells 500 such spots for $5,000. It must sell one such spot to a candidate for not more than $10.

A licensee sells one immediately preemptible 30-second spot in drive time to commercial advertisers for $10. It sells 100 such spots for $750. It must sell one such spot to a candidate for not more than $7.50.

(c) A licensee's best rate per spot for run-of-schedule, 1-minute spots is 1,000 for $1,000. Its rate for one such run-of-schedule spot is $4. It must sell one such spot to a candidate for not more than $1.

(d) A licensee has provided a long-standing advertising client with a special $2,500 500-time rate for 30-second spot announcements in drive time. It must sell one such spot to a candidate for not more than $5.

108. Q. A station sells both fixed-position and run-of-schedule (ROS) spots. The ROS spots are sold at a much lower rate than the fixed-position spots. A station makes a determination to sell only fixed-position spots to candidates. However, a candidate for local office requests ROS spots because they are cheaper. Must the station sell ROS spots to the candidate?

A. Yes. If a station sells ROS spots to commercial advertisers then it must sell run-of-schedule time to candidates. The United States Court of Appeals for the District of Columbia Circuit has ruled that ROS spots are discount rates, not a particular type of spot or class of time. Viewing them as discount rates, the court ruled that stations would be required to make them available to candidates under the lowest unit charge provision of the Communications Act. A station selling spots to a candidate on an ROS basis may schedule them as it schedules other ROS spots purchased by commercial advertisers. (See Q. & A. 142 regarding the requirement that stations avoid discrimination among candidates in scheduling ROS spots.)

109. Q. Are bonus spots to be counted in arriving at a determination of "lowest unit charge"?

A. Yes. Bonus spots are included within the lowest unit charge determination and, therefore, may serve to reduce further the rate at which a candidate may buy time. Thus, for example, if a station gives 10 bonus spots to every purchaser of a $2,000 package which normally includes 1,000 60-second spots in drive time, the candidate may buy one such spot for $1.98 ($2,000 divided by 1010 spots).

110. Q. If a station sells advertising to certain non-profit organizations to advertise their quasi-commercial ventures (*e.g.*, the sale of Christmas trees to raise money), and the station has a policy of giving to such organizations free announcements at least equal in number to the commercial announcements purchased, must the free spots be taken into account in determining "lowest unit charge"?

A. No. In this particular type of situation, where a station policy provides free spots equal to the commercial announcements purchased to promote a non-profit organization's quasi-commercial venture, the free spots are not to be treated as bonus spots for purposes of determining the lowest unit charge. (Letter to *KGWA*, 34 F.C.C.2d 1103 [1972].) However, the free spots must be logged by television stations as commercial matter.

111. Q. Are trade outs, barter transactions or per inquiry arrangements to be used in computing the lowest unit charge?

A. No. Although stations engage in trade outs, barter and per inquiry advertising arrangements in dealing with advertisers, only transactions involving sale of time for monetary consideration are to be used as the basis for calculating the lowest unit charge.

112. Q. Does the fact that a station may provide advertising time without charge to certain parties serve to commit the station to a zero rate as its lowest unit charge?

A. No. The lowest unit charge provision is not applicable to situations when an advertiser is not charged an amount for *any* of his announcements (Letter to *KRSN*, June 29, 1972. The situation discussed here is not to be confused with the situation of bonus spots. See Q. & A. 109.)

113. Q. If a station is obligated to run during the 45 or 60 day statutory period a "make good" spot which was part of a low rate arrangement that is no longer in effect, as might be the case where a station has changed from its summer to its higher fall rates, must that no longer existent rate arrangement of which the "make good" was once a part be included in computing the lowest unit charge?

A. No. "Make good" spots are not to be counted in arriving at a determination of lowest unit charge.

114. Q. If a station offers a special package plan which reflects a selection, for example, of 30-second spot announcements distributed over different time periods, must the station sell the candidate one such spot at the applicable lowest unit charge?

A. No. In the situation of a package plan which reflects a distribution of spot announcements over desirable and less desirable time periods of the day, the candidate must buy one run of the package in order to receive the lowest unit charge per spot as based on the package rate. In other words, if a station sells a package of 1,500 spot announcements for $1,500 which includes a daily distribution of 1 spot announcement in morning drive time, 1 spot announcement in the afternoon and 1 spot announcement in evening drive time, the candidate must buy at least 1 spot in the morning, 1 in the afternoon and 1 in the evening in order to be eligible for the lowest unit charge of $1 per spot announcement. He cannot "cherry-pick" by demanding only drive time spots at the lowest unit charge for the package.

115. Q. Does the provision for lowest unit charge apply to both time charges *and* other charges by a station in connection with political broadcasts?

A. No. The provision applies only to charges for purchase of time. It does not cover additional charges customarily made by a station for other services, which may be termed production oriented, such as charges for use of a television studio, audio- or video-taping, or line charges and remote technical crew charges when the broadcast is to be picked up outside the station. Moreover, the provision does not apply to additional charges that might be incurred if a candidate sought to purchase full sponsorship of an existing program for which there is an established program charge in addition to a time charge.

116. Q. If a candidate purchases time from a station through an agency, may the station include the agency commission in the lowest unit charge?

A. Yes. However, if a candidate purchases time directly from a station without the use of an agency, the lowest unit charge must exclude the amount usually paid for agency commission. For example, if a 1-minute spot announcement costs $100 and an agency is allowed $15, a candidate placing a spot through an agency must pay $100. But if a candidate places the spot directly, without the use of an agency, he pays $85. Although a candidate who purchases time directly from the station without use of an agency can be charged for any production costs incurred by the station in preparing his spots or programs, he cannot be charged for any station services which are provided free of charge to commercial advertisers who do not use an agency. See Q. & A. 115.

117. Q. Must commissions to sales representatives be deducted from the lowest unit charge?

A. No. Sales representatives are customarily viewed as agents of the station and not of the advertiser or advertising agency. Commissions to sales representatives are, therefore, similar to the compensation paid to employees or salesmen of the station and are to be viewed as the station's own cost of doing business. (Letter to *Eugene T. Smith*, 34 F.C.C.2d 622 [1972].)

118. Q. If two or more candidates together purchase spot announcements in which they jointly appear, is each candidate entitled to share the single lowest unit charge for the spot announcement or is each candidate required to pay the entire lowest unit charge?

A. The lowest unit charge is a time charge and not a charge based upon the number of candidates sharing the broadcast use. Thus, if two or more candidates are buying time for a joint use, they are together entitled to share the applicable lowest unit charge.

119. Q. By statute a state provides that broadcast stations may carry legal notices at rates fixed by the statute. This rate is quite low so that for a particular broadcast station in that state the lowest unit charge for such notices for the same class and amount of time for the same period is less than the lowest unit charge based on "normal" rates. Must the lowest unit charge for candidates be calculated on the basis of the statutory rate for legal notices?

A. No. Since the rates for legal notices are set by statute rather than by the station, they are not used for calculation of the lowest unit charge for candidates.

120. Q. May the lowest unit charge vary with the day of the week on which a candidate uses a station?

A. Yes. For example, a television station might charge commercial advertisers more for 1-minute, fixed-position spots between 7:00 and 7:30 p.m. on Sunday than it does for such spots on Monday through Friday; and the charges on Monday through Friday might exceed the charges for such spots on Saturday. In computing the lowest unit charge which must not be exceeded in selling time to candidates, a station, in addition to taking into account the class and amount of time for the same period of the day, may take into account the day of the week, if rates of the station vary with the day of the week. In the example given above, the station would not be required to sell time to a candidate for use on Sunday between 7:00 and 7:30 p.m. at rates not exceeding the lowest unit charge for Saturday night. If a station does not vary its charges to commercial advertisers with the day of the week, it may not do so with candidates for public office.

121. Q. What is the base period for determining the lowest unit charge?

A. Lowest unit charge is determined by the cost of any matter for the "same class and amount of time for the same period" broadcast during either the 45 or 60 day statutory period involved. Exceptions have been recognized by the Commission for rate changes made during the statutory period because of seasonality and audience surveys, as discussed in the following two Q.'s & A.'s. For example, an exception usually will be made for the unique situation where a station has a long-term, low-rate contract that expires during the 45 or 60 day statutory period, if the station never intends to reinstitute that rate again.

122. Q. A general election is to be held on November 2. As required by Section 315(b), the lowest unit charge must be made to candidates during the preceding 60 days, commencing September 3. Pursuant to normal practices, a station on September 20 changes from its summer rates to its higher fall rates. Is the lowest unit charge during the entire 60-day period preceding the election based on summer rates?

A. No. From September 3 to September 20, the lowest unit charge is based on the summer rates. On and after September 20, the fall rates are used as the basis for computation of the lowest unit charge.

123. Q. For a particular community, ARB and Nielsen television market reports are issued six times a year. Upon receipt of these reports it is the normal business practice of a television station in the community to reexamine its rates and revise some of them. During the 60-day period preceding a general election, such a rate revision occurs which results in increased rates for adjacencies to program A shown in prime time, and a decrease in rates for adjacencies to program B in prime time. What is the basis for calculation of the lowest unit charge for adjacencies of the two programs during the 60-day period?

A. Candidates using adjacencies to either program A or program B prior to the rate change are entitled to be charged not more than the lowest unit rate for such adjacencies prior to the rate change, and those using adjacencies to either program after the rate change are entitled to be charged not more than the lowest unit charge after the rate change. Thus, the lowest unit rate for candidates for adjacencies to program A prior to the rate change is lower than the lowest unit rate after the rate change. As to adjacencies to program B, the lowest unit rate prior to the rate change is higher than the lowest unit rate after the rate change.

Note: Although in Q.'s & A.'s 122 and 123 the charges to opposing candidates may differ, no discrimination has resulted under the law since both candidates are receiving the lowest unit charge at the time of use. Of course, this nondiscriminatory difference in charges only pertains where rate changes occur during the statutory period as a result of seasonality or audience surveys.

124. Q. Do the lowest unit charge provisions apply to purchases of time on the networks?

A. Yes. Although the Campaign Communications Reform Act does not specifically refer to networks, the provisions are intended to apply to purchase of network time. A network is in a real sense selling time on behalf of station licensees, and the Commission interprets Section 315(b)(1) as applying to the combination of licensees in the network as well as to the individual licensees. Thus, charges to legally qualified candidates purchasing network time may not exceed the lowest unit charge for the same class and amount of time for the same period of the broadcast day on a network. Candidates are entitled to be charged not more than the lowest unit rate regardless of the number of times they use the network.

125. Q. If a candidate makes a contract with a station for lowest unit charge based upon the station's other rate arrangements existing at the time of the contract, and later, at the time when the candidate's spots are actually to be run, low viewer ratings have resulted in a reduced spot rate for the time period or program during which the candidate's spots are to be shown, is the candidate entitled to a rate adjustment based on the fact that the spot rates have dropped even lower since the time of his original contract with the station?

A. Yes. Unlike the regular commercial advertiser who contracts for a fixed and immutable spot rate for the run of his contract, the candidate buying time for a use which is to occur during the 45 or 60 day statutory period is entitled to the full benefit of any lowering of rates which will result in a new and reduced lowest unit charge. It must be kept in mind that it is the rate which prevails at the date of the candidate's actual broadcast use which governs the determination of lowest unit charge. If the price of a spot on the date of use is lower than the price for which the candidate contracted in advance, the candidate is entitled to the lower price and is to be given a rebate (if the spot has previously been paid for) or an adjustment (if the spot has not yet been paid for.)

126. Q. Are stations permitted to charge less than the lowest unit charge during the 45 or 60 day period before an election?

A. Yes. Section 315(b)(1) provides that charges made by stations shall not *exceed* the lowest unit charge for the same class and amount of time for the same period. Stations are free to charge less than the lowest unit charge. However, if they do, they must give the same low rate to other candidates for all offices purchasing the same class and amount of time for the same period. The Commission has ruled, for example, that a station may not charge candidates from outlying portions of its service area less than its lowest unit charge while continuing to charge "close in" candidates its full lowest unit charge, even though the station is only seeking to encourage political debate. (*Marmet Professional Corp.*, 40 R.R.2d 1219 [1977].)

Equal Opportunities and Lowest Unit Charge

The questions and answers presented above have focused solely upon the manner in which a station arrives at a determination of the lowest unit charge. In a situation where there has been a request for "equal opportunity" the determination of the lowest unit charge may become more complicated. In the questions and answers to follow, this second aspect of the lowest unit charge will be discussed. In order to present this subject comprehensively, a discussion of the phrase "charges made for comparable use," as used in the Campaign Communications Reform Act, must be considered as well.

127. Q. Under what circumstances does the "charges made for comparable use" provision of Section 315(b)(2) apply?

A. Unlike the lowest unit charge provision, the provision in the law for "charges made for comparable use" has no restrictions and applies to all broadcast uses by legally qualified candidates for public office which occur outside the 45 or 60 day statutory period; thus, a candidate's broadcast appearances which relate to a forthcoming election more than 45 or 60 days away or to a forthcoming nomination for election by a convention or caucus of a political party held to nominate a candidate would both receive charges based upon a comparable use.

128. Q. If Candidate A purchases time for broadcast appearances to occur prior to the 45 or 60 day statutory period and pays for the time on the basis of "comparable use," what would opponent Candidate B pay for spot announcements purchased on the basis of an "equal opportunity" request and broadcast during the 45 or 60 day statutory period during which the lowest unit charge applies?

A. Ordinarily, when a candidate makes a request for "equal opportunity," he or she is entitled to the same amount of time upon the same rate terms as his or her opponent received. However, the Campaign Communications Reform Act may (in certain instances) change this result insofar as the rates are concerned. Thus, if, as in the example offered, Candidate B's broadcasts are to take place during the time in which the lowest unit charge applies, Candidate B will be charged on the basis of the lowest unit charge prevailing at the time of his or her broadcast use. Although the Commission's rules provide that "...no licensee shall make any discrimination between candidates in charges..." FCC Rule 73.1940(c), the difference in rates charged Candidates A and B does not amount to discrimination under the Commission's rules since the difference is a result of rates set by statute.

129. Q. If during the 60-day statutory period preceding a general election, the rates of a station, pursuant to normal business practices, change from summer to higher fall rates, and the lowest unit charge is less before the rate change than after the rate change, what rates would be charged to Candidate A who buys time for broadcast during the statutory period but *prior* to the rate increase and to opponent Candidate B who makes an "equal opportunity" request for a broadcast use also to take place during the statutory period but *after* the rate increase?

A. Although in situations not involving "equal opportunity" the lowest unit charge for candidates using the station prior to the seasonal rate change is based on summer rates, and for those using the station after the change it is based on fall rates, the situation is different in cases involving "equal opportunity."

The candidate in such a situation is entitled to be charged the same lower summer rate as the candidate to whom he or she is responding. Therefore, in the example offered, Candidate B must be charged the same rate as Candidate A.

130. Q. If during the 45-day statutory period preceding a primary election, the rates of a station, pursuant to normal business practices, change from spring rates to lower summer rates, and the lowest unit charge is lower after the rate change than before the rate change, what rates would be charged to Candidate A who buys time for broadcast during the statutory period but *prior* to the rate decrease and to opponent Candidate B who makes an "equal opportunities" request for a broadcast use also to take place during the statutory period but *after* the rate decrease?

A. Again, if no "equal opportunity" were involved, the lowest unit charge for candidates using the station prior to the seasonal rate change would be based on spring rates, and for those using the station after the rate change it would be based on summer rates. However, even where "equal opportunity" is involved, as in the fact situation here, the same result is obtained. Candidate A is to be charged based on the spring rates and Candidate B is to be charged based on the summer rates. The result obtained is thus directly the opposite of that in Q. and A. 129. The reason for the result lies in the fact that Section 315(b)(1) of the law states that, during the statutory period, the charges made for the use of any broadcasting station by a candidate shall *not exceed* the lowest unit charge (for the same class and amount of time for the same period). If Candidate B were charged the same rate for his broadcast time as Candidate A, the charge would be based on the higher spring rates and would *exceed* the summer lowest unit charge prevailing at the time of Candidate B's use. The law thus serves to set a ceiling on the rate which Candidate B can be charged.

Note: The answers to Q.'s and A.'s 129 and 130 would also be applicable to rate changes based on audience surveys. The conclusion to be drawn from these Q.'s and A.'s can be stated as follows: If a candidate buys time for a broadcast use to occur during the statutory period, and his opponent makes an "equal opportunity" request for a broadcast use also to take place during the statutory period, both candidates will be charged the same rate based upon the lowest unit charge prevailing at the time of the first candidate's broadcast use unless at the time of the opponent's broadcast use, the station's rates have decreased as a result of seasonality or audience surveys thus creating a more favorable lowest unit charge; the opponent candidate then by law has the benefit of that new more favorable lowest unit charge.

131. Q. During the 60-day period preceding a general election, the rates of a station, pursuant to normal business practices, change from summer to higher fall rates. The lowest unit charges are therefore less before the rate change than afterwards. Candidate A purchases 50 fixed-position, 1-minute spots in prime time to be aired before the rate change. Pursuant to Section 315(a), Candidate B requests "equal opportunity" to respond to Candidate A in fixed-position, 1-minute spots in prime time to be aired after the seasonal rate change. Candidate B requests 100 such spots. At what rate is Candidate B charged?

A. Candidate B is entitled to 50 such spots at the rate charged Candidate A to satisfy the "equal opportunity" requirement. For the remaining 50 spots she may be charged not more than the lowest unit rate based on the higher fall rates. It should be noted that the sale to Candidate B of 50 spots at the low summer rates to satisfy the "equal opportunity" requirement does not affect the rates to be charged her or other candidates using the station after the change to the higher fall rates on other than an "equal opportunity" basis.

132. Q. A candidate contracts with a station for use of its facilities during a period 60 days prior to a general election. The contract specifies no set rate to be charged, but instead provides that the rate to be charged will not exceed the lowest unit charge being made on the date(s) contracted for. May such contracts be entered into by stations?

A. Yes. There is nothing in the law concerning the type of contract a station may enter into with a candidate. (However, a contract providing that, regardless of the lowest unit charge being made on the date of use by the candidate, the candidate must pay a higher rate specified in the contract would be contrary to the public policy established by Section 315(b).)

133. Q. Candidate A purchases through an advertising agency spot announcements to be broadcast during the statutory period and pays $100 based upon a computation of lowest unit charge which included, as the law permits, the 15% agency commission, thus netting the station $85. Candidate B, requesting "equal opportunity" for a broadcast use also to occur during the statutory period, makes his purchase of time directly from the station without the benefit of an agency. Does "equal opportunity" demand that Candidate B also be charged the same $100 lowest unit charge received by A which would include the 15% agency commission?

A. No. Candidate B would pay only $85 since as to him the lowest unit charge does not include an agency commission. The result obtained is thus directly contrary to that achieved in a situation involving "equal opportunity" wholly outside the statutory period, when the lowest unit charge does not apply. (See Q. & A. 146.) The reason why Candidate B is insulated from payment of a rate equivalent to that paid by Candidate A is that the Campaign Communications Reform Act specifies that the charges made to a candidate during the statutory period may not *exceed* the lowest unit charge (for the same class and amount of time for the same period.) In this regard, the Commission has ruled that if a candidate uses an advertising agency, the lowest unit charge as to him always included the combined sum of the agency commission and the time charge; for a candidate not using an agency, the lowest unit charge is limited solely to the time charge. (See Q. & A. 116.) If Candidate B were thus charged Candidate A's lowest unit charge, the charge to Candidate B would *exceed* the particular lowest unit charge normally applicable to B.

Charges Made for Comparable Use

The questions and answers in the immediately preceding section have focused exclusively upon the manner in which a station arrives at a determination of the rates which candidates are to be charged when the broadcast use of a candidate requesting "equal opportunity" falls within the statutory period during which the lowest unit charge applies. In the questions and answers to follow, the matter of the rates to be charged candidates will be discussed from the perspective of the broadcast use of a candidate requesting "equal opportunity" which falls *outside* the statutory period when the lowest unit charge applies. The discussion to follow merely represents a restatement of the familiar and long-standing "equal opportunities" requirements which prevailed in the situation of *all* broadcast appearances by legally qualified candidates prior to enactment of the Campaign Communications Reform Act and which now pertain only in the situation of broadcast uses by candidates which occur outside the 45 or 60 day statutory period.

134. Q. May a station charge premium rates for political broadcasts which occur outside the 45 or 60 day statutory period?

A. No. Section 315(b)(2) provides that the charges made for the use of a station by a candidate outside the statutory period "shall not exceed the charges made for comparable use of such station for other purposes."

135. Q. Does the above requirement apply to political broadcasts by persons other than legally qualified candidates?

A. Yes. In the past this requirement has applied only to candidates for public office. At one time the Commission ruled that a station may adopt whatever policy it desires for political broadcasts by spokespersons for a candidate, or by organizations or persons who are not candidates for office, consistent with its obligation to operate in the public interest. (Letter to *Congressman Diggs, Jr.*, 40 F.C.C. 265 [1955].) However, today such a discriminatory policy against political broadcasts by persons other than candidates to the extent that such persons would be subjected to *higher* rates than commercial advertisers probably would be unacceptable. The thrust of the Campaign Communications Reform Act taken together with current FCC attitudes toward political broadcasting suggests that a station should not establish premium rates for political broadcasts by persons other than candidates. Instead, a station's charges to such individuals should be based on charges made for a comparable use.

136. Q. May a station with both "national" and "local" rates charge a candidate for local office its "national" rate?

A. No. A station may not charge a candidate more than the rate the station would charge if the candidate were a commercial advertiser promoting its business within the same area as that in which the election is being held. (Letter to *Waldo E. Spence*, 40 F.C.C. 392 [1964].)

137. Q. Considering the limited geographical area which a member of the United States House of Representatives serves, must candidates for the House be charged the "local" instead of the "national" rate?

A. This question cannot be answered categorically. To determine the maximum rates which could be charged under Section 315, the Commission would have to know the criteria a station uses in classifying "local" versus "national" advertisers before it could determine what are "comparable charges." In making this determination, the Commission does not prescribe rates but merely requires equality of treatment as between Section 315 broadcasts and commercial advertising. (Letter to *Congressman Simpson*, 40 F.C.C. 286 [1957].)

138. Q. Is a political candidate entitled to receive discounts?

A. Yes. Political candidates are entitled to the same discounts that would be accorded persons other than candidates for public office under the conditions specified, as well as to such special discounts for programs coming within Section 315 as the station may choose to give on a nondiscriminatory basis. (Letter to *Waldo E. Spence*, 40 F.C.C. 392 [1964].)

139. Q. If Candidate A purchases ten time segments from a station which offers a discount rate for purchase of that amount of time, is Candidate B entitled to the discount rate if he purchases less time than the minimum to which discounts are applicable?

A. No. A station is, under such circumstances, only required to make available the discount privileges to each legally qualified candidate on the same basis.

140. Q. If a station has a "spot" rate of $2 per "spot" announcement, with a rate reduction to $1 if 100 or more such "spots" are purchased on a bulk time sales contract, and if one candidate arranges with an advertiser having such a bulk time contract to utilize five of these spots at the $1 rate, is the station obligated to sell time to the candidates of other parties for the same office at the same dollar rate?

A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (Letter to *Senator Monroney*, 40 F.C.C. 252 [1952].)

141. Q. Where a group of candidates for different offices pool their resources to purchase a block of time at a discount, and an individual candidate opposing one of the group seeks time on the station, to what rate is he entitled?

A. He is entitled to be charged the same rate as his opponent, since the provisions of Section 315 run to candidates themselves, and each is entitled to be treated equally with his individual opponents. *(F.C.C.Report and Order*, Docket 11092, 40 F.C.C. 1075 [1954].)

142. Q. A station carries "run-of-schedule" spots (ROS) at its convenience and discretion and makes ROS spots available to commercial advertisers at a reduced rate under a package agreement. On the basis that equal opportunities could not be guaranteed to opponents, could the station refuse to sell ROS spots to legally qualified candidates?

A. No. To the extent a station makes ROS spots available to commercial advertisers, it must also make ROS spots available to legally qualified candidates for public office. In 1981, the United States Court of Appeals for the District of Columbia Circuit determined that ROS spots were a form of discount and that the lowest unit charge rule entitled candidates to the purchase of ROS spots if the station sold ROS spots to commercial advertisers and had determined to cover a particular state or local race by selling spot time to candidates. With respect to federal candidates, ROS spots must be made available to the extent available to commercial advertisers. (See Q. & A. 108.)

143. Q. A licensee informed the Commission that it sold both preemptible and nonpreemptible spot announcements to commercial advertisers on time available basis and the purchase orders specify the times of their broadcast. However, nonpreemptible spot purchasers can select any time previously scheduled for preemptible time spots in addition to other available times. If the preemptible spots were subsequently preempted no charge was made for them. The licensee did not sell preemptible spots to candidates, because it reasoned that if one candidate for public office purchased preemptible spot announcements and they were actually used by him, equal opportunity would require that his opponent be permitted to buy spots at preemptible spot prices and have them broadcast when scheduled regardless of whether or not a purchaser of nonpreemptible spots requested that availability. Could the licensee refuse to sell preemptible spot announcements to political candidates?

A. No. If the licensee sells both preemptible and nonpreemptible spot announcements to commercial advertisers it must make them both available to political candidates at the same rates charged commercial advertisers. However, Section 315(b) of the Communications Act does not require the sale of nonpreemptible spots at preemptible spot rates. If one political candidate buys preemptible spots and they are broadcast, his opponents are entitled to buy preemptible or nonpreemptible spots. If the opponents desire to make certain that their spots will be broadcast, nonpreemptible spots at nonpreemptible rates should be made available to them. But if the opponents buy preemptible spots and they are preempted by nonpreemptible spots, these opponents are then entitled to buy a number of spots equal to those broadcast by the first candidate, but now they must pay the higher nonpreemptible rates. (Letter to *WHDH, Inc.*, 23 F.C.C.2d 763 [1967].)

144. Q. When a candidate and his immediate family own all the stock in a corporate licensee and the candidate is the president and general manager, can he pay for time on the station from which he derives his income and have the station licensee make a similar charge to an opposing candidate?

A. Yes. The fact that a candidate has a financial interest in a corporate licensee does not affect the licensee's obligation under Section 315. Thus, the rates which the licensee may charge to other legally qualified candidates will be governed by the rate which the stockholder candidate actually pays to the licensee. If no charge is made to the stockholder candidate, it

follows that other legally qualified candidates are entitled to equal time without charge. (Letter to *Charles W. Stratton*, 40 F.C.C.228 [1957].)

145. Q. A political candidate purchases time through an advertising public relations agency which he heads. Since he shares in the profit, would the 15% agency commission be a "rebate" and thereby become a violation of Section 315?

A. No. There is no Commission rule or regulation which would prevent or forbid a political candidate from using the services of his own advertising agency. (Letter to *Jason L. Shrinsky*, 23 F.C.C.2d 770 [1966].)

146. Q. A station regularly does business through advertising agencies and gives its customary commission. For example, candidate A purchases $100 worth of time through an agency. The station receives $85. Candidate B, not utilizing an agency, demands the same amount of time from the station for $85. Is he entitled to it?

A. No. The law requires that each candidate be afforded time upon equal terms. Here, following its customary practice, the station has accepted A's time purchase through a recognized agency. The fact that the station receives only $85 has no bearing on the fact that the cost to A was $100. B is entitled to the same terms, no more, no less. It should be noted that the result obtained here is directly the opposite of that achieved in a situation when the "lowest unit charge" applies. (See Q. & A. 133.)

147. Q. A licensee adopted and has consistently maintained a policy whereby agency commissions were not paid in connection with political advertising placed by recognized advertising agencies on behalf of candidates for local office. It adopted and has consistently maintained a similar policy with respect to agency commissions in connection with local commercial advertising. The station's most recent local retail rate card indicates that its established policy is "all rates net to station." Therefore, a candidate who utilized an advertising agency would pay the same station rate as one who did not, but the advertising agency would charge its client-candidate the station rate plus a 15% agency commission. Is this policy consistent with the mandates of Section 315 of the Act and the Rules?

A. Yes. Because the station's rate policy is applicable to both commercial and political advertising, such policy does not contravene Section 315 of the Act nor the Rules. (*In re KSEE*, 23 F.C.C.2d 762 [1968].)

148. Q. A station adopted and maintained a policy under which commissions were not paid to advertising agencies in connection with commercial advertising. Further, in the case of commercial advertisers, the station performed those functions which the advertising agency would normally perform, but in the case of political advertisers, the station performed no such services. An agency which had placed political advertising over the station in a recent election made a demand of the station for payment of the agency commission. Was the station's policy consistent with Section 315 of the Communications Act?

A. No. The Commission has held that such a policy violated both Section 315(b) of the Act and FCC Rule 73.1940; that the benefits accruing to a candidate from the use of an advertising agency were not remote, intangible or insubstantial; and that while under the station's policy, a commercial advertiser would receive, in addition to broadcast time, the services of an advertising agency merely by paying the station's established card rate, whereas, the political advertiser, in return for payment of the same card rate, would receive only broadcast time. The Commission held that such a resultant inequality in treatment vis-a-vis commercial advertisers is clearly prohibited by the Act and the Rules. (Letter to *Marcus Cohn, Esq.*, 40 F.C.C. 388 [1964].)

149. Q. A station increased its advertising rates 30% on August 1. Some legally qualified candidates had purchased time before the rate change for use in the month of August. If their opposing legally qualified candidates request "equal opportunities" based on the use of this time, can they be charged the increased rate for time?

A. No. The rate charged these opposing candidates must be the rate charged their political opponents. Therefore, they should pay the rate in effect before the price change.

150. Q. Time is sold to candidate A for a "talkathon." Candidate B demands an equal allotment of time, and arrangements are made to sell comparable time to her at the same rate as it was sold to A. B uses part of her time and

then cancels her order for the remainder. When billed for time, B insists that she was under no obligation to pay for unused time on the theory that the station has suffered no loss because, under Section 315, the station was required to keep time available to her on call. Is B correct?

A. No. It is true that a station having sold time to one candidate should stand ready to sell comparable time to his or her opponent. But it does not follow that a candidate, having committed herself to paying for the use of specific time, can break a contract and renege on the ground that the station was obligated to hold it open for her. Under these circumstances, the station is not obligated to hold any specific time segment open and is entitled to require the same contract and the same provisions for cancellations as in the case of commmercial users.

K
Reasonable Access

Since 1972, broadcast stations have been required to provide "reasonable access" to candidates for federal elective office for use on behalf of their candidacies. Over the years the Commission has added increasingly detailed definition to the otherwise vague concept of "reasonableness." In more recent cases, the courts have upheld FCC decisions to further limit station discretion, giving candidates and the Commission greater power in determining what is "reasonable."

Section 312(a) of the Communications Act provides that station licenses may be revoked for "willful or repeated failure to allow reasonable access or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for federal elective office on behalf of his candidacy." Nonetheless, as a practical matter, the Commission reviews station compliance with the reasonable access requirements on a case-by-case basis. In the questions and answers that follow, the shorthand term "reasonable access" will be used to refer to the full statutory requirement imposed by Section 312(a)(7).

151. Q. To what candidates do the reasonable access provisions of Section 312(a) apply?

A. The provisions apply only to legally qualified candidates for federal elective office.

152. Q. What are the access rights of state and local candidates?

A. The Commission has stated:

> Stations are expected to devote times to campaigns of state and local candidates in proportion to the significance of the campaigns and the amount of public interest in them. However, the law does not require stations to permit access to candidates for every non-federal office, whereas it does require them to permit access to all candidates for federal office if the candidate requests it.
>
> Regardless of whether candidates are for federal or non-federal office, a station may not refuse all requests for time simply because they do not fit into the station's particular format. For example, a station that normally broadcasts only music and spot announcements will not be meeting its obligations if it refuses to accept or schedule any political discussion running longer than one minute." (*Public Notice*, "The Law of Political Broadcasting and Cablecasting," 69 F.C.C.2d 2209, 2286-87 [1978].)

Similarly, failing to make any time available for state and local candidates would be inconsistent with a station's public interest obligation. (*Wayne Moss*, MM-6285 [Mass Media Bureau, released Sept. 2. 1983].)

153. Q. For purposes of reasonable access, who is a legally qualified candidate for federal elective office?

A. The definition of "a legally qualified candidate" for federal elective office is the same for purposes of reasonable access as for purposes of equal opportunity or "lowest unit charge." (See Part I, Section B of this *Catechism*, p. 8.) However, a person requesting time need only be a legally qualified candidate at the actual time of the broadcast, not when the request is made. (*Carter-Mondale Presidential Committee v. ABC, CBS and NBC*, 74 F.C.C.2d 631 [1979], para. 30.)

154. Q. Does the provision for reasonable access apply to persons or groups requesting access to or purchase of time on a station for themselves as spokespersons on behalf of a candidate?

A. No. The provision applies only to requests for "use" of a station by a federal candidate. The standard of what constitutes a "use" of a station for purposes of administering reasonable

access is the same as the standard concerning equal opportunities, *i.e.*, the use involves an identified or identifiable appearance by the candidate through his or her voice or image. For example, the Commission has ruled that stations are not required to sell time to independent political committees. (But see Q. & A. 199 for a limited exception to this statement. See also *National Conservative Political Action Committee*, 89 F.C.C.2d 626 [1982]; *You Can't Afford Dodd Committee*, 81 F.C.C.2d 579 [1980]; *National Conservative Political Action Committee v. Kennedy*, 563 F. Supp. 662 [D.D.C. 1983].)

155. **Q.** What right of access should be afforded by a station to individuals who are merely spokespersons or supporters of candidates?

A. Such individuals have no right of access under Section 312(a)(7). The station thus must govern its conduct by the "public interest, convenience, or necessity" standard of Sections 307 and 309 of the Communications Act discussed in Q. & A. 152. (See also letter to *Nicholas Zapple*, 23 F.C.C.2d 707 [1970].)

156. **Q.** How is a licensee to comply with the requirement of Section 312(a)(7) that it give reasonable access to the station to, or permit the purchase of reasonable amounts of time by, candidates for federal elective office?

A. The Commission has stated that "reasonable access" cannot be defined exactly because what is "reasonable" in one case may not be "reasonable" in a different set of circumstances. For example, a station covering only a couple of campaigns for federal office would be expected to provide greater access to each federal candidate than a station covering numerous campaigns for federal office with a multiplicity of candidates. (See *Public Notice*, 43 R.R.2d 1353, 1395.)

The Commission has stated:

> Congress clearly did not intend, to take the extreme case, that during the closing days of a campaign stations should be required to accommodate requests for political time to the exclusion of all or most other types of programming or advertising. Important as an informed electorate is in our society, there are other elements in the public interest standard, and the public is entitled to other kinds of programming than political. It was not intended that all or most time be preempted for political broadcasts. The foregoing appears to be the only definite statement that may be made about the new section, since no all-embracing standard can be set. The test of whether a licensee has met the requirement of the new section is one of reasonableness. The Commission will not substitute its judgment for that of the licensee, but, rather, it will determine in any case that may arise whether the licensee can be said to have acted reasonably and in good faith in fulfilling his obligations under this section.
>
> We are aware of the fact that a myriad of situations can arise that will present difficult problems. One conceivable method of trying to act reasonably and in good faith might be for licensees, prior to an election campaign for federal offices, to meet with candidates in an effort to work out the problem of reasonable access for them on their stations. Such conferences might cover, among other things, the subjects of the amount of time that the station proposes to sell or give candidates, the amount and types of its other programming, the 7-day rule, and the amount of advertising it proposes to sell to commercial advertisers.
> (*Licensee Responsibility as to Political Broadcasts*, 15 F.C.C.2d 94 [1968].)

157. **Q.** How will the FCC determine whether the licensee acted reasonably and in good faith?

A. The Commission has placed upon the broadcaster the burden of proving that it has acted reasonably. The broadcaster must file, "in response to a complaint, a full explanation" of its decision. That explanation must show that the broadcaster considered the individual needs of the candidate (as expressed by the candidate), the amount of time provided to the candidate previously, the potential disruption of regular programming, the number of other candidates likely to invoke equal opportunity rights, and the timing of the request. *(CBS v FCC*, 629 F.2d 1, [D.C. Cir. 1980].)

158. **Q.** May a station establish a campaign coverage period and refuse to provide reasonable access before that period commences?

A. No. If the campaign is underway, reasonable access must be given. The Commission will decide whether the campaign

is underway and when the statutory obligations attach. It will consider factors such as announcements of candidacy, the establishment of campaign organizations, fund raising activities, endorsements, media coverage, and (where applicable) the progress of the delegate selection process. (*Carter-Mondale Presidential Committee, Inc.*, 74 F.C.C.2d 631, [1979], *reconsideration denied*, 74 F.C.C.2d 657 [1979], *aff'd sub nom.*, *CBS v. FCC*, 629 F.2d 1 [D.C. Cir. 1980].) Reasonable access must be provided *at least* 45 days before a primary and *at least* 60 days before a general or special election.

159. Q. May a licensee adopt a rigid policy of refusing to sell or give *prime time program time* to federal candidates?

A. No. In its *Public Notice* (43 R.R.2d 1353, 1395), the Commission stated:

> Both commercial and noncommercial educational stations must make available program time during prime time periods unless unusual circumstances exist. The Commission has recognized that there may be situations where the number of candidates in a federal election may make it impossible for a station to make prime time program time available, and the Commission will continue to make exceptions to the prime-time program time policy where circumstances dictate. ("Prime time" for purposes of enforcement of the reasonable access statute means the part or parts of the day in which the audience is likely to be largest. For TV, the 7-11 p.m. period is recognized as prime time in the Eastern and Pacific time zones, and the 6-10 p.m. period in the Central and Mountain time zones. For radio, prime time usually means "drive time," the periods when most persons are driving to or from work.)

160. Q. Must a station make prime time (or drive time) spots available to federal candidates?

A. Yes. Commercial stations must make prime time spot announcements available to federal candidates. (*Public Notice* 43 R.R.2d 1353, 1396.)

161. Q. May a station refuse to sell certain types and lengths of spots to federal candidates?

A. No. Stations may not adopt a policy that flatly bans federal candidates from access to the types, lengths and classes of time which they sell to commercial advertisers. However, this does not mean a station must sell federal candidates everything they request. Thus, for example, a station which sells fixed position spots to commercial advertisers must sell some fixed position spots to federal candidates, but need not grant every request for fixed position spots by a federal candidate.

162. Q. Must a station sell program time to a federal candidate even though it does not offer program time to anyone else?

A. Yes. It is not enough for the licensee to argue that, since it does not sell program time to commercial advertisers, it does not have to sell such time to political candidates. Reasonable access imposes an affirmative obligation on licensees, standing independently of their commercial practices. (*D.J. Leary*, 69 F.C.C.2d 1265, 44 R.R.2d 8331 [1978].)

163. Q. Must a station provide free time to federal candidates in order to provide them with reasonable access?

A. No. A station may satisfy its reasonable access obligation by granting free time to candidates or by permitting purchase of reasonable amounts of time. If a station makes reasonable amounts of time available for purchase by federal candidates, it is not required to also provide them with free time. (*Kennedy for President Committee v. FCC*, 636 F.2d 432 [D.C. Cir. 1980].)

164. Q. Is a station required to sell programs of any length requested by a federal candidate?

A. Not necessarily. For example, where a station has adopted a policy permitting federal candidates to purchase reasonable amounts of prime time programming, it was not unreasonable for the station to refuse one candidate's request to purchase a four and one-half hour block of programming for a telethon. (*Honorable Pete Flaherty*, 48 F.C.C.2d 838 [1974].) On the other hand, the station may not offer a federal candidate "one narrow choice on a take it or leave it basis." Stations must respond flexibly to individual requests and provide access that is responsive to a candidate's needs. Thus, when a station responded to a candidate's request for 30 minutes of prime time prior to a primary by offering the candidate the opportunity to appear with the three other candidates in a single 30-minute prime time program, the Commission found the station's response unreasonable. (*Kennedy for President Committee*, 80 F.C.C.2d 93 [Broadcast Bureau 1980].)

165. Q. If a commercial station gives reasonable amounts of free time to candidates for federal elective office, must it also permit purchase of reasonable amounts of time?

A. No. A commercial station is required either to provide reasonable amounts of free time *or* permit purchase of reasonable amounts of time. It is not required to do both. However, the Commission has stated:

> If a commercial station chooses to donate rather than sell time to candidates, it must make available to Federal candidates under the reasonable access statute free spot time of the various lengths, classes and periods which are available to commercial advertisers. (*Public Notice*, 43 R.R.2d 1353, 1396.)

166. Q. May a federal candidate demand placement of his spots at a specific time or on a specific program?

A. No. The Commission has ruled that a federal candidate "is not entitled to a particular placement of his or her announcement on a station's broadcast schedule." It recognized that this would be very difficult if a candidate wanted his or her spot placed next to a highly rated program that was broadcast only once, or very rarely, and if opposing candidates demanded "equal opportunities." Also some stations do not sell time to candidates during newscasts.

167. Q. Does Section 312(a)(7) on reasonable access apply to noncommercial educational stations and other nonprofit stations, as well as to commercial stations?

A. Yes. There are no provisions in the Campaign Communications Reform Act exempting such stations, nor is there anything in the legislative history of the Act that would indicate that such an exemption was intended. Both types of stations would be required to give reasonable access to legally qualified candidates for federal elective office.

168. Q. May noncommercial educational stations and nonprofit stations charge for broadcast time by or on behalf of legally qualified candidates for federal elective office?

A. Under the provisions of the Commission rules, noncommercial educational stations operating on channels reserved for noncommercial educational uses are not permitted to levy charges for time — for political broadcasts or otherwise. Some such stations presently are providing political programming without charge, and it appears that as a practical matter the new provision will not greatly alter their practices. On the other hand, those stations that do not engage in such programming will be required under the new law to provide reasonable access to candidates without charge. Noncommercial educational stations that are operating on unreserved channels and nonprofit stations that are not educational, *e.g.*, those offering religious broadcasting, may charge for political broadcast time (if their charters or articles of incorporation permit them to make time charges) although it is their policy normally not to charge for any time. If they do charge, notice must be given to the Commission of this change in operation. The lowest unit charge provisions of Section 315(b) cannot apply to such stations since they have no rates on which to base such a charge. However, any charges made must be reasonable when viewed in light of charges made by commercial stations in the same broadcast service licensed to serve the same community. If the charges made by nonprofit stations are unduly high, it is conceivable that they might be construed as an attempt to circumvent the reasonable access provision of Section 312(a)(7). Noncommercial educational stations and nonprofit stations, whether giving free time for political broadcasts or charging for such time, may make necessary charges for production-oriented services, and for other things of the type mentioned in Q. & A. 115.

169. Q. May the Commission regulate the rates to be charged for political broadcasts?

A. The Commission has held that it has the power to limit a station's rates for programming where there is not already established a lowest unit charge. The Commission has held such rates unreasonable and has placed the burden on the broadcaster to "justify its rate to specific factors if...the program rate...on its face bears no reasonable relation to the lowest unit charge that is applicable to spot announcements." (*D.J. Leary*, 69 F.C.C.2d 831, 834 [1978].)

II. The Fairness Doctrine and Political Broadcasts

Any discussion of political broadcasting must involve consideration of the "fairness doctrine." Essentially, the "fairness doctrine" states that when a licensee permits its facilities to be used to air controversial issues of public importance, it must afford reasonable opportunity for the presentation of contrasting points of view. The treatment of the "fairness doctrine" in this publication will be confined to a narrow examination of four aspects of the "fairness doctrine" which relate to political broadcasts. The four aspects will be taken up in the following headings: 1) controversial issues in general; 2) political editorializing; 3) quasi-equal opportunities ("Zapple" doctrine); and 4) personal attack. There is no attempt in the following questions and answers to present a comprehensive or definitive view on the current status of the "fairness doctrine." The doctrine is often difficult to apply and is in a constant state of development. Since one goal of this *Catechism* is to provide stations with a reliable reference tool in the area of political broadcasts, it was decided that completeness should be sacrificed in the interest of certainty. Therefore, the discussion presented in the sections below represents an exploration of only those areas of the "fairness doctrine" affecting political broadcasting where reliable and final decisions have been reached.

Although the "fairness doctrine" has been in existence since 1949, as stated above it continues to be fraught with uncertainties and must be approached in broad, rather than specific, terms. The Commission, aware of this, has attempted to clarify the effect of the "fairness doctrine" vis-a-vis the "equal opportunities" requirements of Section 315. Thus, it has stated:

> The fairness doctrine itself deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance. Generally speaking, it does not apply with the precision of the "equal opportunities" requirement. Rather, the licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation — as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the "equal opportunities" requirement. (See "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," 40 F.C.C. 598 [1964].)

It is important to keep in mind the distinction between appearances by candidates which involve the precise formula of equal opportunity under Section 315, and the discussion of controversial issues by persons other than candidates, which brings into play the very imprecise formula of the "fairness doctrine." When a candidate appears, equal opportunity is mandatory and Section 315 permits no discretion. When issues are discussed by persons other than candidates, reasonable opportunity comes into play, and the licensee is permitted wide discretion, except to the extent that the rules on personal attack and political editorializing apply.

In July, 1974, the FCC issued its *Fairness Report*, 48 F.C.C.2d 1 (1974) which restates and clarifies the essential principles and policies of the fairness doctrine. Summarized herein are some of the principal points of the *Report*. It should be noted that this information is intended only as a very brief and general guide to the current parameters of the fairness doctrine. Any questions which might arise under a particular set of circumstances should be referred to station counsel.

A
Controversial Issues in General

170. Q. What obligation does a licensee have in the "fairness doctrine" area?

A. Where broadcast matter is directed at issues rather than individuals, the obligation upon the station is much more general than under the personal attack and political editorializing rules. Here, the licensee is under no obligation to send copies to any particular person or to afford time to any particular group. Its obligation is to determine whether opposing points of view, in fact, have been presented over its facilities. This may be achieved in any number of ways; as for example, in round-table discussions, news programs, documentaries, etc.

With regard to discharging this obligation, the Commission has said:

> The licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation — *as to whether a controversial issue of public importance is involved*, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming ...in passing on any complaint in this area, *the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith.*

171. Q. What constitutes a "controversial issue of public importance"?

A. The following guidelines are useful in determining what constitutes a "controversial issue of public importance":

(1) An issue is not necessarily one of "public importance" merely because it has received broadcast or newspaper coverage. The degree of media coverage is only one factor to be considered. (2) The Commission suggests that the principal test of "public importance" is "a subjective evaluation of the impact that the issue is likely to have on the community at large." (3) The Commission suggests that an objective approach to determine whether an issue is "controversial" is to measure "the degree of attention paid an issue by government officials, community leaders, and the media." (4) Absent unusual circumstances, any issue on which the general public is asked to vote is presumed to be a controversial issue of public importance, *e.g.*, ballot propositions. (5) Discussion of mere private disputes of no consequence to the general public does not trigger the fairness doctrine. (6) An opportunity for fairness response is not required "as a result of offhand or insubstantial statements." The Commission emphasizes it is opposed to a "policy of requiring fairness, statement by statement or inference by inference. (*Fairness Report*, 48 F.C.C.2d 1 [1974].)

172. Q. What is the controversial issue of public importance in an election campaign?

A. While campaign issues may raise several controversial issues of public importance, the primary issue will be, "Who, among all of the candidates running for a particular office, should be elected?" There will be at least as many viewpoints on that issue as there are candidates. (*U.S. Labor Party v. KIXI and KING-TV*, 57 F.C.C.2d 1273 [1976].)

173. Q. Does the fairness doctrine apply to statements made in candidate uses?

A. No. The Commission has stated specifically that the fairness doctrine does not apply to candidate uses.

174. Q. Does the mere fact that a particular subject is "newsworthy" establish that subject as a controversial issue of public importance to which the fairness doctrine would apply?

A. No. "Newsworthiness" and "controversial issue of public importance" are not synonymous terms. A licensee in its editorial judgment may elect to give broadcast coverage to a story which, although it embraces a matter of dispute or controversy, does not rise to the level of an issue of *public* importance. To permit any other conclusion, would deluge the broadcast media with fairness doctrine complaints premised upon the redress of mere private disputes. Such a situation both would interfere with the licensee's primary duty to operate in the *public* interest and would inhibit the "robust *public* debate" which the fairness doctrine was designed to promote. (*Dorothy Healey v. FCC*, 460 F.2d 917 [1972].)

175. Q. Does the "fairness doctrine" apply only to local controversial issues?

A. No. The keystone of the fairness doctrine and of the public interest is the right of the public to be informed — to have presented to it the "conflicting views of public importance." Where a licensee permits the use of its facilities for the expression of views on controversial local, regional or national issues of public importance, it must afford reasonable opportunities for the presentation of contrasting views by spokespersons for other responsible groups. (Letter to *Cullman Broadcasting Co., Inc.*, 40 F.C.C. 576 [1963].)

176. Q. Which principle is applied to political spot announcements when candidates do not appear therein — the "fairness doctrine" or Section 315?

A. The fairness doctrine is to be applied in such a situation. The "equal opportunities" provision of Section 315 applies only to uses by candidates and not to those speaking in behalf of or against candidates. When spot announcements do not contemplate the appearance of a candidate, the "equal opportunities" provision of Section 315 would not be applicable. The "fairness doctrine," however, is applicable. (Letter to *Lawrence M.C. Smith*, 40 F.C.C. 549 [1963].) The so-called "Zapple Doctrine" also may be applicable. (See Part II, Section C, p. 45.)

177. Q. Does the "fairness doctrine" require that equal time be afforded to opposing viewpoints?

A. The licensee is not required to provide "equal time" for the various points of views. The Commission believes that no precise mathematical time ratio (*e.g.*, 3 to 1, or 5 to 1) is appropriate for all cases. The licensee is expected to exercise good faith and reasonableness in considering the particular facts and circumstances of each case. One approach which the Commission regards as patently unreasonable is "consistently to present one side in prime time and to relegate the contrasting viewpoint to periods outside prime time." It also suggests there can be an imbalance from the sheer weight on one side as against the other stemming from the total amount of time afforded, the frequency of presentation, the size of the listening audience or a combination of factors. (*Fairness Report*, 48 F.C.C.2d 1, 16-17 [1974].)

178. Q. Must a licensee afford reasonable opportunity for presentation of all viewpoints on an issue?

A. No. Where there may be several different contrasting viewpoints or shades of opinion on a given issue, the licensee is not expected to afford an opportunity for presentation of all these views. The Commission expects the licensee to make a good faith effort to identify the "major viewpoints and shades of opinion" being debated in the community and afford provision for their presentation.(*Fairness Report*, 48 F.C.C.2d 1, 15 [1974].)

179. Q. Must all sides of a controversial issue be presented on the same program?

A. No. The licensee is given wide discretion in choosing the methods by which discussion of controversial issues is presented. The Commission concluded that any rigid requirement in this respect would seriously limit the ability of the licensee to serve the public interest. "Forum and roundtable discussions, while often excellent techniques of presenting a fair cross section of differing viewpoints on a given issue, are not the only appropriate devices for...discussion, and in some circumstances may not be particularly appropriate or advantageous."(*Report on Editorializing by Broadcast Licensees*, 25 R.R. 1901 [1960].)

180. Q. How, then, does the Commission determine whether fairness has been achieved on a specific issue?

A. The licensee's overall performance is considered. Thus, where complaint is made, the licensee is afforded the opportunity to set out all the programs, irrespective of the programming format, which it has devoted to the particular controversial issue during the appropriate time period. Regular news programs and in some cases even entertainment programs may contain discussion of one side of a controversial issue. (Letter to *Cullman Broadcasting Co.*, 40 F.C.C. 576 [1963]; letter to *Hon. Oren Harris*, 40 F.C.C. 582 [1963].)

181. Q. Does the licensee have any discretion in choosing a spokesperson?

A. The Commission has refused to establish standards for selecting appropriate spokespersons for opposing views but reminds licensees that they have a duty not "to stack the deck" by deliberate selections which favor one viewpoint at the expense of the other. The Commission looks toward the selection of "genuine partisans who actually believe in what they are

saying." Though the *Fairness Report* does not rule out individual instances of a licensee's presenting opposing views itself, it would regard as unacceptable a "policy of excluding partisan voices and always itself [the licensee] presenting views in a bland, inoffensive manner." Notably, the Commission has rejected the concept of a mandated access, either free or paid, for persons or groups wishing to express a viewpoint on a controversial issue of public importance. It concluded that the public interest would best be served "through continued reliance on the fairness doctrine which leaves questions of access and the specific handling of public issues to the licensee's journalistic discretion."

182. Q. May a licensee justify its failure to present an opposing viewpoint on the grounds that no appropriate spokesperson is available?

A. A licensee may legitimately fail to present an opposing viewpoint on the ground that no appropriate spokesperson is available. However, in such cases, it should be prepared to show that it made a diligent, good faith effort to communicate to such potential spokespersons its willingness to present their opposing views. Furthermore, in cases involving "major issues discussed in depth" this showing should include specific offers of response time to appropriate individuals *in addition* to general over-the-air announcements. Previous rulings indicate this extra obligation also applies where the licensee has presented its side of an issue in which it has a personal stake.

183. Q. How can a licensee go about finding a spokesperson who is willing to present opposing views?

A. The Commission has refused to establish a formula for all broadcasters to follow in their efforts to find a spokesperson for an opposing viewpoint. Various approaches or combinations thereof are generally acceptable, such as the following:

(1) Announcements at the beginning or ending (or both) of programs presenting opinions on controversial issues that opportunity will be made available for the expression of contrasting views upon request by responsible representatives of those views. However, announcements alone are insufficient in cases involving "major issues discussed in depth" or in which a licensee has presented its side of an issue in which it has a personal stake. (See Q. & A. 182.)

(2) Contacting individuals or groups who are known to have opinions contrary to those expressed on the station and offering reasonable time for a response.

(3) Consulting with community leaders as to who might be an appropriate individual or group to respond on a given issue. *Fairness Report*, 48 F.C.C.2d 1, 14-16 [1974].)

184. Q. If one side of a controversial issue is presented, must free time be given for the discussion of the other side?

A. The Commission has stated that if the "fairness doctrine" has any validity, its fulfillment cannot be predicated upon the ability to pay although the licensee may explore the possibility of payment for the time used to respond. Thus, where the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue, it cannot reject a presentation otherwise suitable — and thus leave the public uninformed — on the grounds that it cannot obtain paid sponsorship for that presentation. (Letter to *Cullman Broadcasting Co., Inc.*, 40 F.C.C. 576 [1963].)

185. Q. If one side of a controversial issue is presented, does the licensee have any duties prior to a demand for an opportunity to present the other side?

A. Yes. This obligation cannot be met "merely through the adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time." The licensee must play a "conscious and positive role in encouraging the presentation of opposing viewpoints." *Fairness Report*, 48 F.C.C. 2d 1, 1, 14 [1974].)

186. Q. Is there any policy which a licensee can follow to meet its responsibilities regarding controversial issues under the "fairness doctrine"?

A. Since compliance with the "fairness doctrine" is left to each individual broadcaster, and since so many cases depend on their own particular facts, no one policy can be recommended uniformly. However, the Commission has written to one broadcaster stating that the following policy indicates that the broadcaster is fulfilling the obligations set forth in the *Report on Editorializing by Broadcast Licensees*, 25 R.R. 1901 (1949):

(a) by presenting discussion programs for which participants are sought out who will present contrasting viewpoints;

(b) by offering other time periods to specific persons who have viewpoints contrasting with those expressed on the station's editorials, "where in the opinion of the station the issue warrants it";

(c) by broadcasting the "Editorial Mailbag" for which members of the public with opposing viewpoints are encouraged to send in their views; and

(d) by concluding each editorial with an announcement which makes known to members of the public that the station invites rebuttals by responsible groups and individuals. (Letter to *WFTV-TV*, December 3, 1964, Public Notice 60503. But see Q.'s & A.'s 182 and 183.)

This does not mean that all of the above are necessary in order to achieve compliance. Rather, licensees should use the examples set forth as guides for the formulation of their own policies.

187. Q. A ballot proposition in your state has aroused considerable controversy and you have covered both sides of the issue fully in your news and programming. A week prior to the vote on this issue the proponents request the purchase of 100 spots to be broadcast during the next few days before the vote. You sell them the 100 spots. The opponents have purchased newspaper space to express their views but are not interested in purchasing broadcast spots to counter the proponents. However, they do request free time on your station to respond. Must you make some free time available?

A. The Commission pointed out in its *Fairness Report* that if a station chooses to yield its facilities to one side of a ballot proposition for a so-called "blitz," then an imbalance is created and some opportunity for response must be afforded the other side. The licensee, however, retains considerable flexibility regarding the amount of time, format, spokesperson, and placement of opposing views. It also recognized that some ballot issue advocates take advantage of the *Cullman* principle by spending their money in nonbroadcast media, then wait for the other side to buy time on the air, and finally demand that their own views on the issue be given free broadcast exposure, thus obtaining a broadcast "subsidy" for their views. Nevertheless, the Commission concluded that the *Cullman* principle should not be abandoned because of the possible abuses of a few. Moreover, it stressed that those who rely on *Cullman* have no assurance of obtaining equality by such means since the fairness doctrine does not require equality of exposure of contrasting views. The amount of time to be afforded is a matter for the licensee's discretion.

188. Q. May a licensee rely exclusively on its ongoing ascertainment of community needs in order to determine controversial issues of public importance?

A. No, it may not according to the Commission's decision in *In re Complaint of Representative Patsy Mink (WHAR)*, 509 F.C.C.2d 987 (1976). There, the absence of the issue of strip mining from two ascertainment surveys was not conclusive in light of an extensive amount of supporting material furnished by the complainants, which demonstrated the existence of this controversial issue of public importance.

189. Q. An independent political committee purchases time to promote the candidacy of a particular individual. The individual, however, has not yet become a "legally qualified candidate." Another group promoting another potential candidate requests that the station provide free time to permit them to respond under the fairness doctrine. Must the station provide them free time even though the first group paid for its time?

A. It depends. Although this is not a definitive standard, if none of the potential candidates has become a legally qualified candidate, then the campaign period has not begun and the quasi-equal opportunity (Zapple) doctrine does not apply. Rather, normal fairness doctrine interpretations apply. Thus, under the *Cullman* doctrine, if the time purchased covers a controversial issue of public importance, the licensee cannot refuse to air the opposing viewpoint on the election because the latter group cannot afford to pay for time. (*National Conservative Political Action Committee*, 89 F.C.C.2d 626 [1982].) However, once the candidate becomes a legally qualified candidate and the campaign period is underway, the "Zapple" doctrine applies and groups supporting or opposing particular candidates may be required to pay for time made available to them under the quasi-equal opportunity requirements. (The "Zapple" doctrine is discussed in Part II, Section C.)

B
Political Editorializing

190. Q. What do the Commission's rules regarding political editorializing provide?

A. The Commission's rules* regarding political editorializing, which became effective August 14, 1967, provide as follows:

> (c) Where a licensee, in an editorial, (i) endorses or (ii) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to, respectively, (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial (1) notification of the date and the time of the editorial; (2) a script or tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the licensee's facilities. Where such editorials are broadcast on the day of the election or within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

191. Q. Do the political editorializing rules apply to editorials endorsing or opposing ballot items which do not involve candidates, *e.g.*, a municipal bond issue?

A. No. Subsection (c) applies only to editorials endorsing, or opposing political candidates. Of course, any editorial endorsing or opposing such a ballot item would invoke the "fairness doctrine" and the obligations it imposes upon licensees.

192. Q. What must a licensee do when it broadcasts a political editorial to which the rules apply?

A. The licensee must, within 24 hours after the broadcast, send to the other candidate(s) or the candidate(s) opposed (1) notification of the date and time of the editorial; (2) a script or tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or one of his or her spokespersons to respond over the station's facilities. If the editorial is to be broadcast within 72 hours of election day, the licensee must provide the above-enumerated information far enough in advance of the actual broadcast to enable the candidate(s) to have a reasonable opportunity to prepare a response and to present it in timely fashion following the station's editorial.

*Section 73.1930 of the FCC Rules.

193. Q. If a station broadcasts a political editorial endorsing, or opposing, a candidate, must the station permit the other candidate(s) to reply personally?

A. No. As pointed out in Question 209 below, the Commission has stated that "the licensee may impose reasonable limitations on the reply, such as requiring the appearance of a spokesperson for the candidate to avoid any Section 315 'equal opportunities' cycle.

194. Q. A station, in complying with its obligations under the political editorializing rules, has provided the spokesperson for Candidate A with an opportunity to reply to a station editorial which endorsed opponent Candidate B. The station, in accordance with its usual practice of providing introductions to editorial replies in order to enable its audience to place the replies in perspective, has introduced the editorial reply for Candidate A by saying "This station has endorsed the candidacy of Candidate B for Mayor. Replying on behalf of Candidate A for Mayor, here is Joe Jones." Does such a statement by the station operate as a further endorsement of Candidate B for which Candidate A is entitled to an additional right of editorial reply?

A. Yes. The Commission has frequently stated that in the field of political editorializing, a station "is under an obligation to adhere scrupulously to the requirements of fairness." In the situation offered here, the station's introduction of the editorial reply by a reference to the station's earlier editorial endorsement of Candidate B serves as a further endorsement of Candidate B. Unless Candidate A has agreed to such an introductory reference either expressly or by implication (*i.e.*, the editorial reply itself refers to the earlier station editorial), it must be presumed that such an editorial introduction on the station's part unfairly gives added publicity to Candidate B and thus imposes additional fairness doctrine responsibilities on the station so as to give Candidate A or his spokesperson a further opportunity for reply. (Letter to *Charles F. Massart*, 10 F.C.C.2d 968 [1967]; letter to *George E. Cooley*, 10 F.C.C.2d [1967]; letter to *WCBS*, 20 F.C.C.2d [1969].)

195. Q. During a political campaign, a station editorialized on an issue upon which a candidate has taken an opposite position. No mention is made of the election. Does such an editorial trigger the requirements of the political editorializing rules?

A. No, not on these basic facts. However, the Commission has ruled that when an editorial, instead of merely taking a position on an issue upon which a candidate has also taken a position, directly criticizes or praises the candidate for his or her position on the issue and/or comments on his or her capacity to function as a public official, its relevance to the candidate and the election is obvious and the editorial thereby triggers the political editorializing rules even though it does not specifically endorse or oppose the candidate or refer to the election. (*Taft Broadcasting Co. [WDAF]*, 53 F.C.C.2d 126 [1975]; letter to *Richard N. Hughes*, Oct. 29, 1975.)

C
Quasi-Equal Opportunities (Zapple Doctrine)

196. Q. What is the quasi-equal opportunities ("Zapple") doctrine?

A. Quasi-equal opportunities, also referred to as the "Zapple" doctrine, is a doctrine established by the Commission in 1970 which specifies that when a station sells time to supporters (such as independent political committees) or spokespersons of a candidate during an election campaign who urge the candidate's election, or discuss the campaign issues or criticize an opponent, then the licensee must afford comparable time to the spokesperson for an opponent. (*Letter to Nicholas Zapple*, 23 F.C.C.2d 707 [1970]; *First Report*, Docket No. 19260, 36 F.C.C.2d 40 [1972].)

197. Q. Does the quasi-equal opportunities doctrine apply outside campaign periods?

A. No. Since the doctrine is based on the equal opportunity requirement of Section 315, it applies only in a situation where there exist legally qualified candidates for public office. Thus, only in the case where supporters or spokespersons of one legally qualified candidate have bought broadcast time in support of their candidate does a station become obligated to make time available on request to spokespersons or supporters of the opposing legally qualified candidate(s).

198. Q. If supporters of a candidate request time from a station based upon the quasi-equal opportunities doctrine, must the station provide them with free time in the event they are unable to pay for time?

A. No. Quasi-equal opportunities are premised upon the equal opportunity requirement, which does not afford political candidates the right to free, equal time in response to broadcasts of paid announcements or programs by their opposing candidates. Thus, a supporter of a candidate who seeks broadcast time must pay for time if the supporter of the opposing candidate paid. If the time was provided by the station without charge to supporters of the first candidate, then anyone asking for quasi-equal opportunities also should receive time free of charge.

199. Q. If a legally qualified candidate appears to some significant extent in a broadcast with his or her supporters, may supporters of the opposing candidate demand quasi-equal opportunities?

A. Yes, but only if the opposing candidate or his or her authorized committee has *not* made a timely request for equal opportunities. (See *Carter-Mondale*, 81 F.C.C.2d 409, 420-21 [1980].)

200. Q. Does the quasi-equal opportunities doctrine apply to all parties and all candidates?

A. No. Although the doctrine takes into account the policies of Section 315, it also represents an embodiment of certain elements of the fairness doctrine. Specifically, the Commission has said quasi-equal opportunities exists as a "particularization of what the public interest calls for in certain political broadcast situations in the light of Congressional policies set forth in Section 315(a)." Thus, in administering quasi-equal opportunities under the public interest standard, the station should proceed to make reasonable good faith judgments as to the significance of particular parties or candidates in its community. On this basis, a station need not provide fringe candidates or minor parties with broadcast time under quasi-equal opportunities. (*First Report*, Docket No. 19260, 36 F.C.C.2d 40 [1972].)

201. Q. If a supporter of a candidate appears in a *bona fide* news broadcast, must the station grant the supporter of an opposing candidate a request for time based upon quasi-equal opportunities?

A. No. The Commission has said that if the provisions of Section 315 which exempt from equal opportunities appearances by candidates in *bona fide* news events, are to have any meaning, appearances by supporters of can-

didates in such news broadcasts must also be exempt from application of quasi-equal opportunities. The specific news broadcast exemptions in Section 315 were designed to protect stations from having to grant equal opportunities to fringe candidates whenever a major candidate was covered in a news broadcast. Thus, in order to carry forward the statutory goal of insulating stations from having to provide broadcast time to fringe political campaigns, quasi-equal opportunities necessarily requires an exemption for appearances by supporters of candidates in news broadcasts. (*First Report*, Docket No. 19260, 36 F.C.C.2d 40 [1972].)

D
Personal Attack

202. Q. What do the Commission's rules regarding personal attacks provide?

A. The Commission's Rules regarding personal attacks, which became effective August 14, 1967, provide as follows:*

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the persons or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

(b) The provisions of paragraph (a) of this section shall not apply to broadcast material which falls within one or more of the following categories: (i) personal attacks on foreign groups or foreign public figures; (ii) personal attacks occurring during uses by legally qualified candidates; (iii) personal attacks made during broadcasts not included in (ii) and made by legally qualified candidates, their authorized spokespersons, or those associated with them in the campaign, on other such candidates, their authorized spokespersons, or persons associated with the candidates in the campaign; and (iv) *bona fide* newscasts, *bona fide* news interviews, and on-the-spot coverage of a *bona fide* news events (including commentary or analysis contained in the foregoing programs, but the provisions of paragraph (a) shall be applicable to editorials of the licensee.)

Note: The fairness doctrine is applicable to situations coming within (iv) above and, in a specific factual situation, may be applicable in the general area of political broadcasts described in (iii), above. See Section 315(a) of the Act, 47 U.S.C. Sec. 315(a); Public Notice: *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 40 F.C.C. 598 (1964). The categories listed in (iv) are the same as those specified in Section 315(a) of the Act.

*Section 73.1920 of the F.C.C. Rules

203. Q. Do personal attack rules apply to all personal attacks made over a station's facilities?

A. No. Since the personal attack rules are an outgrowth of the "fairness doctrine," they apply only in situations where the "fairness doctrine" applies. Thus, the rules apply only to personal attacks which are made during a *discussion of a controversial issue of public importance*. Other types of personal attacks would not invoke the "fairness doctrine." Of course, "the use of broadcast facilities for the airing of mere private disputes and attacks would raise serious public interest issues," as well as the libel and slander implications which surround *any* personal attack. (Docket No. 16574, 8 F.C.C.2d 721 [1967].)

204. Q. What constitutes a personal attack under the Commission's rules?

A. A personal attack under the Commissions rules includes: an attack upon the honesty, character, integrity or like personal qualities of an identified person or group. Mere mention or reference to an individual or group in the course of a broadcast does not constitute a personal attack. (Letter to Lar Daly, 40 F.C.C. 494 [1960]; *petition for reconsideration denied,* 40 F.C.C. 496 [1960].) Even where an attack is made, however, the rule applies only if the attack occurs "during the presentation of views on a controversial issue of public importance." (See *Straus Communications, Inc. v. FCC*, 530 F.2d 1001 [D.C. Cir. 1976].)

205. Q. Are personal attacks made in the course of a political broadcast usually subject to personal attack rules?

A. No, not usually. The personal attack rules do not apply to personal attacks occurring during "uses" by legally qualified candidates' authorized spokespersons, or those associated with them in the campaign, on other such candidates, their authorized spokespersons, or persons associated with the candidates in the campaign. Thus, the personal attack principle

would seldom apply to attacks made during political broadcasts. However, this does not mean that in specific factual situations, the licensees might not be subject to the general obligations of the "fairness doctrine." (See *Note* following subsection (b) of the rules.)

206. Q. During the course of a political broadcast a candidate made a personal attack upon individuals who are neither candidates, their authorized spokespersons nor persons associated with candidates in their campaigns. Under Section 315 of the Communications Act, the station carrying the broadcast is prohibited from censoring the candidate's remarks. In light of the principle established by the United States Supreme Court that stations are not liable for civil damages resulting from defamatory remarks broadcast by political candidates (*Farmers Educational and Cooperative Union of America v. WDAY, Inc.*, 360 U.S. 525 [1959]), is the station protected as well from any obligation to comply with the personal attack rules?

A. Yes. The Commission has exempted attacks made during the candidate's "uses" from the personal attack rules. (45 R.R.2d 1635.)

207. Q. Are personal attacks made in the course of a news broadcast subject to the Commission's personal attack rules?

A. No. Although news programming may involve application of the "fairness doctrine," the personal attack rules specifically exempt attacks made during *bona fide* newscasts, *bona fide* news interviews and on-the-spot coverage of a *bona fide* news event (including commentary or analysis contained in any of the foregoing types of news broadcasts).

208. Q. Do the exemptions in the personal attack rules for *bona fide* newscasts, news interviews and on-the-spot coverage of a *bona fide* news event encompass (1) editorials carried in such news coverage or (2) news documentaries?

A. The exemptions do not encompass either of these two types of programming. The rules specifically provide that editorials contained in newscasts, news interviews or on-the-spot coverage are not exempted. Furthermore, the Commission made it clear in revising the personal attack rules to include these exemptions that news documentaries were not to be exempted. (Docket No. 16574, 9 F.C.C.2d 539, 540 [1967].)

209. Q. If a station broadcasts a non-exempt personal attack upon a candidate, must the station permit the candidate to reply personally?

A. No. The Commission stated in its action adopting the rules that "the licensee may impose reasonable limitations on the reply, such as requiring the appearance of a spokesman for the candidate to avoid any Section 315 'equal opportunities' cycle." (8 F.C.C.2d 721 [1967].) The candidate should, of course, be given a substantial voice in the selection of the spokesperson to respond to the attack. (*Times Mirror Broadcasting Co.*, 40 F.C.C. 531 [1962].)

210. Q. Must free time be afforded to answer a personal attack?

A. The Commission has stated that if the "fairness doctrine" has any validity, its fulfillment cannot be predicated upon the ability to pay. (Letter to *Cullman Broadcasting Co., Inc.*, 40 F.C.C. 576 [1963].) This does not mean that the licensee may not inquire whether the attacked individual is willing to pay to appear; however, the person entitled to make a response cannot be denied time because he refuses to pay for it. The licensee is also free to obtain a sponsor for the program in which the reply is broadcast, but having presented a personal attack, the licensee cannot bar the individual's response simply because sponsorship is not forthcoming. (Letters to *KXEN et al.*, 1 F.C.C.2d 929 [1965].)

211. Q. Is the truth or falsity of a personal attack relevant to the broadcaster's obligations under the "fairness doctrine" and the personal attack rules?

A. No. The Commission has stated that the truth or falsity of an attack is not a matter for its determination and that in circumstances where the attack is based upon allegations "the licensee cannot aver that the attack is true and, therefore, there is no need to let the public hear the other side." (Letter to *WHN*, 11 F.C.C.2d 678 [1968].) It must be assumed, however, that if the attack were based not on allegations, but rather on the determination of a judicial body, *e.g.*, conviction of a crime, the Commission would not require the licensee to comply with the personal attack rules.

212. Q. What must a licensee do if a personal attack, subject to the rules, is made over its station?

A. The licensee is required, within one week of the attack, to transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary, if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

III. FCC Handling of Complaints and Inquiries Concerning Political Broadcasts

The Commission will give prompt attention to all inquiries and complaints involving political broadcasts. However, the Commission encourages prior good faith negotiations between licensees and candidates seeking broadcast time or having related questions. In the past, such negotiations often have led to a disposition of the request of questions in a manner which is agreeable to all parties. Thus, a complaint relative to political broadcasting should only be filed with the Commission after such a good faith effort has been made by the parties concerned. In this way, resort to the Commission might be obviated in many instances and time — which is of such great importance in political campaigns — might be saved. If a complaint is filed, a complete statement of facts should be furnished to the Commission as quickly as possible by both the complainant and the licensee and each should send to the other a copy of all communications directed to the Commission, including the initial complaint and response thereto.

In general, the Commission limits its interpretative rulings or advisory opinions to situations where the critical facts are explicitly stated without the possibility that subsequent events will alter them. It prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for a decision. (Letter to *Pierson, Ball & Dowd*, 40 F.C.C.295 [1958].)

IV. Political Broadcast Agreement Form

The following suggested agreement form, prepared by the NAB Legal Department, is designed to fulfill two needs in the political broadcast area: 1) to serve as an actual agreement and 2) to satisfy the Commission's record retention requirements. A station is, of course, free to use any other type of political agreement form or forms so long as the pertinent Commission regulations are satisfied. Regardless of what kind of form a station uses, the identity of the person(s) who will be using the broadcast time should be clearly indicated because the provisions of Section 315 apply only when the candidate himself or herself appears in the broadcast.

Pads of the Agreement Form for Political Broadcasts are available from NAB Services. Please call 800/368-5644 for price information.

NAB FORM PB 11 FEBRUARY 1984

AGREEMENT FORM FOR POLITICAL BROADCASTS

STATION and LOCATION _____ 19____

I, _____ (being) (on behalf of) _____

_____

a legally qualified candidate of the _____ political party for the office of _____

_____

in the _____ election to be held on _____, do hereby request station time as follows:

LENGTH OF BROADCAST	HOUR	DAYS	TIMES PER WEEK	TOTAL NO WEEKS	RATE

DATE OF FIRST BROADCAST	DATE OF LAST BROADCAST

Total Charges: _____

The broadcast time will be used by _____
I represent that the advance payment for the above-described broadcast time has been furnished by

_____

_____ and you are authorized to so describe that sponsor in your log and to announce the program as paid for by such person or entity. The entity furnishing the payment, if other than an individual person, is: ( ) a corporation; ( ) a committee; ( ) an association; or ( ) other unincorporated group. The names and offices of the chief executive officers of the entity are: _____

_____

_____

It is my understanding that: If the time is to be used by the candidate himself within 45 days of a primary or primary runoff election, or within 60 days of a general or special election, the above charges represent the lowest unit charge of the station for the same class and amount of time for the same period; where the use is by a person or entity other than the candidate or is by the candidate but outside the aforementioned 45 or 60 day periods, the above charges do not exceed the charges made for comparable use of such station by other users.

It is agreed that use of the station for the above-stated purposes will be governed by the Communications Act of 1934, as amended, and the FCC's rules and regulations, particularly those provisions reprinted on the back hereof, which I have read and understand. I further agree to indemnify and hold harmless the station for any damages or liability that may ensue from the performance of the above-stated broadcasts. For the above-stated broadcasts I also agree to prepare a script or transcription, which will be delivered to the station at least _____ before the time of the scheduled broadcasts; (*note:* the two preceding sentences are not applicable if the candidate is personally using the time).

Date: _____ _____
(Candidate, Supporter or Agent)

Accepted / Rejected by _____ Title _____

This application, whether accepted or rejected, will be available for public inspection for a period of two years in accordance with FCC regulations (Sections 73.3526 and 73.1940(d).)

LAWS AND REGULATIONS GOVERNING POLITICAL BROADCASTS

From the Communications Act of 1934, as amended

Section 312. (a) The Commission may revoke any station license or construction permit—

• • •

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Section 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(1) during the forty-five days preceeding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period, and

(2) at any other time, the charges made for comparable use of such station by other users thereof.

(c) For the purposes of this section

(1) The term "broadcasting station" includes a community antenna television system.

(2) The terms "licensee" and "station licensee" when used with respect to a community antenna television system, mean the operator of such system

(d) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

From the Rules of the Commission Governing Radio Broadcast Services. (The foregoing Sections of the Communications Act govern any inconsistencies between the following rules and those Sections)

Section 73.1940 Broadcasts by candidates for public office.

(a) Definitions. (1) A legally qualified candidate for public office is any person who:

(i) has publicly announced his or her intention to run for nomination or office,

(ii) is qualified under the applicable local, state or federal law to hold the office for which he or she is a candidate, and,

(iii) has met the qualifications set forth in either subparagraphs (2), (3), or (4), below.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in subparagraph (1) above, the person:

(i) has qualified for a place on the ballot, or

(ii) has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those states or territories (or the District of Columbia) in which they have met the requirements set forth in paragraph (a)(1) and (2) of this rule. Except, that any such person who has met the requirements set forth in paragraph (a)(1) and (2) in at least 10 states (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all states, territories and the District of Columbia for purposes of this Act

(3) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a)(1) above, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those states or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a)(1) above,

(i) he or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that state, territory or the District of Columbia, or

(ii) he or she has made a substantial showing of bona fide candidacy for such nomination in that state, territory or the District of Columbia. Except, that any such person meeting the requirements set forth in paragraph (a)(1) and (4) in at least ten states (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all states, territories and the District of Columbia for purposes of this Act.

(5) The term "substantial showing" of bona fide candidacy as used in paragraphs (a)(2), (3) and (4) above means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

(b) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed (1) during the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period, and (2) at any other time, the charges made for comparable use of such station by other users thereof. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office. (3) This paragraph shall not apply to any station which is not licensed for commercial operation.

(c) Discrimination between candidates. In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage, nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) Records, inspection. Every licensee shall keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. When free time is provided for use by or on behalf of such candidates, a record of the free time provided shall be placed in the political file. All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years.

(e) Time of request. A request for equal opportunities must be submitted to the licensee within one week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred, provided, however, that where the person was not a candidate at the time of such first prior use, he shall submit his request within one week of the first subsequent use after he has become a legally qualified candidate for the office in question.

(f) Burden of proof. A candidate requesting equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

Section 73.1810 Program Log: [Television and noncommercial radio only. Commercial AM and FM stations are *not* required to keep program logs.]

(b) the following entries shall be made in the program log. • • •

(1)(v) An entry for each program presenting a political candidate, showing the name and political affiliation of such candidate • • •

(2)(i) An entry identifying (a) the sponsor(s) of the program, (b) the person(s) who paid for the announcement, or (c) the person(s) who furnished materials or services; and the entry shall constitute a representation that identification was announced on the air. • • •

(4)(ii) An entry for each announcement presenting a political candidate, showing the name and political affiliation of such candidate

Announcement With Respect To Certain Matter Broadcast

Sec. 317 (a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) In any case where a report has been made to a radio station, as required by section 507 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

FCC Rules

Sec. 73.1212 Sponsorship identification; list retention; regulated requirements.

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or part, and (2) by whom or on whose behalf such consideration was supplied: *Provided, however*, That "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast. (i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by section 508 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly to a station as an inducement for broadcasting such

matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter. *Provided, however*, That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorportated group, or other entity shall be made available for public inspection at the location specified by the licensee under sec. 73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under sec. 73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such nnouncement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are ommitted pursuant to this paragraph, the licensee shall observe the following conditions:

(1) maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) attach the list to the program log, if the station is required to keep such log, for the day when the broadcast was made; or retain separately if the station is not required to keep program logs; and

(3) make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be retained for a period of two years after broadcast.

(h) Any announcement required by section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

Note: The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60-1369; 40 F.C.C. 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when sec. 73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 F.C.C. 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

[40 FR 18400, Apr. 28, 1975, as amended at 46 FR 13907, Feb. 24, 1981.]

Index

Subjects listed in this heading relate to specific political broadcast questions in the *Catechism* and are referenced by question number. For general subject headings, see the Table of Contents.

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Suggested Policy on Investigative Reporting

The following is a written summary of the station's policy on "investigative reporting" (*i.e.*, the journalistic investigation of matters of interest to the public which may involve a violation of law and the reporting to the public of the results of such investigations).

The station and its personnel may not knowingly engage in criminal activity in the gathering or reporting of news, nor induce or aid the commission of a crime or a violation of law.* The "staging" of news events is prohibited, and broadcast coverage must deal with actualities, except for re-creations that are expressly described as such. (For example, a reporter upon arriving late at a riot should not ask a rioter to throw a brick through a window for the benefit of the television camera operator. This would be "staging" and also would be inducing a violation of law. *See CBS (WBBM)*, 18 FCC 2d 124 (1968)).

The station must notify the appropriate law enforcement agency if a *crime of violence* is about to take place, that is, if a crime threatening injury to person or property is about to be committed (*e.g.*, robbery or mugging). However, the notification requirement does not apply to information obtained during station investigation of other types of crimes, such as the numbers' racket, bookie joints, prostitution, etc., as this would eliminate all opportunity to make effective investigations of corruption or official laxity in enforcing certain criminal statutes.

In order to insure that the above policies are complied with, the following practices will be followed:

(a) The General Manager must approve in advance all investigative news projects—both as to subject matter and the procedures to be used in covering the matter. The General Manager is encouraged to check with top licensee management in doubtful cases.

(b) The General Manager should be kept fully informed of all complaints, protests, problems or incidents encountered during an investigation of this type. Prior to the broadcast of any material involving the commission of an actual or alleged crime developed by investigative reporting, the General Manager must preview and approve the program material. However, this procedure does not apply to crimes that come to the station's attention by means other than investigative reporting by station personnel.

(c) An employee, whose judgment can be relied upon, shall be placed in charge of all investigative reporting. Investigative reporters should exercise caution and avoid hasty judgments or judgments based on an incomplete investigation. Inexperience, exuberance, ambition or the desire to score a news story first should not be permitted to interfere with making a complete and fully informed investigation as the basis for the broadcast.

(d) In covering civil disorders or terrorist activities, reporters must follow procedures that are least likely to inflame the participants or to lead them to additional acts of violence or terrorism, whether to accommodate the reporters or to advance propaganda objectives of the rioters.

(e) In a situation where the alleged law violation takes place on the property of an institution or an individual, or may be associated in the public mind with an institution or individual not participating in the alleged violation, extreme care should be taken to avoid any implication that the institution or individual is involved in or has condoned the alleged violation.

(It should be stressed that this is merely a suggested policy covering some aspects of investigative reporting. Stations can and should tailor this policy to fit their individual needs.)

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*But there may be exceptions that should be made on an *ad hoc* basis even to so absolute a rule. For example, some issues may require investigative reporting which involve the commission of acts technically in violation of criminal statutes, such as the purchase or possession of hand guns (where they are forbidden) or of liquor in a "dry" state, in connection with stories detailing the ease of acquiring these articles. However, even such exceptional acts are never to be undertaken lightly. Of course, acts that cannot be countenanced, no matter how important the subject under investigation, include any which would cause physical injury to another person. Between these examples are many hard questions involving the proper scope and methods of investigative reporting. These questions always should be approached with a thoughtful regard for the heavy responsibilities involved.

[FOR INTERNAL USE ONLY]

PROMISE-VS.-PERFORMANCE REPORT (TELEVISION)

TELEVISION STATION _____

WEEK OF _____

I. PROGRAM ANALYSIS

From 6:00 a.m. to Midnight _____ Minutes* = 100%

	All Programs	Percent	Local Programs	Percent
News	_____ Mins.	____%	_____ Mins.	____%
Public Affairs	_____ Mins.	____%	_____ Mins.	____%
All Other (Except Entertainment and Sports)	_____ Mins.	____%	_____ Mins.	____%

From 6:00 p.m. to 11:00 p.m. _____ Minutes* = 100%
(5:00 p.m. to 10:00 p.m., C.T. and M.T.)

News	_____ Mins.	____%	_____ Mins.	____%
Public Affairs	_____ Mins.	____%	_____ Mins.	____%
All Other (Except Entertainment and Sports)	_____ Mins.	____%	_____ Mins.	____%

From Midnight to 6:00 a.m. _____ Minutes* = 100%

News	_____ Mins.	____%	_____ Mins.	____%
Public Affairs	_____ Mins.	____%	_____ Mins.	____%
All Other (Except Entertainment and Sports)	_____ Mins.	____%	_____ Mins.	____%

Week's Performance (Total All Time Periods)			Promised	
Total Operation*	_____ Minutes		_____ Minutes	
Total News	_____ Mins.	____%	_____ Mins.	____%
Total Public Affairs	_____ Mins.	____%	_____ Mins.	____%

II. PUBLIC SERVICE ANNOUNCEMENTS

Aired _____ Promised _____

* Excluding commercials.

III. COMMERCIAL PRACTICES

Over sixteen minutes of commercials were aired during _____ hours in week.

If any, list the time and day broadcast and the amount of commercial matter contained therein and provide an explanation: _____

_____

Children's Programming

List each one hour or ½ hour segment of programming specifically designed for children twelve years old and under which contained commercial matter in excess of:

a. 12 minutes per hour or 6 minutes per half-hour on weekdays (Monday through Friday), or

b. 9½ minutes per hour or 4¾ minutes per half-hour on weekends (Saturday and Sunday).

For each programming segment so listed, indicate the length of the segment (i.e., one hour or ½ hour) and the amount of commercial matter contained therein.

Segment	Amount of Commercial Matter	Day Broadcast

IV. CHILDREN'S PROGRAMS

List the programs, program segments or program series broadcast which were designed specifically for children twelve years old and under. Include the source, time and day of broadcast, frequency of broadcast, and program type. Programs designed for children include programs originally produced and broadcast primarily for an audience of children twelve years old and under.

_____

_____

_____

_____

_____

_____

FCC 71-428
62680
36 FR

In the Matter of)
)
Licensee Responsibility to)
Review Records Before Their)
Broadcast (FCC 71-205))

Adopted: April 16, 1971
Released: April 16, 1971

[¶53:24(R)] Review of records on drugs.

Nothing in the Commission's prior notice on records involving use of illegal drugs, stated, directly or indirectly, that a licensee is barred from presenting a particular type of record. 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. Any attempt to review or condemn a licensee's judgment to play a particular record is beyond the scope of federal regulatory authority with perhaps the exception of the so-called "clear and present danger" test. Review of Records on Drugs, 21 RR 2d 1698 [1971].

[¶10:326, ¶53:24(R)] Records on drugs.

Whether to play a particular record, in the area of illegal drugs, does not raise an issue as to

which the government may intervene. That is the reason the Commission has not referred a single complaint concerning the playing of records with drug lyrics to licensees for their comments. Instead, complainants have been informed of the provisions of Section 326 of the Communications Act. The licensee may jeopardize his license by failing to exercise licensee responsibility in this area. A licensee should know whether his facilities are being used to present again and again a record which urges youth to take heroin or cocaine. This example serves to point up the obvious bedrock policy of the responsible public trustee. The point is that such records are not withdrawn from the area of licensee responsibility. Review of Records on Drugs, 21 RR 2d 1698 [1971].

[¶53:24(R)] Records on drugs.

As to the mechanics of licensee responsibility in the area of records involving use of drugs, disc jockeys could be instructed that where there is a question as to whether a record promotes illegal drug usage, a responsible management official should be notified so that he can exercise his judgment. It may be that a record which raises an issue in this respect is played once, but then the station personnel who have heard it will be in a position to bring it to the attention of the appropriate management official for his judgment. The Commission is not calling for an extensive investigation of each such record. What is required is simply reasonable and good faith attention to the problem. Review of Records on Drugs, 21 RR 2d 1698 [1971].

MEMORANDUM OPINION AND ORDER

By the Commission: (Commissioners Bartley, H. Rex Lee and Wells concurring and issuing statements; Commissioner Johnson dissenting and issuing a statement.)

1. The Commission has before it petitions for reconsideration of its Public Notice of March 5, 1971, FCC 71-205 [21 RR 2d 1576], entitled "Licensee Responsibility to Review Records Before Their Broadcast", filed by the Federal Communications Bar Association; Pierson, Ball & Dowd on behalf of Dick Broadcasting, Inc., Lee Enterprises, Inc., RKO General, Inc., and Time-Life Broadcast, Inc.; the Recording Industry Association of

America (RIAA), 1/ and Pacifica Foundation. 2/ The latter also submitted a petition for stay. In view of this latter request and the considerations in the next paragraph, we agree that there is a need for expedited action, and therefore go directly to the merits, without summarizing the petition.

2. The Commission's public notice of March 5 stated, in most pertinent part:

> "Whether a particular record depicts the dangers of drug abuse, or, to the contrary, promotes such illegal drug usage is a question for the judgment of the licensee. The thrust of this Notice is simply that the licensee must make that judgment and cannot properly follow a policy of playing such records without someone in a responsible position (i. e., a management level executive at the station) knowing the content of the lyrics."

The Notice thus simply reflected the well established concept of licensee responsibility. However, as the petitions point up, it was widely reported in the press as a directive by the Commission not to play certain kinds of records. (E. G., "Stations Told to Halt Drug-Oriented Music", Associated Press, The Washington Evening Star, March 6, 1971; "FCC Bars Broadcasting of Drug-Linked Lyrics", United Press International, The Washington Post, March 7, 1971) Since the purpose of a public notice is to inform the industry and public of a Commission policy, it follows that where a notice is so erroneously depicted, we should appropriately call attention to the error. We do so in this Memorandum Opinion and Order. While it adheres fully to the above noted established policy of licensee responsibility, this opinion treats the matter in greater detail and thus constitutes the Commission's definitive statement in this respect.

3. As the Notice stated at the outset, the Commission has received a number of complaints concerning the broadcast of records with lyrics tending to promote or glorify the use of illegal drugs. The Commission's own experience indicated that there was some tendency by broadcasters to be indifferent to the matter of licensee responsibility in this area because all that is involved is the playing of a record. The Commission therefore believed it appropriate to point up that the licensee's responsibility for the material broadcast over his facilities extends to records. Clearly, in a time when there is an epidemic of illegal drug use – when thousands of young lives are being destroyed by use of drugs like heroin, methedrine ("speed"), cocaine – the licensee should not be indifferent to the question of whether his facilities are being used to promote the illegal use of harmful drugs.

1/ RIAA's Motion for Acceptance of Pleading in Excess of Page Limitation is granted.

2/ We also take note that a Petition for Reconsideration was filed late by the Stern Community Law Firm and also a Memorandum of the Authors League of America, Inc. in support of RIAA's Petition for Reconsideration. These materials were received during our determination on this Memorandum Opinion and Order.

4. But nothing in the prior Notice stated, directly or indirectly, that a licensee is barred from presenting a particular type of record. On the contrary, the Notice made clear that selection of records was a matter for the licensee's judgment. Some records point up drug dangers, some may glorify drugs, some may simply reflect the drug scene as it is today. Here, as in so many programming areas, it is often a most difficult judgment whether a record promotes drug usage. Licensees could reasonably and understandably reach differing judgments as to a particular record. We stress that such an evaluation process is one solely for the licensee. The Commission cannot properly make or review such individual licensee judgments. Indeed, at renewal time our function is solely limited to a review of whether a licensee's programming efforts, on an overall basis, have been in the public interest. Report and Statement of Policy Re: Commission En Banc Programming Inquiry, 20 Pike & Fischer, Radio Regulation 1901 (1960): In re Pacifica Foundation, 36 FCC 147, 149 [1 RR 2d 747] (1964).

5. Any attempt to review or condemn a licensee's judgment to play a particular record is, as indicated, beyond the scope of federal regulatory authority with perhaps the exception of the so-called "clear and present danger" test. In this connection, in Anti-Defamation League of B'Nai B'Rith against Radio Station KTYM, 4 FCC 2d 190, 191 [7 RR 2d 565], 6 FCC 2d 385 [9 RR 2d 271] (1967), 3/ the Commission stated:

> "It is the judgment of the Commission, as it has been the judgment of those who drafted our Constitution and of the overwhelming majority of our legislators and judges over the years, that the public interest is best served by permitting the expression of any views that do not involve 'a clear and present danger of serious substantive evil that rises far above public convenience, annoyance or unrest'." 4/ Terminiello v. Chicago, 337 US 1, 4 (1949).

6. The question of formulating a definitive concrete standard is not presented in this matter. For, we hold, based on our experience and the complaints received, that whether to play a particular record in this area does not raise an issue as to which the Government may intervene. That is the reason why the Commission has not referred a single complaint concerning

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3/ Aff'd, Anti-Defamation League v. FCC, 403 F2d 169 [14 RR 2d 2051] (CA DC, 1968), cert denied, 394 US 930 (1969).

4/ Similarly, in Brandenburg v. Ohio, 395 US 444 (1969), the Supreme Court struck down the conviction of a Ku Klux Klan leader for advocating violence at a KKK rally, stating (at p. 447):

> "These later [Supreme Court] decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

the playing of records with drug lyrics to licensees for their comments 5/; instead; we have informed the complainants of the provisions of Section 326. There could be extraordinary, unforeseen circumstances where the stringent requirements of the "clear and present danger" test might be met in this field. No one can today write a constitutional blueprint for every possible future happenstance and changed circumstance. It is sufficient to hold that we do not now perceive such a problem, based upon our present experience, and that our prior Notice and this Opinion are not premised upon it.

7. The Commission did make clear in the Notice that the broadcaster could jeopardize his license by failing to exercise licensee responsibility in this area. Except as to broadcasts by political candidates, the licensee is responsible for the material broadcast over his facilities. That obviously calls for a reasonable degree and exercise of responsibility. It is nonsense to assert that the licensee can be indifferent to this responsibility. If a person approaches a station to buy time to attack his neighbor, or simply to let loose a torrent of vile language, he will not be presented. While these are egregious examples of the need for licensee responsibility, the plain fact is that the licensee is not a common carrier – that the Act makes him a public trustee who is called upon to make thousands of programming judgments over his license term. The thrust of the Notice is simply that this concept of licensee responsibility extends to the question of records which may promote or glorify the use of illegal drugs. 6/ A licensee should know whether his facilities are being used to present again and again a record which urges youth to take heroin or cocaine – that it is a wonderful, joyous experience. This example is egregious, but it serves to point up the obvious bedrock policy of the responsible public trustee. The point is that such records are not withdrawn from the area of licensee responsibility.

8. Nor are the mechanics of licensee responsibility difficult or onerous. Again, it may be desirable to proceed by analogy. Licensees instruct their

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5/ It has come to our attention that pursuant to a request by a broadcasting station's news department, a Commission employee furnished it with the titles of some songs which had been among those included in a presentation to the Commission some months ago by the Department of the Army. The song titles, furnished in response to the station's inquiry, comprised, as was made clear to the station at the time, "A partial list of song titles brought to the attention of the FCC in connection with the subject of so-called drug-oriented song lyrics." We wish to make it clear that such list does not represent any official or even unofficial pronouncement by the Commission, and will not be circulated, utilized or applied by us in any manner whatsoever. The Commission has made no judgment on any song and most emphatically has not compiled or issued any list of songs which it believes should not be broadcast. Nor does it intend to do so in the future.

6/ We thus fully agree with the FCBA position that the Commission should make clear ". . . it was announcing a policy dealing solely with licensee responsibility to be familiar with what the licensee is broadcasting and that it did not intend to pass judgment on the desirability of broadcasting any song . . ." (p. 8, FCBA petition).

employees that before presenting taped material containing questionable language (i. e., of an indecent or obscene nature), the matter should be brought to the attention of a responsible management official (see Eastern Educational Radio, 24 FCC 2d 408, 414 [18 RR 2d 860] (1970)). We note that this is the policy of petitioner Pacifica. See in re Pacifica Foundation, 36 FCC 147, 150 [1 RR 2d 747] (1964). Further, while such material might be presented once in a series part of which has been screened and approved, its presentation is then picked up, either by complaint or station personnel, and a judgment made as to further presentation. So also here, disc jockeys could be instructed that where there is a question as to whether a record promotes the illegal drug usage, a responsible management official should be notified so he can exercise his judgment. It may be that a record which raises an issue in this respect is played once, but then the station personnel who have heard it will be in a position to bring it to the attention of the appropriate management official for his judgment. Finally, we are not calling for an extensive investigation of each such record. We recognized in the ADL case, supra, that imposition of any undue verification process "could significantly inhibit the presentation of controversial issue programming" (6 FCC 2d at p. 386); cf. The Washington Post v. Keogh, 365 F2d 965 (CA DC, 1966). That is equally so here. Therefore, what is required is simply reasonable and good faith attention to the problem. We would conclude this aspect as we did in the prior Notice.

> "Thus, here as in so many other areas, it is a question of responsible, good faith action by the public trustee to whom the frequency has been licensed. No more, but certainly no less is called for."

9. We think that the foregoing is dispositive of the major arguments presented. The licensee is not a book store, but a public trustee of an inherently limited resource who is fully responsible for its operation in the public interest. We have made clear that we are not seeking through a euphemism, license responsibility, to effect the wholly improper result of barring certain kinds of speech. We have imposed no onerous requirements in this respect, and have further stressed that the judgment whether to play a particular record is to be made by the licensee alone. We have noted the arguments that some licensees have dropped all records referring to drugs – in erroneous reaction to our Notice. If that is the case, we trust that with the issuance of this opinion such licensees will cease such grossly inappropriate policy and rather will make a judgment based on the particular record. Finally, to the argument that suggests impropriety in our issuance of a Notice concerning the need for licensee responsibility in the area of records promoting drugs, the short answer is set forth in par. 3, supra – that this is an area of great concern in view of the epidemic proportions of the problem, that we had numerous complaints, and that we had some indication of licensee indifference because all that is involved is the playing of records. We have in the past issued similar Notices when there was indifference to the policy of licensee responsibility in other areas. See, e. g., Public Notice concerning Foreign Language Programs adopted March 22, 1967, FCC 67-368, 9 RR 2d 1901. Of course, the policy of licensee responsibility is applicable generally, but that does not mean that we cannot issue appropriate Notices when there is an indicated need therefor.

10. An argument is also advanced as to the necessity for rule making notice under the Administrative Procedure Act. But our Notice establishes no new rule or indeed even a new policy. It reiterates an established bedrock policy - licensee responsibility. If this opinion were withdrawn, licensees would still be required to observe that policy based on scores of prior decisions. We therefore do not perceive how the rule making notice requirements of the APA are at all applicable here.

11. As a final point, we wish to stress that the issue of drug lyrics is but one facet of the overall drug problem, and it would be unfortunate if it were to be blown out of proportion. For, consideration of this aspect is, of course, not the be-all and end-all of what a broadcaster can do to serve the public interest in this important area. The public generally is now aware of the existence of the drug abuse problem. The alert has been sounded, and broadcasters have played an important role in informing the public. The present challenge and opportunity, for those broadcasters who wish to help, is to inform our citizens as to what can be done to find solutions to the problem of drug abuse. Indeed, because the drug problem is complex, and fraught with emotion, there is the possibility of a good deal of misinformation being circulated. Broadcasters who develop their own materials and programs relating to drug abuse could, if they wish, consult with experts in the field, both in the public and private sectors to insure the accuracy and reliability of their programming. In short, we believe that licensees can play a constructive role in helping the nation seek solutions to the drug problem, just as many of them have done, through public service time, in alerting the nation to the existence of the problem.

12. Accordingly, the request of Pacifica for stay is denied, in view of the above discussion. The requests of the petitioners is granted to the extent reflected above (see, e.g., footnote 6, supra; pp. 9-10, Pierson, Ball & Dowd petition), and in all other respects is denied. */

CONCURRING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

This Memorandum Opinion and Order purports to return to the situation prior to release of the Public Notice of March 5, 1971.

To the extent that it does so, I concur in the action here taken.

CONCURRING OPINION OF COMMISSIONER H. REX LEE

I originally concurred in the Public Notice concerning the broadcast of recorded lyrics tending to promote or glorify the use of drugs because I strongly believed that every licensee should be reminded of the general responsibility for program material. However, I did have some concern that the Notice might be misunderstood, and so stated in my concurring statement. This has happened. The Notice has attracted a wide divergence of opinion and considerable confusion about its meaning.

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*/ Dissenting statement of Commissioner Johnson to be issued at a later date.

STATE STATUTES AFFECTING TELEPHONE RECORDING, WIRELESS MICROPHONES AND EAVESDROPPING*

Alabama	ALA. CODE §13A-11-30, 31.
Alaska	ALASKA STAT. §42-20-300, 310.
Arizona	ARIZ. REV. STAT. ANN. §13-3001, 3005.
Arkansas	No law
California	CAL. PENAL CODE §630, 631, 632 (West).
Colorado	COLO. REV. STAT. §18-9-301, 303-304.
Connecticut	CONN. GEN. STAT. ANN. §53a-187 (West).
Deleware	DEL. CODE ANN. tit. 11, §1335, 1336.
District of Columbia	D.C. CODE ANN. §23-541, 542.
Florida	FLA. STAT. ANN. §934.01, -.03 (West).
Georgia	GA. CODE ANN. §26-3001.
Hawaii	HAWAII REV. STAT. §803-41, 42.
Idaho	IDAHO CODE §18-6701, 6702.
Illinois	ILL. ANN. STAT. ch. 38, §14-1 (Smith-Hurd).
Indiana	No law
Iowa	IOWA CODE ANN. §727.8 (West).
Kansas	KAN. STAT. ANN. §21-4001 & 22-2514.
Kentucky	KY. REV. STAT. ANN. §526.010 (Baldwin).
Louisiana	LA. REV. STAT. ANN. §15:1301, -1302 (West).
Maine	No law
Maryland	MD. CTS. & JUD. PROC. CODE ANN. §10-401, 402 (1974).
Massachusetts	MASS. GEN. LAWS ANN. ch. 272, §99 (West).
Michigan	MICH. STAT. ANN. §28.807(1), (3).
Minnesota	MINN. STAT. ANN. §626 A.01, -.02 (West).
Mississippi	No law
Missouri	No law
Montana	MONT. REV. CODES ANN. §94-8-114.
Nebraska	NEB. REV. STAT. §86-701, 702.
Nevada	NEV. REV. STAT. §179.410, 440, 455, 465.
New Hampshire	N.H. REV. STAT. ANN. §570-A:1, :2.
New Jersey	N.J. STAT. ANN. §2A: 156A-1 (West).
New Mexico	N.M. STAT. ANN. §30-12-1, 11.
New York	N.Y. PENAL LAW §250.00 (McKinney).
North Carolina	No law
North Dakota	N.D. CENT. CODE §12.1-15.02.
Ohio	OHIO REV. CODE ANN. 4931.28 (Baldwin).
Oklahoma	OKLA. STAT. ANN. tit. §1202.
Oregon	OR. REV. STAT. §165.535, 540.
Pennsylvania	PA. CONS. STAT. §5701, 5703.
Rhode Island	R.I. GEN. LAWS §12-5.1-1.
South Carolina	No law
South Dakota	S.D. COMP. LAWS ANN. §23A-35A-1.
Tennessee	TENN. CODE ANN. §39-4533, 4534.
Texas	No law
Utah	UTAH CODE ANN. §77-54a-1, 4.
Vermont	No law
Virginia	VA. CODE §19.2-61, 62.
Washington	WASH. REV. CODE ANN. §9.73.030.
West Virginia	No law
Wisconsin	WIS. STAT. ANN. §968.27 (West).
Wyoming	WYO. STAT. §37-12-122.

*As of December, 1981. State laws are subject to change.

federal register

TUESDAY, SEPTEMBER 9, 1975

PART III:

FEDERAL COMMUNICATIONS COMMISSION

■

APPLICABILITY OF SPONSORSHIP IDENTIFICATION RULES

Revision of May 6, 1963 Public Notice,
as Modified by April 21, 1975
Public Notice

FEDERAL COMMUNICATIONS COMMISSION

SPONSORSHIP IDENTIFICATION RULES

Applicability

SEPTEMBER 3, 1975.

Revision of May 6, 1963 Public Notice, as modified by April 21, 1975 Public Notice.

With the development of broadcast service along private commercial lines, meaningful government regulation of the various broadcast media has from an early date embraced the principle that listeners are entitled to know by whom they are being persuaded. Thus, as far back as the Radio Act of 1927 and continuing with section 317 of the Communications Act of 1934 there has been an unvarying requirement that all matter broadcast by any station for a valuable consideration is to be announced as paid for or furnished, and by whom.

On September 13, 1960, a bill (S. 1898) was signed into law amending section 317 of the Act to redefine the situations in which broadcast licensees must make sponsorship identification announcements. In addition, the law (Public Law 86-752) added a new section 508 to the Act requiring disclosure by persons other than broadcast licensees who provide or receive valuable consideration for the inclusion of any matter in a program intended for broadcast. The persons to whom section 508 relates had previously not been directly subject to any previous provisions of the Act. Subsection (e) of the revised section 317 directs the Commission to prescribe appropriate rules and regulations to implement the Congressional intent expressed in the new wording of section 317. In adopting this legislation, the Congress also set forth a series of twenty-seven examples to illustrate the intended effect of the proviso clause in amended section 317(a).

In 1963, the Commission revised the sponsorship identification rules for the broadcast services (34 F.C.C. 829) thereby implementing amended section 317. By *Report and Order*, adopted April 17, 1975, in Docket No. 19513, these rules were further amended (and consolidated as new section 73.1212) effective May 30, 1975 (FCC 75-417). When the 1963 rule revision was made, the Commission also adopted a *Public Notice*, entitled "Applicability of Sponsorship Identification Rules," which contained thirty-six illustrative interpretations (40 F.C.C. 141), including the twenty-seven examples set forth by the Congress. These interpretations, except for Interpretation 33, are consistent with the 1975 rule revisions. To reflect the provisions of new section 73.1212, Interpretation 33 was revised by *Public Notice*, dated April 21, 1975 (FCC 75-418). The 1975 *Report and Order* also amended the sponsorship identification rules for origination cablecasting (section 76.221) to conform to the new section 73.1212 for broadcasting. The interpretations of the 1963 *Public Notice* as modified by the 1975 *Public Notice* are applicable to origination cablecasting as well as to the broadcast services. The present document is a revision of the 1963 *Public Notice*, incorporating both the 1975 rule changes and the revised Interpretation 33.

There follows hereafter section 317 and section 508 of the Act, the Commission's revised rules and the thirty-six illustrative interpretations.

Section 317 reads as follows:

SEC. 317. (a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) In any case where a report has been made to a radio station as required by section 508 of this Act, or circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience or necessity does not require the broadcasting of such announcement.

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

Section 508 reads as follows:

SEC. 508. (a) Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station) or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317 (d), an announcement is not required to be made under section 317.

(e) The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

(f) The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identifictaion in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Any person who violates any provision of this section shall for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both.

Section 73.1212 of the Commission's rules, applicable in common to the broadcast services, reads as follows:

§ 73.1212 *Sponsorship identification; list retention; related requirements.* (a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce (i) that such matter is sponsored, paid for, or furnished, either in whole or in part, and (ii) by whom or on whose behalf such consideration was supplied: *Provided, however*, That "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(1) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by section 508 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an

appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: *Provided, however,* That in the case of any broadcast of 5 minutes duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified by the licensee under Section 1.526 of this Chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under Section 1.526 of this Chapter. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions:

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Attach the list to the program log for the day when such broadcast was made; and

(3) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list.

(h) Any announcement required by section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

NOTE.—The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60–1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's *Public Notice,* entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by *Public Notice,* dated April 21, 1975 (FCC 75–418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

Section 76.221 of the Commission's rules, applicable to cable television systems, reads as follows:

§ 76.221 *Sponsorship identification; list retension; related requirements.* (a) When a cable television system engaged in origination cablecasting presents 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 system, the system, at the time of the cablecast, shall announce (i) that such matter is sponsored, paid for, or furnished, either in whole or in part, and (ii) by whom or on whose behalf such consideration was supplied: *Provided, however,* That "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a cablecast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the cablecast.

(1) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(b) Each system engaged in origination cablecasting shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for cablecasting, information to enable such system to make the announcement required by this section.

(c) In the case of any political origination cablecast matter or any origination cablecast matter involving the discussion of public controversial issues for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a system as an inducement for cablecasting such matter, an announcement shall be made both at the beginning and conclusion of such cablecast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such system in connection with the transmission of such cablecast matter: *Provided, however,* That in the case of any cablecast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the cablecast.

(d) The announcement required by this section shall, in addition to stating the fact that the origination cablecasting matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (c) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a system on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the system, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the origination cablecasting material is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the matter, the system shall, in addition to making the announcements required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the local office of the system. Such lists shall be kept and made available for a period of two years.

(e) In the case of origination cablecast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the cablecast.

(f) The announcement otherwise required by this section is waived with respect to the origination cablecast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the system shall observe the following conditions:

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list.

(g) The announcements required by this section are waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

NOTE.—The waiver heretofore granted by the Commission in its Report and Order, adopted November 16, 1960 (FCC 60–1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654(e), the predecessor television rule, went into effect.

(h) Commission interpretations in connection with the provisions of the sponsorship identification rules for the broadcasting services are contained in the Commission's *Public Notice,* entitled "Applicability of Sponsorship Identification Rules," dated

May 6, 1963 (40 FCC 141), as modified by *Public Notice*, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports. The interpretations made for the broadcasting services are equally applicable to origination cablecasting.

The following are illustrative interpretations of section 317 and the Commission's rules. Interpretations 1 to 27, inclusive are incorporated without change from House Report 1800 (86th Congress, 2d Session):

A. *Free records.*[1] 1. A record distributor furnishes copies of records to a broadcast station or a disc jockey for broadcast purposes. No announcement is required unless the supplier furnished more copies of a particular recording than are needed for broadcast purposes. Thus, should the record supplier furnish 50 or 100 copies of the same release, with an 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.

2. An announcement would be required for the same reason if the payment to the station or disc jockey were in the form of cash or other property, including stock.

3. Several distributors supply a new station, or a station which has changed its program format (e.g. from "rock and roll" to "popular" music), with a substantial number of different releases.[2] No announcement is required under section 317 where the records are furnished for broadcast purposes only; nor should the public interest require an announcement in these circumstances. The station would have received the same material over a period of time had it previously been on the air or followed this program format.

4. Records are furnished to a station or disc jockey in consideration for the special plugging of the record supplier or performing talent beyond an identification reasonably related to the use of the record on the program. If the disc jockey were to state: "This is my favorite new record, and sure to become a hit; so don't overlook it," and it is understood that some such statement will be made in return for the record and this is not the type of statement which would have been made absent such an understanding, and the supplying of the record free of charge, an announcement would be required since it does not appear that in those circumstances the identification is reasonably related to the use of the record on that program. On the other hand, if a disc jockey, in playing a record, states: "Listen to this latest release of performer 'X', a new singing sensation," and such matter is customarily interpolated in the disc jockey's program format and would be included whether or not the particular record had been purchased by the station or furnished to it free of charge, it would appear that the identification by the disc jockey is reasonably related to the use of the record on that particular program and there would be no announcement required.

B. *Where payment in any form other than the matter used on or in connection with the broadcast is made to the station or to anyone engaged in the selection of program matter.* 5. A department store owner pays an employee of a producer to cause to be mentioned on a program the name of the department store. An announcement is required.

6. An airline pays a station to insert in a program a mention of the airline. An announcement is required.

7. A perfume manufacturer gives five dozen bottles to the producer of a giveaway show, some of which are to be identified and awarded to winners on the show, the remainder to be retained by the producer. An announcement is required since those bottles of perfume retained by the producer constitute payment for the identification.

8. An automobile dealer furnishes a station with a new car, not for broadcast use, in return for broadcast mentions. An announcement is required; the car constituting payment for the mentions.

9. A Cadillac is given to an announcer for his own use in return for a mention on the air of a product of the donor. An announcement is required since there has been a payment for a broadcast mention.

C. *Where service or property is furnished free for use on or in connection with a program, but where there is neither payment in consideration for broadcast exposure of the service or property, nor an agreement for identification of such service or property beyond its mere use on the program.* 10. Free books or theater tickets are furnished to a book or dramatic critic of a station. The books or plays are reviewed on the air. No announcement is required. On the other hand, if 40 tickets are given to the station with the understanding, express or implied, that the play would be reviewed on the air, an announcement would be required because there has been a payment beyond the furnishing of a property or service for use on or in connection with a broadcast.

11. News releases are furnished to a station by Government, business, labor and civic organizations, and private persons, with respect to their activities, and editorial comment therefrom is used on a program. No announcement is required.

12. A Government department furnishes air transportation to radio newscasters so they may accompany a foreign dignitary on his travels through out the country. No announcement is required.

13. A municipality provides street props on a program. No announcement is required.

14. A hotel permits a program to originate on its premises. No announcement is required. If, however, in return for the use of the premises, the producer agrees to mention the hotel in a manner not reasonably related to the use made of the hotel on that particular program, an announcement would be required.

15. A refrigerator is furnished for use as part of the backdrop in a kitchen scene of a dramatic show. No announcement is required.

16. A Coca-Cola distributor furnishes a Coca-Cola dispenser for use as a prop in a drugstore scene. No announcement is required.

17. An automobile manufacturer furnishes his identifiable current model car for use in a mystery program, and it is used by a detective to chase a villain. No announcement is required. If it is understood, however, that the producer may keep the car for his personal use, an announcement would be required. Similarly, an announcement would be required if the car is loaned in exchange for a mention on the program beyond that reasonably related to its use, such as the villain saying: "If you hadn't had that speedy Chrysler, you never would have caught me."

18. A private zoo furnishes animals for use on a children's program. No announcement is required.

19. A university makes one of its professors available to give lectures in an educational program series. No announcement is required.

20. A well-known performer appears as a guest artist on a program at union scale because the performer likes the show, although the performer normally commands a much higher fee. No announcement is required.

21. An athletic event promoter permits broadcast coverage of the event. No announcement is required in absence of other payment by the promoter or agreement to identify in a manner not reasonably related to the broadcast of the event.

D. *Where service or property is furnished free for use on or in connection with a program, with the agreement, express or implied, that there will be an identification beyond mere use of the service or property on the program.*[3] 22. A refrigerator is furnished by X with the understanding that it will be used in a kitchen scene on a dramatic show and that the brand name will be mentioned. During the course of the program the actress says: "Donald go get the meat from my new X refrigerator." An announcement is required because the identification by brand name is not reasonably related to the particular use of

[1] In view of the attention which has been given to the problem of free records, they are treated herein as a special category. It should be noted, however, that the same principles apply to records as to other property or services furnished for use on or in connection with a broadcast.

[2] A question has been raised with respect to a situation where a distributor furnishes to a station free of charge an entire music library with the understanding, express or implied, that only its records would be played on the station. To the extent that such an arrangement may run afoul of the antitrust laws or may constitute an abdication by the station of its licensee responsibility, an announcement under section 317 would not cure it.

[3] Of course, in all these cases, if there is payment to the station or production personnel in consideration for the exposure, an announcement is required.

such refrigerator in this dramatic program.

23. (a) A refrigerator is furnished by X for use as a prize on a giveaway show, with the understanding that a brand identification will be made at the time of the award. In the presentation, the master of ceremonies briefly mentions the brand name of the refrigerator, its cubic content, and such other features as serve to indicate the magnitude of the prize. No announcement is required because such identification is reasonably related to the use of the refrigerator on a giveaway show in which the costly or special nature of the prizes is an important feature of this type of program.

(b) In addition to the identification given in (a) above, the master of ceremonies says: "All you ladies sitting there at home should have one of these refrigerators in your kitchen," or "Ladies, you ought to go out and get one of these refrigerators." An announcement is required because each of these statements is a sales "pitch" not reasonably related to the giving away of the refrigerator on this type of program.

The significance of the distinction between the identification in (a) and that in (b) is, that in (a) it is no more than the natural identification which a broadcaster would give to a refrigerator as a prize if he had purchased the refrigerator himself and had no understanding whatever with the manufacturer as to any identification. That is to say, in situation (a), had the broadcaster purchased the refrigerator he would have felt it necessary, in view of the nature of the show, adequately to describe the magnitude of the prize which was being given to the winner. On the other hand, the broadcaster would not, where he had purchased the refrigerator, have made the type of identification in situation (b), thus providing a free sales "pitch" for the manufacturer.

24. (a) An airplane manufacturer furnishes free transportation to a cast on its new jet model to a remote site, and the arrival of the cast at the site is shown as part of the program. The name of the manufacturer is identifiable on the fuselage of the plane in the shots taken. No announcement is required because in this instance such identification is reasonably related to the use of the service on the program.

(b) Same situation as in (a), except that after the cameraman has made the foregoing shots he takes an extra closeup of the identification insignia. An announcement is required because the closeup is not reasonably related to the use of the service on the program.

25. (a) A station produces a public service documentary showing development of irrigation projects. Brand X tractors are furnished for use on the program. The tractors are shown in a manner not resulting in identification of the brand of tractors except as may be recognized from the shape or appearance of the tractors. No announcement is required since the identification is reasonably related to the use of the tractors on the program.

(b) Same situation as in (a), except that the brand name of the tractor is visible as it appears normally on the tractor. No announcement is required for the same reason.

(c) Same situation as in (b), except that a closeup showing the brand name in a manner not required in the nature of the program is included in the program, or an actor states: "This is the best tractor on the market." An announcement is required as this identification is beyond that which is reasonably related to the use of the tractor on the program.

26. (a) A bus company prepares a scenic travel film which it furnishes free to broadcast stations. No mention is made in the film of the company or its buses. No announcement is required because there is no payment other than the matter furnished for broadcast and there is no mention of the bus company.

(b) Same situation as in (a), except that a bus, clearly identifiable as that of the bus company which supplied the film, is shown fleetingly in highway views in a manner reasonably related to that travel program. No announcement is required.

(c) Same situation as in (a), except that the bus, clearly identifiable as that of the bus company which supplied the film, is shown to an extent disproportionate to the subject matter of the film. An announcement is required, because in this case by the use of the film the broadcaster has impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film.

27. (a) A manufacturer furnishes a grand piano for use on a concert program. The manufacturer insists that enlarged insignia of its brand name be affixed over normal insignia on the piano. An annoucement is required if an enlarged brand name is shown.

(b) Conversely, if the piano furnished has normal insignia and during the course of the televised concert the broadcast includes occasional closeups of the pianist's hands, no announcement is required even though all or part of the insignia appears in these closeups. Here the identification of the brand name is reasonably related to the use of the piano by the pianist on the program. However, if undue attention is given the insignia rather than the pianist's hands, an announcement would be required.

28. (a) An automobile manufacturer or dealer furnishes to a producer of television programs a number of automobiles with the understanding that the producer will use them, or some of them, in some of his programs which call for the use of automobiles; and that the automobiles may be used for other business purposes in connection with the production of the programs, such as transporting the cast, crew, equipment and supplies from location to location or transporting executive personnel to business meetings in connection with the production of the programs. There is no understanding that there will be any identification on the television programs beyond an identification which is reasonably related to the use of the automobiles on the programs. No other consideration is involved. Under such uses, no announcement is required.

(b) If, in addition to the facts stated in (a), it is understood between the producer and the supplier that one or more of the automobiles may be, and they are, used for other purposes not related to the production of the program, an announcement is required.

29. (a) A hotel permits a program to originate from its premises and furnishes hotel services, such as room and board, for cast, production and technical staff, and also furnishes other elements for use in connection with the programs to be broadcast, such as electricity and cable connections, free of charge, and with no other consideration. There is no understanding that there will be an identification of the hotel on the program beyond that reasonably related to the use made of the hotel on the program. No announcement is required.

(b) If the hotel pays money or furnishes free or at a nominal charge any services or items which are not for use on or in connection with the program (e.g., furnishing free or at a nominal charge room and board for the producer for any period of time not related to the production of the program at the hotel site), an announcement is required.

E. *Effective date.* 30. Does section 317 as amended on September 13, 1960 apply to programs or portions of programs produced or recorded prior to September 13, 1960? No, unless valuable consideration was provided to a broadcast station (rather than to a producer or other person) for the broadcast of the program or the inclusion of any program matter therein and the program was broadcast after said date.

F. *Nature of the announcement.* 31. A station broadcasts spot announcements which solicit mail orders from listeners. The sponsor is merely referred to in the announcements and in the mail order address as "Flower Seeds" or "Real Estate" or "the Record Man." Such a reference to the sponsor of the announcements is insufficient to constitute compliance with the Commission's sponsorship identification rules because it is limited to a description of the product or service being advertised. The announcement requirement contemplates the explicit identification of the name of the manufacturer or seller of goods, or the generally known trade or brand name of the goods sold. (See Commission's *Public Notice* entitled "Sponsor Identification on Broadcast Station," FCC 50-1207, 6 R.R. 835.)

32. A station broadcasts "Teaser" announcements utilizing catch words, slogans, symbols, etc., designed to arouse the curiosity of the public by telling it that something is "coming soon." The sponsor of the announcements is not named therein, nor is any generally known trade or brand name given, but it is the intention of the station and the advertiser to inaugurate at a later date a series of conventional spot announcements at

the conclusion of the "teaser" campaign. Announcements of this type do not comply with the Commission's sponsorship identification rules. All commercial matter must contain an explicit identification of the advertiser or the generally known trade or brand name of the goods being advertised. (See *Memorandum Opinion and Order In The Matter of Amendment of § 3.119(e) of the Commission's Rules*, FCC 59-939, 18 R.R. 1860.)

33. A station broadcasts an announcement or other material on behalf of a candidate for public office or on behalf of the proponents or opponents of a bond issue (or any other controversial issue of public importance). The station announces a "disclaimer" or states that the matter "was a paid political announcement." Such announcement *per se* does not comply with the sponsorship identification rule. The rule does not require that either of these type of announcement be made but rather that identification announcement be made which fully and fairly discloses the true identity of the person or persons or entity by whom or on whose behalf payment was made or promised, or from whom or on whose behalf services or other valuable consideration was furnished. If the station knows or by the exercise of reasonable diligence could know that a person or persons or entity is acting on behalf of another, the announcement(s) shall identify the person(s) or entity on whose behalf such action is being taken. If the entity on whose behalf such action is being taken is a corporation, committee, association, or other group, the announcement(s) shall divulge the name of such group. Additionally, a station broadcasting any matter on behalf of such group shall make available for public inspection at the place which the station has designated that its file is available for inspection under Section 1.526 of the rules (the station's main studio or other accessible place in the community of the station's license) a list of the chief executive officers, members of the executive committee, or members of the board of directors of that entity. If the broadcast is network originated, the list may be retained at the network's headquarters office or at the location where the originating station maintains its public inspection file under Section 1.526.

34. Must the required sponsorship announcement on television broadcasts be made by visual means in order for it to be an "appropriate announcement" within the meaning of the Commission's rules?

Not necessarily. The Commission's rule does not contain any provision stating whether aural or visual or both types of announcements are required. The purpose of the rule is to provide a full and fair disclosure of the facts of sponsorship, and responsibility for determining whether a visual or aural announcement is appropriate lies with the licensee. (See *Commission telegram to Mr. Bert Combs*, FCC Public Notice of April 9, 1959, Memo No. 71945.)

G. *Controversial issues.* 35. (a) A trade association furnishes a television station with kinescope recordings of a Senate committee hearing on labor relations. The subject of the kinescope is a strike being conducted by a labor union. The station broadcasts the kinescope on a "sustaining" basis but does not announce the supplier of the film. The failure to make an appropriate announcement as to the party supplying the film is a violation of the Commission's sponsorship identification rules dealing with the presentation of program matter involving controversial issues of public importance. Moreover, the Commission requires that a licensee exercise due diligence in ascertaining the identity of the supplier of such program matter. An alert licensee should be on notice that expensive kinescope prints dealing with controversial issues are being paid for by someone and must make inquiry to determine the source of the films in order to make the required announcement. (See *KSTP, Inc.*, 17 R.R. 553 and *Storer Broadcasting Co.*, 17 R.R. 556a.) A station which has ascertained the source of kinescopes is under an additional obligation to supply such information to any other station to which it furnishes the program.

(b) Same situation as above, except that the time for the program is sold to a sponsor (not the supplier of the film) and contains proper identification of the advertiser purchasing the program time. An additional announcement as to the supplier of the films is still required, for the reasons set forth above.

(c) Same situation as in (a) or (b), above, except that only excerpts from the film are used by a station in its news programs. An announcement as to the source of the films is required. (See *Westinghouse Broadcasting Co.*, 17 R.R. 556d.)

36. A church group plans to film the proceedings of its national convention and distribute film clips "dealing with numerous matters of profound importance to members of (its) faith" in order to "disseminate to the American people information concerning its objectives and programs." The groups request a general waiver under section 317(d) of the Communications Act so that it need not "waste" any of the short periods of broadcast time donated to it by making sponsorship identification announcements. In the below-cited case, the Commission did not grant such a waiver because of the absence of information indicating that the subject matter of the clips was not controversial and because the alleged "loss" of a few seconds of air time was not of decisional significance vis-a-vis Congressional and Commission policy relating to issues of public importance. (See *Petition of National Council of Churches of Christ*, FCC 60-1418.)

Adopted: May 1, 1963, and modified April 17, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-23720 Filed 9-8-75;8:45 am]

PLACE IN PUBLIC INSPECTION FILE: DO NOT FILE WITH FCC

FOR COMMERCIAL RADIO LICENSEES ONLY

CERTIFICATE OF COMPLIANCE WITH PRE- AND POST-FILING ANNOUNCEMENTS

_____, licensee of radio station
(Licensee Name)
_____ licensed to _____
(Call Letters) (City of License)
certifies that it has broadcast pre- and post-filing announcements, on the dates and times set forth below, in compliance with 47 C.F.R. Section 73.3580 of the rules of the Federal Communications Commission.

PRE-FILING ANNOUNCEMENTS

The pre-filing announcement set forth below was broadcast on the following dates and times:

1. _____/_____/_____ (Date) at _____ (Time)
2. _____/_____/_____ (Date) at _____ (Time)
3. _____/_____/_____ (Date) at _____ (Time)
4. _____/_____/_____ (Date) at _____ (Time)

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 LICENSE RENEWAL WITH THE FCC ON OR BEFORE _____ (date four full calendar months prior to expiration date). WHEN FILED, A COPY OF THIS APPLICATION WILL BE AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST _____ (period of time covered by 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 public inspection file)
OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.

APPENDIX III-B-2

PLACE IN PUBLIC INSPECTION FILE: DO NOT FILE WITH FCC

FOR TELEVISION AND NONCOMMERCIAL RADIO LICENSEES ONLY

CERTIFICATE OF COMPLIANCE WITH PRE- AND POST-FILING ANNOUNCEMENTS

_____, licensee of radio station
(Licensee Name)

_____ licensed to _____
(Call Letters) (City of License)

certifies that it has broadcast pre- and post-filing announcements, on the dates and times set forth below, in compliance with 47 C.F.R. Section 73.3580 of the rules of the Federal Communications Commission.

PRE-FILING ANNOUNCEMENTS

The pre-filing announcement set forth below was broadcast on the following dates and times:

1. _____/_____/_____ (Date) at _____ (Time)
2. _____/_____/_____ (Date) at _____ (Time)
3. _____/_____/_____ (Date) at _____ (Time)
4. _____/_____/_____ (Date) at _____ (Time)

ON _____, _____ WAS GRANTED A LICENSE BY THE FEDERAL COMMUNICATIONS COMMISSION TO SERVE THE PUBLIC INTEREST AS A PUBLIC TRUSTEE UNTIL _____.
(date of last renewal grant) (station's call letters) (expiration date)

OUR LICENSE WILL EXPIRE ON _____. WE MUST FILE AN APPLICATION FOR LICENSE RENEWAL WITH THE FCC ON OR BEFORE _____
(date) (date four full calendar months prior to expiration date)

_____. WHEN FILED, A COPY OF THIS APPLICATION WILL BE AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST _____ AND PROJECTIONS
(period of time covered by application)

OF OUR PROGRAMMING DURING THE NEXT _____ YEARS.
(5 years-TV, 7 years-radio)

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 public inspection file)

OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.

PLACE IN PUBLIC INSPECTION FILE: DO NOT FILE WITH FCC

FOR COMMERCIAL RADIO LICENSEES ONLY

POST-FILING ANNOUNCEMENTS

The post-filing announcement set forth below was broadcast on the following dates and times:

1. ____/____/____ (Date) at _____ (Time)
2. ____/____/____ (Date) at _____ (Time)
3. ____/____/____ (Date) at _____ (Time)
4. ____/____/____ (Date) at _____ (Time)
5. ____/____/____ (Date) at _____ (Time)
6. ____/____/____ (Date) at _____ (Time)

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 _____ (expiration date). WE HAVE FILED AN APPLICATION FOR LICENSE RENEWAL WITH THE FCC.

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

INDIVIDUALS WHO WISH TO ADVISE THE FCC OF FACTS RELATING TO OUR RENEWAL APPLICATION AND TO WHETHER THIS STATION HAS OPERATED IN THE PUBLIC INTEREST SHOULD FILE COMMENTS AND PETITIONS WITH THE FCC BY _____ (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 public inspection file) OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.

This Certificate of Compliance was placed in the station's public inspection file on _____. This Certificate will be kept in the public inspection file for the period of renewal to which the announcements relate.

_____ (signature) _____ (title)

APPENDIX III-B-4

PLACE IN PUBLIC INSPECTION FILE: DO NOT FILE WITH FCC

FOR TELEVISION AND NONCOMMERCIAL RADIO LICENSEES ONLY

POST-FILING ANNOUNCEMENTS

The post-filing announcement set forth below was broadcast on the following dates and times:

1. ____/____/____ (Date) at ____ (Time)
2. ____/____/____ (Date) at ____ (Time)
3. ____/____/____ (Date) at ____ (Time)
4. ____/____/____ (Date) at ____ (Time)
5. ____/____/____ (Date) at ____ (Time)
6. ____/____/____ (Date) at ____ (Time)

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 ____ (expiration date). WE HAVE FILED AN APPLICATION FOR LICENSE RENEWAL WITH THE FCC.

A COPY OF THIS APPLICATION IS AVAILABLE FOR PUBLIC INSPECTION DURING OUR REGULAR BUSINESS HOURS. IT CONTAINS INFORMATION CONCERNING THIS STATION'S PERFORMANCE DURING THE LAST ____ (period of time covered by application), AND PROJECTIONS OF OUR PROGRAMMING DURING THE NEXT ____ YEARS.
(5 years-TV, 7 years-radio)

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 public inspection file)
OR MAY BE OBTAINED FROM THE FCC, WASHINGTON, D.C. 20554.

This Certificate of Compliance was placed in the station's public inspection file on ____. This Certificate will be kept in the public inspection file for the period of renewal to which the announcements relate.

____ (signature) ____ (title)

PROGRAM LENGTH COMMERCIAL POLICIES▲

PUBLIC NOTICE*

January 29, 1974

Applicability of Commission Policies on Program-Length Commercials

The Commission has received a number of pleadings, filed on behalf of various licensees of . . . television stations, which in essence petition the Commission to revise or to clarify its policies pertaining to program-length commercials.[1]

The above-referenced filings appear to have been generated by the Commission's statements in its Public Notice, *Program-Length Commercials*, issued February 22, 1973.[2] In that Public Notice, the Commission noted its serious concern over broadcasts of program-length commercials and referred to several rulings concerning programs that interweave "non-commercial" program content so closely with the commercial message that the entire program must be considered commercial. The Commission further noted the three basic problems that typically attend the broadcast of program-length commercials: (1) broadcast of such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability; (2) the program-length commercial is typically inconsistent with the licensee's representations to the Commission regarding the maximum amount of commercial matter it will broadcast in any hour; and (3) violations of the Commission's logging Rules are usually evident.[3]

Questions have been raised by petitioners concerning the meaning of the Commission's statement that certain programs may exhibit a pattern of subordinating the public interest in programming to an interest in the salability of the sponsor's products or services. Additionally, petitioner National Citizens Committee for Broadcasting (NCCB) states that the primary test in determining that a program falls within the definition of a program-length commercial is whether commercial interests are the program's "dominant purpose" which, it says, is another way of stating that the licensee has subordinated programming in the interest of the public to programming in the interest of salability.[4] The Commission does not mean by this expression to question a licensee's judgment in selecting programming which it believes will attract an audience, even though its motive in so doing may, at least in part, be to sell advertising within such programs and thereby derive the revenue necessary to the operation of its station. The fact that an interested commercial entity sponsors a program the content of which is related to the sponsor's products or services does not, in and of itself, make a program entirely commercial. The situation which causes the Commission concern is where a licensee quite clearly broadcasts program matter which is designed primarily to promote the sale of a sponsor's product

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▲*Editors' note: Since 1974, when this* Notice *was issued, the FCC has eliminated all program-length commercial restrictions for commercial radio stations. However, the* Notice *remains applicable to television stations. Accordingly, it has been revised.*

* This *Public Notice* is indexed under the heading "Program Length Commercials" in the general index to this booklet.

[1] These pleadings consisted of filings by the National Association of Broadcasters, June 1, 1973; the Elkins Educational Research Foundation, April 24, 1973; and the law firms of Cohn and Marks, March 16, 1973, and Haley, Bader and Potts, March 25, 1973. On August 13, 1973, the National Citizens Committee for Broadcasting (NCCB) filed a memorandum opposing revision of the Commission's program-length commercial policies, to which Haley filed a statement which essentially repeated what it had urged in its original petition. All parties agree that the Commission's policies should be clarified. To the extent that the material in this Public Notice provides the requested clarification, these petitions are granted, and in all other respects are denied.

[2] 39 FCC 1062, 26 RR 2d 1023. Issued concurrently with the Public Notice was a letter admonishing *Taft Broadcasting Company*, licensee of Stations WDAF-AM and WDAF-TV, for broadcasting program length commercials. *Taft Broadcasting Co.*, 39 FCC 2d 1070 (1973). Since then, the Commission has had occasion to issue similar admonishments to several licensees for their broadcasts of "chinchillas" programs, which the Commission found were program-length commercials. *Weigel Broadcasting Co.*, 41 FCC 2d 370 (1973); *Rush Broadcasting Corp.*, 42 FCC 2d 483, 486 (August 2, 1973); *United Television Company of New Hampshire*, 42 FCC 2d 632, 636 (1973); *Turner Broadcasting of North Carolina*, 42 FCC 2d 622, 626 (1973); *Midland Television Corporation*, 42 FCC 2d 587, 591 (1973); *WXON-TV, Inc.*, 42 FCC 2d 639, 642 (1973); *Mid New York Broadcasting Corp.*, 42 FCC 2d 594, 597 (1973); *Channel Seventeen, Inc.*, 42 FCC 2d 829 (1973). These admonishments, with the exception of *Channel Seventeen, Inc.*, were sent to those licensees together with Notice of Apparent Liability for their apparent failure to comply with the Commission's Rules pertaining to proper logging of commercial announcements. See Commission's Rules, Section [73.1810.]

[3] In this regard, see [Section 73.1810] of the Commission's Rules.

[4] NCCB also urges that the Commission open the proceeding to a formal inquiry if it decides that the program-length commercial policies warrant revision. The Commission believes that revision of the basic program-length commercial policies is not warranted and that a formal inquiry would not be useful at this time. The Commission's statements herein provide clarification of the statements set forth in the February 22, 1973, Public Notice on program-length commercials and similar statements contained in its prior decisions in this area.

or services, rather than to serve the public by either entertaining or informing it. The primary test is whether the purportedly non-commercial segment is so interwoven with, and in essence auxiliary to, the sponsor's advertising (if in fact there is any formal advertising) [5] to the point that the entire program constitutes a single commercial promotion for the sponsor's products or services. This test will be construed strictly and the determination that a program is entirely commercial will be reached only when the facts clearly justify that conclusion. The Commission's responsibility is to apply its policies to those situations where the facts make it obvious the entire program should be classified as commercial.

The petitioners have submitted numerous actual or hypothetical examples of programs typically broadcast by licensees and request the Commission's interpretation of its program-length commercial policies with respect to these examples. Because of the interest shown by petitioners and others in obtaining clarification, the numerous questions received by the Commission and its staff since the Public Notice was issued, and because information coming to the Commission's attention indicates that some licensees, either out of confusion about or disregard for the program-length commercial policies, continue to broadcast program-length commercials, it is believed that further interpretation and clarification of policy is warranted. The Commission has, therefore, set forth below a number of interpretative examples in question and answer form based upon the examples in petitioners' pleadings and in part upon other questions and information received by the Commission subsequent to the issuance of the Public Notice of February 22, 1973.

No attempt has been made to answer all of the numerous hypothetical questions asked, since many of them are repetitive and are variations of the same factual theme. Moreover, it would be impractical, if not impossible, to formulate rulings in advance regarding every conceivable type of program. Rather, the examples and interpretations are intended to provide licensees with a fuller understanding of the standards the Commission employs in determining what constitutes a program-length commercial in several areas of programming. Obviously, many questions will be close and, as in many other areas of Commission policy, the Commission will not impose sanctions if a licensee appears to have given careful consideration to the many factors involved in arriving at a good-faith determination as to whether a particular program is a program-length commercial under the Commission's policies. Each of the rulings issued to date has been concerned with obvious situations in which the licensee knew or reasonably should have known that the program was entirely commercial because the program's non-commercial segment was so closely interwoven with the commercial promotion of the sponsor's products or services.[6]

Petitioners' pleadings indicate that one popular program format that causes the broadcast licensee concern in the program-length commercial area is the sponsored "remote" broadcast, presented live or prerecorded from a location other than the licensee's studios. Such remote broadcasts include, but are not limited to, the presentation of shopping center openings, county fairs, expositions and boat shows, and broadcasts from retailers' showrooms. The Commission notes that such remote broadcasts are not necessarily commercial, even when spots are sold to merchants or exhibitors sponsoring the broadcast. As in other types of programs, the crucial consideration is the extent to which the program content promotes the commercial interests of the sponsor. On the basis of the facts, the remote broadcast may constitute a program-length commercial in at least two situations: (1) when the allegedly non-commercial segment is so closely interwoven with the sponsor or sponsors' commercial announcements that the "non-commercial" segment has achieved a substantial identity with the sponsor's commercial interests, or (2) when no formal commercial spot announcements, as such, are broadcast but the presentation is sponsored and the program clearly is devoted to promoting the sponsor's products or services, as for example, a sponsored remote broadcast from a shopping center which devotes a large portion of time to displaying the products of the merchant-members of the sponsoring association. Similar considerations apply to the other types of programs set forth below.

The Commission reiterates its position that its function is not to pass upon the desirability or quality of a questioned program, but on the basis of the facts peculiar to each situation to determine

[5] Some program-length commercials contain no separate or formal advertisements as such.

[6] The Commission's prior rulings include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP-TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); and *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972) and decisions cited in footnote 2, *supra*.

whether the non-commercial segment of the program is so closely interwoven with the sponsor's commercial messages that it is apparent that the program as a whole promotes the sponsor's products or services.

The NAB suggests that if the Commission considers the grand opening of shops or shopping centers to be totally commercial in nature, it should exempt such remote broadcasts from its policies when they are broadcast on an infrequent basis, e.g., one a month, on the grounds that these broadcasts contain substantial public interest value. However, the Commission believes that there is no basis for such an exception if the Commission's program-length commercial policies are to be applied and enforced in any consistent manner. As the examples given below indicate, coverage of grand openings is not inconsistent with the Commission's policies provided that the licensee takes steps to ensure that the non-commercial portion does not achieve a substantial identity with the sponsor's advertising.

Questions have also been raised as to whether a licensee may broadcast a program-length commercial if it logs the entire program as commercial and the total commercial time does not exceed whatever representations it made to the Commission regarding the maximum commercial content per hour. A specific example has been devoted to this question in view of the number of inquiries. See example 27 (Q).

A number of questions have been asked regarding religious and political programs. The Commission has confined application of its program-length commercial policies to programs concerning the sale of goods or services and will continue to do so. Specific examples below clarify the Commission's policies in this regard. [Reference to musical programs sponsored by recording companies or record shops deleted.]

The NAB also asks whether an exemption from the Commission's program-length commercial policies is warranted for "want ad and classified programs" because of the public interest value the NAB asserts attaches to the broadcast of such programs.[7] As explained in the answer to Question 29, a classified ad or swap shop program for which no charge is made to any advertiser is not a commercial program and therefore does not fall within the scope of the program-length commercial policy. Likewise, where the individual advertisers are not charged for their ads but where a single advertiser pays for the program and presents only his own discrete advertisements unrelated to the classified ads and in the quantity normally allowed by the station, the program does not constitute a program-length commercial. The only circumstance to which the program-length commercial policy applies is that in which each person pays for the broadcast of his own classified-type advertisement, since such a program is entirely commercial in content. Even in this situation, we are granting a limited exemption to the licensee from the program-length commercial policy, provided no more than 15 minutes per day is devoted to such programming and provided further that the advertisements are sponsored by private individuals rather than commercial enterprises. This limited exemption is warranted in our opinion because the classified ad or swap shop program may provide the only broadcast vehicle for an individual wishing to place a short advertisement at a reasonable cost. See answer to Question 29 for further discussion of this matter, including the logging of commercial content of such programs.

It is hoped that the specific examples contained in this Notice will provide substantial guidance to licensees. We repeat our statement in our previous Public Notice that the Commission considers the broadcast of program-length commercials to involve a serious dereliction of duty on the part of the licensee, and the Commission will impose sanctions when it believes sanctions are required to bring about a discontinuance of such practices.

1. (Q) A new shopping center opens. An association composed of the 10 merchants doing business in the center purchases one hour or more of time from a local television . . . station to cover opening day festivities. Ten one-minute commercial spots throughout the hour are given the association's members to promote their products and services. The station enters these 10 minutes on its logs as commercial announcements. Additionally, the station and the merchants' association tacitly agree that most of the time during the purportedly non-commercial segment of the coverage will be devoted to interviews with the owners of the shops, who will promote their shops and the merchandise for sale. Does the entire program constitute a program-length commercial?

   (A) Under the Commission's previously stated standards, the entire program

[7] The Commission, on one occasion, approved one such classified advertising proposal on a limited and experimental basis. *McLendon Pacific Corporation*, 7 RR 2d 653 (1966).

should be considered commercial because the purportedly non-commercial segment is closely interwoven with the commercial segments. Even though the purportedly non-commercial segment may contain information and some entertainment, these features are clearly incidental to the commercial promotions of the merchants' businesses. The fact that the association has purchased the entire broadcast period and has in effect dictated that most of the "non-commercial" segment will advertise the association's members and their merchandise indicates that the licensee has presented the program mainly to promote the sponsors' products and services. The sponsorship arrangement hypothesized in this example is not on its face violative of the Commission's program-length commercial policies. When, however, the facts indicate that the non-commercial segment is so closely interwoven with the sponsor's commercial promotions and has achieved a substantial identity with the products or services being advertised by the sponsor, the program must be considered a program-length commercial.

2. (Q) The licensee decides to cover one hour of a shopping center's grand opening as its own program. It sells 10 minutes of commercial spots to five of the 10 merchants doing business in the new center. These 10 minutes are logged as commercial announcements. Without consulting the five sponsors, the station decides to cover in a minimal fashion the ribbon-cutting ceremonies and speeches by the president of the center's association, and to interview shoppers. Additionally, the station instructs its reporters and camera crew to devote a substantial portion of the non-commercial segment to covering the products and services of the five sponsors. Little or no attention is given to the other merchants and none to their products. Is this entire one-hour program a program-length commercial?

   (A) This program so closely and substantially intermixes the content of the "non-commercial" portion with the commercial messages of the five sponsors that the program in its entirety must be considered a program-length commercial. On these facts, it appears that the entire hour was intended to induce the program's viewers to patronize the program's sponsors. Coverage of the speeches and interviews is not controlling in this example since coverage was incidental to the commercial promotion.

3. (Q) A bank agrees to sponsor a one-hour broadcast of the opening of the city's new civic center, auditorium and theater complex. The complex is the first built in a period of years and includes facilities which house the city's various drama and music companies. The complex was financed by the sale of municipal bonds which the sponsoring bank underwrote. Proposed coverage includes speeches by the city's mayor, city assembly chairperson, the sponsoring bank's president, whose remarks generally related to the functions the complex will serve but also refer in passing to the bank's role in the financing of the complex, and general coverage of other events and interviews. Additionally, approximately 30 minutes is to be devoted to a narrative discussion of the development of the city's drama and music companies, which have achieved excellent regional reputations over the years. The bank receives 12 one-minute commercial spots. One-half of these spots are broadcast live from the site of the opening day's ceremonies; the rest are recorded. Three of these spots discuss the financial strategies and techniques employed by the bank in establishing and underwriting the bond structure for financing construction of the complex. The remaining spots are general promotions for the bank, emphasizing its role in the community and its various savings, loan, trust and securities activities. Does the entire sixty-minute program constitute a program-length commercial? If not, what portion of this one-hour program should be counted as commercial?

   (A) The 12 one-minute spots promoting the bank are clearly commercial announcements and under the Commission's logging rules must be logged as such. The basic question is whether the non-commercial and commercial segments are so interwoven as to make the entire program a commercial advertisement for the bank. Under the circumstances presented in the example, only the 12 one-minute commercial spots need be logged as commercial matter. This program is not one contem-

plated by the Commission's program-length commercial policies because the non-commercial presentation is unrelated to the bank or its services and because the 12 commercial messages presented by the bank are separate and distinct from the non-commercial segment of the broadcast, which contains no cross-references to the services in which the bank was engaged. The mere reference to the bank's role, made in passing by the bank's president in the speech on opening day, is not significant when considered in the context of the entire program.

4. [Deleted]

5. (Q) A local restaurant or night club provides . . . entertainment nightly. It purchases one hour of broadcast time per week from a [TV] station for live coverage of the entertainment from the restaurant. Ten separate one-minute commercial spots for the restaurant are aired, as well as informal mentions, made from time to time during the broadcast, of the fact that the restaurant provides nightly entertainment. [Viewers] are repeatedly urged to patronize the restaurant. Two or three interviews with the restaurant's patrons are broadcast, during which the announcer questions whether the patrons are enjoying themselves. What portion of the broadcast should be logged as commercial matter?

   (A) The question is whether the non-commercial segment of this program is so closely interwoven with the commercial promotions and interests of the sponsor as to constitute a continuous program-length commercial. In the example given, in addition to the formal commercials, the announcer (1) repeatedly identifies the restaurant as the site of the broadcast; (2) repeatedly mentions that the restaurant provides nightly entertainment; (3) repeatedly urges [viewers] to patronize the restaurant and (4) conducts interviews with patrons which tend to promote the restaurant. Thus, it appears that the entertainment portion of the broadcast is so closely interwoven with the promotion of the sponsor's services that the entire program consists primarily of an inducement to listeners to avail themselves of those services. The broadcast is therefore a program-length commercial. While such sponsorship arrangements are not *per se* prohibited, licensees must make certain that commercial advertising remains separate, distinct and wholly apart from the non-commercial segments of the program. When a program's non-commercial segment has achieved a substantial identity with the sponsor's promotion of its products or services, the program in its entirety must be considered commercial.

6. (Q) A well-known restaurant in a major city and a local [TV] station have made the following agreement: Each week the station interviews a well-known personality active either in politics, the arts, athletics, or business. The program is one hour in length and is broadcast live each week from the restaurant at noon. The restaurant provides the luncheon and cocktails at no cost for the announcer and the person interviewed. A large, national food processor sponsors the one-hour broadcast and is allotted five two-minute commercial spots to be broadcast during the hour. At the beginning and end of the program and at each half-hour station break, the following announcement is broadcast: "Luncheon at ABC's today with Richard Roe, is being (has been) brought to you by XYZ Corporation." No other reference to the restaurant is made during the program and no reference is made during the commercial spots to the fact that the sponsor distributes its products to the restaurant from which the interview is being broadcast. The interview is conducted by an employee of the station. What amount of time should be considered commercial?

   (A) Only the commercial spots and the occasional references to the XYZ Corporation must be logged as commercial time. Because the licensee presents a program which keeps the commercial messages separate and distinct from the matters discussed during the interview, avoids promoting or mentioning the services of the restaurant more than necessary to carry out the interview, and makes no cross-references to the sponsor's business relationship with the restaurant, the broadcast cannot be considered a program-length commercial. Even though the restaurant provides the bill of fare without cost, no

mention is made of that fact nor do the restaurant or sponsor dictate or influence the program's content to promote their products or services.

7. (Q) Same situation as in 6, but the restaurant is located in and operated by a performing arts center. The center buys fifteen one-minute spots to be broadcast during the hour. An interview at noon is conducted by the center's director and features only prominent performers from the casts of the productions presented at the center during the week of the interview. The spot announcements promote the center's current attractions in which the interviewees appear. During the interview, the camera pans the center's restaurant, while the interviewer points out the restaurant's different features and refers to its swift and courteous service. Shots of food being prepared by the chefs in the kitchen are shown. The interview is generally limited to a discussion of the performer's roles in the productions billed at the center at the time of the interview, reviews of the productions by the city's newspapers and reactions of the audiences to the performances. What portion of this one-hour program constitutes commercial announcements for the center?

   (A) The entire program must be considered as a program-length commercial. Although portions of the interview may possess informational and entertainment value, it appears that these aspects are incidental to the promotion of the center's restaurant and the performances taking place at the center. It appears further that the licensee has permitted the entire program to be shaped by the commercial interests of the center and has permitted the non-commercial portion of the program to achieve a substantial identity with the services being promoted in the commercial spots. Interviews with actors, musicians, dancers, etc., can, of course, be conducted during programs sponsored by an arts center where the commercials are separate and distinct from the program content. Discussions of the performer's role in a current play and reference to appearances at the center do not violate the Commission's policies, provided that such presentations are not so closely interwoven with the commercial promotions. In the example, the interview is confined to the performers' roles in the productions at the center and thus appears essentially to constitute an advertisement for the center.

8. [Deleted]

9. [Deleted]

10. [Deleted]

11. [Deleted]

12. [Deleted]

13. (Q) A station broadcasts a 15-minute program which lists daily transactions in stock and bond issues. The transactions covered include only those of organizations doing business in the immediate metropolitan area and the program is entirely sponsored by one of the city's brokerage houses. An employee of the broker does the reports directly from the brokerage house and selects the issues to be covered on the basis of their interest to the community. Although, a number of the issues reported or discussed are issues underwritten by the sponsoring broker, issues underwritten by the other brokers in the city are also included in the report. The program commences with a five-minute report on general market conditions, the averages on the major exchanges, and significant commercial news emanating from business and government. No commercial spots are broadcast, although the sponsoring brokerage house is identified as the sponsor at the beginning and end of the program. Is this program a program-length commercial for the sponsor?

   (A) This program is not a program-length commercial. Neither the body of the program nor the initial and final identification of the sponsor makes cross-reference to the fact that the sponsor trades in any of the issues discussed, and the use of the sponsor's representative who randomly selects the stock issues and reports the business news would not in and of itself make the entire program commercial. The Commission's policies pertaining to program-length commercials do not prohibit advertisers from sponsoring programs on

subjects in which they may have a direct or related interest, if the various safeguards referred to in this Public Notice are adhered to. Moreover, the fact that a stock report may be announced as originating at the brokerage house does not, standing alone, make the entire program commercial. Where employees of the sponsor present the program, an identification of that fact must be made.

14. (Q) A retail book distributor purchases one-half hour from a local [TV] station to present a weekly book review. During the program, an employee of the sponsor reviews several new books on the bestseller list. Before and after the review of each book, the reviewer announces that each of the books reviewed is for sale at the sponsor's store. Additional references are made to books not specifically reviewed on the program and to the fact that these books are for sale at the store. Six one-minute spot announcements are made promoting the sponsor's products and specifically refer to the books reviewed on the program. How much of this program is commercial?

(A) The non-commercial informational and entertainment portions of the program are so closely interwoven with the portions of the program advertising the sponsor's products that the entire one-half hour program must be considered a program-length commercial. References made at the beginning and end of book review programs indicating that the books reviewed are sold at the sponsor's store do not necessarily make such programs program-length commercials. Licensees, however, must take steps to ensure that the program's commercials remain separate and distinct from the book reviews. Furthermore, when an employee of the sponsor conducts the book review, disclosure should be made of the reviewer's relationship to the sponsor.

15. (Q) During a one-hour broadcast, the arts editor of a station reviews two books. A book store purchases the hour, and its advertisements are broadcast in close proximity to the book reviews. The books selected for review are chosen and reviewed by the editor according to his own standards, and no suggestion is made by the sponsor regarding selection of the books to be reviewed. There is no mention made that the reviewed books are available through the sponsoring book store. Should the amount of time consumed by the book reviews and the sponsoring book store's spots be considered commercial?

(A) Only the commercial spots advertising the book store must be considered commercial. The commercial messages of the sponsoring book store here are distinct from the informational segment. Absent specific identification of and cross-reference to the sponsor during the non-commercial segment, the fact that the book store purchases the entire hour with separate commercials for products sold by the sponsor does not make the broadcast a program-length commercial.

16. (Q) A direct broadcast from a local livestock market is sponsored exclusively by the livestock market. Information is given by a principal or employee of the market relative to prices for beef and pork, and other facts of importance to area farmers. The information also covers prices at other regional or national markets. Commercial announcements are not broadcast for the sponsoring market, which realizes a commission on all livestock sales. Appropriate sponsorship identification is made at the end of each program. Is this program a program-length commercial under the Commission's policies?

(A) While it is implicit that the sponsoring livestock market has a commercial interest in informing the community of the prices of the products, and hence has a commercial interest in sponsoring such a livestock report, the commercial interests of the sponsoring market here appears to be incidental to the informational segment of the program. The licensee need log only the specific commercial references. Programs of this nature, however, may become entirely commercial if from the facts of any situation presented it is apparent that the informational and commercial content are so inextricably interwoven as to constitute one continuing advertisement. The broadcast of commercial spots for the livestock market during the program would not change the conclusion reached here unless the commercials were interwoven with the program content in the fashion referred to in the introduction

of this Public Notice. In each case the general principles applicable to all program-length commercials must be examined in relation to the facts of the case. Again, disclosure should be made of the fact that the person presenting the program is an employee of the sponsor.

17. (Q) A retail furniture outlet purchases commercial spot announcements to be presented during a station's one-half hour weekly program which features the art of furniture making. The program utilizes the expertise and personnel of small and large furniture manufacturers, including, from time to time, personnel employed by furniture manufacturers whose products are sold by the sponsor. Different topics, proposed and selected by a variety of furniture-making professionals and the station's program director, who conducts the program, are presented each week. The guests on the show make few if any references to the products sold, and the commercial announcements for the retail furniture outlet do not refer to the subject matter of the program. How much of this program is commercial?

(A) Only the commercial spot announcements must be entered on the station's logs as commercial announcements. The informational segment of the program does not exhibit a pattern of cross-referencing to the sponsor's products and does not primarily promote the sponsor's commercial interests. A program of this nature, broadcast live from the retail outlet, will not be considered a program-length commercial if the licensee complies with the usual program-length criteria set forth elsewhere in this Notice.

18. (Q) The furniture retailer buys one half-hour of time. No commercial spots are presented. The program is presented live from the sponsor's showroom each week and features an employee of the station discussing the sponsor's new furniture line and displaying the sponsor's furniture arranged in different suites. Each week some aspects of furniture care and repair are discussed. Periodic statements are made identifying the furniture as available for sale at the sponsor's showrooms, and, in addition to the necessary sponsorship identification announcement at the program's beginning, references are made to the fact that the program is originating live from the sponsor's showroom where the furniture can be viewed. How much of this program is commercial?

(A) Although no commercial spots are presented, it appears that the program's format, the use of only the sponsor's furniture, and the repeated references to the sponsor and to the fact that the furniture is available at the sponsor's showrooms make this broadcast a program-length commercial.

19. (Q) A television station broadcasts a weekly fifteen-minute remote program from a hobby shop whose owner discusses all aspects of various hobbies and crafts. Three commercials are broadcast during the program by a station announcer. The commercials advertise the goods for sale at the hobby shop. The commercials are separate and distinct from the program content and do not refer to the items discussed during the program. How much of the program is commercial?

(A) On the facts stated, only the commercial messages need be considered commercial, since there appears to be no cross-referencing between the commercials and the instructional content of the program.

20. (Q) An entity producing a county fair and composed of ten of the main exhibitors at the fair purchase six hours from a local television station so that the station will broadcast two hours of the event live each day for three days. During the broadcasts, the audience is frequently urged to attend the fair in order to see the booths of the ten exhibitors. Most of each day's program is devoted to coverage of the exhibits of the ten sponsors. Each of the sponsors is given an opportunity to demonstrate his new lines of equipment. The remainder of the time each day is spent in general coverage of the fair and random interviews with attendees. No separate commercial spots are presented. What portion, if any, of the program is commercial?

(A) This program constitutes a program-length commercial. The broadcasts appear primarily to be advertisements designed to promote the exhibitors' products. See also prior examples regarding remote broadcasts.

21. (Q) A committee formed to promote a fair buys spot announcements to be broadcast during a station's coverage of the fair. The spots urge the public to attend the fair, but the station chooses the events and exhibits to be covered and the manner of covering them. The licensee believes that coverage of the new farm equipment would be of considerable interest to the community and each day devotes some time to covering one or more of the farm equipment companies demonstrating and displaying equipment at the fair. The farm equipment companies do not pay for the coverage. How much time of the fair coverage is considered commercial?

(A) Only the duration of the spot announcements for the fair itself must be logged as commercial. Although the program's "non-commercial" segment shows various types of farm equipment, the makers of the equipment do not pay for the broadcast coverage for it. The spot announcements urging attendance at the fair are separate from and unrelated to the coverage of events at the fair.

22. (Q) A non-profit charitable organization is engaged in theoretical and applied cancer research. This organization purchases thirty minutes from a local television station to present a film produced and directed by the organization. The broadcast includes a final ten-minute segment which presents the chairperson of the organization, who discusses the organization's need for additional financial support and makes an appeal for private contributions. Does this program constitute a program-length commercial?

(A) No. Programs sponsored by non-profit organizations for the purpose of soliciting funds through the presentation and discussion of such organizations' non-profit activities do not come within the purview of the Commission's policies regarding program-length commercials. The Commission's program-length commercial policies pertain only to programs which promote the sale of commercial goods and services and, therefore, do not apply to programs sponsored by non-profit organizations to raise funds for their non-profit activities. Licensees broadcasting such programs are nevertheless required to make the standard sponsorship identification announcement and must log the program as sponsored by the particular non-profit organization as required by the Act and the Commission's Rules.

23. (Q) A religious organization sponsors a religious program during which no commercial products are advertised, but which includes solicitation of contributions to assist in continuing the religious activities of the organization. Is the program wholly commercial?

(A) No. In adopting the report and order amending the logging requirements for TV broadcast stations (Now Sec. [73.1810] of the Commission's Rules), the Commission stated:

> In connection with the logging of commercial continuity, a special problem is raised by certain sponsored programs wherein it is difficult to measure the exact length of what would be considered as commercial matter, e.g., some sponsored religious and political programs. For such programs we will not require licensees to compute the amount of commercial matter, but merely to log and announce the program as sponsored. This exception does not, of course, apply to any program advertising commercial products or services. Nor is the exception applicable to any commercial announcements. *Television Program Logging Rules*, 5 FCC 2d 185, 186 (1966).

[Reference to AM and FM broadcast stations deleted.]

24. [Deleted]

26. (Q) A national political party purchases two hours from a television network to present a program designed to solicit funds for the party's activities. The program features interviews with the party's major political figures and various forms of entertainment. Every five minutes a telephone number and street address is superimposed on the screen to indicate to viewers where a monetary pledge may be made. Throughout the program, references are made to the amounts being pledged, and from time to time a plea is made for private contributions to sustain the party's work. Will the Commission consider this program a three-hour program-length commercial?

(A) No. Since the program is sponsored by a political organization and does not in any manner involve the salability of commercial products of services, the logging exception for political broadcasts is therefore applicable, and stations carrying this program must merely announce and log it as sponsored by the particular party.

27. (Q) A realtor purchases fifteen minutes of broadcast time from a [TV] station to present a program advertising the realtor's listing. Although no commercial spots, as such, are presented, the program is clearly a program-length commercial, and the station logs the entire fifteen minutes as commercial, enters the realtor on its logs as the sponsor, and makes the appropriate sponsorship announcement before and after the fifteen minute presentation. No other commercials are presented during the remainder of the hour. The station has represented to the Commission that it will present no more than sixteen minutes of commercial matter in any hour. May a station broadcast a program-length commercial if the total commercial time broadcast during the hour does not exceed the station's commercial representations?

(A) The broadcast of 15-minute program-length commercials, even though the time consumed by the program does not exceed the commercial representations, has been held by the Commission to be inconsistent with the public interest. In *Letter to KCOP-TV*, Inc., 24 FCC 2d 149 (1970), we stated:

> As we have made clear, a pattern of presenting program-length commercials or programs with respect to which other factors indicate that the licensee is disregarding the interest of the public in its programming, will be considered as raising questions as to whether the licensee is operating in the public interest.

28. (Q) A realtor purchases one-half hour to present pictorial and narrative descriptions of houses which are stated to be for sale through the sponsoring realtor's agency. The program is uninterrupted. Is any portion of the program commercial?

(A) Under the Commission's policies and in accordance with its ruling in *WUAB, Inc.*, 37 FCC 2d 748 (1972), this entire program is commercial since the sole thrust of the program is the commercial promotion of the sponsor's products and services.

29. A number of questions have been received regarding the presentation of "classified ads" or "swap shop" programs and whether they fall under the Commission's program-length commercial policies. The following three hypothetical examples and ensuing interpretations will clarify the Commission's program-length commercial policies in this area.

(i) (Q) The station presents a one-half hour program advertising for sale or offering for trade the property of individuals other than commercial enterprises. No charge is made by the station for the individual announcements. Do the Commission's program-length commercial policies apply to this situation?

(A) Where *no* charge is made for the broadcast of any matter, the Commission's commercial policies do *not* apply and none of this time need be logged as commercial matter. But see, example 29 (iii) (Q), below.

(ii) (Q) A local commercial enterprise purchases an hour from the station and receives a schedule of 15 one-minute advertisements which promote the sponsor's products or services. The remainder of the program consists of announcements advertising for sale or trade the property of individuals, who make no payment to the station for the broadcast of those announcements within that sponsored hour. Is this program entirely commercial and what portion should be logged as commercial matter?

(A) The program is not a program-length commercial and only the 15 one-minute commercial spot announcements for the overall sponsor must be entered on the station's logs as commercial matter. Because no charge is made to the individual, non-commercial advertisers, and because the commercial announcements for the program sponsor are separate and distinct from and do not cross-reference the items being advertised in the remainder of the program, no program-length commercial questions are raised.

(iii) (Q) Individual, non-commercial advertisers are charged a fee by the station to

offer for sale or trade their property. The station presents a daily 15-minute program featuring the individuals' announcements. Is this a program-length commercial and what are the Commission's policies on this type of program?

(A) This program is a program-length commercial, but the Commission believes that special circumstances warrant a limited exemption from its program-length commercial policies, since these programs may present the only broadcast vehicle where an individual may advertise property at a reasonable cost. To that end, the Commission will not consider to be contrary to the public interest the broadcast of programs consisting of paid announcements which advertise for sale or trade the property of private individuals, as contrasted with commercial business enterprises. Such programs are to be limited to no more than 15 minutes per day and must be computed and logged as commercial matter. Thus, for example, if a [TV] station has represented to the Commission that it will present no more than 18 minutes of commercial matter per hour and the station devotes aw 15-minute segment to broadcasting classified advertisements paid for by private parties, the station would be required to log that 15 minutes as part of the 18 minutes it has represented to be its commercial maximum per hour. The exemption here granted contrasts with the Commission's program-length commercial policies articulated in Letter to *KCOP-TV, Inc.*, 24 FCC 2d 149 (1970) and example 27, *supra*, because of the special considerations set forth above with respect to advertisements for private individuals as contrasted with commercial enterprises. If the mere format of a classified advertisement program were the determining factor in granting an exemption, the program-length commercial policy might well become meaningless, since a commercial enterprise such as a department store could, by phrasing its sales messages in the form of "classified ads" for different products sold by the store, gain an exemption from our program-length commercial policies for a wholly commercial program.

30. (Q) A leading professional tennis player delivers a commercial extolling the virtues of the sponsor's tennis racquet during coverage of a championship match during which the player uses the sponsor's racquet. Is all or part of the coverage commercial?

(A) The fact that the player in a televised match advertises the product being used in the match does not in and of itself make the entire program commercial. Manufacturers of sports equipment obviously would be interested in sponsoring sports events or events in which their products are used. A problem would arise if the coverage of the event were to be influenced because of the sponsor's interest in promoting its product. Thus, if during coverage of the match the licensee repeatedly showed close-ups of the tennis racquet made by the sponsor so that the viewer would clearly see the name of the manufacturer and if the player were instructed to make references to the racquet in interviews before or after the match, the entire program might become commercial. Similarly, if the announcer made references to the use of the racquet in describing the play, the program might become commercial.

31. (Q) An auto race track purchases three hours of time. Fifty per cent of the time is devoted to [entertainment], 10 per cent to news, 15 per cent to interviews with racing drivers in which references are made to upcoming races held only at the sponsor's track and the final 25 per cent is devoted to direct promotion of attendance at the races. Is all or port of the three-hour program commercial?

(A) That portion of time devoted to [entertainment] and news would not be considered commercial. If interviews conducted with the racing drivers are confined almost entirely to matters pertaining to the sponsor's track, and constant reference is made to the track, the races, the admission price, etc., that portion of the program would be considered commercial. The final 25 per cent of the program is commercial in nature since it is devoted entirely to promoting attendance at the races. Urging attendance at a sports event by the sponsor of the event would not make the entire sports event commercial. If, however, as in the example given, a specific period of time is devoted entirely to promotion of the event, that time would be considered commercial and the licensee must log the time as commercial.

**The following question is based upon rulings made by the Commission in July, 1975 concerning "auction" programming.

32. A [TV] station broadcasts a weekly thirty-minute program entitled "[WXXX's] Auction." Merchants in the station's service area are solicited to contribute items to be auctioned, in return for which each merchant receives the opportunity to briefly speak about the item being auctioned and his store. [Viewers] telephone their bids to the station, the highest bid is selected and the station retains the proceeds of the auctioned items. How much, if any, of this program should be considered commercial?

(A) "Auction" programs such as this are entirely commercial and must be logged as such. The station is the sponsor of the program because it receives all or part of the proceeds from the auction in return for broadcasting descriptive announcements for each participating merchant. Since the commercial and non-commercial portions of the program are so inextricably intermixed the entire broadcast constitutes a program-length commercial and must be logged as commercial matter.

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

FCC 65-618
69685
PUBLIC NOTICE- B
July 12, 1965

STATEMENT OF POLICY CONCERNING LOUD COMMERCIALS

By the Commission:

1. During the past two years, the Commission has studied intensively the problem of loud commercials in television and radio. We are told by industry engineers, broadcasters and others that subjective loudness of commercials cannot be electronically measured, and therefore the Commission cannot act to prevent them. However, in hundreds of complaints from the public we are also told that some commercials are objectionably loud, often louder than adjacent programming--and often so objectionably loud that listeners are compelled to turn the volume down.

2. We conclude today in our Report and Order in the inquiry proceeding (Docket No. 14904) that objectionably loud commercials are a substantial problem, are contrary to the public interest, and that their presentation is to be avoided. 1/

3. The purpose of this policy statement is threefold--to set forth our policy and the policy we expect licensees to follow in this respect, to detail some of the practices which are common causes of loud commercials, and to advise licensees not knowingly to broadcast commercials involving such practices. All licensees are expected to take appropriate measures to assure strict adherence to this policy. The Commission, through its complaint procedure or by spot checks at renewal time, will determine whether licensees are carrying out their obligations in this respect, and will take whatever action is appropriate on the basis of such review.

4. Among the practices which the Commission has identified as often causing loud commercials, and which licensees shall avoid, are the following:

1/ As industry parties point out, there is now no acoustic or electrical tool for determining precisely whether or not a given sound is objectionably loud. Nevertheless, it has been repeatedly held that objectionable or excessive loudness is both a proper subject for preventive governmental action, and a condition sufficiently definable for its existence to be established for legal purposes. See, for example, Kovacs v. Cooper, 336 U.S. 77 (1949); Ex parte Trafton, 271 S.W. 2d 814, 160 Tex. Cr. 407 (1954), and Thompson v. Anderson, 153 P. 2d 665, 107 Utah 331 (1944).

(1) Excessive modulation on commercials as, for example, through inadequate control-room procedures. We are today amending our modulation rules to make it clear that minimum modulation on peaks of frequent recurrence need not be as much as 85% if a lesser level is required to avoid objectionable loudness.

(2) Excessive volume compression resulting from the use of automatic gain control, or similar devices--particularly in the broadcast of pre-recorded commercial material which may have been prepared with extensive compression and other electrical processing. Excessive compression permits material to be broadcast at a higher than normal average level of modulation. At least on pre-recorded commercial material, a maximum of 6 db compression in broadcasting is recommended.

(3) Excessive use of other electrical processing devices, such as filters, attenuators and reverberation units--again, particularly where pre-recorded material is being presented.

(4) The use of pre-recorded commercials which have been subjected to excessive compression, filtering, attenuation, "equalization" or reverberation (echo).

(5) Voice commercials presented in a rapid-fire, loud and strident manner; and

(6) The presentation of commercial matter at modulation levels substantially higher than the immediately adjacent programs. A maximum of 4 db increase (40% to 60% to 100% modulation) is recommended.

To make sure that such practices are avoided, licensees are to adopt adequate control-room procedures to prevent them, and to take appropriate steps to provide for pre-screening recorded commercials for loudness.

5. Much of the loud commercial problem arises in connection with the broadcast of pre-recorded commercials. In fulfilling their obligations in this area, broadcasters are expected to take reasonable steps to get the cooperation of the recording industry so as to prevent the presentation of loud commercials.

6. We now turn to a brief discussion of the matters referred to above.

MINIMUM MODULATION REQUIREMENT

7. One argument advanced by some broadcasters is that they are prevented by our rules from avoiding loud commercials, because the rules require modulation on peaks of frequent recurrence to be at least 85%, thus prohibiting the operator from reducing the transmitter gain even if

necessary to eliminate loudness. We do not so construe the rules. However, in order to make this matter completely clear, we are today amending the modulation rules (Section 73.55, 73.268 and 73.687(b)) to provide that, while in general modulation should not be less than 85% on peaks of frequent recurrence, it may be reduced to whatever level is necessary to avoid objectionable loudness in commercial and other material, even if this is substantially less than 85% on peaks. We expect television and radio broadcasters to observe this practice where necessary to avoid loud commercials.

CONTROL ROOM PROCEDURES

8. Presentation of loud commercials is due partly to inadequate or lax control-room procedures. One cause is inaccurate reading of or inattention to the modulation monitor (required by our Rules) or the widely-used volume unit (vu) meter. Another aspect is excessive reliance on automatic gain control (AGC) or peak-limiting devices, which, unless properly regulated, are likely to result in loud commercials. Broadcasters are to adopt control-room procedures adequate to prevent the presentation of loud commercials which result from these deficiencies or practices. Attention is invited to a description of accepted procedures in the IRE (now IEEE) Standards on American Practice for Volume Measurement of Electrical Speech and Program Waves, 1953 (53 IRE 3.S2).

COMPRESSION AND OTHER PROCESSING

9. One contributing cause to the problem of loud commercials is the use of moderate amounts of volume compression, which permits material to be broadcast at a higher than the normal average level of modulation without having peaks exceed 100% on the modulation meter. Compression in broadcasting, when used in moderation, appears to be desirable; but excessive use thereof, particularly in the broadcast of commercial material, is unquestionably undesirable and a major factor in causing objectionable loudness. Broadcasters are to exercise care in using devices causing compression. It is recommended that an appropriate maximum amount of compression is 6 db, at least in broadcasting pre-recorded commercials. Certainly, as a general rule, no more compression should be used in broadcasting a commercial than in presenting preceding material. Similar care should be used in connection with employment of other processing devices, such as attenuators, filters, or reverberation units. Particular care is to be exercised when the commercial material has been pre-recorded, where substantial amounts of compression and other processing may have been used in the recording. The combination of such processing in recording and in broadcasting--e.g., what might be called "compression on compression"--may, when carelessly used, produce what one broadcaster has termed "a rather overwhelming effect" in terms of loudness. Therefore, the use of further

compression or other electrical processing in broadcasting such commercials is to be avoided to the extent necessary to prevent objectionable loudness, and the amount thereof which may properly be used may well be substantially less (e.g., 6 db of compression less) than that which is appropriate for other types of material.

USE OF RECORDED COMMERCIAL MATERIAL: PRESCREENING

10. Compression, filtering, "equalization", reverberation, and other processing are extensively used in recording commercial material, along with a generally high-volume level of recording. Again, these techniques when used in moderation serve desirable purposes, such as protecting equipment, producing a recording of good technical quality, and producing distinctive effects other than loudness. But it appears that sometimes they are used extensively for no other purpose than to produce loud commercials. Broadcasters are to exercise care in the presentation of recorded material in which such processing has been used resulting in an effect of excessive loudness. Under the revised modulation rules, where a commercial has been pre-screened and found too loud, a licensee should reduce modulation below 85% where necessary to avoid objectionable loudness. Also as mentioned above, care is to be exercised in use of any further electrical processing in broadcasting recorded commercial material.

11. We note in "A Guide for Advertising Agencies and Television Stations in handling Materials for SPOT TELEVISION COMMERCIALS," a joint recommendation of the Station Representatives Association and the American Association of Advertising Agencies, that film, tape and slides should be in the hands of licensees 48 hours in advance of use. The Guide further suggests that materials should be examined by the station on receipt for "damage, defects and completeness". Clearly this contemplates delivery in adequate time to permit pre-screening.

12. We are aware that in actual practice these guidelines are not always observed. However, we expect broadcasters to adopt appropriate practices and procedures to provide time for pre-screening, not only for damage, defects and completeness, but for loudness.

13. We recognize that to require each station, large or small, to pre-screen all commercials for loudness may impose some burden. The small radio licensee can engage in extensive spot pre-screening, and, if a loud commercial escapes prior detection through this process, he can be alert to the need for pre-screening further commercials from the same source. Further, we suggest that the organizations, state or national, which represent advertisers, station representatives, agencies and licensees, should consider the establishment of a group to pre-screen and label commercial material as to loudness for the industry.

STRIDENT DELIVERY

14. One common source of complaint is commercials which are delivered in a loud, rapid and strident manner, with the maximum number of words crammed into the time period and all delivered at or close to maximum peak modulation. Presentation of such material is to be avoided.

CONTRAST WITH PRECEDING PROGRAM MATERIAL

15. Aside from differences resulting from varying degrees of electrical processing used in different types of material, another common source of complaint is the contrast between loudness of commercials as compared to the volume of preceding program material--e.g., soft music or dialogue immediately followed by a rapid-fire, strident commercial. Such contrasts are to be avoided. For guidance, it is recommended that a maximum of 4 db increase over the immediately preceding program segment (40% to 60% to 100% modulation) is appropriate for general observance.

CONCLUSION

16. We conclude that the presentation of objectionably loud commercials is contrary to the public interest. Therefore, to the extent it is within their control, broadcasters have an affirmative obligation to see that such material is not presented. In today's Report and Order we recognize that loudness--the impression created in the listener--is to a degree the result of factors beyond the broadcaster's control and varies as between individual listeners (for example, a reaction to a particular product or a particular sound effect other than volume). But we conclude that objectionably loud commercials result in large measure from factors of a technical or partly technical nature which are within the broadcaster's control, and which are not adequately controlled simply by adherence to our rules in the various broadcast services limiting modulation to 100% on peaks of frequent recurrence. While there is no evidence that broadcasters in substantial numbers deliberately "boost the power" in presenting commercials, neither is there indication of any concerted, industry-wide effort to deal with the problem. While most complaints of loud commercials are directed to television rather than radio (particularly at pre-recorded commercials), the problem is by no means confined to television.

17. We have set forth above the broadcaster's general affirmative obligation, and specific practices and policies to which we expect strict adherence. The list of specifics is not intended to be all-inclusive, and there may well be other steps that can be taken. What is called for is a good faith effort on the part of licensees to prevent the presentation of commercials which are too loud. In setting forth this policy statement, we recognize the underlying importance of advertising to the American system of broadcasting, and the legitimate interest of the advertiser in presenting his message attractively and understandably, and in drawing attention to what he has to say. But these are not irreconciliable alternatives.

18. We note with pleasure a recent suggestion by the American Association of Advertising Agencies that its Subcommittee on Commercial Production might assist in dealing with this problem, by screening commercials referred to it by the Commission about which loudness complaints have been received. We appreciate this offer of assistance, and if the circumstances appear appropriate we will take advantage of the suggested procedure.

19. We also appreciate the consideration and attention being given this problem by the N.A.B. Engineering Advisory Committee. It is understood that investigations and studies are to be made by this committee, regarding the technical considerations that may be involved in the matter of "loudness", and also as to the possibility of developing a new volume measuring meter. The technical staff of the Commission is, of course, ready to cooperate in this endeavor as may be requested.

Adopted: July 9, 1965

PUBLIC NOTICE

Federal Communications Commission ■ 1919 M Street, NW. ■ Washington, D.C. 20554

For recorded listing of releases and texts call 632-0002

For general information call 632-7260 40757

FCC 76-489

June 10, 1976 - B

APPLICABILITY OF THE FRAUDULENT BILLING RULE (REVISED)

On October 20, 1965, the Commission amended Part 73 of its Rules and Regulations to prohibit fraudulent billing practices by broadcast licensees. At the same time, it issued a Public Notice containing illustrative examples of certain kinds of fraudulent billing practices with which the Commission was familiar. It cautioned that "Since fraudulent billing practices may take many forms, the following list of examples should not be considered all-inclusive." 1 FCC 2d 1068, 1075. The fraudulent billing rule, now designated as Section 73.1205 of the Commission's Rules and Regulations, was amended on May 13, 1970 to clarify its meaning and the previously-issued Public Notice was correspondingly amplified with two new examples. 23 FCC 2d 70.

The Commission has now further amended Section 73.1205. In view of the amendments, it is appropriate to add corresponding illustrative examples to the previously issued Public Notice and to issue a revised and consolidated Notice incorporating the additions adopted in 1970 as well. The examples which follow are, like those previously released, not to be considered all-inclusive but merely illustrative of the application of the rule to some practices.

EXAMPLES

1. A licensee issues a bill or invoice to local dealer for 50 commercial spots at a rate of $5 each for a total of $250. In connection with the same 50 commercial spots, the station also supplies the local dealer or an advertising agency, jobber, distributor, or manufacturer of products sold by the local dealer, another affidavit, memorandum, bill, or invoice which indicates that the amount charged the local dealer for the 50 spots was greater than $5 per spot.

Interpretation: This is fraudulent billing, since it may deceive the manufacturer, jobber, distributor or advertising agency to which the inflated bill eventually is sent, as to the amount actually charged and received by the station for the advertising.

2. A licensee issues a bill or invoice to a local dealer for 50 commercial spots at $5 each and the bill, invoice or accompanying affidavit indicates that the 50 spots were broadcast on behalf of certain cooperatively advertised products, whereas some of the spots did not advertise the special products, but were used by the local dealer solely to advertise his store or products for which cooperative sponsorship could not be obtained.

   Interpretation: This is fraudulent billing, even though the station actually received $5 each for the 50 spots, because by falsely representing that the spots advertised certain products, the licensee has enabled the local dealer to obtain reimbursement from the manufacturer, distributor, jobber or advertising agency for advertising on behalf of its product which was not actually broadcast.

3. A licensee sends, or permits its employees to send, blank bills or invoices bearing the name of licensee or his call letters to a local dealer or other party.

   Interpretation: A presumption exists that licensee is tacitly participating in a fraudulent scheme whereby a local dealer, advertising agency or other party is enabled to deceive a third party as to the rate actually charged by licensee for advertising, and thereby to collect reimbursement for such advertising in an amount greater than that specified by the agreement between the third party and the local dealer. It is the licensee's responsibility to maintain control over the issuance of bills and invoices in the licensee's name, to make sure that fraud is not practiced.

4. A licensee submits bills or invoices to an advertising agency, station representative, or other party indicating that licen-

see's rate per spot is $50, whereas the licensee actually receives only $5 or $10 per spot in actual payment from the agency, representative or other party. Licensee claims that the remaining 80 or 90 percent of its original invoice has been deducted by the agency as "commission" and therefore no fraudulent billing is involved.

Interpretation: This is fraudulent billing. The agency discount does not customarily exceed 15 percent and the supplying of bills and invoices by the licensee to agencies which indicate that the licensee is charging several times as much for advertising as he actually receives constitutes participation in a fraudulent scheme.

5. A licensee submits a bill or invoice to a local dealer or other party for 50 commercial spots at $5 for a total of $250. However, the bottom of the bill or invoice carries an addendum so placed that it may be cut off of the bill or invoice without leaving any indication that the invoice originally carried such an addendum. The addendum specifies a "discount" to the advertiser based on volume, frequency or other consideration, so that the amount actually billed at the bottom of the page is less than $5 for each spot.

   Interpretation: The preparation of bills or invoices in a manner which seems designed primarily to enable the dealer to deceive a cooperative advertiser as to the amount actually charged for cooperative advertising raises a presumption that the licensee is participating in a fraudulent scheme.

6. A licensee submits a bill or invoice to a local dealer for 50 spots involving cooperative advertising of a certain product or products at a rate of $5 each and actually collects this amount from the dealer. However, as a bonus the licensee "gives" the dealer

50 additional spots in which the product or products named on the original invoice are not advertised, so that the dealer actually obtains the benefit of 100 spots in return for payment to the station of the $250 billed for the 50 cooperative spots.

Interpretation: If the 50 "bonus" spots were broadcast as the result of any agreement or understanding expressed or implied, that the dealer would receive such additional advertising in return for contracting for the first 50 spots at $5 each, the so-called "bonus" spots were, in fact, a part of the same deal, and the licensee, by his actions, is participating in a scheme to deceive or defraud a manufacturer, jobber, distributor or advertising agency.

7. A local appliance dealer agrees to purchase 1,000 spots per year from a station and thereby earns a discount which reduces his rate per spot from $10 to $5. During the course of the year, the dealer purchases 100 spots from the station which advertises both the dealer and "Appliance A" and for which the dealer pays $5 per spot. Since the station's rate per spot for 100 spots is $10, the dealer asks the station to supply him with an invoice for the 100 spots on behalf of "Appliance A" at $10 spot, claiming that if the manufacturer of the appliance had purchased the 100 spots, or if the dealer himself had purchased only these 100 spots within the course of a year, the $10 rate would apply, and that, therefore, the manufacturer should be required to reimburse the dealer at the $10 rate.

Interpretation: This practice constitutes fraudulent billing unless the licensee makes certain that the manufacturer of "Appliance A" is alerted to the fact or possibility of the dealer's earning a volume discount. Thus, unless the dealer provides satisfactory evidence that the manufacturer is aware that the dealer actually paid only $5 per spot, the licensee should print or stamp a statement on the face of the affidavit of performance which is to be

forwarded to the manufacturer. The statement might be, for example, "RATE SUBJECT TO VOLUME DISCOUNT TO DEALER."

8. A licensee issues a bill or invoice to a dealer for commercial spots which were never broadcast.

   Interpretation: This practice, prima facie, involves fraud, either against the dealer or against a third party which the dealer expects to provide partial reimbursement for the nonexistent advertising.

9. A licensee knowingly issues a bill or invoice to a local or national advertiser which shows broadcast of commercial announcements 1 minute in length, whereas in fact some of the announcements were only 30 seconds in length.

   Interpretation: This is fraudulent billing, since it misrepresents the length of the commercials, a highly important element of the price charged for them.

10. A licensee knowingly issues a bill or invoice to a local or national advertiser which sets forth the time of day or date on which commercial announcements were broadcast, whereas in fact they were presented at a substantially or materially different time or on a different day, or were not broadcast at all.

    Interpretation: This is fraudulent billing, since time of broadcast is often highly important in its value and the price charged for it. Charging for advertising not broadcast is clearly fraudulent.

11. The licensee of a station affiliated with a network furnishes a written certification that the station has broadcast a certain network program in full, whereas in fact the station has not broadcast a part of the advertising content of the program, or has failed to broadcast a portion of the program other than advertising.

Interpretation: Falsely certifying to the network that a network program was broadcast in its entirety constitutes a violation of Section 73.1205 (b) of the Rules, regardless of whether the matter not broadcast consists of advertising or other matter.

12. A licensee enters into a barter agreement with a program supplier whereby the licensee agrees to broadcast the entire program as furnished by the supplier, including commercial spots which the supplier already has sold. The station itself is permitted to sell a number of additional spots for insertion in the program. The station is required by its agreement with the syndicator or supplier to furnish a statement as to whether each program was broadcast in full as furnished by the supplier. Although the station furnishes certification that the program was broadcast in its entirety, it has in fact omitted portions of either the commercial or noncommercial segments of the program.

    Interpretation: As in Example 11 above, such false certification constitutes a violation of Section 73.1205 (b) of the rules.

13. One or more station employees, as a result of willfulness, mistake, misunderstanding or carelessness, are issuing false bills, invoices, affidavits, certifications or other documents such as are described in Section 73.1205(a) or (b). For example, an employee is issuing bills based on advertising contracts or "start orders" without checking the program logs or equivalent station records to make sure that the advertising was broadcast as represented in the bills. Although the principals of the licensee are unaware of the fact, they would have known if they had periodically reviewed their billing practices with reasonable deligence for practices that have proved by experience to be likely to result in issuance of false bills or invoices.

    Interpretation: The unawareness of the principals of the licensee of the issuance

of false bills or invoices is not an excuse, even where the false bills were issued by an employee because of mistake, misunderstanding or carelessness, since the principals failed to exercise reasonable diligence to assure that their employees did not issue false bills or invoices. Note, however, that the rule does not preclude a station from billing in advance. In such circumstances, the station has a general obligation to check program logs or equivalent station records to assure that all time previously billed/or paid for was later broadcast or to make an appropriate adjustment.

Action by the Commission May 25, 1976. Commissioners Wiley (Chairman), Lee, Reid, Hooks, Quello, Washburn and Robinson.

1. Section 73.1205 is amended to read as follows:

§73.1205 Fraudulent billing practices.

(a) No licensee of a standard, FM, or television broadcast station shall knowingly issue or knowingly cause to be issued to any local, regional or national advertiser, advertising agency, station representative, manufacturer, distributor, jobber, or any other party, any bill, invoice, affidavit or other document which contains false information concerning the amount actually charged by the licensee for the broadcast advertising for which such bill, invoice, affidavit or other document is issued, or which misrepresents the nature or content of such advertising, or which misrepresents the quantity of advertising actually broadcast (number or length of advertising messages) or which substantially and/or materially misrepresents the time of day at which it was broadcast, or which misrepresents the date on which it was broadcast.

(b) Where a licensee and any program supplier have entered into a contract or other agreement obligating the licensee to supply any document providing specified information concerning the broadcast of the program or program matter supplied, including noncommercial matter, the licensee shall not knowingly issue such a document containing information required by the contract or agreement that is false.

(c) A licensee shall be deemed to have violated this section if it fails to exercise reasonable diligence to see that its agents and employees do not issue documents containing the false information specified in (a) and (b) above.

NOTE: Commission interpretations of the rule may be found in a separate Public Notice issued June 10, 1976, entitled "Applicability of the Fraudulent Billing Rule," FCC 76-489, 41 Fed. Reg.

FEDERAL TRADE COMMISSION
Washington, D.C. 20580
OFFICE OF INFORMATION

NEWS RELEASE

For IMMEDIATE Release on Thursday, July 8, 1965.

FTC ISSUES STATEMENT REGARDING DECEPTIVE CLAIMS OF BROADCAST AUDIENCE COVERAGE

The Federal Trade Commission today issued the following statement regarding deceptive claims of broadcast audience coverage.

Investigations by Congress and by the Commission have disclosed widespread misuse of audience survey results, use of unreliable survey data, and tampering with and distortion of survey results, which has resulted in deception as to the size, composition, and other characteristics of radio and television audiences. These matters are of course important to advertisers in these media.

The Commission believes that, to avoid such deception, television and radio broadcasters, other persons selling advertising or broadcasting time or programs, advertising agencies, and advertisers should, in making claims based on survey results or data, observe the following basic guidelines.

1. A person (or firm) making a claim concerning the size, composition or other important characteristics of a listening or viewing audience is responsible for seeing to it that the claim is truthful and not deceptive. If he bases his claim on the results of an audience survey, he assumes responsibility for interpreting the data accurately. Thus, he should not engage in activities calculated to distort or inflate such data – for example, by conducting a special contest, or otherwise varying his usual programming, or instituting unusual advertising or other promotional efforts, designed to increase audiences only during the survey period. Such variation from normal practices is known as "hypoing."

It is also improper to cite or quote from a survey report or survey data in such a way as to create a misleading impression of the results of the survey, as by unfairly basing audience claims on results achieved only during certain periods of the broadcast day or on a survey of only a segment of the total potential audience.

2. Audience data are based on sample surveys not derived from complete measurements of audiences. As such, they are statistical estimates, and, at best, are of only limited reliability due to errors and distortions inherent in the statistical methods yielding such data. Claims as to audience coverage based on audience surveys should therefore be qualified in recognition of the fact that survey data are inherently imperfect. Any such claim should be accompanied by a disclosure that any figures cited or quoted are estimates only or are based upon estimates, and are not accurate to any precise mathematical degree unless based upon a true probability sample. Audience surveys are not in practice based upon true probability samples.

3. Such claims should not be based on data obtained in a survey that the person (or firm) making the claim knows or has reason to know was not designed, conducted, and analyzed in accordance with accepted statistical principles and procedures, reasonably free from avoidable bias, and based

on a properly selected sample of adequate size. Such claims should not be based on survey reports or data that do not reliably reflect current audience coverge, either because the passage of time has made the data outdated, or because a later survey report encompassing essentially the same area has been published, or because of the entry or departure of a competitor, or for any other reason.

These guidelines are offered to broadcasters and others concerned for consideration in avoiding possible violation of the Federal Trade Commission Act.

SAMPLE TIME BROKERAGE CONTRACT

AGREEMENT

AGREEMENT, made this _____ day of January, 1981, by and between XYZ Broadcasting Company, Anytown, USA, (hereinafter "XYZ"), licensee of Radio Station WUSA(AM), Anytown, USA ("WUSA" or "Station") and Joseph Timebroker (hereinafter "Timebroker").

WITNESSETH:

1. In consideration of the sum of _____ Dollars ($ _____), XYZ agrees to sell and timebroker agrees to buy that certain segment of air time on Radio Station WUSA(AM), consisting of _____ A.M. to _____ A.M. every Sunday in the months of _____, _____ and _____, 1981, payable each two weeks, cash in advance, subject to the terms and conditions set forth below.

2. The Station shall have full and absolute discretion to refuse the airing of any program content and/or commercial matter. This program shall star _____ and shall consist of _____.

3. Timebroker agrees that, with respect to any given segment of air time purchased hereunder, the amount of commercial matter shall not exceed eighteen (18) minutes during any sixty (60) minute segment.

4. Timebroker agrees to broadcast an announcement in form satisfactory to XYZ at both the beginning and the conclusion of each program to clearly indicate that the air time has been purchased by Timebroker.

5. Timebroker will provide for attachment to WUSA's logs* a list of all commercial announcements for its program. It is understood and agreed that the amount of all advertising shall be limited to eighteen (18) minutes per hour.

6. Pursuant to rules of the Federal Trade Commission, no advertising of credit terms will be made over Station beyond the mention of the fact, if desired, that credit terms are available unless the Truth in Lending Act requirements are followed scrupulously.

7. It is understood and agreed that Timebroker will not receive any consideration in money, goods, services or otherwise, directly or indirectly (including to relatives) from any person or company for the playing of records, the presentation of any programming or the broadcast of any commercial announcements over Station without reporting the same in advance to the management of Station and without such broadcast being announced and logged* as sponsored. Timebroker understands that violation of this provision is "payola" and constitutes a federal crime. It is further understood and agreed that no commercial messages ("plugs") or undue reference shall be made in programming presented over Station to any business venture, profit-making activity or other interest (other than noncommercial announcements for *bona fide* charities, church activities or other public service activities) in which Timebroker or anyone else are directly or indirectly interested without the same having been approved in advance by the management of Station and said broadcast being announced and logged* as sponsored.

8. No lottery shall be presented over Station. Any game, contest or promotion to be presented shall be fully stated and explained in advance to management of Station, and Station reserves the right in its sole discretion to reject any game, contest or promotion which in its sole judgment it deems to be or which might be construed to be a lottery under applicable federal and state laws or does not comply with rules and policies of the Federal Trade Commission and Federal Communications Commission controlling contests and promotions.

9. It is understood and agreed that in accordance with the licensee's responsibility under the Communications Act of 1934, as amended, and the Rules and Regulations of the Federal Communications Commission, Station reserves the right to reject or terminate any advertising proposed to be pre-

*Commercial radio stations are not required by the FCC to keep program logs. However, stations that do maintain such logs may decide to use this provision in their time brokerage contracts. Otherwise, all references to program logs should be deleted from the agreement.

sented or being presented over Station which is in conflict with Station policies regarding advertising and programming content or which in XYZ's sole judgment would not serve the public interest.

10. Timebroker agrees to execute an appropriate affidavit or affidavits on a monthly basis, as prepared by XYZ to effectuate the purpose of Paragraph 7 hereof relating to "payola" and "plugola". In addition to any other provision for termination of this Agreement which may set forth herein, the failure of Timebroker to execute the affidavit referred to herein shall entitle XYZ to terminate this Agreement immediately and without notice.

11. Timebroker agrees not to sell any spot or program time to any agent(s) or person(s) supporting a candidate without the prior approval of the licensee.

12. This Agreement may be terminated by either party upon fifteen (15) days advance notice sent by certified or registered mail; provided, however, that this Agreement may be terminated by XYZ at any time and without notice if, in its opinion or that of its counsel, _____, this Agreement or any portion thereof is, or may be, in violation of State or Federal law or the Rules, Regulations, Policies and/or Decisions of the Federal Communications Commission, or if Timebroker's programming is deemed by XYZ to likely place Station's license in jeopardy at the FCC.

13. Notices shall be addressed as follows:

To Timebroker: _____

_____

_____

To Station: _____

_____

_____

ATTEST: XYZ BROADCASTING COMPANY

_____ By _____

WITNESS: JOSEPH TIMEBROKER

_____ _____

STANDARDS PROPOSED (BUT NOT ADOPTED)
BY THE FCC FOR LICENSEE-CONDUCTED CONTESTS

Questions and Answers

Scope of Rule

1. What types of contests come within the scope of the rule?

For the purpose of Section 73.12_, a contest includes any arrangement in which a prize is offered for award to the public. A prize can be anything of value: cash, negotiable instruments, securities, merchandise, services, tickets, trips, recording contracts, personal appearances, and so on. The means of selecting a winner is not significant for the purpose of defining a contest, but typically involves ability, skill, knowledge, chance, or similar factor or combination of factors. The rule applies to all contests (a) conducted by the licensee and (b) broadcast to the public. The rule does not apply to licensee-conducted contests not advertised to the public. For example, we consider sales contests among station employees a private matter between the licensee and its employees, and exclude such contests from the scope of this rule. It is recognized that broadcast stations often advertise contests for businesses, non-profit groups, or others, with no licensee involvement in the actual conduct of the contests. Where a licensee's only connection with a contest is to advertise it for another, its responsibility is the same as for commercial announcements in general: The licensee should " .... take all reasonable measures to eliminate any false, misleading or deceptive matter...."2/ Where a licensee is co-promoter of a contest, the higher standards of Section 73.12_ apply.

Material Contest Terms

2. What are the material terms of a contest?

The material terms of a contest are those factors which are significant in defining the operation of the contest. From the potential contestant's viewpoint they are the factors which affect his or her decision whether or not to participate in the contest, and which tell how to participate and win. While the material terms of a contest will of course depend on the nature of the contest, in general they will include information about prizes, eligibility restrictions, how to participate, how winners are selected, and other similar information. For example: Station XXXX conducts a contest in which a $100 cash prize is to be awarded. Anyone is eligible to enter as often as he or she wishes, and may do so by mailing a postcard to the station. The winner will be selected by random drawing of the cards received. In this simple contest the material terms are the prize, the method of entering the contest, eligibility restrictions, and the method of selecting the winner. The licensee should specify that the prize is $100 cash, that the contest is entered by

2/ Report and Statement of Policy re: Commission En Banc Programming Inquiry, FCC 60-970, 25 F.R. 7291, 20 RR 1901 (1960). Even this standard may be high; see, for example, Public Notice re: Applicability of Lottery Statute to Certain Contests and Merchandise Sales Promotions, 18 FCC 2d 52, 16 RR 2d 1559 (1969).

mailing postcards to the station, and that the winner will be selected by a drawing of the cards. The cut-off date for accepting entries (the only eligibility restriction in this contest) should be announced well before the deadline date (see question 21). In more complex contests, special or unusual rules applying to the contest should be made clear.

Disclosure of Material Contest Terms

3. How should the material terms of a contest be disclosed?

The material terms should be disclosed by announcements broadcast on the station conducting the contest. They should be stated whenever the station purports to set out the conditions or terms of the contest (whether on the air or in other media), but need not be given in full with brief promotional announcements that do not purport to set out the conditions or terms of the contest.3/ However, no contest description should be false, misleading, or deceptive with respect to any material term. The information given should be clear and understandable. Video announcements should be in letters of sufficient size to be readily legible to an average viewer, should be shown against a background which does not reduce their legibility, and should remain on the screen long enough to be read in full by an average viewer. Similarly, audio announcements should be understandable to an average listener. The nature of the station's audience should be taken into account; for example, if the audience includes children too young to read, video announcements would not be adequate. Licensees should therefore carefully review promotional material before its use to assure themselves that the material will be understood--and not misconstrued--by the station's audience.

4. When should the material terms of a contest be disclosed?

The obligation to disclose the material terms of a contest arises when the station's audience (a) is asked to participate in the contest and (b) has enough information about the contest to make participation possible. Participation in this sense includes any act done to further one's opportunity to win a prize, such as:

(a) Submitting an entry (postcard, telephone call or other).

(b) Undertaking contest-related activities in anticipation of submitting an entry (collecting signatures or proofs-of-purchases, for example).

(c) Listening to a radio station for specific contest information (contest clues, cues to call a special contest telephone number, and so on).

An invitation to participate may be explicit ("Send your guess today!") or implicit ("Collect the greatest number of orange widgets and win!"). The latter is an invitation to participate since it effectively invites the audience to undertake contest-related activities (collecting orange widgets) in anticipation of submitting an entry.

3/ Examples of such promotional announcements are: "Win up to $1,000 on XXXX!" "Play High-Low with XXXX! You may win!" "XXXX, your $100 Cash Words station!"

5. On May 15 station XXXX begins promoting an upcoming contest with announcements such as, "The Spring Sweepstakes Contest is coming soon to XXXX!" On May 20 it adds announcements such as, "Enter the XXXX Spring Sweepstakes!" On May 25 announcements such as, "Win $500 in the XXXX Spring Sweepstakes Contest!" are broadcast. On May 30 the audience is told how to enter the contest. When does the obligation arise to disclose the material terms of the Spring Sweepstakes Contest?

The obligation to disclose the material terms of the contest arises when potential contestants (a) are asked to participate in the contest and (b) have enough information about the contest to make participation possible. The May 15 announcements neither invite participation nor tell how to participate, so disclosure is not required May 15. The May 20 announcements invite participation, but do not tell how to participate; if information about how to participate has not been disseminated, disclosure is not required May 20. Similarly, the May 25 announcements do not tell how to participate, so disclosure is not required. Disclosure is finally required on May 30, for then the audience has both been asked to participate and been told how to participate.

Eligibility Restrictions

6. Station XXXX conducts a call-in contest, each time asking for a contestant from a specified telephone exchange. Once, the announcer intends to ask for a caller from the 632 exchange, but forgets to name the exchange. The first caller is from the 456 exchange. Should he or she be permitted to participate in the contest?

Yes. Any eligibility restriction is a material contest term, and should be disclosed fully and accurately. If a restriction is not reasonably disclosed, that restriction must be presumed by the audience not to apply; and a licensee that applies a restriction not reasonably disclosed will not have conducted the contest substantially as announced.

7. Can any eligibility restriction be applied?

Generally, yes. The rule does not prohibit the use of any eligibility restriction reasonably disclosed. However, some restrictions (for example, race or sex) might be contrary to the public interest. Common eligibility restrictions include time deadlines, residence, and number of entries per person.

Contest Prizes

8. Station XXXX promotes a contest as offering "vacations" at a distant resort. In fact the prizes consist of only hotel accommodations: winners must provide their own transportation, meals, and expense money. Are the announcements misleading?

Yes. Since the term "vacation" popularly connotes more than just lodging, it should not be used where the prize is so limited. Prize descriptions should clearly indicate the nature and value of the prizes offered, and should not mislead, whether by misstatement, exaggeration, implication, or omission of material facts. The ultimate test of descriptions of material terms--including prize descriptions--is how they are likely to be perceived by the station's audience.

9. Station XXXX conducts a contest in which an entrant wins by correctly guessing the prize offered. What information should be disclosed about the prize?

In such a contest a licensee may disclose as much or as little information about the prize as it chooses. Disclosure of the prize is not required in contests where non-disclosure is an essential element in the operation of the contest. However, any information published must be accurate and not misleading. Thus, it would not be an accurate description for a station to advertise a secret-prize contest as offering cash prizes of $1 to $10,000 if the maximum prize to be offered is only $2,000, even though $2,000 does lie between $1 and $10,000.4/ Reasonable rounding-off is of course not misleading.

10. Station XXXX conducts a contest cffering an item of merchandise as grand prize. The item regularly sells for $250 in the station's area, but was bought for $300 worth of advertising time. As consolation prizes, the station made a wholesale purchase of 1,000 T-shirts for $1.25 each, though the equivalent T-shirt sells for $2.00 at retail. For advertising purposes, how should XXXX value the prizes?

Prizes should be promoted at their normal retail value, the retail price a member of the station's audience could expect to pay for the identical prize or its equivalent. In the example given, XXXX should advertise the grand prize as worth $250, and the consolation prizes as worth $2.

11. Station XXXX promotes a contest by saying the winner will receive the keys to an automobile. In fact the winner receives just that: the keys, but no car. Is such advertising misleading?

Probably. The advertising may imply that not only will the keys be awarded, but that an automobile will be part of the prize. If so, and if an automobile is not part of the prize, the station has not fully and accurately disclosed a material term of the contest, and its failure to award the car would constitute a failure to conduct the contest substantially as announced.

12. Station XXXX conducts a contest offering dozens of prize packages collectively worth hundreds of thousands of dollars, but each worth about $5,000. The contest will have two winners, each of whom may choose one of the prize packages. How should the prizes be advertised?

Since only about $10,000 in prizes will be awarded, the licensee should avoid giving the misleading impression that it may award hundreds of thousands of dollars worth of prizes. The truth is, the contest offers only two winners a single prize package each. Announcements indicating that $10,000 in prizes will be offered or given away would be acceptable, as would announcements that each winner will receive $5,000 in prizes. Announcements indicating that, "You can win $10,000 in prizes," would be unacceptable, since the odds that a single person would win both prizes are practically nonexistent.

13. Station XXXX conducts a "Treasure Chest" contest, offering 25 different prizes, each worth about $40. There will be a single winner, who may win 1, 5, 10, or all 25 of the prizes. Would it be acceptable to advertise the contest as a $1,000 Treasure Chest?

4/ High-Low contest present a unique problem, and somewhat greater flexibility in announcing the prize range would be reasonable. However, a serious question of prize overstatement would be raised if several successive secret prizes were offered, all worth substantially less than the maximum announced.

Yes. This differs from the contest in the previous example in that all $1,000 in prizes can be won. As long as all the prizes in the chest can be won (in other words, as long as they are all offered), the sum of their individual values can be publicized without deceptively overstating the prize values. (But see questions 14 and 24.)

14. Station XXXX conducts a contest offering $1,000 to any listener who can present a dollar bill matching a serial number read over the air. During the course of the contest, 1,000 serial numbers are to be broadcast. Would it be acceptable to advertise the contest as offering $1,000,000 in prize money?

No. The licensee should not "offer" more in prizes than it can reasonably expect to award. Because the odds that a listener might have the dollar bill whose serial number is announced are so small, it is likely there will be but a few winners. The odds that there will be 1,000 winners (or any number even approaching that many) are practically nonexistent.

Determining Winners

15. Station XXXX conducts a contest in which the winner is to be selected by a random drawing of entries. Before the drawing, though, a winner is selected by some other means, and the drawing is a sham. Has the contest been conducted substantially as announced?

No. A contest is not conducted substantially as announced if the means of determining the winner is not the same as announced to the public.5/ It is a serious deception when legitimate entrants have no chance to win, as when:

(a) A nonexistent winner is announced to avoid awarding the prize.

(b) The prizes are awarded to predetermined winners.

16. Station XXXX conducts a "Turkey Shoot" contest. Once an hour a contestant who calls the station is permitted to guess how many shots will be required to hit the turkey: one, two, three, or four. Following the guess, a tape recording of shots is played. If the number of shots matches the contestant's guess, the contestant wins a turkey. If not, no prize or a small consolation prize is won. What problems can contests of this type present?

The most common problem is that the winner-determining process may not operate the way it appears to. In the example given, contest procedures imply that whether a particular contestant wins depends entirely on the chance coincidence of his or her guess and the number of shots on the tape. If for any reason chance is not the sole factor determining winners in such a contest, the contest will not have been conducted substantially as announced. Thus, a contest would be conducted improperly if a station employee selects a tape that is known to match or not to match the contestant's guess, or if the number of winners is controlled by some means other than chance.

5/ This and some of the following examples may also involve violations of Section 509 of the Communications Act of 1934, as amended.

17. Station XXXX conducts a contest in which the winner will be the first entrant to identify a secret celebrity; XXXX broadcasts daily clues as to the identity of the celebrity. A listener, confused by a clue, calls the station requesting a clarification. What should XXXX do?

Fair conduct of a contest requires that each entrant have a fair opportunity to win. If special information or assistance that could affect the outcome of a contest is given some entrants without being made available to all, the contest will not have been conducted substantially as announced. Thus, no contestant or group of contestants should be given special information or assistance that is not available to the station's entire audience. An additional factor is present in the case described: Since time of entry partly determines the winner, XXXX should not give any information to the caller that it has not already made available to its audience.

18. What disclosure should be made about tie-breaking procedures?

Where it could reasonably be anticipated that there might be more than one winner for a particular prize, the means of breaking the tie is a material contest term which should be disclosed. For example, a contest with a single $10,000 cash prize ends with 100 eligible "winners." Will the station award each of the 100, $10,000? Will it divide the $10,000 equally among the 100? Will it conduct a random drawing to select a single winner? If the tie could reasonably have been anticipated, a tie-breaking procedure should have been adopted and disclosed.

Changes in Material Contest Terms

19. Can changes be made in contests after they begin?

Changes in material contest terms--including the addition and deletion of terms--may constitute failure to conduct the contest substantially as announced. For the Commission's purposes, a licensee's liability under the rule will be determined by the circumstances of the change; and if the licensee's actions are reasonable, no sanction will be imposed. Factors considered include:

(a) The extent and significance of the change.

(b) Whether the change unfairly disadvantages some contestants.

(c) Whether the change is necessitated by circumstances beyond the licensee's control.

(d) Whether the circumstances requiring the change could have been anticipated.

When it is determined that a material contest term must or should be changed after it has been announced, fair conduct of the contest requires that:

(a) Impact of the change be minimized to reduce the possibility of unfairly disadvantaging some contestants.

(b) The change be announced promptly and conspicuously.

20. Station XXXX begins an hourly call-in contest without mentioning any eligibility restrictions, but decides to limit each contestant to a single call after noticing that a small group of them are making most of the calls. Is this proper?

Yes. Like all other changes in material contest terms, changes in eligibility restrictions will be considered in light of such factors as those mentioned in question 19. Since this change is made to make the contest fair to a greater number of potential contestants and does not unfairly disadvantage any, it is a proper change. However, adequate notice of it should be given, and it should not be applied retroactively.

21. Station XXXX begins a contest in which the winner will be selected by drawing a postcard entry, but does not state a deadline date for accepting entries. Has it improperly failed to disclose a material contest term?

No. However, the deadline date should be announced far enough in advance for a person who wishes to enter the contest to do so. The amount of time required would vary from a few seconds (for telephone entries) to a few days (for simple mail entries) to even longer (for entries requiring special effort). In the case of mail entries, it should be specified whether the deadline date is the date of postmark or the date of receipt.

22. Station XXXX conducts a contest with an announced prize of a vacation trip to Buenos Aires. After the contest begins, though, arrangements for the trip fall through, and XXXX substitutes a different prize. Has the licensee improperly failed to conduct the contest substantially as announced?

The answer depends on the circumstances of the change, as mentioned in question 19. In this case the licensee should:

(a) Take reasonable steps from the beginning to assure itself that the prizes offered will be available when the contest is concluded.

(b) Attempt to secure an equivalent prize if the original becomes unavailable.

(c) Substitute a prize of roughly comparable value if an equivalent prize cannot be secured.

(d) Announce the change to its audience as soon as possible.

The Commission will find the change improper if, for example:

(a) The licensee fails to take reasonable steps from the beginning to assure the availability of prizes.

(b) The licensee did not intend to award the originally offered prize.

(c) The licensee fails to make a good-faith effort to secure an equivalent or comparably valued prize.

(d) The change is not promptly and conspicuously announced to the station's audience.

23. Station XXXX conducts a contest offering a year's car washes as the prize. Two weeks after the contest begins, a set of tires is added to the prize. Two weeks later, a car is added. Is there anything improper about these prize changes?

No. Since no contestant is unfairly disadvantaged by the increases in prize value, these changes are not improper. However, reductions in prize value are suspect, raising the question whether there was a reasonable chance the larger prizes could be won.

Misrepresentations

24. Station XXXX conducts an hourly Turkey Shoot contest, but once a day adds a bonus $100 if the contestant wins a turkey. On a particular day the bonus-prize hour occurs in the early morning; but the station's announcers continue to tell contestants later in the day that they may win $100. Has the contest been conducted improperly?

Yes. When a station states or implies that a prize can be won when in fact it cannot, a material contest term (whether the prize can be won) has not been fully and accurately disclosed, and the contest has not been conducted substantially as announced. Similar misrepresentations occur when:

(a) A station urges its audience to look for a hidden prize before it is hidden.

(b) A station urges submission of entries that it knows no longer have a chance to win (for example, after receipt of a correct entry in a contest where the earliest correct entry is the winner).

(c) A station announces a $1,000 Treasure Chest contest (see question 13), but there is no way all $1,000 in prizes can be won.

25. Station XXXX conducts a contest offering $5,000 in merchandise prizes to a single winner. The winner will be the first person to call a designated telephone number once the station announces that calls will be accepted. The station urges its audience to stay tuned for an imminent announcement that calls will be accepted ("...maybe in five minutes, maybe in five hours, maybe in five days..."), though the announcement will not be made for two weeks. Are the promotional announcements improper?

Yes. Representations that it is possible to win the contest in the immediate future are false if it will not be possible to win for a substantially longer time. Such announcements do not accurately disclose a material contest term (when the prize can be won), and are therefore improper.

Other Problems

26. Station XXXX conducts a contest in which, to win, a person must listen for his or her name to be announced on the air, then call a special telephone number within five minutes. The telephone line is used for other station business, though, and is sometimes busy when contestants call the station. What should the station do?

The station should take special care to see that the telephone line is free when names are broadcast. If attempts to keep the line open do not succeed, the station should change the operation of the contest to assure that contestants have a reasonable chance to win. Failure to take such action may constitute failure to conduct the contest substantially as announced.

27. Station XXXX conducts a contest offering an automobile, and announces a winner. However, the winner does not receive the prize until more than a year after the contest ends. Is the delayed award of the prize improper?

Yes. The prompt award of prizes at the conclusion of a contest is an implied material term of every contest unless there is an announcement to the contrary. Unreasonable delay in awarding prizes, therefore, is a failure to conduct the contest substantially as announced.

28. Station XXXX conducted a Scavenger Hunt contest, publishing a list of items to be collected. As the contest progressed, it became apparent that the list was ambiguous, and XXXX modified the requirements slightly. At the end of the contest there was no clear winner, though two contestants claimed to have met all the requirements. How should the stations have avoided these problems?

Contest rules and procedures should have been carefully reviewed in advance to assure that all likely problems had been anticipated and avoided. In this case scavenger-list descriptions should have been thoroughly analyzed to eliminate ambiguities, and special attention should have been given to the procedure for determining the winner. Any clarifications required during the course of the contest should have been announced to the station's audience so no contestant would have an unfair advantage. Where such precautions are not taken, the contest may not be conducted substantially as announced.

29. Station XXXX plans a contest and sets out rules for its operation. Once the contest begins, however, station employees disregard the rules, and the contest is not conducted substantially as announced. Is the licensee responsible?

Yes. Since contests by their very nature carry great potential for abuse because of the prizes associated with them, the Commission expects licensees to exercise special care in supervising and controlling them to assure that they are conducted fairly and substantially as represented to the public. If due to inadequate licensee supervision, station employees do not conduct a contest properly, the licensee will be held accountable.

EXAMPLES OF PAYOLA

1. An announcer accepts money, food, payments on his car, or other benefits in exchange for an understanding that he will play certain records in his programs and this fact is not disclosed prior to the broadcast of such records.

2. An announcer makes a recording for a fee and royalties with the understanding that the record will be played over the station and this fact is not disclosed prior to the broadcast.

3. An announcer participates in outside activities such as dances or other entertainment, either as a financial backer or a paid performer. In order to increase his income from the event or to insure its success so he will be called upon for other performances, he broadcasts promotional announcements for the event without disclosing his involvement to the public.

4. A station licensee's outside activities includes the ownership of a theatre. A record distributor offers the services of a band, for free, in exchange for heavy promotion of the band's appearance. The licensee broadcasts promotional announcements for the event without identifying either the record distributor's participation or the licensee's involvement to the public.

5. As to outside interests, the Commission has stated: "Even suggestions to employees by the president of the licensee regarding selection of records published by firms controlled by him may lead to increased play of the record and thus serve the private interest of the licensee rather than the public interest and contravenes the Commission's expressed policies in this area."

SUGGESTED GUIDELINES FOR DEALINGS WITH RECORD COMPANIES AND RECORD PROMOTERS

1. When a radio station requests a bulk supply (over 10 copies) of recordings of a given title intended for contests, giveaways or other station promotions, it will provide a management-signed letter acknowledging acceptance and expected use of such bulk supply. This procedure will apply whether recordings are purchased or bartered for commercial time.

2. Review recordings accumulated by a radio station will be controlled by management to prevent resale, and such resale is not authorized. Such accumulated recordings either will be destroyed once retention is no longer desired or will be itemized, receipted, and given to charitable, educational or other institutions with written acknowledgment that the recordings are not to be sold or bartered.

3. The maximum number of copies of free recordings of a given title to be provided for a radio station will be established by the station management and will be limited and intended only for employees involved in music programming.

4. Station management is encouraged to periodically review what has been played, how often and why. Proper criteria for determing record selection should be established, and there should be periodic review to assure staff compliance with the criteria.

5. Radio stations are encouraged to maintain a regular log showing names of all individuals visiting the station or station personnel for music promotion or program purposes; log will show name, company affiliation, company(s) represented and whom contacted.

6. Radio station management shall require an employee to report to his management any offer or solicitation of a bribe.

MEMORANDUM TO EMPLOYEES

This memorandum concerns Sections 317 and 507 of the Communications Act of 1934, as amended. The issuance of this memorandum does not mean that we believe that there have been infractions of the law; we simply wish to remind all personnel of their obligations under the law and under the policies adopted by the Company.

Your obligations under Sections 317 and 507, and our Company's policy, can be stated very simply:

> EVERY EMPLOYEE IS PROHIBITED FROM ACCEPTING ANY MONEY, SERVICE OR OTHER VALUABLE CONSIDERATION FROM ANY PERSON OTHER THAN THE COMPANY FOR BROADCASTING ANY MATERIAL OVER THE STATION.
>
> EVERY EMPLOYEE HAVING ANY VOICE IN THE SELECTION OF BROADCAST MATTER IS PROHIBITED FROM (a) ENGAGING IN ANY OUTSIDE BUSINESS OR ECONOMIC ACTIVITY WHICH WOULD CREATE A CONFLICT OF INTEREST IN THE SELECTION OF BROADCAST MATTER; (b) ACCEPTING ANY FAVORS, LOANS, ENTERTAINMENT OR OTHER CONSIDERATION FROM PERSONS SEEKING THE AIRING OF ANY BROADCAST MATTER IN RETURN THEREFOR; AND (c) PROMOTING OVER THE AIR (EXCEPT BY MEANS OF AN APPROPRIATE COMMERCIAL ANNOUNCEMENT) ANY ACTIVITY OR MATTER IN WHICH THE EMPLOYEE HAS A DIRECT OR INDIRECT FINANCIAL INTEREST.

Your attention is also directed to the fact that Section 507 of the Communications Act of 1934, as amended, makes it a criminal offense, subject to a fine of not more than $10,000 or imprisonment of not more than one year, or both, if any employee fails to disclose to the Company any acceptance or agreement to accept from any person other than the Company, any money, service or other valuable consideration for the broadcast of any material over the station.

Attached to this memorandum is an affidavit which you should execute after reading it and the attached copies of Sections 317 and 507 of the Communications Act of 1934, the FCC's sponsorship identification rule (Section 73.1212) and the 36 interpretations of the applicability of the sponsorship identification rules released by the Commission in May of 1963 and April of 1975.

AFFIDAVIT

I, _____ having first been duly sworn, hereby state that I have read and will comply with the provisions of Sections 317 and 507 of the Communications Act of 1934, as amended, copies of which are attached hereto. I fully understand that any person who violates Section 507 of the Act is subject to the penalties set forth in Section 507(g), consisting of a fine up to $10,000, imprisonment up to one year, or both. I also have read and will comply with the provisions of the Commission's Sponsorship Identification Rule (73.1212), a copy of which is attached hereto.

I also have read the attached FCC Public Notice of September 3, 1975 which sets forth the Commission's 36 interpretations of Section 317 and Rule 73.1212.

I also will comply with the policy of the Company to prohibit every employee having any voice in the selection of broadcast matter from (a) engaging in any outside business or economic activity which would create a conflict of interest in the selection of broadcast matter; (b) accepting any favors, loans, entertainment or other consideration from persons seeking the airing of any broadcast matter in return therefor; and (c) promoting over the air (except by means of an appropriate commercial announcement) any activity or matter in which the employee has a direct or indirect financial interest.

_____
Affiant

Subscribed and sworn to before
me this _____ day of _____,

_____
Notary Public

My commission expires:

ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST

SEC. 317. (a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided,* That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) In any case where a report has been made to a radio station, as required by section 507 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

DISCLOSURE OF CERTAIN PAYMENTS

SEC. 507.[235] [47 U.S.C. § 508] (a) Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d), an announcement is not required to be made under section 317.

(e) The inclusion in the program of the announcement required by section 317 shall consititute the disclosure required by this section.

(f) The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Any person who violates any provision of this section shall, for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both.[236]

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[235] Section 507 was formerly numbered section 508. It was redesignated as section 507 by Public Law 96-507, 94 Stat. 2747, Dec. 8, 1980. This section was added by Public Law 86-752, 74 Stat. 889, Sept. 13, 1960. *See also* note 234.

[236] This section was added by Public Law 86-752, approved September 13, 1960, 74 Stat. 889.

FCC SPONSORSHIP IDENTIFICATION RULE

§ 73.1212 Sponsorship identification; list retention; related requirements.

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) by whom or on whose behalf such consideration was supplied: *Provided, however,* That "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by section 508 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: *Provided, however,* That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified by the licensee under § 73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under § 73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions:

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Attach the list to the program log, if the station is required to keep such log, for the day when the broadcast was made; or retain separately if the station is not required to keep program logs, and

(3) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be retained for a period of two years after broadcast.

(h) Any announcement required by section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

NOTE: The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60-1369; 40 F.C.C. 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 F.C.C. 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

[40 FR 18400, Apr. 28, 1975, as amended at 46 FR 13907, Feb. 24, 1981]

1. CONTENTS OF THE PUBLIC INSPECTION FILE*

The following is an explanatory checklist for the contents of the public file of commercial television stations whose licenses have been regularly renewed. Most of the items required to be placed in the public file must be retained until final FCC action on the *second* renewal application following the application filed for the renewal period during which the documents were placed in the file. Thus, for example, a television station that placed an item in its public file in 1978 and had its license renewed in 1979 would be required to retain the item until final action on its 1984 renewal application. Given the recent lengthening of radio license periods, this provision can result in extended retention periods for some items. For other material, the FCC specifies a shorter period of retention. The rules also state that the FCC may direct a licensee to retain in the public file material related to a pending claim, investigation or complaint. Any such material must be kept until the licensee has been formally notified that the materials may be discarded, or until the claim involved has been satisfied or otherwise disposed of.

In connection with each of the applications listed below, the following items must be retained as well:

- All letters, exhibits and other documents filed as part of the particular application.
- All amendments to the application.
- All subsequent correspondence between the Commission and the applicant concerning the application.
- All documents incorporated by reference in the application.
- All service contour maps and information showing the main studio and transmitter location. Other engineering materials submitted in connection with applications are not required in the public file.

Needless duplication is not necessary, and information that is already contained in earlier materials in the public file may merely be referred to in subsequent materials provided that: (1) the subsequent materials sufficiently identify the earlier information so that it can be easily located in the file; and (2) there was no change in the earlier information and the subsequent materials include a statement to that effect.

Unless specifically stated otherwise, each item in the checklist below must be retained until final action on the station's renewal application for the *second* renewal period after the renewal period when the item was first placed in the public file.

a. Applications:

- Construction Permits for New Stations (FCC Form 301).
- Renewal of License (FCC Forms 303-S, 303-C, 303-N).
- Composite Week Logs (TV Only):

  The FCC will release each year the composite week dates for television licensees filing for renewal *that year.* Television renewal applicants must place a copy of the program logs for the composite week in the public file on the date that the renewal application is due for filing at the FCC. All television licensees filing for renewal in a given year, including those filing the simplified "postcard" renewal form, must include the composite week logs in their public files. The requirement that television licensees place a copy of the composite week logs in the public file at renewal time supercedes the requirement that television licensees file Annual Programming Reports (FCC Form 303-A). Copies of Annual Programming Reports for years prior to 1981 must be kept in the file (along with copies of the composite week logs for those Reports) until the licensee's first renewal under the new simplified renewal procedures.

  TV licensees also should make sure that they retain their programs logs for public inspection for two years.
- Assignment or Transfer of Contol of Licensee (FCC Forms 314, 315, 316).
- Construction Permits for Major Changes in Facilities (FCC Form 301).

  A "major change" is:

  TV: a change in (1) frequency or station location; or (2) a change in power or antenna height above average terrain and/or antenna location, if the change or combination of changes results in a change of 50 percent or more in the area within the Grade B contour of the station.

*From NAB's "A Broadcaster's Guide to Record Retention."

FM: a change in (1) frequency or station location; or (2) a change in power, antenna height above average terrain and/or antenna location or height, if the change or combination of changes results in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour.

AM: any increase in power or any change in frequency hours of operation or station location.

ALL LICENSEES: The Commission may designate other changes, not mentioned above, as major changes by advising the applicant within 15 days after the application is filed. If this occurs, the application must be placed in the public file.

- Application for Extension of Time to Complete Construction of a New Station (FCC Form 701)
- Any Change Affecting Program Service
- If Petitions to Deny have been filed against any of the above applications, a statement to that effect listing the name and address of the person or group that filed the Petition to Deny.

b. Ownership Information

In addition to the Ownership Reports (FCC Form 323), include all documents incorporated by reference in either an Ownership Report or a supplement to an Ownership Report. Again, needless duplication is not required where materials incorporated by reference are already contained in earlier materials in the file, and the incorporation is noted in the documents. Owners with multiple licenses who submit a common Ownership Report for all stations must insert a copy of that Report in the public file of each station owned.

- Ownership Reports (FCC Form 323).
- Network Affiliation Contracts filed on or after May 1, 1969.
- Documents Relating to Ownership or Control of the Licensee. Under Section 73.3613, a licensee must file with the Commission and list on its Ownership Report (FCC Form 323) certain documents and contracts relating to the ownership and control of the station. The contracts and agreements also must be included in the public file. Occasionally, it may be difficult to determine whether a particular item must be filed with the FCC and kept in the public file. While it would be impossible to provide a comprehensive list of all possible contracts and agreements in connection with the operation of a broadcast station, guidelines for particular instruments are listed below:

- Contracts or other agreements relating to the sale of a station or the transfer of the corporate licensee must be included in the public file, regardless of whether an application for FCC consent to the transfer or assignment has been filed.
- Contracts with "time brokers" do *not* have to be included in the public file, although they must be made available to the FCC on request.
- A management agreement with someone who is not an employee of the station must be included in the public file. A management agreement with a station employee, however, need not be placed in the station's public file, unless the agreement provides for the employee to share in profits and losses.
- Union contracts need not be included in the station's public file.
- Copies of network affiliation agreements must be included in the public file.
- For a corporate licensee, the public file should include the Articles of Incorporation and Bylaws of the corporation, together with all amendments to them.
- Subchannel leasing agreements for Subsidiary Communications Authorization operation need not be included in the public file, but must be made available to the Commission on request.
- Agreements or contracts that involve any pledge of the stock of a corporate licensee or an encumbrance of the assets of the station should be included in the public file.
- Transcription agreements or contracts for supplying videotape recordings and film for television must be included in the public file, if they specify option time.
- Music licensing agreements (BMI, ASCAP or SESAC) do *not* have to be included in the public file.

c. Agreements with Citizens' Groups

A copy of every written agreement between a broadcast applicant or licensee, and one or more citizens or citizens' groups, dealing with goals or proposed practices directly or indirectly affecting station operation in the public interest (*e.g.*, ascertainment, programming, employment, etc.).

d. Annual Employment Reports

FCC Form 395, including any related exhibits and correspondence.

e. "The Public and Broadcasting – A Procedure Manual"

The manual was printed in the *Federal Register* on September 5, 1974. Retain indefinitely.

f. Political Broadcasting Records

All requests for broadcast time made by or on behalf of candidates for public office, with a notation of the disposition of each and the charges made for any time sold and records of any free time provided. The NAB Political Agreement Form contains all necessary information and, when properly completed and filed, fulfills this requirement. Retain for 2 years.

g. Letters from the Public

All letters and written comments and suggestions, including anonymous letters, received from members of the public concerning operation of the station and the licensee's programming efforts. Retain for 3 years (from date of receipt by licensee).

The following types of letters need not be placed in the public file:

- Internal and business correspondence.
- Obscene and defamatory letters.
- Written comments or suggestions made by a person who has *specifically requested* that his or her communication not be made available for public inspection.

Television licensees must place letters received from the public in one of two categories: programming and non-programming. If a letter relates to both categories, the licensee should place it in the category that receives the most attention in the letter.

The FCC recently proposed to eliminate the requirement that licensees retain letters from the public and make them available for inspection. A final decision on the proposal has not been issued as of May 31, 1984.

h. Sponsors of Controversial Programming

A list of the chief executive officers or members of the executive committee or the board of directors of a corporation, committee, association or unincorporated group paying for or furnishing to the station broadcast material that is political or involves the discussion of a controversial issue of public importance. Rule 73.1212. Retain for 2 years.

i. List of Community Issues and Responsive Programming

- TV: The annual listing of problems and needs and typical and illustrative programming broadcast in response to those problems and needs.
- AM and FM: A list of at least five to ten community issues to which the station paid particular attention in programming during the preceding three months. This list should be placed in the public inspection file every calendar quarter (*e.g.*, July 1, October 1, January 1 and April 1). A brief narrative must be included to show how each issue was treated, *i.e.*, public service announcements or programs, giving a description of the programs including time, date and duration of each program. These lists are to be retained for the entire license renewal period.

j. TV: Ascertainment Documentation

The following items which document a television staton's ascertainment efforts are *not* required for stations located outside metropolitan statistical areas *and* licensed to communities of 10,000 or less in population. The FCC now (Summer 1984) is considering the further deregulation of television and may, in the future, cut back on the present requirements for documenting ascertainment.

- *Information Relating to the Population Characteristics of the City of License.* The information needed relates to the total population of the city of license including the numbers and proportions of males and females, of minorities, of youth (age 17 and under), and of the elderly (age 65 and older). The population data required may be extracted from either the U.S. Census

Bureau's *County and City Data Book* or its *General Population Characteristics* or similarly reliable reference material. Inclusion of data on portion of the station's service area outside the city of license is optional.

- *Documentation of Community Leader Interviews*, including information identifying:
  - the name, address, organization and position or title of the community leader interviewed;
  - the institution or element in the community represented;
  - the date, time and place of the interview;
  - the name of the principal, management level or other employee of the station conducting the interview;
  - the problems, needs or interests discussed during the interview or a notation that the leader requested that his or her comments be kept confidential; and
  - for interviews conducted by station personnel other than principals or management level staff, the name of the principal or management level employee who reviewed the interview record and date of the review. This documentation must be placed in the public file within 30 to 45 days after completion of the interview.
- *Documentation Concerning the General Public Survey*, including a narrative statement concerning the sources consulted and methods followed in conducting the general public survey, the number of people consulted and the results of the survey. This documentation must be placed in the file within a reasonable time after completion of the survey, but in no event later than the date the station's application for renewal of license is filed.

k. Examples of Records that Need Not Be Included in the Public File

- Minor changes in facilities of an authorized station.
- Licenses to cover construction permits.
- Applications for extension of time to complete construction, *except* in the case of a new station.
- Authorization for remote pickup or STL in connection with operation of broadcast stations.
- Pleadings, briefs, transcripts of testimony and depostions pertaining to hearings on applications.

2. FIELD OPERATIONS BUREAU PUBLIC FILE CHECKLIST

In the "postcard" renewal decision, the FCC announced that it will select at random ten percent of all licensees for on-site inspections by FCC Field Operations Bureau personnel. The FOB inspectors will carry the following checklist of documents that must be included in the public file. The items included are not intended to replace existing public file requirements, but are those "particularly important" documents that the inspectors are sure to check. Licensees are advised to double check these items to make sure they are complete and in the file.

- Most recent renewal application.
- Most recent Ownership Report.
- Annual Employment Reports filed with the Commission after the date that the station's license was last renewed.
- Most recent Model Equal Employment Opportunity Program.
- "The Public and Broadcasting – A Procedure Manual"
- A letter file for letters received from members of the public.
- Composite week logs reflecting the period after the date that the station's license was last renewed (Television Only).
- Statement of TV Program Service.
- A file for requests for time by candidates for public office.
- Annual Problems/Programs lists for the period after the date that the station's license was last renewed (Television Only).
- Quarterly Issues/Programs lists for the period after the date that the station's license was last renewed (Radio Only).
- Leader interview documentation of the period after the date that the station's license was last renewed (Television Only).
- Most recent general public survey documentation (Television Only).

3. RETENTION PERIODS AND RESPONSIBILITY FOR PUBLIC FILE MATERIALS

Here is some additional information that licensees must know about retention periods for public file materials:

(a) All applications, Ownership Reports and materials associated with them, including composite week program logs, ascertainment data and documentation, and the annual listing of problems and needs for television stations or the quarterly issues/programs list for radio stations, must be retained in the public file until the FCC takes final action on the second renewal application filed after the report on application is filed with the FCC. There are, however, exceptions to this general rule.

- Service contour maps and information showing the main studio and transmitter location which concern a former mode of operation (frequency, power, a different directional pattern or transmitter location) need only be retained for three years after the station has commenced operations under a new mode. However, the basic application forms for a former mode of operation must be retained until final action on the second renewal application after the items are placed in the public file.
- All items concerning a given renewal application must be retained until the FCC has taken final action on the second of two additional renewal application. In other words, a pending application for a license renewal must be preceded in the public file by the two previous renewal applications and their related materials. Once the pending application is granted, then the earlier of the two previous applications on file can be discarded.
- Certain materials may have to be retained for a *longer* period than seven years:
  - Materials that have a substantial bearing upon a matter which is the subject of a claim against the licensee, of an FCC investigation or of a complaint to the FCC of which the licensee has been notified must be retained until the licensee receives notice in writing from the FCC that it may discard the particular materials.
  - Materials that have a substantial bearing on a matter which is the subject of a private claim against the licensee must be retained until the claim is satisfied or until the applicable statute of limitations has barred the claim.
  - The FCC's manual. *The Public and Broadcasting* must be kept in the public file indefinitely.

(b) Items that, in themselves, would not have to be included in the public file nevertheless must be included if they are incorporated by reference in applications or other documents that are included.

Note: Incorporation by reference takes place whenever a licensee makes reference in an application or report to information contained in an earlier report or application rather than taking time to restate the earlier material in its entirety. In this regard, licensees should be aware of the fact that if a confidential document (*i.e.*, not available for public inspection) is incorporated by reference in subsequent report or application, that earlier report is no longer confidential and may be inspected by the public.

(c) After materials have been kept in the public file for the required period, the licensee may discard them. If, however, a licensee chooses to retain any materials which were once a required part of the public file, it must still permit any member of the public to inspect those materials upon request. Materials voluntarily retained may be kept in any form and place which the licensee finds convenient. Any party who wishes to examine these materials must make his or her request in good faith, in writing and should be granted access to the materials only at a time and place convenient to both the party and the licensee.

(d) In the event of an assignment or transfer of either a license or construction permit, the seller of the station has the responsibility of maintaining the local file until the Commission approves the assignment and the assignment is consumated. When this occurs, the new owner then has the responsibility for maintaining the local file and must see that all documents required to be maintained before as well as after the assignment are in the file.

4. RECORDS REQUIRED BY THE FCC, BUT NOT REQUIRED TO BE IN THE PUBLIC FILE

Several categories of records must be retained at the station or another specified location and made available for inspection or duplication by the Commission on request. These records need not be made available for inspection by the public. For some categories of contracts and agreements, the Commission's Rules do not specify retention. A reasonable policy would be to retain these agreements during the time they are in effect and until final action on the station's renewal application for the renewal period after the license term during which the agreement expires or at least for the entire time that the contract or agreement is in effect.

- *Equipment Performance Data.* Equipment performance measurement data and curves, with a description of the instruments and procedures employed, signed and dated by the qualified person making the measurements. These records should be retained at the transmitter or remote control point of the station for a period of two years. §73.1590.
- *Operator Designations.* The written designation of the chief operator and agreements with a chief operator serving on a contract basis (the chief operator for an AM station using a directional antenna or operating with greater than 10 kw authorized power, or of a TV station, is to be an employee of the station on duty for the number of hours each week necessary to keep the station's technical operation in compliance with FCC Rules). The written designation of the chief operator should be posted with the operator license. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files. The Commission does not specify the period for which these agreements must be retained. § 73.1870.
- *Rebroadcast Consent.* Where the station rebroadcasts the programming of another station, the station should keep on file a copy of the written rebroadcast consent of the licensee originating a program or any part of a program that is broadcast. FCC regulations do not specify a retention period. §73.1207(b).
- *Tower Agreements.* A copy of any agreement among licensees using a common tower for their antennas designating one such licensee as the party responsible for painting and lighting the structure. A copy of the agreement should be retained in the station file of *each* party to the agreement. FCC regulations do not specify a retention period. § 73.1213(c).
- *Time Brokerage Contracts.* Contracts relating to the sale of time to "time brokers" for resale. FCC rules do not specify a retention period. § 73.3613(d).
- *Time Sales Contracts.* Time sales contracts with the same sponsor for four or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station. § 73.3613(d).
- *Contracts with Chief Operators.* Contracts with chief operators and other engineering personnel. FCC regulations do not specify a retention period. § 73.3613(c).
- *SCA Leasing Agreements.* Subsidiary communications authorization (SCA) subchannel leasing agreements. FCC regulations do not specify a retention period. § 73.3613(d).
- *Operating and Maintenance Logs and Records.* Station operating and maintenance logs and records should be retained in the station files for two years, provided, however, that logs involving communications incident to a disaster or which include communications incident to or involved in an investigation by the Commission and about which the licensee or permittee has been notified, shall be retained until the Commission specifically authorizes in writing their destruction. Logs incident to or involved in any claim or complaint of which the licensee or permittee has notice should be retained until such claim or complaint has been fully satisfied or until the claim or complaint has been barred by statute limiting the time for the filing of the suit or complaint. § 73.1840.

  As of September 1983, the FCC has cut back substantially its requirements for broadcast stations to make periodic equipment observations and record the results in operating and maintenance logs. Experimental and developmental stations and AM directional stations with FCC-approved

sampling systems still must keep operating and maintenance logs in a specific format set forth in the Commisson's rules. Other stations, unless otherwise directed by the FCC, may develop any reasonable system of recording equipment observations.

All stations must keep and retain for two (2) years records or logs covering:

- improper functioning of tower lights;
- each test of the Emergency Broadcasting System (EBS) and information concerning EBS procedures; and
- any other operation and maintenance data required to be kept under the licensee's instrument of authorization.

MEMORANDUM TO STAFF

Re: Public Inspection File

Section 73.3526 of the FCC's Rules and Regulations provides that each broadcast station shall maintain a public file either at the main studios of the station or at any accessible place in the community in which the station is licensed. Such public file must be made available for inspection at any time during regular business hours.

The Commission has ruled that the public file shall be made available on request to anyone without appointment or without identifying the particular document they wish to inspect. Because the public file contains many documents, it will be permissible to ask the person requesting the file: "Is there any specific part of the file you would like to see?" If the person then identifies a specific part of the file, his or her request should be honored. If the person says "No, I would like to see the public file," he or she must be allowed to review the entire file. The FCC has ruled that it is not necessary for anyone inspecting the file to identify the document they wish to review.

On receipt of any inquiries for the public file, the following procedures should be taken:

1. Have an inspection form (giving the name and address of the person inspecting the public file) filled out.* (The inspection form also may include a space for "Organization." However, the person filling out the form cannot be *required* to put anything in this space.)

2. Provide a conference room or other area for the inspection (remember, no advance appointment is needed to inspect the public file).

3. Refer any questions concerning the station's policies and practices to the Station Manager.

4. Deliver to the Station Manager a copy of the inspection form.

**See* Appendix V-C for a suggested inspection form.

REQUEST TO EXAMINE LOCAL PUBLIC INSPECTION FILE

Request is hereby made by:

NAME: _____

ADDRESS: _____

CITY: _____

STATE: _____

PHONE: _____

to examine documents which are contained in station _____ 's public inspection file, pursuant to Section 73.3526 of the rules of the Federal Communications Commission.

OPTIONAL: If there are specific documents which are desired for inspection, please identify them below:

_____

_____

_____

DATE: _____

SIGNED: _____

REQUEST FOR REPRODUCTION OF PUBLIC FILE MATERIALS

_____
Request Date

Please reproduce the following described materials from your public file:

_____

_____

_____

_____

_____

Total No. of Pages _____

I hereby agree to pay you at the rate of _____ cents per page at the time I place my order for duplication. It is understood that I will be called as soon as the material is ready to be picked up by me.

Name _____

Address _____

_____

Telephone No. _____

PROGRAM LOG
PUBLIC INSPECTION REQUEST

Request Date _____

Approved _____

Name _____

Address _____

_____

Phone _____ Affiliation _____

General Purpose of Inspection _____

_____

Logs to be available _____

_____

Logs Inspected _____

_____

Appointment Date _____ Time _____

Inspection Completed _____

Comments _____

_____

_____

_____

Supervision By _____

Developing a Record Retention System*

To organize your record keeping system, first develop a record retention schedule adapted to your particular needs. It should provide a comprehensive list of all records and documents used and should state the retention period for the records. At the outset, you will need to determine what records you must keep by law, how long you have to keep them and what form you have to keep them in. Other records, such as lists of potential advertisers and projections of future sales performance, concern only the station itself. You need to decide how long these records are useful. Some documents, while not used in everyday business and not required by law to be retained, nevertheless could help to preserve your legal rights in the event of a dispute. If a significant amount of money is involved, these documents should be kept for as long as the possibility of a dispute exists. For documents that concern completed business transactions, this period is generally determined by the applicable statute of limitations.

To determine whether to retain or discard particular records, look to why the record initially was prepared. Government regulations require that some records be kept and usually specify the period that the station has to keep them on file. Records retained in the FCC public file are good examples of this sort of record. Other records, such as contracts, invoices and deeds, are retained because they may be needed later to preserve a station's legal rights against other parties. Therefore, in developing a plan for record retention, you should consider:

1. Does a federal, state or local law or regulation require us to keep the record, and, if so, for how long?

2. Whether or not the law requires us to keep the record, do we need to preserve our own legal rights, and, if so, how long?

3. If the record is not necessary to comply with a law or preserve legal rights, how long will the record be useful in our operations?

To answer the first question, decide what the regulation or law requires. To answer the second question, consider the legal right which the record documents or protects. Unless the legal right represented is a "perpetual" one – such as a basic corporate document or a deed to real estate – find out how long the record will be useful to preserve the right.

Statutes of limitations specify the period during which a legal action can be brought to enforce a legal right or obligation. After the statute of limitations period has expired, no action can be brought to enforce a right or seek damages, regardless of the merits of the claim, unless the existence of the claim was fradulently concealed. Thus, for most records which document completed transactions, the statute of limitations period specifies the maximum time that the record could have any use in establishing your legal rights.

Unfortunately, each State has its own statutes of limitations, and various statutes in a single State will give different limitations periods depending on the nature of the action. In addition, statutes of limitations generally have exceptions extending the period for filing a claim if the existence of the claim was fraudulently concealed. Thus, the decision to destroy a particular set of records involves a calculated risk, and, in many instances, reasonable decisions will have to be made about what records to keep and which to discard. Often, these decisions can be made on the basis of (1) the absence of any specific requirement that the document be retained, (2) the likelihood that a question would ever arise, (3) the potential for loss if a claim is made and the document is unavailable, or (4) the availability of the same information in other places.

Employees who maintain the files should be able to determine readily from the schedule what records should be kept and which should be discarded. In larger organizations, it may be efficient to have lower level clerical employees make this determination, subject to review by their supervisors. After the record retention schedule has been developed, take a look at how the records are maintained. Below are some suggestions for handling common record keeping problems.

1. At some stations, there is a running joke that "without George (or Betty), we would never know where anything is." This jest has a serious side, however, since the control of office files by a single individual can result in major difficulties in the event of the death, early retirement or resignation of a key employee. Without a clear policy, the system for organizing the office files may become "personalized" over time. While a single individual may know how to locate neces-

*From NAB's "A Broadcaster's Guide to Record Retention."

sary documents, others will not, and the absence of vital records may not be easily determined.

2. In revising a filing system, documents should be categorized according to the purpose for which they are used and should be filed so as to permit easy removal of documents after their usefulness has expired.

3. When a file is first made up, decide in advance what period will be covered by the contents of the file (*e.g.*, "receipts for 1982 only"). You also should state the period for which the records should be retained (*e.g.*, "retain until 1987"). Then, during an annual or semi-annual review of the files the documents to be discarded can be located without a detailed examination of all the contents of particular files.

4. If your station has several departments, it is important to insist upon a common system for all office files. Personnel from other departments should not have to learn a new filing "language" in order to obtain documents from the files of other departments. One way to avoid this problem is to centralize the responsibility for maintaining office files, even if the files are not kept in one location. In this way, the station's departments can develop a common system for document retention and for periodic purging of the files.

5. The bane of most filing systems is the indiscriminate use of "miscellaneous" files. While some categories of documents will not fall within the specific category of even the most well thought out filing system, the extensive use of miscellaneous files generally indicates that your filing system is not meeting the needs of your organization. In addition, the extensive use of miscellaneous files may result in the unnecessary retention of useless paper or the loss of important documents.

Model Quarterly Issues/Programs List

ISSUE	HOW DETERMINED	TYPE	EXAMPLES	TIME	DATE	DURATION
Energy – cost to consumers.	Our city has a "community chest" fund to help the needy keep warm during the winter. There were a number of federal grants available for insulating homes this year, when energy costs skyrocketed, according to newspaper accounts and industry newsletters.	5-part mini-documentary following morning and afternoon newscasts.	The first installment surveyed the prices charged in this area for heating oil, gas and electricity, comparing them to last year's and the average consumer's pocketbook. Part II: outlook for future – new developments. Part III: insulation tips. Part IV: citizen "on-the-street" responses to energy situation. Part V: money grants available.	7:24 am 6:24 pm	M-F 1/4-1/8	4 minutes per segment
The federal budget.	Given the newspaper coverage, nightly newscasts and discussions at the Chamber of Commerce and state capital, President Reagan's budget appears to be one of the most controversial aspects of his Presidency. Our own community is feeling the pinch.	"One-on-one" hour-long interview show with segments aired during the week, the entire program aired one day each week. Community Job Board.	One show featured an interview with Senator Smith. Another show featured an interview with State Senator Jones, along with Councilwoman Johnson. We feature a job board each day with listings from the local employment office.	9:30 am segments 10:20 am 9:30 am segments 10:20 am 1:20 pm	2/7 2/1-2/5 3/14 3/8-3/12 daily	One hour 4 minutes each One hour 4 minutes each 3 minutes

APPENDIX V-G-1

Model Quarterly Issues/Programs List

ISSUE	HOW DETERMINED	TYPE	EXAMPLES	TIME	DATE	DURATION
Whether or not to fund construction of a sports complex.	The City Council has proposed a sports complex with funds to come, in part, from floating municipal bonds. Debate at Council meetings has been heated, with a large number of citizens attending.	Editorials	During the week preceeding the Council vote on how to deal with the issue, the station opened its mikes to 7 citizens, comprising a cross-section of opinion on this issue.	6:24 pm	3/28-4/3	3 minutes
Water purity.	A local environmental group held a press conference revealing that a number of area towns had asbestos-cement pipes delivering their water, possibly causing contamination. The group urged that these pipes be replaced immediately, while the state health commissioners said more studies should be done first.	"One-on-one" interview show.	One week, the show featured an interview with the attorney for the environmental group. The next week, the assistant commissioner of the state health department was featured.	9:30 am segments 10:20 am 9:30 am segments 10:20 am	3/28 3/22-3/26 4/4 3/29-4/2	One hour 4 minutes each One hour 4 minutes each

FEDERAL COMMUNICATIONS COMMISSION
PRIMER ON PART I SECTION IV-A AND IV-B OF APPLICATIONS FORMS CONCERNING ASCERTAINMENT OF COMMUNITY PROBLEMS AND BROADCAST MATTER TO DEAL WITH THOSE PROBLEMS

A. General

1. Question: With what applications does this Primer* apply in answering Part I, Section IV (A or B) of the application forms?

Answer: With applications for:

(a) construction permit for new broadcast stations;

(b) construction permit for a change in authorized facilities when the station's proposed field intensity contour (Grade B for television, 1 mV/m for FM, or 0.5 mV/m for AM) encompasses a new area that is equal to or greater than 50% of the area within the authorized field intensity contours.

(c) construction permit or modification of license to change station location;

(d) construction permit for satellite television station, including a 100% satellite;

(e) the assignee's or transferee's portion of applications for assignment of broadcast license or transfer of control, except in pro forma cases where Form 316 is appropriate.

Educational organizations filing applications for educational non-commercial stations are exempt from the provisions of this Primer.

2. Question: If Section IV (A or B) has been recently submitted, must an applicant conduct a new ascertainment of community problems and submit a new Section IV?

Answer: Needless duplication of effort will not be required. Prior filings within the year previous to the tender of the present application will generally be acceptable, where they were filed by the same applicant, for the same station or for another station in the same community and there are no significant coverage differences involved. Parties relying on previous filings must specifically refer to the application relied on and state that in their judgment there has been no change since the earlier filing. Proposed assignors and transferors of control are not required to file Part I even where they must file other parts of Section IV.

*As a result of radio deregulation in 1981, this Primer no longer applies to commercial radio-related applications.

3. Question: What is the general purpose of Part I, Section IV-A or IV-B?

Answer: To show what the applicant has done to ascertain the problems, needs and interests of the residents of his community of license and other areas he undertakes to serve (See Question 6, below), and what broadcast matter he proposes to meet those problems, needs and interests, as evaluated. The word "problems" will be used subsequently in this Primer as a short form of the phrase "problems, needs and interests." The phrase "to meet community problems" will be used to include the obligation to meet, aid in meeting, be responsive to, or stimulate the solution for community problems.

4. Question: How should ascertainment of community problems be made?

Answer: By consultations with leaders of the significant groups in the community to be served and surrounding areas the applicant has undertaken to serve, and by consultations with members of the general public. In order to know what significant groups are found in a particular community, its composition must be determined, see Question and Answer 9. The word "group" as used here is broad enough to include population segments, such as racial and ethnic groups, and informal groups, as well as groups with formal organization.

5. Question: Can an applicant rely upon long-time residency in or familiarity with, the area to be served instead of making a showing that he has ascertained community problems?

Answer: No. Such an ascertainment is mandatory.

6. Question: Is an applicant expected to ascertain community problems outside the community of license?

Answer: Yes. Of course, an applicant's principal obligation is to ascertain the problems of his community of license. But he should also ascertain the problems of the other communities that he undertakes to serve, as set forth in his response to Question 1(A)(2) of Section IV-A or IV-B. Applicants for stations licensed to more than one city, or for channels assigned to two or more cities, or proposed transferees or assignees of stations which have obtained waiver of the station identification rules to permit secondary identification with additional cities, are expected to ascertain problems in each of the cities. If an applicant chooses not to serve a major community that falls within his service contours a showing must be submitted explaining why. However, no major city more than 75 miles from the transmitter site need be included in the applicant's ascertainment, even if the station's contours exceed that distance.

7. Question: Must the ascertainment of community problems for the other areas the applicant undertakes to serve be as extensive as for the city of license?

Answer: No. Normally, consultations with community leaders who can be expected to have a broad overview of community problems would be sufficient to ascertain community problems.

8. Question: Should an applicant for a major change in facilities (see Answer 1(b), above) make a new ascertainment of community problems for the entire service area or just the additional area to be served?

Answer: Only the additional area to be served need be subjected to a new ascertainment of community problems. Only communities or areas covered by Question and Answer 6 need be ascertained, to the extent indicated in Answer 7.

9. Question: How does an applicant determine the composition of his city of license?

Answer: The applicant may use any method he chooses, but guesswork or estimates based upon alleged area familiarity are inadequate. Current data from the U. S. Census Bureau, Chamber of Commerce and other reliable studies or reports are acceptable. The applicant must submit such data as is necessary to indicate the minority, racial, or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive.

10. Question: If the applicant shows consultations with leaders of groups and organizations that represent various economic, social political, cultural and other elements of the community, such as government, education, religion, agriculture, business, labor, the professions, racial and/or ethnic groups, and eleemosynary organizations, is the applicant still required to submit a showing in support of its determination of the composition of the community?

Answer: Yes. The purpose of requiring a determination of the community is to inform the applicant and the Commission what groups comprise the community. The applicant must use that information to select those who are to be consulted as representatives of those groups. That determination may be challenged on a showing, including supporting data, that a significant group has been omitted. The "significance" of a group may rest on several criteria, including its size, its influence, or its lack of influence in the community.

B. Consultations with Community Leaders and Members of the General Public.

11(a). Question: Who should conduct consultations with community leaders?

Answer: Principals or management-level employees. In the case of newly formed applicants who have not hired a full staff and are applying for new stations, or for transfer or assignment of an authorization, principals, management-level employees, or prospective management-level employees, must be used to consult with community leaders.

11(b). Question: Who should consult with members of the general public?

Answer: Principals or employees. In the case of newly formed applicants who have not hired a full staff and are applying for new stations, or for transfer or assignment of an authorization, principals, employees or prospec-

tive employees may conduct consultations. If consultations are conducted by employees who are below the management level, the consultation process must be supervised by principals, management-level employees, or prospective management-level employees. In addition, the applicant may choose to use a professional research or survey service to conduct consultations with members of the general public.

12. Question: To what extent may a professional research or survey service be used in the ascertainment process?

Answer: A professional service would not establish a dialogue between decision-making personnel in the applicant and community leaders. Therefore, such a service may not be used to consult community leaders. However, a professional service, as indicated in Answer 11(b), may be used to conduct consultations with the general public. A professional service may also be used to provide the applicant with background data, including information as to the composition of the city of license. The use of a professional research or survey service is not required to meet Commission standards as to ascertaining community problems. The applicant will be responsible for the reliability of such a service.

13(a). Question: With what community leaders should consultations be held?

Answer: The applicant has already determined the composition of the community, and should select for consultations those community leaders that reflect that composition. Groups with the greatest problems may be the least organized and have the fewest recognized spokesmen. Therefore, additional efforts may be necessary to identify their leaders so as to better establish a dialogue with such groups and better ascertain their problems.

13(b). Question: With what members of the general public should consultations be held?

Answer: A random sample of members of the general public should be consulted. The consultations should be designed to further ascertain community problems which may not have been revealed by consultations with community leaders. In addition to a random sample, if the applicant has reason to believe that further consultations with a particular group may reveal further problems or may elicit viewpoints that will give him further insight into its problems, he is encouraged to consult with additional members of that group.

14. Question: How many should be consulted?

Answer: No set number or formula has been adopted. Community leaders from each significant group must be consulted. A sufficient number of members of the general public to assure a generally random sample must also be consulted. The number of consultations will vary, of course, with the size of the city in question and the number of distinct groups or organizations. No formula has been adopted as to the number of consultations in the city of license compared to other communities falling within the station's coverage contours. Applicants for stations in relatively small communities that are near larger communities are reminded that an ascertainment of community problems primarily in the larger community raises a question as to whether the station will realistically serve the smaller city, or intends to abandon its obligation to the smaller city.

15. Question: When should consultations be held?

Answer: In preparing applications for major changes in the facilities of operating stations, a complete new ascertainment must be made within six (6) months prior to filing the application. Applicants for a new facility, or the party filing the assignee or transferee portion of an application for assignment or transfer, are also required to hold consultations with six (6) months prior to filing an appropriate application.

16. Question: Is a showing on the ascertainment of community problems defective if leaders of one of the groups that comprise the community, as disclosed by the applicant's study, are not consulted?

Answer: The omission of consultations with leaders of a significant group would make the applicant's showing defective, since those consulted would not reflect the composition of the community.

17. Question: In consultations to ascertain community problems, may a preprinted form or questionnaire be used?

Answer: Yes. A questionnaire may serve as a useful guide for consultations with community leaders, but cannot be used in lieu of personal consultations. Members of the general public may be asked to fill out a questionnaire to be collected by the applicant. If the applicant uses a form or questionnaire, a copy should be submitted with the application.

18. Question: In consulting with community leaders to ascertain community problems, should an applicant also elicit their opinion on what programs the applicant should broadcast?

Answer: It is not the purpose of the consultations to elicit program suggestions. (See Question and Answer 3.) Rather, it is to ascertain what the person consulted believes to be the problems of the community from the standpoint of a leader of the particular group or organization. Thus, a leader in the educational field would be a useful source of information on educational matters; a labor leader, on labor matters; and a business leader on business matters. However, it is also recognized that individual leaders may have significant comments outside their respective fields, and the applicant should consider their comments with respect to all community problems. The applicant has the responsibility for determining what broadcast matter should be presented to meet the ascertained community problems as he has evaluated them.

19. Question: If, in consulting with community leaders and members of the general public, an applicant receives little information as to the existence of community problems, can he safely assume that only a few problems actually exist?

Answer: No. The assumption is not safe. The applicant should re-examine his efforts to determine whether his consultations have been designed to elicit sufficient information. Obviously, a brief or chance encounter will not provide adequate results. The person interviewed should be specifically advised of the purpose of the consultation. The applicant should note that many

individuals, when consulting with a broadcast applicant, either jump to the conclusion that the applicant is seeking programming preferences, or express community problems in terms of exposure or publicity for the particular group or groups with which they are affiliated. The applicant may properly note these comments, but should ask further questions designed to elicit more extensive responses as to community problems.

20. Question: In responding to Part I of Section IV-A or IV-B how should the applicant identify the community leaders consulted?

Answer: By name, position and/or organization of each. If further information is required to clearly identify a specific leader, it should be submitted.

21. Question: Should the information elicited from a community leader, from the standpoint of the group he represents, be set forth after his name?

Answer: It is not required, but the applicant may find it desirable. The information can be set forth in a general list of community problems.

C. Information Received.

22. Question: Must all community problems which were revealed by the consultations be included in the applicant's showing?

Answer: All ascertained community problems should be listed, whether or not he proposes to treat them through his broadcast matter. An applicant need not, however, list comments as to community problems that are clearly frivolous.

D. Applicant's Evaluation

23. Question: What is meant by an "applicant's evaluation" of information received as to community problems?

Answer: The applicant's evaluation is the process by which he determines the relative importance of the community problems he has ascertained, the timeliness of the various comments, and the extent to which he can present broadcast matter to meet the problems.

24. Question: Is the applicant's evaluation to be included in his application?

Answer: It is not required. Where the applicant's broadcast matter does not appear to be sufficiently responsive to the community problems disclosed by his consultations, the applicant may be asked for an explanation by letter of inquiry from the Commission. See Questions and Answers 25 and 26.

25. Question: Must an applicant plan broadcast matter to meet all community problems disclosed by his consultations?

Answer: Not necessarily. However, he is expected to determine in good faith which of such problems merit treatment by the station. In determining what kind of broadcast matter should be presented to meet those problems,

the applicant may consider his program format and the composition of his audience, but bearing in mind that many problems affect and are pertinent to diverse groups of people.

26. Question: If an applicant lists a number of community problems but in his evaluation determines that he will present broadcast matter to meet only one or two of them, would the proposal be defective?

Answer: A prima facie question would arise as to how the proposal would serve the public interest, and the applicant would have the burden of establishing the validity of his proposal.

27. Question: As a result of the evaluation process, is an applicant expected to propose broadcast matter to meet community problems in proportion to the number of people involved in the problem?

Answer: No. For example, the applicant, in his evaluation (see Question and Answer 23) might determine that a problem concerning a beautification program affecting all the people would not have the relative importance and immediacy of a problem relating to inadequate hospital facilities affecting only a small percentage of the community, but in a life-or-death way.

E. Broadcast Matter to Meet the Problems as Evaluated

28. Question: What is meant by "broadcast matter"?

Answer: Programs and announcements.

29. Question: In the application, must there be a showing as to what broadcast matter the applicant is proposing to what problem?

Answer: Yes. See Public Notice of August 22, 1968, FCC 68-847, 13 RR 2d 1303. The applicant should give the description, and anticipated time segment, duration and frequency of broadcast of the program or program series, and the community problem or problems which are to be treated by it. One appropriate way would be to list the broadcast matter and, after it, the particular problem or problems the broadcast matter is designed to meet. Statements such as "programs will be broadcast from time to time to meet community problems," or "news, talk and discussion programs will be used to meet community problems," are clearly insufficient. Applicants should note that they are expected to make a positive, diligent and continuing effort to meet community problems. Therefore, they are expected to modify their broadcast matter if warranted in light of changed community problems. If announcements are proposed, they should be identified with the community problem or problems they are designed to meet.

30. Question: Can an applicant specify only announcements and no programs to meet community problems?

Answer: A proposal to present announcements only would raise a question as to the adequacy of the proposal. The applicant would have the burden of establishing that announcements would be the most effective method for meet-

ing the community problems he propose to meet. If the burden is not met by the showing in the application, it will be subject to further inquiry.

31. Question: What is meant by devoting a "significant proportion" of a station's programming to meeting community problems? [City of Camden 18 FCC 2d 412, 421, 16 RR 2d 555, 568 (1969)]

Answer: There is no single answer for all stations. The time required to deal with community problems can vary from community to community and from time to time within a community. Initially, this is a matter that falls within the discretion of the applicant. However, where the amount of broadcast matter proposed to meet community problems appears patently insufficient to meet significantly the community problems disclosed by the applicant's consultations, he will be asked for an explanation by letter of inquiry from the Commission.

32. Question: Can station editorials be used as a part of a licensee's efforts to meet community problems?

Answer: Yes.

33. Question: Can news programming be considered as programming to meet community problems?

Answer: Yes. However, they can not be relied upon exclusively. Most broadcast stations, of course, carry news programs regardless of community problems. News programs are usually considered by the people to be a factual report of events and matters – to keep the public informed – and, therefore, are not designed primarily to meet community problems.

34. Question: If an applicant proposes a specialized format (all news, rock and roll, religious, etc.), must it present broadcast matter to meet community problems?

Answer: Yes. The broadcast matter can be fitted into the format of the station.

35. Question: May an applicant rely upon activities other than programming to meet community problems?

Answer: No. Many broadcasters do participate personally in civic activities, but the Commission's concern must be with the licensee's stewardship of his broadcast time in serving the public interest.

36. Question: Are there any requirements as to when broadcast matter meeting community problems should be presented?

Answer: The applicant is expected to schedule the time of presentation on a good faith judgment as to when it could reasonably be expected to be effective.

1976 PRIMER*ON ASCERTAINMENT OF COMMUNITY PROBLEMS BY BROADCAST RENEWAL APPLICANTS

Introduction

The principal ingredient of a licensee's obligation to operate in the public interest is the diligent, positive and continuing effort by the licensee to discover and fulfill the problems, needs and interests of the public within the station's service area. Statement of Policy Re: Commission En Banc Programming Inquiry, 25 FR 7291, 20 RR 1901 (1960). In the fulfillment of this obligation, the licensee must consult with leaders who represent the interests of the community and members of the general public who receive the station's signal. 1960 Programming Policy Statement, supra. This Primer provides guidelines for the licensee of a commercial broadcast station to follow in conducting these consultations. The types of consultations required can best be summarized in a question and answer format.

A. General

Question 1. When must the community survey be conducted?

Answer. The licensee's obligation is to ascertain the problems, needs and interests of the public within the station's service area on a continuing basis. The licensee, therefore, must make reasonable and good faith efforts to ascertain community problems, needs and interests throughout the station's license term.

Question 2. What area should the community survey encompass?

Answer. The licensee is obligated to provide service to the station's entire service area. As a practical matter, however, it is realized that the service contours of a station cover a substantial geographical area. Thus, the licensee is permitted to place primary emphasis on the station's city of license and secondary emphasis outside that area. In any event, no community located more than 75 miles from the city of license need be included in the licensee's survey. Further, if a licensee chooses not to serve a community within the station's contours, a brief statement should be placed in the station's public inspection file explaining the reason(s) therefor.

Question 3. What is the purpose of the community survey?

Answer. The purpose of the community survey is to discover the problems, needs and interests of the public as distinguished from its programming preferences. However, a licensee may, if it wishes, also seek to discover the public's programming preferences.

*As a result of radio deregulation in 1981, this Primer no longer applies to commercial radio renewal applicants.

Question 4. Who must be consulted during the community survey?

Answer. The licensee must interview leaders who represent the interests of the service area and members of the general public.

Question 5. Must a compositional study of the community be conducted?

Answer. A special compositional study of the community need not be conducted. We have identified typical community institutions and elements normally present in most communities and we expect the licensee to utilize this listing in conducting its community leader survey. (See Question and Answer 7, below.) We recognize that all communities are not the same and that other significant institutions or elements may be indigenous to a particular community. However, if a licensee interviews a representative sample of leaders from among the elements in this listing that apply to its community, its coverage of all significant elements will not be open to question. The licensee may, at its option, interview leaders within elements not found on this list.

Question 6. Must the licensee obtain demographic data relating to its community of license?

Answer. A licensee should have on file information relating to the population characteristics of its city of license. The population data required can be extracted from the U. S. Census Bureau's County and City Data Book and General Population Characteristics, (two separate publications), or similarly reliable reference material. The information needed relates to the total population of the city of license; the numbers and proportions of males and females, of minorities, of youths (age 17 and under), and of the elderly (age 65 or older). Inclusion of data on portions of the station's service area outside the city of license is optional.

B. Community Leader Survey

Question 7. What community leaders should be consulted?

Answer. The community leaders consulted should constitute a representative cross-section of those who speak for the interests of the service area. This requirement may be met by interviews within the following institutions and elements commonly found in a community: (1) Agriculture; (2) Business; (3) Charities; (4) Civic, Neighborhood and Fraternal Organizations; (5) Consumer Services; (6) Culture; (7) Education; (8) Environment; (9) Government (local, county, state and federal); (10) Labor; (11) Military; (12) Minority and ethnic groups; (13) Organizations of and for the Elderly; (14) Organizations of and for Women; (15) Organizations of and for Youth (including children) and Students; (16) Professions; (17) Public Safety, Health and Welfare; (18) Recreation; and (19) Religion. A licensee is permitted to show that one or more of these institutions or elements is not present in its community. At its option it may also utilize the "other" category to interview leaders in elements not found on the checklist.

Question 8. If a licensee interviews in all of the above categories will the licensee be considered to have contacted all the significant groups in its community?

Answer. The Checklist is thorough enough for most communities and yet not overly detailed. Interviews in all of its elements will establish the requisite coverage of significant community groups. Whether this coverage is also representative will depend on such factors as number of interviews in each element, size and influence of that element in the community, etc. A licensee is permitted to show that one or more of these categories is not present in its community. It may also, at its option, interview leaders in other categories which may not be found on the Checklist.

Question 9. How many community leaders should be consulted?

Answer. A licensee should consult with leaders on a continuous basis. The Commission's concern, in this regard, is not one of numbers but of representativeness. The licensee's reasonable and good faith discretion as to how many community leaders should be interviewed to establish representativeness will be accorded great weight. However, we have established a reasonable number of interviews (see table below) that a licensee may conduct during the license term*, if it wishes to remove any question as to the gross quantitative sufficiency of its community leader survey. Fewer interviews may be conducted if, in the exercise of its discretion, a licensee determines that a lesser number results in a leadership survey that is representative of its service area.

Population of City of License	Number of Consultations
10,001 - 25,000	60
25,001 - 50,000	100
50,001 - 200,000	140
200,001 - 500,000	180
Over 500,000	220

Question 10. What leaders in each significant institution or element should be consulted?

Answer. There are many community leaders in each of the enumerated institutions and elements. Due to the physical impossibility of interviews with all community leaders, and the practical impossibility of requiring interviews with leaders based on some ratio to population of their constituencies, each licensee is accorded wide discretion in determining what leaders in each of the institutions or elements should be interviewed from time to time. The leadership of some institutions or elements (e.g., government) may remain relatively stable throughout the license term and, thus, interviews with such leaders on several occasions can be expected. In this respect, each consultation with a community leader constitutes a separate ascertainment interview. The licensee should, of course, make reasonable and good faith efforts to consult with various leaders in each significant institution or element and not limit the consultations to the same leaders throughout the license term.

*Since 1976, when this Primer was published, broadcast stations' license terms have been increased from three to five (television) or seven (radio) year terms. Thus, licensees should consider conducting more interviews than the numbers suggested here. For example, if a television station is licensed to a city with 300,000 people, it should consider consulting approximately 300 community leaders, or roughly 60 per year.

Question 11. Who can conduct the community leader consultations?

Answer. Principals, management level and other employees of the station may conduct the community leader consultations. (See Question and Answer 12, below.) When such interviews are conducted by non-management level employees, their efforts must be under the direction and supervision of a principal or management level employee. Also, the results of the interview must be reported to a principal or management level employee within a reasonable period of time after the consultation.

Question 12. Since non-management level employees may conduct community leader interviews, is it necessary for principals and management level employees to be involved in the consultations at all?

Answer. Yes. Community leader consultations may be conducted by any employee who the licensee believes is qualified for the assignment. However, a substantial degree of participation, as interviewers, by principals and management level employees is still necessary. Accordingly, 50 percent of all interviews must be conducted by management level employees.

Question 13. Can a professional research firm conduct the community leader survey on behalf of the licensee?

Answer. No. The licensee is expected on its own behalf to consult with a cross-section of community leaders who represent the interests of the service area. Thus, a professional research firm cannot be used for this purpose.

Question 14. Must the community leader interviews take place in a formal meeting called for the specific purpose of inquiring about community problems, needs and interests?

Answer. The interview process allows for a multiplicity of dialogue techniques. Such interviews, for example, may take place during a meeting called for the specific purpose of discussing community problems, needs and interests, or in a business meeting with a community leader by a principal, management level or other employee of the licensee where community problems, needs and interests are also the subject of discussion. Additionally, such an interview may take place during community leader luncheons, joint consultations (see Question and Answer 15, below), on the air broadcasts (see Question and Answer 16, below), and during news interviews. In any event, appropriate documentation must be obtained (see Question 18, below).

Question 15. Are joint consultations between licensees and community leaders permitted?

Answer. Joint consultations between licensees and community leaders are permitted, provided: (i) each community leader who participates is on a roughly equivalent plane of interest or responsibility; (ii) each community leader is given ample opportunity to freely present his or her opinions as to community problems, needs and interests; and (iii) each licensee participating is given ample opportunity to question each leader.

Question 16. Can community leader interviews taking place during an on-the-air broadcast be used as evidence of a licensee's ascertainment process?

Answer. Ordinarily, a licensee should not rely on this method to ascertain community problems. When, however, such an on-the-air interview reveals a community problem, need or interest which results in the consideration of a future program concerning that problem, need or interest, the consultation may be used as evidence of the licensee's ascertainment efforts.

Question 17. Can community leaders be interviewed via telephone?

Answer. Face-to-face interviews should be the staple of the licensee's ascertainment process. The limited use of the telephone to conduct community leader interviews is permitted, particularly in areas outside the community of license, and other situations where reasons of convenience, efficiency or necessity might apply. However, a licensee should not, through over-reliance on ascertainment by telephone, abuse the flexibility that this medium gives the station.

Question 18. What documentation is required to be placed in the station's public inspection file regarding community leader interviews?

Answer. Within a reasonable time after completion of an interview, which we perceive ordinarily to be 30 to 45 days, the licensee must place in its public inspection file information identifying: (a) the name and address of the community leader consulted; (b) the institution or element in the community represented; (c) the date, time and place of the interview; (d) problems, needs or interests discussed during the interview (unless the leader requests that his comments be kept confidential); (e) the name of the licensee representative conducting the interview; and (f) where a non-manager performed the interview, the name of the principal or management level employee who reviewed the completed interview record. No credit will be given for interviews placed in the public file after the date on which the licensee's renewal application is filed with the Commission.

Question 19. What documentation relating to the community leader interviews must be submitted with the station's application for renewal of license?

Answer. Upon the filing of an application for renewal of license, the licensee must certify that the documentation noted in Question and Answer 18, above, has been placed in the station's public inspection file at the appropriate times. Additionally, the licensee must submit as part of its renewal application a checklist indicating the number of community leaders interviewed during the license term in the enumerated categories set forth at Question and Answer 7 above. If one or more of the institutions or elements is not present in the community, a brief explanation must be included with the checklist.

C. General Public Survey

Question 20. With what members of the general public should consultations be held?

Answer. A random sample of members of the general public should be consulted. For our purposes, a random sampling may be taken from a general city telephone directory or may be done on a geographical distribution basis by means of "man-in-the-street" interviews or questionnaires collected by the licensee. These techniques are illustrative, not exhaustive. Whatever survey technique is utilized by the licensee, there must be a full description of the methodology used to assure a roughly random sampling of the general public and an indication of the total number of general public interviews conducted by that survey technique.

Question 21. What is the purpose of the general public survey?

Answer. Here, again, the primary purpose of the general public survey is to discover the community problems, needs and interests of the public as distinguished from its programming preferences. (See Questions and Answers 3 and 4 above.)

Question 22. How many members of the general public should be surveyed?

Answer. No set number or formula has been adopted. A sufficient number of members of the general public should be consulted to assure a generally random sample. The number, of course, will vary with the size of the community in question.

Question 23. When should the general public survey be conducted?

Answer. Either throughout the license term or within some specific period during the license term, at the licensee's option. In either event, appropriate documentation must be placed in the station's public file within a reasonable time after its completion, which we perceive ordinarily to be 30 to 45 days, but in no event later than the date on which its renewal application is filed with the Commission.

Question 24. Who should consult with members of the general public?

Answer. Principals, station employees, or a professional research or survey service. If consultations are conducted by employees who are below the management level, the consultation process must be supervised by principals or management level employees.

Question 25. What documentation concerning the general public survey is required?

Answer. Each licensee must place in the station's public inspection file a narrative statement concerning the method used to conduct the general public survey, the number of people consulted, and the ascertainment results of the survey. (See also the reference to demographic data in Questions and Answers 6.)

Question 26. What documentation relating to the general public survey must be filed with the station's application for renewal of license?

Answer. Upon the filing of an application for renewal of license, the licensee must certify that the documentation noted in Question and Answer 25, above, has been placed in the station's public inspection file. No other submission is necessary unless specifically requested by the Commission.

D. Programming

Question 27. Must all community problems revealed by the licensee's consultations with community leaders and members of the general public be treated by the station?

Answer. In serving the needs of its community, a licensee is not required to program to meet all community problems ascertained. There are a number of problems which may deserve attention by the broadcast media. The evaluation of the relative importance and immediacy of these many and varied problems, and the determination of how the station can devote its limited broadcast time to meeting the problems that merit treatment, is left to the good faith judgment of the licensee. In making this determination, the licensee may consider the programming offered by other stations in the area as well as its station's program format and the composition of its audience. With respect to the latter factor, however, it should be borne in mind that many problems affect and are pertinent to diverse groups within the community. All members of the public are entitled to some service from each station. While a station may focus relatively more attention on community problems affecting the audience to which it orients its program service, it cannot exclude all other members of the community from its ascertainment efforts and its non-entertainment programming. Indeed, many special interests may be adequately dealt with in programming which has a wide range of audience appeal.

Question 28. Must all community problems revealed by the ascertainment consultations be included in the licensee's showing placed in the public inspection file?

Answer. Yes. The purpose of the community leader and general public consultations is to elicit from those interviewed what they believe to be the community's problems, needs and interests. All ascertained community problems should, therefore, be reflected in the community leader contact reports and in the general public narrative retained in the station's public inspection file.

Question 29. In what form may matter be broadcast to treat ascertained community problems, needs and interests?

Answer. Programs, news and public service announcements. This includes station editorials, ordinary and special news inserts, program vignettes, and the like. (But see Question and Answer 33 below regarding the exclusion from the yearly problems-programs list of announcements and ordinary news inserts of breaking events.)

Question 30. Can a licensee use only news and public service announcements to treat community problems, needs and interests?

Answer. Not necessarily. It is the responsibility of the individual licensee to determine the appropriate amount, kind, and time period of broadcast matter which should be presented in response to the ascertained problems, needs and interests of its community and service area. Where the licensee, however, has chosen a brief and usually superficial manner of presentation, such as news and public service announcements, to the exclusion of all others, a question could be raised as to the reasonableness of the licensee's action. The licensee would then be required to clearly demonstrate that its single type of presentation would be the most effective method for its station to respond to the community's ascertained problems.

Question 31. When should matter broadcast in response to the community's ascertained problems, needs and interests be presented?

Answer. The Commission does not prescribe the time of day at which specific program matter responsive to the community's ascertained problems should be broadcast. Rather, the licensee is expected to schedule the time of presentation based upon its good faith judgment as to when the broadcast reasonably could be expected to be effective.

Question 32. If a licensee utilizes a specialized program format - such as all-news, classical music, religious – must it present broadcast matter to meet community problems, needs and interests?

Answer. Yes. It is the responsibility of the licensee to be attentive and responsive to the problems, needs and interests of the public it is licensed to serve. The licensee's choice of a particular program format does not alter its obligation to meet community problems, needs and interests. The manner in which the licensee presents such responsive programming may, of course, be tailored to the particular format of the station. (See, however, Question and Answer 27, above.)

Question 33. What documentation must be placed in the station's public inspection file regarding the licensee's efforts to program to meet ascertained community problems, needs and interests?

Answer. Each year on the anniversary date of the filing of the station's application for renewal of license, the licensee must place in its public inspection file a list of no more than ten significant problems, needs and interests ascertained during the preceding twelve months. Concerning each problem, need or interest listed the licensee must also indicate typical and illustrative programs broadcast in response to those problems, needs and interests indicating the title of the program or program series, its source, type, a brief description thereof, time broadcast and duration. Such programs do not include announcements (such as PSAs) or news inserts of breaking events (the daily or ordinary news coverage of breaking newsworthy events).

Metropolitan Statistical Areas and their Components as of June 30, 1983

[Population as of April 1, 1980]

	1980 Population (1,000)
Abilene, Tex. MSA	**111**
Taylor County	111
Akron, Ohio PMSA [1]	**660**
Portage County	136
Summit County	524
Albany, Ga. MSA [1]	**112**
Dougherty County	101
Lee County	12
Albany-Schenectady-Troy, N.Y. MSA	**636**
Albany County	286
Green County	41
Montgomery County	53
Rensselaer County	152
Saratoga County	154
Schenectady County	150
Albuquerque, N. Mex. MSA	**420**
Bernalillo County	420
Alexandria, La. MSA	**135**
Rapides Parish	135
Allentown-Bethlehem, Pa.-N.J. MSA [1]	**635**
Warren County, N.J.	84
Carbon County, Pa.	53
Lehigh County, Pa.	272
Northampton County, Pa.	225
Alton-Granite City, Ill. PMSA	**268**
Jersey County	21
Madison County	248
Altoona, Pa. MSA [1]	**137**
Blair County	137
Amarillo, Tex. MSA [1]	**174**
Potter County	99
Randall County	75
Anaheim-Santa Ana, Calif. PMSA [1]	**1,933**
Orange County	1,933
Anchorage, Alaska MSA [1]	**174**
Anchorage Borough	174
Anderson, Ind. MSA [1]	**139**
Madison County	139
Anderson, S.C. MSA [1]	**133**
Anderson County	133
Ann Arbor, Mich. PMSA [1]	**265**
Washtenaw County	265
Anniston, Ala. MSA [1]	**120**
Calhoun County	120
Appleton-Oshkosh-Neenah, Wis. MSA [1]	**291**
Calumet County	31
Outagamie County	129
Winnebago County	132
Asheville, N.C. MSA	**161**
Buncombe County	161
Athens, Ga. MSA [1]	**130**
Clarke County	74
Jackson County	25
Madison County	18
Oconee County	12
Atlanta, Ga. MSA	**2,138**
Barrow County	21
Butts County	14
Cherokee County	52
Clayton County	150
Cobb County	298
Coweta County	39
De Kalb County	483
Douglas County	55
Fayette County	29
Forsyth County	28
Fulton County	590
Gwinnett County	167
Henry County	36
Newton County	34
Paulding County	26
Rockdale County	37
Spalding County	48
Walton County	31
Atlantic City, N.J. MSA	**276**
Atlantic County	194
Cape May County	82
Augusta, Ga.-S.C. MSA	**346**
Columbia County, Ga.	40
McDuffie County, Ga.	19
Richmond County, Ga.	182
Aiken County, S.C.	106
Aurora-Elgin, Ill. PMSA	**316**
Kane County	278
Kendall County	37
Austin, Tex. MSA [1]	**537**
Hays County	41
Travis County	420
Williamson County	77
Bakersfield, Calif. MSA [1]	**403**
Kern County	403
Baltimore, Md. MSA	**2,200**
Anne Arundel County	371
Baltimore County	656
Carroll County	96
Harford County	146
Howard County	119
Queen Anne's County	26
Baltimore City	787
Bangor, Maine MSA [1]	**84**
Penobscot County (pt)	81
Waldo County (pt)	3
Baton Rouge, La. MSA [1]	**494**
Ascension Parish	50
East Baton Rouge Parish	366
Livingston Parish	59
West Baton Rouge Parish	19
Battle Creek, Mich. MSA	**142**
Calhoun County	142
Beaumont-Port Arthur, Tex. MSA [1]	**375**
Hardin County	41
Jefferson County	251
Orange County	84
Beaver County, Pa. PMSA	**204**
Beaver County	204
Bellingham, Wash. MSA [1]	**107**
Whatcom County	107
Benton Harbor, Mich. MSA [1]	**171**
Berrien County	171
Bergen-Passaic, N.J. PMSA	**1,293**
Bergen County	845
Passaic County	448
Billings, Mont. MSA [1]	**108**
Yellowstone County	108
Biloxi-Gulfport, Miss. MSA	**182**
Hancock County	25
Harrison County	158
Binghamton, N.Y. MSA	**263**
Broome County	214
Tioga County	50
Birmingham, Ala. MSA	**884**
Blount County	36
Jefferson County	671
St. Clair County	41
Shelby County	66
Walker County	69
Bismarck, N.Dak. MSA [1]	**80**
Burleigh County	55
Morton County	25
Bloomington, Ind. MSA [1]	**99**
Monroe County	99
Bloomington-Normal, Ill. MSA [1]	**119**
McLean County	119
Boise City, Idaho MSA [1]	**173**
Ada County	173
Boston, Mass. PMSA	**2,806**
Bristol County (pt.)	35
Essex County (pt.)	118
Middlesex County (pt.)	1,130
Norfolk County (pt.)	596
Plymouth County (pt.)	213
Suffolk County	650
Worcester County (pt.)	64
Boston-Lawrence-Salem, Mass.-N.H. CMSA	**3,972**
Boston, Mass. PMSA	2,806
Brockton, Mass. PMSA	183
Lawrence-Haverhill, Mass.-N.H. PMSA	339
Lowell, Mass.-N.H. PMSA	243
Nashua, N.H. PMSA	143
Salem-Gloucester, Mass. PMSA	258
Boulder-Longmont, Colo. PMSA	**190**
Boulder County	190

See footnote on page V-I-15.

[Population as of April 1, 1980]

	1980 Population (1,000)
Bradenton, Fla. MSA [1]	148
Manatee County	148
Brazoria, Tex. PMSA	170
Brazoria County	170
Bremerton, Wash. MSA [1]	147
Kitsap County	147
Bridgeport-Milford, Conn. PMSA	439
Fairfield County (pt.)	332
New Haven County (pt.)	106
Bristol, Conn. PMSA [1]	74
Hartford County (pt.)	63
Litchfield County (pt.)	11
Brockton, Mass. PMSA	183
Bristol County (pt.)	17
Norfolk County (pt.)	5
Plymouth County (pt.)	161
Brownsville-Harlingen, Tex. MSA [1]	210
Cameron County	210
Bryan-College Station, Tex. MSA [1]	94
Brazos County	94
Buffalo, N.Y. PMSA	1,015
Erie County	1,015
Buffalo-Niagara Falls, N.Y. CMSA	1,243
Buffalo, N.Y. PMSA	1,015
Niagara Falls, N.Y. PMSA	227
Burlington, N.C. MSA [1]	99
Alamance County	99
Burlington, Vt. MSA	115
Chittenden County (pt.)	110
Franklin County (pt.)	3
Grand Isle County (pt.)	2
Canton, Ohio MSA [1]	404
Carroll County	26
Stark County	379
Casper, Wyo. MSA [1]	72
Natrona County	72
Cedar Rapids, Iowa MSA [1]	170
Linn County	170
Champaign-Urbana-Rantoul, Ill. MSA [1]	168
Champaign County	166
Charleston, S.C. MSA [1]	430
Berkeley County	95
Charleston County	277
Dorchester County	59
Charleston, W.Va. MSA [1]	270
Kanawha County	231
Putnam County	38
Charlotte-Gastonia-Rock Hill, N.C.-S.C. MSA	971
Cabarrus County, N.C	86
Gaston County, N.C	163
Lincoln County, N.C	42
Mecklenburg County, N.C	404
Rowan County, N.C	99
Union County, N.C	70
York County, S.C	107
Charlottesville, Va. MSA [1]	114
Albemarle County	56
Fluvanna County	10
Greene County	8
Charlottesville city	40
Chattanooga, Tenn.-Ga. MSA [1]	427
Catoosa County Ga	37
Dade County, Ga	12
Walker County, Ga	56
Hamilton County, Tenn	288
Marion County, Tenn	24
Sequatchie County, Tenn	9
Chicago, Ill. PMSA	6,060
Cook County	5,254
Du Page County	659
McHenry County	148
Chicago-Gary-Lake County (Ill.), Ill.-Ind.-Wis. CMSA	7,937
Aurora-Elgin, Ill. PMSA	316
Chicago, Ill. PMSA	6,060
Gary-Hammond, Ind. PMSA	643
Joliet, Ill. PMSA	355
Kenosha, Wis. PMSA	123
Lake County, Ill. PMSA	440
Chico, Calif. MSA [1]	144
Butte County	144
Cincinnati, Ohio-Ky.-Ind. PMSA [1]	1,401
Dearborn County, Ind.	34
Boone County, Ky	46
Campbell County, Ky	83
Kenton County, Ky	137
Clermont County, Ohio	128
Hamilton County, Ohio	873
Warren County, Ohio	99
Cincinnati-Hamilton, Ohio-Ky.-Ind. CMSA	1,660
Cincinnati, Ohio-Ky.-Ind. PMSA	1,401
Hamilton-Middletown, Ohio, PMSA	259
Clarksville-Hopkinsville, Tenn.-Ky. MSA [1]	150
Christian County, Ky	67
Montgomery County, Tenn.	83
Cleveland, Ohio PMSA [1]	1,899
Cuyahoga County	1,498
Geauga County	74
Lake County	213
Medina County	113
Cleveland-Akron-Lorain, Ohio CMSA [1]	2,834
Akron, Ohio PMSA	660
Cleveland, Ohio PMSA	1,899
Lorain-Elyria, Ohio PMSA	275
Colorado Springs, Colo. MSA	309
El Paso County	309
Columbia, Mo. MSA [1]	100
Boone County	100
Columbia, S.C. MSA [1]	410
Lexington County	140
Richland County	270
Columbus, Ga.-Ala. MSA [1]	239
Russell County, Ala	47
Chattahoochee County, Ga	22
Muscogee County, Ga	170
Columbus, Ohio MSA	1,244
Delaware County	54
Fairfield County	94
Franklin County	869
Licking County	121
Madison County	33
Pickaway County	44
Union County	30
Corpus Christi, Tex. MSA [1]	326
Nueces County	268
San Patricio County	58
Cumberland, Md.-W. Va. MSA [1]	106
Allegany County, Md.	81
Mineral County, W. Va.	27
Dallas, Tex. PMSA	1,957
Collin County	145
Dallas County	1,556
Denton County	143
Ellis County	60
Kaufman County	39
Rockwall County	15
Dallas-Fort Worth, Tex. CMSA	2,931
Dallas, Tex. PMSA	1,957
Fort Worth-Arlington, Tex. PMSA	973
Danbury, Conn. PMSA	170
Fairfield County (pt.)	149
Litchfield County (pt.)	21
Danville, Va. MSA [1]	112
Pittsylvania County	66
Danville city	46
Davenport-Rock Island-Moline, Iowa-Ill. MSA [1]	384
Henry County, Ill.	58
Rock Island County, Ill.	166
Scott County, Iowa	160
Dayton-Springfield, Ohio MSA	942
Clark County	150
Greene County	130
Miami County	90
Montgomery County	572
Daytona Beach, Fla. MSA [1]	259
Volusia County	259
Decatur, Ill. MSA [1]	131
Macon County	131
Denver, Colo. PMSA	1,429
Adams County	246
Arapahoe County	294
Denver County	492
Douglas County	25
Jefferson County	372
Denver-Boulder, Colo. CMSA	1,618
Boulder-Longmont, Colo. PMSA	190
Denver, Colo. PMSA	1,429
Des Moines, Iowa MSA	368
Dallas County	30
Polk County	303
Warren County	35
Detroit, Mich. PMSA	4,488
Lapeer County	70
Livingston County	100
Macomb County	695
Monroe County	135
Oakland County	1,012
St. Clair County	139
Wayne County	2,338

See footnote on page V-I-15.

[Population as of April 1, 1990]

	1990 Population (1,000)
Detroit-Ann Arbor, Mich. CMSA	**4,753**
Ann Arbor, Mich. PMSA	265
Detroit, Mich. PMSA	4,488
Dothan, Ala. MSA	**122**
Dale County	48
Houston County	75
Dubuque, Iowa MSA [1]	**94**
Dubuque County	94
Duluth, Minn.-Wis. MSA [1]	**267**
St. Louis County, Minn	222
Douglas County, Wis	44
East St. Louis-Belleville, Ill. PMSA	**300**
Clinton County	33
St. Clair County	268
Eau Claire, Wis. MSA [1]	**131**
Chippewa County	52
Eau Claire County	79
El Paso, Tex. MSA [1]	**480**
El Paso County	480
Elkhart-Goshen, Ind. MSA [1]	**137**
Elkhart County	137
Elmira, N.Y. MSA [1]	**98**
Chemung County	98
Enid, Okla. MSA [1]	**63**
Garfield County	63
Erie, Pa. MSA [1]	**280**
Erie County	280
Eugene-Springfield, Oreg. MSA [1]	**275**
Lane County	275
Evansville, Ind.-Ky. MSA	**278**
Posey County, Ind	26
Vanderburgh County, Ind	168
Warrick County, Ind	41
Henderson County, Ky	41
Fall River, Mass.-R.I. PMSA	**157**
Bristol County, Mass. (pt.)	141
Newport County, R.I. (pt.)	17
Fargo-Moorhead, N. Dak.-Minn. MSA [1]	**138**
Clay County, Minn	49
Cass County, N. Dak	88
Fayetteville, N.C. MSA [1]	**247**
Cumberland County	247
Fayetteville-Springdale, Ark. MSA	**100**
Washington County	100
Fitchburg-Leominster, Mass. MSA	**94**
Middlesex County (pt.)	2
Worcester County (pt.)	92
Flint, Mich. MSA	**450**
Genesee County	450
Florence, Ala. MSA [1]	**135**
Colbert County	55
Lauderdale County	81
Florence, S.C. MSA [1]	**110**
Florence County	110
Fort Collins-Loveland, Colo. MSA [1]	**149**
Larimer County	149
Fort Lauderdale-Hollywood—Pompano Beach, Fla. PMSA [1]	**1,018**
Broward County	1,018
Fort Meyers, Fla. MSA [1]	**205**
Lee County	205
Fort Pierce, Fla. MSA	**151**
Martin County	64
St. Lucie County	87
Fort Smith, Ark.-Okla. MSA	**163**
Crawford County, Ark	37
Sebastian County, Ark	95
Sequoyah County, Okla	31
Fort Walton Beach, Fla. MSA [1]	**110**
Okaloosa County	110
Fort Wayne, Ind. MSA	**354**
Allen County	294
De Kalb County	34
Whitley County	26
Fort Worth-Arlington, Tex. PMSA	**973**
Johnson County	68
Parker County	45
Tarrant County	861
Fresno, Calif. MSA [1]	**515**
Fresno County	515
Gadsden, Ala. MSA [1]	**103**
Etowah County	103
Gainesville, Fla. MSA	**171**
Alachua County	151
Bradford County	20
Galveston-Texas City, Tex. PMSA [1]	**196**
Galveston County	196
Gary-Hammond, Ind. PMSA [1]	**643**
Lake County	523
Porter County	120
Glens Falls, N.Y. MSA [1]	**110**
Warren County	55
Washington County	55
Grand Forks, N.Dak. MSA	**66**
Grand Forks County	66
Grand Rapids, Mich. MSA [1]	**602**
Kent County	445
Ottawa County	157
Great Falls, Mont. MSA [1]	**81**
Cascade County	81
Greeley, Colo. MSA [1]	**123**
Weld County	123
Green Bay, Wis. MSA [1]	**175**
Brown County	175
Greensboro-Winston-Salem-High Point, N.C. MSA	**852**
Davidson County	113
Davie County	25
Forsyth County	244
Guilford County	317
Randolph County	92
Stokes County	33
Yadkin County	28
Greenville-Spartanburg, S.C. MSA [1]	**569**
Greenville County	288
Pickens County	79
Spartanburg County	202
Hagerstown, Md. MSA [1]	**113**
Washington County	113
Hamilton-Middletown, Ohio PMSA [1]	**259**
Butler County	259
Harrisburg-Lebanon-Carlisle, Pa. MSA	**555**
Cumberland County	179
Dauphin County	232
Lebanon County	109
Perry County	36
Hartford, Conn. PMSA	**716**
Hartford County (pt.)	601
Litchfield County (pt.)	8
Middlesex County (pt.)	6
New London County (pt.)	8
Tolland County (pt.)	94
Hartford-New Britain-Middletown, Conn. CMSA	**1,014**
Bristol, Conn. PMSA	74
Hartford, Conn. PMSA	716
Middletown, Conn. PMSA	82
New Britain, Conn. PMSA	142
Hickory, N.C. MSA	**203**
Alexander County	25
Burke County	73
Catawba County	105
Honolulu, Hawaii MSA [1]	**763**
Honolulu County	763
Houma-Thibodaux, La. MSA	**177**
Lafourche Parish	82
Terrebonne Parish	94
Houston, Tex. PMSA	**2,736**
Fort Bend County	131
Harris County	2,410
Liberty County	47
Montgomery County	128
Waller County	20
Houston-Galveston-Brazoria, Tex. CMSA	**3,101**
Brazoria, Tex. PMSA	170
Galveston-Texas City, Tex. PMSA	196
Houston, Tex. PMSA	2,736
Huntington-Ashland, W.Va.-Ky.-Ohio MSA	**336**
Boyd County, Ky	56
Carter County, Ky	25
Greenup County, Ky	39
Lawrence County, Ohio	64
Cabell County, W.Va	107
Wayne County, W.Va	46
Huntsville, Ala. MSA	**197**
Madison County	197
Indianapolis, Ind. MSA [1]	**1,167**
Boone County	36
Hamilton County	82
Hancock County	44
Hendricks County	70
Johnson County	77
Marion County	765
Morgan County	52
Shelby County	40
Iowa City, Iowa MSA [1]	**82**
Johnson County	82

See footnote on page V-I-15.

[Population as of April 1, 1980]

	1980 Population (1,000)
Jackson, Mich. MSA [1]	**151**
Jackson County	151
Jackson, Miss. MSA	**362**
Hinds County	251
Madison County	42
Rankin County	69
Jacksonville, Fla. MSA	**722**
Clay County	67
Duval County	571
Nassau County	33
St. Johns County	51
Jacksonville, N.C. MSA [1]	**113**
Onslow County	113
Janesville-Beloit, Wis. MSA [1]	**139**
Rock County	139
Jersey City, N.J. PMSA [1]	**557**
Hudson County	557
Johnson City-Kingsport-Bristol, Tenn.-Va. MSA [1]	**434**
Carter County, Tenn	50
Hawkins County, Tenn	44
Sullivan County, Tenn	144
Unicoi County, Tenn	16
Washington County, Tenn	89
Scott County, Va	25
Washington County, Va	46
Bristol city, Va	19
Johnstown, Pa. MSA [1]	**265**
Cambria County	183
Somerset County	81
Joliet, Ill. PMSA	**355**
Groundy County	31
Will County	324
Joplin, Mo. MSA [1]	**126**
Jasper County	87
Newton County	41
Kalamazoo, Mich. MSA	**212**
Kalamazoo County	212
Kankakee, Ill. MSA [1]	**103**
Kankakee County	103
Kansas City, Kans. PMSA	**519**
Johnson County	270
Leavenworth County	55
Miami County	22
Wyandotte County	172
Kansas City, Mo. PMSA	**914**
Cass County	51
Clay County	136
Jackson County	629
Lafayette County	30
Platte County	46
Ray County	21
Kansas City, Mo.-Kansas City, Kans. CMSA	**1,433**
Kansas City, Kans. PMSA	519
Kansas City, Mo. PMSA	914
Kenosha, Wis. PMSA [1]	**123**
Kenosha County	123
Killeen-Temple, Tex. MSA [1]	**215**
Bell County	158
Coryell County	57
Knoxville, Tenn. MSA	**566**
Anderson County	67
Blount County	78
Grainger County	17
Jefferson County	31
Knox County	320
Sevier County	41
Union County	12
Kokomo, Ind. MSA [1]	**104**
Howard County	87
Tipton County	17
La Crosse, Wis. MSA [1]	**91**
La Crosse County	91
Lafayette, La. MSA	**190**
Lafayette Parish	150
St. Martin Parish	40
Lafayette Ind. MSA [1]	**122**
Tippecanoe County	122
Lake Charles, La. MSA [1]	**167**
Calcasieu Parish	167
Lake County, Ill. PMSA	**440**
Lake County	440
Lakeland-Winter Haven, Fla. MSA [1]	**322**
Polk County	322
Lancaster, Pa. MSA [1]	**362**
Lancaster County	362
Lansing-East Lansing, Mich. MSA	**420**
Clinton County	56
Eaton County	88
Ingham County	276
Laredo, Tex. MSA [1]	**99**
Webb County	99
Las Cruces, N. Mex. MSA [1]	**96**
Dona Ana County	96
Las Vegas, Nev. MSA [1]	**463**
Clark County	463
Lawrence, Kans. MSA [1]	**68**
Douglas County	68
Lawrence-Haverhill, Mass.-N.H. PMSA	**339**
Essex County Mass. (pt.)	257
Rockingham County, N.H. (pt.)	82
Lawton, Okla. MSA [1]	**112**
Commanche County	112
Lewiston-Auburn, Maine MSA	**85**
Androscoggin County (pt.)	85
Lexington-Fayette, Ky. MSA [1]	**316**
Bourbon County	19
Clark County	28
Fayette County	204
Jessamine County	26
Scott County	22
Woodford County	18
Lima, Ohio MSA	**155**
Allen County	112
Auglaize County	43
Lincoln, Nebr. MSA [1]	**193**
Lancaster County	193
Little Rock-North Little Rock, Ark. MSA	**474**
Faulkner County	46
Lonoke County	35
Pulaski County	341
Saline County	53
Longview-Marshall, Tex. MSA [1]	**152**
Gregg County	99
Harrison County	52
Lorain-Elyria, Ohio PMSA [1]	**275**
Lorain County	275
Los Angeles-Anaheim-Riverside, Calif. CMSA	**11,498**
Anaheim-Santa Ana, Calif. PMSA	1,933
Los Angeles-Long Beach, Calif. PMSA	7,478
Oxnard-Ventura, Calif. PMSA	529
Riverside-San Bernardino, Calif. PMSA	1,558
Los Angeles-Long Beach, Calif. PMSA [1]	**7,478**
Los Angeles County	7,478
Louisville, Ky.-Ind. MSA	**957**
Clark County, Ind	89
Floyd County, Ind	61
Harrison County, Ind	27
Bullitt County, Ky	43
Jefferson County, Ky	685
Oldham County, Ky	28
Shelby County, Ky	23
Lowell, Mass.-N.H. PMSA	**243**
Middlesex County, Mass. (pt.)	235
Hillsborough County, N.H. (pt.)	8
Lubbock, Tex. MSA [1]	**212**
Lubbock County	212
Lynchburg, Va. MSA	**141**
Amherst County	29
Campbell County	45
Lynchburg city	67
Macon-Warner Robins, Ga. MSA	**264**
Bibb County	150
Houston County	78
Jones County	17
Peach County	19
Madison, Wis. MSA [1]	**324**
Dane County	324
Manchester, N.H. MSA	**129**
Hillsborough County (pt.)	112
Merrimack County (pt.)	12
Rockingham County (pt.)	6
Mansfield, Ohio MSA [1]	**131**
Richland County	131
McAllen-Edinburg-Mission, Tex. MSA [1]	**283**
Hidalgo County	283
Medford, Oreg. MSA [1]	**132**
Jackson County	132
Melbourne-Titusville-Palm Bay, Fla. MSA [1]	**273**
Brevard County	273
Memphis, Tenn.-Ark.-Miss. MSA [1]	**913**
Crittenden County, Ark	49

See footnote on page V-I-15.

[Population as of April 1, 1980]

	1980 Population (1,000)
De Soto County Miss.	54
Shelby County, Tenn	777
Tipton County, Tenn	33
Miami-Fort Lauderdale, Fla. CMSA	**2,644**
Fort Lauderdale-Hollywood-Pompano Beach, Fla. PMSA	1,018
Miami-Hialeah, Fla. PMSA	1,626
Miami-Hialeah, Fla. PMSA [1]	**1,626**
Dade County	1,626
Middlesex-Somerset-Hunterdon, N.J. PMSA	**856**
Hunterdon County	87
Middlesex County	596
Somerset County	203
Middletown, Conn. PMSA	**82**
Middlesex County (pt)	82
Midland, Tex. MSA [1]	**83**
Midland County	83
Milwaukee, Wis. PMSA [1]	**1,397**
Milwaukee County	965
Ozaukee County	67
Washington County	85
Waukesha County	280
Milwaukee-Racine, Wis. CMSA	**1,570**
Milwaukee, Wis. PMSA	1,397
Racine, Wis. PMSA	173
Minneapolis-St. Paul, Minn.-Wis. MSA	**2,137**
Anoka County, Minn	196
Carver County, Minn	37
Chisago County, Minn	26
Dakota County, Minn	194
Hennepin County, Minn	941
Isanti County, Minn	24
Ramsey County, Minn	460
Scott County, Minn	44
Washington County, Minn	114
Wright County, Minn	59
St. Croix County, Wis.	43
Mobile, Ala. MSA [1]	**444**
Baldwin County	79
Mobile County	365
Modesto, Calif. MSA [1]	**266**
Stanislaus County	266
Monmouth-Ocean, N.J. PMSA	**849**
Monmouth County	503
Ocean County	346
Monroe, La. MSA [1]	**139**
Ouachita Parish	139
Montgomery, Ala. MSA [1]	**273**
Autauga County	32
Elmore County	43
Montgomery County	197
Muncie, Ind. MSA [1]	**129**
Delaware County	129
Muskegon, Mich. MSA	**158**
Muskegon County	158
Nashua, N.H. PMSA	**143**
Hillsborough County (pt.)	129
Rockingham County (pt.)	14
Nashville, Tenn. MSA [1]	**851**
Cheatham County	22
Davidson County	478
Dickson County	30
Robertson County	37
Rutherford County	84
Sumner County	86
Williamson County	58
Wilson County	56
Nassau-Suffolk, N.Y. PMSA [1]	**2,606**
Nassau County	1,322
Suffolk County	1,284
New Bedford, Mass. MSA	**167**
Bristol County (pt.)	154
Plymouth County (pt.)	13
New Britain, Conn. PMSA [1]	**142**
Hartford County (pt.)	142
New Haven-Meriden, Conn. MSA	**500**
Middlesex County (pt.)	15
New Haven County (pt.)	485
New London-Norwich, Conn.-R.I. MSA	**251**
New London County, Conn. (pt.)	222
Windham County, Conn. (pt.)	3
Washington County, R.I. (pt.)	25
New Orleans, La. MSA	**1,256**
Jefferson Parish	455
Orleans Parish	558
St. Bernard Parish	64
St. Charles Parish	37
St. John The Baptist Parish	32
St. Tammany Parish	111
New York, N.Y. PMSA	**8,275**
Bronx County	1,169
Kings County	2,231
New York County	1,428
Putnam County	77
Queens County	1,891
Richmond County	352
Rockland County	260
Westchester County	867
New York-Northern New Jersey-Long Island, N.Y.-N.J.-Conn. CMSA	**17,539**
Bergen-Passaic, N.J. PMSA	1,293
Bridgeport-Milford, Conn. PMSA	439
Danbury, Conn. PMSA	170
Jersey City, N.J. PMSA	557
Middlesex-Somerset-Hunterdon, N.J. PMSA	886
Monmouth-Ocean, N.J. PMSA	849
Nassau-Suffolk, N.Y. PMSA	2,606
New York, N.Y. PMSA	8,275
Newark, N.J. PMSA	1,879
Norwalk, Conn. PMSA	127
Orange County, N.Y. PMSA	260
Stamford, Conn. PMSA	199
Newark, N.J. PMSA	**1,879**
Essex County	851
Morris County	408
Sussex County	116
Union County	504
Niagara Falls, N.Y. PMSA	**227**
Niagara County	227
Norfolk-Virginia Beach-Newport News, Va. MSA	**1,160**
Gloucester County	20
James City County	23
York County	35
Chesapeake city	114
Hampton city	123
Newport News city	145
Norfolk city	267
Poquoson city	9
Portsmouth city	105
Suffolk city	48
Virginia Beach city	262
Williamsburg city	10
Norwalk, Conn. PMSA [1]	**127**
Fairfield County (pt.)	127
Oakland, Calif. PMSA	**1,762**
Alameda County	1,105
Contra Costa County	656
Ocala, Fla. MSA [1]	**122**
Marion County	122
Odessa, Tex. MSA [1]	**115**
Ector County	115
Oklahoma City, Okla. MSA	**861**
Canadian County	56
Cleveland County	133
Logan County	27
McClain County	20
Oklahoma County	569
Pottawatomie County	55
Olympia, Wash. MSA [1]	**124**
Thurston County	124
Omaha, Nebr.-Iowa MSA	**585**
Pottawattamie County, Iowa	87
Douglas County, Nebr	397
Sarpy County, Nebr	86
Washington County, Nebr	16
Orange County, N.Y. PMSA [1]	**260**
Orange County	260
Orlando, Fla. MSA [1]	**700**
Orange County	471
Osceola County	49
Seminole County	180
Owensboro, Ky. MSA [1]	**86**
Daviess County	86
Oxnard-Ventura, Calif. PMSA [1]	**529**
Ventura County	529
Panama City, Fla. MSA [1]	**98**
Bay County	98
Parkersburg-Marietta, W.Va.-Ohio MSA	**158**
Washington County, Ohio	64
Wood County, W.Va.	94
Pascagoula, Miss. MSA [1]	**118**
Jackson County	118
Pawtucket-Woodsocket-Attleboro, R.I.-Mass. PMSA	**307**
Bristol County, Mass. (pt.)	75
Norfolk County, Mass. (pt.)	6
Worcester County, Mass. (pt.)	8
Providence County, R.I. (pt.)	218
Pensacola, Fla. MSA [1]	**290**
Escambia County	234
Santa Rosa County	56
Peoria, Ill. MSA [1]	**366**

See footnote on page V-I-15.

[Population as of April 1, 1980]

	1980 Population (1,000)
Peoria County	200
Tazewell County	132
Woodford County	33
Philadelphia, Pa.-N.J. PMSA [1]	**4,717**
Burlington County, N.J.	363
Camden County, N.J.	472
Gloucester County, N.J.	200
Bucks County, Pa.	479
Chester County, Pa.	317
Delaware County, Pa.	555
Montgomery County, Pa.	644
Philadelphia County, Pa.	1,688
Philadelphia-Wilmington-Trenton, Pa.-N.J.-Del.-Md. CMSA	**5,681**
Philadelphia, Pa.-N.J. PMSA	4,717
Trenton, N.J. PMSA	308
Vineland-Millville-Bridgeton, N.J. PMSA	133
Wilmington, Del.-N.J.-Md. PMSA	523
Phoenix, Ariz. MSA [1]	**1,509**
Maricopa County	1,509
Pine Bluff, Ark. MSA [1]	**91**
Jefferson County	91
Pittsburgh, Pa. PMSA	**2,219**
Allegheny County	1,450
Fayette County	159
Washington County	217
Westmoreland County	392
Pittsburgh-Beaver Valley, Pa. CMSA	**2,423**
Beaver County, Pa. PMSA	204
Pittsburgh, Pa. PMSA	2,219
Pittsfield, Mass. MSA	**83**
Berkshire County (pt.)	83
Portland, Maine MSA	**194**
Cumberland County (pt.)	179
York County (pt.)	15
Portland, Oreg. PMSA	**1,106**
Clackamas County	242
Multnomah County	563
Washington County	246
Yamhill County	55
Portland-Vancouver, Oreg.-Wash. CMSA	**1,298**
Portland, Oreg. PMSA	1,106
Vancouver, Wash. PMSA	192
Portsmouth-Dover-Rochester, N.H.-Maine MSA	**191**
York County, Maine (pt.)	42
Rockingham County, N.H. (pt.)	67
Stafford County, N.H. (pt.)	82
Poughkeepsie, N.Y. MSA [1]	**245**
Dutchess County	245
Providence, R.I. PMSA	**619**
Bristol County	47
Kent County (pt.)	151
Newport County (pt.)	4
Providence County (pt.)	353
Washington County (pt.)	63
Providence-Pawtucket-Fall River, R.I.-Mass. PMSA	**1,083**
Fall River, Mass.-R.I. CMSA	157
Pawtucket-Woonsocket-Attleboro, R.I.-Mass. PMSA	307
Providence, R.I. PMSA	619
Provo-Orem, Utah MSA [1]	**218**
Utah County	218
Pueblo, Colo. MSA [1]	**126**
Pueblo County	126
Racine, Wis. PMSA [1]	**173**
Racine County	173
Raleigh-Durham, N.C. MSA	**561**
Durham County	153
Franklin County	30
Orange County	77
Wake County	301
Reading, Pa. MSA [1]	**313**
Berks County	313
Redding, Calif. MSA [1]	**116**
Shasta County	116
Reno, Nev. MSA [1]	**194**
Washoe County	194
Richland-Kennewick-Pasco, Wash. MSA [1]	**144**
Benton County	109
Franklin County	35
Richmond-Petersburg, Va. MSA	**761**
Charles City County	7
Chesterfield County	141
Dinwiddie County	23
Goochland County	12
Hanover County	50
Henrico County	181
New Kent County	9
Powhatan County	13
Prince George County	26
Colonial Heights city	17
Hopewell city	23
Petersburg city	41
Richmond city	219
Riverside-San Bernardino, Calif. PMSA [1]	**1,558**
Riverside County	663
San Bernardino County	895
Roanoke, Va. MSA	**220**
Botetourt County	23
Roanoke County	73
Roanoke city	100
Salem city	24
Rochester, Minn. MSA [1]	**92**
Olmsted County	92
Rochester, N.Y. MSA [1]	**971**
Livingston County	57
Monroe County	702
Ontario County	89
Orleans County	38
Wayne County	85
Rockford, Ill. MSA [1]	**280**
Boone County	29
Winnebago County	251
Sacramento, Calif. MSA	**1,100**
El Dorado County	86
Placer County	117
Sacramento County	783
Yolo County	113
Saginaw-Bay City-Midland, Mich. MSA	**422**
Bay County	120
Midland County	74
Saginaw County	228
St. Cloud, Minn. MSA [1]	**163**
Benton County	25
Sherburne County	30
Stearns County	108
St Joseph, Mo. MSA	**88**
Buchanan County	88
St. Louis, Mo.-Ill. PMSA	**1,809**
Monroe County	20
Franklin County	71
Jefferson County	146
St. Charles County	144
St. Louis County	974
St. Louis city	453
St. Louis-East St. Louis-Alton, Mo.-Ill. CMSA	**2,377**
Alton-Granite city, Ill. PMSA	268
East St. Louis-Belleville, Ill. PMSA	300
St. Louis, Mo.-Ill. PMSA	1,809
Salem, Oreg. MSA [1]	**250**
Marion County	205
Polk County	45
Salem-Gloucester, Mass. PMSA	**258**
Essex County (pt)	258
Salinas-Seaside-Monterey, Calif. MSA [1]	**290**
Monterey County	290
Salt Lake City-Ogden, Utah MSA	**910**
Davis County	147
Salt Lake County	619
Weber County	145
San Angelo, Tex. MSA [1]	**65**
Tom Green County	85
San Antonio, Tex. MSA [1]	**1,072**
Bexar County	989
Comal County	36
Guadalupe County	47
San Diego, Calif. MSA [1]	**1,862**
San Diego County	1,862
San Francisco, Calif. PMSA	**1,489**
Marin County	223
San Francisco County	679
San Mateo County	587
San Francisco-Oakland-San Jose, Calif. CMSA	**5,368**
Oakland, Calif. PMSA	1,762
San Francisco, Calif. PMSA	1,489
San Jose, Calif. PMSA	1,295
Santa Cruz, Calif. PMSA	188
Santa Rosa-Petaluma, Calif. PMSA	300
Vallejo-Fairfield-Napa, Calif. PMSA	334
San Jose, Calif. PMSA [1]	**1,295**
Santa Clara County	1,295
Santa Barbara-Santa Maria-Lompoc, Calif. MSA [1]	**299**
Santa Barbara County	299
Santa Cruz, Calif. PMSA [1]	**188**
Santa Cruz County	188

See footnote on page V-I-15.

[Population as of April 1, 1980]

	1980 Population (1,000)
Santa Rosa-Petaluma, Calif. PMSA [1]	**300**
Sonoma County	300
Sarasota, Fla. MSA [1]	**202**
Sarasota County	202
Savannah, Ga. MSA	**221**
Chatham County	202
Effingham County	18
Scranton—Wilkes-Barre, Pa. MSA	**729**
Columbia County	62
Lackawanna County	228
Luzerne County	343
Monroe County	69
Wyoming County	26
Seattle, Wash. PMSA [1]	**1,607**
King County	1,270
Snohomish County	338
Seattle-Tacoma, Wash. CMSA	**2,093**
Seattle, Wash. PMSA	1,607
Tacoma, Wash. PMSA	486
Sharon, Pa. MSA [1]	**128**
Mercer County	128
Sheboygan, Wis. MSA [1]	**101**
Sheboygan County	101
Sherman-Denison, Tex. MSA [1]	**90**
Grayson County	90
Shreveport, La. MSA	**333**
Bossier Parish	81
Caddo Parish	252
Sioux City, Iowa-Nebr. MSA [1]	**117**
Woodbury County, Iowa	101
Dakota County, Nebr	17
Sioux Falls, S. Dak. MSA [1]	**109**
Minnehaha County	109
South Bend-Mishawaka, Ind. MSA	**242**
St. Joseph County	242
Spokane, Wash. MSA [1]	**342**
Spokane County	342
Springfield, Ill. MSA [1]	**188**
Menard County	12
Sangamon County	176
Springfield, Mo. MSA [1]	**208**
Christian County	22
Greene County	185
Springfield, Mass. MSA [1]	**515**
Hampden County (pt)	434
Hampshire County (pt)	81
Stamford, Conn. PMSA [1]	**199**
Fairfield County (pt)	199
State College, Pa. MSA [1]	**113**
Centre County	113
Steubenville-Weirton, Ohio-W. Va. MSA [1]	**163**
Jefferson County, Ohio	92
Brooke County, W.Va	31
Hancock County, W.Va	40
Stockton, Calif. MSA [1]	**347**
San Joaquin County	347
Syracuse, N.Y. MSA [1]	**643**
Madison County	65
Onondaga County	464
Oswego County	114
Tacoma, Wash. PMSA [1]	**486**
Pierce County	486
Tallahassee, Fla. MSA	**190**
Gadsden County	42
Leon County	149
Tampa-St. Petersburg-Clearwater, Fla. MSA	**1,614**
Hernando County	44
Hillsborough County	647
Pasco County	194
Pinellas County	729
Terre Haute, Ind. MSA	**137**
Clay County	25
Vigo County	112
Texarkana, Tex.-Texarkana, Ark. MSA	**113**
Miller County, Ark	38
Bowie County, Tex	75
Toledo, Ohio MSA	**617**
Fulton County	38
Lucas County	472
Wood County	107
Topeka, Kans. MSA	**155**
Shawnee County	155
Trenton, N.J. PMSA [1]	**308**
Mercer County	308
Tucson, Ariz. MSA [1]	**531**
Pima County	531
Tulsa, Okla. MSA	**657**
Creek County	59
Osage County	39
Rogers County	46
Tulsa County	471
Wagoner County	42
Tuscaloosa, Ala. MSA [1]	**138**
Tuscaloosa County	138
Tyler, Tex. MSA [1]	**126**
Smith County	128
Utica-Rome, N.Y. MSA [1]	**320**
Herkimer County	67
Oneida County	253
Vallejo-Fairfield-Napa, Calif. PMSA [1]	**334**
Napa County	99
Solano County	235
Vancouver, Wash. PMSA	**192**
Clark County	192
Victoria, Tex. MSA [1]	**69**
Victoria County	69
Vineland-Millville-Bridgeton, N.J. PMSA [1]	**133**
Cumberland County	133
Visalia-Tulare-Porterville, Calif. MSA [1]	**246**
Tulare County	246
Waco, Tex. MSA [1]	**171**
McLennan County	171
Washington, D.C.-Md.-Va. MSA	**3,251**
Washington, D.C.	638
Calvert County, Md	35
Charles County, Md	73
Frederick County, Md	115
Montgomery County, Md	579
Prince Georges County, Md	665
Arlington County, Va	153
Fairfax County, Va	597
Loudoun County, Va	57
Prince William County, Va	145
Stafford County, Va	40
Alexandria city, Va	103
Fairfax city, Va	19
Falls Church city, Va	10
Manassas city, Va	15
Manassas Park city, Va	7
Waterbury, Conn. MSA	**205**
Litchfield County (pt.)	35
New Haven County (pt.)	170
Waterloo-Cedar Falls, Iowa MSA	**163**
Black Hawk County	138
Bremer County	25
Wausau, Wis. MSA [1]	**111**
Marathon County	111
West Palm Beach-Boca Raton-Delray Beach, Fla. MSA [1]	**577**
Palm Beach County	577
Wheeling, W. Va.-Ohio MSA [1]	**186**
Belmont County, Ohio	83
Marshall County, W.Va	42
Ohio County, W.Va	61
Wichita, Kans. MSA [1]	**411**
Butler County	45
Sedgwick County	367
Wichita Falls, Tex. MSA	**121**
Wichita County	121
Williamsport, Pa. MSA [1]	**118**
Lycoming County	118
Wilmington, Del.-N.J.-Md. PMSA [1]	**523**
New Castle County, Del	398
Cecil County, Md	60
Salem County, N.J	65
Wilmington, N.C. MSA	**103**
New Hanover County	103
Worcester, Mass. MSA	**403**
Worcester County (pt.)	403
Yakima, Wash. MSA [1]	**173**
Yakima County	173
York, Pa. MSA [1]	**381**
Adams County	68
York County	313
Youngstown-Warren, Ohio MSA [1]	**531**
Mahoning County	289
Trumbull County	242
Yuba City, Calif. MSA [1]	**102**
Sutter County	52
Yuba County	50

[1] MSA's and PMSA's whose June 30, 1983 definition is the same as an SMSA recognized as of June 1981.

Source: U.S. Bureau of the Census, unpublished data.

SUGGESTED LEADER CONTACT FORM

COMMUNITY LEADER SURVEY

STATION_____

DATE_____

Community Leader Contacted:

NAME_____

ADDRESS_____

CITY_____

ORGANIZATIONS/OCCUPATION:_____

_____

_____

_____

_____

CHECK BOXES WHICH BEST DESCRIBE PERSON INTERVIEWED

- ☐ Agriculture
- ☐ Business
- ☐ Charities
- ☐ Civic, Neighborhood, and Fraternal Organizations
- ☐ Consumer Services
- ☐ Culture
- ☐ Education
- ☐ Environment
- ☐ Government
- ☐ Labor
- ☐ Military
- ☐ Minority or Ethnic Group
  - ☐ Black
  - ☐ Hispanic, Spanish, or Spanish-surnamed American
  - ☐ American Indian
  - ☐ Oriental
  - ☐ Woman
- ☐ Organization for/of the Elderly
- ☐ Organization for/of Youth or Students
- ☐ Professions
- ☐ Public Safety, Health, and Welfare
- ☐ Recreation
- ☐ Religion
- ☐ Other_____

COMMUNITY PROBLEMS, NEEDS, AND INTERESTS AS STATED BY COMMUNITY LEADER:

[Use other side of paper if needed]

Name of Person Conducting Interview_____

Reviewed by_____

Title_____

_____
Leader Signature

Date_____

SAMPLE - COMMUNITY LEADER ANNUAL CHECKLIST

Institution/Element	Number	Not Applicable (Explain Briefly)
1. Agriculture		
2. Business		
3. Charities		
4. Civic, Neighborhood and Fraternal Organizations		
5. Consumer Services		
6. Culture		
7. Education		
8. Environment		
9. Government (local, county, state & federal)		
10. Labor		
11. Military		
12. Minority and ethnic groups		
13. Organizations of and for the Elderly		
14. Organizations of and for Women		
15. Organizations of and for Youth (including children) and Students		
16. Professions		
17. Public Safety, Health and Welfare		
18. Recreation		
19. Religion		
20. Other		
While the following are not regarded as separate community elements for purposes of this survey, indicate the number of leaders interviewed in all elements above who are:		
(a) Blacks		
(b) Hispanic, Spanish speaking or Spanish-surnamed Americans.		
(c) American Indians		
(d) Orientals		
(e) Women		

ASCERTAINMENT OF COMMUNITY NEEDS:

SUGGESTIONS FOR THE SURVEY OF THE GENERAL PUBLIC

National Association of Broadcasters
1771 N Street, N.W.
Washington, D. C. 20036

ASCERTAINMENT OF COMMUNITY NEEDS

Background

Under present Federal Communications Commission procedures, applicants for broadcast licenses – both radio and television – must determine the important problems that exist in the communities the licensee is to serve. However, only television and noncommercial radio station licensees are required to conduct formal ascertainment. This requirement to formally ascertain community needs applies to renewal applications as well as to initial applications, applications for major changes in facilities, and applications for assignment or transfer.

The FCC guidelines for ascertainment of community problems are contained in its primer on *Ascertainment of Community Problems by Broadcast Renewal Applicants*, which was issued in its present form on January 7, 1976. According to this primer, which no longer governs commercial radio licensees, an applicant must use two means of determining community needs: 1) consultations with community leaders in the communities served by the licensee, and 2) survey of the general public in the applicant's community of license. The purpose of this NAB document is to offer some suggestions for carrying out the second of the Commission's requirements – the survey of the general public.

Limitations

While it is hoped that these suggestions will be helpful, some inherent limitations must be noted. It is impossible to design a sample survey that is universally applicable to those broadcast licensees who still are required to conduct formal ascertainment; the suggestions made here must be interpreted and modified based on each licensee's particular situation. Consequently, this document is intended as a supplement to, not a substitute for, the FCC primer; similarly, it is not as a substitute for competent legal advice. The description of survey methods is limited; more complete discussion and examples can be found in NAB's *Broadcast Research Primer*.

Survey Research Methods

Generally speaking, surveys of the public consist of three distinct steps: the sample design, data collection and analysis. In addition, the FCC requires documentation of the survey.

Sample design: Although the primer has intentionally omitted any reference to "statistically reliable sampling," it does specify that a "ramdom sample" of the general public must be consulted. In theory, therefore, the sample of people to be contacted should be determined in a way that every person in the population has an equal chance of being selected for the sample. In practice, there are many methods used – some very sophisticated – to select random samples of the population that is to be studied. For the purposes of meeting the FCC's requirement of "randomness," however, probably the most straightforward procedure involves using telephone directories. Although this obviously excludes people who do not have telephones (or who have unlisted numbers), the proportion of people having telephones is high enough in most communities to allow sampling from telephone directories without introducing significant bias, and the Commission has stated that sampling from telephone directories is appropriate.

An example of how telephone directories can be used to select a "random sample" is given in the Appendix at the end of this document.

Data collection: The most commonly used methods of obtaining information from the people selected in the sample are telephone interviews, personal (face-to-face) interviews and mail surveys. The survey can be conducted by principals, station employees or professional researchers. The FCC requires, however, that employees below the management level be supervised by principals or management.

The FCC previously stated its objections to the use of a questionnaire that is returned voluntarily through the mail by the respondent, on the basis that such a technique could introduce a strong "cooperation bias," *i.e.*, that the people who mailed back the questionnaires would differ significantly from those who did not bother to return

the questionnaire. Subsequent conversations with key FCC personnel indicate that mail surveys can be acceptable if steps are taken to eliminate this "cooperation basis." The most straightforward way to do this is to obtain responses from a large percentage of people to whom the questionnaire is sent. This can be done by sending follow-up letters, or by telephoning people who don't respond to the original questionnaire, asking them to fill out and return the questionnaire.

Whether the survey is to be done verbally (telephone or face-to-face) or by mail, a questionnaire is necessary. Although generally the design of questionnaires can be a difficult task requiring sophisticated expertise, a relatively simple questionnaire should be adequate for this task. The following pages give examples of questionnaires that have been used by broadcasters to survey the public. Some were used for personal (or telephone) interviews, and some were used in mail surveys. Note that no questions have been asked concerning program preferences; while such questions may provide useful management information to you, program preferences are *not* the community needs and problems that the FCC requires that you determine. There is nothing wrong with using the survey to ask questions about program preferences, opinions about the station, etc., but such questions should follow, not precede, the questions about community problems.

The survey can be done at any time during the license period. The survey results must be placed in the station's public inspection file within a reasonable time after completing the survey.

QUESTIONNAIRE #1

Telephone No._____

This is_____of KXXX Broadcasting Company. We are taking a public opinion survey in your community, and I'd appreciate it if you would answer a few questions for me.

1. What would you say is the single most important problem currently facing your community?

2. Could you indicate some other problems currently facing your community?

3. What would you say is the single most important problem currently facing the nation?

4. Now please indicate some other problems currently confronting the nation.

5. Are there any other problems you would like to mention?

Now I would like to ask you a few more questions for classification purposes.

6. Which of the following age groups are you in?
(READ IN CONSECUTIVE ORDER)

a. 12 - 17 _____
b. 18 - 34 _____
c. 35 - 49 _____
d. 50+ _____
e. Refused or N/A _____

Page 2

7. Could you please tell me the occupation of the head of the household?

8. Sex of respondent:

Male_____
Female_____

9. Could you please tell me your race?

Caucasion _____
Black_____
Hispanic_____
American Indian_____
Oriental_____
Other_____
N/A_____

NAME_____ADDRESS_____

CITY_____COUNTY_____STATE_____

DATE_____

INTERVIEWER'S INITIALS_____

APPENDIX V-L-6

QUESTIONNAIRE #2

KXXX-TV

Personal Interview Questionnaire

COMMUNITY PROBLEMS AND NEEDS SURVEY

Code #_____

1. Respondent's name_____

2. Respondent's address:

   a. city, village or town: _____

   b. street address:_____Zip_____

3. Sex: Male_____ Female_____

4. Age: Adult____ Youth_____

5. Race: Black_____ Hispanic_____ American Indian_____
   Oriental_____ Caucasion_____ Other_____

6. In your opinion, what is the greatest current problem that is common to the entire_____metropolitan area?

7. Will you name other major metropolitan area wide problems that need immediate attention?

8. Can you think of any need the metropolitan area has that is not related to any particular major problem?

9. Does your own immediate community (ward, city, village or town) have any major problems?

10. What, if anything, does your immediate community need that is not related to any major problems?

11. Additional significant comments of respondent:

12. Name of interviewer _____

13. Date_____

QUESTIONNAIRE #3
COVER LETTER

Dear Friend:

We at Station KXXX-TV have continuously attempted to maintain contacts with local citizens and community organizations throughout our coverage area so as to remain closely aware of the varying needs and problems of the audience we serve.

At the present time, KXXX-TV, like all other broadcast stations in (name of state) , is preparing its application for regular renewal of license to present to the Federal Communications Commission.

You have been selected to help us in determining the needs, issues and problems facing your community, which is one aspect that the FCC requires for our renewal application. Your answers will assist KXXX-TV to develop its broadcast operations to better serve such needs and interests.

We are asking you to take a few minutes of your time to answer the enclosed questionnaire. We should emphasize that this survey seeks to obtain your own personal view as to what, if any, are the issues, needs or problems facing your community. These would include such matters as (and we mention these only as possibilities to help focus on the type of information desired) pollution, overcrowded schools or need for expanded economic development.

For your convenience we have enclosed a self-addressed stamped envelope.

Your cooperation is greatly appreciated.

Cordially,

KXXX-TV
General Manager

QUESTIONNAIRE #3
FOLLOW-UP LETTER

Dear Viewer:

In June, 19_____ , a questionnaire was mailed to you; as yet we've not heard from you. We are again asking your help.

We at station KXXX-TV have continuously attempted to maintain contacts with local citizens, community organizations and youth throughout our coverage area so as to remain closely aware of the varying needs and problems of the audience we serve.

At the present time KXXX-TV, like all other broadcast stations in (name of state) , is preparing its application for regular renewal of license to present to the Federal Communications Commission.

You have been selected to help us in determining the needs, issues and problems facing your community, which is one aspect that the FCC requires for our renewal application. Your answers will assist KXXX-TV to develop its broadcast operations to better serve such needs and interests.

As of this writing we have not received your questionnaire. Again, we are asking that you take a few minutes of your time to answer the enclosed questionnaire. We should emphasize that this survey seeks to obtain your own personal view as to what, if any, are the issues, needs or problems facing your community. These would include such matters as (and we mention these *only* as possibilities to help focus on the type of information desired) pollution, overcrowded schools or need for expanded economic development.

Perhaps you have mislaid your origninal questionnaire. For your convenience we have enclosed a duplicate questionnaire and a self-addressed stamped envelope.

Thank you for your cooperation. We would appreciate your answer by July 15, 19_____.

Cordially,

KXXX-TV
General Manager

QUESTIONNAIRE #3

KXXX-TV COMMUNITY NEEDS QUESTIONNAIRE

Date_____

NAME_____

ADDRESS_____

_____

1. What, in your opinion, are the major needs and problems of your community?_____

_____

_____

_____

_____

2. Do you have any suggestions about how television stations could serve the community needs and problems you've listed?

_____

_____

_____

_____

_____

Some comments on each of these questionnaires:

Questionnaire #1: This questionnaire is intended for a telephone or personal interview. It was used by a television station in a large city. Personal data on the respondent (age, sex, race, etc.) are asked to the *end* of the interview; in general, interviews are more effective if such questions are asked at the end of the interview, after the respondent has given his or her opinions about community problems.

Questionnaire #2: This questionnaire was used for personal interviews. Note that the questions distinguish between problems in the respondent's *immediate* community and problems common to the wider metropolitan area. The FCC does not require that such a distinction be made; asking the questions in this way probably elicits more information from the respondent, however, since it requires him or her to consider "community need" from two different viewpoints.

Questionnaire #3: This mail questionnaire was used in a smaller television market. The form was mailed with the cover letter that precedes the questionnaire. The follow-up letter then was sent to people who did not respond to the original request along with another copy of the questionnaire. As indicated above, a strong follow-up effort generally is necessary in mail surveys to obtain sufficient responses to minimize the effect of cooperation bias.

Note that all of these questions are "open-end"—*i.e.*, the respondent answers in his or her own words, and is not restricted to choices selected from a list. As an alternative, a "closed-end" approach could be used—a list of possible problems could be shown (or read) to the respondent, with a request that the respondent select those he or she feels are important to the community. This "closed-end" approach has several advantages—the responses don't require coding, and the list of problems may serve to remind the respondent of a problem that he or she may otherwise overlook. It is not recommended, however, since it is difficult to make a list that covers all potential problems, and there is danger of such a list affecting a respondent's answer because of the structure of the list.

Analysis

Unless a very large number of people are interviewed, results of the survey can be tabulated by hand by station personnel. The first step is to edit each questionnaire to correct any obvious errors by interviewers, and to check for clarity of the respondents' answers. Ideally, unclear responses should be checked by contacting the respondent to determine what he or she meant by the response.

If open-end questions are used (as in the sample questionnaires included here), then these must be coded. In some survey research work, coding of questionnaires can be a difficult and complicated task. In this case, however, coding should not be difficult for the simple questions that can be used to determine the public's view of important community problems. Coding consists of two steps: first, developing a list of categories of answers that are given to the question, and second, asigning the answer given by each respondent to one of these categories. Suppose, for example, that we have a total of 200 completed questionnaires, and that we wish to code responses to the first question in Questionnaire #1, which asks, "What would you say is the single most important problem facing your community?"

To accomplish the first step, we take a sample of perhaps 40 of the 200 questionnaires (selecting every fifth questionnaire), and use these to determine categories of problems that respondents have identified. For example, among the forty respondents, one may say that the most important problem is "the high cost of living," another might say "rising prices," and a third might identify "inflation" as the major problem. These could all be lumped into a category of "inflation." Similarly, three other respondents may reply that the major problem is "nothing for kids to do," "no recreational facilities for children," and "teenagers hanging around the street;" these might fall into a category of "lack of recreational facilities and activities for children." By going through forty questionnaires, a list of categories of responses can be developed, which might look like this:

1. Inflation
2. Lack of recreational facilities

3. Crime in the streets
4. Overcrowded schools
5. Unemployment – lack of economic opportunity
6. Lack of civic pride
7. Lack of respect for authority
8. Racial discrimination in employment
9. Generally poor relations between races
10. Drugs
11. Don't know
12. Other

The responses on each of the 200 questionnaires then would be assigned to one of these categories (or more than one category, if more than one answer is given). When coding the responses on these questionnaires, the code number (in this case, a number between 1 and 12) often is written in colored pencil beside the question on each questionnaire. Tabulating the results then is simply a matter of counting the number of responses for each code; the raw number of responses often then is converted to percentages. For example, for the 200 questionnaires, we might find something like:

CODE	NUMBER OF RESPONSES	% OF TOTAL RESPONSES
1. Inflation	36	18%
2. Lack of recreational facilities	16	8
3. Crime in the streets	24	12
4. Overcrowded schools	10	5
5. Unemployment – lack of economic opportunity	24	12
6. Lack of civic pride	6	3
7. Lack of respect for authority	6	3
8. Racial discrimination in employment	16	8
9. Generally poor relations between races	20	10
10. Drugs	34	17
11. Don't know	4	2
12. Other	4	2
	200	100%

Documentation

After the analysis is completed, documentation of the survey must be placed in the station's public inspection file. This documentation should include a description of the method used to conduct the survey, the number of people contacted and the survey results; it should be placed in the files within a "reasonable time . . . ordinarily 30 to 45 days" after completion of the survey.

APPENDIX

Sample Selection from Telephone Directory

Before a sample of names can be drawn from a telephone directory, the number of names needed must be determined. Because not all people whose names are drawn will be able to be contacted – some people won't be home when the interviewer calls, others will refuse to be interviewed – the original sample must be larger than the intended number of completed interviews. In general, the initial sample should be between 50% larger and twice as large as the number of completed interviews that is

desired. For the sake of illustration, assume that we want to complete 500 interviews, and that we will therefore select 1,000 names.* These names would be selected in the following way:

a. Say the telephone directory has 100 white pages. Dividing the 1,000 numbers wanted by 100 gives us 10; so we will need to select 10 numbers per page. (If we wanted 200 numbers we would take 2 per page; if we wanted 50 we would take 1 every other page.)

b. Let's say the directory has three columns on each page, and we will pick one column from which to draw the ten names. The selection should be random; so we could put three slips of paper, numbered 1, 2 and 3 in a hat and draw one. But we have a list of random numbers in Figure 1, below. These numbers have in effect already been "drawn from a hat" and listed here. Start at the top of any of the columns of random numbers and go down (or start at the bottom and go up, or go across) until we come to a number between 1 and 3. For example, if we look at the top of the last column on the right, the first number is 8 (which we can't use) and the next one down is 2. So use the second column on each page for the names needed.

c. Say each column in the directory is 10 inches deep. Pick a random number between 01 and 10, this time looking at two-digit numbers on the list of random numbers. For example, if we use the first two columns of numbers, starting with 70, notice that the first usable number we come to as we go down is 06, about half way down the table. We have now determined that we will start listing telephone numbers for the sample 6 inches from the top of the second column in the directory.

d. On a ruled form (sheets with, say, ten lines each), we then would copy ten telephone numbers. We could start with the number nearest to the 6-inch mark from the top of the second column on each page, and list every fifth number until 10 numbers had been listed. If we reach the bottom of the column before listing the tenth name, we simply would continue the counting process at the top of the next column. We would use only residential numbers, skipping commercial or institutional listings. It also is desirable to copy the names, so interviewers can use them in interviewing.

The idea behind all this is to make all decisions without our whim entering into it and to spread the selection throughout the directory, systematically. Should we run out of numbers before we complete the survey, we would make another similar but smaller selection from throughout the book.

Figure 1 Table of Random Numbers

70361	41836	33098	69782	56399	55494	44017	48019	01348
85884	08785	41152	29927	30667	99040	33031	06081	45402
76390	36976	62785	06008	03027	69882	46955	16951	42276
48891	74601	90030	27953	69905	43592	89734	24807	23802
62971	40993	79767	24327	69905	45315	10331	52809	06032

*The figures used here are for illustrative purposes; the number of interviews will vary with the size of the community. While the FCC has specified what it considers a reasonable number of interviews for the community leader survey, it has refused to specify such numbers for the general public survey.

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

GUIDELINES

Approved by OMB
3060 - 0113
Expires 12-31-83

The model EEO program, which was adopted by the Commission in Docket No. 20550, provides comprehensive and clearly-defined practices to assist the non-exempt broadcast applicant in developing an effective EEO program for its proposed or existing station. The EEO program designed for a particular station should be reasonably responsive to the elements of the model program to the extent they are appropriate in terms of station size, location, and the like. However, the data requirements, which are set forth in Sections IV, VI, VII and VIII of the model, are essential for self-evaluation and must be part of whatever program is devised by the broadcast applicant. While the most current information available should be used in responding to these elements, statements of policy and general descriptions of a station's EEO practices, which were set forth in earlier-filed EEO program, can be incorporated by reference where the applicant does not intend to augment or otherwise modify its program in that respect during the forthcoming license term. The specific elements which should be addressed are as follows:

I. General Policy

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of minorities and women in the relevant available labor force.

II. Responsibility for Implementation

This section calls for the name and title of the official designated by the licensee with responsibility for implementation of the station's program.

III. Policy Dissemination

The purpose of this section is to disclose the manner in which the station's EEO policy is communicated to employees and prospective employees. In this respect, the applicant's program should disclose whether it: (a) utilizes an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) posts a notice which informs job applicants and employees that the licensee is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) where applicable, seeks the cooperation of labor unions represented at the station in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it utilizes in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

IV. Recruitment

In this section, the applicant should set forth the recruitment sources and other techniques it uses to increase the pool of minority and female job applicants. Additionally, the applicant should list all minority and female applicant referral sources which the station has contacted in the previous 12 months and the number of individuals who were referred from each named source. Note: All of the categories of recruitment sources listed in the model program need be utilized if there are a sufficient number of minority and females applying for positions at the station. The purpose of the listing is to determine whether the specialized referral sources are producing the desired results. Sources which prove to be nonproductive in terms of qualified minority and female applicants should not be relied on and new sources should be sought.

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

GUIDELINES

V. Training

Training programs are not mandatory. Each applicant is expected to decide, depending upon its own individual situation, whether a training program is feasible and would assist it in its effort to increase the pool of available minority and female applicants. Also, where an applicant already has employee training programs, the information reported in this element of the model program should enable it to ascertain whether minority and female employees have the same opportunity to participate as other employees. Information submitted with respect to any training programs utilized should include a report covering at least the 12 month period prior to the filing of the application, but may encompass the entire license period, if so desired.

Additionally, the applicant may set forth any other assistance to students, schools or colleges which is designed to be of benefit to minorities and women interested in entering the broadcasting field. The beneficiary of such assistance should be listed, as well as the form of assistance, such as contributions to scholarships, participation in work/study programs, and the like.

VI. Availability Survey

Pursuant to this section the applicant should state the percentages of women, Blacks not of Hispanic origin, Asian or Pacific Islanders, American Indians or Alaskan Natives and Hispanics in the station's labor recruitment area. Generally speaking, where a station is located in a Standard Metropolitan Statistical Area, the S.M.S.A. should be considered as the labor recruitment area. Where a station is not located in an S.M.S.A., the city of license or county figures should be used. The necessary data may be obtained from state employment agencies' "Manpower Information for Affirmative Action Programs," which is available in most localities, or other publications such as "General Population Characteristics" and "General Social and Economic Characteristics," obtainable from any Department of Commerce Field Office.

Note: The inclusion of this data is designed to assist the applicant in evaluating the effectiveness of its station's EEO program. The availability survey produces a means to determine whether the station's work-force percentages bear some reasonable relationship to those reflected in the relevant available labor force.

VII. Current Employment Survey

Applicants of stations with less than 50 full-time employees are required to state whether there has been any change in their employment profile from the payroll period covered by the station's most recently filed Annual Employment Report (FCC Form 395). If there has been no change of any kind with respect to either full-time or part-time employees, the sentence to this effect should be checked. If there has been a change in the station's profile, the applicant must submit an updated Form 395 that identifies all employees under each job category by sex and race. The updated employment profile should cover the payroll period as close to the filing of the application as possible. The payroll period chosen must be specified.

Stations with 50 or more full-time employees are required to prepare and submit a list of all job titles within each Form 395 job category, with part-time and full-time status indicated. Each job title must show the number of incumbents that are male, female, Black not of Hispanic origin, Asian or Pacific Islander, American Indian or Alaskan Native, Hispanic, and White not of Hispanic origin. In other words, under each applicable job category (i.e., Officials and Managers, Professionals, Technicians, etc.), the applicant should list each job title it includes in the category on the Form 395 and identify the number of incumbents by sex and race. This showing should reflect the station's employment profile for the payroll period as close to the filing of the application as possible. The payroll period chosen must be specified.

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

GUIDELINES

VIII. Job Hires

Each licensee must state the total number of persons hired for station positions, both full-time and part-time, during the 12-month period preceding the date utilized for the *"Current Employment Survey."* This aggregate hiring information is to also include a breakout of the number of minorities and women hired. Predicated on this date and the recruitment information already compiled for the fourth element of the EEO program, the applicant must determine whether a sufficient number of minorities and women are applying for positions at the station. (The answer to the two parts of this question need not be the same. For example, a representative number of minorities may be applying, whereas the pool of women applicants may be less than sufficient). Should either minorities or women be inadequately represented among the applicants for available positions, the applicant should analyze its recruitment techniques and referral sources and propose additional methods to expand the applicant pool of minorities and/or women.

IX. Promotion

Under this section the applicant should describe any promotional policies and practices which have benefited minority or female employees during the preceding 12 months. (For instance, the licensee might list the number of minorities and/or women elevated from part-time to full-time status, the number of those promoted from a training status, or the number that have advanced to more responsible jobs.) Also, if not listed in the *"Training"* element, the applicant may wish to note any extra effort undertaken to increase promotional opportunities for minorities and women.

X Effectiveness of the Affirmative Action Plan

Under this section the applicant should analyze the results of its efforts to recruit, hire and promote minorities and women and explain any difficulties encountered in implementing its EEO program. One way this can be done is to compare the percentages of minorities and women on the station's current staff with their respective percentages in the relevant available labor force. (See *Availability Survey"* and *"Current Employment Survey"* of the model program). If the percentages do not reasonably relate, the disparity may be attributable to deficiencies in the station's recruitment, hiring, placement, training or promotional policies and practices. If so, the applicant should propose alternative policies to correct the deficiency.

APPENDIX V-M-4

FEDERAL COMMUNICATIONS COMMISSION

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Approved by OMB
3060 - 0113
Expires 12/31/83

CALL LETTERS _____

NAME OF LICENSEE: _____

CITY AND STATE WHICH STATION IS LICENSED TO SERVE: _____

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

NAME _____ STREET ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

TELEPHONE NO. ( ) _____

INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, a license renewal applicant who employs five or more full-time station employees must file a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asians or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). If minority group representation in the available labor force is less than five percent (in the aggregate), a program for minority group members need not be filed. However, a program must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant employs less than five full-time employees, no EEO program for women or minorities need be filed.

NOTE: Check appropriate box, sign the certification below, and return to the FCC:

☐ Station employs less than 5 full-time employees; therefore no written program is being submitted.

☐ Station employs 5 or more full-time employees. Our 10-point program is attached.

CERTIFICATION

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief, and ar made in good faith.

Signed and dated this _____ day of _____ , 19 _____

Signature: _____

Title: _____

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE. TITLE 18, SECTION 1001.

FCC FORM 396
February 1983

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MODEL PROGRAM

I. General Policy

It is our policy to provide equal employment opportunity to all qualified individuals without regard to their race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It is also out policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have developed an Equal Employment Opportunity Program which includes the following elements:

II. Responsibility for Implementation

(Name _____ Title), is responsible for the administration and implementation of our Equal Employment Opportunity Program. It is also the responsibility of all persons making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, natural origin or sex.

III. Policy Dissemination

To assure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts are made:

( ) The station's employment application form contains a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, state, or federal agency if they believe they have been the victims of discrimination.

( ) Appropriate notices are posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, state, or federal agency if they believe they have been the victim of discrimination.

( ) We seek the cooperation of the unions represented at the station to help implement our EEO program and all union contracts contain a nondiscrimination clause.

( ) Other (Specify)

_____

_____

_____

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MODEL PROGRAM

IV. Recruitment

To ensure nondiscrimination in relation to minorities and women, and to foster their full consideration in filling job vacancies, we utilize the following recruitment procedures:

( ) We attempt to maintain systematic communication, both orally and in writing, with a variety of minority and women organizations to encourage the referral of qualified minority and female applicants. Examples of such organizations contacted during the past twelve months are:

Organization/Source	Number of Referrals
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

( ) In addition to the organizations noted above, which specialize in minority and women candidates, we deal only with employment services, including state employment agencies, which refer job candidates without regard to their race, color, religion, national origin or sex. Examples of these employment referral services contacted during the past twleve months and the number of referrals are:

_____	_____
_____	_____
_____	_____

( ) When we recruit prospective employees from educational institutions such recruitment efforts include area schools and colleges with significant minority and female enrollments. Education institutions contacted for recruitment purposes during the past twelve months and the number of referrals are:

_____	_____
_____	_____

( ) When utilizing media for recruitment purposes, help-wanted advertisements always include a notice that we are an Equal Opportunity Employer and contain no indication, either explicit or implied, of a preference for one sex over another.

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MODEL PROGRAM

( ) When we place employment advertisements in printed media some of such advertisements are placed in media which have significant circulation or are of particular interest to minorities and women. Examples of publications utilized during the past twelve months and the number of referrals are:

_____ _____

_____ _____

( ) We encourage present employees, particularly minority and female employees, to refer minority and female candidates for existing and future job openings.

V. Training

( ) Station resources and or needs are such that we are unable or do not choose to institute specific programs for upgrading the skills of employees.

( ) We provide on-the-job training to upgrade the skills of employees. Tangible benefits of such training to minority and women employees during the past 12 months may be briefly described as follows:

_____

_____

_____

( ) We provide assistance to students, schools or colleges in programs designed to enable minorities and women to compete in the broadcast employment market on an equitable basis:

Schools or Other Beneficiary	Form of Assistance
_____	_____
_____	_____
_____	_____

( ) Other (Specify)

_____

_____

VI. Availability Survey

Based on information derived from _____ , the respective minority and female workforce in the station's recruitment area is as follows:

Percentage in the Workforce	Women	Blacks not of Hispanic origin	Asian or Pacific Islanders	Am. Indians or Alaskan Natives	Hispanics
	_____	_____	_____	_____	_____

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MODEL PROGRAM

NOTE: The Following To Be Used Only If Workforce Data Is Unavailable.

Based on information derived from _____ , the respective minority and female population in the station's recruitment area is as follows:

Percentage in the Population	Women	Blacks not of Hispanic origin	Asian or Pacific Islanders	Am. Indians or Alaskan Natives	Hispanics
	_____	_____	_____	_____	_____

The above information is for: ( ) S.M.S.A. ( ) City ( ) County
( ) Other (Specify)

VII. Current Employment Survey

A. To be completed by stations with less than 50 full-time employees.

( ) There has been no change in our employment profile since the filing of our most recent Annual Employment Report.

( ) There has been a change in our employment profile since the filing of our last Annual Employment Report. Attached is an updated report identifying the incumbents under each FCC Form 395 job category for the two-week period beginning _____ and ending _____ .

B. To be completed by stations with 50 or more full-time employees.

( ) Attached as Exhibit No. VII B is a survey of our workforce showing a list of all job titles within each FCC Form 395 category and showing the number of incumbents who are male, female, Black not of Hispanic origin, Asian or Pacific Islander, American Indian or Alaskan Native, Hispanic and White not of Hispanic origin.

VIII. Job Hires

During the twelve-month period beginning (Month-Day-Year) and ending (Month-Day-Year), we hired a total of ( ) persons of whom ( ) were minorities and ( ) were women.

( ) An analysis of our recruitment techniques, job applications, and new hires suggests that a sufficient number of qualified minorities and women (are) (are not) applying for available positions.

( ) We are expanding our recruitment sources to include:

IX. Promotion

It is our policy to provide promotions on a nondiscriminatory basic. Further, to assure that minorities and women are given due consideration for promotional opportunities, special effort is taken to encourage minorities and women to qualify and apply for advancement. During the past twelve months our policy has had the following results:

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MODEL PROGRAM

X. Effectiveness of Affirmative Action Plan

This section should contain a brief narrative discussion of the effectiveness of the station's efforts to ensure Equal Employment Opportunity. For example, the licensee might compare the percentage of minority employees in its own workforce with the percentage of minority persons in the licensee's labor market, also setting forth information which suggests that discrepancies which may exist are not unreasonable. The licensee may also explain any difficulties it has experienced in implementing its affirmative action plan, together with any steps it proposes to take to surmount these difficulties in the future. Also include a brief description of any complaint which has been filed before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station including the persons involved, the date of filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

LOW POWER TELEVISION FACT SHEET
(BC DOCKET NO. 78-253)

An Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, Report and Order.

CHRONOLOGY

August 8, 1978	Notice of Inquiry issued initiating this proceeding.
September 9, 1980	Notice of Proposed Rulemaking adopted.
April 9, 1981	FCC votes to stop accepting applications.
May 14, 1981	First low power application granted.
July 30, 1981	Further Notice of Proposed Rulemaking adopted.
March 4, 1982	Report and Order.

On September 9, 1980, the Federal Communications Commission issued a Notice of Proposed Rulemaking proposing to authorize a new broadcast service consisting of very low powered television stations. The principal rule change proposed was that TV translators, currently permitted only to rebroadcast simultaneously the programming of a full service station, would be allowed to originate programming to an unlimited degree.

On March 4, 1982, the Commission adopted a Report and Order authorizing the low power television service, subject to the following rules.

TECHNICAL STANDARDS

Secondary Status. Low power stations have secondary spectrum priority to full service stations. This means that they may not cause interference to or receive interference from full service stations, that they are responsible to correct any interference caused to full service stations and that they must yield to facilities changes or new full service stations that create an interfering condition. This rule also applies to land mobile stations sharing UHF frequencies with broadcast uses. Between cable systems and low power stations, a "first in time, first in right" policy applies where there is interference at the cable headend or the output channel of a cable system using a converter; in other instances of cable/low power interference, the cable operator is responsible to correct the interference.

Channel Selection. Low power stations may operate on any available VHF or UHF channel, provided that they do not cause objectionable interference to full service stations, other translators or low power stations or land mobile stations that share frequencies with broadcast uses. Low power channels are to be allocated on a demand basis. There is no table of allotments and no channels are reserved solely for noncommercial use; rather, applicants select a channel and provide an engineering showing on the application that the proposed facility will not cause objectionable interference. The potential for such interference is predicted using desired-to-undesired (D/U) frequency ratios set out in the Report and Order. The D/U ratios are used

to determine where the protected contours fall for full service, land mobile, and low power stations and translators, and they establish the measure by which the overlap of the contours of low power and other stations is prohibited. The D/U ratios establish a four-to-seven mile protected contour for low power stations, although the signal may carry beyond that contour where no other signals interfere with it.

Power Limits. Low power stations and translators will be limited to 10 watts VHF and 1,000 watts UHF. VHF stations operating on channels in the TV Table of Assignments may use 100 watts. 1,000-watt UHF low power stations within 250 miles of the Canadian border and 199 (for UHF) or 250 (for VHF) miles of the Mexican border must be coordinated with the governments of those countries.

RULES RELATING TO PROGRAM CONTENT

Origination. Low power stations will be permitted to originate programming to an unlimited degree but will not be required to originate any programming. Program origination includes any transmission other than simultaneous rebroadcast from a full service station.

Statutory Rules. The statutory prohibitions on the broadcast of obscene material, lotteries, plugola, payola, and licensee-conducted contests apply to the low power service. The Fairness Doctrine and rules mandating access for political candidates and victims of personal attacks will apply in a sliding scale, to the extent that the low power station's origination capability permits. The Copyright laws apply to low power stations. This means that consent from the copyright holder must be obtained for program rebroadcast and commercial substitution.

Commission Regulations. Low power stations will be subject to a minimum of program content reglated regulations. There is no ascertainment requirement. There are no prescribed amounts of nonentertainment programming or local programming and no limits on commercialization. There are no minimum hours of operation required.

Station Management. An operator must be in continuous attendance during all local originations; microwave transmissions must be observed on a conventional receiver for ten continuous minutes each day. The statutory exemption from the operator-in-attendance requirement for translators whose primary function is rebroadcast continues in force.

Subscription Service. Low power stations may provide subscription (pay) programming, subject to no complement of four restriction (this rule prohibits STV in markets where there are fewer than four other free stations) or required minimum hours of free programming. Decoders may not be sold to subscribers, however, but only leased.

Mandatory Carriage. Cable systems will not be required to carry the signal of low power stations, but may do so if they choose, on the basis of private negotiation.

OWNERSHIP RESTRICTIONS

There will be no restrictions placed upon multiple ownership of low power stations:

--Any number of low power stations may be owned in common.

--Current broadcast licensees, cable operators, and newspaper publishers may own low power stations.

--The three national commercial networks may own low power stations.

APPLICATION PROCESSING

Pending Applications. During the pendency of the low power television rulemaking, translator applications, including many requesting waiver of the rules to permit low power features (program origination and/or STV) were permitted. These interim applications were to be granted on a conditional basis, subject to the outcome of the rulemaking. To date, about ten translators with low power features, along with about 70 translators, have been granted.

Freeze. On April 9, 1981, faced with a 5,000 application backlog, the Commission stopped accepting translator applications, except for existing translators seeking to change channel from channels 70 through 83 or to change channel to correct interference to or from full service stations, or new proposals to serve areas currently receiving fewer than two full service stations. Currently, about 100 freeze-exempt applications are being filed each month. THE COMMISSION IS NOT LIFTING THE FREEZE AT THIS TIME. In order to reduce the application backlog, and to expedite service to those areas that are most in need of it, pending and incoming freeze-exempt applications will be grouped in three categories by market size. The most rural applications will be processed first, and only when processing of the first tier is completed will processing of the second tier commence. The same holds true for the second and third tiers. The freeze will be lifted only for the limited purpose of receiving competing applications to the applications in each tier, at the time that the tier is being processed. This is required by the Commission's cut-off procedures. Only when processing of the backlog is fully completed will it be feasible to lift the freeze completely. Until that time, any applications submitted that do not belong in the tier then being processed will be returned.

COMPARATIVE PROCEDURES AND CRITERIA

When two or more applications are mutually exclusive, or when a challenge to the basic qualifications of an applicant cannot be resolved by staff action, the subject application(s) will be designated for a comparative hearing. The hearings will be largely conducted on paper, with a right for pre-hearing discovery or oral testimony only when the Administrative Law Judge deems this to be necessary. The comparative criteria will be (1) diversification of control of the media of mass communications and (2) over fifty per cent minority ownership.

§76.51 Major Television Markets.

For purposes of the cable television rules, the following is a list of the major television markets and their designated communities:

a. First 50 major television markets:

1. New York, New York-Linden-Paterson-Newark, New Jersey.
2. Los Angeles-San Bernardino-Corona-Fontana, Calif.
3. Chicago, Ill.
4. Philadelphia, Pa.-Burlington, N.J.
5. Detroit, Mich.
6. Boston-Cambridge-Worcester, Mass.
7. San Francisco-Oakland-San Jose, Calif.
8. Cleveland-Lorain-Akron, Ohio.
9. Washington, D.C.
10. Pittsburgh, Pa.
11. St. Louis, Mo.
12. Dallas-Fort Worth, Tex.
13. Minneapolis-St. Paul, Minn.
14. Baltimore, Md.
15. Houston, Tex.
16. Indianapolis-Bloomington, Ind.
17. Cincinnati, Ohio-Newport, Ky.
18. Atlanta, Ga.
19. Hartford-New Haven-New Britain-Waterbury, Conn.
20. Seattle-Tacoma, Wash.
21. Miami, Fla.
22. Kansas City, Mo.
23. Milwaukee, Wis.
24. Buffalo, N.Y.
25. Sacramento-Stockton-Modesto, Calif.
26. Memphis, Tenn.
27. Columbus, Ohio.
28. Tampa-St. Petersburg, Fla.
29. Portland, Oreg.
30. Nashville, Tenn.
31. New Orleans, La.
32. Denver, Colo.
33. Providence, R.I.-New Bedford, Mass.
34. Albany-Schenectady-Troy, N.Y.
35. Syracuse, N.Y.
36. Charleston-Huntington, W. Va.
37. Kalamazoo-Grand Rapids-Battle Creek, Mich.
38. Louisville, Ky.
39. Oklahoma City, Okla.
40. Birmingham, Ala.
41. Dayton-Kettering, Ohio.
42. Charlotte, N.C.
43. Phoenix-Mesa, Ariz.
44. Norfolk-Newport News-Portsmouth-Hampton, Va.
45. San Antonio, Tex.
46. Greenville-Spartanburg-Anderson, S.C.-Asheville, N.C.
47. Greensboro-High Point-Winston Salem, N.C.
48. Salt Lake City, Utah.
49. Wilkes Barre-Scranton, Pa.
50. Little Rock, Ark.

b. Second 50 major television markets:

51. San Diego, Calif.
52. Toledo, Ohio.
53. Omaha, Nebr.
54. Tulsa, Okla.
55. Orlando-Daytona Beach, Fla.
56. Rochester, N.Y.
57. Harrisburg-Lancaster-York, Pa.
58. Texarkana, Tex.-Shreveport, La.
59. Mobile, Ala.-Pensacola, Fla.
60. Davenport, Iowa-Rock Island-Moline, Ill.
61. Flint-Bay City-Saginaw, Mich.
62. Green Bay, Wis.
63. Richmond-Petersburg, Va.
64. Springfield-Decatur-Champaign, Ill.
65. Cedar Rapids-Waterloo, Iowa.
66. Des Moines-Ames, Iowa.
67. Wichita-Hutchinson, Kans.
68. Jacksonville, Fla.
69. Cape Girardeau, Mo.-Paducah, Ky.-Harrisburg, Ill.
70. Roanoke-Lynchburg, Va.
71. Knoxville, Tenn.
72. Fresno, Calif.
73. Raleigh-Durham, N.C.
74. Johnstown-Altoona, Pa.
75. Portland-Poland Spring, Maine.
76. Spokane, Wash.
77. Jackson, Miss.
78. Chattanooga, Tenn.
79. Youngstown, Ohio.
80. South Bend-Elkhart, Ind.
81. Albuquerque, N. Mex.
82. Fort Wayne-Roanoke, Ind.
83. Peoria, Ill.
84. Greenville-Washington-New Bern, N.C.
85. Sioux Falls-Mitchell, S. Dak.
86. Evansville, Ind.
87. Baton Rouge, La.
88. Beaumont-Port Arthur, Tex.
89. Duluth, Minn.-Superior, Minn.
90. Wheeling, W. Va.-Steubenville, Ohio.
91. Lincoln-Hastings-Kearney, Nebr.

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92. Lansing-Onondaga, Mich.
93. Madison, Wis.
94. Columbus, Ga.
95. Amarillo, Tex.
96. Huntsville-Decatur, Ala.
97. Rockford-Freeport, Ill.
98. Fargo-Valley City, N.D.
99. Monroe, La.-El Dorado, Ark.
100. Columbia, S.C.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13866, July 14, 1972; 39 FR 24373, July 2, 1974; 39 FR 27572, July 30, 1974; 39 FR 37988, Oct. 25, 1974]

Illustrations of Specified Zones *

The purpose of this Appendix is to illustrate the general application of the non-duplication rules.

Figure 1 represents a hypothetical television broadcast market situation. It has been designed to illustrate various non-duplication circumstances and should not be considered as generally representative of an actual market situation.

Four television markets are illustrated, identified by the large letters A, B, C, and D. Markets A and D represent two smaller markets (i.e., below 100), and markets C and B are underscored and represent major markets (i.e., top 100). Stations located in all four markets receive a 35 mile (radius) specified zone of protection (see paragraph 57). This zone will be referred to as the Primary Zone of the respective market. In addition, smaller markets (A and D) receive an added 20 mile (radius) area beyond the Primary Zone of protection. This added zone will be referred to as the Secondary Zone of the respective market.

The application of the non-duplication rules to various hypothetical cable system locations can be determined by noting relative priorities of the various Primary and Secondary Zones encompassing the particular systems, as discussed below.

CABLE SYSTEM 1 - is located within the Primary Zone of market D and, since there are no other equal or higher priority zones that encompass the cable system, it must provide non-duplication protection to all network affiliated stations in market D against all other similarly affiliated signals carried by the cable system.

CABLE SYSTEM 2 - is located within the Secondary Zone of market D and, since there are no other equal or higher priority zones that encompass the cable system, it must provide non-duplication protection to all network affiliates in market D from all other similarly affiliated signals carried by the cable system.

* Prepared by the FCC to accompany the order adopting the present non-duplication rules.

CABLE SYSTEM 3 - is located within the overlapping Secondary Zones of both markets A and D. Since the cable system is within overlapping zones of equal priority, it is not required to protect affiliated stations in market A or D against each other. Affiliates in both markets A and D, however, may take advantage of their individual secondary zones by requesting non-duplication protection from cable system 3 with respect to similar affiliates from any other market (e.g., C and B).

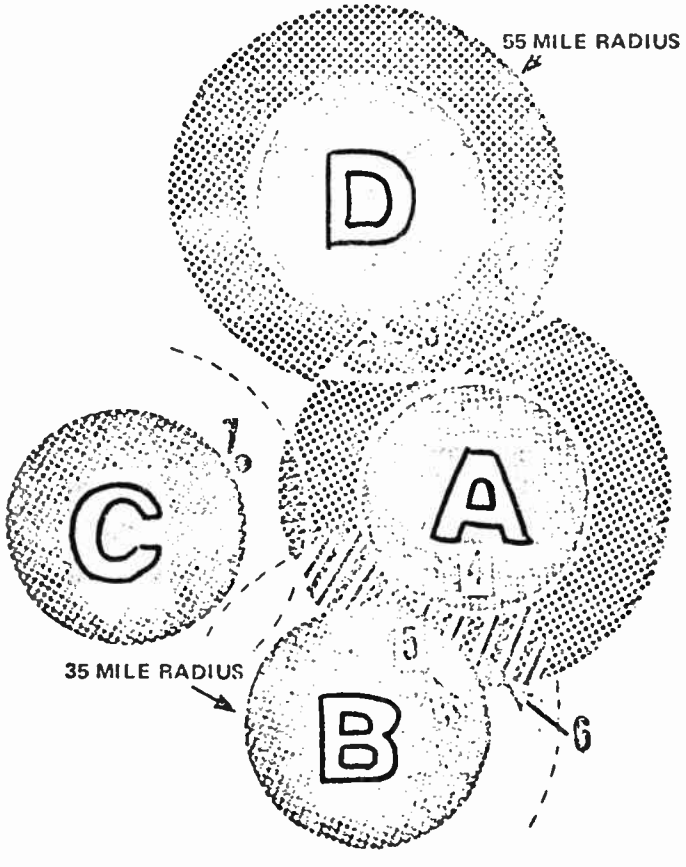
CABLE SYSTEM 4 - is located within the Primary Zone of market A and, since there are no equal or higher priority zones that encompass the system, it must provide non-duplication protection to all network affiliated stations in television market A against all other similarly affiliated signals from other markets carried by the cable system.

CABLE SYSTEM 5 - is located within the Primary Zone of market B and the Secondary Zone of market A. Since the Primary Zone is of higher priority, the cable system must provide non-duplication protection to all network affiliated stations in market B against all other similarly affiliated signals from other markets.

CABLE SYSTEM 6 - is located within the Secondary Zone of market A and outside the Primary Zone of Market B. If the usual system of priorities would govern, the cable system would be required to provide non-duplication protection to affiliated stations in market A against similarly affiliated signals from all other markets, including market B. However, since this might result in the blacking out of a closer signal (from market B) to protect a more distant signal (from market A), § 76.92(f) applies and a 55 mile area of protection must be drawn around the Primary Zone of major market B wherever it may overlap a smaller market Secondary Zone. Cable systems located within this major-minor market overlap area (illustrated here by the striped portion) need not provide non-duplication protection to affiliated stations in either market A or B against each other. Nor would

such a cable system have to provide non-duplication protection to affiliated stations in major market B against similar affiliates in any other market. The cable system must, however, recognize the Secondary Zone of protection of affiliated stations in smaller market A with respect to similar affiliates in all markets other than market B.

CABLE SYSTEM 7 - is located outside all Primary and Secondary Zones and, therefore, is not required to provide non-duplication protection to affiliated stations in any market. § 76.92 (f), discussed above, is inapplicable because, although it is within 55 miles of major market C, there is no overlap from the secondary zone of smaller market A.



NAME OF REQUESTING STATION:

(Include name of licensee, community of license, call letters, channel designation, and affiliation)

SAMPLE NETWORK EXCLUSIVITY REQUEST FORM

(month and year)

PERIOD OF PROTECTION

MAILING DATE:

DAY	DATE	TIME PROGRAM BEGINS	TIME PROGRAM ENDS	PROTECTED PROGRAM TITLE (e.g., name of sporting event and teams; or name of movie)	NET-WORK	PROGRAMMING TO BE DELETED (indicate by a 'yes' or a 'no') *(In these spaces indicate the call letters, channel designations, and affiliations of the stations whose programming is to be deleted.)*		

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NAME OF REQUESTING STATION:

Dime Box Broadcasting, Inc.
Dime Box, Texas
KABW, Channel 38
Affiliation: ABC network

SAMPLE NETWORK EXCLUSIVITY REQUEST FORM

March 1975
PERIOD OF PROTECTION

MAILING DATE:
February 19, 1975

Example

DAY	DATE	TIME PROGRAM BEGINS	TIME PROGRAM ENDS	PROTECTED PROGRAM TITLE (e.g., name of sporting event and teams; or name of movie)	NET-WORK	PROGRAMMING TO BE DELETED (indicate by a 'yes' or a 'no') KABD-TV Channel 27 (ABC)	KABK Channel 8 (ABC)	KABB-TV Channel 63 (ABC/NBC)
Friday	21	8:00 p.m.	9:00 p.m.	Kolchak: The Night Stalker	ABC	Yes	Yes	No
		9:00 p.m.	9:30 p.m.	Hot 1 Baltimore	ABC	No	Yes	Yes
		9:30 p.m.	10:00 p.m.	Odd Couple	ABC	Yes	Yes	Yes
		10:00 p.m.	11:00 p.m.	ABC Closeup: IRS-A Question of Power	ABC	Yes	Yes	No
		11:30 p.m.	1:00 a.m.	Wide World Mystery "Rock-a-Die, Baby"	ABC	No	Yes	No

Example

INDEX

TOPICAL INDEX

National Association of Broadcasters

nab LEGAL GUIDE

To FCC Broadcast Regulations

UPDATE – AUGUST 1984

THE NAB LEGAL GUIDE TO FCC BROADCAST REGULATIONS

UPDATE – AUGUST 1984

After the NAB *Legal Guide* went to press, the FCC concluded several proceedings affecting station licensees across the board. From eliminating programming, ascertainment, commercialization and program log requirements for commercial television and noncommercial station licensees to expanding the uses permitted for AM carrier operation, the FCC has streamlined many of its regulations, indirectly changing the manner in which you use the *Legal Guide.*

The following information summarizes the recent FCC actions. Page references to the *Legal Guide* are provided parenthetically. The use of this summary along with the *Legal Guide* should assist stations in complying with present FCC regulations. It also provides a resource for determining what the FCC policies were before deregulation.

I. COMMERCIAL TELEVISION STATION LICENSEES

A. PROGRAMMING GUIDELINES

In its TV deregulation decision, effective September 24, 1984, the FCC eliminated its programming guidelines set out in Section III of the Television Audit Form, FCC Form 303-C (discussed in the *Legal Guide* at page I-3 and appearing in Appendix I-B). In fact, it discontinued Form 303-C entirely (pages I-8, I-13, II-30, V-10). Each commercial television station licensee now need only submit FCC Form 303-S, the simplified renewal application, for every five-year license renewal date (I-8, V-2). The FCC also decided to no longer apply the promise-versus-performance standard in uncontested renewal proceedings (Appendix II-G, page II-30).

Even though the FCC eliminated its programming guidelines, it continues to expect commercial television licensees to provide programming that is responsive to the issues confronting their communities. In the exercise of good-faith judgment, licensees now may address issues by whatever program mix in

whatever amounts they believe is appropriate in order to be responsive to the needs of the community. Such programming may consist of public affairs (II-5, II-6), public service announcements (II-6, II-7, III-6), editorials (II-5), community bulletin boards (II-6) and religious programming (II-5). Generally, however, the FCC does not recognize entertainment programming as issue-responsive. In selecting the issues a licensee will address in its programming, it may look to the programming of other television stations, both commercial and noncommercial, in the community to determine what issues have or have not been covered.

B. ASCERTAINMENT

The FCC will no longer require licensees to follow specific ascertainment procedures set forth in its *1971 Primer on Ascertainment of Community Problems* (Appendix V-H, page V-7) and *1976 Primer on Ascertainment of Community Problems by Renewal Applicants* (Appendix V-I, page V-7). Specifically, the FCC abolished these *Primers* thereby eliminating formal ascertainment obligations. This decision allows commercial television licensees and applicants for new television licenses, for the assignment or transfer of existing facilities, or for major modifications of existing facilities to determine the issues that warrant consideration in their community by whatever means they consider appropriate. In all future proceedings, the FCC will focus on the responsiveness of a licensee's programming, not the methodology used to arrive at programming decisions.

C. COMMERCIAL GUIDELINES

Also in the TV deregulation *Order*, the Commission eliminated all rules and policies restricting the amount of commercial time aired or proposed by commercial TV licensees and applicants (IV-14, Appendix I-B). In addition, it rescinded its policy banning program-length commercials (IV-5, Appendix IV-A).

D. PROGRAM LOGS

The Commission modified substantially its program logging requirements for commercial television station licensees (II-2). Television broadcasters are no longer required to maintain a contemporaneous listing of all programs (including type and source) broadcast, nor must they place in their public inspection files a "problems-programs" list (V-5, V-7). In addition, the FCC will no longer require any licensee to submit a copy of the program logs for a designated composite week (I-3, I-13).

E. QUARTERLY ISSUES/PROGRAMS LIST

The FCC has concluded that the best method of documentation suitable to its new regulatory scheme for commercial television broadcasting is a quarterly issues/programs list requirement. This list must be placed in the station's public inspection file and it should contain, in narrative form, a brief description of at least five issues to which the licensee gave particular attention with programming in the previous three months and a statement of how each issue was treated. The list also must include information pertaining to the date, time and duration of each listed program broadcast. There is no limit to the number of issues a licensee may list in the quarterly report.

As further guidance, the Commission states in its *Order* deregulating television:

> Some community issues may be of such significance that they are repeated on subsequent issues/programs lists. Such a decision is left to the licensee's discretion and open to public and Commission scrutiny in their judgment on the broadcaster's good faith efforts to program to meet community issues. We also note that responsive programming may consist of numerous and diverse broadcasts in answer to any one issue.

As with radio licensees, television broadcasters are not required to describe and explain the means by which they become aware of the issues facing their community. It is the programming and not the process of ascertaining community issues that is of interest to the Commission. Thus, in adopting the quarterly, no limit issues/programs list, the FCC has brought the regulation of television programming in line with that of radio (V-6).

F. CHILDREN'S PROGRAMMING

With the elimination of FCC Form 303-C, licensees will no longer be required to present a separate list of programs designated for children 12 years or under (II-30). In no way, however, does this action change the licensee's programming obligations with respect to children (II-29, IV-22).

II. LOUD COMMERCIALS

The FCC terminated its inquiry into loud commercials (IV-7). It concluded that there is no clear way to impose new regulations that would be effective in controlling the apparent loudness of commercial announcements over AM, FM or television stations.

III. HORSE RACE PROGRAMMING AND ADVERTISING

In a further step to relieve broadcasters of unwarranted restraints on licensee editorial discretion, the FCC eliminated in their entirety its policies that restricted the broadcasting of horse race programming and information and off-track betting advertisements (II-42, IV-37, IV-38). This decision becomes effective September 24, 1984.

IV. NONCOMMERCIAL BROADCASTERS

As for commercial television and radio licensees, the FCC has revised its programming policies and reporting requirements affecting public broadcasters. Specifically, the FCC will no longer impose ascertainment obligations on public broadcast licensees (VII-6). It eliminated the long form audit renewal application, Form 303-N, as well (I-13). In addition, it abolished its program log requirements and substituted an issues/programs list obligation similar to that of commercial licensees (V-6, VII-6).

V. EDITORIALS BY NONCOMMERCIAL BROADCASTERS

The United States Supreme Court has held that Section 399 of the Public Broadcasting Act, which forbade any noncommercial educational station that receives a grant from the Corporation for Public Broadcasting to "engage in editorializing," violates the First Amendment. Thus, public broadcasters now may editorialize (VII-4).

VI. CALL SIGNS

The FCC declined to reconsider its decision to eliminate that portion of its rules that mandated FCC resolution of call sign disputes (I-14).

VII. MULTIPLE OWNERSHIP – SEVEN STATION RULE

The Commission repealed its "7-7-7" station ownership rule (V-17) that prohibited the ownership of more than seven television stations (including only five VHF stations), seven FM stations and seven AM stations. The FCC now will permit the ownership of up to 12 FM stations and 12 AM stations. The new FCC rule adopted also provides for the allowance of ownership of up to 12 television stations with no VHF/UHF distinction and the elimination of these ceilings in 1990. However, by *Order* released August 9, 1984, the FCC decided to stay that portion of its new rule pertaining to television broadcast ownership until 60 days after further reconsideration or until April 1, 1985, whichever is later.

VIII. AM CARRIER OPERATION

AM broadcasters now may use their carrier signals for any broadcast or nonbroadcast activity, so long as such operation does not interfere with main channel broadcasting or the signals of other broadcast stations (V-31).

IX. POSTING OF OPERATOR LICENSE OR PERMIT

The FCC has eliminated its requirement that operators who work at more than one location procure, complete and post at the additional locations FCC Form 759 to verify the existence of a permit (V-20). Instead, the radio operator license or permit may be photocopied and posted. This simpler verification procedure requires licensed commercial radio operators on duty at two or more transmitting stations that are not co-located to post their radio operator license or permit at one of the stations, and allows them to post a photocopy of the license or permit at each other station.