

## [Assessing Control of the Noncommercial Broadcaster - FCC Looks to Board of Directors](#)

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How do you determine who is **control of a noncommercial broadcaster** governed by a self-perpetuating Board of Directors? That question was addressed in a recent [FCC decision](#), dismissing an application for a new noncommercial FM station that had not properly disclosed its owners on its FCC Form 340 application. In that case, the applicant had reported to the FCC that it was controlled by one individual, the head of a Monastery. No other officers or directors or members of the applicant nonprofit corporation were listed in the application. A competing applicant searched state records, and determined that its articles of incorporation reflected that the applicant was to be governed by a Board of Directors, and required at least three directors. Moreover, the state filings had listed 6 directors - including two individuals who were not US citizens. When challenged, the applicant admitted that the applicant corporation was set up in the manner set out in the state filings, but contended that the directors were all members of the same religious order, and could not challenge the decisions of their superior - arguing that this gave the superior effective control over the entity. The FCC rejected the argument - relying on state laws that said that a company is governed by its Board of Directors - and concluding that the individuals on that board therefore had control of the applicant. Any attempt to now list the 5 other members on the FCC application would be a major change in the control of the board (and would raise alien ownership issues because of the two directors who were not US citizens), so the application was dismissed.

This case illustrates the Commission's general rule that, **when evaluating control of nonprofit entities** that don't have shareholders or other owners, as do commercial enterprises, **the FCC looks to the governing body of the entity that holds the FCC license to define where control lies**. But the rules for noncommercial entities have never been completely clear - as the FCC has for over 20 years had a rulemaking to establish rules governing changes in control of noncommercial entities. While this proceeding has been pending, the FCC looks at these issues through an interim policy based on the rules proposed in that proceeding. Under that policy, the FCC assumes that nonprofit boards will have periodic changes in composition. It requires that, when a majority of the governing board changes due to these normal, gradual changes, a noncommercial broadcaster file a Form 316 short-form transfer of control - an application routinely processed by the FCC in a matter of days. But, if there is a sudden

change in control of the Board where a controlling interest changes all at once (e.g. if members of a nonprofit entity vote out a majority of the Board, or if there is some sort of mass resignation), then the company should obtain FCC approval on an FCC Form 315 "long form" application, that is subject to petitions to deny. In the context of any application for a new station, a long-form transfer will result in a dismissal of an application for which the filing window has closed, while short-form changes will be permitted.

We [wrote about these issues](#) when the FCC commenced its still-pending proceeding to require noncommercial broadcasters to file their ownership reports on the same biennial schedule as commercial entities. With license renewal approaching, noncommercial licensees should review their ownership, and make sure that its ownership information is correct, and that any transfers that have occurred based on these policies have been properly reported and approved.

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