

Preparing for Radio Station FCC License Renewals

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2011 marks the start of the license renewal cycle for broadcast radio stations and it is time for broadcasters to prepare. Beginning with radio stations licensed to communities in Maryland, Virginia, Washington, DC, and West Virginia, stations will once again prepare and file applications with the Federal Communications Commission (FCC) seeking a renewal of their authorization to operate a broadcast station. This first group of radio stations will file their license renewal applications on June 1, 2011, with the remaining states following at two month intervals according to the Commission's staggered deadlines. A full schedule of the radio renewal filing deadlines is available [here](#) (sorted by date) and [here](#) (sorted by state). Television stations will follow one year behind radio, with the first TV stations filing their applications on June 1, 2012.

Apart from the license renewal application itself, the FCC's rules contain a number of related requirements. This includes the airing of pre- and post-filing announcements on the station telling their listeners about the filing of the renewals. Stations also will be filing an EEO Program Report in conjunction with the license renewal application to demonstrate compliance with the EEO rules. With these deadlines almost upon us, this advisory seeks to help stations prepare for the renewal process.

Before getting into the specific steps that stations should be taking in order to prepare for the upcoming renewal, however, a few words about the importance of the license renewal process itself are in order. It should go without saying, but in order to continue broadcasting legally, stations must timely prepare and file a license renewal application with the FCC. In the last renewal cycle, a surprising number of stations simply missed the filing deadline altogether. Furthermore, broadcasters with station groups that straddle state lines may have stations or FM translators licensed to communities in an adjacent state with a different license renewal deadline. Broadcasters should review their licenses in advance to confirm the renewal deadline for each and every station. Given that licensees will face forfeitures and the possible cancellation of their license if they miss the renewal filing deadline, the importance of timely filing a license renewal application cannot be overstated.

At its simplest, the license renewal application allows the FCC and the public to review the station's conduct in the previous license term and to assess the licensee's continuing qualifications to remain an FCC licensee. The crux of the license renewal inquiry is whether the station has complied with the Commission's laws and served the public interest during the previous license term. Accordingly, the renewal process invites the public, competitors, public interest groups, and the government to sift through all aspects of the station's operations during the past eight years. Based on the Form 303-S and related documents filed by the licensee, as well as any comments, petitions, or objections raised by interested parties, the FCC will then decide whether or not an extension of the license is warranted. Broadcasters need to review all aspects of their operations and prepare for the license renewal process in advance, approaching it with the seriousness it demands.

At various times in the past, particular public interest groups have been active in challenging broadcast renewal applications. With the numerous issues facing the broadcast industry at the current time, and controversies over issues like the performance royalty, spectrum reallocation, retransmission consent, and low power FM, there may well be parties at odds with the broadcast industry in general who take out their dispute on specific broadcasters' renewal applications. This provides yet one more reason to prepare carefully for the upcoming renewal cycle.

Pre-filing announcements

The first issue for stations to address is the pre-filing announcements that are required to be aired over the station in advance of the submission of the license renewal application.

Consistent with the Commission's rules, for the two months prior to the submission of the license renewal application, stations must air pre-filing announcements on the 1st and 16th of the two calendar months preceding the filing of the application. So, for example, for the first group of radio stations in Maryland, Virginia, Washington, DC, and West Virginia, which will file an FCC Form 303-S license renewal application on June 1, 2011, those stations must begin airing pre-filing announcements on April 1, 2011, and continue on April 16, May 1, and May 16, for a total of four pre-filing announcements.

The pre-filing announcements give local notice to the community that the station will be filing a license renewal

application with the Commission. The announcements provide information about the station's renewal filing and inform listeners that they can advise the FCC of facts relating to either the renewal application or the station's operation during the previous license term. The announcements also include a statement inviting listeners to visit the station and view the public inspection file. The precise language of the pre-filing announcements—which is dictated by the FCC's Rules—can be found [here](#).

The announcements should be aired in the primary language used on the station, so if the station broadcasts primarily in a foreign language, the announcements should be broadcast in that language. For commercial radio stations, at least two of the required pre-filing announcements must air on the station between 7 a.m. and 9 a.m., or 4 p.m. and 6 p.m. local time. If the station does not operate between 7 a.m. and 9 a.m. or between 4 p.m. and 6 p.m., then at least two of the required announcements must be made during the first two hours of broadcast operations. For noncommercial educational stations, the timing of the announcements is the same as for commercial stations, except that such stations need not broadcast the announcements during any month during which the station does not operate.

Review station operations in preparation for filing

Station, Studio, and Tower. Given that stations are petitioning the government for an extension of license, and that listeners, citizens, and other interested parties will be encouraged to participate in the process, it is important that applicants have both their literal and proverbial house in order before filing their renewal application with the Commission. The first place broadcasters should start is with their station's facilities, studios, and files. As part of the renewal process, stations will be inviting interested parties to visit the radio station to review the renewal application and the station's public inspection file. As discussed above, stations will be airing announcements to that effect and providing the address of the main studio. Accordingly, stations should ensure that the main studio is open and staffed during regular business hours, consistent with the FCC's rules. Station employees should be familiar with the FCC's public inspection file rules and be prepared to greet visitors and provide immediate and unrestricted access to the file.

In addition, stations should make sure that their physical facilities are in compliance with the Commission's rules. For example, stations should take the opportunity to check the fencing and signage at their tower site. This includes confirming whether the Antenna Structure Registration Number (ASRN) and contact information for the tower are properly posted at the site, if an ASRN is required. Now would also be a good time to review the painting and lighting on the tower to make sure that they meet all applicable requirements. Furthermore, stations are required to certify that their transmitter sites are in compliance with the limitations on radio frequency (RF) radiation as part of the license renewal application. So stations are advised to check to make sure they are in compliance with all applicable limits, especially if there have been changes at the transmitter site since the last renewal.

Aside from the studio and tower site, stations should also review their licenses to make sure that all of the station's operating facilities are properly authorized. Make sure that stations have licenses for all Studio Transmitter Links (STLs), remote pick-ups, and other auxiliary facilities.

Making sure that the FCC has the proper contact information for the station is also very important. The FCC will not be mailing license renewal reminders this year, but instead will only send an email notice. Make sure that the licensee name and contact information listed in the FCC's database including the email address of someone who will appropriately note and react to an email from the FCC, is accurate for each facility. Stations should also make sure that the FCC has the correct mailing address for the licensee on file.

Public Inspection File. In the last renewal cycle, the single largest source of problems and fines for stations was the public inspection file. As part of the FCC Form 303-S license renewal application, stations must certify that their public inspection file is complete and accurate and, if it is not, they must address any deficiencies. Thus, the next, and perhaps the most important, issue for stations to address in advance of completing the license renewal application is to review the public inspection file to make sure that all necessary documentation is included. The public inspection file rules are extensive, but several areas in particular have been the source of repeated difficulty for stations in previous renewal cycles. These problem areas are discussed in turn below. Further information about the contents of the public inspection file, including a checklist of required items, can also be found in our earlier Public Inspection File advisory, available [here](#).

Quarterly Issues Programs Lists. In the last renewal cycle, many stations were missing Quarterly Issues Programs lists for some portion of the eight-year period, often incurring fines of \$10,000 or more where there were many such reports missing from the files. These reports are very important, as they are the only required official records to demonstrate the programming that a station has broadcast to serve the public interest needs of its service area. If that service is ever challenged, as it could very well be at renewal time, a station will need the

reports to demonstrate how the station's programming responded to the needs and interests of the station's community of license and surrounding area. Stations should ensure that the public file contains a list for each and every quarter of the license term. More information regarding Quarterly Issues Programs lists can be found in our most recent quarterly advisory, available [here](#).

Equal Employment Opportunity. Mandatory EEO filings are another area that can cause issues for stations. Stations should have their EEO Annual Public File Reports in their public inspection file for every year of the license term. Stations must also have their most recent EEO Annual Public File Report posted on their website (if they have a website). Stations will be required to certify on the Form 303-S that they have complied with this requirement. The FCC staff will also routinely surf the web and inspect station websites to see whether the Annual EEO report is posted properly and conspicuously. In addition to the Annual EEO report, television stations with 5 or more full-time employees, and radio employment units with more than 10 full time employees, were required to file a Form 397 Mid-Term EEO Report with the FCC at the mid-point of the license term. If a station was required to file the Mid-Term Report, then a copy of the Form 397 should also be available in the public file. Finally, as discussed further below, stations will also need to prepare and file an FCC Form 396 Broadcast EEO Program Report simultaneously with the filing of the renewal application. That Form 396 must also be placed in the public file. Further details about EEO obligations can be found in an earlier EEO advisory that our firm has published, available [here](#).

FCC Form 323 or Form 323-E Ownership Report. The Commission's rules regarding the filing of ownership reports vary for commercial versus noncommercial stations, but every station must have a copy of the most recent FCC Form 323 (for commercial stations) or Form 323-E (for noncommercial stations) ownership report in their public file. In addition, stations should review the report on file at the station to ensure that the licensee has properly and timely filed its ownership report with the FCC. Please note, as a result of the FCC's differing approach to commercial versus noncommercial stations, commercial stations are no longer required to file a biennial ownership report on the same date that they file their license renewal application. Rather, commercial stations file a biennial report according to a unified filing date, the next of which falls on Nov. 1, 2011. Noncommercial stations, however, continue to face the need for a Form 323-E Ownership Report at the time they submit their Form 303-S license renewal application. The ownership reporting requirements are discussed further below.

Corporate Documents. Related to the ownership reports, stations must also have copies of relevant corporate documents and agreements pertaining to the station in the public inspection file. Alternatively, the public file can contain a list of such documents, which the licensee must be able to produce within seven days of when someone requests to see a copy of a specific agreement. The FCC has fined several stations recently for failing to have copies of corporate documents, including the licensee's articles of incorporation or corporate by-laws, in their public inspection files. So stations should review this requirement carefully and make sure they have any necessary documents in the file.

FCC Form 303-S application for renewal of broadcast station license

The FCC Form 303-S license renewal application is easily the most important application that licensees will file with the FCC. While the current FCC Form 303-S License Renewal Application is composed primarily of certifications and yes/no questions, stations should not take the form lightly. The application requires licensees to certify as to their compliance with a range of FCC rules over the course of the prior license term, or in the case of a station that has been acquired during the license term, for that period of time that the current owner has been the licensee of the station. Accordingly, each question must be considered and answered carefully, lest the applicant stumble into a false certification or make a misrepresentation to the Commission. While the failure to comply with many of the specific requirements may result in a fine—a misrepresentation to the FCC is much more serious—and can result in the loss of a license. So be sure to be honest and accurate with your responses to avoid even the appearance of a misrepresentation or falsehood.

Some have criticized the current renewal process as too lax and have called for changes. For example, Commissioner Michael Copps has called recently for a more rigorous license renewal process for broadcast radio and television stations. In an address last Fall, Commissioner Copps suggested implementing a "public value test" to assess whether a station has served the public interest, and if not, or if it does not improve during a probationary period, then the license would be revoked. While Commissioner Copps was speculating on future changes to the license renewal process, his remarks serve to emphasize that broadcasters are the stewards of the public airwaves, and that the Commission and the public expect stations to serve the needs and interests of the local community. With that in mind, below are some of the more significant issues to consider in advance of completing the Form 303-S, as

well as a few changes have been made to the form.

In addition to the standard character qualification issues, alien ownership, and Anti-Drug Abuse Act certifications, which are required on a number of FCC applications, the renewal application contains several additional equally weighty certifications. One such question is a certification that, the licensee and each party to the application, i.e., all officers, directors, shareholders with greater than 5% voting interest, members (if the licensee is an Limited Liability Company), or partners (if the licensee is a partnership), have not had any adverse final action taken against it by any court or administrative body in either a civil or criminal proceeding involving any: 1) felony, 2) mass media-related antitrust or unfair competition laws, 3) fraudulent statements to another governmental unit, or 4) discrimination. Depending on the size of the licensee and the number of principals involved, ascertaining the answer to this question could be simple, or could require a survey of a large number of people. For companies with widely disbursed ownership, the licensee should survey its attributable owners to make sure that they have not had any such adverse findings.

Another important question requires the reporting of any FCC violations during the preceding license term. By this, the FCC means any violations of rules or regulations of the Commission that have resulted in the issuance of an official Notice of Violation, Notice of Apparent Liability for Forfeiture, Forfeiture Order, or similar FCC action finding a specific violation of the FCC's rules or of the Communications Act. Again, this question requires the disclosure of any formal FCC action in the preceding term. It does not require a confession of any violations the station may have discovered on its own, and that it corrected.

Returning to the public inspection file, the renewal application requires the licensee to certify that the documentation required by the FCC's rules was placed in the station's public inspection file at the appropriate times. As emphasized above, in order to make this certification, stations need to review their public files in advance. If they find any omissions or errors in the public file, they should take steps to correct the problem, and also note the problem and the resolution in response to this question on the form. While the voluntary disclosure of any issues with the public inspection file could result in an admonishment or a fine from the Commission, such a result is preferable to making a false certification to the Commission and possibly facing the revocation of the station's license.

Next, the renewal application requires the licensee to certify that the station is currently on the air broadcasting programming intended to be received by the public and that it has not been silent in the preceding license term for any consecutive 12-month period.

For the first time this year, the license renewal application will require a certification that the station is not discriminating in the sale of advertising time. Specifically, the certification requires an affirmative answer that the licensee's "advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements held by the licensee contain nondiscrimination clauses." This requirement is one on which the FCC has never provided much guidance. The Commission has said that station advertising contracts should have certifications that state that advertisers are not making their buying decisions for discriminatory purposes. Given that this is a new, and arguably vague, rule, stations should consider the issue in advance, preferably in consultation with their legal counsel, to ensure they are able to answer the question.

In addition, the form contains a new question requiring the licensee to certify that, during the preceding license term, the station was neither silent, nor operating on less than the required minimum schedule, for any period longer than 30 days. If the licensee is unable to certify compliance with this standard, then it will need to include an exhibit to specify the "exact dates on which the station was silent or operating for less than its prescribed minimum hours." While the application continues to contain the certification that the station has not been silent for any consecutive 12-month period (mentioned above), the new form will now expand that inquiry to gather information about whether the station has been off the air for any significant period of time during the previous license term. While it is not clear precisely what the Commission will do with the information, the Commission could potentially find that a station has failed to serve the public interest if it has been off the air for a significant period of time, possibly decide that the station's license should not be renewed or that the licensee should face a forfeiture or sanction. Stations are often off the air for periods of time longer than 30 days as the result of equipment failure, facilities modifications, programming changes, station sales, or financial difficulties. Accordingly, licensees should carefully review their stations' operations in the past term and fully describe and disclose any significant outages.

One final change to the Form 303-S, which could make the application easier for licensees, is the proposed elimination of the requirement that full power AM and FM licensees include an exhibit demonstrating compliance with the Radio Frequency (RF) radiation limits. Previously, radio applicants were required to include an RF exhibit if they were unable to demonstrate compliance with the limitations by using the RF worksheets in the renewal application. The revised form merely requires applicants to certify that their facilities comply with the Commission's RF limits if there have been no changes since the last renewal and does not require any exhibits to support that conclusion.

Form 396 Broadcast EEO Program Report

In addition to the renewal application, stations must also simultaneously file an FCC Form 396 Broadcast EEO Program Report with the FCC. Please note, all licensees must file an FCC Form 396; it is required regardless of whether or not the station, or local station employment unit, has five or more full-time employees and thus, is subject to the FCC's EEO rules.

If a station or station employment unit has fewer than five full-time employees, then it will simply certify that it is not subject to the FCC's EEO rules and report any discrimination complaints (discussed below), but leave the second portion of the Form 396 blank.

If a station or local station employment unit has five or more full-time employees, then it must complete the entire report, which essentially requires the applicant to certify to the station's ongoing compliance with the FCC's EEO rules. The Form 396 will also require applicants to provide copies of the station's two most recent EEO Annual Public File Reports. Ordinarily, these Annual Reports are not submitted to the FCC, but rather are simply placed in the station's public inspection file and posted on the station's website (if it has a website). At both the mid-term of the renewal period and at the time the station files for its license renewal, however, the station must provide copies of the Annual report to the FCC. This allows the FCC to review the station's EEO efforts, and to consider the station's compliance—or noncompliance—with the EEO rules in conjunction with its consideration of the station's request for renewal of license.

As part of the Form 396, all applicants—both those with fewer than five full-time employees and those with more—will also be required to report whether any pending or resolved discrimination complaints were filed with any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station during the preceding license term. If such complaints are pending, the licensee will be required to provide a brief description of the complaint or complaints, including the persons involved, the date of the filing, the court or agency involved, the file number (if any), and the disposition or current status of the matter.

The Form 303-S renewal application requires licensees to certify that the FCC Form 396 EEO Program Report has been submitted to the Commission, and also requires that the file number of the FCC Form 396 be cross-referenced on the renewal application. Practically speaking, this means that applicants will need to press the button and submit the Form 396 EEO Program Report first, and then, once the FCC File number is assigned, carry that information over to the Form 303-S. The renewal application also requires the licensee to certify that the most recent EEO Annual Public File Report has been posted on the station's website, if it has one, as required by the Commission's rules. As noted above, the FCC staff will search the web for a station's website in order to confirm that the Annual Report is properly posted. Accordingly, given that the FCC can easily verify compliance with this rule, stations should be careful to post the Annual Public File Report in advance of the Form 303-S filing in order to avoid making a false certification in the renewal application.

Biennial Ownership Report

As mentioned above, one important area of public inspection file compliance is the Biennial Ownership Report. Like EEO, the renewal application contains a separate question requiring the licensee to certify that it has filed a Biennial Ownership Report on Form 323 (for commercial stations) or Form 323-E (for noncommercial stations) with the Commission. Previously, all stations, commercial and non-commercial alike, prepared and filed an Ownership Report with the Commission at the same time that it filed the renewal application. With the change to a single consolidated filing date for all commercial stations that is no longer the case for commercial stations. Rather, commercial broadcast stations must all file a Biennial Ownership Report on Nov. 1, 2011.

With respect to noncommercial broadcast stations, however, those stations will continue to file biennial ownership reports on the anniversary of the license renewal filing date for the station's state and type of service (radio or TV). Thus, all noncommercial broadcast stations will need to prepare and file an Ownership Report on FCC Form 323-E on the same date that they file their FCC Form 396 License Renewal application.

Post-filing announcements

With all of the necessary filings submitted to the Commission and out of the way, all that remains is for stations to air the required post-filing announcements consistent with the Commission's Rules. Similar to the pre-filing announcements, the post-filing announcements air after the filing of the license renewal application to notify listeners

of the submission and to encourage them to participate in the FCC's review process. The precise language of the post-filing announcements—which is dictated by the FCC's Rules—can be found [here](#).

The post-filing announcements must air on the 1st and 16th of the three calendar months following the filing of the license renewal application. So, for example, with respect to the stations in the first renewal group, Maryland, Virginia, Washington, DC, and West Virginia, these stations will air post-filing announcements on June 1, June 16, July 1, July 16, Aug. 1, and Aug. 16.

For commercial radio stations, at least three of the required pre-filing announcements must air on the station between 7 a.m. and 9 a.m., or 4 p.m. and 6 p.m. local time. Further, at least one announcement must air between 9 a.m. and noon, at least one between noon and 4 p.m., and at least one between 7 p.m. and midnight. If the station does not operate between 7 a.m. and 9 a.m. or between 4 p.m. and 6 p.m., then at least three of the required announcements must be made during the first two hours of broadcast operations. For noncommercial educational stations, the timing of the post-filing announcements is the same as for commercial stations, except such stations need not air the announcements during any month in which the station does not broadcast. In such case, the noncommercial educational station must ensure that the announcements it does air follow the order specified above. So, for example, if a noncommercial radio station broadcasts only four post-filing announcements, three must air between 7 a.m. and 9 a.m., or 4 p.m. and 6 p.m., and the fourth must air between 9 a.m. and noon.

Conclusion

Regardless of whether your station is in the first group due to file on June 1, 2011, or is later in the renewal filing cycle, now is the time for stations to make sure that their operations are in good order in all respects. By starting the review early, stations will have time to correct any issues that might exist, and avoid scrambling to do so when the license renewal is actually due. In addition, broadcasters should make sure that their stations are serving their local communities. For most licensees, this goes without saying, but stations should be alert to their listeners and do their best to address any criticisms that coming from the community. At license renewal time, broadcasters want friends who will verify how well the station serves your community and the public interest, not enemies who may be ready to complain to the FCC about the station's performance.

For any further questions relating to the renewal deadlines and FCC rule compliance, or for assistance completing these important FCC filings, please feel free to contact any of members in the DWT Broadcast Group.

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