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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes	)	MM Docket No. 98-43
	)	
	)	
Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities	)	MM Docket 94-149

REPORT AND ORDER

Adopted: October 22, 1998 **Released: November 25, 1998**

By the Commission: Commissioners Ness and Tristani issuing a joint statement; Commissioner Furchtgott-Roth dissenting in part and issuing a statement.

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I. INTRODUCTION

1. With this *Report and Order*, we make fundamental changes in our broadcast application and licensing procedures. In the *Notice of Proposed Rulemaking* initiating this proceeding[1], we proposed numerous modifications to those procedures that we believed would serve the public interest by reducing applicant and licensee burdens, increasing the efficiency of application processing, and preserving the public's ability to participate fully in our broadcast licensing processes. Although not required by statute, this initiative was undertaken in conjunction with the 1998 biennial regulatory review because our proposals were designed to streamline application and licensing procedures and eliminate unwarranted regulatory burdens. After careful consideration of the proposals in the *Notice* and the comments received, we now adopt these various measures. Specifically, we adopt an electronic filing mandate for key Mass Media Bureau broadcast application and reporting forms after a phase in period. To facilitate the filing and processing of electronically submitted applications, we have substantially revised those forms by replacing many narrative exhibits with "yes" or "no" questions and certifications, supplemented with detailed worksheets and instructions. We also revise our requirements for extending the construction periods of broadcast stations; for selling unbuilt station construction permits; and for submitting ownership reports for commercial and noncommercial educational stations. Additionally, we modify the Annual Ownership Report to require the provision of information on the racial and gender identity of broadcast licensees. To preserve the integrity of our streamlined application processes, we are implementing a two-pronged formal program of audits.

2. As we have previously emphasized, the Commission is committed to creating a customer-friendly

[1] 13 FCC Rcd 11349 (1998) (hereinafter "*Notice*").

environment that uses the most current filing and processing technologies and promotes more efficient and speedy Commission operations. To that end, the Commission has significantly expanded the use of electronic filing in many areas, including allowing parties to file comments electronically in notice and comment rulemakings,[2] and requiring parties to submit various types of applications electronically.[3] To better serve our licensees and the public generally, the Commission has also for several years made virtually every FCC order, notice of proposed rulemaking, public notice and news release available at no charge through the Internet. We have continued to improve our World Wide Web site and have established an electronic mailbox for submitting messages and questions to the agency.

3. The decision in this *Report and Order* to streamline key broadcast applications and to provide for their electronic submission will further the Commission's long-standing commitment to utilizing new information technologies for enhancing service to our licensees and to the public as a whole. As described in detail below, we believe the electronic submission of our streamlined broadcast applications will significantly reduce the regulatory burdens on applicants, permittees and licensees. The Commission's system for the electronic filing of broadcast applications will, through a series of edit checks and validations, improve the accuracy of both applicants' filings and the information in our database. Thus, the electronic filing of our streamlined applications should also promote the more efficient processing of broadcast applications and the expedited grant of Commission authorizations to applicants. Moreover, we believe that the implementation of electronic filing will not only preserve, but will in fact improve, the public's ability to participate in the Commission's processes, as members of the public will be able to view electronically filed broadcast applications via the World Wide Web.

4. Overall, we conclude that the measures adopted in this *Report and Order* eliminate unnecessary regulatory burdens in connection with the licensing of new broadcast stations and station modifications and in the transfer and assignment of those facilities. We emphasize, however, that these efficiencies will not be created at the expense of the Commission's or the public's ability to monitor broadcaster compliance with all Commission rules and policies. In particular, we have adopted a more formalized enforcement program, which includes regular pre-grant and post-grant audits, to assure that our streamlining initiatives do not adversely impact the Commission's capability to insure licensee compliance with our important regulations and policies. In combination with our other pending initiatives in the broadcast area,[4] we believe that the measures approved herein will contribute to a marked improvement in the regulatory environment for both the broadcast industry and the general public.

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[2] *See Electronic Filing of Documents in Rulemaking Proceedings, Report and Order*, 13 FCC Rcd 11322 (1998).

[3] *See, e.g.*, 47 C.F.R. §§ 1.2105(a); 1.2107(c) (as of January 1, 1999, requiring all applicants to file short-form applications to participate in an auction electronically and requiring all auction winners to file long-form applications electronically). Since October 1997, renewal applications for wireless radio services authorizations (FCC Form 900) have been required to be submitted electronically as well. *See Biennial Regulatory Review -- Amendment of Parts 0, 1, 12, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order*, FCC 98-234 (released October 21, 1998) ("*ULS Order*").

[4] *See, e.g., Notice of Proposed Rule Making and Order, 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 13 FCC Rcd 14849 (1998) ("*Technical Streamlining Notice*"); *Notice of Proposed Rulemaking, 1998 Biennial Regulatory Review -- Amendment of Part 73 and Part 74 Relating to Call Sign Assignments for Broadcast Stations*, 13 FCC Rcd 14392 (1998) ("*Call Sign Notice*").

II. DISCUSSION

A. Electronic Filing of Applications

5. As described in the *Notice*, 13 FCC Rcd at 11352 (¶ 5), the Mass Media Bureau is currently developing electronic versions of various broadcast applications and reporting forms as part of a wide-ranging effort to computerize and streamline the Mass Media Bureau's processes in order to expedite service to the public.[5] The *Notice* invited comment on whether the electronic filing of these applications should be mandatory or permissive, and if mandatory, whether the Commission should phase in such a requirement. We also asked for comment on applicant identification issues, particularly whether Taxpayer Identification Numbers (TINs) should be used as identifiers for parties utilizing the Mass Media Bureau's electronic filing system. *See Notice*, 13 FCC Rcd at 11352-56 (¶¶ 6-16).

1. *Mandatory Electronic Filing*

6. *Background.* As stated in the *Notice*, 13 FCC Rcd at 11353 (¶ 7), electronic filing could speed the processing of applications, conserve Commission resources, and make filing easier for applicants by automatically notifying them of any critical errors or omissions in their applications through a series of edit checks and validations. If electronically filed broadcast applications were made available on the Internet, the general public would also benefit by being able to view these applications more easily. Making electronic filing mandatory would allow the Commission to maximize these resource savings, cost savings and efficiencies. Conversely, if electronic filing were permissive only, the resulting dual filing system (paper and electronic) would substantially reduce any efficiencies that would otherwise be gained from implementation of electronic filing because the data from paper filings would need to be entered by Commission staff into our electronic system, thereby likely slowing the processing and grant of applications.[6] However, as we recognized in the *Notice*, 13 FCC Rcd at 11353-54 (¶ 9), mandating the electronic filing of Mass Media Bureau applications might prove disruptive to licensees, permittees and applicants accustomed to our long-established manual filing procedures.

7. *Comments.* A number of commenters express support for mandatory electronic filing if coupled with a phase in period.[7] Other commenters, focusing primarily on the possible impact to small broadcasters who may have less access to and familiarity with the Internet, prefer electronic filing to be permissive rather

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[5] Electronic versions of the following 15 forms are being developed: FCC Forms 301, 302-AM, 302-FM, 302-TV, 302-DTV, 314, 315, 316, 340, 345, 346, 347, 349, 350, and 5072. FCC Form 398, the Children's Television Programming Report, is already available in electronic format.

[6] The Commission's experience with the Children's Television Programming Report (FCC Form 398) illustrates this problem clearly. Although available in electronic format, many television licensees to date have filed these reports manually. As a result, the Mass Media Bureau has had to divert significant data entry and administrative resources to entering the data from paper filings into the electronic system.

[7] *See* Comments of FCBA at 3-5; Association of America's Public Television Stations at 2; NAB at 5; Cumulus Media Inc. at 4; *see also* Media Access Project at 4 (supporting proposal to collect broadcast application and licensing information electronically).

than mandatory.[8] Some commenters also call for the adoption of a hardship exemption that would allow broadcast applicants, even after the close of any phase in period, to request a waiver of the requirement to file their applications electronically.[9]

8. *Discussion.* Given the competing considerations at issue, we determine, as proposed in the *Notice*, 13 FCC Rcd at 11354 (¶ 10), to mandate electronic filing after a phase in period. We note this mandate for electronic filing in the broadcast context is consistent with the Commission's requirements for electronic filing in other areas.[10] In particular, in our recently adopted order concerning universal licensing for wireless services, the Commission determined to require mandatory electronic filing for all wireless services that are licensed by auction.[11] Because the various broadcast services are now subject to licensing by auction,[12] we believe that electronic filing should similarly be mandated for key broadcast applications. While we recognize that a system of permissive electronic filing would be preferable to broadcasters who are less familiar with computer systems, that approach would be highly inefficient because it would require the Commission to keep separate databases or to incur the cost of inputting paper filings into the new database. Given the falling costs of computer and modem equipment, and the increasing access to the Internet at public institutions, such as libraries, at minimal cost, we believe that electronic filing will not constitute an undue burden or expense for broadcast licensees and permittees generally.[13]

9. We believe phasing in mandatory electronic filing will provide a period for broadcast licensees, permittees and applicants, including small market broadcasters, to become familiar with, and accustomed to using, the Internet generally and our electronic system specifically to submit their applications. Although

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[8] *See* Comments of Michael Robert Birdsill at 1-2; Independent Broadcast Consultants, Inc. at 5; CBS at 2; David Tillotson at 2-3.

[9] *See* Comments of NAB at 6; Cumulus Media Inc. at 4.

[10] For example, beginning January 1, 1999, the Commission's general auction rules require that all auction applicants file their short-form applications (FCC Form 175) electronically and that all auction winners file their long-form initial license applications electronically. *See* 47 C.F.R. §§ 1.2105(a); 1.2107(c). In the broadcast auction order, we determined that all applicants filing short-form applications in broadcast auction windows would be required to file electronically, in accordance with the general Part 1 auction rules. *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No 90-264, 13 FCC Rcd 15920 (1998), ¶¶ 141-144 ("*Auction Order*").

[11] *See ULS Order* at ¶ 22. The *ULS Order* expanded mandatory electronic filing to include other types of applications in auctionable services, such as transfers and assignments, renewals and license modifications. Mandatory electronic filing also applies to licensees in wireless services subject to auction even if the particular license was not acquired by auction, *e.g.*, cellular and paging licensees who obtained their licenses by lottery will be required to file license-related applications electronically when the mandatory filing requirements take effect.

[12] *See* 47 U.S.C. § 309(j), as amended by Balanced Budget Act of 1997. *See generally Auction Order*, 13 FCC Rcd 15920.

[13] Because the Commission's electronic filing system is Web-based, as discussed in more detail below, broadcast licensees and permittees will not need to purchase any special computer software to utilize the system. Further, in a survey of 1997 Radio Show attendees, the NAB found that 87 percent have Web access. Additionally, 83 percent of small market radio attendees who participated in the survey also reported having Internet access. *See* Comments of NAB at 6.

we feel that a phase in period, as detailed below, should be sufficient for broadcast licensees, permittees and applicants to become accustomed to utilizing our electronic application system, we nonetheless note that an applicant can request a waiver of our mandatory electronic filing requirements, even after the close of the phase in period. As with any request for a waiver of Commission rules, the applicant must be prepared to "plead with particularity the facts and circumstances" warranting the grant of a waiver of our mandatory electronic filing rules.[14] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (1969). We expect the number of these waiver requests to be limited, and we do not intend to routinely grant requests for waiver of our mandatory electronic filing requirements following the end of the phase in period. Nevertheless, we want to stress that the Commission is sensitive to the burden that electronic filing could place upon some licensees who are seeking to serve the public interest, with limited resources, and succeed in a highly competitive local environment. We will carefully weigh the needs of such licensees in ruling on any waiver request.

10. With regard to the length of time of the phase in period, we have determined that electronic filing will become mandatory, on a form-by-form basis, six months after each Mass Media Bureau form specified in the *Notice*, as well as other Commission forms that will in the future be adapted to electronic filing, becomes available for filing electronically.[15] At this time, we expect the 15 Mass Media Bureau forms specified in the *Notice* to become available for filing electronically no earlier than March of 1999. Thus, as a practical matter, electronic filing of the key broadcast application forms will not become mandatory before the fall of 1999. With regard to the FCC Form 398 (Children's Television Programming Report) specifically, which has been available for submission electronically since the spring of 1997, we will require licensees to file it electronically as of January 10, 1999.[16] The adoption of this six-month phase in period is consistent with the phase in period recently approved by the Commission for all wireless services that are licensed by auction.[17]

11. We realize that this phase in period for electronic filing of broadcast applications, although consistent with Commission decisions for other services, is briefer than the phase in period favored by some commenters.[18] After careful consideration, however, we believe that the public interest benefits of a wholly electronic filing system substantially outweigh the initial disruption that a limited number of applicants may experience in the conversion from manual filing. As described above, electronic filing should aid applicants in submitting correct applications and in speeding the processing of their applications, facilitate the general

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[14] For example, the applicant should set forth the specific reasons why electronic filing would constitute an unreasonable burden or expense.

[15] In addition to the 15 Mass Media Bureau forms listed in the *Notice* and in footnote 5 above, we expect additional forms, including FCC Forms 323 and 323-E (Ownership Reports), to become available in electronic format in the future.

[16] One commenter specifically calls for mandatory electronic filing of the FCC Form 398, so as to promote public monitoring of broadcast stations' compliance with the children's television rules. *See* Comments of Institute for Public Representation et al. at 10-11.

[17] *See ULS Order* at ¶ 24 (electronic filing for the various auctionable wireless services will become mandatory on (1) July 1, 1999, or (2) six months after application processing in ULS begins for each particular service, whichever is later).

[18] *See, e.g.*, Comments of FCBA at 5 (supporting 12-24 month phase in period); Cumulus Media Inc. at 4 (favoring three-year phase in period); NAB at 5 (calling for phase in period of three years); Association of America's Public Television Stations at 2 (favoring "substantial" phase in period).

public's ability to view broadcast applications, and reduce resource burdens on the Commission. Great effort has also been made to develop a "user friendly" system for the electronic filing of broadcast applications, which are being significantly streamlined in this proceeding. Given the clear benefits of electronic filing to applicants, the public, and the Commission, we believe that delaying the institution of an entirely electronic system for a longer time period during which there would be a dual filing system, as urged by some commenters, is contrary to the underlying purpose of this item -- the expeditious processing and grant of broadcast licensee's applications to facilitate the initiation of prompt and efficient service to the public.[19] For these reasons, we will, consistent with previous Commission decisions, have a six-month phase in period for each broadcast form as it becomes available in electronic format before electronic filing of that form becomes mandatory.

12. Consistent with our tentative view in the *Notice*, 13 FCC Rcd at 11355 (¶ 11), we find that we cannot alter the filing fees associated with application forms so as to encourage the use of electronic filing during the phase in period. Mass Media Bureau filing fees are set by statute (*see* 47 U.S.C. § 158), and the Commission lacks discretion to make changes in them. In addition, we do not have available at this time any data pertaining to the costs associated with Mass Media Bureau processing of electronically filed applications. Any statutory revision of the filing fees will need to be based on data that accurately reflect these costs, which cannot be obtained until the Mass Media Bureau has gained some experience with processing electronically filed applications. The Commission may request that Congress consider the question of filing fees associated with broadcast applications in the future, when we have the necessary cost data.[20]

2. *Operation and Security of Electronic System.*

13. *Background.* In the *Notice* we invited comment on issues related to the operation, capabilities, and security of the Commission's system for the electronic filing of broadcast applications. Commenters raise numerous questions on these issues, which we discuss below in some detail.

14. *Discussion.* We anticipate that applicants will file their Mass Media Bureau applications electronically via the Commission's site on the World Wide Web.[21] Applicants will not be able to file applications on diskette, as supported by one commenter,[22] because the submission of diskettes is not compatible with our Web-based system (HTML),[23] and would unduly increase the burdens on the Commission's resources. In addition, allowing the use of diskettes would raise another security question by increasing the risk of importing viruses into the Commission's system via the diskettes submitted by various

[19] As discussed above, a lengthy phase in period would substantially reduce any efficiencies that would otherwise be gained from implementation of electronic filing, as Mass Media Bureau staff would need to enter the data contained in manually filed applications into the electronic system, thereby slowing the application review process.

[20] *See* Comments of NAB at 7; Independent Broadcast Consultants, Inc. at 5 (urging reevaluation of application fees to reflect efficiencies associated with electronic filing and processing).

[21] *See* Comments of FCBA at 4 (supporting use of World Wide Web for electronic filing).

[22] *See* Comments of NAB at 4.

[23] HyperText Markup Language

applicants. The Commission's Web-based system will not be hardware or software product or manufacturer specific; all commonly available computer hardware and software will be compatible with the Commission's electronic system.[24]

15. The electronic system will provide immediate notification to applicants that their electronically filed applications have been received. Specifically, applicants will be able to print out a page identifying the status of all applications they are preparing, which will show, *inter alia*, that an application has been filed with and received by the Commission; in addition, applicants will be able to download and print their submitted applications. The system will afford applicants the ability to submit amendments, make corrections to electronically filed applications and submit narrative, explanatory exhibits.[25] *See infra* ¶ 23. We note that Mass Media Bureau forms and applications filed electronically pursuant to this *Report and Order* must be received by the electronic filing system before midnight on the filing date. Given these various features of the electronic system providing assurances to applicants that their applications have been correctly submitted and received by the Commission, we believe it unnecessary and burdensome to require applicants to also submit paper copies of electronically filed applications during the phase in period.[26]

16. For any broadcast application for which a fee is required, the electronic system will inform the applicant that a fee is required and that an FCC Form 159 (Remittance Advice) must be filed. In such cases, when the application has been submitted, the applicant would select the "Form 159" button, and the system would then display an FCC Form 159. This form will already have certain information supplied, including the Payment Type Code, the amount to be paid, and an FCC code that will enable the matching of each particular application to the fee payment. The applicant should, as instructed by the system, print the Form 159 and complete the remaining fields. The text at the bottom of the screen after the form contains the address to which the complete form and payment should be mailed.[27] Applications will be accepted after we have received confirmation electronically from Mellon Bank that the applicant has made the appropriate payment. We currently anticipate that the fee process will operate in the manner described, but the process may change in the future, as the Commission continues to develop more efficient electronic means for fee payment.

17. With regard to questions of access to the electronic filing system and the security of electronically filed applications, security for the Mass Media Bureau's electronic system will be consistent with all other Commission electronic filing systems. As commenters support,[28] applications will be filed electronically utilizing passwords chosen by the applicants and unique account numbers that are internally

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[24] *See* Comments of FCBA at 4 (stating that the ability to file applications electronically should be available through as many computer platforms and as many varieties of computer software as possible).

[25] *See* Comments of Association of America's Public Television Stations at 2 and FCBA at 6-8, expressing concern on these issues.

[26] *Compare* Comments of Cumulus Media Inc. at 4 (requiring a paper submission if an application is also filed electronically creates more paperwork, defeating intent of streamlining) with Comments of Cohen, Dippell and Everist, P.C. at 1 (wanting period of time where electronic filing is accepted along with a hard copy).

[27] Fee payments will continue to be made to the Commission's lock-box bank (Mellon Bank in Pittsburgh, Pennsylvania).

[28] *See* Comments of NAB at 8; FCBA at 9-10.

generated by the system and assigned to applicants.[29] Applicants and licensees will be obligated to provide TINs so as to fulfill the Commission's obligations under the Debt Collection Improvement Act (DCIA), Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996).[30] Due to security concerns, however, passwords and unique account numbers, rather than TINs, will be used for the filing of applications. Some commenters assert that TINs are not necessarily confidential, and they fear that using a TIN as the only identifying number would not provide the proper security assurances to applicants.[31] We are confident that the use of passwords and unique account numbers with electronically filed applications will provide a level of security commensurate with, or even greater than, the requirement of an original signature on a paper application.[32] Moreover, we have previously determined that "the signature on an electronically filed application will consist of the electronic equivalent of the typed name of the individual."[33]

18. As envisioned in the *Notice*, 13 FCC Rcd at 11353 (¶ 7), the general public will be able to view electronically filed applications through the Commission's site on the World Wide Web. Of course, public access to all electronic submissions will be "read only." To enhance the security and privacy of applicants, the TINs provided by applicants will not be accessible to the general public through read only access. Given the security features of the Commission's electronic system, as described above, we do not believe that allowing such read only access by the public to electronically filed applications raises legitimate concerns about the security of electronically filed applications.[34] The Commission is a public agency and applications filed with us are public records. Moreover, as we have frequently stated, the Commission relies on members of the public to act as private attorneys general to assist in overseeing the conduct of applicants and

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[29] As described in the *Notice*, 13 FCC Rcd at 11356 (¶ 15), the system will also generate, in the following manner, an application reference number for each application filed: The first four digits would represent the year, followed by the month and the day. For instance, 20010122 would represent January 22, 2001. This number would be followed by a three-character alphanumeric sequence in the ranges of "a" to "z" and "0" to "9," distinguishing from each other all applications filed on the same day.

[30] Under the DCIA, the Commission and executive agencies are required to monitor and provide information about their regulatees to the U.S. Treasury. The statute includes a requirement that the Commission collect TINs and share them with the U.S. Treasury to insure that the Commission does not refund monies to entities that have an outstanding debt with the federal government.

[31] *See* Comments of NAB at 8; FCBA at 9; Independent Broadcast Consultants, Inc. at 6; CBS at 3-4.

[32] *See* Comments of FCBA at 9 (expressing concern that elimination of signature requirement might lead to increase in unauthorized filings).

[33] *Procedures for Electronic Filing of Applications in the Private Radio Services*, 9 FCC Rcd 174 (1994). Sections 1.743(e) and 1.913(e) of our rules currently permit electronic signatures for applications submitted to the Common Carrier and Wireless Telecommunications Bureaus. *See* 47 C.F.R. §§ 1.743(e) and 1.913(e).

[34] The NAB opposes public access to electronically filed applications, contending that there is "a large security risk to the integrity of the application process if *any* individual has electronic access to *any* of these [applications] at *any* time." Comments of NAB at 9 (emphasis in original). The Media Access Project and OMB Watch refute these security concerns, with MAP specifically contending that existing technology "is better equipped to protect the integrity of files than the current paper system." Reply Comments of Media Access Project at 2-4; Comments of OMB Watch at 1.

licensees and in fulfilling our statutory functions.[35] We are therefore not inclined to restrict the public's ability to view electronically filed applications. Indeed, we hope that electronic access to broadcast applications will enhance the public's ability to view applications and participate in the Commission's processes.[36] To facilitate the public's ability to view electronically filed applications, members of the public will not be required to identify or otherwise provide information about themselves in order to view electronically filed applications.[37] As some commenters specifically call for, we will also require applicants to place paper copies of electronically filed applications, as well as copies of sales contracts and contour maps, in their stations' local public files, so as to further insure public access to broadcast applications.[38] *See infra* ¶¶ 41 and 50.

19. We believe the electronic filing measures adopted herein will allow us to better serve the parties we regulate and members of the public by expediting the processing of broadcast applications and improving access for the public generally to participate in the Commission's processes. Implementation of electronic filing for our key broadcast applications in the near future should, in combination with our technical streamlining and call sign initiatives,[39] dramatically improve the regulatory environment for the public and for broadcast licensees and permittees.

B. Streamlining Application Processing

1. *Use of Certifications, Instructions and Worksheets*

20. *Background.* In the *Notice*, we noted that the current versions of most Mass Media Bureau forms rely on open-ended narrative exhibits and document submissions. *See Notice*, 13 FCC Rcd at 11356 (¶ 17). While such forms represent one method of ensuring that the Commission receives all necessary information from each applicant, we explained that we could not obtain the full benefits of electronic filing and processing simply by converting the current version of each form into an electronic format. We therefore proposed to recast key Mass Media Bureau forms into an electronic "filing friendly" format, replacing required exhibits with certifications and questions that require only "yes" or "no" answers. We

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[35] *See, e.g., Auction Order*, 13 FCC Rcd at ¶ 165.

[36] During the six-month phase in period, manually filed applications will be made available to the public through our Web site to the extent that Commission resources permit the entry into our electronic system of data from manually filed applications.

[37] The Media Access Project and OMB Watch strongly object to any suggestion that members of the public should be required to identify themselves before viewing electronically filed applications, arguing that this would impede citizen access and invade the privacy of persons wishing to view applications. *See* Reply Comments of Media Access Project at 4-5; Comments of OMB Watch at 2.

[38] *See* Comments of Media Access Project at 6; Independent Broadcast Consultants, Inc. at 5. We will not, however, require additional paper copies of electronically filed applications to be submitted to the Commission, as one commenter supports for both reference and security reasons. *See* Independent Broadcast Consultants, Inc. at 5-7. As previously described in ¶¶ 14-18, we believe the various security and notification features of the electronic system obviate the need for submitting hard copies of electronically filed applications to the Commission.

[39] *See Technical Streamlining Notice*, 13 FCC Rcd 14849 (1998); *Call Sign Notice*, 13 FCC Rcd 14392 (1998).

also proposed to develop detailed worksheets and instructions to explain processing standards and rule interpretations and thus help ensure that applicants certify accurately. With minor modification, we here adopt those proposals.

21. *Comments*. Eight of the nine commenters on these issues agree that the Mass Media Bureau should abandon open-ended narrative exhibits in favor of certifications and worksheets, as long as the worksheets are accessible to the public, the applications are easy and inexpensive for applicants to file, and provide room for applicants to supply further information, if they so desire.[40] The eight commenters believe that applicants should retain worksheets, but are split on whether worksheets should be retained at the Commission or in station public inspection files.[41] Additionally, commenters express concern that the Commission must not force an applicant into the troublesome position of answering only "yes" or "no" to application questions, when perhaps an answer of "maybe" with a narrative exhibit would be more accurate. They believe that a well-intentioned applicant may be at risk of a lack of candor charge if it should answer "yes" or "no" to a question that may require further explanation, particularly where approval is sought for a complex transaction.[42] Thus, they suggest that the questions on the revised application forms should be worded in such a way that the applicant can attach relevant documentation when it feels doing so is necessary.[43]

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[40] Radio & Records opposes the proposal, stating as follows: "[T]he reliance on self-certification and applicant "check lists" necessarily rests on the assumption that a broadcast applicant fully comprehends all of the intricacies inherent in applicable Commission policies, including complex policies relating to multiple ownership, reversionary interests, etc. If the Commission were to now rely exclusively on such self-certification and expanded "check lists," the opportunity for accurate independent review of proposed sales transactions would be significantly eviscerated." Radio & Records et al. at 11-12. *See also* Independent Broadcast Consultants, Inc. at 10-11 (opposes streamlined forms on basis that forms will not provide the Commission with adequate technical information).

[41] *See, e.g.,* Comments of Media Access Project at 10-11; CBS at 5; FCBA at 11, 17; Institute for Public Representation et al. at 10 (worksheets should be retained in public inspection file); NAB at 11; BIA at 1. FCBA added that each worksheet should be signed by the person who completed it. Comments of FCBA at 11. Two commenters said that worksheets should also be maintained at the Commission. *See* Comments of David Tillotson at 10; Institute for Public Representation et al. at 4.

[42] *See* Comments of Media Access Project at 14 (a "yes" or "no" question would allow both an unscrupulous and a well-intentioned applicant to answer the same question wrong, although one response may come out of a desire to conceal important portions of an agreement, while the other answer may be an honest mistake born out of failure to comprehend the significance of a question.) *See also* Comments of Cumulus at 7; CBS at 6-7 (supports "yes" or "no" responses for technical rules); Institute for Public Representation et al. at 7 (if an applicant falsely certifies that it has complied with Commission rules, such a violation would be virtually undetectable); Media Access Project at 14 (reliance on "yes" or "no" questions will, over time, erode both the Commission's and the public's abilities to analyze proposed transactions, and reduced scrutiny will lead to lower levels of compliance with Commission rules); NAB at 2, 11 (facts surrounding applicant and the nature of the application do not always lend themselves to a simple choice between "yes" or "no"); FCBA at 7-8 (no applicant should be put in the position of being forced to answer only "yes" or "no").

[43] *See, e.g.,* Comments of NAB at 11-12. "[W]e recommend that the Commission allow broadcasters -- on a streamlined form's 'yes/no' or other 'short response' question -- also to check a box calling the Commission's attention to a 'see attached' document. This 'see attached' document also could be filed electronically and be available instantly to, for example, any Commission staff member reviewing the application or report, and would be used to explain the basis for the applicant's response."

22. *Discussion.* After consideration, we have concluded that recasting key Mass Media Bureau forms into "yes" or "no" certification formats, supplemented with detailed worksheets and instructions, will benefit broadcasters, the public and the Commission. The revised forms will significantly reduce burdens on applicants and on the Commission staff while continuing to provide a sufficient basis for determining whether a proposed action is in compliance with the Act, and Commission rules and policies. The revised forms will facilitate application processing, and result in more accurate databases and easier public access to information. The revised forms will also substantially reduce the amount of information applicants must submit, restricting the use of exhibits, to the greatest extent possible, to waiver requests, or to circumstances where additional information is necessary to support application elements potentially inconsistent with precedent, processing standards, Commission rules and policies, and the Act. To facilitate a smooth transition, we will selectively introduce paper versions of the new forms before the development of our electronic filing system is complete. Public notices will detail transition information concerning the use of these revised paper forms.

23. Since one of our fundamental goals is to ensure the accuracy of certifications, we adopt commenters' suggestion to include an "explanation" checkbox beside the "yes" or "no" checkboxes on certain questions on the application form. As detailed in application instructions to each form, applicants may only affirmatively certify or respond to questions where they are certain that the response is correct. A "no" response would be required where an applicant is requesting either a waiver or is uncertain that it fully complies with the Act, a pertinent rule or policy, or that it can truthfully complete a particular certification. For instance, a "no" answer and a concise, focused, explanatory exhibit would be the appropriate response where the applicant believes it is in compliance with, for example, the local radio ownership rules, but is not fully confident about its local market analysis because of uncertainty concerning the attributability of a party's interest in a station.[44] In this regard, we emphasize that each applicant is responsible for the information that the instructions and worksheets convey.[45] Thus, the first question in each application, which requires an applicant to certify that it has answered each question based on its review of application instructions and worksheets, is a key aspect of this new regulatory model. It is designed to promote voluntary rule compliance and where violations are discovered, to permit the initiation of vigorous enforcement actions against the applicant.

24. However, we will not, as some commenters propose, require that applicants retain worksheets at the Commission and/or in their public files. We are adopting a system under which application worksheets are available to applicants as instruments to provide guidance in completing certification questions.[46] They are designed to clarify Commission processing standards and rule interpretations and to

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[44] The Commission will decline to review general, unfocused explanatory exhibits. For example, if an applicant is uncertain that it can certify compliance with ownership related questions even after reviewing the instructions and worksheets, it cannot simply submit its entire contract for staff review; rather, it should clearly direct the staff's attention to pertinent contract terms and identify what it considers to be the material legal and/or factual issues.

[45] As we gain additional experience with a certification-based approach to broadcast licensing, we will revise worksheets and instructions as necessary to maximize their usefulness to applicants.

[46] Three draft worksheets were attached to the *Notice*: a multiple ownership rules worksheet, an investor insulation worksheet, and a family relationship worksheet. *See* Appendix C to *Notice*. Those three worksheets have been combined into one ownership worksheet and modified after further staff review and consideration of comments. Further, we have drafted two additional worksheets: a local notice checklist and a sales contract evaluation worksheet. *See* Appendix E to the *Report and Order*. We will draft additional worksheets, as necessary, to institute subsequent rule or form changes.

enhance the reliability of applicant certifications and responses. They will help applicants focus on material facts and documents on which a meaningful certification must be based. However, we believe it would be contrary to our goals of easing regulatory burdens and increasing application processing efficiencies to, in essence, treat the worksheets as part of the application and subject them to review by the Commission and the public in all circumstances. Thus, applicants should not file the worksheets with the Commission, and, unless they desire, need not retain them. In this regard, we note that it may be advantageous for licensees to retain the worksheets, as well as other data or documentation used to support certifications, for use in response to Commission audits and inquiries, discussed *infra*, ¶¶ 62-76.

2. *Assignment and Transfer Applications: Forms 314 and 315*

25. Considerable staff resources are devoted to processing the several thousand assignment and transfer applications received in the Mass Media Bureau each year. As noted, we believe that the electronic filing process will speed the processing of applications, reduce resource burdens on the Commission, and improve the accuracy of application filings. To fully realize these processing efficiencies obtainable through electronic filing, we examined the rules applied and the information collected in the sales application process and sought comment on specific modifications thereto. We now conclude that significant changes in our sales application forms (FCC Forms 314 and 315) and license assignment and transfer rules are warranted.

a. *Rule Revision: Payment Restrictions on the Sale of Unbuilt Stations*

26. *Background.* Section 73.3597(c) of the Commission's rules restricts payment upon assignment or transfer of an unbuilt station to reimbursement of a seller's expenses. ("no profit rule").[47] The no profit rule requires that an application to assign or transfer an unbuilt station include declarations by both parties that the seller will not be reimbursed for more than out-of-pocket expenses. If the seller is to receive reimbursement for expenses incurred, an itemized accounting, demonstrating that the expenses represent legitimate and prudent outlays, reasonably necessary toward placing the station in operation, must be included in the application.[48] In addition, Section 73.3597(d) provides that where the seller retains an

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[47] 47 C.F.R. § 73.3597(c) provides in pertinent part:

> (1)(i) *Unbuilt Station* refers to an AM, FM, or TV broadcast station or a low power TV or TV translator station for which a construction permit is outstanding, and, regardless of the stage of physical completion, as to which program tests have not been commenced or, if required, been authorized.
>
> (2) The FCC will not consent to the assignment or transfer of control of the construction permit of an unbuilt station if the agreements or understandings between the parties provide for, or permit, payment to the seller of a sum in excess of the aggregate amount clearly shown to have been legitimately and prudently expended and to be expended by the seller, solely for preparing, filing, and advocating the grant of the construction permit for the station, and for other steps reasonably necessary toward placing the station in operation.
>
> 47 C.F.R. § 73.3597(c)(1)(i) and (2).

[48] Section 73.3597(c)(3) provides in pertinent part:

> (i) Applications for consent to the assignment of a construction permit or transfer of control shall, in the

interest in an unbuilt station, the Commission must consider whether the transaction involves actual or potential gain to the seller over and above reimbursement of expenses.[49] The no profit rule was intended "to preclude trafficking in construction permits for unbuilt stations by barring the use of such permits as a means of obtaining financial gain from their transfer before the original grantee builds and operates the station."[50] The rule afforded the Commission a means to ensure an applicant held a bona fide intent to place a proposed station on the air and render broadcast service.

27. The Commission has previously concluded that the for-profit assignment or transfer of a construction permit prior to commencement of program tests violates Sections 301 and 304 of the Act, which traditionally have been interpreted to provide, *inter alia*, that licenses issued by the Commission convey no property interest.[51] Under this analysis, prior to the time a station has commenced operation, the permittee essentially has nothing to convey for a profit.[52] Furthermore, as a policy matter, the Commission reasoned that implicit in the filing of a construction permit application is an applicant's representation of intent to construct and promptly initiate new service. A pre-construction for-profit sale was viewed as inconsistent with this assumption.

28. In the *Notice*, 13 FCC Rcd at 11360 (¶ 25), we proposed to eliminate the no profit rule. The *Notice* observed that the statutory analysis set forth in *Bill Welch,* where the Commission abandoned its earlier analysis and determined that there is no *per se* statutory proscription against the for-profit sale of

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case of unbuilt stations, be accompanied by declarations by both the assignor (or transferor) and by the assignee (or transferee) that, except as clearly disclosed in detail in the applications, there are no agreements or understandings for reimbursement of the sellers expenses or other payments to the seller....

(ii) When the seller is to receive reimbursement of his expenses, the applications of the parties shall include an itemized accounting of such expenses, together with such factual information as the parties rely upon for the requisite showing that those expenses represent legitimate and prudent outlays made solely for the purposes allowable under paragraph (c)(2) of this section.

47 C.F.R. § 73.3597(c)(3)(i) and (ii).

[49] 47 C.F.R. § 73.3597(d)(1).

[50] *See Assignment and Transfer of Construction Permits for New Broadcast Stations (Section 1.597 of the Commission's Rules)*, 16 FCC 2d 789, 789 (1969). Trafficking is defined as speculation, barter or trade in licenses to the detriment of the public interest. *See also Amendment of Part I of the Commission's Rules Adding Section 1.365 Concerning Applications for Voluntary Assignments or Transfers of Control*, 32 FCC 689 (1962).

[51] *See Amendment of Section 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control), Report and Order*, 52 RR 2d 1081 (1982) ("Trafficking Report and Order") (subsequent history omitted). Section 301 provides, in pertinent part, that it is the purpose of the Act "to provide for the use of [radio transmission] channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions and period of the license." 47 U.S.C. § 301. Section 304 of the Act requires applicants to "waive any claims to the use of any particular frequency ... as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise." 47 U.S.C. § 304.

[52] *See Trafficking Report and Order,* 52 RR 2d at 1083.

construction permits for unbuilt broadcast stations, remains sound.[53] Moreover, the *Notice* maintained that, as a matter of policy, retention of the no profit rule is no longer necessary to preserve the integrity of our licensing process, or to facilitate the introduction of new broadcast services. We also noted that the initiation of competitive bidding procedures for broadcast spectrum, together with the proposed restricted construction permit extension policy, would provide sufficient incentives for the prompt construction of broadcast facilities.[54] Accordingly, we tentatively concluded to follow the same construction permit sale policy followed in other services subject to auction procedures.[55] Specifically, we sought comment on our proposal to permit the sale for profit of any permit at any time, subject to a strictly enforced build-out requirement. We recognized that certain permits will not be subject to auction procedures, and specifically sought comment as to whether the no profit rule should be retained in those circumstances. The *Notice* tentatively concluded, however, that reimbursement restrictions should also be eliminated for both outstanding construction permits and those to be issued before the implementation of competitive bidding procedures, including those issued as a result of settlement agreements facilitated by Section 309(l)(3) of the Communications Act.[56] That legislation requires the Commission to waive, *inter alia*, the no profit rule with regard to settlements among certain applicants entered into by February 1, 1998.[57]

29. *Comments*. The two commenters addressing this issue encourage the Commission to eliminate the no profit rule without regard to whether a station is commercial or noncommercial, and without regard to the manner by which the construction permit was granted, urging that elimination of the rule will only hasten the implementation of new broadcast service for the listening and viewing public.[58]

30. *Discussion*. We affirm the holding in *Bill Welch* that there is no *per se* statutory proscription against the for-profit sales of unbuilt stations. Moreover, we no longer believe that retention of the rule is necessary to maintain the integrity of our licensing processes. Thus, after consideration, we will, both for outstanding commercial station construction permits and commercial station construction permits that will be issued pursuant to the auction process, eliminate the no profit rule restricting payment upon assignment or transfer of an unbuilt station to reimbursement of a seller's expenses. We also will eliminate the no profit limitation for noncommercial educational station construction permits granted prior to the release of this *Report and Order*, as well as for those granted subsequent to the release of this *Report and Order* as "singletons." However, as discussed *infra* ¶ 33, except for those granted as "singletons," we defer deciding on whether we should permit subsequently issued noncommercial educational station construction permits to be sold for a profit.

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[53] *Bill Welch*, 3 FCC Rcd 6502 (1988).

[54] *See Notice*, 13 FCC Rcd at 11360-11361 (¶ 26, n 44); *see also Auction Order*, 13 FCC Rcd 15920.

[55] *See, e.g.*, 47 C.F.R. § 24.839.

[56] Section 3002 (a)(3) of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997), added Section 309(l) to the Communications Act of 1934. Section 309(l) provides that, for a 180 day period, the Commission "shall waive any provisions of its regulations necessary" to permit those persons, who, before July 1, 1997, filed competing applications for construction permits for new commercial radio or television stations, to enter into an agreement to procure the removal of a conflict between their applications.

[57] *See, e.g., Gonzales Broadcasting, Inc.*, 12 FCC Rcd 12253 (1997); *Playa Del Sol Broadcasters*, 13 FCC Rcd 3270 (1998); *Praise Broadcasting Network, Inc.*, 13 FCC Rcd 3268 (1998).

[58] *See* Comments of CBS at 6; Michael Robert Birdsill at 2.

31. For commercial stations, use of competitive bidding procedures to resolve mutual exclusivity among commercial broadcast applicants will soon replace both the traditional comparative hearing process for full-service radio and television stations and the system of random selection formerly employed to award certain low power television and television translator licenses. Our concern with spectrum speculation in an auction environment, where there are strict bidding and payment requirements and where the winning bidder has paid fair market value for an authorization, is minimal.[59] We also believe that the competitive bidding process itself, where the permittee may be required to make a substantial front end payment, provides a strong impetus for timely station construction. Even in cases where a commercial permit is not issued pursuant to an auction, *e.g.*, because only one application was filed for a frequency and therefore the application was granted as a "singleton," we believe it is appropriate to eliminate reimbursement restrictions. Applicants holding these permits would have been potentially subject to the auction process. Moreover, our concerns about speculation will be at a minimum where an auction fails to attract a single competing proposal. Even assuming that "singleton" commercial station permittees do not have the same impetus to build quickly in order to recoup auction expenditures, we believe that the automatic cancellation and forfeiture provisions adopted in this *Report and Order, infra* at ¶¶ 77-90, will provide sufficient incentives to construct authorized facilities promptly.

32. Regarding outstanding commercial and noncommercial construction permits issued prior to the release of this *Report and Order*, we will also follow the conclusion tentatively reached in the *Notice,* 13 FCC Rcd at 11361 (¶ 28), that reimbursement restrictions be eliminated. Whether they received an authorization through grant of a "singleton" application or through settlement, most current permittees filed construction permit applications under rules that prohibited the sale of a permit at a profit. Thus again, our concern that the construction permit was issued merely as the result of a speculative filing is minimal. Furthermore, some commercial station construction permits were recently issued pursuant to settlement agreements facilitated by Section 309(l) of the Communications Act, which, *inter alia,* required the Commission to waive the no profit rule with regard to settlements among certain applicants entered into by February 1, 1998. In principle, these authorizations were acquired at fair market value and we see no justification for imposing price restrictions on their sale now.[60]

33. We note that under current processing rules, we continue to accept applications for FM facilities on the reserved band and to grant permits in circumstances where no mutually exclusive application is timely filed or where a global settlement agreement among all mutually exclusive applicants is approved. With regard to noncommercial station permits granted as "singletons" on or after the release of this *Report and Order*, we will eliminate the no-profit rule. As with commercial applicants, we believe that where a noncommercial applicant has failed to attract even a single competing application and where the applicant will be subject to strict construction requirements, it is unnecessary to restrict for-profit sales or otherwise

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[59] *See, e.g.*, 47 C.F.R. §§ 73.5003 and 73.5004. (To be eligible to bid, each bidder must submit an upfront payment prior to the commencement of bidding. In addition, the Commission will impose financial sanctions on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes, or who are ultimately determined to be disqualified.) *See generally Auction Order*, 13 FCC Rcd 15920.

[60] We note, however, that the Commission's current settlement rules will continue to apply to pending mutually exclusive commercial and noncommercial applications, *i.e.*, any pending applicants who did not take advantage of the Commission's prior windows for settling for more than out-of-pocket expenses and who wish to settle now are, absent a waiver of the provisions of 47 C.F.R. § 73.3525, restricted to out-of-pocket expenditures. Furthermore, we emphasize that settlement agreements to procure the removal of application conflict submitted pursuant to Section 311(c) of the Act and Section 73.3525 of the Commission's rules, must be accompanied by affidavits from each party setting forth, *inter alia*, the exact nature and amount of any consideration paid or promised.

provide an impetus for prompt construction. *See supra* ¶ 31. However, in instances where there are mutually exclusive noncommercial applications filed on or after the release of this *Report and Order* and a permit is subsequently issued as the result of a settlement, we believe a more cautious approach is required. We note that a proceeding is pending to develop a selection process for mutually exclusive noncommercial educational station applicants.[61] Until the issues in that proceeding are resolved, we will not be in a position to determine whether adopting procedures that would permit settlements among those applicants and subsequent for-profit sales could frustrate the goals of that proceeding. Moreover, we can be less certain about the motivations of noncommercial educational new station applicants who file after the adoption of this Order. Accordingly, we conclude that maintaining the status quo with respect to applications filed subsequent to the release of this *Report and Order* will help protect the integrity of the broadcast licensing process.

34. Finally, we address the issue of the for profit sale of permits by permittees who received bidding credits as designated entities in the auction context. As proposed in the *Notice*, we will impose the same restriction as imposed in other auctionable services.[62] Thus, where bidding credits are used in a broadcast auction, for a five year period, the Commission will require a designated entity seeking approval of a transfer or an assignment to a non-designated entity, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, to reimburse the government for the amount of the bidding credit, plus interest, before transfer of the license will be permitted.[63] These requirements will address Congressional concerns over unjust enrichment[64] and work to secure the integrity of the Commission's processes by preventing profiting through the rapid sale of an authorization acquired through the assistance of our preference policies. Generally, we will follow the provisions of Part 1 of the auction rules and apply transfer limitations to the extent they are applied in other auctionable services.[65]

b. *Requirement to Submit Contracts with Assignment and Transfer Applications*

35. *Background.* Currently, all Mass Media Bureau applications for consent to assignment of license or to transfer control of a licensee entity, Forms 314, 315 and 316, require that the seller submit a

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[61] We recently released a *Further Notice of Proposed Rulemaking* proposing new comparative standards to select among mutually exclusive noncommercial educational applicants and raising related, *e.g.*, holding period, issues. *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking, FCC 98-269 (released October 21, 1998).*

[62] *See* 47 C.F.R. § 1.2111.

[63] *See Second Report and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, 9 FCC Rcd 2348, 2395 (1994) (¶ 264).

[64] In designing the auction rules, the Commission was directed to "require such transfer disclosures and anti-trafficking restrictions ... as may be necessary to prevent unjust enrichment ...." 47 U.S.C. § 309 (j)(4)(E). In general, the acquisition of a license through an effectively conducted auction was, in itself, thought to be a strong deterrent to unjust enrichment. In an open, unlimited bidding process without special accommodations, the winner is likely to pay the market price for its license. However, Congress recognized that the potential for unjust enrichment exists when designated entities obtained licenses with the help of bidding credits.

[65] *See Auction Order*, 13 FCC Rcd at ¶¶ 193 - 196. *See also*, 47 C.F.R. § 73.5007.

copy of the agreement for the assignment or transfer of the station. If the understanding between the parties has not been reduced to writing, a written description of the complete oral agreement must be supplied.[66] In addition, Section 73.3613(b) of the Commission's rules requires that licensees and permittees file with the Commission, *inter alia*, any contracts, instruments or documents relating to the present or future ownership or control of the licensee or permittee within thirty days of execution.[67] The Commission has traditionally used the contract, in conjunction with the sales application, to gain a broad understanding of the overall structure of each transaction involved in the assignment or transfer of a broadcast authorization. Furthermore, these documents permit independent verification of rule compliance. For example, examination of the contract provides corroboration that a non-party will not exercise undue influence over an assignee or transferee, or assurance that the licensee has retained no prohibited reversionary interest, or secured an interest in the station license.

36. In the *Notice*, 13 FCC Rcd at 11362 (¶ 31), we proposed to eliminate the requirement that such contracts or agreements be filed as part of the application for assignment or transfer. We also proposed to delete the portion of Section 73.3613(b) that requires such agreements be filed with the Commission within thirty days of execution. We sought comment on these proposals, and in particular the appropriateness of these changes where complex transactions are involved. We proposed that applicants place all such agreements in the station's public inspection file, in lieu of including copies with all application filings. Significant resource savings could be realized, we presumed, to the extent we could rely on applicants' certifications regarding the content of the sales agreements. We here adopt our proposal to eliminate routine staff review of sales contracts and agreements, but will still require that the documents be filed and made available in the Commission's public reference room and in the station's public file.

37. *Comments*. While commenters generally welcomed the Commission's efforts to ease administrative burdens and were supportive of our desire to process applications more efficiently with the use of fewer government resources, ten of the thirteen commenters addressing this issue oppose adoption of our proposal to eliminate contract submissions to the Commission.[68] Commenters indicate that, on balance, the public interest benefits that accrue from such filings outweigh any regulatory burdens incurred. While recognizing that streamlining is a laudable goal, these commenters also argue that the public's ability to evaluate applications must not be jeopardized and that the sales contract, in particular, is an integral part of the application. They maintain that, if the Commission were to require that this vital information be

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[66] Instructions to the FCC sales Forms 316, 314 and 315 presently provide that the contract or agreement between the parties must specifically show: (1) that the assignee or transferee will have complete control over all necessary physical property and its use and unlimited supervision over programs to be broadcast; (2) the consideration, whether monetary or otherwise, and whether paid or promised; (3) all other terms and conditions involved in the assignment or transfer, including a statement that the instrument submitted covers the entire arrangement between the parties. If it does not, all other pertinent legal instruments must be submitted; and (4) the assignment or transfer is subject to the consent of the Commission.

[67] 47 C.F.R. § 73.3613(b).

[68] *See, e.g.,* Comments of FCBA at 12-18; David Tillotson at 12-15; Norwest at 1; The Exline Company at 1; Frank Boyle at 1; Radio and Records et al. at 4-13 (detriment to the industry occasioned by a change in filing requirements is manifest; the harm resulting to the public more than offsets the continued requirement to file a contract); BIA Research, Inc. at 2-3; Berry Best Services at 1-3; Media Access Project at 1-3; 7-9; 17; Institute for Public Representation et al. at 5-8. Only three commenters urge the Commission to eliminate contract submissions with the sales application, asserting that retention of the contract in the station public inspection file is sufficient. *See* Comments of CBS at 6; Cumulus Media Inc. at 5; Michael Robert Birdsill at 3.

placed only in local public inspection files, rather than in the Washington, D.C. public reference room, the fundamental role of oversight would be hindered, because of the expense of traveling to multiple locations for information retrieval. Several commenters argue that the documents are highly complex and the public relies on the expertise of counsel and specialty organizations based in Washington, D.C. to bring questionable contract provisions to light.[69] They further contend that the burden on applicants and licensees of submitting a copy of the sales agreement to the Commission is not substantially greater than the burden of requiring applicants and licensees to place such materials in local public files.[70]

38. The sales price is of particular importance to many commenters, who emphasize the public interest benefits in requiring sales price data.[71] Three commenters contend that absence of this information could result in decreased financing sources, obstruct new owner expansion, and only serve to broaden the gap between large station groups with access to sophisticated investment institutions and small groups, individuals and new industry entrants.[72] Presumptively, many loans would not have been made without this data, one commenter states.[73] Impeding the flow of transactional financing would only injure the industry which the proposal was designed to assist and significantly disrupt the orderly marketplace that presently exists, four commenters maintain.[74] Two commenters state that the public has a right to know the dollar value assigned to broadcast spectrum, which is a scarce resource belonging to the public.[75] Furthermore, one of the commenters adds, accurate information as to comparable station sales is required in order to ensure accuracy in implementation of the Commission's minority distress sale policy.[76]

39. *Discussion.* We adopt our proposal to modify the sales application processing scheme as it relates to transactional documents. Specifically, in lieu of the Commission expending staff resources to analyze sales agreements and contracts in every case, applicants will themselves assess their sales and organizational documents against the series of standards set forth in the expanded instructions to Forms 314 and 315. These instructions expressly identify the core issues that the Commission focuses on when it reviews the submitted agreements and contracts. Applicants will be required to certify that a transaction conforms fully to the standards set forth in the instructions, the Commission's rules and policies, and the Act, or to disclose those specific aspects of the transaction for which waivers are sought and/or where

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[69] *See* Comments of Media Access Project at 16; FCBA at 13; Institute for Public Representation et al. at 7.

[70] *See* Comments of FCBA at 14; Radio & Records et al. at 12; Media Access Project at 15; David Tillotson at 9.

[71] *See* Comments of Norwest Communications Finance Division at 1; Radio & Records et al. at 8-13; Berry Best Services, Ltd. at 2-3; BIA Research, Inc. at 2; Frank Boyle at 1; FCBA at 18; Media Access Project at 12.

[72] *See* Comments of BIA Research, Inc. at 2; Radio & Records et al. at 11; FCBA at 18.

[73] *See* Comments of FCBA at 18.

[74] *See* Comments of FCBA at 18; Norwest at 1; Exline Company at 1; Reply Comments of Radio & Records at 4-6.

[75] *See* Comments of Radio & Records et al. at 8; Berry Best Services, Ltd. at 2.

[76] *See Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978). (Under the distress sale policy, a broadcaster facing substantial and material questions of fact as to character qualifications issues may sell its broadcast station to a minority-controlled entity at a percentage of fair market value).

compliance with the Act, and our rules and policies is uncertain. We emphasize, however, that if an application raises concerns on its face, or presents particularly significant public interest issues, or where an objection is filed, relevant provisions of the agreements will be reviewed by the staff on a case-by-case basis. In addition, we will rely on a two-pronged random audit program, discussed fully at *infra* ¶¶ 66-76, which we believe will strongly enhance the reliability of applicants' certifications. We conclude that this approach preserves our ability to meet the statutory obligations under Section 310(d) of the Act to grant only those applications that serve the public interest, convenience and necessity, and reduces administrative burdens on applicants and licensees. To further reduce filing burdens on licensees, we will also adopt the proposal to eliminate, as duplicative, the Section 73.3613(b) requirement that sales agreements and contracts be filed with the Commission within thirty days of execution, where the reporting entity has already filed the sales contract with the assignment or transfer application.

40. However, we will modify our proposals to ensure easy public access to sales agreements and contracts previously reviewed by the staff. Throughout the course of this proceeding, we expressed particular concern whether the proposed procedures sufficiently enable the public to monitor station transactions and underscored our commitment regarding the preservation of meaningful public participation under Section 310(d) of the Act. We are oftentimes dependent on the public to bring information to the Commission's attention to determine whether proposed actions are consistent with the public interest. Indeed, the Commission would be hard-pressed to regulate the communications industry without the assistance of the public. It is evident from the comments that the public takes seriously its public oversight responsibilities, and we acknowledge that meaningful oversight requires public access to information. Of special concern to commenters was the projected impact of ending the practice of having unredacted sales agreements available for inspection in the Commission's Washington, D.C. public reference room.

41. Thus, based on the filed comments, we are persuaded to retain our present requirement that applicants submit copies of sales agreements so that we can continue our practice of maintaining copies of unredacted sales agreements and contracts in the public reference room. Similarly, if the parties have an oral agreement, a written description of its material terms must be submitted with the application. We note commenters' assessment of the public interest benefits concerning sales price data, and will accordingly continue to require that contracts submitted for retention in the public reference room disclose sales price. We acknowledge the value in the Commission's collection of this sales price information, recognizing the multiple uses for which it is employed and the public's reliance thereon. *See supra* ¶ 38. Since contracts and agreements are "material pertaining to" the sales application, they must also, pursuant to the public file rule, be retained in the station's public file until final action has been taken on the application.[77] If we determine that the documents have not been submitted for use in the public reference room, we will neither accept for filing, nor process the application for assignment or transfer. Similarly, we will suspend application processing if it comes to our attention that the documents have not been placed in the station's public file. Thus, maximum public access to essential documents and supplementary materials is maintained.

42. To execute our decision here, prior to the implementation of electronic filing procedures, we will initially require applicants to file a single paper copy of the sales agreement with the assignment or transfer application, and eliminate duplicate copies which are submitted as part of the current triplicate paper filing procedures. The processing staff will immediately forward this copy of the contract to the public reference room. Upon the implementation of electronic filing procedures for sales applications, the public

[77] Applications granted pursuant to a waiver showing, however, must be retained for as long as the waiver is in effect. 47 C.F.R. §§ 73.3526(e)(2) and 73.3527(e)(2). *See generally, Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, FCC 98-175 (rel. August 11, 1998). (¶ 54-55) ("*Main Studio Order*").

will have access to electronic copies of sales agreements transmitted with the application and made available in the public reference room. The staff will review the electronic copy of the sales agreement for the proposed transaction only where application responses, exhibits, waiver requests and/or objections raise relevant issues. We emphasize that the staff will not scrutinize each agreement as a matter of course. Thus, under these revised procedures, a grant of an assignment application would not conclusively establish either the acceptability of a particular contract term or the correctness of an applicant's rule interpretation in future application proceedings. Reliance on a prior Commission action would be appropriate only where a decision disposing of the prior application plainly considered and found acceptable the pertinent contract term or rule interpretation.[78]

c. *Requirement to Submit Contour Overlap Maps*

43. *Background.* Forms 314 and 315 currently require radio applicants to submit a multiple ownership exhibit if the buyer is acquiring a radio station that has a principal community contour that overlaps the principal community contour of a commonly owned, same service radio station.[79] In the *Notice*, 13 FCC Rcd at 11363 (¶ 34), we proposed to reduce administrative burdens on broadcasters and simultaneously streamline the staff review process by eliminating the requirement that applicants submit contour overlap maps to demonstrate compliance with the local radio ownership rules. We proposed to rely on applicant certifications in place of contour maps. We cautioned, however, that an applicant in most instances would be in a position to make this local radio ownership certification only after preparing a map and completing a worksheet, regardless of whether there existed a Commission filing requirement. In connection with these proposals, we sought comment on whether we should require applicants to place a copy of the contour overlap map in the station's public inspection file. Finally, we requested comment on whether applicants should be exempt from the public file requirement in those situations in which compliance with the rule was obvious. We here adopt our proposal to rely, in most instances, on applicant certification of compliance with the multiple ownership rules rather than on staff review of contour overlap maps. However, we will require that maps be available to the public both in the Commission's public

[78] In light of the contract submission procedures adopted herein, we will continue to impose the transfer disclosure requirements of Section 1.2111(a) of the Commission's rules. Under Section 1.2111(a) of the general auction rules, an applicant seeking approval of the transfer of control or assignment of license within 3 years of receipt of such license by means of competitive bidding must, together with the transfer or assignment application, also file with the Commission the associated contract, option agreements, management agreements, or other documents disclosing the consideration received in return for the transfer or assignment of the license. 47 C.F.R. § 1.2111(a). *See also Auction Order*, 13 FCC Rcd at ¶ 184.

[79] The exhibit must include: (i) a map that clearly identifies, by relevant contours, the location and geographic coverage of the markets involved; (ii) the number of commercial AM and FM stations counted as being in the market, including a map that shows the principal community contours of all commercial stations intersecting with the principal community contours of these stations; and (iii) the call letters and locations of all stations in the market that are proposed to be commonly owned, including any radio station in the market for which the applicant brokers more than 15 percent of that station's broadcast time per week. The forms were amended pursuant to the rules adopted in *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in Docket 91-140, 7 FCC Rcd 6387, 6403, n. 105 (1992).

reference room and in the station's public file.[80] In light of the intensified radio sales activity occurring after the Telecommunications Act of 1996[81] and the rapid and ongoing industry consolidation, we will also give heightened focus in both our pre-grant and post-grant audit activities, described fully *infra*, ¶¶ 66-76, to the accuracy of multiple ownership certifications and take all steps necessary, including ordering post-grant divestitures, to ensure that applicants do not circumvent Congressionally-mandated ownership limits.

44. *Comments.* Five of the eight commenters addressing the issue expressed concern about eliminating Commission review of a radio contour overlap map exhibit. They argue that multiple ownership is one of the most controversial issues in broadcasting today, and consequently, in this era of rapid ownership consolidation, review of the maps serves the vitally important purpose of insuring that a proposed purchaser has not overstepped legislatively-mandated ownership limits.[82] Furthermore, in the context of assignment and transfer applications, several commenters argue that the radio multiple ownership study is not a precise science.[83] One commenter maintains that contours are the key ingredient in the current duopoly rules, and there are diverse methods by which a party may predict the location of field strength contours.[84]

45. No commenter challenges our assumption that most applicants proposing to own multiple radio interests in an area would need to complete a market evaluation and prepare contour overlap maps to accurately respond to the related certification question, notwithstanding any Commission imposed filing requirement.[85] In addition, numerous commenters contend that retention of the contour overlap map serves as an excellent defense against challenge, either by the Commission or citizens' groups, and helps avoid the possibility that an applicant may be charged with misrepresentation in its statement that grant of the application will comply with the radio duopoly rules.[86]

46. Thus, commenters note that applicants would not be relieved of any burden by the proposal to eliminate the requirement that contour maps be filed with the sales applications, as applicants would still be burdened with the expense and effort of preparing such maps to ensure compliance with our multiple

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[80] We note that the Commission is currently undertaking an examination of the broadcast ownership rules, including the local radio ownership rules, in the context of our biennial ownership review. *1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Inquiry,* 13 FCC Rcd 11276 (1998). Action undertaken today is not intended to affect the proceedings in our Biennial Regulatory Review.

[81] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[82] *See* Comments of NAB at 12; FCBA at 16; David Tillotson at 6; Independent Broadcast Consultants, Inc. at 18-19; Cohen, Dippell and Everist, P.C. at 2.

[83] *See* Comments of FCBA at 16; David Tillotson at 7.

[84] *See* Comments of NAB at 12.

[85] *See* Comments of Cumulus Media Inc. at 7; Media Access Project at 17; Graham Brock, Inc. at 1; David Tillotson at 15.

[86] *See, e.g.,* Comments of NAB at 12; Independent Broadcast Consultants at 19.

ownership rules.[87] A number of commenters therefore contend that the radio contour overlap map should be available to the public both in the local public inspection file and in the Commission's public reference room. Without this information, they feel it will be impossible for the public to participate in and comment upon ownership combinations that are in violation of the Commission's rules and policies.[88]

47. *Discussion.* We adopt our proposal to modify the sales application processing scheme as it relates to the radio contour overlap map. Specifically, in lieu of Commission staff reviewing these maps in every instance to ensure that the application complies with our multiple ownership rules, applicants themselves will assess and certify compliance. In this regard, we believe it appropriate to limit staff review in order to achieve the benefits of our proposals. We acknowledge that our contour-based definition of a market is unique, as most citizens would presume the market to be the community to which the station is licensed. We further note that the Commission's definition of a market and the attendant use of overlapping contours has been the subject of challenge and is consequently undergoing examination in the Biennial Regulatory Review. *See supra* n. 80. However, we have given very careful attention to developing instructions and worksheets that will help applicants understand all relevant rules and concepts. We believe that, with conscientious use of these tools, applicants can accurately determine whether or not they should certify compliance with our current rules. As with the sales contracts, we emphasize that if an application raises concerns on its face, or presents significant public interest issues, or where an objection is filed, the contour overlap maps will be reviewed by the staff on a case by case basis.[89] Additionally, we will rely on the random audit program discussed *infra* ¶¶ 66-76, which we believe will further enhance the reliability of applicants' certifications.

48. As noted, we are very mindful of the public's right to review and evaluate station sales and consequently sensitive to commenters' concerns that eliminating the filing and retention of multiple ownership information in Washington, D.C., despite continued availability of that data in public files throughout the country could possibly impede meaningful public participation in Commission sales proceedings under Section 310(d) of the Act.[90] Our procedures must not be modified to the detriment of public participation in our regulatory processes.

49. Therefore, to insure that access to all relevant information is maintained, as with sales agreement and contract data, we will retain our practice of maintaining copies of contour overlap maps in the Commission's public reference room. Consistent with the contract filing procedures adopted herein, we will require applicants to file a single copy of the contour overlap map (or submit an electronic version) with the application for assignment or transfer. The processing staff will not review the map unless application

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[87] *See* Comments of David Tillotson at 9 and 15 (the burden, such as it is, is in gathering the information and completing the worksheets, not in sending the information to the Commission).

[88] *See, e.g.,* Comments of NAB at 12; FCBA at 17; David Tillotson at 15. Several commenters, however, found it sufficient to retain the contour map in the public inspection file. *See* Comments of Cumulus at 7 (Eliminating the requirement that an applicant file such maps with the Commission will likely reduce the time consumed in processing the applications - a benefit to the applicant, the Commission and the public); Graham Brock, Inc. at 1-2; Media Access Project at 18.

[89] If the Commission ultimately modifies the local radio ownership rules or the methodology by which they are applied in the course of the Biennial Regulatory Review proceeding, we will at that time revisit the requirements imposed in this *Report and Order.*

[90] *See* 47 U.S.C. § 309(d).

responses, exhibits, or waiver requests raise multiple ownership issues, but the public will be able to access the map and bring any concerns or objections to the attention of the Commission staff. As with the sales contract, under these revised procedures, an applicant generally may not assert that grant of a prior assignment application with the identical multiple ownership analysis conclusively establishes either the acceptance of a particular multiple ownership showing or application rule compliance. *See supra* ¶ 42.

50. Since the radio contour overlap map constitutes "material related to" the application, it must, pursuant to the public file rule, also be maintained in the public inspection file along with the application for assignment or transfer for review by the general public until final action has been taken.[91] As with sales contracts, we will refrain from processing any application when contour maps are not submitted with the application, or when we become aware that they have not been retained in the local public file according to the provisions of the local public file rule. By thus ensuring that the multiple ownership information is made available, the Commission will benefit from the oversight that the public can provide.

51. Only one commenter responded to the request for comment on whether applicants should be exempt from filing requirements whenever compliance with the radio contour overlap rule was obvious. Overlapping contour methodology creates unique market definitions for each station or group of stations, the commenter contends, warranting no exemption from any filing requirements for those applications located in the largest of markets.[92] No additional comments were received on the Commission's alternative proposal and no additional recommendations were submitted depicting examples of obvious compliance. Given the lack of any support in the comments for this proposal, we decline to adopt an exemption to the contour map filing requirements outlined above.

3. *New Commercial Station and Facility Change Applications: Form 301*

a. *Rule Revisions*

52. *Background.* In the *Notice,* 13 FCC Rcd at 11364 (¶ 36), we sought comment on whether we should modify or eliminate filing and reporting requirements codified in three Commission rules: 47 C.F.R. §§ 73.316(c) (FM directional antenna systems); 73.1030(a) (Notifications concerning interference to radio astronomy and radio research installations); and 73.1675(a) (Auxiliary antennas). Specifically, the *Notice* proposed modifying Section 73.316 to shift the filing requirements regarding certain directional antenna information to the license application stage of the FM authorization process and modifying Section 73.1030(a) by eliminating the application disclosure requirement regarding the date of radio astronomy and research installation notification. Finally, the *Notice* proposed modifying Section 73.1675(a) to eliminate the map requirement for auxiliary facilities for the FM and TV broadcast services. These proposed modifications to the reporting requirements were intended to simplify the preparation of the technical portion of Form 301 and exhibits accompanying the form, and to reduce paperwork burdens for broadcast applicants. With slight modifications, we adopt the proposals.

53. *Comments.* The Commission received only three comments addressing these proposals. Two of the three commenters support the Commission's decision to reduce or eliminate the filing requirements

[91] Applications granted pursuant to a waiver showing, however, must be retained for as long as the waiver remains in effect. *See* 47 C.F.R. §§ 73.3526(e)(2) and 73.3527(e)(2).

[92] *See* Comments of Independent Broadcast Consultants at 19.

specified in these individual rules.[93] However, one commenter suggests that information currently required by Section 73.316(c), such as the antenna manufacturer, model number, and number of bays, is important in the Commission's assessment of public health and safety concerns. The commenter urges retention of the requirement that this directional antenna information be submitted with construction permit applications.[94] All three commenters agree with our proposal to modify Sections 73.1030(a) and 73.1675(a) by eliminating, respectively, the requirements to specify the date of the radio observatory notification and the broadcast auxiliary operation map requirements for FM and TV in the Form 301 application.[95]

54. *Discussion.* As stated in the *Notice*, 13 FCC Rcd at 11364 (¶ 37), in practice, we have not needed the directional antenna information required by Section 73.316(c) until the license stage of the authorization process. While the information may be occasionally helpful, in many instances, as recognized in the *One Step Licensing Report and Order*, the construction permit applicant has not yet selected a specific antenna type or manufacturer.[96] Furthermore, the Commission currently approves practically all authorizations based on numerical tabulations of the proposed composite radiation patterns without considering specific antenna information such as make, model, and size. Elimination of the requirement to file this information would provide applicants maximum flexibility in choosing an antenna manufacturer when constructing a facility. Should the absence of definitive information concerning a specific directional antenna preclude grant of a construction permit application, the Commission can of course request the appropriate antenna information prior to grant.[97] Similarly, the revisions to the auxiliary antenna map submission requirement and the date notification to radio astronomy installation requirement will reduce filing burdens without endangering the technical integrity of the broadcast services. The staff will continue to afford the radio astronomy installations a 20 day comment period regarding applicable proposals. Furthermore, the staff will verify compliance with Section 73.1675(a) using technical data submitted in FCC Form 301. We believe that these rule modifications will simplify and reduce the filing burden on applicants, provide permittees additional flexibility when constructing an authorized facility, and streamline the processing of construction permit applications within the Commission. Therefore, we adopt the modifications to Sections 73.316(c), 73.1030(a), and 73.1675(a) of the Commission's rules, as proposed in the *Notice*.

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[93] *See, e.g.*, Comments of Graham Brock, Inc. at 3; CBS at 6.

[94] *See* Comments of Cohen, Dippell and Everist, P.C. at 2.

[95] In addition to eliminating the Section 73.1030(a) reporting requirement, we proposed to make the internal organization of the rule more consistent by designating the present subsection (a) as subsection (a)(1). We also proposed to conform the present subsection (a) to subsection (a)(2) by specifying that applicants under the former may provide the requisite notification prior to, as well as simultaneously with, the filing of their applications. The rule will be revised accordingly. *See* 47 C.F.R. § 73.1030(a) and (a)(2)(ii).

[96] *See Amendment of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit* in MM Docket 96-58, 12 FCC Rcd 12371, 12404-05 (1997) ("*One Step Licensing Report and Order*").

[97] *See* 47 C.F.R. § 1.17 (the Commission or its representatives may require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be granted).

b. Form Revisions

55. *Background.* Form 301 is used to propose new stations, as well as major and minor changes to authorized facilities in the commercial television, FM and AM services. In the *Notice*, 13 FCC Rcd at 11366 (¶ 43), we presented revisions to FCC Form 301 that would streamline the processing of applications for construction permits. We proposed to conform Forms 301, 314 and 315 non-technical questions where regulatory concerns were identical. In addition, we proposed to reorganize the FM technical data section of the Form 301 application, Section V-B, to facilitate electronic computer data entry and analysis. The revisions involve specifically replacing many of the current questions with certifications, along with the creation of a discrete technical section, or "Tech Box," and would significantly decrease the number of technical exhibits required. We tentatively concluded that use of the "Tech Box" would facilitate electronic data entry and allow the Commission's computer engineering programs to automatically execute certain review functions now performed by the staff. Consistent with our overall streamlining goals, we also proposed to eliminate certain burdensome, duplicative or marginally useful questions.

56. *Comments.* In general, commenters support the proposed changes to FCC Form 301. Commenters seek assurance, however, that the Commission and others will be able to independently determine the acceptability of an application and the impact of a proposed facility on other broadcast facilities through the technical data collected on the new form.[98] For example, one commenter stated that if the Commission is to retain its role as a spectrum "traffic cop," it must collect the appropriate data and retain the tools necessary to perform that function.[99] Some commenters specifically suggest that the Commission continue to require the filing of tower sketches, because they inform the Commission of collocated antennae, and provide information about AM directional arrays.[100] In addition, these commenters suggest that the sketches may alert the Commission to other FM antennas mounted at similar elevations. One commenter stated that exhibits required by the form are not explained in the applications and that such vagueness could erode the Commission's high technical standards, particularly for AM facilities.[101] Finally, one commenter suggests that applicants should be required to submit worksheets with the new applications.[102]

57. *Discussion.* We will, for the most part, adopt the FCC Form 301 revisions as proposed, thereby decreasing the number of required technical exhibits and significantly reducing applicant filing burdens. Exhibits will be required only in connection with the most critical technical and public safety matters, such as FM spacing, contour protection, and radiofrequency electromagnetic exposure guidelines. We will employ a "Tech Box" to incorporate all critical technical data required for engineering review. In the event of any discrepancies between data in the "Tech Box" and data submitted elsewhere in the application, the data in the "Tech Box" will be used. We believe that use of the "Tech Box" will eliminate the need for repeated staff amendment requests and attendant processing delays, necessitated by minor errors and discrepancies within the application. We concur with the commenter that urged the Commission to continue

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[98] *See, e.g.*, Comments of NAB at 13; Cohen, Dippell and Everist, P.C. at 3; CBS at 5; Independent Broadcast Consultants, Inc. at 22.

[99] *See* Comments of NAB at 13.

[100] *See, e.g.*, Comments of NAB at 16; Independent Broadcast Consultants, Inc. at 15.

[101] *See* Comments of Independent Broadcast Consultants, Inc. at 16.

[102] *See* Comments of Independent Broadcast Consultants, Inc. at 12.

to solicit core technical data from which the Commission, licensees and the public can make independent determinations of compliance or non-compliance with Commission rules. However, we are confident that our revised form and the few associated exhibits yield that data. As with other forms, we will also provide a detailed set of instructions to ensure that applicants can correctly determine compliance with Commission rules and policies and will employ our audit program to ensure that questions have been answered carefully and accurately.

58. In response to commenters' suggestions, we have reorganized the AM section of Form 301 to provide individual "Tech Boxes" for Daytime, Nighttime and critical hours operations.[103] We have also eliminated references to blanketing interference and cross-modulation from the FM technical portion of the form because these rules are only applicable once a station is operating and are therefore not practically considered at the construction permit application stage.[104]

59. We reject commenters' suggestion that we continue to require the submission of tower sketches to inform the Commission of collocated antennas. Tower sketches submitted by applicants do not typically provide information otherwise unavailable to the Commission. Specifically, the information provided in the "Tech Box," concerning the proposed facility, in conjunction with information from the Commission's engineering database regarding co-located and nearby existing broadcast facilities, are sufficient to enable the staff to make accurate determinations about compliance with radiofrequency electromagnetic exposure guidelines and to determine if a proposed antenna may disrupt other nearby facilities. Additionally, with respect to AM facilities, specific information regarding the technical parameters of the radiator will be submitted in the "Tech Box," making any such information on a tower sketch redundant.

60. Except for AM station applicants, we also reject the suggestion that the Commission continue to require the filing of site maps with FCC Form 301. Applicants have historically used site maps for the purpose of deriving the coordinates of a specific transmitter site identified in the field. However, advances in technology now allow applicants to accurately determine coordinates without the use of site maps. Specifically, accurate Global Positioning Satellite (GPS) receivers are readily available, and can currently be used to determine site coordinates for tower registration purposes. Given this fact, we believe that submission of a site map would, in most instances, be an unnecessary expense for applicants. Furthermore, given our adoption of a "Tech Box" methodology, site maps will be of limited utility to the staff in processing FM, FM translator, and TV applications. The staff will now rely on the applicant's certification, on the public, and on our audit process -- rather than on time-sensitive staff cross-checks -- to insure that the information in the "Tech Box" is accurate. However, we agree that site maps for AM stations retain their importance, because AM facilities, with their longer wavelengths, are much more susceptible to undesirable effects from nearby structures, such as buildings, antenna towers and water towers. Therefore, we will retain the requirement for AM applicants to submit transmitter site maps to evaluate the proposed site with respect to the surrounding electromagnetic environment.

61. As with other forms, as discussed *supra*, ¶ 24, we decline to require the submission of worksheets with the Form 301. Finally, various cosmetic changes, corrections for typographical errors, and form congruence suggestions have been incorporated into the new forms. In sum, we believe that the revised Form 301, together with the proposed modifications to our codified filing requirements discussed above, will reduce the administrative burden of the broadcast application process and make possible more efficient allocation of staff resources without compromising our ability to maintain the technical integrity

[103] *See* Comments of NAB at 13.

[104] *See* Comments of NAB at 13; Cohen, Dippell and Everist, P.C. at 3.

of broadcast services, enforce our core rules and policies and permit members of the public to monitor and comment on these facility applications.[105]

C. Enforcement

62. *Background.* The Commission is responsible for ensuring that licensees comply with the Communications Act and the Commission's rules. Possible sanctions for noncompliance include admonitions, forfeitures, and designations for hearing or revocation. In the *Notice*, 13 FCC Rcd at 11368 (¶¶ 47-50), we emphasized that to fulfill our enforcement responsibilities under the proposed streamlined procedures, we must be able to evaluate the certifications of our applicants. We also stressed the importance of insuring compliance with the rules that remain after streamlining. To preserve the integrity of the application process, we need to have a strong enforcement program, and we therefore invited comment on whether our existing sanctions would be sufficient after streamlining. We also proposed a formal program of random audits, sought comment on how to implement such a program, and requested opinions on whether audits would suffice to maintain post-streamlining compliance.

63. *Comments.* Of those who commented on the issue, the majority, including communications attorneys, broadcasters, and public interest groups, support the establishment of a strong enforcement program.[106] Most commenters either directly state that current sanctions would be adequate under the new process,[107] or implicitly approve the current measures by supporting the proposed audit system without suggesting changes to current sanctions.[108] A minority of commenters believe, however, that the current enforcement system, even with the implementation of random audits, would be ineffective in preventing misrepresentations.[109] One commenter believes that, since revocation hearings are expensive, the Commission would primarily rely on forfeitures, even where assignments or transfers of control resulted in multiple ownership violations.[110]

64. The majority of commenters endorse our suggestion of random audits, but express differing opinions as to how such an audit program should be implemented. Commenters propose auditing varying numbers of applications, including occasional, fifteen percent of all applications filed, and every thirtieth application.[111] One commenter suggests that engineering not prepared by a qualified consultant should be

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[105] We also herein delete the financial and site certification questions on streamlined forms 301 (full-service AM, FM, TV), 346 (LPTV, TV Translators) and 349 (FM translators and boosters), in order to reflect the policy provisions adopted in the recently released *Auction Order*. *Auction Order*, 13 FCC Rcd at ¶¶ 172-176.

[106] *See, e.g.*, Comments of FCBA at ii and 19; Media Access Project iv and 20-22; CBS at 5.

[107] *See* Comments of NAB at 19 n. 23.

[108] *See, e.g.*, Comments of FCBA at 19-20; Institute for Public Representation et al. at 9-10.

[109] *See, e.g.*, Comments of Independent Broadcast Consultants, Inc. at 10.

[110] *See* Comments of David Tillotson at 8.

[111] *See, e.g.*, Comments of FCBA at 19; Media Access Project at 21; Graham Brock, Inc. at para. 7; Reply Comments of Media Access Project at 14.

a more likely candidate for audit.[112] Another commenter is concerned that the public would not have sufficient information to detect inaccuracies in applicants' submissions.[113] In addition, one commenter predicts that, under the proposed audit system, innocent, careless mistakes might be elevated to serious offenses.[114]

65. Most of those commenting on our audit proposal assert that, in conducting audits, the Commission should request submission of all supporting documents or worksheets used in preparing applications.[115] Several commenters advocate that applicants should be required to place their worksheets in the station's public file to provide the public an opportunity to verify the accuracy of responses.[116] In addition, one commenter suggests encouraging applicants to place their worksheets on the Internet.[117] Another commenter urges that applicants should be given an opportunity to respond to Commission concerns before any sanction is imposed.[118] In reply comments, Media Access Project argues that if applicants are given an opportunity to contest Commission findings, those responses should be part of the public record and subject to comment.[119]

66. *Discussion.* The comments affirm our belief that we must have a strong enforcement program, including random audits, if we are to insure the integrity of the application process under our new streamlined procedures. Most commenters either state that our current sanctions are adequate or support our audit proposal without suggesting any changes to existing sanctions, and we believe that our current enforcement measures are adequate.

67. As to the opinion that, under streamlining, the risk of being detected is so minimal that it would not prevent applicants from making misrepresentations, we note that the Commission historically has received significant enforcement assistance from the public, including competitors. In this regard, petitions to deny and informal objections will remain as adjuncts to audits. Furthermore, the implementation of electronic filing should facilitate the public's ability to view broadcast applications and participate in the Commission's processes in various ways, including by the filing of petitions to deny and informal objections against broadcast applications. *See supra* ¶ 18. We believe that these complementary factors, along with a formal audit program, will deter abuse of the application process.

68. In response to the concern that, without detailed information, interested persons will be unable to determine compliance with our rules, we note that the station's public file and the files maintained in the

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[112] *See* Comments of Graham Brock, Inc. at para. 7.

[113] *See* Comments of Institute for Public Representation et al. at 3-9.

[114] *See* Comments of David Tillotson at 11-12.

[115] *See, e.g.,* Comments of NAB at 19-20; FCBA at 20; Media Access Project at 21; Institute for Public representation at 10; CBS at 5.

[116] *See* Comments of Media Access Project at 11; Institute for Public Representation at 10.

[117] *See* Comments of Media Access Project at 11.

[118] *See* Comments of NAB at 19.

[119] *See* Reply Comments of Media Access Project at 13-14.

Commission's public reference room will remain a source of information to the general public.[120] In this regard, although sales contracts and contour maps will no longer be reviewed in every instance by the staff, such documents must be placed in the station's public file and filed with the Commission for retention in the Commission's public reference room. Those who are not located in proximity to the Commission or the station will be able to access such documents through the Commission's contractor.

69. We do not agree with the comment that the Commission would allow ongoing rule violations because of a reluctance to designate for revocation hearing. First, the processing staff, in reviewing applications and exhibits thereto, will discover many such problems before grant. Second, we will continue to rely on the public to bring problems to our attention prior to grant, in particular through the filing of petitions to deny and informal objections. Finally, although we do not designate for revocation hearing lightly, we will not allow a licensee to remain in a situation violative of our rules or the statutes we administer without appropriate sanctions.

70. As to the concern that, under the proposed audit system, innocent, careless mistakes will be elevated to serious offenses, we note that the staff will continue its current practice of considering all the circumstances surrounding the submission of inaccurate or incomplete information in determining the need for and the severity of a sanction. Additionally, as suggested by the NAB,[121] we have striven to provide clear guidance in the instructions, worksheets and forms. Consequently, as discussed *supra* ¶ 22, we expect that with such additional guidance, fewer mistakes will be made. Moreover, as discussed *supra* ¶ 23, where an applicant is uncertain or confused about certain problematic questions, an "explanation" check box can be used.

71. As also discussed fully at *supra* ¶ 24, we will not require the retention of worksheets by applicants. We will, however, as described below, contact applicants we are auditing to request any documentation that might be necessary and to provide an opportunity to explain any inaccuracies or apparent discrepancies between the streamlined applications and the supporting documentation. Applicants may find it advantageous to retain their worksheets, as they may provide such worksheets in response to Commission inquiries.

72. After consideration of all comments described above regarding our proposal for a formal program of random audits, we will adopt such a program, which will subject selected broadcast applications to heightened scrutiny prior to grant and will additionally subject selected applications to audit after grant. The pre-grant audit program will be applicable to commercial and noncommercial radio and television station applications that will be selected randomly by computer. Specifically, the computer will select over the course of a year up to a total of approximately five percent of all applications filed in the primary and secondary radio and television services, ensuring that, even though the number of applications filed on behalf of radio broadcast stations is significantly larger than the number of applications filed on behalf of television stations, applications from both services are sufficiently represented in the audit process. The applicants who filed these applications will then be notified of their selection for an audit, and will be directed by letter to provide certain additional documentation and information for our review. This documentation should be readily available to the selected applicants, and, if promptly furnished to the Commission, the processing of the applications subject to audit should not be unduly impeded. Indeed, we expect that any pre-grant review will be conducted during the 30-day period for the filing of petitions to deny against the applications. The information requested will be similar to that information we have utilized in the past to insure

[120] 47 C.F.R. §§ 73.3526; 73.3527 (public inspection file rules).

[121] *See* Comments of NAB at 18-19.

compliance with the Commission's policies and regulations. For example, in audits of assignment of license and transfer of control applications, we may likely request contracts of sale, security agreements, pledge agreements or any other related documents that may reveal information pertaining to the prospective licensee's control of the station(s) at issue; in any audit, for assignment or transfer of a radio station, we may also request the contour maps. As stated previously, we emphasize that, although we will choose applications for audit on a random basis, if an application raises concerns on its face or presents particularly significant public interest concerns, we may decide to conduct an audit even if the application did not fall into the group chosen by random selection.[122]

73. After receiving the requested information from an audited applicant, we will examine the documentation and analyze it for consistency with the certifications and representations in the streamlined application and for compliance with all Commission rules and policies. Applicants may be required to provide further information to explain any discrepancies between the application filed and the supporting documentation submitted (such as the contract of sale), and will be given an opportunity to respond to all Commission questions and concerns. In pre-grant audit cases where we find that an applicant has made inaccurate certifications, the Commission may dismiss the application and require the resubmission of a corrected application, may also impose a forfeiture, or may defer action for further investigation and possible designation for hearing.

74. As described above, pre-grant audits will normally be conducted during the 30-day petition to deny period and will generally be limited to an examination of information that we have previously utilized to insure compliance with Commission rules, such as sale agreements and contour maps. Because time constraints will limit the breadth of pre-grant audits, we will also randomly subject up to five percent of all applications to more extensive post-grant audits. Post-grant audits may include comparison of the application being audited with all relevant Commission files and databases as well as other available sources of pertinent information.

75. Upon analysis of the above-described information, the staff may issue a letter of inquiry requiring submission of all the application's supporting and background documentation not found in its independent search, *e.g.*, any agreements or letters relating to a sale if there is reason to believe some exist or a copy of the required Local Public Notice. The staff may also ask questions designed to elicit information that it could not ascertain independently. These may include, for example, specific questions similar to those contained in the optional worksheets on cross-interest, family relationships, future ownership rights, investor insulation, and local marketing agreements, if appropriate. The staff will also allow the applicants an opportunity to explain any apparent discrepancies. Upon receipt and analysis of all relevant information, the staff will, consistent with our current practice, prepare either a close-out letter, instructions to correct any violations, if appropriate,[123] admonition, forfeiture, hearing designation order, or an order to show cause why an order of revocation should not be issued.

76. We believe this formal program of both pre- and post-grant random audits will effectively check streamlined broadcast applications for the reliability of applicants' certifications, and will provide additional incentives for applicants to be accurate in their representations and certifications. Conducting pre-and post-

[122] We will not, however, as one commenter proposes, adopt a general policy of auditing applications not prepared by a recognized consultant. To do so would unfairly disadvantage applicants that do not need a consultant or may not be able to afford one.

[123] This may include divestiture, for example, in cases involving violation of our multiple ownership rules. Upon documentation of the correction, the Commission will ordinarily issue a Notice of Apparent Liability for a forfeiture.

grant audits each of up to approximately five percent of commercial and noncommercial broadcast applications should be sufficient to encourage compliance by all applicants with Commission rules and policies, especially when combined with the possibility of serious sanctions for those applicants found to have made false certifications or otherwise failing to comply with Commission rules. Subjecting a higher percentage of applications to audits, such as 15 percent, as urged by some commenters, would impose greater burdens on both applicants and the Commission, perhaps without resulting in a commensurate deterrence of rule violations. The formal audit program described above properly balances the need for regulatory compliance with the goal of our streamlining initiative to provide economies for both applicants and the Commission. We retain the discretion, however, to reexamine this audit program after it has been in operation for a reasonable period of time and to make any changes (such as increasing the number of applications audited) that are needed to address problems or to enhance the program's effectiveness. We will not hesitate to increase the number of pre- or post-grant audits, or to take any other actions necessary, so that the Commission can continue to enforce effectively all of its rules and policies and protect the public interest.

D. Modifying Construction Permit Extension Procedures

77. *Background.* The Act provides that the Commission may not grant a license for a broadcast station without first issuing a construction permit specifying the operating and construction parameters for the facility, including the date on which the facility must be completed and ready for operation.[124] Currently, the Commission's rules allow 24 months to construct a full-power television station and 18 months to construct other broadcast facilities.[125] Within the specified time frame, a permittee must complete construction and file an application for a license to cover. A permittee may request additional time if it fails to complete construction within the time period specified in its construction permit.[126] Specifically, we authorize a permittee additional time to complete construction when it can demonstrate one of the following three conditions: (1) construction is complete and testing is underway looking toward the prompt filing of a license application; (2) substantial progress has been made, i.e., demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems), but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.[127] A permittee that makes a satisfactory "one-in-three" showing (i.e., satisfies one of the above three criteria) is afforded up to an additional six months within which to complete construction.[128] If the permittee fails to complete construction prior to the expiration of this additional period, the construction permit is once again subject to forfeiture unless the Commission grants a further extension of time based on a satisfactory "one-in-three" showing for the most recent construction period.

78. Our rules also allow a permittee to file an application to modify a construction permit or to file

[124] 47 U.S.C. §§ 318 and 319 (a)-(b).

[125] 47 C.F.R. § 73.3598 (a)-(b).

[126] 47 C.F.R. § 73.3534.

[127] 47 C.F.R. § 73.3534(b).

[128] 47 C.F.R. §73.3534(d).

an application either to assign or transfer control of a construction permit.[129] While Section 319(b) of the Act provides for the automatic forfeiture of an expired construction permit, the Commission's long-standing practice has been to declare a construction permit forfeited before considering it actually to have lapsed. This practice was supported by court decisions in *Mass Communicators, Inc. v. FCC*[130] and *MG-TV Broadcasting Company v. FCC*.[131] However, the policy was not mandated by the Court, which gave the Commission discretion to permit automatic forfeiture of a permit when a station is not ready for operation due to circumstances within the control of the permittee.[132]

79. While many permittees are now able to complete construction within the initial construction period afforded under the current rules, it remains the case that a significant number of permittees do not succeed in constructing their proposed facilities prior to permit expiration. As a result, we continue to receive large numbers of extension applications each year.[133] Substantial staff resources are required for the fact-intensive analysis involved in processing and disposing of these applications. Our goal in this proceeding is to substantially reduce paperwork and administrative burdens on permittees and the number of requests for additional time to construct while promoting the expeditious construction of stations.

80. In the *Notice*,[134] we proposed to reduce the necessity for extensions by increasing the authorized construction period provided in an initial construction permit to a period that would allow sufficient time for a diligent permittee to complete construction of a facility, even if the permittee encounters significant construction difficulties. Specifically, we proposed to: (1) issue all construction permits for a uniform three-year term; (2) exclude from the calculation of this term those periods during which the permit itself is the subject of administrative or judicial review or where construction delays have been caused by an "act of God"; (3) eliminate the current practice of providing extra time for construction after a permit has been modified or assigned;[135] and (4) make construction permits subject to automatic forfeiture upon expiration. Additionally, we proposed to apply these rules to any construction permit that is within its initial construction period at the time these rules are adopted. Thus, the construction period for all eligible permittees would be increased to afford each an initial three year term, and extensions of such permits would be governed by the strict criteria outlined here. Further, we proposed to increase from two years to three years the initial period afforded NTSC permittees to construct either analog or digital facilities. We proposed no change in the construction deadlines for converting to Digital Television (DTV) or the return

[129] 47 C.F.R. § 73.3535.

[130] 266 F.2d 681, 683, (1959) *cert. denied*, 361 U.S. 828 (1959).

[131] 408 F.2d 1257 (1968). *See also Edward A. Baker v. FCC*, 834 F.2d 181, 185 (D.C. 1987).

[132] *Mass Communicators, Inc. v. FCC*, 266 F. 2d at 683.

[133] For example, in 1996 the Mass Media Bureau's Audio Services Division alone received 617 applications to extend AM and FM construction permits. In 1997, that number increased more than 10 percent to 687.

[134] *Notice*, 13 FCC Rcd at 11368-11374 (¶¶ 51-68).

[135] For example, Permittee A's application to modify its unbuilt station is approved two years after the initial construction permit was granted. Thus, Permittee A has one year, the remainder of its construction period, in which to complete construction of the facility, including the modification.

of the analog channels in 2006.[136] Finally, we tentatively concluded that the three year construction period provides sufficient time to resolve zoning problems and, therefore, that a permittee that encountered such problems should not receive additional time to construct.[137] We anticipated that the extended construction period would benefit permittees that would otherwise struggle to complete construction under the current construction deadlines, and the automatic forfeiture provision would help us achieve our goal of conserving Commission resources and avoiding undue delays in initiating service to the public.

81. *Comments.* Overall, commenters support our proposed changes. All commenting parties agreed that the Commission should extend the initial construction period to either three or four years and eliminate extensions beyond this initial period.[138] Several commenters support institution of automatic forfeiture procedures upon expiration of a permit.[139] Commenters agreed with our proposal that any modifications or assignments of construction permits that occur during the initial three-year construction period should not be grounds for extending the construction period.[140]

82. Although we had proposed granting the lengthened construction period only to permittees still within their initial construction periods, two commenters argued that we should apply the lengthened construction period to all outstanding authorizations that have provided a permittee less than three years to construct.[141] Six of the seven comments received in response to our query as to whether problems in obtaining local zoning authorization are sufficiently beyond the permittee's control to warrant treatment similar to that of delays caused by administrative and judicial review disagreed with our tentative conclusion that they do not.[142] One commenter concluded that the continued inability to obtain land use permits should

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[136] *See Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997), *on reconsideration*, FCC 98-23, released February 23, 1998. *See also Sixth Report and Order* in MM Docket No. 87-268, FCC 97-115, released April 21, 1997, *on reconsideration*, FCC 98-24, released February 23, 1998.

[137] *See Notice*, 13 FCC Rcd at 11373 (¶65).

[138] *See Notice*, 13 FCC Rcd at 11372 (¶62). *See, e.g.*, Comments of Waimea Broadcasting Inc. at 3; Graham Brock, Inc. at 4 (supports three-year construction period with modifications permitted during first 18 months of initial grant); Independent Broadcast Consultants, Inc. at 20 (all existing permittees should get three years to construct, while those permittees near the expiration of their permit or extension should be given a one-year, one-time grace period to complete construction); Media Access Project at 22; Reply Comments of EBT Broadcasting, LLC at 1; NAB at 2-3. *See also*, Comments of Michael Robert Birdsill at 3 (extension of construction period should be to four years because it takes longer to acquire tower space in the current market due to increased competition from DTV license holders).

[139] *See, e.g.*, Comments of Waimea Broadcasting Inc. at 3; Independent Broadcast Consultants at 20; Media Access Project at 22.

[140] *See, e.g.*, Comments of Graham Brock, Inc. at 4 (permittees should only be allowed to modify permits within the first half (18 months) of the initial construction period).

[141] *See, e.g.*, Reply Comments of NAB at 2; Comments of Waimea Broadcasting, Inc. at 4-5. *See also In the Matter of Amendment of Section 73.3598 and Associated Rules Concerning the Construction of Broadcast Stations*, Memorandum Opinion and Order, 102 FCC 2d 1054 (1985).

[142] *See, e.g.*, Comments of NAB at 18; Richard L. Harvey, WBHX at 1-7; Michael Robert Birdsill at 4-5; Harry Pappas at 2-14; Independent Broadcast Consultants at 21, Waimea Broadcasting, Inc. at 3, note 3.

remain a valid basis to extend the construction permit;[143] three commenters provided anecdotal support based upon zoning delays experienced by the commenters in specific cases.[144]

83. *Discussion.* After consideration, we conclude that a three-year construction period would provide all permittees an adequate and realistic time to construct. The new procedures should result in a substantial reduction in requests for additional time to construct. Moreover, we will only count against a permittee's three-year construction allowance those periods in which the permit was "unencumbered" by an administrative or judicial review or by an act of God. We note that the Commission followed this approach in *Rainbow Broadcasting Company*, FCC 98-185 (rel. Aug. 5, 1998) (*Rainbow IV*),[145] where we determined that waiver of 47 C.F.R. § 73.3598, which specifies an 18-month initial construction period for radio stations and a 24-month initial construction period for television stations, was justified where the permittee had been deprived of an unencumbered period for initial construction of the facilities specified in the construction permit. We adopt a complimentary policy today insofar as we amend Section 73.3598 to provide each permittee with a total of three unencumbered years during which it may construct its broadcast facility.

84. Under these new procedures, the Commission will toll the construction period only when construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review. Although we proposed in the *Notice*[146] that these rules apply to any construction permit that is within its initial construction period at the time these rules are adopted,[147] we conclude that the fairer approach is to allow all permittees to take advantage of the extended construction period in the manner set forth below. Act of God encumbrances will be narrowly construed and include only those periods where the permittee demonstrates that the construction progress was impossible, notwithstanding its diligent efforts.[148] In light of these new procedures, we eliminate the current practice of providing additional time for construction after a permit has been modified or assigned.

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[143] *See, e.g.*, Comments of Michael Robert Birdsill at 4 (delays caused by local regulatory agencies [zoning/planning] should be basis for one-time, six-month extension of construction permit under the longer initial construction period).

[144] *See, e.g.*, Harry Pappas at i, 1-14 (zoning authorization has contributed to unresolved 10-year delay in construction of television station); Richard L. Harvey, WBHX at 1-8 (attended seven hearings before zoning board to seek approval of proposed site bordering state forest); Michael Robert Birdsill at 5 (needed additional three months after receiving zoning approval to receive required special use permit).

[145] *Rainbow IV* follows a remand by the United States Court of Appeals for the District of Columbia Circuit. *See Press Broadcasting Co., Inc.*, 59 F.3d 1365 (D.C. Cir. 1995). *See also, Memorandum Opinion and Order and Hearing Designation Order*, 11 FCC Rcd 1167 (1995) (corrected by *Erratum*, DA 96-156, released February 12, 1996) (*Rainbow II*); *Initial Decision*, 12 FCC Rcd 4028 (ALJ 1997) (*Rainbow III*); *Rainbow Broadcasting Co.*, 9 FCC Rcd 2839 (1994) (*Rainbow I*).

[146] *Notice*, 13 FCC Rcd at 11371 (¶59).

[147] One commenter agreed with our tentative conclusion. *See, e.g.*, Comments of Michael Robert Birdsill at 5. (The Commission should announce that applications for construction permits granted as of a certain date will be governed by the new rules, and previously granted construction permits will be governed by the old rules).

[148] We clarify that the mere pendency of a request by an AM permittee to migrate to the AM expanded band does not constitute a qualifying encumbrance.

85. As proposed in the *Notice*, the lengthened three year construction period will also apply to modifications of licensed facilities. Likewise, the grounds for tolling a construction period will apply to modifications of licensed facilities. Thus, a licensee authorized to modify an existing facility may make a showing that its construction period was "encumbered" due to an act of God or administrative or judicial review, and therefore, that it is entitled to additional time to construct. The lengthened three-year construction period will apply to NTSC permittees to construct either analog or digital new station facilities. This *Report and Order* does not impact DTV build-out requirements, the deadline for which remains 2006.

86. In lieu of FCC Form 307, the current form by which a permittee may apply for a construction permit extension, we adopt a notification procedure under which a permittee must inform the Commission of the circumstances that it believes should toll its construction period. A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of the act of God that has blocked construction, or the initiation of a relevant administrative or judicial review. An act of God is defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes), and the construction period will be tolled for the length of time that a diligent permittee will need to recover from the effects of the event. Covered administrative and judicial review falls into two categories. The first consists of petitions for reconsideration and applications for review within the Commission of the grant of a construction permit or a permit extension, and any appeal of any Commission action thereon. The second category consists of any cause of action pending before any court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any environmental requirement. Thus, a permit would not qualify for tolling on the basis of the pendency of a zoning application before a local zoning board. The three-year construction period provides ample time to complete this process and construct the station or choose a new site free from zoning difficulties. However, the pendency of an appeal in a local court of a final zoning board decision would qualify for tolling. We conclude that these limited tolling procedures are responsive to statutory requirements.

87. A permittee must also notify the Commission promptly when the relevant administrative or judicial review is resolved. A permittee that needs more than six months to resume construction after a natural disaster must submit additional supporting information at six-month intervals explaining construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments. The burden is upon the permittee to show that any further tolling of the construction period is warranted.

88. Notification must be in the form of a letter submitted in triplicate to the Secretary. The letter notification must also be placed by the permittee in the local public file of the station(s) concerned. In addition to the date and circumstances of the tolling event, the notification must include the station call sign, frequency, community of license, construction permit application file number, and signature of the permittee.

89. The rules we adopt herein will apply to all construction permits granted after the effective date of this *Report and Order*. Further, we adopt the proposal set forth in the *Notice*, 13 FCC Rcd at 11374 (¶ 67), to make construction permits granted pursuant to these rules subject to automatic forfeiture, without further Commission action, upon expiration of an unencumbered three-year construction period.[149] Additionally, we eliminate that part of Section 73.3535(a) that requires that "[b]efore such an application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated." We also conclude that we should eliminate the

[149] While Section 319(b) of the Act provides for the automatic forfeiture of an expired construction permit unless the Commission authorizes additional time or the delay was caused by circumstances outside the permittee's control, the Commission's practice has been to take an affirmative action cancelling a construction permit before it is forfeited.

requirement that permittees who modify unbuilt stations certify that construction will commence immediately upon grant. *See* Section 73.3535(b). We find a certification unnecessary in the context of the new rules because the construction permit will automatically expire when the three year period is over if the station has not been constructed, regardless of any certification that may have been provided upon issuance of a grant. The analogous certification requirement for assignees and transferees will likewise be eliminated.[150] Permittees currently holding construction permits will fall into one of the three categories outlined below.

(1) *Construction permit is in its initial construction period and/or an initial extension request is pending.* Construction permits will be automatically extended to three years from the date of an initial grant upon a timely request from the permittee. In addition, a permittee may submit a showing requesting additional time based on the tolling procedures adopted herein. *See supra* ¶¶ 83-84.

Requests for this additional time must be filed no later than 60 days prior to the expiration of the existing permit, with the exception of those permittees that have fewer than 60 days from the effective date of this Order until the expiration of their permits. Those permittees may file such requests no later than the date upon which their permit expires. Any pending application for a first extension of a construction permit will be considered a request for three years from the date of the initial grant.

If a permittee does not request the additional time provided under this Order, it must file an application for a license to cover prior to the permit expiration date. Once the rules adopted herein become effective, if no request for additional time is received, and construction of the station is not complete within the specified period and a covering license application is not filed, the construction permit will be automatically forfeited upon expiration without any further affirmative action by the Commission.

A request for reconsideration of a permit cancellation based solely on a permittee's failure to apply for additional time will be denied.

(2) *Permittee is authorized to construct under an extension of its construction permit.* The current extension, as an outstanding permit, will be extended to three years from the initial grant of the construction permit, upon request of the permittee submitted in accordance with the time frames described *supra.* In addition, a permittee may submit a showing requesting additional time based on the tolling procedures adopted herein. No additional time will be granted when the permittee has had, in all, at least three unencumbered years to construct. The construction permit will be subject to automatic forfeiture at the expiration of the last extension.

(3) *Construction permit has expired.* Construction permits that have expired prior to the effective date of this *Report and Order* fall into two categories. The first consists of permittees that did not seek reconsideration within 30 days of a cancellation and forfeiture action. Such actions are now final and these permits cannot be reinstated.[151] The second category consists of permits that have not yet been cancelled, or a cancellation is the subject of a timely filed appeal. These permits will be extended to three years from the initial grant of the construction permit, upon request of the permittee submitted in accordance with the time frames described *supra.* Additionally, a permittee may submit a showing requesting additional

[150] *Notice,* 13 FCC Rcd at 11373-74 (¶66); 47 C.F.R. § 73.3535 (a).

[151] 47 C.F.R. §§ 1.103(b) (Commission action shall be deemed final, for purposes of seeking reconsideration at the Commission or judicial review, on the date of public notice) and 1.104 (any person desiring Commission consideration of a final action shall file a petition for reconsideration within 30 days from the date of public notice of such action). *See also* 47 C.F.R. § 1.106(f) and 47 U.S.C. § 405.

time based on the tolling procedures adopted herein. Any request for additional time to construct filed more than 30 days after a permit has expired must show good cause for waiving the requirement that a permittee file a replacement application within 30 days of permit expiration. *See* 47 C.F.R. § 73.3534(e). No additional time will be granted when the permittee has had, in all, at least three unencumbered years to construct.

90. Section 319 of the Act and our rules governing construction permits are intended to strike a balance between our fundamental interests in expediting new service to the public and preventing the warehousing of scarce spectrum, and our recognition that there are legitimate obstacles that may prevent the rapid construction of broadcast facilities. On several occasions we have lengthened construction periods to conform our policies to changes in broadcast technology and the broadcast marketplace, as well as to respond to the administrative burdens of processing a large volume of extension requests. We conclude that modifications in our broadcast construction policies are warranted at this time and that the public interest will be served by lengthening the time period for construction of a broadcast station and imposing strict criteria for tolling the new extended construction period.

E. Modification of *Pro Forma* Assignments and Transfers

91. *Discussion.* In the *Notice,* 13 FCC Rcd at 11374-79 (¶¶ 69-82), we raised a question and invited comment as to whether Section 310(d) would afford the Commission the flexibility to give a blanket consent to certain *pro forma* broadcast station assignments and transfers of control. Accordingly, an individual finding of approval would not initially need to be made in a particular case, thereby allowing such transaction to be implemented with a subsequent notification to the Commission. However, upon reflection, we believe that it would not be prudent to make such a fundamental change in our interpretation of Section 310(d) without Congressional guidance. Therefore, we decline at this time to adopt the notification process suggested in the *Notice.*

F. Streamlined Ownership Reporting Requirements

92. *Background.* Under the Commission's current rules, licensees of commercial AM, FM and television broadcast stations (with the exception of sole proprietorships and partnerships composed entirely of natural persons) are required to file an Ownership Report (FCC Form 323) once a year, on the anniversary of the date that their license renewal applications must be filed. *See* 47 C.F.R. § 73.3615. In the *Notice*, 13 FCC Rcd at 11379 (¶ 85), we proposed to reduce the frequency with which Ownership Reports must be filed. We also sought comment on whether noncommercial educational broadcast station licensees and permittees should be subject to the same ownership reporting requirements as commercial licensees. With minor modification, we determine to adopt our ownership reporting proposals.[152]

93. *Comments.* In the *Notice*, 13 FCC Rcd at 11379-80 (¶¶ 85, 89), we proposed a four-year interval for reporting ownership information for both commercial and noncommercial broadcast permittees

[152] As discussed, the *Notice* made proposals concerning only the frequency with which Ownership Reports should be filed and did not raise any questions pertaining to the content of those reports. Comments calling for differing substantive changes in the ownership disclosure obligations of commercial or noncommercial broadcast licensees and permittees are outside the scope of this rulemaking, and we accordingly decline to address them herein, except as discussed in Section G, below. *See* Comments of Allbritton Communications Company at 3-8; Educational Broadcasting Corporation at 4-5; Association of America's Public Television Stations at 3-4.

and licensees, but invited comment as to whether a two-year or other reporting interval would be more appropriate or beneficial. The comments generally express support for relaxing the annual ownership reporting requirement currently applicable to commercial licensees, but do not agree on the appropriate reporting interval.[153]

94. *Discussion.* After consideration, we determine to modify our existing ownership reporting rules to require commercial and noncommercial broadcast licensees to file Ownership Reports (FCC Form 323 or 323-E) when they file their stations' license renewal applications and every two years thereafter. However, for commercial licensees, we will delay the effective date of this rule modification until our new Ownership Report which, as discussed *infra* ¶¶ 107-110, will include questions concerning minority and female ownership is available.[154] We believe this relaxation of the ownership reporting requirements will ease the paperwork burden on licensees without impairing the public's ability to ascertain the ownership of broadcast stations. At this time, we decline to relax our ownership reporting requirements to a greater degree. Given the current trend toward consolidation in the broadcast industry and the frequency with which both major and minor ownership changes are occurring, we believe a more conservative approach in modifying our reporting requirements is warranted. We will also, as proposed and as commenters support, formalize the Commission's current practice of requesting an Ownership Report within 30 days of consummation of an approved assignment or transfer by amending Section 73.3615 to specifically require that commercial and noncommercial licensees and permittees file Ownership Reports within 30 days of consummating authorized assignments or transfers of licenses.[155]

95. To further conform the ownership reporting requirements applicable to noncommercial educational broadcasters to those applicable to commercial broadcasters, we will also, as proposed, eliminate the Commission's existing supplemental reporting requirement, under which a noncommercial educational licensee or permittee must file an Ownership Report within 30 days after *any* change in previously reported information. The commenters agree with our observation in the *Notice*, 13 FCC Rcd at 11380 (¶ 88), that this supplemental filing requirement may be especially burdensome for noncommercial educational broadcasters, and they support its elimination.[156] Thus, the revised ownership reporting requirements we adopt herein should reduce the regulatory burdens on both commercial and noncommercial AM, FM and television licensees and permittees. We believe this lessening in the regulatory burden will be achieved without adversely impacting the Commission's or the public's ability to monitor the ownership of commercial and noncommercial educational broadcast stations and insure compliance with our multiple and alien ownership limitations.

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[153] *See, e.g.*, Comments of NAB at 20 (supporting four-year reporting interval); Berry Best Services, Ltd. at 3 (there should be no requirement to file an updated Ownership Report until after a change in ownership); CBS at 8 (supporting four-year reporting interval); Cumulus Media Inc. at 8 (supporting eight-year reporting interval). *But see* Comments of Media Access Project at 22 (opposes relaxation of annual reporting requirement, but, if Commission chooses to reduce frequency of reporting, then Ownership Reports should be filed every two years).

[154] Thus, commercial licensees should continue to file FCC Form 323 according to their current schedule until they have filed the revised form one time. Thereafter, they may file under the relaxed requirements.

[155] *See* Comments of CBS at 8; NAB at 20; Institute for Public Representation, et al. at 9.

[156] *See* Comments of Association of America's Public Television Stations at 2-3; Educational Broadcasting Corporation at 2-3.

G. Information on Minority and Female Ownership

96. *Background.* In our 1995 *Notice of Proposed Rule Making* regarding minority and female ownership of Mass Media facilities[157] we sought comment on whether to revise our Annual Ownership Report form, FCC Form 323, to include a section requiring owners to identify their race or ethnicity and their gender.[158] We take this opportunity to address this issue and conclude that we will amend Form 323 to include race and gender data. Doing so will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities, to determine the need for measures designed to promote ownership by minorities and women, to chart the success of any such measures that we may adopt, and to fulfill our statutory mandate under Section 257 of the 1996 *Act*[159] and Section 309(j) of the Communications Act of 1934[160] to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry.

97. *Comments.* Several commenters substantively addressed amending Form 323 in our minority and female ownership proceeding.[161] American Women in Radio and Television, Inc. ("AWRT"), Black Citizens for a Fair Media et al. ("BCFM"), Minority Media and Telecommunications Council ("MMTC"), and the National Association of Black Owned Broadcasters ("NABOB") all endorse our amendment of the form to include information on the race, ethnicity and gender of broadcast owners.[162] They believe that the collection of such information is essential in order to monitor the effectiveness of minority and female ownership programs.[163] Moreover BCFM points out that race and gender-based remedies must be "narrowly tailored" and terminate once fair representation has been achieved and, therefore, the collection of such data is necessary to these ends.[164] It asserts that the collection of statistical information on the race and gender of station employees to monitor equal employment opportunity compliance has proved useful and the burden

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[157] *Notice of Proposed Rule Making, In the Matter of Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, MM Docket Nos. 94-149 and 91-140, 10 FCC Rcd 2788 (1995). ("*Minority NPRM*").

[158] *Id.* at 2797. This *Report and Order* addresses only the data collection issue raised in the *Minority NPRM*. Other issues raised in that proceeding are not addressed herein.

[159] 47 U.S.C. § 257(a). In implementing Section 257, the Commission must "promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity." 47 U.S.C. § 257(b).

[160] 47 U.S.C. § 309(j).

[161] The comments and reply comments in the minority and female ownership proceeding, MM Docket Nos. 94-149 and 91-140, were filed May 17, 1995 and July 10, 1995, respectively.

[162] NABOB also recommends that the Commission initiate a study of minority ownership and obtain information concerning: 1) all minority controlled communications licensees in all commercial services; 2) when each license was acquired; 3) whether any of the Commission's minority ownership policies were used by the licensee in acquiring the facility; 4) the sources of financing that were used by the licensee; and 5) what barriers to entry the licensee encountered in acquiring the facility. Comments of NABOB at 8.

[163] *See* Comments of AWRT at 7, BCFM at 9-11, NABOB at 12, MMTC at 26; Institute for Public Representation et al. at 8-9. *See also*, Reply Comments of MMTC at 2.

[164] *See* Comments of BCFM at 9. *See also* Comments of AWRT at 7-8.

of its collection minimal.[165]

98. Proponents of amending the annual ownership form also request that the Commission amend the form as soon as possible and seek expedited approval of the information collection from the Office of Management and Budget.[166] This, they contend would provide a current baseline and information that would be useful in the Commission's review of its ownership rules and policies.[167] While AWRT urges that the revised form include a designation of the gender and race of the owner of the station, BCFM suggests that we add questions concerning whether women or members of racial or ethnic minority groups hold ownership interests in the station and, if so, the percentage interest held by each group, the minority total, the female total, whether either total constitutes a controlling interest, whether women or minorities otherwise exercise control, and whether any minority ownership policies or devices were used by the current owners in acquiring the station.[168]

99. Another issue raised by commenters concerning amendment of Form 323 concerns how we should define relevant groups. BCFM states that the Commission should define minority and female ownership in the same way that it has for the tax certificate and distress sale policies.[169] However, Press Broadcasting Company, Inc. ("Press"), addressing the issue of definitions in this proceeding generally, argues that the Commission has not been clear as to what races or ethnicities it is talking about when it refers to "minorities" other than to say that it means "Black, Hispanic, Native American, Alaska Native, Asian and Pacific Islander."[170] Even if it uses the definitions and distinctions it uses in its evaluation of the Form 395-B Annual Employment Report, Press continues, these are far from clear or consistent and are, instead, inconsistent, arbitrary and overlapping in many respects.[171]

100. *Discussion.* We believe it is appropriate to develop more precise information on minority and female ownership of mass media facilities. Although the National Telecommunications and Information Administration has recently compiled data regarding minority ownership,[172] NTIA itself states that its methodology for obtaining that data, including referring to various periodicals and contacting individual radio and television stations, does not insure a complete listing of all commercial radio and television

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[165] *See* Comments of BCFM at 9-10.

[166] *See* Comments of AWRT at 8-9, BCFM at 11-13. As precedent for expedited approval they note that in 1988, OMB approved a Commission request for expedited consideration of a one-time collection of data on minority and female ownership of broadcast stations. OMB approved the request, finding that the information to be collected by the Commission was not duplicative of information collected by other agencies and that the burden on stations was minimal.

[167] *See* Comments of AWRT at 8-9, and BCFM at 11-12.

[168] *See* Comments of BCFM at 11.

[169] *See* Comments of BCFM at 11.

[170] *See* Comments of Press at 5-6.

[171] *See* Comments of Press at 6-7. Press goes on to list several definitional problems it believes are contained in these definitions. Comments of Press at 7-9.

[172] *See 1996 and 1997 NTIA Reports.*

stations owned by minorities.[173] In addition, as pointed out by AWRT, the NTIA data does not include data on female ownership.[174] Accordingly, we will amend FCC Form 323 to include a section on the race and gender of individuals with attributable interests in broadcast licensees. No commenter specifically opposes collecting this information.[175] We do not believe that the modified reporting requirement will impose an undue burden on licensees because they will not be required to obtain information from anyone whose interests are not already reportable.

101. Our revised Annual Ownership Report form will provide us with annual information on the state and progress of minority and female ownership and enable both Congress and the Commission to assess the need for, and success of, programs to foster opportunities for minorities and females to own broadcast facilities. In this regard, our information collection is consistent with our mandate under Section 309(j) of the Communications Act of 1934, which directs the Commission to award all commercial broadcast licenses for which mutually exclusive applications are filed, except those in three exempt categories, by competitive bidding.[176] In implementing the competitive bidding requirement, the Commission must:

> promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women...[177]

Further, in crafting competitive bidding regulations, the Commission must promote "economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women," and ensure that those entities "are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures..."[178] Thus, Section 309(j) evidences a congressional policy favoring the dissemination of broadcast licenses among a wide variety of groups, including minority groups and women. Compilation of data to monitor the status of minority and female ownership is a critical step in implementing this mandate to further opportunities for minorities and women in broadcasting.

102. Section 257 of the 1996 Act provides further evidence of congressional concern regarding diversity of broadcast ownership. Section 257 requires the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers

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[173] *1997 NTIA Report* at 7 n. 23.

[174] *See* Comments of AWRT at 7.

[175] However, as noted in ¶¶ 99 and 104, Press raises a number of general issues with respect to this proceeding regarding the definition of races and ethnicities considered to be "minorities."

[176] 47 U.S.C. § 309(j), as amended by Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

[177] 47 U.S.C. § 309(j)(3).

[178] 47 U.S.C. § 309(j)(4).

of telecommunications services and information services."[179] In carrying out this mandate, the statute directs the Commission to "promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity."[180] To the extent that a lack of employment opportunities in the broadcast industry deprives minorities of employment or management experience and thereby erects barriers to entry into the industry, our action today will help us fulfill our mandate under Section 257 to identify and eliminate those barriers and foster a diversity of media voices.

103. We recognize that not all broadcast licensees are required to file ownership forms. Specifically, pursuant to Section 73.3615(a) of the Commission's Rules, sole proprietorships and partnerships composed solely of natural persons are exempt from the filing requirement. However, we encourage these licensees to file information voluntarily regarding gender and racial identity, so that we may more accurately measure minority and female broadcast ownership. In addition, the modified reporting requirement will only apply to the FCC Form 323, Annual Ownership Report, required of commercial broadcasters. We will consider at a later date whether to apply the requirement to the FCC Form 323-E required of noncommercial stations. The reporting requirements of noncommercial broadcasters as set forth in Section 73.3615(d) of the Commission's Rules, 47 C.F.R. § 73.3615(d), will remain unchanged, except as modified *supra* ¶ 95.

104. The groups on which we will seek information are those to which our minority and female ownership policies have historically applied. In addition to females, these classifications are Black, Hispanic, Native American, Alaska Native, Asian, and Pacific Islander.[181] Although Press argues in its comments that we lack sufficiently detailed definitions for these groups, it also points out that these groups are defined more extensively in the "Instructions For Completion of FCC Form 395-B Broadcast Station Annual Employment Report."[182] We will include similar definitions in our revised instructions for Form 323. Categorizing employees for purposes of the Annual Employment Report, while not necessarily perfect, has not proven unduly problematic in the past. We see no reason why it should prove to be so with respect to ownership reporting in the future.

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[179] 47 U.S.C. § 257(a).

[180] 47 U.S.C. § 257 (b). While telecommunications and information services are not defined by the 1996 Act to encompass broadcasting, Section 257(b) directs the Commission to "promote the policies and purposes of this Act favoring diversity of media voices" in carrying out its responsibilities under Section 257 and, in its *Policy Statement* implementing Section 257, the Commission discussed market entry barriers in the mass media services. *See Policy Statement*, 62 Fed. Reg. 34648 (1997).

[181] *See Section 257 Proceeding NOI*, 11 FCC Rcd 6280, 6299 (1996). This is also the definition generally used by the federal government in its standard Equal Employment Opportunity construction contract specifications. *See* 41 CFR § 60-4.3(a). *See also* former 47 C.F.R. § 73.3555(e)(3)(iv). We also note that Section 309(i)(3)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(i)(3)(C), uses essentially the same definition for the purposes of random application selection: "Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders." Our 1978 Policy Statement on minority ownership had listed these groups as including those of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction. *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d, 979, 980 n. 8 (1978).

[182] In particular see instruction 9, "Minority Group Identification." The determination of race, ethnicity and gender for purposes of the FCC Form 395-B may be made visually, from post-employment records or in accordance with what the person is regarded as belonging in the community.

105. Thus, we will amend Section 73.3615 of the Commission's Rules as set forth in Appendix C and FCC Form 323, Annual Ownership Report, to require the provision of information on the gender and racial identity of all parties with attributable interests in commercial broadcast licensees. We direct the Mass Media Bureau to revise FCC Form 323 accordingly and submit it to OMB for approval.

III. ADMINISTRATIVE MATTERS AND ORDERING CLAUSES

106. Paperwork Reduction Act of 1995 Analysis. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. The new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

107. The Final Regulatory Flexibility Analysis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 604, is contained in Appendix B.

108. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4, 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 301, 303, 307, 308 and 309, Sections 73.316, 73.1030, 73.1675, 73.3534, 73.3535, 73.3597, 73.3598, 73.3613 and 73.3615 of the Commission's Rules, ARE AMENDED, as set forth in Appendix C.

109. IT IS FURTHER ORDERED, That the rule amendments set forth in Appendix C WILL BECOME EFFECTIVE 60 days after their publication in the *Federal Register*, and the information collection contained in these rules, with the exception of 47 C.F.R. § 73.3615(a), will become effective 60 days after publication in the *Federal Register*, following OMB approval, unless a notice is published in the *Federal Register* stating otherwise. The Commission will publish a notice setting the effective date of § 73.3615(a) upon OMB's approval of § 73.3615(a).

110. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

111. IT IS FURTHER ORDERED that the proceeding in MM Docket No. 98-43 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A: List of Commenters

Commenters in MM Docket No. 98-43
1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes

Allbritton Communications Company
American Federation of Television & Radio Artists
Association of America's Public Television Stations
Berry Best Services, Ltd.
BIA Companies
Birdsill, Michael Robert
CBS Corporation
Cumulus Media, Inc.
Educational Broadcasting Corporation
Everist, Donald G.
Federal Communications Bar Association
Graham Brock, Inc.
Harvey, Richard L. (WBHX)
Independent Broadcast Consultants, Inc. (William J. Sitzman)
Institute for Public Representation, Association of Independent Video and Filmmakers, Center for Media Education, Civil Rights Forum, OMB Watch (filed jointly by Citizens Communications Center Project, Institute for Public Representation, Georgetown University Law Center)
Media Access Project
National Association of Broadcasters
Norwest Communications Finance Division (Norwest Bank Minnesota, N.A.)
Pappas, Harry J, Stella A. Pappas, and Skycom, Inc.
Radio & Records, Radio Business Report, Duncan's American Radio, LLC, Dataworld (joint comments)
Tillotson, David
Waimea Broadcasting, Inc.

Reply Commenters in MM Docket No. 98-43

Berry Best Services, Ltd.
EBT Broadcasting LLC
Media Access Project
National Association of Broadcasters
OMB Watch (late filed)
Radio & Records, Radio Business Report, Duncan's American Radio, LLC, Dataworld (joint comments)

Commenters in MM Docket No. 94-149
Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities

American Women in Radio and Television, Inc.
Black Citizens for a Fair Media et al.
Minority Media and Telecommunications Council
National Association of Black Owned Broadcasters
Press Broadcasting Company, Inc.

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

Report and Order
MM Docket Nos. 98-43, 94-149

As required by the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking*[2] for each of the dockets in this proceeding, MM Docket Nos. 98-43 and 94-149. The Commission sought written public comments on the proposals set forth in each *Notice*, including comment on each IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA")[3] in this *Report and Order* ("*Order*") conforms to the RFA.[4]

A. Need For and Objectives of the Rule: Specifically, this *Order*: (1) streamlines broadcast application procedures, (2) speeds introduction of new and expanded services to the public, (3) reduces administrative burden on regulates, (4) increases public access to information about the Bureau's actions and processing activities, and (5) maximizes efficiency in the use of Commission resources. The *Order* maintains the technical integrity of broadcast services while fostering the Commission's goals of competition and diversity, continuing enforcement of the Commission's core rules and policies, and permitting members of the public a continued opportunity to monitor station performance. This action is taken in conjunction with the Commission's 1998 biennial regulatory review. Although Congress did not mandate this area of review, the Commission nonetheless undertook it to assure that its rules and processes are no more regulatory than necessary to achieve Commission goals.

Further, the *Order* revises our Ownership Report form, FCC Form 323, to include a section requiring each owner to identify the race or ethnicity and the gender of each person holding an attributable ownership interest in its broadcast facility. Doing so will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities and to chart the success of any measures that we may eventually adopt in this proceeding in promoting ownership by minorities and women. Information about the status of minority and female broadcast ownership will also help us to fulfill our responsibilities under Section 257 of the *Telecommunications Act of 1996* to identify and

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et. seq., has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[2] *In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules and Processes, Notice of Proposed Rulemaking*, 13 FCC Rcd 11349, MM Docket No. 98-43 (rel. April 3, 1998); *In the Matter of Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, 10 FCC Rcd 2788, MM Docket No. 94-149 (rel. January 12, 1995).

[3] This FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1966, Pub. L. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[4] *See* 5 U.S.C. § 604.

eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services.[5] In implementing Section 257, the Commission is mandated to "promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity."[6]

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFAs: No comments were received specifically in response to the IRFA in MM Docket No. 98-43. However, some comments in that proceeding did address certain small business issues. Primarily, commenters were concerned that not all small businesses are currently connected to the Internet and therefore would be unable to immediately participate in the electronic filing initiative adopted herein without additional expense.[7] Commenters were also concerned that eliminating the requirement that permittees file sales contracts will hurt small business because lending institutions will be unable to access necessary sales price information.[8] One commenter, Cumulus Media, commented that streamlining the application process will inevitably decrease the cost of doing business for small broadcasters and that broadcasters could then shift their resources into benefits for the public, such as more local programming and sponsorship of community events.[9]

Four commenters endorsed our proposed amendment to FCC Form 323, which would require a broadcaster to provide information regarding the race or ethnicity and the gender of any individual with an attributable ownership interest in its broadcast facility.[10] All four commenters stated that the collection of such information is essential in order to monitor the effectiveness of minority and female ownership programs. One commenter points out that race and gender-based remedies must be "narrowly tailored" and terminate once fair representation has been achieved and, therefore, the collection of such data is necessary to these ends.[11] The commenter asserts that the collection of statistical information on the race and gender of station employees to monitor equal employment opportunity compliance has been useful and the burden of its collection minimal. While another commenter urges that the revised form include

[5] 47 U.S.C. § 257(a).

[6] 47 U.S.C. § 257(b).

[7] *See* Comments of NAB at 4, Independent Broadcast Consultants, Inc. at 3-4, Michael Robert Birdsill at 1-2, David Tillotson at 2).

[8] *See* Comments of FCBA at ii; Reply Comments of Radio & Records at 6.

[9] *See* Comments of Cumulus at 4.

[10] *See* Comments of American Women in Radio and Television, Inc. ("AWRT"), Black Citizens for a Fair Media *et al.* ("BCFM"), Minority Media and Telecommunications Council ("MMTC"), and the National Association of Black Owned Broadcasters ("NABOB").

[11] *See* Comments of BCFM.

a designation of the gender and race of the owner of the station,[12] the first commenter suggests that we add questions concerning whether women or members of racial or ethnic minority groups hold ownership interests in the station and, if so, the percentage interest held by each group, the minority total, the female total, whether either total constitutes a controlling interest, whether women or minorities otherwise exercise control, and whether any minority ownership policies or devices were used by the current owners in acquiring the station.[13]

Another issue raised by commenters concerning amendment of FCC Form 323 concerns how the Commission should define relevant groups. One commenter Press Broadcasting Company, Inc. ("Press"), addressing the issue of definitions in this proceeding generally, argues that the Commission has not clearly defined "minorities" beyond "Black, Hispanic, Native American, Alaska Native, Asian and Pacific Islander," and that the Commission's definition of minorities is arbitrary and inconsistent with its definition in other proceedings.[14]

C. Description and Estimate of the Number of Small Entities to which Rules will Apply: Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.[15] We received no comment in response to either IRFA on how to define radio and television broadcast "small businesses." Therefore, we will continue to utilize SBA's definitions for the purpose of this FRFA.

The rules and policies adopted in the *Order* will apply to all broadcast licensees. The SBA defines

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[12] *See* Comments of AWRT.

[13] *See* Comments of BCFM.

[14] *See* Comments of Press Broadcasting Company, Inc.

[15] While we stated in the *Notice* that we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FRFA, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to these rules and to consider further the issue of the number of small entities that are radio and television broadcasters or small media entities in the future. *See Report and Order* in MM Docket No. 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), *citing* 5 U.S.C. § 601(3).

a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[16] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[17] Included in this industry are commercial, religious, educational, and other television stations.[18] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[19] For 1992,[20] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. There were approximately 1,583 operating television broadcasting stations in the nation as of September 30, 1998, of which approximately 1,219 are considered small businesses.[21]

Additionally, the SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[22] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[23] Included in this industry are commercial religious, educational, and other radio stations.[24] Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included.[25] As of September 30, 1998,

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[16] 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833.

[17] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

[18] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[19] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995). Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services [producers of live radio and television programs]).

[20] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" of "7." *See* 1992 Census, Series UC92-S-1, at III.

[21] FCC News release "Broadcast Stations Totals as of September 30, 1998."

[22] 13 C.F.R. § 121.201, SIC 4832.

[23] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 108, Appendix A-9.

[24] *Id.*

[25] *Id.* However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. *Id.*

Commission records indicate that 12,373 radio stations were operating, of which 11,878 were small businesses.[26]

Thus, the measures adopted here will affect the approximately 1,583 television stations, approximately 1,219 of which are considered small businesses.[27] Additionally, the measures adopted here will also affect the 12,373 radio stations, approximately 11,878 of which are small businesses.[28] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies.

In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the rules and procedures adopted in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements: The measures adopted in the *Order* will reduce the reporting required of prospective and current applicants, permittees and licensees. All measures aim to reduce the overall administrative burden upon both the public and the Commission. For example, we have adopted a phase-in period for mandatory electronic filing. We note that such a phased-in procedure has been used elsewhere to benefit small businesses. For example, the Securities and Exchange Commission incorporated its mandatory filing rules in stages. While most companies were phased into the electronic filing system in 1993, small businesses were not completely phased in until May 1996. We believe that electronic filing will, among other things, speed the processing of applications, save Commission resources, and make filing easier for regulatees by informing them of certain errors in their applications before they are actually sent.

The full benefits of electronic filing and processing would not be realized simply by converting the current version of each form into an electronic format. Accordingly, we have deleted or narrowed overly burdensome questions and will now rely more on applicant certifications. *See Order*, ¶ 22. These changes will both reduce applicant filing burdens and streamline our processing of sales, new station, and facility modification applications. The *Order* revises Commission requirements for extending the construction periods of broadcast stations (*Order*, ¶¶ 83-90); for selling unbuilt construction permits (*Order*, ¶¶ 30-34); and for submitting ownership reports for commercial and noncommercial stations (*Order*, ¶¶ 94-95). To preserve the integrity of our streamlined application process, the *Order* implements a formal program of both pre- and post-application grant random audits (*Order*, ¶¶ 66-76).

In addition, many broadcast licensees will need to file modified FCC Form 323, and include

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[26] FCC News Release "Broadcast Station Totals as of September 30, 1998."

[27] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1998 total of 1569 TV stations to arrive at 1,208 stations categorized as small businesses.

[28] We use the 96 percent figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,241 individual station count to arrive at 11,751 individual stations as small businesses.

information on the race or ethnicity and gender of individuals with attributable interests in the broadcast license. (*Order*, ¶¶ 100-105). However, not all broadcast licensees are required to file ownership forms. Specifically, pursuant to Section 73.3615(a) of the Commission's Rules, sole proprietorships and partnerships composed solely of natural persons are exempt from the filing requirement. We encourage those licensees to file information voluntarily regarding gender and racial identity, so that we may more accurately measure minority and female broadcast ownership. In addition, our modified reporting requirement will apply only to commercial broadcast stations. The reporting requirements of noncommercial broadcasters as set forth in Section 73.3615(d) of the Commission's Rules, 47 C.F.R. § 73.3615(d), will remain unchanged.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: This *Order* sets forth the Commission's new streamlined rules and procedures. The streamlined rules and procedures are intended to reduce applicant and licensee burdens, realize fully the benefits of the Mass Media Bureau's electronic filing initiative, and preserve the public's ability to participate fully in the Commission's broadcast licensing processes. These streamlined rules and procedures are designed to reduce filing burdens and increase the efficiency of application processing. All significant alternatives presented in the comments were considered, and some were adopted herein, including the addition of permitting narrative exhibits to be attached to certification forms under specific circumstances in order to reduce the number of application amendments and thereby further preserve staff resources while reducing the paperwork burden on applicants.

As noted in the *Order*, the development of electronic filing procedures will also greatly increase efficiencies to applicants, while increasing the speed of the licensing process. *Order*, ¶ 8. We expect that these changes will benefit all, including small entities. Electronic filing should be easier for applicants than the current system because the electronic filing system will prompt the applicant for the necessary information and will provide interactive error messages if information is not filed correctly. The electronic filing system will allow the applicant to correct its applications prior to submitting it. This system will allow all interested parties, including small entities, easy access to pleadings that are filed in connection with applications and licenses.

We do not believe that the modified race and gender reporting requirement will impose an undue economic burden on licensees because they will not be required to obtain information from anyone whose interests are not already reportable. We have attempted to keep burdens on broadcast television and radio stations to a minimum by grafting this information collection onto an existing collection requirement rather than imposing an entirely new requirement. Additionally, the information being requested is simply the race and gender of persons with an attributable interest in the broadcast license. The Commission rejected requests made by some commenters for the collection of additional information. The significant alternatives the Commission considered were: 1) to collect more information than the race and gender of those with attributable interests (e.g., whether any minority ownership policies or devices were used by the current owners in acquiring the station); or 2) collect no information on the race and gender of persons with attributable interests. The first alternative could significantly increase the information-gathering and reporting burden on licensees with little benefit, while the information we require can be submitted by interested parties during the course of this proceeding. The second alternative, to collect no race or gender information, would force the Commission to make important policy decisions without relevant and important information.

F. Report to Congress The Commission will send a copy of the *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority ad Female Ownership of Mass Media Facilities*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of this *Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order*, including this FRFA, (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

G. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

APPENDIX C

I. Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 1 PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

47 CFR Part 1 is amended to read as follows:

2. Section 1.4 is amended by revising paragraph (f) to read as follows:

§ 1.4 Computation of Time

* * * * *

(f) * * * Mass Media Bureau applications and reports filed electronically pursuant to § 73.3500 of the Rules must be received by the electronic filing system before midnight on the filing date.

II. Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73 RADIO BROADCAST SERVICES

3. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 303, 307, 308 and 309.

47 CFR Part 73 is amended to read as follows:

4. Section 73.316 is amended by revising subsection (c) as follows:

§ 73.316 FM Antenna systems

* * * * *

(c) *Applications for directional antennas.*

(1) Applications for construction permit proposing the use of directional antenna systems must include a tabulation of the composite antenna pattern for the proposed directional antenna. A value of 1.0 must be used to correspond to the direction of maximum radiation. The pattern must be tabulated such that 0° corresponds to the direction of maximum radiation or alternatively, in the case of an asymmetrical antenna pattern, the pattern must be tabulated such that 0° corresponds to the actual azimuth with respect

to true North. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas. Applications must include valuations tabulated at intervals of not greater than ten (10) degrees. In addition, tabulated values of all maximas and minimas, with their corresponding azimuths, must be submitted.

(2) Applications for license upon completion of antenna construction must include the following:

(i) A complete description of the antenna system, including the manufacturer and model number of the directional antenna. It is not sufficient to label the antenna with only a generic term such as "dipole." In the case of individually designed antennas with no model number, or in the case of a composite antenna composed of two or more individual antennas, the antenna must be described as a "custom" or "composite" antenna, as appropriate. A full description of the design of the antenna must also be submitted.

(ii) A plot of the composite pattern of the directional antenna. A value of 1.0 must be used to correspond to the direction of maximum radiation. The plot of the pattern must be oriented such that 0° corresponds to the direction of maximum radiation or alternatively, in the case of an asymmetrical antenna pattern, the plot must be oriented such that 0° corresponds to the actual azimuth with respect to true North. The horizontal plane pattern must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10-nth. Values of field strength less than 10% of the maximum field strength plotted on that pattern must be shown on an enlarged scale. In the case of a composite antenna composed of two or more individual antennas, the composite antenna pattern should be provided, and not the pattern for each of the individual antennas.

(iii) A tabulation of the measured relative field pattern required in paragraph (c)(1) of this section. The tabulation must use the same zero degree reference as the plotted pattern, and must contain values for at least every 10 degrees. Sufficient vertical patterns to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. Complete information and patterns must be provided for angles of ± 10 deg. from the horizontal plane and sufficient additional information must be included on that portion of the pattern lying between +10 deg. and the zenith and -10 deg. and the nadir, to conclusively demonstrate the absence of undesirable lobes in these areas. The vertical plane pattern must be plotted on rectangular coordinate paper with reference to the horizontal plane. In the case of a composite antenna composed of two or more individual antennas, the composite antenna pattern should be used, and not the pattern for each of the individual antennas.

(iv) A statement that the antenna is mounted on the top of an antenna tower recommended by the antenna manufacturer, or is side-mounted on a particular type of antenna tower in accordance with specific instructions provided by the antenna manufacturer.

(v) A statement that the directional antenna is not mounted on the top of an antenna tower which includes a top-mounted platform larger than the nominal cross-sectional area of the tower in the horizontal plane.

(vi) A statement that no other antenna of any type is mounted on the same tower level as a directional antenna, and that no antenna of any type is mounted within any horizontal or vertical distance

specified by the antenna manufacturer as being necessary for proper directional operation.

(vii) A statement from an engineer listing such individual engineer's qualifications and certifying that the antenna has been installed pursuant to the manufacturer's instructions.

(viii) A statement from a licensed surveyor that the installed antenna is properly oriented.

(ix) For a station authorized pursuant to Sec. 73.215 or Sec. 73.509, a showing that the root mean square (RMS) of the measured composite antenna pattern (encompassing both the horizontally and vertically polarized radiation components (in relative field)) is at least 85 percent of the RMS of the authorized composite directional antenna pattern (in relative field). The RMS value, for a composite antenna pattern specified in relative field values, may be determined from the following formula:

RMS = the square root of:

$$\frac{[(\text{relative field value } 1)^2 + (\text{relative field value } 2)^2 + \ldots + (\text{last relative field value})^2]}{\text{total number of relative field values}}$$

where the relative field values are taken from at least 36 evenly spaced radials for the entire 360 degrees of azimuth. The application for license must also demonstrate that coverage of the community of license by the 70 dBu contour is maintained for stations authorized pursuant to Sec. 73.215 on Channels 221 through 300, as required by Sec. 73.315(a), while noncommercial educational stations operating on Channels 201 through 220 must show that the 60 dBu contour covers at least a portion of the community of license.

* * * * *

5. Section 73.1030 is amended by revising subsection (a) as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(a)(1) Radio astronomy and radio research installations. In order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, a licensee proposing to operate a short-term broadcast auxiliary station pursuant to Section 74.24, and any applicant for authority to construct a new broadcast station, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39° 15' N on the north, 78° 30' W on the east, 37° 30' N on the south, and 80° 30' W on the west, shall notify the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944. Telephone: (304) 456-2011. The notification shall be in writing and set forth the particulars of the proposed station, including the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission and power. The notification shall be made prior to, or simultaneously with, the filing of the application with the Commission. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period

from the National Radio Astronomy Observatory for itself, or on behalf of the Naval Radio Research Observatory, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

(2) Any applicant for a new permanent base or fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization to change the frequency, power, antenna height, directivity, or location of a station on these islands shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants shall consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(i) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD-83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, and effective radiated power.

(ii) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. The Commission shall determine whether an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference.

* * * * *

6. Section 73.1675 is amended by revising subsection (a) as follows:

§ 73.1675 Auxiliary antennas.

(a) An auxiliary antenna is one that is permanently installed and available for use when the main antenna is out of service for repairs or replacement. An auxiliary antenna may be located at the same transmitter site as the station's main antenna or at a separate site. The service contour of the auxiliary antenna may not extend beyond the following corresponding contour for the main facility:

(1) AM stations: The 0.5 mV/m field strength contours.
(2) FM stations: The 1.0 mV/m field strength contours.
(3) TV stations: The Grade B coverage contours.

An application for an auxiliary antenna for an AM station filed pursuant to paragraphs (b) or (c) of this section must contain a map showing the 0.5 mV/m field strength contours of both the main and auxiliary facilities.

* * * * *

7. Section 73.3500 is revised to read as follows:

§ 73.3500 Application and report forms.

(a) Following are the FCC broadcast application and report forms, listed by number.

* * * * *

(b) Following are the FCC broadcast application and report forms, listed by number, that must be filed electronically in accordance with the filing instructions set forth in the application and report form.

(1) Form 398, in electronic form as of January 10, 1999.

8. Section 73.3526 is amended by revising subsection (e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e)(11)(iii) Children's Television Programming Reports. For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, *i.e.* four quarterly reports filed jointly each year, in electronic form as of January 10, 1999. These Reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

* * * * *

9. Section 73.3534 is revised to read as follows:

§ 73.3534 Period of construction for Instructional TV Fixed station construction permit and requests for extension thereof.

(a) Each original construction permit for the construction of a new Instructional TV Fixed station,

or to make changes in such existing stations, shall specify a period of 18 months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) Requests for extension of time within which to construct an Instructional TV Fixed station shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such request for extension are known to the applicant in time to permit such filing. In other cases, a request will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date.

(c) Requests for extension of time to construct Instructional TV Fixed stations will be granted upon a specific and detailed narrative showing that the failure to complete construction was due to causes not under the control of the permittee, or upon a specific and detailed showing of other sufficient justification for an extension.

(d) If a request for extension of time within which to construct an Instructional TV Fixed station is approved, such an extension will be limited to a period of no more than 6 months.

(e) A construction permit for an Instructional TV Fixed station shall be declared forfeited if the station is not ready for operation within the time specified therein or within such further time as the FCC may have allowed for completion, and a notation of the forfeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date.

10. Section 73.3535 is deleted:

§ 73.3535 Application to modify authorized but unbuilt facilities, or to assign or transfer control of an unbuilt facility.

11. Section 73.3597 is amended by revising subsection (c)(1) as follows:

§ 73.3597 Procedures on transfer and assignment applications.

* * * * *

(c) (1) As used in paragraphs (c) and (d) of this section:

(i) * * *

(ii) * * *

(iii) The provisions of subsections (c) and (d) of this section apply only to mutually exclusive noncommercial educational applications filed on or after the release of the *Report and Order* in MM Docket 98-43, where the construction permit is issued pursuant to settlement agreement.

* * * * *

12. Section 73.3598 is revised to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster; or broadcast auxiliary station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

(i) Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes) or

(ii) the grant of the permit is the subject of administrative or judicial review (i.e., petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by subsection (b), and provide supporting documentation. All notifications must be filed in triplicate with the Secretary and must be placed in the station's local public file.

(d) A permittee must notify the Commission promptly when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God will automatically cease six months from the date of the notification described in subsection (c), unless the permittee submits additional notifications at six month intervals detailing how the act of God continues to cause delays in construction, any construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments.

(e) Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.

13. Section 73.3599 is deleted:

§ 73.3599 Forfeiture of construction permit.

14. Section 73.3613 is amended by revising subsection (b) to read as follows:

§ 73. 3613 Filing of contracts.

(b) Ownership or control: Contracts, instruments or documents relating to present or future ownership or control of the licensee or permittee or of the licensee's or permittee's stock, rights or interests therein, or relating to changes in such ownership or control shall include but are not limited to the following:

* * * * *

(7) Agreements providing for the assignment of a license or permit or agreements for the transfer of stock filed in accordance with FCC application Forms 314, 315, 316 need not be resubmitted pursuant to the terms of this rule provision.

15. Section 73.3615 is amended by revising subsection (a); (a)(1); the first sentence of subsection (a)(2); subsection (a) (3) (i) (A); subsection (c); subsection (d) and subsection (f) as follows:

§ 73.3615 Ownership Reports.

(a) With the exception of sole proprietorships and partnerships composed entirely of natural persons, each licensee of a commercial AM, FM, or TV broadcast station shall file an Ownership Report on FCC Form 323 when filing the station's license renewal application and every two years thereafter on the anniversary of the date that its renewal application is required to be filed. Licensees owning multiple stations with different anniversary dates need file only one Report every two years on the anniversary of their choice, provided that their Reports are not more than two years apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of a date not more than 60 days prior to the filing of the Report:

(1) In the case of an individual, the name, race or ethnicity, and gender of such individual;

(2) In the case of a partnership, the name, race or ethnicity, and gender of each partner and the interest of each partner. * * *

(3) * * *

(i) * * *

(A) The name, residence, citizenship, race or ethnicity, gender, and stockholding of every officer, director, trustee, executor, administrator, receiver and member of an association, and any stockholder which holds stock accounting for 5 percent or more of the votes of the corporation, except that an investment company, insurance company, or bank trust department need be reported only if it holds stock amounting to 10 percent or more of the votes, provided that the licensee certifies that such entity has made

no attempt to influence, directly or indirectly, the management or operation of the licensee, and that there is no representation on the licensee's board or among its officers by any person professionally or otherwise associated with the entity.

* * * * *

(c) Before any change is made in the organization, capitalization, officers, directors, or stockholders of a corporation other than licensee or permittee, which results in a change in the control of the licensee or permittee, prior FCC consent must be received under § 73.3540. A transfer of control takes place when an individual or group in privity, gains or loses affirmative or negative (50%) control. See instructions on FCC Form 323 (Ownership Report). Each permittee or licensee of a commercial AM, FM or TV Broadcast station shall file an Ownership Report on FCC Form 323 within 30 days of consummating authorized assignments or transfers of permits and licenses. The Ownership Report of the permittee or licensee shall give the information required by the applicable portions of paragraph (a) of this section.

(d) Each licensee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E when filing the station's license renewal application and every two years thereafter on the anniversary of the date that its renewal application is required to be filed. Licensees owning more than one noncommercial educational AM, FM or TV broadcast station with different anniversary dates need file only one Report every two years on the anniversary of their choice, provided that their Reports are not more than two years apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership reports shall give the following information as of a date not more than 60 days prior to the filing of the Ownership Report:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(e) Each permittee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E (1) within 30 days of the date of grant by the FCC of an application for original construction permit and (2) on the date that it applies for a station license. The Ownership Report of the permittee shall give the information required by the applicable form. A permittee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and it is accurate, in lieu of filing a new Report.

(f) Each permittee or licensee of a noncommercial educational AM, FM or TV Broadcast station shall file an Ownership Report on FCC Form 323-E within 30 days of consummating authorized assignments or transfers of permits and licenses. The Ownership Report of the noncommercial educational permittee or licensee shall give the information required by the applicable form.

(g) * * *

APPENDIX D

Attached are copies of the following FCC Forms, which have been revised in keeping with this *Report and Order*: 301, 314, and 315.

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

GENERAL INSTRUCTIONS

A. This FCC Form is to be used to apply for authority to construct a new commercial AM, FM, or TV broadcast station or to make changes in the existing facilities of such a station. In the case of new station and major modification proposals, this application is filed by either the successful bidder at a broadcast frequency auction or by an applicant proposing facilities that are not mutually exclusive with any other application filed during the same window thus not subject to the Commission's comparative bidding procedures. All proposals for minor changes to authorized commercial stations are also to be filed on this form. The form consists of the following sections:

I. General Information
II. Legal Qualifications
III. Preparer's Certification (for preparer of engineering sections of the application)
III-A AM Broadcast Engineering Data
III-B FM Broadcast Engineering Data
III-C TV Broadcast Engineering Data
III-D Digital Television (DTV) Engineering Data

Applicants must complete Sections I, II, III, and the relevant engineering section. No section may be omitted. However, an applicant for minor change in facilities need fill out only Items 1 and 11 in Section II, **unless** the change in facilities will implicate the Commission's multiple ownership rules; in that case, the applicant also must complete Item 4 in Section II. An applicant for major change in facilities need fill out only Items 9, 10, and 11 in Section II and, if applicable, the multiple ownership certification, Item 4.

B. This application form makes many references to FCC rules. Applicants should have on hand and be familiar with current broadcast rules in Title 47 of the Code of Federal Regulations (C.F.R.):

(1) Part 0 "Commission Organization"
(2) Part 1 "Practice and Procedure"
(3) Part 73 "Radio Broadcast Services"
(4) Part 74 "Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services"

FCC Rules may be purchased from the Government Printing Office. Current prices may be obtained from the GPO Customer Service Desk at (202) 512-1803. For payment by credit card,

call (202) 512-1800, M-F, 8 a.m. to 4 p.m. e.s.t; facsimile orders may be placed by dialing (202) 518-2233, 24 hours a day. Payment by check may be made to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954.

C. Applicants that prepare this application in paper form should file an original and two copies of this application and all exhibits. Applicants should follow the procedures set forth in Part 0 and Part 73 of the Commission's Rules. Amendments to previously filed applications should be prepared and submitted in original and two copies, signed in the same manner as the original application, and should contain the following information to identify the associated application:

(1) Applicant's name.
(2) Service (AM, FM, or TV).
(3) Call letters or specify "NEW" station.
(4) Channel number (FM or TV) or frequency (AM).
(5) Community of license.
(6) File number of application being amended (if known).
(7) Date of filing of application being amended (if file number is not known).

D. **Public Notice Requirements**:

(1) 47 C.F.R. Section 73.3580 requires that applicants for construction permits for new broadcast stations and for major change in existing broadcast facilities (as defined in 47 C.F.R. Sections 73.3571(a)(1) (for AM applicants), 73.3572(a)(1) (for television applicants), or 73.3573(a) (1) (for FM applicants)) give local notice in a newspaper of general circulation in the community to which the station is licensed. This publication requirement also applies with respect to major amendments as defined in 47 C.F.R. Sections 73.3571(b) (AM), 73.3772(b) (television), and 73.3573(b) (FM). Local notice is also required to be broadcast over the station, if operating. However, if the station is the only operating station in its broadcast service licensed to the community involved, publication of the notice in a newspaper is not required. (Noncommercial educational FM stations are classified as a "different service" from commercial FM stations for purposes of this policy.) The publication requirement also applies with respect to major amendments to applications as defined in 47 C.F.R. Section 73.3578(b).

(2) Completion of publication may occur within 30 days before or after the tender of the application to the Commission. Compliance or intent to comply with the public notice requirements must be certified by the applicant in Item 9 of Section II of this application. The required content of the local notice is described in Paragraph (f) of 47 C.F.R. Section 73.3580; Worksheet #1 attached to these instructions provides additional guidance. Proof of publication need not be filed with this application.

E. A copy of the completed application and all related documents shall be made available for inspection by the public in the applicant's public inspection file pursuant to 47 C.F.R. Section 73.3526.

F. Applicants should provide all information requested by this application. If any portions of the application are not applicable, the applicant should so state. **Defective or incomplete applications will be returned without consideration.** Inadvertently accepted applications are also subject to dismissal.

G. In accordance with 47 C.F.R. Section 1.65, applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and material changes in the information furnished in this application. This requirement continues until the FCC action on this application is no longer subject to reconsideration by the Commission or review by any court.

H. This application requires applicants to certify compliance with many statutory and regulatory requirements. Detailed instructions and worksheets provide additional information regarding Commission rules and policies. These materials are designed to track the standards and criteria which the Commission applies to determine compliance and to increase the reliability of applicant certifications. They are not intended to be a substitute for familiarity with the Communications Act and the Commission's regulations, policies, and precedent. While applicants are required to review all application instructions and worksheets, they are not required to complete or retain any documentation created or collected to complete the application. See Section II, Item 1.

I. This application is presented primarily in a "Yes/No" certification format. However, it contains appropriate places for submitting explanations and exhibits where necessary or appropriate. Each certification constitutes a material representation. Applicants may only mark the "Yes" certification when they are certain that the response is correct. A "No" response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. Thus, a "No" response to any of the certification items **will not** cause the immediate dismissal of the application provided that an appropriate exhibit is submitted.

J. Applicants are not required to certify as to their financial qualifications on FCC Form 301. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses, MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264, FCC 98-194 (August 18, 1998), ¶¶ 172-176 ("Auctions Order"). Nevertheless, the Commission's substantive financial qualification requirements are unchanged. All applicants for new broadcast facilities must have reasonable assurance of committed financing sufficient to construct the proposed facility and operate it for three months without revenue **at the time they file the FCC Form 301**. See Merrimack Valley Broadcasting, Inc., 82 FCC 2d 166, 167 (1980); Liberty Productions, 7 FCC Rcd 7581, 7584 (1992).

K. Applicants filing this FCC Form 301 also are not required to certify that the site specified in FCC Form 301 is available for its intended use. See Auctions Order at ¶¶ 172-175. Nevertheless, the Commission's substantive site availability requirements are unchanged. All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available **at the time they file FCC Form 301**. See William F. and Anne K. Wallace, 49 FCC

2d 1424, 1427 (Rev. Bd. 1989); Genesee Communications, Inc., 3 FCC Rcd 3595 (1988); National Innovative Programming Network, 2 FCC Rcd 5641 (1987).

L. **The applicant, or the applicant's authorized representative, must sign the application.** Depending on the nature of the applicant, the application should be signed as follows: if a sole proprietorship, personally; if a partnership, by a general partner; if a corporation, by an officer; for an unincorporated association, by a member who is an officer; if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the application for his or her client, but only in cases of the applicant's disability or absence from the United States. In such cases, counsel must separately set forth why the application is not signed by the client. In addition, as to any matter stated on the basis of belief instead of personal knowledge, counsel shall separately set forth the reasons for believing that such statements are true. See 47 C.F.R. Section 73.3513.

M. The Commission has suspended the requirement to file a Broadcast Equal Employment Opportunity Model Program (Form 396-A) as part of this application. However, a Notice of Proposed Rule making is currently outstanding regarding the obligation of stations to make reasonable good-faith efforts to seek out qualified applicants regardless of race or gender for vacancies. This proceeding may result in new or modified equal employment opportunity policies.

INSTRUCTIONS FOR SECTION I: GENERAL INFORMATION

A. **Item 1: Applicant Name**. Applicants should use only those state abbreviations approved by the U.S. Postal Service.

The name of the applicant must be stated exactly in Item 1. If the applicant is a corporation, the exact corporate name; if a partnership, the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his/her office, and the name of the association; and, if an individual applicant, the person's full legal name.

B. **2: Contact Representative**. If the applicant is represented by a third party (such as, for example, legal counsel), that person's name, firm or company, and telephone/electronic mail address may be specified in Item 2.

C. **Item 3: Fees**. The Commission is statutorily required to collect charges for certain regulatory services to the public. Generally, applicants seeking authority to construct a new broadcast station or modify an outstanding authorization are required to submit a fee with the filing of FCC Form 301. Government entities, however, are exempt from this fee requirement. Exempt entities include possessions, states, cities, counties, towns, villages, municipal organizations, and political organizations or subparts thereof governed by elected or appointed officials exercising sovereign direction over communities or governmental programs. Also exempt are full-service noncommercial educational radio and TV broadcast licensees and permittees, **provided** that the

proposed facility will be operated noncommercially. See 47 C.F.R. Section 1.1114. To avail itself of a fee exemption, an applicant must indicate its eligibility by checking the appropriate box in Item 3, Section 1 of FCC Form 301 and provide an explanation as appropriate.

When filing a fee-exempt application, an applicant must complete Item 3 and provide an explanation as appropriate. Applications **NOT** subject to a fee may be hand-delivered or mailed to the FCC at its Washington, D.C. offices. See 47 C.F.R. Section 0.401(a). Fee-exempt applications should not be sent to the Mellon Bank Lockbox; so doing will result in a delay in processing the application.

The Commission's fee collection program utilizes a U.S. Treasury lockbox bank for maximum efficiency of collection and processing. Prior to the institution of electronic filing procedures, all FCC Form 301 applications requiring the remittance of a fee, or for which a waiver or deferral from the fee requirement is requested, must be submitted to the appropriate post office box address. See 47 C.F.R. Section 0.401(b). A listing of the required fee and the address to which FCC Form 301 should be mailed or otherwise delivered are also set forth in the "Mass Media Services Fee Filing Guide." This document can be obtained either by writing to the Commission's Form Distribution Center, 9300 E. Hampton Drive, Capital Heights, Maryland 20743, or by calling 1-800-418-FORM and leaving your request on the answering machine provided for this purpose. See also 47 C.F.R. Section 1.1104. The Fee Filing Guide also contains a list of the Fee Type Codes needed to complete this application.

Payment of any required fee must be made by check, bank draft, money order, or credit card. If paying by check, bank draft, or money order, the remittance must be denominated in U.S. dollars, drawn upon a U.S. institution, and made payable to the Federal Communications Commission. No postdated, altered, or third-party checks will be accepted. **DO NOT SEND CASH**. Additionally, checks dated six months or older will not be accepted.

FCC Form 159, dated July 1997, must be submitted with any application subject to a fee received at the Commission. All previous editions of this form are obsolete. The correct FCC Form contains new requirements that must be completed. Failure to use this version of the form or to submit all requested information may delay the processing of the application.

Pending institution of electronic filing procedures, any applicant who wishes to pay its filing fee by **money order or credit card** must submit FCC Form 159 along with its application.

Payment of application fees may also be made by Electronic Payment, provided that prior approval has been obtained from the Commission. Applicants interested in this option must first contact the Billings and Collections Branch at (202) 418-1995 to make the necessary arrangements.

Applicants hand-delivering FCC Forms 301 may receive dated receipt copies by presenting copies of the applications to the acceptance clerk at the time of delivery. For mailed-in applications,

a "return copy" of the application should be furnished and clearly marked as a "return copy." The applicant should attach this copy to a stamped, self-addressed envelope. Only one piece of paper per application will b stamped for receipt purposes.

For further information regarding the applicability of a fee, the amount of the fee, or the payment of the fee, applicants should consult the "Mass Media Services Fee Filing Guide."

C. **Item 4: Purpose of Application.** This question requires that the applicant identify the purpose of the application and provide certain identifying information for the facilities proposed in the FCC Form 301.

INSTRUCTIONS FOR SECTION II: LEGAL INFORMATION

A. **Item 1: Certification.** Each applicant is responsible for the information that the application instructions and worksheets convey. As a key element in the Commission's streamlined licensing process, a certification that these materials have been reviewed and that each question response is based on the applicant's review is required.

B. **Item 2: Parties to the Application.** This question requires the disclosure of information on the applicant and all parties to the application. As used in this application form, the term "party to the application" includes any individual or entity whose ownership or positional interest in the applicant is attributable. An attributable interest is an ownership interest in or relation to an applicant or licensee which will confer on its holder that degree of influence or control over the applicant or licensee as should subject it to limitation by the Commission's multiple ownership rules. See Report and Order in MM Docket No. 83-46, 97 FCC 2d 997 (1984), reconsideration granted in part, 58 RR 2d 604 (1985), further modified on reconsideration, 61 RR 2d 739 (1986). Generally, insulated limited partners or member of a limited partnership or limited liability corporation, certain investors, and certain creditors are not considered parties to the application. However, as set forth in the checklist entitled, "Investor Insulation and Non-Party Influence over the Applicant," the holder of such an interest may be deemed a party to the application and, thus, must be listed in the Table in Item 2a. In the event that the Investor Insulation and Non-Party Influence over Applicant worksheet requires the submission of an explanatory exhibit, the applicant must respond "No" to Section II, Item 2b and complete this exhibit.

Additionally, "parties to the application" includes the following with respect to each of the listed applicant entities:

> **INDIVIDUAL APPLICANT:** The natural person seeking to hold in his or her own right the authorization specified in this application.
>
> **PARTNERSHIP APPLICANT:** Each partner, including all limited partners. However, a limited partner in a limited partnership is **not** considered a party to the application **IF** the limited partner is not materially involved, directly or indirectly, in the management

or operation of the media-related activities of the partnership and the applicant so certifies in response to Question 3(b), Section III. Sufficient insulation of a limited partner for purposes of this certification would be assured if the limited partnership arrangement:

(1) specifies that any exempt limited partner (if not a natural person, its directors, officers, partners, etc.) cannot act as an employee of the limited partnership if his or her functions, directly or indirectly, relate to the media enterprises of the company;

(2) bars any exempt limited partner from serving, in any material capacity, as an independent contractor or agent with respect to the partnership's media enterprises;

(3) restricts any exempted limited partner from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business;

(4) empowers the general partner to veto any admissions of additional general partners admitted by vote of the exempt limited partners;

(5) prohibits any exempt limited partner from voting on the removal of a general partner or limits this right to situations where the general partner is subject to bankruptcy proceedings, as described in Sections 402 (4)-(5) of the Revised Uniform Limited Partnership Act, is adjudicated incompetent by a court of competent jurisdiction, or is removed for cause, as determined by an independent party;

(6) bars any exempt limited partner from performing any services to the limited partnership materially relating to its media activities, with the exception of making loans to, or acting as a surety for, the business; and

(7) states, in express terms, that any exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership.

Notwithstanding conformance of the partnership agreement to these criteria, however, the requisite certification cannot be made if the applicant has actual knowledge of a material involvement of a limited partner in the management or operation of the media-related businesses of the partnership. In the event that the applicant cannot certify as to the noninvolvement of a limited partner, the limited partner will be considered as a party to this application.

LIMITED LIABILITY COMPANY APPLICANT: Currently, the Commission treats an LLC as a limited partnership each of whose members is considered to be a party to the

application **UNLESS** the applicant certifies in response to Question 3 (b), Section III. that the member is insulated in the manner specified above with respect to a limited partnership.

CORPORATE APPLICANT: Each officer, director and owner of stock accounting for 5% or more of the issued and outstanding voting stock of the applicant is considered a party to the applicant. Where the 5% stock owner is itself a corporation, each of its stockholders, directors and "executive" officers (president, vice-president, secretary, treasurer or their equivalents) is considered a party to this application **UNLESS** the applicant submits as an exhibit a statement establishing that an individual director or officer will not exercise authority or influence in areas that will affect the applicant or the station. In this statement, the applicant should identify the individual by name title, describe the individual's duties and responsibilities, and explain the manner in which such individual is insulated from the corporate applicant and should not be attributed an interest in the corporate applicant or considered a party to this application. In addition, a person or entity holding an ownership interest in the corporate stockholder of the applicant is considered a party to this application **ONLY IF** that interest, when multiplied by the corporate stockholder's interest in the applicant, would account for 5% or more of the issued and outstanding voting stock of the applicant. For example, where Corporation X owns stock accounting for 25% of the applicant's votes, only Corporation X shareholders holding 20 percent or more of the issued and outstanding voting stock of Corporation X have a 5% or more indirect interest in the applicant (.25 x .20 = .05) and, therefore. are considered parties to this application. In applying the multiplier, any entity holding more than 50% of its subsidiary will be considered a 100% owner. Where the 5% stock owner is a partnership, each general partner and any limited partner that is non-insulated, regardless of their partnership interest, is considered a party to the application.

Stock subject to stockholder cooperative voting agreements voting accounting for 50% or more of the votes in a corporate applicant will be treated as if held by a single entity and any stockholder holding 5% or more of the stock in that block is considered a party to this application.

An investment company, insurance company or trust department of a bank is not considered a party to this application **IF** its aggregated holding accounts for less than 10% of the outstanding votes in the applicant **AND IF** the applicant certifies in response to Section II, Item 3(b) that:

(1) such entity exercises no influence or control over the corporation, directly or indirectly; and

(2) such entity has no representatives among the officers and directors of the corporation.

ANY OTHER APPLICANT: Each executive officer, member of the governing board

and owner or holder of 5% or more of the votes in the applicant.

C. **Item 4: Multiple Ownership**. This item requires that the applicant certify compliance with the Commission's broadcast ownership rules, including restrictions on investor insulation and participation of non-party investors and creditors. In order to facilitate the evaluation of the transaction that is the subject of this FCC Form 301, applicants are directed to Worksheet #2, which is tailored to the individual inquiries in Item 4.

> **NOTE -- Radio Applicants Only:** If any party to the application proposes to hold an attributable interest in more than one AM or FM station where the principal community contours of the two same-service stations would overlap, the applicant is directed to Worksheet #2, Section A.I., Question 1. If the answer to Question 1 is "No," an applicant is required to submit with the application an explanatory exhibit which must include: (1) a map that clearly identifies, by relevant contours, the location and geographic coverage of the radio market or markets involved; (2) the number of commercial AM and FM stations counted as being in the market or markets, including a map that shows the principal community contours of the stations that define the market or markets and the principal community contours of all commercial stations intersecting with the principal community contours of these stations; and (3) the call letters and locations of all stations in the market or markets that are, or are proposed to be, commonly owned, operated, or controlled, including any AM or FM station in the market for which the applicant or nay party to the application brokers more than 15 percent of that station's broadcast time per week.

D. **Items 5 and 6: Character Issues/Adverse Findings**. Item 5 requires the applicant to certify that neither it nor any party to the application has had any interest in or connection with an application that was or is the subject of unresolved character issues. An applicant must disclose in response to Item 6 whether the applicant or any party to the application has been the subject of a final adverse finding with respect to certain relevant non-broadcast matters. The Commission's character policies and litigation reporting requirements for broadcast applicants to focus on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct. In responding to Items 5 and 6, applicants should review the Commission's character qualifications policies, which are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990) and 7 FCC Rcd 6564 (1992).

Where the response to Item 5 is "No," the applicant must submit an exhibit that includes an identification of the party having had the interest, the call letters and location of the station or file number of the application or docket, and a description of the nature of the interest or connection, including relevant dates. The applicant should also fully explain why the unresolved character issue is not an impediment to a grant of this application.

In responding to Item 6, the applicant should consider any relevant adverse finding that occurred within the past ten years. Where that adverse finding was fully disclosed to the Commission in an application filed on behalf of this station or in another broadcast station application and the

Commission, by specific ruling or by subsequent grant of the application, found the adverse finding not to be disqualifying, it need not be reported again and the assignee may respond "Yes" to this item. However, an adverse finding that has not been reported to the Commission and considered in connection with a prior application would require a "No" response.

Where the response to Item 6 is "No," the applicant must provide in an exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another pending application, or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing. The assignee should also fully explain why the adverse finding is not an impediment to a grant of this application.

E. **Item 7: Alien Ownership and Control**. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit or station license to an alien, a representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any entity of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or an entity organized under the laws of a foreign country. The Commission may also deny a construction permit or station license to a licensee directly or indirectly controlled by another entity of which more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or another entity organized under the laws of a foreign country.

Compliance with Section 310 is determined by means of a two-prong analysis, one pertaining to voting interests and the second to ownership interests. See, e.g., BBC License Subsidiary L.P., 10 FCC Rcd 10968 (1995). The voting interests held by aliens in a licensee through intervening domestically organized entities are determined in accordance with the multiplier guidelines for calculating indirect ownership interests in an applicant as set forth in the "Corporate Applicant" Instructions for Section II, Item 2. For example, if an alien held a 30-percent voting interest in Corporation A which, in turn, held a non-controlling 40-percent voting interest in Licensee Corporation B, the alien interest in Licensee Corporation B would be calculated by multiplying the alien's interest in Corporation A by that entity's voting interest in Licensee Corporation B. The resulting voting interest (30% x 40% = 12%) would not exceed the 25% statutory benchmark. However, if Corporation A held a controlling 60% voting interest in Corporation B, the multiplier would not be utilized and the full 30 percent alien voting interest in Corporation A would be treated as a 30 percent interest in Licensee Corporation B, i.e., an impermissible 30% indirect alien voting interest in the licensee. If Partnership A held a 40% voting interest in Licensee Corporation B, that voting interest would be similarly impermissible if any general partner or any non-insulated limited partner of partnership A was an alien, regardless of his or her partnership interest.

Applicants must also comply with the separate alien equity ownership benchmark restrictions of Section 310. Under the second prong of the analysis, an assignee must determine the pro rata equity holdings of any alien investor in a licensee entity or its parent. In calculating alien ownership, the same voting interest multiplier rules apply.

In order to complete this two-prong analysis, an applicant must determine the citizenship of each entity holding either a voting or equity interest or explain how it determined the relevant percentages. Corporate applicants and licensees whose stock is publicly traded have employed a variety of practices, including sample surveys using a recognized statistical methodology, a separate restrictive class of stock for alien owners, and the compiling of citizenship information on each stockholder by the corporation's stock transfer agent, to ensure the accuracy and completeness of their citizenship disclosures and their continuing compliance with Section 310.

F. **Item 8: Programming**. Applicants for broadcast construction permits need no longer file a specific program service proposal. Nevertheless, prior to making the certification called for in Item 8, the applicant should familiarize itself with its obligation to provide programming responsive to the needs and interests of the residents of its community of license. See Programming Information in Broadcast Applications, 3 FCC Rcd 5467 (1988).

G. **Item 10: Auction Authorization**. The Commission's Part 1 auction rules require all winning bidders for construction permits or licenses to include certain exhibits with their long-form applications. **If this application is being submitted to obtain a construction permit for which the applicant was a winning bidder in an auction**, then the applicant must, pursuant to 47 C.F.R. Section 73.5005(a), include an exhibit containing the information required by the following Part 1 auction rules, if applicable.

1. Section 1.2107(d) requires the applicant to provide a detailed explanation of the terms, conditions, and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement it had entered into relating to the competitive bidding process. See 47 C.F.R. Section 1.2107(d).

2. Section 1.2110(i) requires applicants claiming designated entity status to describe how they satisfy the requirements for eligibility for such status, and must list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements, and any other agreements, including oral agreements, which establish that the designated entity will have both de facto and de jure control of the entity. See 47 C.F.R. Section 1.2110(i).

3. Section 1.2112(a) requires that each long-form application fully disclose the real party or parties in interest and disclose specified ownership information, including identifying any party holding a 10 percent or greater interest in the applicant. See 47 C.F.R. Section 1.2112(a).

4. Section 1.2112(b) requires each applicant claiming status as "small business" to

disclose specified gross revenue information; to list and summarize all agreements or instruments that support the applicant's eligibility as a small business, including the establishment of de facto and de jure control; and to list and summarize any investor protection agreements. See 47 C.F.R. Section 1.2112(b).

H. **Item 11: Anti-Drug Abuse Act Certification**. This question requires the assignee to certify that neither it nor any party to the application is subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

Section 5301 of the Anti-Drug Abuse Act of 1988 provides federal and state court judges the discretion to deny federal benefits to individuals convicted of offenses consisting of the distribution or possession of controlled substances. Federal benefits within the scope of the statute include FCC authorizations. A "Yes" response to Item 11 constitutes a certification that neither the assignee nor any party to this application has been convicted of such an offense or, if it has, it is not ineligible to receive the authorization sought by this application because of Section 5301.

With respect to this question only, the term "party to the application" includes if the applicant is an individual, that individual; if the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5 percent or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; all members if a membership association; and if the applicant is a partnership, all general partners and all limited partners, including both insulated and non-insulated limited partners, holding a 5 percent or more interest in the partnership.

INSTRUCTIONS FOR SECTION III: PREPARER'S CERTIFICATION AND ENGINEERING DATA

A. **Preparer's Certification**. When someone other than the applicant has prepared the engineering section of the FCC Form 301, Section III requires that person to certify, to the best of his/her knowledge and belief, the veracity of the technical data supplied. The Section III preparer's certification on Page 4 of FCC Form 301 need not be completed if the engineering portion of the application has been prepared by the applicant. In that event, the applicant's certification on Page 3 of FCC Form 301 will encompass both the legal and engineering sections of the application.

B. **General Engineering Instructions for Sections III-A, B, C, & D**. The engineering section relevant to each service covered by this form -- AM, FM, and TV -- contains a "Tech Box" to incorporate in one central location all critical technical data required for engineering review. In the event that there are any discrepancies between data in the "Tech Box" and data submitted elsewhere in the application, the data in the "Tech Box" will be controlling. Additionally, individual "Tech Boxes" in Section III-A for Daytime, Nighttime, and Critical Hours operations have been provided to facilitate both preparation and evaluation of the application. See 47 C.F.R Sections 73.14 and 73.187.

An indication as to the specific transmitter make and model is not required by FCC Form 301. Rather, any permit authorizing construction will require installation of a type-accepted transmitter or one complying with the provisions of 47 C.F.R. Section 73.1660. Applicants for AM facilities are reminded of the maximum rated power limitations or transmitters imposed by 47 C.F.R. Section 73.1665. Similarly, we no longer require the applicant to list the specific make, manufacturer, model number and number of bays for FM directional antennae. That data will be required by any subsequently filed application for covering license.)

Applicants for AM facilities must provide a site map, which is critical for determining the exact distances and relations between towers in an AM array. Applicants for FM and TV facilities need not submit a site map.

AM directional antenna patterns submitted pursuant to 47 C.F.R. Sections 73.150 and 73.152 (standard patterns and modified standard patterns) are to be tabulated using units of millivolts per meter at one kilometer.

The latitude and longitude coordinates for all points in the United States are based upon the 1927 North American Datum (NAD 27). The National Geodetic Survey is in the process of replacing NAD 27 with the more accurate 1983 North American Datum (NAD 83) and updating current topographic maps with NAD 83 data. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data using two different sources, the Commission has announced that, until further notice, all applicants are to furnish coordinates based on NAD 27 on all submissions and the Commission will continue to specify NAD 27 coordinates in its data bases and authorizations. In addition, applicants that have already filed applications with coordinates reflecting NAD 83 must provide NAD 27 coordinates to the appropriate Commission licensing bureau. See Public Notice, "FCC Interim Procedures for the Specification of Geographic Coordinates," 3 FCC Rcd 1478 (1988). Accordingly, applicants should use NAD 27 in furnishing the information in "Tech Box" Section III-A, Items 4b, 5b, and 6b (AM applicants), Section III-B, Items 3-4 (FM applicants), and Section III-C, Item 4 (TV applicants), and Section III-D, Item 4 (DTV applicants).

C. **Environmental Protection Act: Section III-A, Item 11; Section III-B, Item 17; Section III-C, Item 18; and Section III-D, Item 14**. The National Environmental Policy Act of 1969 requires all federal agencies to ensure that the human environment is given consideration in all agency decision-making. Since January 1, 1986, applications for new broadcast stations, modifications of existing stations, and license renewals must contain either an environmental assessment that will serve as the basis for further Commission review and action, or an indication that operation of the station will not have a significant environmental impact. See Section 1.1307(b). in this regard, applicants are required to look at eight environmental factors. These factors are relatively self-explanatory, except for the evaluation of whether the station adequately protects the public and workers from potentially harmful radiofrequency (RF) electromagnetic fields. Worksheet #3 includes both a general environmental evaluation and specific sub-sections for RF exposure analysis. These pages are designed to facilitate and substantiate the certification called for in Section III-A, Item 11 (AM applicants), Section III-B, Item 17 (FM applicants),

Section III-C, Item 18 (TV applicants), and Section III-D, Item 14 (DTV applicants). Their use is voluntary, but strongly encouraged.

New RF Exposure Requirements. In 1996, the Commission adopted new guidelines and procedures for evaluating environmental effects of RF emissions. All applications subject to environmental processing filed on or after October 15, 1997 must demonstrate compliance with the new requirements. These new guideline incorporate two tiers of exposure limits:

> **General population/uncontrolled** exposure limits apply to situations in which the general public may be exposed or in which persons who are exposed as a consequence of their employment may not be made fully aware of the potential for exposure or cannot exercise control over their exposure. Members of the general public are always considered under this category when exposure is not employment-related.
>
> **Occupational/controlled** exposure limits apply to human exposure to RF fields when persons are exposed as a consequence of their employment and in which those persons who are exposed have been made fully aware of the potential for exposure and can exercise control over their exposure. These limits also apply where exposure is of a transient nature as a result of incidental passage through a location where exposure levels may be above the general populations/uncontrolled limits as long as the exposed person has been made fully aware of the potential for exposure and can exercise control over his or her exposure by leaving the area or some other appropriate means.

The new guidelines are explained in more detail in OET Bulletin 65, entitled Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields, Edition 97-01, released August, 1997, and Supplement A: Additional Information for Radio and Television Broadcast Stations (referred to here as "OET Bulletin 65" and "Supplement A," respectively). Both OET Bulletin 65 and Supplement A can be viewed and/or downloaded from the FCC Internet site at http://www/fcc.gov/oet/rfsafety. Copies can also be purchased from the Commission's duplicating/research contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (telephone: (202) 857-3800; fax: (202) 857-3805. Additional information may be obtained from the RF Safety Group at rfsafety@fcc.gov or (202) 418-2464 or from the FCC Call Center at 1-888-CALL FCC (225-5322).
November 24, 1998.

The RF worksheets and tables appended to Worksheet 3 below will enable certain categories of stations to determine whether or the proposed facility will have a significant environmental impact as defined by Section 1.1307. All applicants can use the General environmental Worksheet. Some, but not all, stations will be able to use the RF worksheets. Generally, the RF worksheets can only be used in the following situations: (1) single use tower; (2) single tower with several FM/FM translators; or (3) a multiple tower AM array with no other user co-located within the array. Additionally, in order to be eligible to use the RF worksheets, access to AM stations must be restricted by a fence or other barrier that will preclude casual or inadvertent access to the site and warning signs must be posted at appropriate intervals describing the

potential for RF exposure. *See* "RF Exposure Compliance Worksheet Instructions" for more detail on eligibility.

If after using the worksheets the applicant finds that levels will exceed the RF guidelines, levels may still be acceptable based on a more detailed evaluation of a number of variables (*e.g.*, antenna radiation patterns or measurement data). In that case, the applicant must submit an exhibit to the application that explains why the proposed facility does not exceed the RF radiation exposure guidelines at locations where humans are likely to be present, or describing measures or circumstances which will prevent or discourage humans from entering those areas where the RF exposure exceeds the guidelines (*e.g.*, fencing or remote location). The guidelines are explained in more detail in OET Bulletin 65.

If the applicant is not eligible to use the worksheets, it is not an indication that the proposed facility will cause excessive exposure. Generally, applicants that are not able to use the worksheets will need to utilize more complex calculations or measurements to demonstrate compliance. For this reason, applicants who are not eligible to use the worksheets should consider seeking the assistance of a qualified consulting engineer in determining whether the proposed facility will meet the RF exposure guidelines.

Should the applicant be unable to conclude that its proposal will have no significant impact on the quality of the human environment, it must submit an Environmental Assessment containing the following information:

1. A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high-intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.

2. A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) by zoning, planning, environmental and other local, state, or federal authorities on matters relating to environmental effects.

3. A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.

4. A discussion of environmental and other considerations that led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects; and any alternative sites or facilities that have been or reasonably might be considered.

5. If relevant, a statement why the site cannot meet the FCC guidelines for RF exposure with respect to the public and workers.

NOTE: Even if the applicant concludes from the use of the attached worksheets that human RF

electromagnetic exposure is consistent with the Commission's guidelines, each site user must also meet requirements with respect to "on-tower" or other exposure by workers at the site (including RF exposure on one tower caused by sources on another tower or towers). These requirements include, but are not limited to, the reduction or cessation of transmitter power when persons have access to the site, tower, or antenna. Such procedures must be coordinated among all tower users. See OET Bulletin 65 for details.

D. All applicants must comply with the requirements of Section 73.1030. Specifically, applicants must notify United States Government radio astronomy installations, radio receiving installations, and FCC monitoring stations of the proposed facility and its possible impact on their operations. The Commission need not be informed of the date of such notification.

E. **Section III-A (AM Engineering)**

1. **Tech Box.** The applicant must ensure that the facility specifications listed in items 1-6 of the Tech Box are accurate. Conflicting data found elsewhere in the application will be disregarded. All items must be completed. The response "on file" is not acceptable. The response "not applicable" is not acceptable unless otherwise noted below.

Item 1: Frequency. The proposed frequency must be between 535 to 1705 kHz.

Item 2: Class. See Section 73.21.

Item 3: Hours of operation. No **new** daytime-only, share time, or specified hours stations are allowed.

Items 4 - 6: See Sections 73.150 and 73.160.

Power - The nominal power must be rounded as follows:

Nominal Power (kW)	Rounded to nearest figures (kW)
0.001 to 0.249	0.001
0.25 to 0.99	0.01
1.0 to 9.9	0.1
10.0 to 50.0	1.0

Antenna Location - If a directional array is proposed, list the coordinates of the center of the array.

Antenna Parameters - The proposed antenna parameters must be submitted according to these specifications:

RMS Values	4 significant digits.
Azimuth of augmentation and Span	nearest 0.1 degree.

Augmented radiation	4 significant digits.

Array Parameters - The proposed array parameters must be submitted according to these specifications:

Tower height	nearest 0.1 degree.
Field ratio	3 significant digits.
Phase	nearest 0.1 degree.
Spacing	nearest 0.1 degree.
Orientation	nearest 0.1 degree.

Tower reference switch - The tower reference switch is set as follows:

Blank or 0	with respect to origin.
1	with respect to immediately preceding tower.

Top-loaded/Sectionalized (A, B, C, D)

Blank or 0	normal tower.
1	top-loaded tower.
2 and up	sectionalized tower.

Proposed toploading tower: Applicants must provide electrical heights in A and B, where A is the physical height of the tower, in electrical degrees, and B is the difference, in electrical degrees, between the apparent electrical height (based on current distribution) of the tower and the physical height of the tower.

Proposed Sectionalized tower: Applicants must provide electrical heights in A, B, C, and D, where A is the physical height of the lower section of the tower, in electrical degrees, B is the difference, in electrical degrees, between the apparent electrical height (based on current distribution) of the lower section of the tower and the physical height of the lower section of the tower, C is the physical height of the entire tower, in electrical degrees, and D is the difference between the apparent electrical height of the tower (based on current distribution of the upper section) and the physical height of the entire tower. D will be zero if the sectionalized tower is not top-loaded.

2. **Certifications.** Items 7-11 set forth a series of certifications concerning the Commission's technical allotment standards and operational requirements for AM stations.

Item 7: Broadcast Facility. The applicant must certify that it complies with the Commission's engineering standards and assignment requirements for AM stations. Applicants must submit and provide, as applicable, the following information:

Top loaded or sectionalized antenna -

Antenna must be fully described. Apparent electrical height values must be included. See Sections 73.150 and 73.160.

Non-directional Antenna-
The theoretical efficiency based on Figure 8 of Section 73.190 and adjusted for ground losses must be submitted.

Directional Antenna Specifications -
Engineering data specified in Sections 73.150 or 73.152 must be submitted for each proposed directional antenna.

Antenna Site Plat -
Antenna Site Plat must clearly show the following items:

-Boundary lines, roads, railroads, other obstructions, and the ground system or counterpoise.
-Number and dimensions of ground radials or height and dimensions of counterpoise.
-Spacing and orientation of each element in the array with respect to true north.
-A scale in meters.

Antenna Site Map -
A 7.5 minute U.S. Geological Survey topographic quadrangle map, if available, must be submitted that clearly shows the proposed antenna site accurately plotted, latitude and longitude lines clearly marked and a scale in kilometers.

Aerial Photographs -
A sufficient number of aerial photographs taken in clear weather at appropriate altitudes and angles to permit identification of all structures in the vicinity. The photographs must be marked so as to show compass directions, exact boundary lines of the proposed site, and a map showing the proposed 1000 mV/m contour for both the day and night operation. Photographs taken in eight different directions from an elevated position on the ground will be acceptable in lieu of the aerial photographs if the data referred to above can be clearly shown.

Contour Maps -
For daytime operation, applicants must submit a map or maps having appropriate scales, showing the 1000, 5, 2, and 0.5 (0.1 if Class A) mV/m daytime contours for both existing and proposed facilities. The map showing the 5 mV/m contour must clearly show the legal boundaries of the principal community to be served.

For critical hours operation, applicants must submit a map or maps having appropriate scales, showing the 1000, 5, and 0.5 mV/m critical hours contours for both existing and proposed facilities. The map showing the 5 mV/m contour must clearly show the legal boundaries of the principal community to be served.

For nighttime operation, applicants must submit a map or maps having appropriate scales, showing the 1000 mV/m and coverage contours (the proposed 5 mV/m nighttime groundwave contour, or the nighttime interference-free contour, whichever is the greater value) for both existing and proposed facilities. The map showing the nighttime coverage contour must clearly show the legal boundaries of the principal community to be served.

See Sections 73.24(e), 73.33, 73.37, 73.45, 73.150, 73.152, and 73.182(a)-(i).

Item 8: Community Coverage. The applicant must certify that the proposed facility complies with the Commission's AM community coverage requirements. See Section 73.24(i). For all AM stations, the daytime 5 mV/m contour must cover the entire principal community to be served. Additionally, however:

(1) **For stations in the 535-1605 kHz band**, 80% of the principal community must be encompassed by the nighttime 5 mV/m contour or the nighttime interference-free, contour, whichever value is higher, see Section 73.182(k); and

(2) **For stations in the 1605-1705 kHz band**, 50% of the principal community is encompassed by the nighttime 5 mV/m contour or the nighttime interference-free contour, whichever value is higher, see Section 73.182(k).

Class D stations holding nighttime authorizations do not need to demonstrate nighttime principal community coverage.

Item 9: Main Studio Location. The applicant must certify that its proposed main studio location comply with the requirements of Section 73.1125. In order to answer "Yes" to this question, the applicant's proposed main studio must be **either** (1) within the principal community contour of any station licensed to that community; **or** (2) within 25 miles from the reference coordinates of the center of its community of license.

A community's reference coordinates are generally the coordinates listed in the United States Department of the Interior publication entitled Index to the National Atlas of the United States. An alternative reference point, if none is listed in the Atlas, is the coordinates of the community's main Post Office.

In order to qualify as a "main studio," the proposed location must be equipped with type-accepted equipment and capable of originating programming at any time. Additionally, the studio must be staffed by **at least** one management-level employee **and** one staff-level employee at all times during regular business hours. See Jones, Eastern of the Outer Banks, Inc., 6 FCC Rcd 3615 (1991), clarified, 7 FCC Rcd 6800 (1992), aff'd 10 FCC Rcd 3759 (1995). Additionally, each AM. FM, and TV broadcast station must at all times maintain a toll-free telephone line from its community of license to its main studio, wherever located.

Item 10: Interference. An applicant for a station on a frequency between 535 kHz and 1605

kHz must certify that it complies with the Commission's AM interference standards. In order to be approved, the applicant must meet all pertinent interference analyses: groundwave, skywave, and critical hours. While not every AM proposal will need to be analyzed under each mode of interference -- a proposal for or to modify daytime operation only will not need a nighttime skywave study -- the applicant must submit an Exhibit providing specific technical data with respect to each applicable section.

Section 73.37 bars the acceptance of an application for AM facilities if the proposed operation would create overlap of certain specified signal-strength groundwave contours; the signal strengths vary with the frequency separation of the station(s) involved. The technical exhibit for this item must contain an allocation study that includes the following information:

(1) Protected and interfering contours for the proposed facility.

(2) Protected and interfering contours of all relevant existing stations and proposed facilities to demonstrate that there is no prohibited contour overlap caused or received by the proposed facility. If prohibited overlap is predicted to occur, the applicant must submit appropriate justification for waiver of Section 73.37.

(3) Transmitter locations, call signs, and file numbers of each existing station and proposed facility included in the above-specified contour overlap analysis.

(4) Properly labelled longitude and latitude markings and a distance scale.

Item 10 also requires that any applicant on a frequency between 1605 KHz and 1705 KHz certify that it complies with the Commission's AM interference standards specified in Section 73.37(f) and the Report and Order in MM Docket No. 87-267, 6 FCC Rcd 6273 (1991).

Section 73.182 contains general allotment standards, including specified signal strength contours which are to be protected from objectionable nighttime skywave signal interference. If a proposal involves nighttime operation, the applicant must submit a technical Exhibit containing an allocation study that includes the following information:

(1) *Nighttime Channel Study*: (a) the relevant existing and proposed nighttime limitations which contribute to the 50% "root sum square" ("RSS") of the proposed facility, (b) the existing and proposed nighttime limitations which enter into the 25% and 50% RSS nighttime limitation of each existing station and proposed facility. If interference is predicted to occur, the applicant must submit appropriate justification for waiver of Section 73.182.

(2) *Skywave Study*: The protected groundwave, skywave, and interfering contours

of all relevant existing co- and first-adjacent-channel Class A stations and proposed facilities, to demonstrate that there is no prohibited contour overlap caused or received by the proposed facility. If prohibited overlap is predicted to occur, the applicant must submit appropriate justification for waiver of Section 73.182.

(3) *Nighttime Groundwave Study*: The protected and interfering groundwave contours of all relevant existing second- and third-adjacent channel stations and proposed facilities, to demonstrate that there is no prohibited contour overlap caused or received by the proposed facility. If prohibited overlap is predicted to occur, the applicant must submit appropriate justification for waiver of Section 73.37.

Section 73.187 specifies limitations on critical-hour daytime radiation. "Critical Hours" are the two hours after local sunrise and the two hours before local sunset. Applicants that propose critical-hour operation must submit an Exhibit containing an allocation study that includes the following information:

The 0.1 mV/m groundwave contour in pertinent arcs in the direction of protected co-channel Class A station and appropriate studies to establish compliance with Section 73.187.

F. **Section III-B (FM Engineering)**

1. **Tech Box:** The applicant must accurately specify the requested facilities in Items 1 through 12 of the Tech Box. Conflicting data found elsewhere in the application will be disregarded. All items must be completed. The response "on file" is not acceptable. The response "not applicable" is not acceptable unless otherwise noted below.

Item 1: Channel. The proposed channel must be between 200 and 300. See Section 73.201.

Item 2: Class. The proposed class must meet the requirements in Sections 73.210 and 73.211.

Item 3: Antenna Location Coordinates. The proposed antenna site must be specified using North American Datum 27 (NAD 27) coordinates. Please indicate North or South Latitude, and East or West Longitude.

Item 4: One-Step Proposal Allotment Coordinates. If proposing a one-step facility modification, the proposed allotment site must be specified using NAD27 coordinates. One-step allotment sites must comply with the requirements in Section 73.203(b) (allotment site must be fully spaced under Section 73.207, and allotment must provide 70 dBu coverage to 100% of the community of license pursuant to Section 73.315). If the application is not for a one-step facility modification, the applicant should check "Not Applicable."

Item 5: Antenna Structure Registration Number. The Antenna Structure Registration number should be entered here. Most towers greater than 61 meters (200 feet) in height, or those located near airports require antenna registration numbers. See Section 17.4. If the tower does not require registration, please indicate that registration is Not Applicable, or if the FAA has not yet ruled on a proposed structure, please indicate whether the FAA Notification has been filed with the FAA.

Items 6-9: Elevation and Heights. All heights must be in meters, rounded to the nearest whole number.

Items 10-11: Effective Radiated Power. The effective radiated power must be entered in kilowatts, and rounded pursuant to Section 73.212. Applicants proposing a beam-tilt antenna must complete Item 11.

Item 12: Directional Antenna. If a directional antenna is proposed, the directional antenna must comply with Section 73.316. Applicants need not submit the exact antenna manufacturer, make, model, and size along with FCC Form 301. Applicants proposing a directional antenna must complete the table in Item 12. Relative field values (0.001-1.000) must be entered for every 10 degrees on the unit circle. Up to five azimuths may be added at the bottom of the table for additional accuracy. If the "No Rotation" box is checked, the antenna pattern will be entered with 0 Degrees oriented towards True North in the Commission's database. However, if the "Rotation" question is completed the antenna pattern will be rotated clockwise by the number of whole degrees indicated in the "Rotation" box. For example, if the maximum relative field value from the table is 0 Degrees, and the Rotation is 135 Degrees, the maximum lobe of the antenna will be oriented at 135 Degrees in the Commission's database.

2. **Certifications.** Items 13-17 set forth a series of certifications concerning the Commission's technical allotment standards and operational requirements for FM stations.

Item 13: Allotment. The applicant must certify that it complies with the Commission's allotment requirements for FM stations, Section 73.203. In order to answer "Yes" to this question, the applicant must propose an allotment listed in the FM Table of Allotments. See Section 73.202. If the allotment is not listed in the Table, the applicant certifies that the proposed facility complies with the "one-step" allotment requirements set forth in Section 73.203(b). See Report and Order in MM Docket No. 92-159, 8 FCC Rcd 4735 (1993). Applicants proposing a co-channel downgrade, pursuant to MM Docket 88-118, are not required to specify a fully-spaced allotment site.

Item 14: Community Coverage. The applicant must certify that the proposed facility complies with the Commission's community coverage requirements. See Section 73.315. In order to answer "Yes" to this question, the proposed 3.16 mV/m contour must cover the entire principal community to be served, using the standard prediction method from Section 73.313. If compliance with Section 73.315 is based an alternative prediction methods, exhibits must be submitted demonstrating compliance with all appropriate rule sections.

Item 15: Main Studio Location. The applicant must certify that its proposed main studio location complies with the requirements of Section 73.1125. In order to answer "Yes" to this question, the applicant's proposed main studio must be **either** (1) within the principal community contour of any station licensed to that community; **or** (2) less than 25 miles from the reference coordinates of the center of its community of license. A community's reference coordinates are generally the coordinates listed in the United States Department of the Interior publication entitled Index to the National Atlas of the United States. An alternative reference point, if none is listed in the Atlas, is the coordinates of the community's main Post Office.

In order to qualify as a "main studio," the proposed location must be equipped with type-accepted equipment and capable of originating programming at any time. Additionally, the studio must be staffed by **at least** one management-level employee **and** one staff-level employee at all times during regular business hours. See Jones, Eastern of the Outer Banks, Inc., 6 FCC Rcd 3615 (1991), clarified, 7 FCC Rcd 6800 (1992), aff'd 10 FCC Rcd 3759 (1995). Additionally, each AM, FM, and TV broadcast station must at all times maintain a toll-free telephone line from its community of license to its main studio, wherever located.

Item 16: Interference. The applicant must certify that the proposal complies with the Commission's spacing, contour overlap, and interference protection provisions. In order to answer "Yes" to this question, the applicant must submit exhibits as noted. All exhibits must contain sufficient information to demonstrate that the proposed facility complies with the applicable rule sections.

If the proposed facility will be fully-spaced under Section 73.207, the applicant need mark only the box in item 16a.

If the subject application proposes to modify a licensed station that is currently short-spaced, the applicant must mark the applicable boxes 16b.-16d. and submit appropriate exhibits.

If the station is "grandfathered" due to its authorization prior to the adoption of the FM Table of Allotments in 1964, the applicant should (1) mark box 16b., (2) list the stations to which its licensed facility is currently short-spaced, and (3) supply an exhibit demonstrating that the proposal complies with Section 73.213(a)

If the station is short-spaced by virtue of a spacing-waiver grant or a rule change after 1964, the applicant should (1) mark box 16c. or 16d. as appropriate, (2) list all stations to which the licensed facility is short-spaced under these rules, and (3) supply the exhibit(s) demonstrating that the proposal complies with Section 73.213(b) and/or (c).

If the applicant is proposing a spacing less than that specified in Section 73.207 but wishes to be processed under the contour protection standards of Section

73.215, the applicant should (1) mark box 16e., (2) list all stations for which it proposes to employ contour protection, and (3) supply the exhibit(s) demonstrating that the proposal complies with Section 73.215.

G. **SECTION III-C (TV Engineering)**

1. **Tech Box**. The applicant must ensure that the facility specifications listed in items 1-11 of the Tech Box are accurate. Conflicting data found elsewhere in the application will be disregarded. All items must be competed. The response "on file" is not acceptable. The response "not applicable" is not acceptable unless otherwise noted.

Item 11e.: Directional Antenna. If a directional antenna is proposed, the directional antenna must comply with 47 C.F.R. Sections 73.682(a)(14) and 73.685, and the applicant must submit an exhibit demonstrating such compliance. See Section 73.685.

2. **Certifications**. Items 12-18 set forth a series of certifications concerning the Commission's technical allotment standards and operational requirements for TV stations. The applicant must certify that the proposed facility complies with the Commission's allotment requirements for TV stations, Section 73.607.

Item 12: Allotment. The applicant must certify with the allotment requirements contained in 47 C.F.R. Section 73.607, i.e., that the application specify a channel and community in accordance with the Commission's Table of Television Allotments, 47 C.F.R. Section 73.606.

Item 13: Power and Antenna Height. The applicant must certify that it complies with the maximum and minimum power and antenna height requirements specified in 47 C.F.R. Section 73.614.

Item 14: Community Coverage. The applicant must certify that the proposed facility complies with the Commission's community coverage requirements. The principal community contour is as follows for television stations:

Channels 2-6	Channels 7-13	Channels 14-69
74 dBμ	77 dBμ	80 dBμ

To determine if the proposed facility complies with the requirements of Section 73.685(a) and (b), the predicted distance to the pertinent signal-strength contour must be calculated using the standard methodology in 47 C.F.R. Section 73.684.

Item 15: Main Studio Location. The applicant must certify that its proposed main studio location comply with the requirements of 47 C.F.R. Section 73.1125. In order to answer "Yes" to this question, the applicant's proposed main studio must be **either** (1) within the principal

community contour of any station licensed to that community; **or** (2) within 25 miles from the reference coordinates of the center of its community of license. A community's reference coordinates are generally the coordinates listed in the United States Department of the Interior publication entitled Index to the National Atlas of the United States. An alternative reference point, if none is listed in the Atlas, is the coordinates of the community's main Post Office.

In order to qualify as a "main studio," the proposed location must be equipped with type-accepted equipment and capable of originating programming at any time. Additionally, the studio must be staffed by **at least** one management-level employee **and** one staff-level employee at all times during regular business hours. See Jones, Eastern of the Outer Banks, Inc., 6 FCC Rcd 3615 (1991), clarified, 7 FCC Rcd 6800 (1992), aff'd 10 FCC Rcd 3759 (1995). Additionally, each AM. FM, and TV broadcast station must at all times maintain a toll-free telephone line from its community of license to its main studio, wherever located.

Item 16: Separation Requirements: The applicant must certify that the proposed facility complies with the minimum distance separation between television stations set forth in 47 C.F.R. Section 73.610.

H. **SECTION III-D (DTV Engineering)**

1. **Certifications Checklist**. Items 1-5 set forth a series of certifications concerning the Commission's technical allotment standards and operational requirements for DTV stations.

Item 1. The applicant must certify compliance with the digital television channel allotment and operational requirements contained in 47 C.F.R. Section 73.622. Specifically, this question requires that the applicant certify that (a) the application specifies a channel and community in accordance with the Commission's Table of Television Allotments, 47 C.F.R. Section 73.622(a), (b) it will operate with a transmitting antenna located within 5 kilometers of the DTV reference coordinates for the station, as referenced in Section 73.622(d) and set forth in the Sixth Report and Order in MM Docket No. 87-268, Fcc 97-115, 62 Fed. Reg. 26,684 (May 14, 1997), (c) it will operate with facilities that do not exceed the power and antenna height maxima specified in Section 73.622(f).

If any of items 1(a)-1(c) are answered "No," the applicant must demonstrate in response to Section III-D, Item 12 that the proposal will not cause or increase interference to any other DTV broadcast station, DTV allotment, or analog TV broadcast station. Interference is to be predicted in accordance with the procedure set forth in Appendix B of the Sixth Report and Order in M Docket No. 87-268. See 47 C.F.R. Section 73.623.

Item 3: Community Coverage. The applicant must certify that the proposed facility complies with the Commission's community coverage requirements. The principal community contour is as follows for digital television stations:

Channels 2-6	Channels 7-13	Channels 14-69
28 dBμ	36 dBμ	41 dBμ

To determine if the proposed facility complies with the requirements of Section 73.625(a) and (b), the predicted distance to the pertinent signal-strength contour must be calculated using the standard methodology in 47 C.F.R. Section 73.625(b).

2. **Tech Box**. The applicant must ensure that the facility specifications listed in items 1-11 of the Tech Box are accurate. Conflicting data found elsewhere in the application will be disregarded. All items must be competed. The response "on file" is not acceptable. The response "not applicable" is not acceptable unless otherwise noted.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the

personal information we request in this form. We will use the information provided in the application to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection.

If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this form, 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. Your response is required to obtain the requested authorization.

We have estimated that each response to this collection of information will take 50 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0837), Washington, DC 20554. We will also accept your comments via the Internet if your send them to jboley@fcc.gov. Please DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number of if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0837.

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), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.