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

In the Matter of	)	
	)	
1998 Biennial Regulatory Review –	)	MM Docket No. 98-43
Streamlining of Mass Media Applications,	)	
Rules, and Processes	)	

NOTICE OF PROPOSED RULE MAKING

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Comment Date: [60 days from date of publication in the Federal Register]
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By the Commission (Commissioner Furchtgott-Roth issuing a separate statement):

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I. Introduction

1. With this *Notice*, we commence a proceeding to consider fundamental changes in our broadcast application and licensing procedures. Our goals are to reduce applicant and licensee burdens, realize fully the benefits of the Mass Media Bureau's current electronic filing initiative, and preserve the public's ability to participate fully in our broadcast licensing processes. This proceeding is premised on our belief that we can prudently increase our reliance on applicant certifications rather than more detailed applicant informational disclosures. These proposals are designed to reduce filing burdens and increase the efficiency of application processing. We recognize that this approach is feasible only if the Commission retains the capacity to verify compliance with our rules and the accuracy of application information through audits and inquiries. Thus, we emphasize that this streamlining initiative is accompanied by our commitment to sanction severely those applicants that fall short of discharging their obligations of full disclosure and complete candor, buttressed by our proposal to establish a formal system of random audits.

2. This *Notice* is part of a broad-based streamlining initiative to overhaul Mass Media Bureau policies and licensing procedures. At this time, our streamlining efforts include two additional proceedings that are pending or will soon be initiated. The Commission currently has outstanding a *Notice of Proposed Rulemaking* regarding ways to reduce undue equal employment opportunity ("EEO") program compliance burdens for broadcasters while still maintaining an effective EEO program.[1] Moreover, the Commission will shortly initiate a separate rule making to consider technical changes. That proceeding will attempt to identify ways to speed the introduction of new and improved broadcast services, provide greater flexibility to broadcasters to improve existing services, and facilitate compliance with core technical requirements.

3. The instant rulemaking is premised, for the most part, on the Commission's current regulatory framework, *i.e.*, it assumes no fundamental changes in our rules and policies relating to multiple ownership, attribution, investor insulation, control, etc.[2] Within that framework, the proposals made in this *Notice* represent a significant step forward. Specifically, we invite comment as to whether electronic filing should be mandatory for 16 key Mass Media Bureau broadcast application and reporting forms. In connection with this transition, we propose to revise substantially these forms to facilitate electronic application processing by replacing narrative exhibits with "yes/no" questions and certifications.[3] We also believe, independent of electronic filing considerations, that expanded application instructions, new worksheets and revised forms will prove less burdensome to applicants while promoting compliance with our rules. We are confident that implementation of these proposed changes will create a better regulatory environment for both the public and the broadcast industry.

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[1] *Order and Notice of Proposed Rule Making* in MM Docket No. 96-16, 11 FCC Rcd 5154 (1996).

[2] Some of these rules are being reviewed in other contexts, such as our attribution and ownership proceedings. *See, e.g., Notice of Proposed Rule Making* in MM Docket Nos. 94-150 *et al.*, 10 FCC Rcd 3606, 3614 (1995); *Further Notice of Proposed Rule Making* in MM Docket Nos. 94-150 *et al.*, 11 FCC Rcd 19895 (1996) (attribution rules); *Second Further Notice of Proposed Rule Making* in MM Docket Nos. 91-221 & 87-8, 11 FCC Rcd 21655 (1996) (TV local ownership rules); *Notice of Proposed Rule Making* in MM Docket Nos. 96-222, 91-221, & 87-8, 11 FCC Rcd 19949 (1996) (TV national ownership rules).

[3] For example, an FM licensee is currently required to file up to fourteen exhibits as part of its technical showing in FCC Form 301. As proposed, only two or three exhibits typically would be required with the revised form.

4. We emphasize, however, that the scope of this proceeding is significantly broader than electronic filing and that we seek generally to overhaul and streamline broadcast licensing processes. Although not required by statute, this initiative is undertaken in conjunction with our 1998 biennial regulatory review. In this regard, we have tentatively identified certain policies that either consume significant staff resources or create burdens that may no longer be warranted. Accordingly, we propose to eliminate: payment restrictions on the sale of unbuilt stations, the requirement to submit contracts with assignment and transfer applications, and several rules that add unwarranted filing burdens on commercial new station and facility change applicants. We consider relaxing ownership report filing requirements for commercial and noncommercial stations. This proceeding also proposes fundamental changes in our construction permit extension procedures. We believe these changes will reduce the need for repetitive extension filings. We seek comments on procedures we can adopt, consistent with statutory restrictions, to expedite the processing of *pro forma* assignment and transfer applications. Finally, we invite comment on other measures which may advance our streamlining goals.

II. Issue Analysis

A. Electronic Filing of Applications

1. *Electronic Filing Proposal*

5. *Background.* The Commission is committed to using information technology to better serve members of the public and the parties that we regulate.[4] Accordingly, the Mass Media Bureau is currently working on facilitating electronic filing for 15 key broadcasting application and reporting forms.[5] This project is one phase of a multi-phased effort to computerize and streamline the Mass Media Bureau's processes. In this Notice, we invite comment on whether we should make electronic filing of these applications mandatory or permissive, and, if mandatory, whether we should phase in such requirements.[6]

6. *Discussion.* We believe that widespread use of electronic filing and related processing systems will permit meaningful efficiencies in dealing with applicants, licensees, and the general public. Our goal is to create a customer-friendly environment that uses the most current filing and processing technologies.

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[4] Our web site, http://www.fcc.gov, has become a useful resource for the public to learn about the agency and its actions, as well as to communicate their views to the Commission. In addition, all of the agency's Bureaus have their own web pages, and our electronic mailbox allows the public to express opinions and ask questions about a variety of subjects. The Commission may be reached at fccinfo@fcc.gov.

[5] The Mass Media Bureau is developing electronic versions of the following 15 forms: FCC Forms 301, 302-AM, 302-FM, 302-TV, 307, 314, 315, 316, 340, 345, 346, 347, 349, 350, and 5072. As noted in paragraph 8, *infra*, we also propose to require the electronic filing of Form 398, which already is available in electronic form.

[6] In our pending proceeding on the electronic filing of rule making comments, we address implementation questions, such as how to confirm receipt by the Commission and how to address the service of copies to all relevant parties. *See Notice of Proposed Rule Making* in GC Docket No. 97-113, 12 FCC Rcd 5150, 5153-57 (1997) (*Electronic Filing in Rule Making Proceedings Notice*). Therefore, these questions will not be the subject of the instant proceeding. In the *Electronic Filing in Rule Making Proceedings Notice*, we propose to allow parties to file comments electronically in all notice and comment rule making proceedings conducted under section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, (with the exception of broadcast allotment proceedings) and to give such comments the same treatment and consideration as paper filings.

7. Electronic filing could, among other things, speed the processing of applications, save Commission resources, and make filing easier for regulatees by automatically notifying them of any critical errors or omissions in their applications even before any staff review occurs, through a series of edit checks and business validations.[7] Such efficiencies could allow broadcasters to inaugurate or improve service to the public more quickly. In addition, because of the unique public service obligations of broadcasters, it is critical that our processes remain open to participation by broadcasters, broadcast applicants, and members of the public. We believe that electronic filing could facilitate such openness. If electronically filed applications are made available on the Internet, interested parties could examine them at home, at the office, or perhaps at the public library.[8] We invite comment on these tentative views.

8. We invite comment as to whether electronic filing of some or all of the 15 forms listed in note 5, *supra* should be mandatory or whether electronic filing should be permissive. Making it mandatory would allow us to maximize the resource savings, cost savings, and efficiencies achievable through electronic filing.[9] It may also permit an increase in the accuracy of the Commission's data bases, which would more accurately reflect the data filed in applications. Therefore, we seek comment on whether we should require mandatory electronic filing of all of these applications.[10] Additionally, we seek comment on whether we should require that FCC Form 398, the Children's Programming Report, which can currently be filed either electronically or by paper, be filed electronically.[11] We seek comment on these proposals, as well as on any legal, technical, or other issues raised by mandatory electronic filing.[12]

9. While we recognize the substantial benefits of mandatory electronic filing, we also seek to avoid

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[7] For example, if a party fails to check the box certifying its compliance with the statutory alien ownership requirements, 47 U.S.C. § 310(b), then the application would not be fileable.

[8] The public would continue to be able to review and obtain copies of electronically filed applications through the Commission's public reference room and where applicable, in the station's public file.

[9] If electronic filing is permissive, some paper filings would have to be scanned into the Commission's system. Dealing with fewer paper filings would reduce the Commission's administrative burdens. Further, a dual filing system (paper and electronic) would reduce predictability with respect to staffing requirements in several areas, including data entry and applications processing.

[10] We do not anticipate requiring that petitions to deny, informal objections, and other related documents be submitted electronically.

[11] The Children's Programming Report fully sets forth the informational and educational programming broadcast by commercial television broadcasters. The Report must be filed annually, although quarterly filings with the Commission are encouraged.

[12] We note that we have adopted mandatory electronic filing systems in other regulatory areas. For example, with respect to common carriers, we recently announced that we would soon require incumbent local exchange carriers ("ILECs") to file their federal tariffs and associated documents electronically pursuant to the Commission's Electronic Tariff Filing System ("ETFS"). *See Report and Order* in CC Docket No. 96-187, 12 FCC Rcd 2170, 2195 (1997); *Public Notice*, DA 97-2491 (November 25, 1997) ("*ETFS Public Notice*"). In addition, the Wireless Telecommunications Bureau is implementing a consolidated license processing system, Universal Licensing System, for the services under its jurisdiction. *Notice of Proposed Rule Making* in WT Docket No. 98-20, FCC 98-23 (released March 18, 1998) ("*ULS Notice*"). We have proposed that all applications and notifications submitted to the Wireless Telecommunications Bureau in all of the wireless radio services be filed electronically, starting in 1999.

any disruption to or harmful impact on any small businesses that may not have access to computer or Internet services. Since computer technology and Internet accessibility have become widespread, is lack of access to computer services that would permit electronic filing a significant problem? For broadcasters that lack the necessary computer and communications technology, are vendors available to assist in the preparation and electronic filing of applications? Would the cost of such services be unreasonably burdensome to those broadcasters that do not have other electronic filing options? If the lack of access to or the cost of computer services is a problem, should we create exemptions to mandatory electronic filing for small businesses or other qualifying entities? How should we define the qualifying criteria for any such exemption? Would the waiver standards or small business definitions applied by other federal agencies be useful in this regard?[13]

10. Alternatively, would any disruptive impact of a mandatory electronic filing requirement be minimized or eliminated by phasing in such requirements, *i.e.*, affording a transition period during which electronic filing would be permissive?[14] Such a transition period might allow applicants and members of the public a period of time to become accustomed to the new system and to gain access to computer services if they do not already have them, and it might provide the Commission with an opportunity to address any unforeseen problems with the system.[15] During such a transition period, we anticipate that businesses could arise to offer electronic filing services to those persons or entities that do not own computers or otherwise have access to the Internet.

11. If we adopt a transition period, should it be based, at least in part, on whether the filer is a small entity? Should the phase-in be done on a form-by-form basis? What phase-in dates should we use? Are there ways that we could or should encourage voluntary electronic filing during such a transition period? What incentives could we apply to do so? We note that its inherent advantages may likely be the most significant

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[13] The Commodity Futures Trading Commission ("CFTC"), For example, generally requires the electronic filing of certain daily reports by futures commission merchants. 17 C.F.R. § 17.00(a). Exemptions from the CFTC's electronic filing requirements were once liberally granted because of the relatively high cost of compliance. However, noting that lower prices have made personal computers commonplace for business applications, the CFTC recently announced that it would now examine each exemption request on a case-by-case basis. 62 Fed. Reg. 24026, 24028 (May 2, 1997). In addition, the Securities and Exchange Commission ("SEC") has established a "hardship exemption" to its mandatory electronic filing rules. Specifically, a filer may claim or request a hardship exemption based on several factors, including technical difficulties in filing and undue burden and expense of conversion to an electronic format. 17 C.F.R. §§ 232.201 and 232.202. The Small Business Administration ("SBA") has adopted small business size standards for broadcast radio and television stations in 13 C.F.R § 121.201. According to the SBA's regulations, entities engaged in television broadcasting (Standard Industrial Classification ("SIC") Code 4833) with no more than $10.5 million in annual receipts qualify as small business concerns. Entities engaged in radio broadcasting (SIC Code 4832) with no more than $5 million in annual receipts also qualify as small business concerns.

[14] We note that we have phased in the electronic filing requirement, or have proposed to do so, in various nonbroadcast contexts where the Commission has instituted or has proposed to institute mandatory electronic filing. For example, when we inaugurated the Electronic Tariff Filing System for local exchange carriers ("LEC"), we stated that its use would initially be permissive, but that it would soon become mandatory. We also stated that LECs would still be required to file tariffs and associated documents on paper until the end of the transition period, and that paper filing would thereafter be prohibited. *ETFS Public Notice*. Mandatory electronic filing has not yet commenced.

[15] We note that phase-in procedures have been used elsewhere to benefit small businesses. For example, the SEC incorporated its mandatory filing rules in stages, phasing in most companies in 1993. *See* 58 Fed Reg 14628 (March 18, 1993); 58 Fed. Reg. 14848 (March 18, 1993); 58 Fed. Reg. 14999 (March 18, 1993). However, small businesses were not completely phased in until May 1996. 61 Fed. Reg. 13544 (March 27, 1996).

incentive. However, we request comment on other possible measures to spur electronic filing, such as higher filing fees for paper filers. We could adopt such measures during a transition phase to assure the highest possible level of electronic filing. We note, however, our tentative view that we lack statutory authority to structure filing fees based on whether the filing is paper or electronic. If we phase in mass media electronic filing, should we require parties also to submit traditional paper copies of any electronic filings during the transition? Would any such requirement be consistent with the Paperwork Reduction Act of 1995? Would such a requirement increase administrative burden, delay processing, or discourage electronic filing?

2. *Applicant Identification Issues*

12. *Background.* TINs are 9-digit identifiers required of all individuals and employers to identify their tax accounts. Pursuant to the Debt Collection Improvement Act ("DCIA"); Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. Law No. 104-34, Chapter 10, 110 Stat 1321, 1321-1358 (1996), he 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 Taxpayer Identifying Numbers (TIN), also referred to as "Taxpayer Identification Numbers," and share them with the U.S. Treasury to ensure that the Commission does not refund monies to entities that have an outstanding debt with the federal government. Individuals use their Social Security Number as their TIN.[16] Employers use their Employer Identification Number ("EIN") as their TIN.[17] The Financial Management Service of the U.S. Treasury has recommended that agencies obtain the TIN when an agency first has direct contact with a person.[18]

13. *Discussion.* We invite comment on using TINs in a manner analogous to their proposed use in the Wireless Bureau's Universal Licensing System.[19] Under our proposal, all parties that submit broadcast applications electronically would be required to submit a TIN as a prerequisite for using the system, and the Mass Media Bureau would use TINs as the unique identifier for such parties. Parties submitting applications manually would also be required to supply their TIN on their application form, because all such applications will be scanned into the electronic filing system, and a TIN is necessary to track these applications for DCIA purposes. Parties seeking to file a pleading electronically would not be required to submit a TIN, but they would be permitted to register using a unique identifier and password of their choosing.[20] Members of the public would not be required to register simply to view applications.

14. We seek comment on whether requiring the use of TINs would satisfy the requirements of the DCIA, and whether it would provide a unique identifier for parties filing broadcast applications that would

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[16] Therefore, for the purposes of this *NPRM*, the term "Taxpayer Identification Number" shall mean "Social Security Number" for individuals.

[17] Such numbers are sometimes referred to as Federal Identification Numbers ("FIN"). EINs are issued by the IRS to all employers whether or not they pay taxes. These employers include corporations, sole proprietors, partnerships, state and local governments, limited liability companies, non-profit organizations, and federal government/military agencies.

[18] The authority to collect TINs is found in 31 U.S.C. § 7701(c)(1).

[19] *ULS Notice* ¶¶ 71-75.

[20] Registering an identifier and password would be optional. These identifiers would be used solely to identify the entity making the filing so that once the relevant administrative information is in our database it can be prefiled on the pleadings form when the same entity makes subsequent filings.

ensure that the system functions properly. We would take steps to prevent misuse of TINs. For example, the electronic filing system would be designed so that TINs would not be available to the public. In addition, we could limit the number of Commission employees who would have access to TIN information in conjunction with their work.

15. As an alternative, we seek comment on using unique system-generated identifiers. These identifiers would be generated by the Bureau's database and would be assigned to filers in the following manner: The first four digits would represent the year, followed by the month and the day. For example, 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." The identifier would also represent the application's file number.[21]

16. Finally, a Privacy Act submission would be published in the *Federal Register* to obtain the requisite public and congressional comment and Office of Management and Budget ("OMB") approval prior to implementation of the electronic filing system. We seek comment on these proposals.

B. Streamlining Application Processing

17. As noted, the transition from paper to electronic filing creates significant opportunities to streamline and improve the way in which applications are processed. Moreover, the elimination of manual data entry would result in the Commission's databases more accurately reflecting the data filed in applications. Electronic filing could speed application processing and enhance public access to application information. It would also permit for the first time the electronic processing of many portions of broadcast applications. However, the current versions of most Mass Media Bureau forms rely to a significant extent on open-ended narrative exhibits and document submissions. 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. Accordingly, we believe that it is necessary to undertake a thorough review of our broadcast forms and to reconsider both the information that is collected and the form in which it is submitted.

18. We purposely choose to concentrate first on those application forms that constitute the bulk of filings made by full service radio and television broadcasters and to which the Mass Media Bureau currently allocates a significant portion of its processing resources. Thus, we consider changes to the license and permit assignment and transfer forms -- Forms 314, 315 and 316; the new commercial station/technical modification form -- Form 301; the construction permit extension form -- Form 307; and the annual ownership report for commercial stations -- Form 323.[22] For Forms 314, 315, 316, and 301, we have attempted to recast as many questions as possible into an electronic "filing friendly" format, replacing required exhibits with certifications and "yes/no" questions. We tentatively conclude that the broadcast application forms should restrict, to the maximum extent possible, the use of exhibits to waiver requests or where additional information is necessary to support application elements potentially inconsistent with precedent or processing standards. At the same time we have taken a fresh look at the information which we currently require, and propose to reduce

[21] The system would rely upon TINs or unique identifiers to restrict access and ensure security. Similarly, applicants and licensees will use these numbers to identify themselves to the system.

[22] Other forms listed in note 5, *supra,* also will be changed to permit electronic filing. We have attempted to use identical questions, where possible, across the universe of forms included in the conversion process. Thus, changes made to these other application forms will track to a significant extent changes made to the forms discussed more fully below. However, revisions to these other forms are not premised on rule changes, and therefore, are not discussed further in this *Notice*.

substantially the amount of information that applicants are now required to file. For Forms 307 and 323, we propose to restructure filing requirements altogether.

19. We believe these proposed changes would benefit broadcasters, the public and the Commission. As part of this process we are making significant revisions to the instructions to the Mass Media Bureau application forms and adding worksheets, where applicable, to help clarify Commission processing standards and rule interpretations. We anticipate that these changes would increase the percentage of applications that are complete and "acceptable" at the time of filing. By specifically enumerating in instruction materials the key factual predicates underlying certain certifications, we also believe that we would enhance the reliability of the information provided by applicants. Our fundamental goal is to provide applicants with sufficient guidance to intelligently certify compliance with our rules and policies. We view the expanded application form instructions as crucial to this process and therefore, propose to require each applicant to certify that it has read the instructions and disclosed fully in exhibits all matters about which there is any question regarding full compliance with the standards and criteria set forth in the instructions. We invite comment on this proposal. We seek comment on whether we should require licensees to retain worksheets for use in response to Commission audits or other Commission inquiries, or alternatively whether licensees should be required to place worksheets in their public inspection files. Moreover, we anticipate that staff would no longer need to meticulously review those applications in which an applicant's responses establish full compliance with our rules. We also propose to narrow or eliminate application questions of marginal importance and believe that these changes will not undermine the Commission's ability to make informed public interest determinations.

20. As part of this broad review of our processing practices, we also have scrutinized our substantive rules which significantly impact on our ability to efficiently process the applications which are under consideration in this proceeding. We tentatively conclude that some may no longer serve the public interest, as discussed below. Accordingly, we propose to eliminate or relax a number of technical and non-technical rules and filing requirements. If adopted, these changes would both reduce applicant filing burdens and streamline our processing of sales, new station, and facility modification applications. Attached as Appendix B are illustrative copies of several forms that incorporate the changes proposed herein. Attached as Appendix C are several draft worksheets which are designed to aid applicants in making informed application certifications. We emphasize that based on our experience with these fundamental changes in our application procedures, we may consider additional modifications to the forms, related software programs, and electronic filing procedures to simplify electronic filing for broadcasters and enhance Commission processing efficiencies.

1. *Assignment and Transfer Applications: Forms 314 and 315*[23]

21. The Mass Media Bureau devotes considerable staff resources to processing the several thousand assignment and transfer applications it receives each year.[24] We believe that substantial benefits could be gained in this area from the implementation of electronic filing and processing. We have reviewed and propose substantial revisions to the sales application forms (FCC Forms 314 and 315). A number of proposed application form changes follow from our review of our assignment and transfer rules and the information currently collected as part of the sales application process. We propose to eliminate the rule restricting payments upon assignment or transfer of unbuilt stations. Further, we propose to eliminate the requirement

[23] The proposed changes in the processing of short form applications are discussed *infra* at paragraphs 69-81.

[24] In fiscal year 1997 alone, the Audio and Video Services Divisions combined received over 4600 assignment and transfer applications.

that applicants file sales agreements as part of the assignment or transfer application. In addition, we propose other changes that are not subject to the rulemaking requirements of the Administrative Procedure Act[25] and therefore may be implemented without notice and comment. Nonetheless, we believe the changes are substantial enough to warrant discussion here.

a. *Rule Changes*

(i) *Payment Restrictions on the Sale of Unbuilt Stations*

22. *Background.* Section 73.3597(c) of the Commission's rules restricts payments upon assignment or transfer of an unbuilt station to reimbursement of a seller's expenses ("no profit" rule).[26] 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.[27] In addition, Section 73.3597(d) provides that where the seller retains an 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.[28] In such cases, our rules provide that the assignment or transfer application must be designated for hearing unless the transferor or assignor has obligated itself to provide the station with a capital contribution proportionate to the transferor's or assignor's equity share in the station for the one-year period commencing with program

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[25] *See* 5 U.S.C.A. § 553(b)(3)(A).

[26] 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.
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> 47 C.F.R. § 73.3597(c)(1)(i) and (2).

[27] 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 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. . . .
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> (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.
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> 47 C.F.R. § 73.3597(c)(3)(i) and (ii).

[28] 47 C.F.R. § 73.3597(d)(1).

tests.[29]

23. The Commission adopted the current "no profit" rule as a mechanism to ensure that an applicant held the requisite intent to place a proposed station on the air and initiate service. The 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."[30] The Commission's adoption of the "no profit" limitation supplemented the adoption seven years earlier of the "three year rule," which provided that permittees seeking to assign or transfer a station held for less than three years would be required to make a compelling affirmative showing of unforeseen circumstances or hardship.[31]

24. When the Commission eliminated the "three year rule" in 1982, we announced that the Commission would "limit . . . action in this area to enforcing Sections 301 and 304 of the Communications Act,"[32] which traditionally have been interpreted to provide, *inter alia*, that licenses issued by the Commission convey no property interest.[33] At that time, the Commission reasoned that the for-profit assignment or transfer of a construction permit prior to commencement of program tests violates the letter and spirit of these statutory provisions.[34] In addition, as a policy matter, the Commission stated that implicit in the filing of a construction permit application is an applicant's representation of intent to construct and promptly initiate service.[35] As a result, the Commission concluded that retention of the "no profit" limitation was necessary to maintain the integrity of the Commission's processes and to further the public interest objective of expeditious introduction of new service.[36] We also concluded that once a permittee commences operations, it has fulfilled its service commitment and therefore, the "no profit" limitation should no longer apply.[37]

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[29] 47 C.F.R. § 73.3597(d)(2).

[30] *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. *See 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, 689 (1962).

[31] *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).

[32] *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, 1088 (1982) ("*Trafficking Report and Order*")(subsequent history omitted).

[33] *Trafficking Report and Order*, 52 RR 2d at 1089; *see also Applications for Voluntary Assignments or Transfers of Control, Notice of Proposed Rulemaking*, 47 Fed. Reg. 985, 987 (1982) ("*Trafficking NPRM*").

[34] *Trafficking Report and Order*, 52 RR 2d at 1089.

[35] *Id.* at 1083.

[36] *Id.* at 1089.

[37] *Id.* The Commission found, however, that in light of our concerns about the integrity of Commission processes, a one-year holding period should be imposed on those who obtain a permit through a comparative hearing. *Id.* This one-year holding period subsequently was imposed on permittees who obtained their permits through the Minority Ownership Policy. *See Amendment of Section 73.3597 of the Commission's Rules (Applications for Voluntary*

25. *Discussion.* We now propose to eliminate the "no profit" rule.[38] Although the Commission previously concluded that the "no-profit" rule was mandated by statute when we eliminated the "three year rule," we subsequently held in *Bill Welch* that there is no *per se* statutory proscription against for-profit sales of unbuilt stations.[39] Rather, the Commission reasoned that Sections 301 and 304 of the Act "address congressional concerns that the Federal Government retain ultimate control over radio frequencies, as against any rights, especially property rights, that might be asserted by licensees who are permitted to use the frequencies."[40] The Commission concluded that the language of Sections 301 and 304 does not specifically prohibit sales of unbuilt construction permits and such sales are not inconsistent with the government's ultimate control over those licenses.[41] Furthermore, the Commission found that the for-profit sale of the cellular authorizations obtained through a lottery was consistent with the public interest.[42] While the Commission recognized that the for-profit sale of unbuilt cellular facilities may increase the risk of speculation, it found that the best approach to discourage speculation would be to review all assignment and transfer applications pursuant to the cellular service's "anti-trafficking" provision.[43]

26. We believe that the statutory analysis set forth in *Bill Welch* remains correct, and therefore, that there is no statutory proscription against the for-profit sale of construction permits for unbuilt broadcast stations. Moreover, we no longer believe that retention of the rule is necessary to facilitate the introduction of new broadcast services or to maintain the integrity of our licensing process. With the initiation of competitive bidding for broadcast spectrum in situations where mutually exclusive applications are filed, we believe that the winning bidder's payment of fair market value for a construction permit combined with a restricted construction permit extension policy proposed *infra* will promote the prompt construction of broadcast facilities.[44] Moreover, our concern about spectrum speculation in an auction environment, where the winning

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Assignments or Transfers of Control), Memorandum Opinion and Order, 99 FCC 2d 971 (1985).

[38] We note that our proposed modifications to our construction permit extension procedures would impact on the assignment and transfer of unbuilt stations. *See infra* ¶ 66.

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

[40] *Id.* at 6503.

[41] *Id.*

[42] *Id.* at 6504. While the Commission concluded in *Bill Welch* that the for-profit sale of unbuilt cellular authorizations was not prohibited by statute and in the public interest, the Commission specifically stated that its decision on statutory grounds would not affect the prohibition of such for-profit sales in the broadcast service. *Id* at 6505 n.26.

[43] *Id.* Section 22.139 of the Commission's rules provides, *inter alia*, that "[c]arriers must not obtain or attempt to obtain an authorization in the Public Mobile services for the principal purpose of speculation or profitable resale of the authorization, but rather for the provision of common carrier telecommunication services to the public." 47 C.F.R. § 22.139.

[44] *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Notice of Proposed Rulemaking*, MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, FCC 97-397 (rel. November 26, 1997) ("*Auction NPRM*"); *see also Notice infra* ¶ 59. In the *Auction NPRM*, we tentatively concluded that competitive bidding is statutorily mandated for mutually exclusive applications for secondary services, whether such applications were filed before or

bidder has paid, axiomatically, fair market value for an authorization, is significantly less than in *Bill Welch*, in which a cellular authorization was obtained in a lottery. Thus, we tentatively conclude that we should follow the same construction permit sale policy which is followed in other services subject to auction procedures.[45]

27. We recognize that the Commission will not be conducting auctions to assign construction permits in every context. For example, we may decide not to use auction procedures for noncommercial station licenses.[46] Also, we may receive applications that attract no competing applications ("singletons") and thus would not be auctionable. We seek comment on whether the fact that a construction permit may not be issued through auction should cause us to retain the "no profit" rule in such situations. We specifically invite commenters to discuss the pros and cons of applying the "no profit" rule in cases where no auction takes place.[47]

28. We tentatively conclude that reimbursement restrictions should also be eliminated for outstanding construction permits. Existing permittees acquired their authorizations under the current limitations, without any reasonable expectation that there would be an opportunity to sell at a profit prior to the initiation of service. It also appears that a number of commercial station construction permits will be issued prior to the implementation of competitive bidding, primarily as a result of settlement agreements facilitated by Section 309(l)(3) of the Balanced Budget Act of 1997.[48] Section 309(l)(3) requires the Commission to waive, *inter alia*, the "no profit" rule with regard to settlements among certain applicants entered into by February 1, 1998.[49] We tentatively conclude that we also should permit the for-profit sale of these construction permits, which to a certain extent have already been subject to private competitive forces. More generally, we believe that sales to serious buyers willing to acquire construction permits at fair market value and under strict construction requirements will help ensure the prompt initiation of new service. Moreover, this reasoning appears to apply equally to both outstanding construction permits and those that will be issued before the implementation of competitive bidding procedures. We seek comment on these tentative conclusions.

29. If we retain the current "no profit" rule, we propose to allow permittees to certify compliance with the rule by answering a series of "yes/no" questions. For example, a permittee would be required to certify that it has not included any expenses for services rendered by any of its principals and that there are no consulting or future employment agreements between the permittee and the assignee that are part of the consideration for assignment of the permit to the proposed assignee. The Commission would continue to have the authority to

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after July 1, 1997. *See Auction NPRM* ¶¶ 39-41. Were the Commission to subsequently reach a different conclusion, we would need to reevaluate whether the "no profit" rule should continue to apply to the assignment and transfer of low power TV and TV translator stations.

[45] *See e.g.* 47 C.F.R. § 24.839.

[46] *See* Section 3002(a)(1)(A)(2)(C), Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251.

[47] We note that a proceeding is pending to develop comparative criteria to select among mutually exclusive noncommercial station applicants. *See Reexamination of the Comparative Standards for New Noncommercial Educational Applicants, Notice of Proposed Rule Making,* 10 FCC Rcd 2877 (1995). Such applicants are now subject to a processing freeze. *Id.*

[48] Pub. L. No. 105-33, 111 Stat. 251 (1997).

[49] *See Gonzales Broadcasting, Inc.*, 12 FCC Rcd 1253, 1255-56 (1997).

request an itemized accounting of expenses on a case-by-case basis where disclosures in an application raise issues or concerns.[50] We seek comment on the appropriateness of allowing permittees to certify compliance, and particularly on our proposal to allow a seller to certify that it will not be reimbursed for more than its out-of-pocket expenses. We also request comment on whether it would be sufficient to require sellers to place copies of all expense documentation in a station's public file if the no-profit rule is retained.

(ii) *Requirement to Submit Contracts with Assignment and Transfer Applications*

30. *Background.* In connection with our broad review of the Mass Media Bureau's processing practices, we have reviewed the information that currently is collected as part of the application process. The current sales forms, FCC Forms 314, 315 and 316, require that the seller submit a copy of the contract and/or agreement for the assignment or transfer of the station, or if the agreement has not been reduced to writing, a written description of the complete oral agreement. In addition, Section 73.3613(b) of the Commission's rules requires that licensees and permittees file with the Commission any documents relating to the present or future ownership or control of the licensee or permittee within thirty days of execution.[51] The Commission has used the sales agreement, together with the application, to understand the overall structure of each transaction involving the assignment or transfer of a broadcast authorization. These documents also have enabled the Commission to independently verify compliance with various rules, including the Commission's prohibition against reversionary interests, and to ensure that a non-party cannot exercise undue influence over an assignee or transferee.

31. *Discussion.* We propose to eliminate the requirement that such contracts and/or agreements be filed as part of assignment or transfer applications as well as the portion of Section 73.3613(b) that requires that such agreements be filed with the Commission within thirty days of execution.[52] To the extent that we can rely on applicants' certifications regarding the contents of sales agreements rather than on a direct review of the relevant documents, the Commission could achieve significant resource savings. However, we also recognize that any processing changes must not impede our ability to discharge our obligation under Section 310(d) of the Act to grant only those applications that serve the public interest, convenience and necessity and must preserve the public's ability to monitor and participate in the consideration of sales applications.

32. In lieu of the requirement that applicants file the agreements and/or contracts with the application,

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[50] *See* 47 C.F.R. § 1.17 ("The Commission or its representatives may, in writing, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination of whether a license should be revoked, or to some other matter within the jurisdiction of the Commission.").

[51] 47 C.F.R. § 73.3613(b).

[52] We note that in the *Auction NPRM*, we proposed to conduct broadcast spectrum auctions in conformity with the general competitive bidding rules set forth in Part I, Subpart Q of the Commission's rules. *See Auction NPRM* ¶ 51. Section 1.2111 of the Commission's rules provides that where a license has been obtained through a competitive bidding procedure, an applicant seeking approval to assign or transfer control of such license within the first three years of obtaining the license must file with the Commission the relevant assignment or transfer agreements or contracts. We recognize that Section 1.2111 is inconsistent with our proposal here to eliminate the requirement that applicants file assignment and transfer agreements with the application. In the *Auction NPRM*, we have sought comment on whether there are any general competitive bidding rules that are inappropriate in the context of broadcast auctions. *Id.* We intend to ensure that the rules adopted in this proceeding are consistent with the rules adopted in the pending broadcast auction proceeding.

we propose to require applicants to carefully and thoroughly review their sales and organizational documents against the detailed standards set forth in the instructions to Forms 314 and 315.[53] These standards have been designed to identify the core issues that the Commission passes on now when it reviews the actual agreements and/or contracts. We propose to expand application instructions to cover both the sales and loan agreements and also issues relating to non-party investor influence over the assignee or transferee. We also believe that a checklist of criteria regarding investor insulation would clarify the limited scope of insulated investor involvement in a licensee entity. Applicants would be required to disclose fully any sales, financing or investor information where the transaction or the assignee entity does not conform fully to the standards set forth in the instructions. However, we may request copies of agreements on a case-by-case basis where disclosures made in an application raise issues or concerns.[54] We seek comment on whether the proposed application procedures and certifications would suffice instead of the requirement that applicants file the sales agreements with their applications. In particular, we seek comment on whether the proposed instruction materials and related certifications would suffice instead of individualized review of agreements and contracts where complex transactions are involved. Finally, we seek comment on whether these procedures are sufficient to discharge our obligation under Section 310(d) of the Act to grant only those applications that serve the public interest, convenience and necessity.

33. If the Commission eliminates the requirement that applicants file sales agreements with their applications and the rule requiring that such agreements be filed with the Commission within thirty days of execution, we propose to require that applicants place all such agreements in the station's public inspection file and to modify our public inspection file rule accordingly. The revised assignment and transfer forms would require the current permittee or licensee to certify that this has been done. However, we are concerned about preserving meaningful public participation under Section 309(d) of the Act and minimizing applicant filing burdens.[55] Are the proposed procedures sufficient to permit the public to monitor station transactions? Does Section 309(d) of the Act effectively mandate that we require applicants to place copies of sales agreements in their public inspection files or some other place? We also seek comment on the impact of ending the practice of having sales agreements available for inspection in the Commission's Washington, D.C. public reference room.

(iii) *Requirement to Submit Contour Overlap Maps*

34. With regard to radio applicants, we propose to reduce administrative burdens on broadcasters and at the same time streamline the staff review process by eliminating the requirement that applicants submit contour overlap maps to demonstrate compliance with our local radio ownership rules. We propose to rely on applicant certifications in place of contour maps. An applicant would be in a position to make this local radio ownership certification only after completing a worksheet.[56] To the extent a proposed transaction would involve more than one "market," as that term is defined in Section 73.3555(a)(4)(ii), we would require the applicant to complete the worksheet with regard to each such market. We seek comment on this proposal. In particular, we seek comment on whether our elimination of the requirement that applicants submit contour

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[53] *See* Appendix C, FCC Form 314 Worksheets

[54] *See supra* n. 50.

[55] *See* 47 U.S.C. § 309(d).

[56] *See* Appendix C, Worksheet # 1.

overlap maps will detrimentally affect the public's ability to access the information necessary to monitor station sales and thereby undermine the opportunity for meaningful public participation under Section 309(d) of the Act.[57] In connection with these changes, we also seek comment on whether we should require an applicant to place a copy of the contour overlap map in the station's public inspection file. It is our belief that most applicants that propose to hold multiple radio interests in a single area would need to prepare contour overlap maps to meaningfully and accurately complete the worksheet and answer the related application certification question, regardless of whether there is a Commission filing requirement. We also seek comment on whether applicants should be exempt from the public file requirement in those situations in which compliance is obvious, *e.g.*, where a certification is premised on the fact there are forty-five or more stations in a major market. We seek comment of whether we should require an applicant to prepare a map solely for placement in the station's public inspection file in such circumstances.

b. *Other Revisions*

35. As noted above, we also propose revisions to the sales forms (FCC Forms 314 and 315) that do not require changes in our rules. These changes are intended to maximize the advantages of electronic filing and processing and eliminate burdensome disclosure requirements. As noted above, these proposed form changes are not subject to the Administrative Procedure Act's notice and comment rulemaking requirements.[58] Nevertheless, we believe that comment on the proposed revisions is warranted. We urge interested parties to review the draft forms carefully so that meaningful comments may be submitted regarding the proposed revisions in the forms.

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

a. *Rule Revisions*

36. 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 order to more fully realize our goals of simplifying the preparation of the technical portion of Form 301 and reducing paperwork for broadcast applicants, we propose to 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).

(i) *Section 73.316(c)*

37. We propose to modify Section 73.316(c) to shift the filing requirements now codified in subsections (1)-(2) and (4)-(7) from the construction permit phase to the license phase of the FM authorization process.[59] Subsections (1) and (4) of 47 C.F.R. § 73.316(c) require the submission as part of Form 301 of information regarding directional antenna manufacturer and type, and a vertical plane pattern plot. In practice, however, we have not needed such information until the license stage of the authorization process.[60] With

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[57] *See* 47 U.S.C. § 309(d).

[58] *See* 5 U.S.C.A. § 553(b)(3)(A).

[59] *See* 47 C.F.R. § 73.316(c).

[60] *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*

regard to subsection (c)(1), the Commission recognized in the *One Step Licensing Report and Order* that in many cases the construction permit applicant has not selected an antenna manufacturer or model type.[61] As to the vertical plane pattern plot required by (c)(4), the primary purpose of this information is to demonstrate that a directional antenna's actual performance comports with the Commission's technical standards. Thus, we recognized in the *One Step Licensing Report and Order* that vertical plane pattern plots "should be supplied with the licens[e] application."[62] We now propose to change the rule to require the information set forth in these subsections only at the license application stage of the FM authorization process.

38. Section 73.316(c)(2) requires that FM applicants submit as part of Form 301 a composite pattern plot for proposed directional antennas. A composite pattern tabulation, however, is sufficient for processing such applications. In practice, the staff also has required submission of such a plot (based on the antenna's actual, rather than its theoretical, composite pattern) with the FM license application, as part of a directional antenna's proof of performance. We now propose to modify Section 73.316(c)(2) to require the submission of a measured composite pattern plot with only the license application and to permit FM applicants to file tabulated composite pattern data with Form 301. This proposed modification would reduce paperwork for FM applicants, who in practice now are required to submit such plots twice during the authorization process. It also would codify the processing requirement that plots be submitted at the license stage. In order to conform the rule to the new and revised Section 73.310(a) (composite antenna pattern),[63] we also propose to substitute the term "composite antenna pattern" for the following language in the present Section 73.316(c)(2): "relative field horizontal plane pattern" with "[a] single pattern encompassing both the horizontal and vertical polarization . . ., rather than separate patterns for horizontal and vertical polarization."

39. Subsections (5) through (7) of the present Section 73.316(c) require the submission with the FM construction permit application of directional antenna mounting data. We propose to modify these subsections to limit this disclosure requirement to license applications and to conform subsections (5) through (7) with subsection (8) of Section 73.316(c), which currently requires that applicants establish rule compliance at the license application stage. We anticipate that these changes to Section 73.316(c) would simplify the overall authorization process for FM applicants proposing the use of directional antennas.

(ii) *Section 73.1030(a)*

40. Section 73.1030(a) protects radio astronomy and radio research installations in West Virginia and Puerto Rico from interference by proposed new or modified broadcast facilities. The rule requires applicants in specified areas to notify the observatories of their proposals prior to or simultaneously with the filing of their applications with the Commission and we propose no change in this procedure.[64] The Commission then allows the observatories a 20-day comment period. The present rule specifies that applicants must disclose the date of notification to the observatory. We believe that this disclosure requirement is superfluous because Section

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Licensing Report and Order").

[61] *Id.*

[62] *Id.* at 12405.

[63] *See One Step Licensing Report and Order*, 12 FCC Rcd at 12386 and 12431.

[64] 47 C.F.R. § 1030(a); *see Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico, Report and Order* in ET Docket No. 96-2, 12 FCC Rcd 16522 (1997) ("*Puerto Rico Report and Order*").

73.1030(a) requires applicants to provide the required notice no later than the filing date of the application. The 20-day period for comment or objection necessarily commences on the filing date.[65] Accordingly, we propose to modify Section 73.1030(a) by eliminating the requirement that applicants indicate in their applications the date of observatory notification. The staff could determine automatically based upon a proposed facility's coordinates whether Section 73.1030(a) is applicable, and where the rule applies, automatically provide the observatory in question the requisite 20-day comment period, commencing on the filing date of the application.[66]

(iii) *Section 73.1675(a)*

41. Section 73.1675(a) provides that the service contour of a proposed broadcast auxiliary operation must not exceed the specified corresponding contour for the licensed main station operation. The rule requires broadcast applicants to submit maps demonstrating compliance with this provision in support of their construction permit applications. Staff rarely relies on these maps because the Commission now has the tools to automatically verify compliance with Section 73.1675(a) based upon technical facility data required by Form 301. Accordingly, we propose to modify the rule to eliminate the map requirement for auxiliary facilities for the FM and TV broadcast services. Although we believe that the rationale for eliminating the Section 73.1675(a) map requirement is equally applicable to the FM and TV broadcast services, we propose to retain the map requirement for AM auxiliary facility permit applications. Determining service contours for AM facilities requires conductivity measurement data which our databases do not contain at this time. Therefore, verification of compliance with Section 73.1675(a) for AM auxiliary facilities still requires manual processing.

42. In sum, we believe that these proposed rule modifications would simplify and make less burdensome the Form 301 application process. Moreover, we believe that adoption of these changes would not jeopardize the technical integrity of the broadcast services or the consistent enforcement of our core rules and policies. We also believe that these proposals would not diminish the public's ability to monitor or comment on these facility applications. We seek comments on these modifications, and request additional suggestions to eliminate or streamline reporting and filing requirements which relate to Form 301 filings.

b. *Form Revisions*

43. We also propose to reorganize and streamline FCC Form 301. The proposed revisions are intended to reduce applicant filing burdens and increase application processing efficiencies. First, we propose to conform Forms 301, 314 and 315 non-technical questions where regulatory concerns are identical. Thus, the non-technical portions of Form 301 would substantially duplicate the proposed new assignment and transfer forms. In addition, we propose to reorganize the FM technical data section of the application, Section V-B. Section V-B presently requires FM broadcast applicants to demonstrate compliance with our technical rules through submission of complex and detailed technical exhibits. These technical exhibits are not submitted in a form or manner amenable to computer data entry or analysis and, therefore, require manual processing by

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[65] See *Puerto Rico Report and Order*, 12 FCC Rcd at 16531 (rejecting proposal that applicants be allowed to trigger commencement of the 20-day period prior to filing their applications).

[66] In addition to eliminating the Section 73.1030(a) reporting requirement, we propose to make the internal organization of the rule more consistent by designating the present subsection (a) as subsection (a)(1). *See Puerto Rico Report and Order*, 12 FCC Rcd at 16546 (creating new subsection (a)(2)). We also propose 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. *See* 47 C.F.R. § 73.1030(a) and (a)(2)(ii); *Puerto Rico Report and Order* 12 FCC Rcd at 16531.

the engineering staff. The revised Section V-B would require applicants to certify compliance with our technical rules for routine and non-waiver issues. The technical data required for engineering review would be organized in such a manner as to facilitate electronic entry of the data and, in some instances, allow our computer engineering programs to verify compliance with our technical rules. Consistent with our overall streamlining goals, we also propose to eliminate certain burdensome, duplicative or marginally relevant questions.[67]

44. The revised Section V-B would consist of a certification section and a discrete technical section or "Tech Box." The certification section would consist of a number of "yes/no" questions regarding compliance with the Commission's technical rules. While Section V-B currently requires as many as 14 exhibits, the revised version normally would require no more than one or two exhibits. Exhibits would 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. Applications with verified "yes" answers to all certification questions and with all necessary exhibits attached would be processed on an expedited basis. All other applications would be handled on a case-by-case basis. The revised Form 301 would also include detailed instructions to assist applicants in preparing the technical portion of the form.

45. The "Tech Box" would cover all critical technical data required for engineering review. Presently, questions and filing requirements pertaining to technical data are interspersed throughout Section V-B. We have found that this organization results in minor errors and application discrepancies, necessitating repeated staff requests for explanations and amendments. Such requests delay processing and tax the Commission's limited resources. We anticipate that the "Tech Box" would help eliminate this problem. 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" would be controlling. Use of the "Tech Box" also would facilitate electronic data entry and allow the Commission's computer engineering programs to perform automatically certain review functions now performed by the staff.

46. We believe that the revised Form 301, together with the proposed modifications to our codified filing requirements discussed above, would 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 of broadcast services, enforce our core rules and policies and permit members of the public to monitor applications.[68]

C. Enforcement

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[67] For example, we propose to eliminate Questions 7(a)(3) and 7(b)(2) of the current Section V-B relating to site elevation and height of radiation center above mean sea level, the answers to which questions may be derived easily from other data required by the technical portion of the form. Similarly, applicants would no longer submit Federal Aviation Administration ("FAA") information, including copies of FAA determinations because this information can be accessed through the FCC antenna structure registration number included in the application. We also propose to eliminate the sketch of the supporting antenna structure required by Question 8 of the current Section V-B.

[68] In order to facilitate the auction process, the Commission proposed to eliminate tenderability and two-tiered minimum filing requirements for new and major change FM applications in the *Auction NPRM*. *See Auction NPRM* ¶ 78. We believe the rationale underlying this auction-related processing proposal applies only to new and major change applications. *See id.* In light of the revisions we are proposing herein to our application forms and processing procedures, however, we invite comment on whether we also should modify the tenderability and two-tier processing standards for minor change FM applications. 47 C.F.R. § 73.3564.

47. We have proposed substantial revisions to our applications forms and processing procedures. These would significantly streamline the amount of information that applicants must furnish to the Commission. We would rely more heavily on certifications by applicants that they comply with the applicable rules. By so doing, we do not intend at all to lower our expectation that licensees conduct themselves as public trustees. Under the Communications Act we retain the obligation to ensure that licensees continue to serve the public interest and comply with the Commission's rules.

48. Similarly, our proposals to relax or eliminate some of our rules and policies should not be taken to mean that we will not take seriously the rules and policies that remain. In fact, in a deregulatory setting, where regulatory burdens are decreased, a permittee's or licensee's unwillingness or inability to comply with the remaining rules has even greater significance. Accordingly, we seek to ensure that our enforcement policies remain adequate in light of our streamlining efforts. Current enforcement measures applied by the Commission range from admonitions to forfeitures to conducting hearings to determine whether to revoke or deny renewal of a broadcaster's license. We invite comment as to whether our existing enforcement measures and policies remain sufficient.

49. We note that if the proposed revisions to our application forms and processing procedures are adopted, we intend to have a formal program of random audits to ensure that licensees continue to comply with our rules and we intend to rely heavily on such audits. We invite comments as to how we should implement such audits and whether such audits are sufficient means of ensuring continued licensee compliance with our rules and policies. If not, we invite comment as to what additional measures, if any, we should adopt.

50. We reiterate that we take seriously permittees' and licensees' representations to the Commission. We will not hesitate to impose strong sanctions in the event that we find that misrepresentation has occurred with respect to any such permittee or licensee certifications in whatever streamlined applications we adopt. Candor is one of the highest obligations of a licensee or permittee, as we rely to a great extent on representations made in applications and other filings with the Commission.[69]

D. Modifying Construction Permit Extension Procedures

51. *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.[70] Whether for a new facility or for a modification of a licensed station, the Commission issues a construction permit for either 24 months (for full power TV) or 18 months (for AM, FM, International Broadcast, low power TV, TV translator, TV booster, FM translator, FM booster, broadcast auxiliary, or Instructional TV Fixed station

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[69] *E.g., Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217 (D.C. Cir. 1994) (applicant disqualified in comparative broadcast proceeding for lack of candor); *RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982) (license renewal denied based on lack of candor).

[70] 47 U.S.C. §§ 318, 319(a)-(b). Section 319(d) of the Telecommunications Act of 1996, however, allows the Commission to implement regulations regarding minor changes to licensed facilities whereby a modified license may be issued without prior issuance of a construction permit. The Commission has recently implemented "one-step" licensing procedures that can be used in specified circumstances. *See Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, 12 FCC Rcd 12371 (1997); 47 C.F.R. § 73.1690.

("ITFS")).[71] Within the specified time frame, a permittee must complete construction and file an application for a license to cover.

52. If a permittee fails to complete construction within the time period specified in its construction permit, the Act provides that the construction permit will be automatically forfeited unless the delay was caused by circumstances that were not within the permittee's control or the Commission, in its discretion, authorizes additional time.[72] Under our rules, we use identical criteria to determine whether authorization of additional time is in the public interest, regardless of whether the construction permit is for a new station or a proposed modification of a licensed station.[73] 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 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.[74] 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. 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.[75]

53. Our rules also allow a permittee to file an application to modify a construction permit or to file an application either to assign or transfer control of a construction permit. If an application to modify a construction permit, or an application to assign or transfer control of a construction permit, is filed outside the first half of the construction permit's initially authorized period (*i.e.*, after the first 12 of the initial 24 months of a full power TV construction permit or after the first nine of the initial 18 months of a construction permit

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[71] 47 C.F.R. § 73.3598(a)-(b). Although the construction period for ITFS is set forth in Section 73.3598, ITFS is a point-to-point microwave (non-broadcast) service and is therefore outside the scope of the proposals contained in this Mass Media streamlining initiative.

[72] *See* 47 U.S.C. § 319(b). Our rule implementing § 319(b) provides that a construction permit "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 notice of the forfeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date." 47 C.F.R. § 73.3599.

[73] 47 C.F.R. §§ 73.3534(b). Applications for extension of time are made on FCC Form 307.

[74] *Id.* The same criteria are also used to determine whether a permittee that has allowed its construction permit to expire prior to requesting an extension should be afforded additional time to construct. Our rules refer to a post-expiration request as a "replacement" rather than an "extension." *See* 47 C.F.R. § 73.3534(e). Extensions for International Broadcast are processed under more general guidelines. *See* 47 C.F.R. § 73.3534(c) (permittee may either demonstrate that its failure to complete was due to causes that were beyond its control or may provide other information "sufficient to justify an extension.").

[75] In determining whether an extension is warranted, the Commission will only look at the most recent authorized construction period. *See Rainbow Broadcasting Company*, 9 FCC Rcd 2839, 2846 (1994), *rev'd on other grounds sub nom. Press Broadcasting Company v. FCC*, 59 F.3d 1365 (D.C. Cir. 1995); *Panavideo Broadcasting, Inc.*, 6 FCC Rcd 5259 (1991).

for other facilities) the permittee must make the same "one-in-three" showing discussed above.[76] When an application to modify a construction permit is granted, the time period allowed for construction is six months from the issuance of the authorization to modify or the remainder of the construction permit's already authorized construction period, whichever is longer.[77] When an application to assign or transfer control of a construction permit is granted, the construction permit is extended for 12 months from the consummation of the assignment or transfer of control, unless, at the time of consummation, more than 12 months is remaining in the construction permit's already authorized construction period.[78]

54. Section 319 of the Act and our rules governing construction permits, described above, are intended to strike a balance between our fundamental interest in expediting new service to the public and in preventing the warehousing of scarce spectrum and our recognition that there are sometimes legitimate obstacles which 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 ever-increasing tide of applications for extensions.

55. From 1934 to 1970, permittees were afforded eight months for construction. During this era, several significant developments occurred in the broadcast marketplace, including the introduction of both FM and TV broadcast services. To address these changes, in 1970, we established an 18-month construction period for TV stations and increased the construction period for radio permittees to 12 months.[79] We also used that rulemaking to announce our intention to strictly scrutinize applications for additional construction time and to deny all that failed to show compelling public interest benefits justifying their grant.[80]

56. In 1985, citing the increasing complexity of construction, scarcity of equipment suppliers and growing complexity in the design and construction of broadcast stations, we again amended our rules and increased the construction periods to the current terms of 24 months for TV permittees and 18 months for radio permittees.[81] Furthermore, we eliminated grants of extension applications based on a "catch-all" demonstration that the public interest would be served by the extension of construction permit and we reasserted our intention

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[76] 47 C.F.R. § 73.3535(a)-(b). Although 47 C.F.R. § 73.3535(d) specifies that we will not accept an application to modify a construction permit, or an application to assign or transfer control of a construction permit, filed after the initial construction period, the Commission has interpreted this rule to allow acceptance of such applications so long as the construction permit has not expired -- whether or not the permittee has received prior extensions of time to construct. *See Clarke Broadcasting Corp.*, 11 FCC Rcd 3057, 3057 n.5 (1996).

[77] 47 C.F.R. § 73.3535(c).

[78] *Id.* Historically, as discussed below, the staff has applied the "one-in-three" showing required by Section 73.3535 of the Commission's rules and the additional 12 month provision only to the assignments and transfers of control of construction permits to construct new stations (*i.e.*, the rule has not been applied to an application to assign or transfer control of a licensed station with an outstanding construction permit to modify facilities). Moreover, the staff applies Section 73.3535(c) of the Commission's rules only to "long-form" applications to assign or transfer control a construction permit (*i.e.*, applications on FCC Form 314 or 315).

[79] *Report and Order* in Docket No. 18763, 23 FCC 2d 274 (1970).

[80] *Id.* at 274-75.

[81] *See Memorandum Opinion and Order* ("*1985 MO&O*"), 102 FCC 2d 1054, 1055 (1985).

to carefully scrutinize all extension applications.[82] We expected that longer construction periods, in combination with the removal of the "catch-all" public interest showing and increased scrutiny, would significantly curb the substantial number of extension applications.

57. 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. 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. Although most of the extension applications we receive contain satisfactory "one-in-three" showings and, accordingly, are granted, substantial staff resources are required for the fact-intensive analysis involved in processing these applications.

58. In addition to the burden on staff resources, our current scheme places a substantial administrative burden on permittees and in some instances may actually create a barrier to prompt completion of construction. Specifically, if a permittee is unable to complete construction prior to expiration of the permit, the permittee is not only faced with the burden of completing and filing an extension application but the permittee must also wait a typical interval of two months while the staff processes the extension request. During this interval, after the permit has expired but before the staff has acted on the extension application, the permittee remains unsure of the construction permit's status (*i.e.*, the pending extension application might be denied) and therefore any construction progress made during this period is at a permittee's own risk. Given this uncertainty, many permittees choose not to proceed with construction while an extension application is pending.

59. *Discussion.* On the basis of our experience, we believe it is now time to further consider amending our Mass Media rules governing construction of facilities. As discussed more fully below, we propose 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 propose to: (1) issue all construction permits for a uniform three-year term; (2) extend permits only in circumstances where the permit itself is the subject of administrative or judicial appeal 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 the subject of a modification or an assignment or transfer of control; and (4) make construction permits subject to automatic forfeiture upon expiration. Additionally, we propose to apply these rules to any construction permit that is within its initial construction period at the time these rules are adopted.

60. In addition to fulfilling our streamlining goals of reducing the necessity for extensions and thereby reducing paperwork and administrative burdens, we believe that our proposed changes coincide appropriately with the Commission's plan to issue construction permits to build new stations and to make major modifications

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[82] Prior to the *1985 MO&O*, Section 73.3534 of the Commission's rules provided that extensions would be granted only "upon a specific and detailed showing that the failure to complete was due to causes not under the control of the grantee, or upon a specific and detailed showing of other matters sufficient to justify the extension." In applying this standard, the Commission granted extensions "where permittees [had] made bona fide efforts to meet their commitments and [took] substantial steps toward construction, where delays in construction resulted from unforeseen circumstances beyond the control of the permittee, or where the permittee [had] shown that the public interest would be served by the grant of the extension." *Northeast TV Cablevision Corp., et al.*, 21 FCC 2d 442, 444 (1970).

of licensed facilities through an auction process.[83] While we must obviously provide applicants who receive a broadcast authorization through the auction process an adequate period of time to construct their facilities, we believe that three years is a sufficient period and that a competitive bidding procedure will attract willing and able participants and thus promote the expeditious construction of facilities.[84]

61. *Increased, Uniform Period For All Construction Permits.* As noted, we propose to issue all future construction permits, whether for full power or low power TV, TV translator, TV booster, AM, FM, FM translator, FM booster, International Broadcast, or broadcast auxiliary facilities, with a uniform three-year construction period. Furthermore, we propose to grant the proposed three-year construction period to all permits, whether for the construction of a new facility or for a modification of a licensed station. Based on our experience in granting extensions, we believe that an uninterrupted three-year construction period, combined with the tolling mechanism described in paragraph 64 *infra*, would provide adequate time in which any diligent permittee could successfully complete construction.

62. We invite comment on the need for, and relative merits of, a uniform period and we seek comment as to whether a three year term is appropriate. We solicit comments on typical construction time lines and problems, particularly where commenters support alternative permit time frames. We also seek comment as to whether the proposed longer construction period would remove an incentive for prompt construction by permittees who are capable of completing construction much earlier than the proposed three-year deadline. This question is particularly relevant regarding construction permits to modify licensed facilities and permits to construct secondary facilities where a three-year period might, in instances where the proposed changes do not require extensive construction efforts, be far more than a diligent permittee needs to successfully construct and therefore might promote spectrum warehousing. Commenters are specifically asked to comment on the extent to which construction permit applicants are not really prepared to and do not want to proceed promptly with construction when they apply, but rather are applying in an attempt to preserve some right for the future or to block other parties' potential plans. We also seek comment on whether we should impose a shorter construction period, *e.g.*, one year, for construction permits for minor modifications to licensed facilities. We particularly are concerned that under Section 73.208 of our rules, a three-year construction period for such permits would have a preclusive impact on the ability of other parties to file applications.[85]

63. We propose not to apply the three-year construction period to the digital television ("DTV") facilities constructed by initial DTV licensees, which are on their own construction schedule.[86] However, in our *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* the Commission established special construction rules for new NTSC permittees whose applications remained pending on April

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[83] The Commission has proposed auctioning the broadcast spectrum as directed by the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997). *See Auction NPRM* ¶¶ 1, 6-7.

[84] *See, e.g., Rules and Policies for the Digital Audio Radio Satellite Service*, 12 FCC Rcd 5754, 5815 (1997); *Amendment of Part 95 of the Commission's Rules to Modify Construction Requirements for Interactive Video and Data Services*, 11 FCC Rcd 2472, 2473 (1996); *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, 9 FCC Rcd 2348, 2358 (1994).

[85] *See* 47 C.F.R. § 73.208(b) (station separation requirements in licensing proceedings are determined by protecting both licensed and permitted facilities).

[86] *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.

3, 1997.[87] This limited class of permittees, which are not eligible for an initial DTV paired license, may construct either an analog or a digital station. These permittees also must complete construction with the "traditional" two-year construction period applied to NTSC stations,[88] and, if they initially construct analog facilities, may convert to DTV by the 2006 deadline. If we adopt the three-year construction period proposed in this *Notice*, we propose to increase to three years the initial period afforded these NTSC permittees to construct either analog or digital facilities. We propose no change in the 2006 deadline for converting to DTV. We invite comment as to whether the two-year period for this group of NTSC permittees should be extended to three years if we adopt the three-year proposal discussed herein.

64. *Restrict Extensions to Circumstances Where Delays Are Beyond the Permittee's Control.* As noted in paragraph 52 *supra,* Section 319(b) of the Act states that a construction permit will not be subject to forfeiture if delays have been caused by circumstances that are beyond a permittee's control. To comply with this statutory prohibition, we propose to toll the period of a construction permit when circumstances outside a permittee's control prevent construction. We propose, however, to strictly limit the circumstances that would qualify for such treatment. Specifically, we seek comment on whether we can limit the tolling of the construction period to when the grant of a construction permit is the subject of administrative or judicial appeals or when construction has been delayed by an "act of God." Moreover, we propose to define "acts of God" very narrowly in terms of natural disasters (e.g., floods, tornados, hurricanes, and earthquakes) and even then to only toll the construction period for the length of time which a diligent permittee would need to recover from the effects of the event, up to a maximum of one year. We also propose to require strict documentation of a permittee's efforts to build subsequent to such events.

65. Commenters are requested to address both the legal and economic consequences of this proposal and to suggest a mechanism by which a permittee would inform the Commission of natural disasters which have delayed construction and request the tolling of a construction period. We seek comment whether this proposed rule change would be consistent with Section 319(b) of the Act. Finally, we seek comment as to whether difficulties 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. Our tentative conclusion is that zoning delays can be overcome and construction can be completed within the proposed three-year construction period if a permittee pursues the zoning process diligently.

66. *Eliminate Post-Modification and Post-Assignment Extensions.* As previously noted in paragraph 53 *supra*, when a permittee for a new facility files an application to modify its construction permit, or an application to assign or transfer control of its construction permit outside the first half of the construction permit's initially authorized period, we currently require a "one-in-three" showing and, upon grant, we provide the permittee, in most instances, with additional time in which to complete construction. Since we believe that the proposed three-year construction period will provide sufficient time for completion, even when a construction permit has been the subject of further modification, assignment, or transfer, we propose to eliminate both the restriction on second-half construction period modifications and assignments and the extended construction periods provided under our rules. Thus, both a permittee that modifies an unbuilt station and a buyer of an unbuilt station would be held to a construction permit's original deadline, unless the period was subject to tolling as described in paragraph 64 *supra*. We seek comment on whether elimination of automatic extensions when unbuilt stations have been modified, assigned, or transferred is consistent with

[87] *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* in MM Docket No. 87-268, FCC 98-23, ¶¶ 11-16, released February 23, 1998.

[88] *Id.* ¶ 11.

Section 319(b) of the Act. In addition, we propose to eliminate, as unnecessary, the requirement that permittees that modify unbuilt stations certify that construction will commence immediately upon grant.[89] We likewise propose to eliminate the analogous certification requirement for assignees and transferees.[90] We seek comment on these proposals.

67. *Automatic Forfeiture of Expired Construction Permits.* 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),[91] the Commission's practice has been to take an affirmative action cancelling a construction permit before it is forfeited.[92] As a result, we are compelled to dedicate scarce staff resources to cancel expired construction permits and then notify permittees of our action. In an effort to streamline this process, we propose to make a construction permit subject to automatic forfeiture, without further Commission action, upon expiration of the three-year construction period proposed in paragraph 61 *supra*. We seek comment on whether an automatic cancellation policy for expired construction permits should be adopted and our tentative conclusion that such a procedure would be consistent with the Act's automatic forfeiture provision.

68. *Application of New Rules to Outstanding Permits.* Finally, we propose that the rules regarding construction permits, and extensions thereof, that we adopt in this rulemaking proceeding be applied to any construction permit that is currently in its initial construction period (*i.e.*, the first 24 months for a full power TV facilities permit and the first 18 months for an AM, FM, International Broadcast, low power TV, TV translator, TV booster, FM translator, FM booster, or broadcast auxiliary permit).[93] We invite comment on how to implement our proposal and whether implementation would cause unjustifiable hardship to permittees or would result in a disservice to the public. We believe, however, that it would be administratively unworkable to apply the proposed rules to construction permits that are already beyond their initial construction periods (whether through extension, assignment, transfer of control, or modification). Because many of these permits have already been afforded a construction period close to (or, in many instances, in excess of) the three-year term proposed in this *Notice*, we propose to continue to apply the rules as they exist today to permits outside their initial periods. We invite comment on the tentative conclusion that it is more appropriate to continue to apply our current rules to construction permits that are beyond their initial periods.

E. Modifying Pro Forma Assignments and Transfers

69. *Background.* Pursuant to the Act and current Commission rules and policies, prior Commission

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[89] *See* 47 C.F.R. § 73.3535(b).

[90] *See* 47 C.F.R. § 73.3535(a).

[91] *See supra* note 72 and accompanying text.

[92] *See Edward A. Baker v. FCC*, 834 F.2d 181, 185 (D.C. Cir. 1987); *1985 MO&O*, 102 FCC 2d at 1058 n.11.

[93] We note that we have broad rulemaking authority to revise our processing rules and to apply the new rules to pending applicants. *See Maxcell Telecom Plus v. FCC*, 815 F.2d 1551, 1555 (D.C. Cir. 1987) (upholding decision to decide pending cellular cases by lottery rather than by comparative hearing). *See also Chadmoore Communications v. FCC*, No. 96-1061 (D.C. Cir. May 20, 1997) (upholding the denial of an application for an extension of the construction period based on a subsequently adopted rule disallowing such extension, because no right to an extension vested upon the filing of the application).

consent is required for assignments or transfers of control of broadcast licenses or permits.[94] Under Section 310(d) of the Act:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.[95]

70. Unauthorized transfer of control of a broadcast permit or license is a serious rule violation, which can result in the imposition of severe penalties, including loss of license. Consent for involuntary assignments or transfers of control or those that do not involve a "substantial change in ownership or control" may be obtained by filing a "short form" application, FCC Form 316, which requires less information than our "long forms," FCC Forms 314 and 315, and is not subject to the public notice and a thirty-day petition to deny procedure under Section 309 of the Act.[96] Assignments or transfers that may be filed on Form 316 are:

> (1) assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;
> (2) assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;
> (3) assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;
> (4) corporate reorganization which involves no substantial change in the beneficial ownership of the corporation;
> (5) assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or
> (6) assignment of less than a controlling interest in a partnership.[97]

71. Additionally, Form 316 may be used to seek FCC consent to the involuntary assignment of license or transfer of control upon the death or legal disability of an individual permittee or licensee, a person directly or indirectly in control of a corporate permittee or licensee, or a member of a partnership, where the assignment or transfer is to a person or entity legally qualified to succeed to the foregoing interests under the laws of the

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[94] 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540(a); 47 C.F.R. § 73.3541. The instructions to FCC Form 323 set out examples of when particular transactions constitute a transfer of control or an assignment requiring prior Commission consent. For a general survey of this area, see Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934*, 43 *Fed. Comm. L. J.* 277 (1991).

[95] 47 U.S.C. § 310(d).

[96] 47 U.S.C. § 309(b), (c)(2)(B), (d). In the case of short form applications, however, the Commission entertains informal objections, under 47 C.F.R. § 73.3587, which may be filed any time up until Commission action on the application.

[97] 47 C.F.R. § 73.3540(f). The standard for determining when a "long form" as opposed to a "short form" is required and *vice versa* is set out in *Clay Broadcasters*, 21 RR 2d 442 (1971); *Barnes Enterprises*, 55 FCC 2d 721, 725 n.4 (1975); *Grace Missionary Baptist Church*, 80 FCC 2d 330 (1980).

place having jurisdiction over the estate involved.[98] Such cases include assignments or transfers to a bankruptcy trustee pursuant to Court order.[99]

72. *Discussion.* We note that approximately 35 percent of radio and television assignment and transfer applications propose *pro forma* transactions and are filed on FCC Form 316. Every effort is made to process these routine applications quickly. Indeed, the average processing time from filing in Pittsburgh to FCC action for both Audio Services Division ("ASD") and Video Services Division ("VSD") is approximately ten days, and fewer than five days from receipt of the applications by either Division. Moreover, both ASD and VSD are able to accommodate filers by initiating short form application processing with a receipt-stamped copy of the Pittsburgh filing. Where speed is demonstrated to be critical, both divisions can issue manually-released public notices in order to complete processing within a single business day. Nevertheless, some broadcasters have claimed that these speed of disposal rates have caused financial and other problems with respect to these *pro forma* transactions.

73. In this regard, we note past suggestions by broadcasters and others that the current *pro forma* assignment and transfer process can be streamlined and regulatory burdens on licensees substantially reduced with respect to certain routine transfers and assignments. For certain *pro forma* transfers and assignments, which do not affect actual control of the licensee or permittee and which are routinely and virtually always granted by the Commission, broadcasters have questioned whether they should be required to file an application and wait for a grant. Our goal is to streamline our procedures to the extent possible to eliminate any significant problems or unnecessary regulatory burdens. Therefore, we invite comment on such proposals. We specifically ask commenters to identify any specific situations or transactions in which such short processes may cause difficulties, and how, so that we can tailor our procedures accordingly.[100]

74. We particularly note that some types of *pro forma* assignments or transfers may be suited for streamlined procedures. For example: (1) court-ordered transfers to a bankruptcy trustee; (2) certain corporate reorganizations (such as a change in an intermediate subsidiary); (3) reorganization by a corporate licensee in another state where no other changes are made; (4) involuntary assignment of license or construction permit or transfer of control due to death or legal disability of the individual permittee or licensee; and (5) assignment of less than a controlling interest in a partnership? We invite comment on whether these and/or other categories of *pro forma* transfers and assignments should be subjected to a streamlined procedure.

75. While we seek to reduce unnecessary regulatory burdens, we note that our ability to ease our rules with respect to any transfers and assignments is constrained by the tenets of Section 310(d) of the Act, which, as noted above, requires prior Commission consent to transfers and assignments "in any manner." Accordingly, we invite comment as to how we may streamline our procedures while nonetheless complying with Section 310(d).

76. We note past suggestions that we adopt a notification procedure for certain *pro forma* transfers and assignments instead of requiring a Form 316 application process and prior Commission consent. Under such a streamlined procedure certain assignments and transfers, as listed above, could be carried out by

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[98] 47 C.F.R. § 73.3541.

[99] *See, e.g., O.D.T. International*, 9 FCC Rcd 2575 (1994).

[100] We have been informally advised that one common problem results from last-minute restructuring, often for tax purposes, during the final stages of closing an approved transaction.

licensees or permittees, subject only to a requirement that the Commission be notified of the assignment or transfer within a certain period thereafter (say 30 days) and the requirement that an Ownership Report Form be filed within 30 days after the assignment or transfer.[101] Notification and the filing of the Ownership Report would be important to ensure that the Commission's license records are kept current.

77. Would Section 310(d) permit us to adopt such a notification procedure? While we have adopted a notification procedure for *pro forma* assignments and transfers for certain telecommunications carriers, which are also governed by Section 310(d), in that case, we were expressly given forbearance authority under Section 10 of the Telecommunications Act of 1996.[102] No such forbearance authority applies here. Nonetheless, it can be argued that Section 310(d) would permit us to make a blanket finding that certain types of *pro forma* transactions are *per se* in the public interest, so that an individual finding would not then need to be made in a particular case, thereby allowing such transactions to go forward upon notification to the Commission. In one context, the Cable Television Relay Service ("CARS"), we have streamlined transfers by providing that prior Commission consent is not required for assignments or transfers of control "in cases where the change in ownership does not affect the identity or controlling interest of the licensee."[103] We do not require Commission notification of such transfers. We invite comment as to whether this precedent is applicable to broadcast transfers.

78. We invite comment on the procedures that should be followed for notifications of transactions that are determined to fall outside the scope of *per se* grantable applications. Commenters should also consider the procedures we should adopt in response to notifications for transactions that we conclude are both voluntary and involve a substantial change in ownership or control, and thus are subject to the public notice and petition to deny provisions of Section 309(d). Finally, we invite comment on the sanctions that should be imposed for such erroneous notifications.

79. The Commission also uses "short form" procedures in connection with tender offers and proxy contests to acquire control of entities that hold Commission licenses.[104] Under these expedited procedures an

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[101] *See* 47 C.F.R. § 73.3615(f).

[102] *Memorandum Opinion and Order, Forbearance from Section 310(d) of the Communications Act Regarding Non-substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, FCC 98-18, released February 4, 1998; Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56; Sect. 10, *codified at* 47 U.S.C. § 160(a).

[103] 47 C.F.R. § 78.35(c). In adopting this rule, we explained that:

> [W]e see no need for FCC approval in cases where ownership transfer does not result in a change in the identity of the licensee or the ultimate controlling interest of the licensee. Section 310(d) [of the Act] requires Commission approval only when a license is transferred to another person or when control of a corporation holding a license is transferred. Thus, Section 310(d) does not appear to require FCC approval of ownership changes that do not involve a change in the identity or controlling interest of the licensee. *Pro forma*, or "short form," assignments or transfers of control which do involve such changes will continue to require approval. (footnotes omitted)

Report and Order in MM Docket No. 84-886, 100 FCC 2d 1136, 1140-41 (1985).

[104] *See generally Tender Offers and Proxy Contests*, 59 Rad. Reg. 1536 (1986), *appeal dismissed sub nom. Office of Communication of the United Church of Christ v. FCC*, 826 F.2d 101 (D.C. Cir. 1987).

acquiring entity initially files a Form 316 application with a request that the Commission grant a special temporary authorization to permit a transfer of control from the shareholders of the target entity to an independent trustee of a voting trust.[105] Generally, the special temporary authorization imposes various conditions to prevent a bidder from exercising control of the tendered stock and from attempting to influence the actions of the trustee. If successful, the Commission must pass on the qualifications of the acquiring entity in a "long form" application. We question whether the streamlining options considered in this *Notice* should apply to our tender offer and proxy contest processing policies. Our experience is that established procedures substantially accommodate the need of bidders for expeditious Commission review and consent. Moreover, unlike "routine" *pro forma* transfers, these applications contemplate a substantial change in ownership or control of a licensee or permittee entity and the immediate grant of a special temporary authorization to a trustee empowered to collect stock and exercise control of such entity on an interim basis. Thus, the FCC application process can generate controversial fact-specific issues that implicate core regulatory concerns not amenable to a prospective *per se* public interest determination.[106] Accordingly, we seek comment on our tentative conclusion that the proposed streamlining procedures should not be extended to cover the processing of "short form" applications relating to tender offers and proxy contests for control of Commission licensees.

80. Assuming that a notification procedure could be adopted consistent with Section 310(d), are there benefits to obtaining prior consent to such transactions that would be lost if we adopt a notification requirement? Should we require that a notification and Ownership Report both be filed with the Commission or, in the alternative, would an Ownership Report be sufficient in this regard? Is the thirty-day period an appropriate time limit for the notification requirement? Should we require that a notification letter be filed, or should we adopt a new notification form for this purpose? If we require that a notification letter or form be filed, what information should be required to be filed in the letter? Finally, should we place such notifications on public notice to permit the public an opportunity to seek reconsideration of the application of the "blanket" consent to a particular transaction? Alternatively, would a requirement that the notification be placed in the station's public file be sufficient in this regard?

81. As an alternative to a notification procedure, we could keep the current application process but, in the case of certain specified *pro forma* assignments and transfers, permit applicants to proceed, at their own risk, to consummate the transfer or assignment if Commission action denying the application is not taken within a set short period after the application is filed. We invite comment as to whether this alternative would be consistent with Section 310(d). We note that the Commission would, in the event that this proposal is adopted, retain the authority to deny the assignment or transfer even after such a consummation and require that the transaction be unwound. Thus, we believe, the Commission's authority under Section 310 of the Act would be retained.

82. Assuming we could adopt such an alternative procedure consistent with Section 310(d), we invite comment as to what the time period for required Commission action should be and as to whether ten business days is an appropriate time period for this purpose. Further, we invite comment as to whether such a proposal would significantly and meaningfully reduce regulatory burdens and provide adequate relief. We note our concern that it may be difficult to unwind sales or transfer transactions after they have occurred and invite

[105] *See, e.g., Macfadden Acquisition Corp.*, 104 FCC 2d 545, 565-66 (1986); *Viacom, Inc.*, 8 FCC Rcd 8439 (1993).

[106] *See, e.g., Viacom, Inc.*, 8 FCC Rcd 8439, 8441 (1993) (requiring Trustee to divest himself of stock to insure "strict insulation from the bidder").

comment as to whether this is a significant negative factor that we should consider or whether we should rely on applicants to make a reasoned judgment as to whether they should take the risk that the Commission may later unwind a transaction that has been consummated prior to FCC consent. We note that this proposal would apply only to narrow categories of *pro forma* transfers and assignments, as specified above, where Commission consent is virtually always received. We invite comment on all aspects of this proposal.

F. Streamlined Ownership Reporting Requirements

83. *Background.* Section 73.3615 of the Commission's rules requires that, with the exception of sole proprietorships and partnerships composed entirely of natural persons, licensees of commercial AM, FM and TV broadcast stations file an Ownership Report on FCC Form 323 once a year, on the anniversary of the date that their license renewal applications must be filed.[107] A licensee owning more than one station may file one such report per year, on the anniversary date of its choice, provided that its reports are not more than one year apart. A permittee of a new commercial AM, FM or TV station must also file an Ownership Report within 30 days of the date of grant of an application for the original construction permit and on the date that it applies for a license for that new station. A licensee or permittee which has a current and unamended Ownership Report on file need not file a new report, but instead may file a letter with the Commission verifying that the licensee or permittee has reviewed its current report and that it is still accurate. In addition, the Commission routinely requests that Form 323 be filed within 30 days of the consummation of an authorized transfer of control or assignment of license.

84. Licensees of noncommercial educational AM, FM and TV broadcast stations must file an Ownership Report on FCC Form 323-E at the time their applications for renewal are required to be filed, which now is every eight years.[108] As in the case of commercial licensees, the Commission also routinely requires that Form 323-E be filed within 30 days of consummation of an authorized transfer of control or assignment of license. In addition, a supplemental Ownership Report must be filed by a noncommercial educational licensee or permittee within 30 days after *any* change occurs in the information previously reported.

85. *Streamlining Proposal.* We propose to reduce the frequency with which Ownership Reports (FCC Forms 323 and 323-E) for commercial and noncommercial educational AM, FM and TV broadcast stations must be filed with the Commission. Currently, most licensees of commercial broadcast stations are required to file Ownership Reports annually. Our proposal would relax this requirement so that such licensees would have to file Ownership Reports when they file their stations' license renewal applications and four years thereafter, at the mid-point of their scheduled license term. In addition, we propose to formalize the Commission's current practice of requesting an Ownership Report within 30 days of an approved assignment or transfer by amending Section 73.3615 of the Commission's Rules to specifically require that a commercial or noncommercial educational licensee or permittee shall file an Ownership Report on FCC Form 323 or 323-E within 30 of days of consummation of an approved license assignment or transfer of control. In the event that we adopt a notification procedure for certain *pro forma* assignments and transfers, we propose to also require the filing of an Ownership Report within thirty days of the consummation of those transactions. We invite comment on all aspects of these proposals. We also invite comment on whether we should adopt the same proposed relaxed ownership reporting requirements for noncommercial educational AM, FM and TV broadcast station licensees and permittees. In addition, we invite comment as to whether, as discussed more fully above, we should institute mandatory electronic filing for Ownership Report forms.

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[107] 47 C.F.R. § 73.3615.

[108] 47 C.F.R. § 73.1615(d); 73.1020(a).

86. We tentatively believe that our proposed relaxed ownership reporting requirements would ease the paperwork burden on licensees and permittees without impairing the public's ability to ascertain the identities of broadcast station owners. Similarly, we believe that our relaxed requirements would not adversely affect the Commission's ability to monitor ownership of commercial and noncommercial educational broadcast stations and compliance with our multiple ownership limitations and the alien ownership and prior consent provisions of Section 310 of the Communications Act of 1934, as amended. We note that Ownership Reports rarely generate challenges or complaints. We invite comment on these tentative conclusions.

87. Under the current ownership reporting system, many commercial licensees can file the same basic certification letter each year, referencing a full Ownership Report filed years earlier. The obligation to file a full report on the annual reporting date, however, is often triggered by slight changes in ownership, for which prior approval is not required. In such cases, the Commission receives little new information from the licensee. Since the Commission must approve major ownership changes in advance, and Ownership Reports reflecting changes due to transfers or assignments would be required to be filed in connection with consummation of sales transactions and transfers, we would be able to retain current information on the controlling interests in licensees and permittees. Accordingly, we do not believe that our regulatory functions would be impeded if we are informed of less substantial changes less frequently than annually. We, of course, have the ability to obtain at any time full, current ownership information from any licensee should such information be needed to discharge our regulatory responsibilities. We invite comment as to whether our proposals would hinder members of the public and other broadcasters in obtaining necessary ownership information and monitoring ownership changes.

88. As discussed above, the current ownership reporting requirements are stricter for noncommercial stations than for commercial stations. We believe that the supplemental reporting requirement, under which a noncommercial educational licensee or permittee must file within 30 days after any change in previously reported information, may be especially burdensome for noncommercial permittees and licensees. This requirement often serves to elicit information of less substantial changes for which prior Commission approval is not required. As noted above, we propose, therefore, to conform the Form 323-E reporting requirements to our Form 323 reporting requirements, as revised. We seek comment on whether eliminating the 30-day supplemental reporting requirement, coupled with the addition of a regular four-year filing requirement, will result in an overall reduction of the burden on noncommercial educational licensees.

89. While we have proposed a four-year reporting interval for noncommercial and commercial permittees or licensees, we invite comment as to whether a two-year or other reporting interval would be more appropriate or beneficial. In this regard, commenters contending that a four-year reporting requirement would be detrimental to the public's or the Commission's ability to monitor adequately significant changes in the ownership of broadcast stations should provide specific examples and arguments to substantiate their position.

III. ADMINISTRATIVE MATTERS

90. *Comments and Reply Comments*. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties shall file comments within sixty (60) days of the date of publication of this *Notice* in the Federal Register and reply comments within ninety (90) days of the date of publication of this *Notice* in the Federal Register. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center

(Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

91. *Initial Paperwork Reduction Act of 1995 Analysis*. This *Notice* proposes rule and procedural revisions which may contain an information collection requirement. As part of our continuing effort to reduce paperwork burdens, we invite the general public and OMB to take this opportunity to comment on the information collection contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from the date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

92. *Ex parte Rules*. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules. 47 C.F.R. § 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two-sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

93. *Initial Regulatory Flexibility Analysis*. With respect to this *Notice*, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix A. As required by the Regulatory Flexibility Act,[109] the Commission has prepared an IRFA of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice*. Written public comments are requested on the IRFA. We ask a number of questions in our IRFA regarding the prevalence of small businesses in the industries covered by this *Notice*. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Notice* and must have a distinct heading designating them as responses to the IRFA.

94. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 4(j), 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 308, 309, and 310, this *Notice of Proposed Rule Making* IS ADOPTED.

95. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

96. *Additional Information*. For additional information on this proceeding, please contact Peter Doyle, Audio Services Division, Mass Media Bureau (202) 418-2780; James J. Brown, Video Services

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[109] Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981), as amended.

Division, Mass Media Bureau (202) 418-1600; or Mania K. Baghdadi, Policy and Rules Division, Mass Media Bureau (202) 418-2130.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

As required by the Regulatory Flexibility Act ("RFA"),[110] the Commission has prepared this present Initial Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making ("Notice"). Written public comments are requested on this IRA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments of the Notice provided above in ¶ 88. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register. *See id.*

A. Need For and Objectives of the Proposed Rules: With this *Notice*, the Commission commences a proceeding to review its broadcast applications and related rules. The Commission's goals are to streamline its procedures, speed introduction of new and expanded services to the public, reduce administrative burdens on regulatees, increase public access to information about the Bureau's actions and processing activities, and maximize efficiency in the use of Commission resources, while maintaining the technical integrity of broadcast services, 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 review is taken in conjunction with the Commission's 1998 biennial regulatory review. Although Congress did not mandate this area of review, the Commission nonetheless undertakes it to assure that its rules and processes are no more regulatory than necessary to achieve Commission goals.

B. Legal Basis: Authority for the actions proposed in this *Notice* may be found in Sections 4(i), 4(j), 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 308, 309, and 310.

C. Description and Estimate of the Number of Small Entities to Which the Proposed 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 which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."[111]

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[110] *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. 194-12, 110 Stat. 848 (1996) ("CWAA"). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[111] While 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 *Notice*, 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 the proposed rules in this Notice and to consider further the issue of the number of small entities that are radio and television broadcasters or other 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).

The proposed rules and policies will apply to television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[112] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[113] Included in this industry are commercial, religious, educational, and other television stations.[114] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[115] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[116] There were 1,509 television stations operating in the nation in 1992.[117] That number has remained fairly constant as indicated by the approximately 1,569 operating television broadcasting stations in the nation as of January 31, 1998.[118] For 1992,[119] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[120]

Additionally, the Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[121] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[122] Included in this industry are

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[112] 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

[113] 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).

[114] *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.

[115] 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).

[116] *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[117] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 110, Appendix A-9.

[118] FCC News Release "Broadcast Station Totals as of January 31, 1998.

[119] Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 110, III.

[120] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[121] 13 C.F.R. § 121.201, SIC 4832.

[122] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 110, Appendix A-9.

commercial religious, educational, and other radio stations.[123] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[124] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[125] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[126] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[127] As of January 31, 1998, official Commission records indicate that 12,241 radio stations were operating, of which 7,488 were FM stations.[128]

Thus, the proposed rules will affect many of the approximately 1,569 television stations, approximately 1,208 of which are considered small businesses.[129] Additionally, the proposed rules will affect some of the 12,241 radio stations, approximately 11,751 of which are small businesses.[130] 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 proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown. We invite comment as to such number.

D. Description of Projected Recording, Recordkeeping, and Other Compliance Requirements: The measures proposed in this *Notice* would reduce the reporting required of prospective and current applicants, permittees and licensees. All proposals aim to reduce the overall administrative burden upon both the public and the Commission. We propose to make the electronic filing of many broadcast related applications mandatory and seek comment as to whether to do so on a phased-in basis. We note that such a phased-in procedure has been used elsewhere to benefit small businesses. For example, the SEC 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 could, 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 concerting the current version of each form into an electronic format. We have therefore concluded that it is necessary to

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[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[127] FCC News Release No. 31327, Jan. 13, 1993.

[128] FCC News Release "Broadcast Station Totals as of January 31, 1998."

[129] 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.

[130] We use the 96% 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.

undertake a thorough review of broadcast forms and to reconsider both the information that is collected and the form in which it is submitted. Accordingly, we propose to delete or narrow overly burdensome questions and to rely more on applicant certifications. If adopted, these changes would both reduce applicant filing burdens and streamline our processing of sales, new station, and facility modification applications. We also tentatively propose to eliminate the rule restricting payments upon assignment or transfer of unbuilt stations. Further, we tentatively propose to eliminate the requirement that applicants file sales agreements as part of the assignment or transfer application, and that such agreements be filed with the Commission within thirty days of execution. Instead, we propose that such agreements would have to be placed in the station's public inspection file and the current permittee or licensee would be required to certify to such placement. In addition, we propose to make revisions to the sales forms that are intended to maximize the advantages of electronic filing and processing.

We further propose to reduce the frequency with which Ownership Reports (FCC Forms 323 and 323-E) for commercial and noncommercial educational AM, FM, and TV broadcast stations must be filed with the Commission. We tentatively believe that this proposal would ease the paperwork burden on licensees and permittees without impairing the public's ability to ascertain the identities of broadcast station owners.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered: This *Notice* solicits comment on a variety of alternatives discussed herein. These alternatives are intended to streamline our rules and procedures. Our goals are to reduce applicant and licensee burdens, realize fully the benefits of the Mass Media Bureau's current electronic filing initiative, and preserve the public's ability to participate fully in our broadcast licensing processes. These proposals are designed to reduce filing burdens and increase the efficiency of application processing. Any significant alternatives presented in the comments will be considered.

F. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules: The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this IRFA will also be published in the Federal Register.

APPENDIX B

Attached are copies of revised FCC Forms 301 and 314.

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
DRAFT

FOR FCC USE ONLY	

FCC 301

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

FOR COMMISSION USE ONLY
FILE NO.

Section I - General Information

1.

Legal Name of the Licensee/Permittee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
Call Sign(s)	Facility Identifier(s)	

2.

Contact Representative (if other than licensee/permittee)	Firm or Company Name
Telephone Number (include area code)	E-Mail Address (if available)

3. If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114):

☐ Governmental Entity ☐ Noncommercial Educational Licensee ☐ Other _____ ☐ N/A

4. **Application Purpose.**

☐ New station
☐ Major Change in licensed facility
☐ Minor Change in licensed facility
☐ Major Modification of construction permit
☐ Minor Modification of construction permit
☐ Major Amendment to pending application
☐ Minor Amendment to pending application

a. File number of original construction permit: _____ ☐ N/A

b. Service Type: ☐ AM ☐ FM ☐ TV

c. Channel No. or Frequency: _____

d. Community of License: _____

e. Facility Type: ☐ Main ☐ Auxiliary

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

Section II - Legal and Financial

1. **Certification.** Applicant certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Applicant further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.

☐ Yes ☐ No

2. **Parties to the Application and Non-Party Equity Owners.** List the applicant, parties to the application and non-party equity owners. If other than natural persons, list officers, directors, stockholders with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the applicant, list separately its officers, directors, stockholders with attributable interests, non-insulated partners and/or members.

   a. Name and address of the applicant and, if applicable, its officers, directors, stockholders, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and partners.
   b. Citizenship.
   c. Positional Interest: Officer, director, general partner, limited partner, LLC member, etc.
   d. Percentage of votes.
   e. Percentage of equity.

a.	b.	c.	d.	e.

3. **Other Authorizations.** List call signs, locations, and facility identifiers of all other broadcast stations in which applicant or any party to the application has an attributable interest.

Exhibit No. ☐ N/A

4. **Multiple Ownership.** Applicant certifies that the proposed facility:
   a. complies with the Commission's multiple and cross-ownership rules;
   b. does not present an issue under the Commission's cross-interest policy;
   c. does not present an issue under the Commission's policies relating to media interests of immediate family members;
   d. complies with the Commission's policies relating to future ownership interests; and
   e. complies with the Commission's restrictions relating to the insulation and non- participation of non-party investors and creditors.

☐ Yes ☐ No

Section II - Legal and Financial

5. **Character Issues.** Applicant certifies that neither applicant nor any party to the application has or has had any interest in, or connection with: ☐ Yes ☐ No
   a. any broadcast application in any proceeding which left unresolved character issues against the applicant or which resolved such issues against the applicant; or
   b. any pending broadcast application in which character issues have been raised.

6. **Adverse Findings.** Applicant certifies that with respect to the applicant or any party to the application, no relevant adverse finding has been made nor has adverse final action been taken related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination? ☐ Yes ☐ No

7. **Alien Ownership and Control.** Applicant certifies that it complies with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments. ☐ Yes ☐ No

8. **Financial Qualifications.** Applicant certifies that sufficient net liquid assets are on hand or are available from committed sources to construct and operate the requested facility for three months without revenue. ☐ Yes ☐ No

9. **Program Service Certification.** Applicant certifies that it is cognizant of and will comply with its obligations as a Commission licensee to present a program service responsive to the issues of public concern facing the station's community of license and ☐ Yes ☐ No

10. **Local Public Notice.** Applicant certifies compliance with the public notice requirements of 47 C.F.R. Section 73.3580? ☐ Yes ☐ No

11. **Anti-Drug Abuse Act Certification.** Applicant certifies that neither applicant nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862. ☐ Yes ☐ No

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim 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, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

SECTION III PREPARER'S CERTIFICATION

I certify that I have prepared Section III (Engineering Data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name		Relationship to Applicant (e.g., Consulting Engineer)
Signature		Date
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

SECTION III-A AM BROADCAST ENGINEERING DATA

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this 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.

TECH BOX

1. **Frequency:** _____ kHz 2. **Class:** A☐ B☐ C☐ D☐

3. **Hours of Operation:** ☐ Unlimited ☐ Limited ☐ Daytime ☐ Share Time ☐ Specified Hours: _____

4. **Nondirectional:** ☐ Day ☐ Night ☐ Critical Hours ☐ Not Applicable

   Estimated Efficiency: _____ mV/m per kW at 1 km

5. **Directional:** ☐ Daytime only (DA-D) ☐ Nighttime only (DA-N) ☐ Not Applicable
   ☐ Same constants day and night (DA-1)
   ☐ Different constants day and night (DA-2)
   ☐ Different constants day, critical hours, and night (DA-3)

   Theoretical Efficiency: Day: _____ Night: _____ Critical Hours: _____ mV/m per kW at 1 km at 1 Ω loss
   Standard Efficiency: Day: _____ Night: _____ Critical Hours: _____ mV/m per kW at 1 km
   Q Factor: Day: _____ Night: _____ Critical Hours: _____

6. **Power:** Daytime _____ kW Nighttime _____ kW Critical Hours _____ kW

7. **Daytime Antenna Location Coordinates:**
To the nearest second (NAD 27)

LATITUDE	Degrees	Minutes	Seconds	N☐ S☐
LONGITUDE	Degrees	Minutes	Seconds	W☐ E☐

8. **Nighttime Antenna Location Coordinates:**
To the nearest second (NAD 27)

LATITUDE	Degrees	Minutes	Seconds
LONGITUDE	Degrees	Minutes	Seconds

9. **Tower Array:**

Towers	1	2	3	4
Height of radiator above base insulator, or above base, if grounded (rounded to nearest tenth of meter).				
Electrical Height of radiator (degrees).				
Overall height above ground (include obstruction lighting- rounded to nearest meter)				
Field				
Phase				
Orientation				
Tower Reference Switch				
Top Loaded Apparent Height				
Orientation				
Antenna Structure Registration.	_____ Number ☐ Notification Filed with FAA. ☐ Not applicable.	_____ Number ☐ Notification Filed with FAA. ☐ Not applicable.	_____ Number ☐ Notification Filed with FAA. ☐ Not applicable.	_____ Number ☐ Notification Filed with FAA. ☐ Not applicable.
Hours of operation (check all that apply).	☐ Day ☐ Night ☐ Critical Hours	☐ Day ☐ Night ☐ Critical Hours	☐ Day ☐ Night ☐ Critical Hours	☐ Day ☐ Night ☐ Critical Hours

For additional towers, submit an exhibit listing information requested above _____

SECTION III-A AM BROADCAST ENGINEERING DATA

CERTIFICATION

If any question is answered "No," a request for waiver, explanation, or justification must be submitted otherwise, the application will be returned without further consideration. Exhibits are required as noted.

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13. **Broadcast Facility.** The proposed facility complies with the engineering standards and assignment requirements of 47 CFR §§ 73.24(e), 73.33, 73.45, 73.150, 73.152, 73.160, 73.182(a)-(i), 73.186, 73.189, 73.1650. **Exhibit Required.** ☐YES☐NO

Exhibit No. _____

14. **Community Coverage.** The proposed facility complies with community coverage requirements of 47 CFR § 73.24(i). **Exhibit Required.** ☐YES☐NO

Exhibit No. _____

15. **Main Studio Location.** The main studio complies with requirements of 47 CFR § 73.1125. ☐YES☐NO

16. **Interference.** The proposed facility complies with all of the following applicable rule sections. Check all those that apply. A separate **exhibit is required** for each applicable section as indicated. ☐YES☐NO

Groundwave.
a) ☐ 47 CFR § 73.37.

Exhibit No. _____

Skywave.
b) ☐ 47 CFR § 73.182.

Exhibit No. _____

Critical Hours.
c) ☐ 47 CFR § 73.187.

Exhibit No. _____

Blanketing Interference. The proposed facility complies with the requirements of 47 CFR § 73.24(g). ☐YES☐NO

17. **Environmental Protection Act.** The proposed facility is excluded from environmental processing under 47 CFR § 1.1306 (*i.e.*, the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments). Unless the applicant can determine compliance through the use of the RF worksheets in Appendix A, an **exhibit is required.** ☐YES☐NO

Exhibit No. _____

18. **Site Availability.** Applicant certifies that it has reasonable assurance that the site or proposed structure will be available for the applicant's intended purpose. ☐YES☐NO

PREPARER'S CERTIFICATION ON PAGE 3 MUST BE COMPLETED AND SIGNED.

SECTION III-B FM BROADCAST ENGINEERING DATA (FCC Form 301)

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this 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.

TECH BOX

1. Channel Number: _____

2. Class (select one): A __ B1 __ B __ C3 __ C2 __ C1 __ C __

3. Antenna Location Coordinates:

To the nearest second (NAD 27)

LATITUDE	Degrees	Minutes	Seconds	N☐ S☐
LONGITUDE	Degrees	Minutes	Seconds	W☐ E☐

4. One-Step proposal allotment coordinates filed pursuant to MM Docket 92-159:
____ Not applicable

To the nearest second (NAD 27)

LATITUDE	Degrees	Minutes	Seconds
LONGITUDE	Degrees	Minutes	Seconds

5. Antenna Structure Registration Number: _____ ____ Not applicable

____ FAA Notification Filed with FAA

6. Antenna Location Site Elevation Above Mean Sea Level: _____ meters

7. Overall Tower Height Above Ground Level: _____ meters

8. Effective Radiated Power: _____ kW (H) _____ kW (V)

9. Maximum Effective Radiated Power: ____ Not applicable _____ kW (H) _____ kW (V)
(Beam-Tilt Antenna ONLY)

10. Height of Radiation Center Above Ground Level: _____ meters (H) _____ meters (V)

11. Height of Radiation Center Above Average Terrain: _____ meters (H) _____ meters (V)

12. Directional Antenna Relative Field Values: ____ Not applicable
Rotation: _____° ____ None

Degree	Value	Degree	Value	Degree	Value	Degree	Value	Degree	Value	Degree	Value
0		60		120		180		240		300	
10		70		130		190		250		310	
20		80		140		200		260		320	
30		90		150		210		270		330	
40		100		160		220		280		340	
50		110		170		230		290		350	
Additional Azimuths											

CERTIFICATION

If any question is answered "No," a request for waiver, explanation, or justification must be submitted otherwise, the application will be returned without further consideration. Exhibits are required as noted.

AUXILIARY ANTENNA APPLICANTS ARE NOT REQUIRED TO RESPOND TO ITEMS 13-16. PROCEED TO ITEM 17.

13. **Allotment.** The proposed facility complies with the allotment requirements of 47 CFR § 73.203. ☐YES☐NO

14. **Community Coverage.** The proposed facility complies with community coverage requirements of 47 CFR § 73.315. ☐YES☐NO

15. **Main Studio Location.** The main studio complies with requirements of 47 CFR § 73.1125. ☐YES☐NO

16. **Interference.** The proposed facility complies with all of the following applicable rule sections. Check all those that apply. ☐YES☐NO

Separation Requirements.

a)☐ 47 CFR § 73.207

Grandfathered Short-Spaced.

b)☐ 47 CFR § 73.213(a) with respect to station(s): _____ _____
Exhibit Required.

c)☐ 47 CFR § 73.213(b) with respect to station(s): _____ _____
Exhibit Required.

d)☐ 47 CFR § 73.213(c) with respect to station(s): _____ _____
Exhibit Required.

Contour Protection.

e)☐ 47 CFR § 73.215 with respect to station(s): _____ _____
Exhibit Required.

Cross-Modulation. The applicant accepts full responsibility for the elimination of cross-modulation interference with respect to facilities in close proximity to the proposed transmitter site that are in existence or authorized prior to the grant of this application and the elimination receiver-induced modulation caused to radio receivers in use prior to the grant of this application. ☐YES☐NO

17. **Environmental Protection Act.** The proposed facility is excluded from environmental processing under 47 CFR § 1.1306 (*i.e.*, the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments). Unless the applicant can determine compliance through the use of the RF worksheets in Appendix A, **an exhibit is required.** ☐YES☐NO _____

18. **Site Availability.** Applicant certifies that it has reasonable assurance that the site or proposed structure will be available for the applicant's intended purpose. ☐YES☐NO

PREPARER'S CERTIFICATION ON PAGE 16 MUST BE COMPLETED AND SIGNED.

SECTION III-C - TV BROADCAST ENGINEERING DATA

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will not be disregarded. All items must be completed. The response "on file" is not acceptable. The response "not applicable" is not acceptable unless otherwise noted. If any item is incomplete, the application will be returned without further consideration.

TECH BOX

1. Channel Number: _____

2. Offset: Plus_____ Minus_____ Zero_____

3. Zone: I_____ II_____ III_____

4. Antenna Location Coordinates:
To the nearest second (NAD 27)

Latitude	Degrees	Minutes	Seconds
Longitude	Degrees	Minutes	Seconds

Antenna Location Address: (specify address, city, county and state. If no address, specify distance and bearing relative to the nearest town or landmark.

5. Antenna Structure Registration Number: _____ ☐ Not Applicable

☐ FAA Notification Filed with FAA

6. Antenna Location Site Elevation Above Mean Sea Level: _____ meters

7. Overall Tower Height Above Ground Level: _____ meters

8. Height of Radiation Center Above Ground Level: _____ meters

9. Height of Radiation Center Above Average Terrain (HAAT): _____ meters

10. Height of Radiation Center Above Mean Sea Level: _____ meters

11. Maximum Effective Radiated Power: _____ kW

12. Antenna Make _____ Model No. _____

13. a. Electrical Beam Tilt: _____ degrees ☐ Not Applicable

b. Mechanical Beam _____ degrees toward azimuth _____ degrees True ☐ Not Applicable

Attach as an Exhibit all data specified in 47 C.F.R. Section 73.685. Exhibit No.

14. Proposed antenna is: ☐ Horizontally Polarized ☐ Circularly Polarized ☐ Elliptically Polarized

15. Directional Antenna Relative Field Values: ☐ Not Applicable

Reference Azimuth _____ degrees True

Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value
0		60		120		180		240		300	
10		70		130		190		250		310	
20		80		140		200		260		320	
30		90		150		210		270		330	
40		100		160		220		280		340	
50		110		170		230		290		350	
Additional Azimuths											

16. Terrain and coverage data (to be calculated in accordance with 47 C.F.R. Section 73.684)

Source of terrain data: (check only one box below)

☐ Linearly interpolated 30-second database (Source: _____)

☐ 7.5 minute topographic map

☐ Other (briefly summarize)

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 3 to 16 km (meters)	Predicted Distances		
		To the City Grade Contour (kilometers)	To the Grade A contour (kilometers)	To the Grade B contour (kilometers)
*				
0				
45				
90				
135				
180				
225				
270				
315				

*Radial through principal community, if not one of the major radials. This radial should NOT be included in the calculation of HAAT.

CERTIFICATION

An answer of "Yes" to all of the questions below will ensure an expeditious grant of this application. However, if the proposed facility is located within the Canadian or Mexican borders, coordination of the proposal under the appropriate treaties may be required prior to the grant of the application.

If any question is answered "No," a request for waiver, explanation, or justification must be submitted. If any question is answered "No," and a request for waiver, explanation, or justification is not submitted, the application will be returned without further consideration. Exhibits are required as noted.

Allotment

17. The proposed facility complies with the allotment requirements of 47 C.F.R. Section 73.607. ☐ Yes ☐ No

    Auxiliary Antenna Applications - By checking Yes above, the applicant also certifies that if an auxiliary antenna is proposed, the facility complies with 47 C.F.R. Section 73.1675(a). Exhibit Required. Exhibit No.

    AUXILIARY ANTENNA APPLICANTS ARE NOT REQUIRED TO RESPOND TO ITEMS 18-21. PROCEED TO ITEM 22.

Power and Antenna Height

18. The proposed facility complies with 47 C.F.R. Section 73.614. ☐ Yes ☐ No

Community Coverage

19. The proposed facility complies with community coverage requirements of 47 C.F.R. Section 73.685(a) and (b).. ☐ Yes ☐ No

Main Studio Location

20. The main studio complies with the requirements of 47 C.F.R. Section 73.1125. ☐ Yes ☐ No

Interference

21. The proposed facility complies with all of the following applicable rule sections: ☐ Yes ☐ No

    Check all that apply

    ☐ 47 C.F.R. Section 73.610

    ☐ 47 C.F.R. Section 73.685(c). Exhibit required. Exhibit No.

    ☐ 47 C.F.R. Section 73.685(d)

    ☐ 47 C.F.R. Section 73.685(g). Exhibit required. Exhibit No.

    ☐ 47 C.F.R. Section 73.685(h). Exhibit required. Exhibit No.

    Directional Antenna

    By checking Yes above, the applicant also certifies that if a directional antenna is proposed, the directional antenna complies with 47 C.F.R. Section 73.685(e) and (f). Exhibit Required. Exhibit No.

22. The applicant accepts full responsibility for the elimination of cross-modulation interference with respect to facilities in close proximity to the proposed transmitter site that are in existence or authorized prior to the grant of this application and the elimination of receiver-induced modulation caused to radio receivers in use prior to the grant of this application. ☐ Yes ☐ No

23. The requirements of 47 C.F.R. Section 73.1030 regarding notification to radio astronomy installations, radio receiving installations and FCC monitoring stations have either been satisfied or are not applicable. ☐ Yes ☐ No

If the proposed facility is required to be notified to the National Radio Astronomy Observatory, the applicant is required to provide the date the proposed facility was notified to the Observatory: _____

24. The FCC has issued a registration for the antenna structure proposed in this application; ☐ Yes ☐ No
OR
the registration for the antenna structure is not required because the structure does not require notification to the FAA pursuant to 47 C.F.R. Section 17.7;
OR
the FAA was notified of the proposed facility pursuant to 47 C.F.R. Section 17.7.

Environmental Protection Act

25. The proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306; i.e., the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments. ☐ Yes ☐ No
Exhibit Required.

Radiofrequency Electromagnetic Exposure

By checking Yes above, the applicant also certifies that the applicant, in coordination with other users of the site, will reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic exposure in excess of FCC guidelines.

The determination of compliance with exposure limits must account for all collocated and nearby radiating sources that operate at frequencies between 300 kHz and 100 GHz.

PREPARER'S CERTIFICATION ON PAGE 3 MUST BE COMPLETED AND SIGNED.

SECTION III-D - DTV BROADCAST ENGINEERING DATA

Complete Questions 1-5 of the Certification Checklist and provide all data and information for the proposed facility, as requested in Items 6-25, below. The response "not applicable" is not acceptable unless otherwise noted.

Certification Checklist: A correct answer of "Yes" to all of the questions below will ensure an expeditious grant of a construction permit. However, if the proposed facility is located within the Canadian or Mexican borders, coordination of the proposal under the appropriate treaties may be requird prior to grant of the application. An answer of "No" will require additional evaluation of the applicable information in this form before a construction permit can be granted.

1. The proposed DTV facility complies with 47 C.F.R. Section 73.622 in the following respects:

   (a) It will operate on the DTV channel for this station as established in 47 C.F.R. Section 73.622. ☐ Yes ☐ No

   (b) It will operate from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 C.F.R. Section 73.622. ☐ Yes ☐ No

   (c) It will operate with an effective radiated power (ERP) and antenna height above average terrain (HAAT) that do not exceed the DTV reference ERP and HAAT for this station as established in 47 C.F.R. Section 73.622. ☐ Yes ☐ No

2. The proposed facility will not have a significant environmental impact, including exposure of workers or the general public to levels of RF radiation exceeding the applicable health and safety guidelines, and therefore will not come within 47 C.F.R. Section 1.1307. ☐ Yes ☐ No

3. Pursuant to 47 C.F.R. Section 73.625, the DTV coverage contour of the proposed facility will encompass the allotted principal community. ☐ Yes ☐ No

4. The requirements of 47 C.F.R. Section 73.1030 regarding notification to radio astronomy installations, radio receiving installations and FCC monitoring stations have either been satisfied or are not applicable. ☐ Yes ☐ No

5. The antenna structure to be used by this facility has been registered by the Commission and will not require reregistration to support the proposed antenna, OR the FAA has previously determined that the proposed structure will not adversely effect safety in air navigation and this structure qualifies for later registration under the Commission's phased registration plan, OR the proposed installation on this structure does not require notification to the FAA pursuant to 47 C.F.R. Section 17.7. ☐ Yes ☐ No

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will not be disregarded. All items must be completed. The response "on file" is not acceptable. The response "not applicable" is not acceptable unless otherwise noted. If any item is incomplete, the application will be returned without further consideration.

TECH BOX

6. a. Channel Number: _____

   b Associated analog TV station channel number, if any: _____

7. Zone: I_____ II_____ III_____

8. Antenna Location Coordinates:
   To the nearest second (NAD 27)

Latitude	Degrees	Minutes	Seconds
Longitude	Degrees	Minutes	Seconds

Antenna Location Address: (specify address, city, county and state. If no address, specify distance and bearing relative to the nearest town or landmark.

9. Antenna Structure Registration Number: _____ ☐ Not Applicable

   ☐ FAA Notification Filed with FAA

10. Antenna Location Site Elevation Above Mean Sea Level: _____ meters

11. Overall Tower Height Above Ground Level: _____ meters

12. Height of Radiation Center Above Ground Level: _____ meters

13. Height of Radiation Center Above Average Terrain (HAAT): _____ meters

14. Height of Radiation Center Above Mean Sea Level: _____ meters

15. Effective Radiated Power (average power) (in the main lobe of radiation, if directional): _____ kW

16. Antenna Make _____ Model No. _____

17. a. Electrical Beam Tilt: _____ degrees ☐ Not Applicable

    b. Mechanical Beam _____ degrees toward azimuth _____ degrees True ☐ Not Applicable

    Attach as an Exhibit all data specified in 47 C.F.R. Section 73.625(c). Exhibit No.

18. Proposed antenna is: ☐ Horizontally Polarized ☐ Circularly Polarized ☐ Elliptically Polarized

TECH BOX - cont'd

19. Directional Antenna Relative Field Values: ☐ Not Applicable

Reference Azimuth _____ degrees True

Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value
0		60		120		180		240		300	
10		70		130		190		250		310	
20		80		140		200		260		320	
30		90		150		210		270		330	
40		100		160		220		280		340	
50		110		170		230		290		350	
Additional Azimuths											

20. Attach as an Exhibit a topographic map that shows clearly, legibly, and accurately, the location of the proposed transmitting antenna. This map must comply with the provisions of 47 C.F.R. Section 73.625(b). The map must further display clearly and legibly the original printed contour lines and data as well as latitude and longitude markings, and must bear a scale of distance in kilometers.

Exhibit No.

21. Attach as an Exhibit a map (*Sectional Aeronautical Chart or equivalent)* which shows clearly, legibly, and accurately, and with the original printed latitude and longitude markings and a scale of distance in kilometers:

Exhibit No.

(a) the proposed transmitting location, and the radials along which profile graphs have been prepared;
(b) the DTV coverage contour as established in 47 C.F.R. Section 73.625(b); and
(c) the legal boundaries of the principal community to be served.

22. Terrain and coverage data (to be calculated in accordance with 47 C.F.R. Section 73.625(b))

Source of terrain data: *(check only one box below)*

☐ Linearly interpolated 30-second database (Source: _____)

☐ Linearly interpolated 3-second database (Source: _____)

☐ 7.5 minute topographic map

☐ Other *(briefly summarize)*

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 3 to 16 km (meters)	Predicted distance to the DTV Coverage Contour (kilometers)
*		
0		
45		
90		
135		
180		
225		
270		
315		

*Radial through principal community, if not one of the major radials. This radial should NOT be included in the calculation of HAAT.

23. Does the proposed facility satisfy the interference protection provisions of 47 C.F.R. Section 73.623(a)? (Applicable only if **Certification Checklist** items 1(a), (b), or (c) are answered "No.") ☐ Yes ☐ No

    If No, attach as an Exhibit justification therefore, including a summary of any related previously granted waivers. Exhibit No.

24. If the proposed facility will not satisfy the coverage requirement of 47 C.F.R. Section 73.625, attach as an Exhibit justification therefore. (Applicable only if No in **Certification Checklist**, item 3.) Exhibit No.

Environmental Protection Act (see 47 C.F.R. Section 1.1301 et. seq.)

25. The proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306; i.e., the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments. ☐ Yes ☐ No
    Exhibit Required.

Radiofrequency Electromagnetic Exposure

By checking Yes above, the applicant also certifies that the applicant, in coordination with other users of the site, will reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic exposure in excess of FCC guidelines.

The determination of compliance with exposure limits must account for all collocated and nearby radiating sources that operate at frequencies between 300 kHz and 100 GHz.

PREPARER'S CERTIFICATION ON PAGE 3 MUST BE COMPLETED AND SIGNED.

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
DRAFT

FCC 314

APPLICATION FOR CONSENT TO ASSIGNMENT OF BROADCAST STATION CONSTRUCTION PERMIT OR LICENSE

FOR FCC USE ONLY	

FOR COMMISSION USE ONLY
FILE NO.

Section I - General Information

1.

Legal Name of the Licensee/Permittee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
Call Sign(s)	Facility Identifier(s)	

2.

Contact Representative (if other than licensee/permittee)	Firm or Company Name
Telephone Number (include area code)	E-Mail Address (if available)

3.

Legal Name of the Assignee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	

4.

Contact Representative (if other than assignee)	Firm or Company Name
Telephone Number (include area code)	E-Mail Address (if available)

5. If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114):

☐ Governmental Entity ☐ Noncommercial Educational Licensee ☐ Other _____ ☐ N/A

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

Section II - Assignor

1. **Certification.** Licensee/permittee certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Licensee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.

☐ Yes ☐ No

2. **Authorizations to be Assigned.** List call signs, locations and facility identifiers of all authorizations to be assigned. Include construction permits and file numbers. List main station authorizations and any FM and/or TV translator stations, LPTV stations, SCA, FM and/or TV booster stations, and associated auxiliary service stations.

Exhibit No.

3. **Agreements for Sale of Station.** Licensee/permittee certifies that:
   a. it has placed in its public inspection file(s) copies of all agreements for the sale of the station(s);
   b. these documents embody the complete and final understanding between licensee/permittee and assignee; and
   c. these agreements comply fully with the Commission's rules and policies.

☐ Yes ☐ No

4. **Other Authorizations.** List call signs, locations, and facility identifiers of all other broadcast stations in which licensee/permittee or any party to the application has an attributable interest.

Exhibit No. ☐ N/A

5. **Character Issues.** Licensee/permittee certifies that neither licensee/permittee nor any party to the application has or has had any interest in, or connection with:
   a. any broadcast application in any proceeding which left unresolved character issues against the applicant or which resolved such issues against the applicant; or
   b. any pending broadcast application in which character issues have been raised.

☐ Yes ☐ No

6. **Adverse Findings.** Since the filing of the licensee/permittee's last renewal application for the authorization(s) being assigned (or since grant of a new station construction permit for station(s) in initial license term), licensee/permittee certifies that with respect to the licensee/permittee or any party to the application, no relevant adverse finding has been made nor has adverse final action been taken related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another government unit; or discrimination.

☐ Yes ☐ No

7. **Local Public Notice.** Licensee/permittee certifies compliance with the public notice requirements of 47 C.F.R. Section 73.3580.

☐ Yes ☐ No

8. **Anti-Drug Abuse Act Certification.** Licensee/permittee certifies that neither licensee/permittee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

☐ Yes ☐ No

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

Section III - Assignee

1. **Certification.** Assignee certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Assignee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets. ☐ Yes ☐ No

2. **Agreements for Sale of Station.** Assignee certifies that: ☐ Yes ☐ No
   a. the written agreements in the licensee/permittee's public inspection file embody the complete and final agreement for the sale of the station(s) which are to be assigned; and
   b. these agreements comply fully with the Commission's rules and policies.

3. **Parties to the Application.**
   a. List the assignee, and, if other than a natural person, its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the assignee, list separately its officers, directors, stockholders with attributable interests, non-insulated partners and/or members.

   (1) Name and address of the assignee and, if applicable, its officers, directors, stockholders, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the assignee first, officers next, then directors and, thereafter, remaining stockholders and partners.
   (2) Citizenship.
   (3) Positional Interest: Officer, director, general partner, limited partner, LLC member, etc.
   (4) Percentage of votes.
   (5) Percentage of equity.

(1)	(2)	(3)	(4)	(5)

   b. Assignee certifies that equity interests not set forth above are non-attributable. ☐ Yes ☐ No ☐ N/A

4. **Other Authorizations.** List call signs, locations, and facility identifiers of all other broadcast stations in which assignee or any party to the application has an attributable interest.

Exhibit No. ☐ N/A

5. **Multiple Ownership.** Assignee certifies that the proposed assignment:
   a. complies with the Commission's multiple and cross-ownership rules;
   b. does not present an issue under the Commission's cross-interest policy;
   c. does not present an issue under the Commission's policies relating to media interests of immediate family members;
   d. complies with the Commission's policies relating to future ownership interests; and
   e. complies with the Commission's restrictions relating to the insulation and non-participation of non-party investors and creditors.

☐ Yes ☐ No

6. **Character Issues.** Assignee certifies that neither assignee nor any party to the application has or has had any interest in, or connection with:
   a. any broadcast application in any proceeding which left unresolved character issues against the applicant or which resolved such issues against the applicant; or
   b. any pending broadcast application in which character issues have been raised.

☐ Yes ☐ No

7. **Adverse Findings.** Assignee certifies that with respect to the assignee or any party to the application, no relevant adverse finding has been made nor has adverse final action been taken related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☐ No

8. **Alien Ownership and Control.** Assignee certifies that it complies with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments.

☐ Yes ☐ No

9. **Financial Qualifications.** Assignee certifies that sufficient net liquid assets are on hand or are available from committed sources to consummate the transaction and operate the station(s) for three months.

☐ Yes ☐ No

10. **Program Service Certification.** Assignee certifies that it is cognizant of and will comply with its obligations as a Commission licensee to present a program service responsive to the issues of public concern facing the station's community of license and service area.

☐ Yes ☐ No

11. **Anti-Drug Abuse Act Certification.** Assignee certifies that neither assignee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

☐ Yes ☐ No

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim 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, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

APPENDIX C

Attached are the following sample worksheets that would be included with FCC Form 314 under the approach proposed in the *Notice*:

Worksheet # 1 - Local Radio Station Ownership - Assignee Question 5a.

Worksheet # 2 - Investor Insulation and Non-party Influence Over Assignee - Assignee Question 5e.

Worksheet # 3 - Family Relationships - Assignee Question 5c.

WORKSHEET # 1

LOCAL RADIO STATION OWNERSHIP

The local radio ownership rule, 47 C.F.R. § 73.3555(a)(1), sets the maximum number of stations in which a party may hold attributable interests in any particular radio market. In radio markets with 14 or fewer commercial radio stations, a party may hold an attributable ownership interest in up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM). However, a party may not hold an attributable ownership interest in more than 50 percent of the stations in markets of 14 or fewer stations. In a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may hold an attributable ownership interest in up to 6 commercial radio stations, no more than 4 of which are in the same service. In a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may hold an attributable ownership interest in up to 7 commercial radio stations, no more than 4 of which are in the same service. In a radio market with 45 or more commercial radio stations, a party may hold an attributable ownership interest in up to 8 commercial radio stations, no more than 5 of which are in the same service.

A radio market is defined as that area encompassed by the principal community contours (predicted or measured 5 mV/m groundwave contour for AM; predicted 3.16 mV/m contour for FM) of the mutually overlapping stations proposing to have common ownership. The number of stations in the market is based on the principal community contours of all operating, full-service commercial stations whose principal community contours overlap or intersect the principal community contours of the commonly-owned and mutually overlapping stations. In calculating the number of stations in a market in which a party may have an attributable ownership interest, we attribute to the prospective buyer only those commonly-owned stations that contribute to the mutual overlap in the relevant radio market. That is, a station contour that overlaps the contour of a station outside the mutual overlap area, but does not have mutual overlap with all stations that create the market, does not count toward the local radio ownership "cap."

An assignee must complete this worksheet if the principal community service contour (predicted or measured 5 mV/m groundwave contour for AM; predicted 3.16 mV/m contour for FM) of any AM or FM station being assigned overlaps with the principal community service contour of an AM or FM station in which the assignee or any party to this application has or proposes to have an attributable interest (including any AM or FM station with principal community contour overlap in which the applicant or any party to the application brokers or proposes to broker more than 15 percent of the broadcast time per week of such station).

1. Is the overlap in every instance between only one AM and one FM station where neither of these two stations overlaps the principal community contour of a third station in the same service? ☐ Yes ☐ No

If yes, the proposed assignment complies with local radio station ownership rules.

If No to 1., answer the following questions with regard to each of the radio markets defined by the stations with mutually overlapping principal community contours:

2. Number of commercial AM and FM stations in the market:

a. 45 or more ☐ Yes ☐ No

b. Between 30 and 44 ☐ Yes ☐ No

c. Between 15 and 29 ☐ Yes ☐ No

d. 14 or fewer ☐ Yes ☐ No

3. Number of FM stations in the market in which the assignee or parties to the application would have an attributable interest following assignment of the stations: _____

4. Number of AM stations in the market in which the assignee or parties to the application would have an attributable interest following assignment of the stations: _____

5. Total number of AM and FM stations in the market in which the assignee or parties to the application would have an attributable interest following assignment of the stations: _____

If assignee determines based on its answers to these questions that it is in compliance with 47 C.F.R. § 73.3555(a), assignee may certify to such compliance in assignee question 5a of the attached application. If assignee determines that it is not in compliance with the local radio ownership rules, assignee shall submit an exhibit stating reasons in support of a waiver of the rules.

WORKSHEET # 2

INVESTOR INSULATION AND NON-PARTY INFLUENCE OVER ASSIGNEE

I. Investor Insulation

If an assignee is a limited partnership or a limited liability company ("LLC") that seeks to insulate partners or members in accordance with the Commission's attribution rules, the assignee shall ensure that each such limited partner or LLC member is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership or LLC. To ensure that each such limited partner or LLC member is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership or LLC, the limited partnership or LLC enabling documents shall:

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

b. bar any exempt limited partner/LLC from serving, in any material capacity, as an independent contractor or agent with respect to the partnership/LLC's media enterprises;

c. restrict any exempt limited partner/LLC member from communicating with the limited partnership/LLC, the general partner, or any LLC management committee on matters pertaining to the day-to-day operations of its business;

d. empower the general partner/LLC management committee to veto any admissions of additional general partners/LLC members admitted by vote of the exempt limited partners/LLC members;

e. prohibit any exempt limited partner/LLC member from voting on the removal of a general partner/LLC member or limit this right to situations where the general partner/LLC member is (i) subject to bankruptcy proceedings, as described in Section 402(4)-(5) of the Revised Uniform Limited Partnership Act, (ii) is adjudicated incompetent by a court of competent jurisdiction, or (iii) is removed for cause, as determined by an independent party;

f. bar any exempt limited partner/LLC member from performing any services to the limited partnership/LLC materially relating to its media activities, with the exception of making loans to, or acting as a surety for, the business; and

g. state, in express terms, that any exempt limited partner/LLC member is prohibited from becoming actively involved in the management or operation of the media businesses of the limited partnership/LLC.

If these conditions are met with regard to every limited partner and LLC member that the applicant seeks to insulate, the applicant may certify in assignee question 5e of the attached application to compliance with the Commission's restrictions regarding insulation of non-party investors.

II. Non-Party Influence Over Assignee

A. Non-party investors, *i.e.*, investors with nonattributable interests, may have very limited powers over the operations of a licensee. Accordingly, assignee should ensure that with respect to any agreement, arrangement or understanding involving insulated parties or other investors with nonattributable interests, including creditors, secured parties, program suppliers, and any other persons not disclosed as parties to this application, that such agreement **does not:**

1. give any non-party investor the right to vote on any matters decided by the assignee's board of directors, partnership committee or other management group;

2. give any non-party investor the right to attend, or appoint an observer to attend, assignee board, partnership or other management meetings;

3. place any limitation on assignee programming discretion;

4. give any non-party investor the right to vote on, approve or restrict assignee's actions on any matter relating to programming, personnel or finances;

5. give any non-party creditor or any bond, debenture or warrant holder the right to vote on, approve or restrict the assignee's actions on any matter relating to programming, personnel or finances;

6. give any non-party creditor or any bond, debenture or warrant holder the right to share in the profits of the assignee;

7. give any non-party investor that holds a non-voting convertible interest the right to convert such an interest and acquire control of the assignee based on the assignee's actions relating to programming, personnel and finances;

8. give any non-party investor, creditor, or bond, debenture or warrant holder the right to vote on, approve or deny the selection or removal of a general partner of an assignee partnership or a member of the assignee's governing body; and

9. give any non-party investor, creditor, or bond, debenture or warrant holder the right to convert, tender or require the tendering of stock pursuant to a put or call agreement based on the actions of the assignee or transferee relating to programming, personnel or financing.

If these conditions are met with regard to every non-party investor and creditor, applicant may certify in assignee question 5e of the attached application that it complies with the Commission's restrictions regarding non-participation of non-party investors and creditors.

B. With respect to any loan agreement, assignee has ensured that such agreement:

1. includes an unconditional promise by the assignee to pay on demand or on a specific date a sum certain;

2. contains a fixed or defined variable rate of interest on the loan; and

3. does not prohibit the redemption of the loan by the assignee, or permit redemption at the option of the lender only.

If these conditions are met with regard to each loan application, applicant may certify in assignee question 5e of the attached application that it complies with the Commission's restrictions regarding non-participation of non-party investors and creditors.

WORKSHEET # 3

FAMILY RELATIONSHIPS

An assignee must complete this worksheet if any member of the immediate family (*i.e.*, husband, wife, father, mother brother, sister, son or daughter) of any party to the application or non-party equity owner holding a nonattributable interest o 5% or more in the applicant have any interest in or connection with any other broadcast station, pending broadcast applicatio or daily newspaper in the same area or, in the case of a television station applicant only, a cable television system in the sam area .

A broadcast station and a daily newspaper are considered to be in the same area if: (1) the predicted or measured 2 mV/m contour of an AM station encompasses the entire community in which such daily newspaper is published; (2) the predicted 1 mV/m contour of an FM station encompasses the entire community in which such daily newspaper is published; or (3) the Grade A contour of a TV station encompasses the entire community in which such daily newspaper is published. A daily newspaper is one that is published four or more days per week, is in the English language and is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally. *See* 47 C.F.R. § 73.3555(d) and 47 C.F.R. § 73.3555 Note 6.

A television station and a cable television system are considered to be in the same area if the Grade B contour of the television station overlaps in whole or in part the service area of such system, *i.e.*, the area within which the system is serving subscribers. *See* 47 C.F.R. § 76.501(a).

Answer the following questions for each such relationship:

1. Has the family member who is not included as an interest holder in the assignee been involved in negotiations with the licensee/permittee for the acquisition of any of the station(s) to be assigned?

☐ Yes ☐ No

2. Has the family member who is not included as an interest holder in the assignee provided financing or otherwise been involved in the process of making financial arrangements for the acquisition of any of the station(s) to be assigned?

☐ Yes ☐ No

3. Are the family members involved together in the management or operation of any other media interests located in other areas?

☐ Yes ☐ No

4. Are there any agreements, arrangements or understandings, either written or oral, between the family members with same-area media interests for the participation of one family member in the financial affairs, commercial practices, programming, or employment practices of the other family member's media entity. Consider, for example, joint sales agreements, local marketing agreements, and arrangements to share facilities or personnel.

☐ Yes ☐ No

If assignee answers "No" to all of the above questions, assignee may certify in assignee question 5c of the attached application that it complies with the Commission's policies relating to media interests of immediate family members. If assignee answers "Yes" to any one of the above questions, assignee shall submit an exhibit giving full particulars.

Separate Statement of Commissioner Harold W. Furchtgott-Roth

In re: Notice of Proposed Rulemaking

1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes

I support adoption of this Notice of Proposed Rulemaking. To my mind, any reduction in paperwork obligations or simplification of our procedural rules for regulated entities -- or "streamlining" -- is always a plus. To that extent, this item is good policy and I am all for it.

This item should not, however, be mistaken for compliance with section 11 of the Communications Act.

First of all, section 11 requires a biennial review of all regulations that govern the operations of "any provider of telecommunications service." 47 U.S.C. section 161(a)(1). It does not by its terms apply to regulations governing those in the broadcasting and cable business, unless they also provide telecommunications service. I therefore understand this mass media item to be premised not on the biennial review requirement of section 11 (notwithstanding the caption, which suggests otherwise) but on our general authority to change our rules when appropriate under section 4(i), *id.* section 154(i), and related provisions of the Communications Act.[1]

Second, this item focuses mainly, as do some "pure" section 11 items that we have issued,[2] on procedural rules governing filings at the Commission as opposed to substantive rules that limit what companies can do in the marketplace, *e.g.*, regulations that restrict market entry or limit market share. As stated above, it is certainly important that in the course of the Biennial Review we evaluate our procedural rules and modify or eliminate them if necessary. But section 11 requires us to look at *both* procedural and substantive rules and make an affirmative finding of their continued necessity.

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[1]Section 202(h) mandates a review of certain broadcast rules as a part of the section 11 Biennial Review, but only of "ownership" rules, which does not include the regulations at issue here.

[2]By this I mean items regarding rules applicable to telecommunications service providers.

If all we do is "streamline" certain procedures at the Commission, without also examining all pertinent substantive rules and making the statutorily-required determinations of necessity, we will fail to meet the express directive of section 11.

As I have previously explained, I question whether the FCC is prepared to meet its statutory obligation to review all of the regulations covered by section 11 in 1998. *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 12 FCC Rcd __ (Jan. 29, 1998). To my knowledge, the FCC has no plans to review affirmatively *all* regulations applicable to the operations or activities of telecommunications providers and to make specific findings as to their continued necessity. Nor has the Commission issued general principles to guide our "public interest" analysis and decisionmaking process across the wide range of FCC regulations.

We should not let this item, which does not relate to telecommunications rules and focuses almost exclusively on procedural matters, or any other limited Commission analysis be mistaken for full compliance with Section 11.

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