







**South Carolina
Broadcasters Association**
LICENSE RENEWAL WORKSHOP
March 23, 2011
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**Surviving the
License Renewal Process
2011**

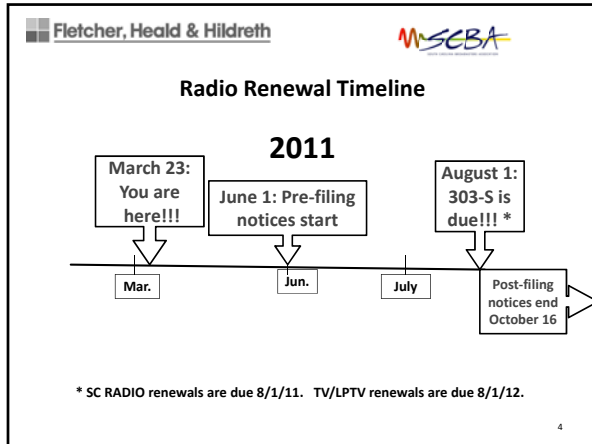
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The Agenda

- Getting Started
- Timeline
- The Process
 - Pre-filing Public Notices
 - Form 303-S License Renewal Form
 - Questions
 - Form 396 EEO Program Form
 - Local Public Inspection File
 - Post-filing Public Notices

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Timeline (continued)

Missing the filing deadline can be expensive.

FCC Fines:

- Filing after 8/1 but before 12/1 – \$1,500+
- Filing after 12/1 – \$10,000+

Additional Special Temporary Authority (STA) costs to enable operation after 12/1.

Legal Fees to obtain grant and reduce fines.

Aggravation/Distracted/Hassle

The New Revised Form 303-S



New Requirements:

- Certification about minimum operating schedule compliance
- Certification about non-discriminatory advertising policies
(For LPTV stations – Form 396 EEO Program Report must be filed)

Relaxation of Previous Requirement:

- Most RF Exhibits no longer required

New definition of “eligible entity”

Pre-filing Public Notices



Pre-filing Public Notices must be broadcast:

- on June 1, June 16, July 1 and July 16 (at least two of the four notices must be broadcast during drive-time (7-9 a.m. or 4-6 p.m.))**
- in station's primary language**

Documentation of broadcasts must be prepared and placed in local public inspection file.

(continued)

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Language specified in rules (47 C.F.R. §73.3580):



On [date of last license renewal grant], [call sign] was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until December 1, 2011.

Our license will expire on December 1, 2011. We must file an application for renewal with the FCC by August 1, 2011. When filed, a copy of this application will be available for public inspection during our regular business hours. It contains information concerning this station's performance during the last [time since last renewal grant].

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by November 1, 2011.

Further information concerning the FCC's broadcast license renewal process is available at [public inspection file address] or may be obtained from the FCC, Washington, DC 20554.

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Form 303-S

General Considerations:

- Single form for *all* broadcast stations, with some common sections for all services and some different sections for different services.**
- Boosters and translators are to be included on same form as main station.**
- Broadcast auxiliaries renew automatically. They are not listed on 303-S and no separate form is required.**

(continued)

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Renewal of Boosters and Translators:

Boosters: List call signs, facility IDs, and communities of license in Exhibit 2 to Form 303-S.

Translators and LPTV Stations:

Include on application of main station only if same licensee -- translators with different licensees must have separate renewal applications.



Translator renewals filed based on state translator is licensed, not state of station being rebroadcast.

Answer yes to question in Section I regarding translators and complete Section V.

No pre-filing public notice required

(continued)

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Form 303-S, Section V – Translators and LPTV Stations:

List translators by call sign, facility ID and community of license.

Certify that translator station is on-air.



Identify station being rebroadcast by call sign, facility ID, and community of license and certify that you have written consent to rebroadcast.

Certify to compliance with RF exposure rules at translator site.

FM Translators only – certify to compliance with translator contour rules for fill-in translators or translators used by AM stations.

LPTV only – certify to EEO compliance and filing of Form 396.

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Character Certification

2. **Character Issues.** Licensee certifies that neither the licensee nor any party to the application has or has had any interest in, or connection with:

- a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or any party to the application; or
- b. any pending broadcast application in which character issues have been raised.

(continued)

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Character Certification (continued):

Disclose any applications in which character issues were raised (as to the applicant or any "party") unless FCC has issued final decision in favor of licensee.

Certification covers all "parties" to the application, not just the licensee. Definition of "party" is broad.

Character issues include misrepresentation, lack of candor, abuse of Commission process, other issues raising questions about party's truthfulness.



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Adverse Non-FCC Findings Certification

3. **Adverse Findings.** Licensee certifies that, with respect to the licensee and each party to the application, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any laws related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination.

(continued)
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Adverse Non-FCC Findings Certification (continued):

Disclose any adverse findings, made by a court or agency, of non-FCC violations within last 10 years – unless already disclosed in an application that has been granted.

Types of violation to be disclosed:

- Antitrust or unfair competition in a mass media-related industry
- Discrimination
- Fraudulent statements to a government agency
- Any felony conviction.

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FCC Violations Certification

4. **FCC Violations during the Preceding License Term.** Licensee certifies that, with respect to the station(s) for which renewal is requested, there have been no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulations of the Commission during the preceding license term. If No, the licensee must submit an explanatory exhibit providing complete descriptions of all violations.

(continued)

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FCC Violations Certification *(continued)*:

Report *only* violations about which the FCC has issued a formal notice (NAL, NOV, Fine/Forfeiture Order).

Include file number of notice, brief description of circumstances, and current status.

Sample disclosure: "Licensee received a Notice of Violation on May 3, 2010 alleging a violation of the Commission's Emergency Alert System Rules (*see* File No. EB-10-LA-3547). Licensee responded on June 13, and the matter remains pending."

Remember: If you are aware of a violation but no FCC notices have been issued--no need to confess!

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Alien Ownership Certification



5. **Alien Ownership and Control.** Licensee 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.

Section 310 limits include:

- 20% cap on direct foreign ownership**
- 25% cap on indirect foreign ownership**

Determination of compliance can be complex.

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Anti-Drug Abuse Act Certification

6. **Anti-Drug Abuse Act Certification.** Licensee certifies that neither licensee 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.

Requires disclosure of drug-related convictions, but *only* if they expressly resulted in denial of federal benefits under 1988 Anti-Drug Abuse Act.

Note that disclosure includes licensee and “any party” – which includes all officers, directors, partners, members, other principals, and persons with 5% or greater ownership interests, even if insulated and/or non-voting.

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**Non-Discriminatory Advertising Certification
(New Provision)**

7. **Non-Discriminatory Advertising Sales Agreements.** Licensee certifies that its advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements held by the licensee contain nondiscrimination clauses.

(continued)

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Non-Discriminatory Advertising Certification *(continued)*:
Commercial licensees must certify that:



- Advertising contracts do not discriminate based on race or ethnicity.**
- All advertising contracts contain nondiscrimination clauses.**

Intended to stop discriminatory “no urban/no Spanish” advertising orders.

Licensee must have “reasonable basis” for certification.

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Non-Discriminatory Advertising Certification *(continued)*:

Time period covered by certification:



Certification not initially adopted until 2008, and not adopted in its currently proposed form until 2010.

Certification uses "present tense" language (*i.e.*, licensee-applicant's contracts "do not discriminate" and "contain" appropriate non-discrimination clauses).

FCC Public Notice states that certification must cover period beginning on March 14, 2011.

(continued)

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Non-discriminatory Advertising Certification *(continued)*:

Our suggested language for contracts:

NONDISCRIMINATION POLICY: [Insert name of licensee] and its station[s] do not discriminate in advertising contracts on the basis of race or ethnicity. Any provision in any order or agreement for advertising that purports to discriminate on the basis of race or ethnicity, even if handwritten, typed, or otherwise made a part of a particular contract, is hereby rejected.

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Biennial Ownership Report Certification

1. **Biennial Ownership Report:** Licensee certifies that the station's Biennial Ownership Report (FCC Form 323 or 323-E) has been filed with the Commission as required by 47 C.F.R. Section 73.3615.

Note: Commercial licensees do not have to file "biennial" Form 323 at license renewal. (Next Form 323 reports are due November 1, 2011.) --BUT, Noncommercial licensees do need to file biennial ownership reports (Form 323-E) at time of renewal.

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EEO Program Certification

2. **EEO Program:** Licensee certifies that:



a. The station's Broadcast EEO Program Report (FCC Form 396) has been filed with the Commission, as required by 47 C.F.R. Section 73.2080(f)(1).

Specify FCC Form 396 File Number

b. The station has posted its most recent Broadcast EEO Public File Report on the station's website, as required by 47 C.F.R. Section 73.2080(c)(6).

(continued)

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EEO Program Certification *(continued):*


Every station must file Form 396 (even if station's employment "unit" has less than 5 full time employees).

Station Employment "unit" with 5 or more full time employees must include two annual "EEO Public File Reports" (if less than 5 full time no Reports are necessary).

Form 396 must be filed *before* Form 303-S so that Form 396 "file" number can be included in Form 303-S.

Website posting certification required *only* for station units with 5 or more full time employees.

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Local Public File Certification

3. **Local Public File.** Licensee certifies that the documentation, required by 47 C.F.R. Sections 73.3526 or 73.3527, as applicable, has been placed in the station's public inspection file at the appropriate times.

Requires certification that *all* documents were placed in file at the time they were due to be placed there.

Certification covers *only* current owner if current owner acquired station through "long-form" assignment or transfer since grant of last renewal. (If certification covers less than whole license term, specific time period covered should be noted in an exhibit.)

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Local Public File (continued):
Public File Violations for Missing Issues/Programs Lists – greatest source of fines in last renewal cycle.
Inconsistent amounts based on numbers of lists:
 10 or more missing lists = \$10,000
 Seven missing lists = \$4,000
Remedial actions to recreate lists expected but may not reduce forfeiture.
No credit for “voluntary disclosure” in renewal (but worse if you do not disclose). Good past record helps.

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**Minimum Operating Schedule Certification
(New Provision -- Radio Only)**

4. **Adherence to Minimum Operating Schedule.** Licensee certifies that, during the preceding license term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days.

If No, submit an Exhibit specifying the exact dates in the preceding license term on which the station was silent or operating for less than its prescribed minimum hours.

(continued)



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Minimum Operating Schedule Certification (continued)
NEW certification regarding any periods of more than 30 days when station was either (a) not operating, i.e. silent or (b) operating for fewer than required minimum operating hours for the station (even if authorized by STA).
Exact dates of off-air or improper reduced hours must be provided in exhibit.
Transmitting test signals does not count as operation.
Question does not ask about reduced “power” operation.

(continued)

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Minimum Operating Schedule Certification *(continued)*:

FCC can grant renewal *only* if it determines station has served the public interest – which may be difficult if station has been off-air for much of license term.

Renewal form does not call for justification or explanation of non-operation, but if compelling reason (*i.e.* natural disaster, unpreventable equipment failure) for non-operation is available, that may be noted in an exhibit.

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Discontinued Operational Status Certifications

5. **Discontinued Operations.** Licensee certifies that during the preceding license term the station has not been silent for any consecutive 12-month period.
6. **Silent Station.** Licensee certifies that the station is currently on the air broadcasting programming intended to be received by the public.

Renewal will *not* be granted if station has been silent for any consecutive 12-month period. For purposes of the certification, station is deemed silent unless it is operating with facilities “authorized” by the Commission.

Renewal will not ordinarily be granted while station is silent.

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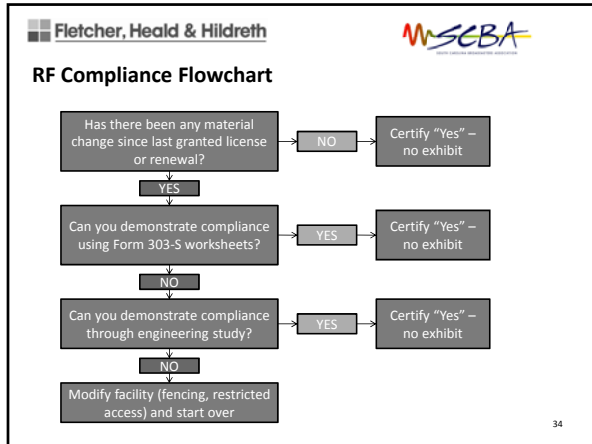
 


Relaxed RF Certification Requirements
(Revised Provision)

Stations’ RF compliance may be certified if no material change in RF environment has occurred since grant of station’s most recent license or renewal application.

If material changes *have* occurred, FCC-provided worksheets may still be used by some applicants to confirm RF compliance.

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Radio-Newspaper Cross-Ownership Certification (New Certification -- Radio Only)

8. **Radio/Newspaper Cross-Ownership.** Licensee certifies that neither the applicant nor any party to this application has an attributable interest in a newspaper which: (1) is published four or more days per week, (2) is in the dominant language in the market, and (3) is published in a community entirely encompassed by:

a. the 1 mV/m contour of one of the FM station(s)? Yes No N/A

b. the 2 mV/m contour of one of the AM station(s)? Yes No N/A

If No to either Question 7.a or 7.b, has the Commission made a finding pursuant to Section 310(d) of the Communications Act that the newspaper/broadcast combination is in the public interest?

(continued)

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Radio-Newspaper Cross-Ownership Certification (continued):

Requires certification of compliance with cross-ownership standards adopted in 2008.

Licensees unable to certify compliance must request waiver of cross-ownership rule or cite to decision approving of the cross-ownership (i.e., pre-1975 grandfathered combinations).

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Violent Programming Certification -- Television Only

4. **Violent Programming.** Licensee certifies that no written comments or suggestions have been received from the public that comment on its station's programming and characterize that programming as constituting violent programming.

If No, submit as an Exhibit a summary of those written comments and suggestions received from the public.

(continued) 37

Violent Programming Certification (continued):

Disclose any written comments, complaints, or suggestions from the public alleging that any station programming was violent.

Certification should cover last three years (comments from public may be discarded after three years).

Provide summary of comments, including date and nature of complaint – do not identify complainant by name.

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Commercial Limits Certification -- Television Only

5. **Children's Programming Commercial Limitations.** For the period of time covered by this application, the licensee certifies that it has complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670. (The limits are no more than 12 minutes of commercial matter per hour during children's programming on weekdays and no more than 10.5 minutes of commercial matter per hour during children's programming on weekends. The limits also apply pro rata to children's programs which are 5 minutes or more and which are not part of a longer block of children's programming.)

If No, submit as an Exhibit a list of each segment of programming 5 minutes or more in duration designed for children 12 years and under and broadcast during the license period which contained commercial matter in excess of the limits. For each programming segment so listed, indicate the length of the segment, the amount of commercial matter contained therein, and an explanation of why the limits were exceeded.

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Commercial Limits Certification (continued):



Certify compliance with FCC restrictions on commercial matter in children's programming (i.e., programming primarily for children 12 and under):

- 12 minutes of commercial matter per hour (weekdays).
- 10.5 minutes of commercial matter per hour (weekends).
- Restrictions on appearance of commercial website addresses.

Requires disclosure of any violations during the license term, including dates, times, nature and extent of violation, and explanation of why violation occurred.

Significant source of fines in last renewal cycle for even seemingly minor violations.

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Children's Programming Report Certification -- Television Only



6. For the period of time covered by this application, the licensee certifies that it has filed with the Commission, and incorporated by reference, the Children's Television Programming Reports (FCC Form 398) as described in 47 C.F.R. Section 73.3526.

If No, submit as an Exhibit a statement of explanation.

Requires certification only as to timely electronic filing of Form 398 each quarter during license term.

Certification does not address substance of reports or placement in the public inspection file (covered in other certifications).

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CORE Children's Programming Certifications -- Television Only

7. For the period of time covered by this application, the licensee certifies that the average number of hours of CORE Programming per week broadcast by the station totaled 3 hours or more (averaged over a six-month period).



8. The licensee certifies that it identifies each CORE Program aired at the beginning of the airing of each program as required by 47 C.F.R. Section 73.673.

If No, submit as an Exhibit a statement of explanation.

9. The licensee certifies that it provides information identifying each CORE Program aired on its station, including an indication of the target child audience, to publishers of program guides as required by 47 C.F.R. Section 73.673.

If No, submit as an Exhibit a statement of explanation.

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CORE Children's Programming Certifications (continued)

Requires certification of compliance with FCC guideline of three hours of "CORE" educational/informational children's programming per week throughout license term.

Requires certification that programs are identified on-air and to program guide providers (i.e., TV Guide, etc.) with "E/I" logo.

Inability to certify to three hours per week of CORE programming may lead to lengthy Commission review of application.

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Children's Programming Report Publicity Certification -- Television Only



10. The licensee certifies that it publicizes the existence and location of the station's Children's Television Programming Reports (FCC Form 398) as required by 47 C.F.R. Section 73.3526(e)(1)(iii).

If No, submit as an Exhibit including the specific steps the applicant intends to implement to ensure compliance in the future.

Requires certification that station provided publicity of the existence and location of its Form 398 Children's Programming Reports.

FCC does not require specific efforts, but expects "reasonable" publicity of reports.

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Children's Programming Other Information -- Television Only

11. The licensee may include as an exhibit any other comments or information it wants the Commission to consider in evaluating compliance with the Children's Television Act. This may include information on any other non-core educational and informational programming that the applicant aired or plans to air, or any existing or proposed non-broadcast efforts that will enhance the educational and informational value of such programming to children. See 47 C.F.R. Section 73.671, Note 1.

Exhibit for any additional information related to compliance with children's programming rules.

If station cannot certify "Yes" to Question 7 (3 hours of CORE programming per week), demonstration of other educational/informational efforts should be included.

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Failed or Failing Station Waiver Justification -- Television Only



16. **Local TV Ownership Waiver.** Has the licensee been granted a "failing" or "marginal" station waiver of 47 C.F.R. Section 73.3555(b)?

If Yes, submit as an Exhibit a specific factual showing of the program-related benefits that have accrued to the public as a result of that waiver.

Only applicable to television stations acquired through waiver of television duopoly rules for failed or failing stations.

Must include exhibit justifying continued waiver of multiple ownership rules by demonstrating program-related public interest benefits of combined ownership.

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Class A Eligibility Certification – Class A Television Only

12. **Continued Class A Eligibility.** Licensee certifies that its station does, and will continue to, broadcast: (a) a minimum of 18 hours per day; and (b) an average of at least 3 hours per week of programming each quarter produced within the market area served by the station, or by a group of commonly controlled low power or Class A stations whose predicted Grade B contours are contiguous.

Requires certification of compliance with local programming and total programming hours requirements for Class A television stations.

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Form 396 – EEO Program Report

Every station employment unit must file Form 396, but unit with 5 or more full time employees must also respond as to annual EEO Public File Reports.

Multi-state employment unit – must file with earliest state

Multi-service employment unit – file with radio *and* TV renewals



Completion of Form requires:

Disclosure of discrimination complaints filed during preceding license term

If 5 or more full time employees, then attach annual Public File Reports for previous *two* years

Attach EEO "Narrative Statement"

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EEO Discrimination Complaints



DISCRIMINATION COMPLAINTS. Have any pending or resolved complaints been filed during this license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)?

If so, provide a brief description of the complaint(s), including the persons involved, the date of the filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

All stations must disclose all pending or resolved complaints filed during license term with any court or agency.

Disclosure should include: Name of person filing complaint, agency and file number, date filed, basis for complaint (e.g., race, gender, age, etc.), resolution or status of complaint.

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EEO Discrimination Complaints *(continued)*:

Sample Disclosure

On August 1, 2007, Jane Smith, an employee of WWW(FM), filed a claim with the Equal Employment Opportunity Commission alleging that Licensee had discriminated against her based on age, race, and gender (Charge Number 1234567). On September 5, 2007, the EEOC dismissed the charge, providing Ms. Smith with 90 days in which to file suit. She did not file suit within the time allowed and the matter is considered closed.

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EEO Annual Public File Reports

Required *only* for employment units with 5 or more full time employees at the time Form 396 is filed.

Copies of annual EEO public file reports due August 1, 2010 and August 1, 2011 must be included as attachments to Form 396.

Reminder: Annual public file reports must include a description of the supplemental EEO initiatives undertaken by station.

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Post-filing Public Notices



Post-filing Public Notices must be broadcast, in station's primary language, on August 1, August 16, September 1, September 16, October 1 and October 16:

- At least three of the six notices must be broadcast during drive-time (7-9 a.m. or 4-6 p.m.)
- At least one between 9 a.m. and noon
- At least one between noon and 4 p.m.
- At least one between 7 p.m. and midnight

Documentation reflecting times and dates of broadcast of all pre- and post-filing notices must be prepared and placed in local public inspection file within 7 days of last announcement.

(continued)

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Language specified in rules (47 C.F.R. §73.3580):

On [date of last license renewal grant], [call sign] was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until December 1, 2011.



Our license will expire on December 1, 2011. We have filed an application for renewal with the FCC.

A copy of this application is available for public inspection during our regular business hours. It contains information concerning this station's performance during the last [time since last renewal grant].

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by November 1, 2011.

Further information concerning the FCC's broadcast license renewal process is available at [public inspection file address] or may be obtained from the FCC, Washington, DC 20554.

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Translators and LPTV Stations -- Post-filing Local Public Notice:

No on-air announcements required.

Must publish a notice one time, immediately after filing, in a local newspaper.

FCC does not require specific language, but announcement must include: Call sign, applicant, community, and transmitter site of translator. Purpose of application (*i.e.* renewal). Date application was filed. Output channel and power of translator. If applicable, call sign, community, and channel of station rebroadcast on translator. Statement inviting comment to the FCC.

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Translators and LPTV Stations -- Local Public Notice (continued):

Text of announcement:

On [date application filed], [licensee] filed an application with the FCC to renew the license of [call sign], which serves [community of license] on [channel or frequency] at [operating power] from a site located at [address or coordinates of transmitter site]. [Call sign] rebroadcasts the signal of radio station [call sign, community of license, and channel or frequency of station rebroadcast].

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC.

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The Renewal Process – Other Post-Filing Issues

Petitions to Deny – due by November 1

License Expires – December 1



Duty to Amend (FCC Rule Section 1.65):

Must report any “substantial and significant” changes

Negative (*i.e.*, felony convictions, new character allegations)

Positive (*i.e.*, resolution of a pending character charge)

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The Renewal Process – Some Preparation Tips

Sooner rather than later:

Review public inspection file

Check and update address with FCC

Review EEO initiatives and discrimination complaints

Arrange for RF study, if necessary

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Questions?
Thank you.

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