

SUPPORTING STATEMENT

A. Justification

1. 47 CFR Section 73.3613 requires that each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall file with the FCC copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 30 days of execution thereof:

(a) Network service: Network affiliation contracts between stations and networks will be reduced to writing and filed as follows:

(1) All network affiliation contracts, agreements, or understandings between a TV broadcast or low power TV station and a national network. For the purposes of this paragraph the term network means any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation.

(2) Each such filing on or after May 1, 1969, initially shall consist of a written instrument containing all of the terms and conditions of such contract, agreement or understanding without reference to any other paper or document by incorporation or otherwise. Subsequent filings may simply set forth renewal, amendment or change, as the case may be, of a particular contract previously filed in accordance herewith.

(3) The FCC shall also be notified of the cancellation or termination of network affiliations, contracts for which are required to be filed by this section.

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

(1) Articles of partnership, association, and incorporation, and changes in such instruments;

(2) Bylaws, and any instruments effecting changes in such bylaws;

(3) Any agreement, document or instrument providing for the assignment of a license or permit, or affecting, directly or indirectly, the ownership or voting rights of the licensee's or permittee's stock (common or preferred, voting or nonvoting), such as:

(i) Agreements for transfer of stock;

(ii) Instruments for the issuance of new stock; or

(iii) Agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation. Pledges, trust agreements, options to purchase stock and other executory agreements are required to be filed. However, trust agreements or abstracts thereof are not required to be filed, unless requested specifically by the FCC.

Should the FCC request an abstract of the trust agreement in lieu of the trust agreement, the licensee or permittee will submit the following information concerning the trust:

- (A) Name of trust;
 - (B) Duration of trust;
 - (C) Number of shares of stock owned;
 - (D) Name of beneficial owner of stock;
 - (E) Name of record owner of stock;
 - (F) Name of the party or parties who have the power to vote or control the vote of the shares; and
 - (G) Any conditions on the powers of voting the stock or any unusual characteristics of the trust.
- (4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of 1 year, and all proxies, whether or not running for a period of 1 year, given without full and detailed instructions binding the nominee to act in a specified manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee within 30 days after the stockholders' meeting in which the stock covered by such proxies has been voted. However, when the licensee or permittee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1% or more of the corporation's voting stock. When the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are not officers or directors or do not hold 1% or more of the corporation's stock, the only information required to be filed is the name of any person voting 1% or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy.
- (5) Mortgage or loan agreements containing provisions restricting the licensee's or permittee's freedom of operation, such as those affecting voting rights, specifying or limiting the amount of dividends payable, the purchase of new equipment, or the maintenance of current assets.
- (6) Any agreement reflecting a change in the officers, directors or stockholders of a corporation, other than the licensee or permittee, having an interest, direct or indirect, in the licensee or permittee as specified by §73.3615.
- (7) Agreements providing for the assignment of a license or permit or agreements for the transfer of stock filed in accordance with FCC application Forms 314, 315, 316 need not be resubmitted pursuant to the terms of this rule provision.
- (c) Personnel: (1) Management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee; station management contracts with any persons, whether or not officers, directors, or regular employees,

which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

(2) The following contracts, agreements, or understandings need not be filed: Agreements with persons regularly employed as general or station managers or salesmen; contracts with program managers or program personnel; contracts with attorneys, accountants or consulting radio engineers; contracts with performers; contracts with station representatives; contracts with labor unions; or any similar agreements.

(d)(1) *Time brokerage agreements (also known as local marketing agreements)*: Time brokerage agreements involving radio stations where the licensee (including all parties under common ownership) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in §73.3555(a), and more than 15 percent of the time of the brokered station, on a weekly basis is brokered by that licensee; time brokerage agreements involving television stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both licensed to the same market as defined in the local television multiple ownership rule contained in §73.3555(b), and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving radio or television stations that would be attributable to the licensee under §73.3555 Note 2, paragraph (i). Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(2) *Joint sales agreements*: Joint sales agreements involving radio stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in §73.3555(a), and more than 15 percent of the advertising time of the brokered station on a weekly basis is brokered by that licensee. Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

History:

On June 2, 2003, the Commission adopted new media ownership rules for the radio and television services in Report and Order (R&O) and Notice of Proposed Rulemaking (NPRM), *In the Matter of 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-277, *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket No. 01-235, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, MM Docket No. 01-317, *Definition of Radio Markets*, MM Docket No. 00-244, and *Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area*, MB Docket No. 03-130, 18 FCC Rcd 13620 (2003).

Certain contracts, agreements, or understandings need not be filed with the FCC under Section 73.3613(e), but must be retained at the station and made available for inspection by the FCC upon request.

In the 2003 R&O, the Commission complied with the statutory mandate to review, reassess, and recalibrate its broadcast ownership rules every two years. The Commission concluded that neither an absolute prohibition on common ownership of daily newspapers and broadcast outlets in the same market, nor an absolute prohibition on common ownership of radio and television outlets in the same market, remained necessary in the public interest. With respect to both of these rules, the Commission found that the ends sought could be achieved with more precision through modified cross-media limits. The R&O also revised the methodology for defining radio markets and counting stations for purposes of the local radio ownership rule, revised the local television multiple ownership rule, modified the national television ownership cap, and retained the dual network rule.¹ The R&O also made joint sales agreements (“JSAs”)² attributable for purposes of determining compliance with the local radio ownership rule and adopts “grandfathering” rules and procedures to address any existing station ownership patterns or JSAs that may cause a party to be out of compliance with the modified rule.

The 2003 NPRM addressed the issue of defining radio markets for areas of the country where Arbitron Metros³ are not defined.

On June 24, 2004, the Court issued an Opinion and Judgment (“Remand Order”) in which it upheld certain aspects of the new ownership rules, including the attribution of JSAs among radio stations, while requiring further explanation for certain other aspects of the new rules. The Court stated that its prior stay of the new rules would remain in effect pending the outcome of the remand proceeding. The Commission has not yet responded to the Remand Order, but in the meantime the Commission filed a petition for rehearing requesting that the Court lift the stay partially – i.e., with respect to the radio ownership and JSA attribution rules which the Court’s Remand Order upheld.

On September 3, 2004, the Court issued an Order (“Rehearing Order”) which partially granted the Commission’s petition for rehearing, thus lifting the stay of the revised radio ownership and JSA attribution rules. As a result of the Rehearing Order, the Commission’s revised radio ownership and JSA attribution rules took effect on September 3, 2004. Implementation of the new radio ownership and JSA attribution rules, as required by the Rehearing Order, triggers the requirement for certain licensees to file JSAs.

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¹ Cross-media ownership issues include, for example, the common ownership of broadcast stations and a newspaper in the same market.

² The JSA is an agreement authorizing a broker to sell advertising time for the brokered station in return for a fee paid to the licensee.

³ The Arbitron Method uses the Metro Survey Areas (Arbitron Metros) established by Arbitron for determining compliance with the FCC’s multiple ownership rules in Arbitron-rated radio markets. Arbitron has defined Arbitron Metros for most of the more populated areas of the country. An Arbitron radio market can consist of up to three geographic areas: Metro Survey Area (Metro or MSA), Total Survey Area (TSA) and, if applicable, and Designated Market Area (DMA).

The Commission is requesting an extension of this submission in order to receive the full three year approval/clearance from OMB.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Sections 154(i), 303 of the Communications Act of 1934, as amended.

2. The contracts filed are used by FCC staff to assure that a licensee maintains full control over the operation and maintenance of the station.
3. The use of information technology is not feasible in this situation.
4. This agency does not impose a similar information collection on the respondents. There are no similar data available.
5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents.
6. The frequency for this collection of information is determined by respondents, as necessary.
7. This collection of information is consistent with the guidelines in 5 CFR §1320.5(d) (2) in that it requires that a contract be retained so long as it is in effect.
8. The Commission published a notice in the *Federal Register* on December 10, 2007 (72 FR 69684) to begin the initial 60 day public notice and comment period under 5 CFR Section 1320.13 of the Paperwork Reduction Act. No comments were received from the public.
9. No payment or gift was provided to respondents.
10. There is no need for confidentiality with this collection of information.
11. This collection of information does not address any private matters of a sensitive nature.
12. The following is estimated for public burden for Section 73.3613:

<u>Contracts Filed</u>	<u>Number of Contracts</u>	<u>Respondent Burden</u>
With FCC	800	0.25 hrs.
In station file	1,500	0.5 hrs

Total Number of Annual Respondents:

800 licensees/permittees filing contracts with the FCC

1,500 licensees/permittees filing contracts w/ broadcast station files

2,300 respondents filing contracts annually

Total Number of Responses: 2,300 respondents x 1 contract/annum/respondent = **2,300 contracts**

(responses)

We assume that the licensee/permittee will use an attorney to file contracts with the Commission. The licensee/permittee will spend 0.25 hours in consultation with the attorney. Also, it will take the licensee/permittee 0.5 hours to prepare in station contract files.

Annual Burden Hours:

800 contracts x 0.25 hours/contract =	200 hours
1,500 contracts x 0.5 hours/contract =	<u>750 hours</u>
Total Annual Burden Hours:	950 hours

Annual "In-House Cost": We estimate that the station licensee/permittee will have an average salary of \$70,000/year (\$33.65/ hour). It will take the licensee/permittee 0.25 hours per contract file to provide information to the outside attorney. This information will be used when the attorney is preparing requisite contracts to be submitted to the Commission. In addition, we assume that the station will use the equivalent of a GS-5 clerical person to maintain the station contract files at \$15.54/hour. Maintaining station contract files is estimated to take clerical staff 0.5 hours per contract file.

800 contracts x 0.25 hours x \$33.65/hour =	\$6,730.00
1,500 contracts x 0.5 hours x \$15.54/hour =	<u>\$11,655.00</u>
Total Annual "In House" Cost:	\$18,385.00

13. Annual Cost Burden: We assume that the respondent would use an attorney to file the requisite contracts. We estimate that the average cost for an attorney is \$200/hour.

Total Annual Cost Burden:

800 contracts x 0.5 hours/contract x \$200/hour = **\$ 80,000**

14. Cost to the Federal Government: The Commission will use paraprofessional staff at the GS-11/Step 5 level (\$31.61/hour) and clerical staff at the GS-5/Step 5 level (\$17.24/hour) to process the contracts filed with the Commission. It will take the GS-11 staff 0.5 hours and the GS-5 staff 0.25 hours to process each contract.

800 contracts x \$31.61/hour/contract x 0.5 hours =	\$12,644.00
800 contracts x \$17.24/hour/contract x 0.25 hours =	<u>\$ 3,448.00</u>
Total Cost to the Federal Government =	\$16,092.00

5. There are no program changes or adjustments to this information collection.

16. The data will not be published.

17. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

18. There are no exceptions to the Certification Statement in Item 19 of OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

This information collection does not employ any statistical methods.