

Title: Application for Renewal of Broadcast Station License, FCC Form 303-S; Section 73.3555(d), Daily Newspaper Cross-Ownership**SUPPORTING STATEMENT****A. Justification:**

1. FCC Form 303-S is used in applying for renewal of license for commercial or noncommercial AM, FM, TV, FM translator, TV translator, Class A TV, or Low Power TV, and Low Power FM broadcast station licenses. Licensees of broadcast stations must apply for renewal of their licenses every eight years.

This collection also includes the third party disclosure requirement of 47 C.F.R. Section 73.3580. This rule requires local public notice of the filing of the renewal application. For AM, FM, Class A TV and TV stations, these announcements are made on-the-air. For FM/TV Translators and AM/FM/TV stations that are silent, the local public notice is accomplished through publication in a newspaper of general circulation in the community or area being served.¹

47 C.F.R. Section 73.3555 is also included in this information collection. Section 73.3555 states that in order to overcome the negative presumption set forth in 47 C.F.R. Section 73.3555(d)(4) with respect to the combination of a major newspaper and television station, the applicant must show² by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth in 47 C.F.R. Section 73.3555(d)(5) will inform this decision. (OMB approval was previously received for the information collection requirements contained in this rule section (waiver showings/filings)).

Revised Information Collection Requirements:

On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the “*Order*”) in MB Docket Nos. 07-294; 06-121; 02-277; 04-228, MM Docket Nos. 01-235; 01-317; 00-244; FCC 07-217. The *Order* adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Consistent with actions taken by the Commission in the *Order*, the following changes are made to Form 303-S: The instructions to Form 303-S have been revised to incorporate a definition of “eligible entity,” which will apply to the Commission’s existing Equity Debt Plus (“EDP”) standard, one of the standards used to determine whether interests are attributable. Section II of the form includes a new certification concerning compliance with the Commission’s rule against discrimination in advertising sales agreements. The instructions for Section II have been revised to include a new description of the certification.

¹ See OMB control number 3060-0214 for the burden associated with the recordkeeping requirement for the newspaper and broadcast notices pursuant to Section 73.3527.

² These showings are done via waiver showings/filings with the Commission.

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Second, commercial broadcast stations are required to operate not less than the minimum operating hours set forth in 47 C.F.R. 73.1740. Noncommercial educational FM stations are required to operate not less than the minimum operating hours set forth in 47 C.F.R. 73.561. Low-power FM stations are required to operate not less than the minimum operating hours set forth in 47 C.F.R. 73.850. Noncommercial educational AM stations are not required to operate on a regular schedule and no minimum hours of operation are specified, but the hours of actual operation during a license period shall be taken into consideration in the renewal of an NCE AM licensee. See 47 C.F.R. 73.1745(b); 47 CFR 73.1740(b). On February, 28, 2001, the Commission released a *Memorandum Opinion and Order* where it held that a station's failure to provide any service during the license term is material to whether it served the public interest, convenience and necessity pursuant to Section 309(k) of the Communications Act of 1934, as amended. Section 309(k) sets forth the standards for broadcast station renewal procedures. *Birach Broadcasting Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020 (2001) ("*Birach*"); 47 U.S.C. § 309(k). It noted that a "licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term." *Birach*, 16 FCC Rcd at 5020.

Consistent with the holding in *Birach*, the Commission's rules for minimum operating schedules, and the statutory requirements under Section 309(k) of the Act, the following changes are made to the Form 303-S: Section III of the form includes a new question, Item 4, requiring licensees to certify 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, consistent with the Commission's rules. If a licensee cannot so certify, it must 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. Section III includes the new certification and the instructions include a new description of the certification.

Section III, Item 7 (previously Item 6) has been revised to eliminate the requirement that full power AM and FM licensees submit an exhibit to demonstrate compliance with the Commission's maximum permissible radio frequency ("RF") electromagnetic exposure limits, in the event that they are unable to complete the RF worksheets contained in the instructions of the form. All licensees continue to be required to certify that their facilities comply with the Commission's maximum permissible RF limits. The elimination of the exhibit requirement for radio broadcasters, conforms the question so it is now consistent with the requirements for licensees of broadcast television stations, translators (FM and TV stations), and low-power FM stations, who are not required to submit an exhibit. The instructions for Section III, Item 7 and Worksheet #1 Environmental have been revised accordingly.

Section V, Item 4 has been revised to clarify that Low Power TV ("LPTV") stations still need to file Form 396 with the renewal application, but that they may or may not need to file a public file report and post it to their website. The word "as" has been replaced with the word "if." The old version of the form stated that stations are required to certify that they have created a public file report and posted it to their websites "as" required by regulation. The instructions have been

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revised to explain that for Section V, Item 4, only LPTV stations that are part of a station employment unit with full-power stations, where the unit employs at least five or more full-time employees, needs to file a public file report and post it to the station website. Other LPTV stations do not have to create a public file report because they do not have a public file.

Finally, a small number of typographical errors have been corrected throughout the instructions and form.

These proposed revisions to FCC Form 303-S need OMB approval.

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, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

2. Agency Use of Information: The data is used by FCC staff to assure that the necessary reports connected with the renewal application have been filed and that the licensee continues to meet basic statutory requirements to remain a licensee of a broadcast station. The local public notice informs the public that the station has filed for license renewal.

3. Consideration Given to Information Technology: The Commission requires applicants to file FCC Form 303-S electronically.

4. Effort to Identify Duplication and Similar Information: There are no similar information collections on respondents.

5. Effort to Reduce Small Business Burden: In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities/businesses.

6. Less Frequent Data Collections: The frequency for this collection of information will ultimately be determined by the expiration of the station license.

7. Information Collection Circumstances: This collection of information is consistent with 5 CFR Section 1320.5(d)(2).

8. Consultations with Persons outside the FCC: Opportunity for public comment on this information collection requirement has been published in the *Federal Register* on October 13, 2010 (75 F.R. 62816). The Commission has received three (3) comments on the Commission's collection of data on Form 303-S in response to the notice published in the *Federal Register*. Clear Channel Broadcasting Licenses, Inc. and the National Association of Broadcasters support the

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Commission's proposed revision to Section III, Item 7 to eliminate the requirement that certain full power AM and FM licensees submit an RF emissions exhibit. They both support the revision because it reduces regulatory burdens and costs.

Station Resource Group and the National Federation of Community Broadcasters have submitted joint comments asking the Commission to include a "n/a" choice for noncommercial stations for Section II, Item 7, which asks licensees to certify that they do not discriminate and that they have nondiscriminatory clauses in their advertising agreements. The commenters state that noncommercial stations do not enter into advertising sales contracts and therefore should not be required to make the certification. The Commission agrees that noncommercial stations should not be required to make the certification with regard to advertising sales contracts, because, by nature of the stations, they do not enter into commercial sales contracts. The Commission, however, does not agree that a "n/a" choice needs to be added to the form because the question will not be displayed for noncommercial stations during the electronic filing process. Specifically, when "noncommercial educational" station is selected in Section I, Item 5 during the electronic filing process, the certification in Section II, Item 7 will not display. As explained in paragraph 15 below, the Commission has reduced the burden hours and burden costs to reflect the fact that only licensees of commercial stations are required to complete the certification.

9. Payment or Gift: No payment or gift was provided to the respondent.

10. Confidentiality of Information: There is no need for confidentiality with this collection of information.

11. Justification for Sensitive Questions: This information collection does not address any private matters of a sensitive nature.

12. Estimate of Annual Burden and Annual Burden Hour Cost: The following estimates are provided for the public burden:³

<u>Service(s)</u>	<u>Number of Applications/Respondents</u>
Commercial AM/FM	1,170
Noncommercial FM	403
FM translators / LPFM	487
AM/FM stations off-the-air	595
Commercial TV	154
Noncommercial TV	49
Class A TV/LPTV/TV translators	588
TV stations off-the-air	375
TOTAL RESPONSES/RESPONDENTS:	3,821

³ Broadcast licenses are typically granted for eight year periods. The annual burden figures listed here were calculated by obtaining the total number of licensed stations and dividing these figures by eight in order to determine the number of applications/respondents on an annual basis, pursuant to OMB requirements.

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These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

The burden on the public is as follows:

Radio Applicants contracting legal portion of form/meeting with contractors to coordinate information

1,170 applications x 50% x 1.5 hour/consultation	= 878 hours
403 applications x 50% x 1.33 hour/consultation	= 268 hours
487 applications x 50% x 1.5 hour/consultation	= 365 hours
595 applications x 50% x 1.5 hour/consultation	= 446 hours

Radio Applicants completing general and legal portion of form without outside contracting assistance/completing form by themselves

1,170 applications x 50% x 3.5 hours/form	= 2,048 hours
403 applications x 50% x 3.33 hours/form	= 671 hours
487 applications x 50% x 3.5 hours/form	= 852 hours
595 applications x 50% x 4.5 hours/form	= 1,339 hours

TV Applicants contracting legal portion of form/meeting with contractors to coordinate information

154 applications x 75% x 2 hours/consultation	= 231 hours
49 applications x 75% x 1.83 hours/consultation	= 67 hours
588 applications x 75% x 1.25 hour/consultation	= 551 hours
375 applications x 75% x 2 hours/consultation	= 563 hours

TV Applicants completing general and legal portion of form without outside contracting assistance/completing form by themselves

154 applications x 25% x 12 hours/form	= 462 hours
49 applications x 25% x 4.83 hours/form	= 59 hours
588 applications x 25% x 3.25 hours/form	= 478 hours
375 applications x 25% x 12 hours/form	= 1,125 hours

TOTAL ANNUAL BURDEN HOURS = 10,403 HOURS⁴

The above estimate was based on the following data:

*We estimate that 50% of radio broadcast licensees will use a communications attorney to complete

⁴ The burden for the respondent to attach waiver showings/filings to the form/application pursuant to 47 CFR 73.3555(d) is accounted for in the burden estimate.

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the legal portion and file the FCC Form 303-S. We estimate that it will take approximately 1.5 hours for commercial applicants and 1.33 hours for non-commercial FM applicants to coordinate information with these attorneys.

*The remaining 50% of radio broadcast licensees will complete the general and legal portions and file the FCC Form 303-S themselves.

*We estimate that 75% of all TV broadcast licensees will use a communications attorney to complete the legal portion and file the FCC Form 303-S. We estimate that it will take approximately 2 hours to coordinate information with these attorneys for a full service commercial TV licensee and 1.83 hours for a noncommercial TV licensee. For a TV translator licensee, we estimate that it will take 1.25 hours to coordinate with counsel.

*The remaining 25% of TV broadcast licensees will complete the general and legal portions and file the FCC 303-S themselves.

ANNUAL “IN-HOUSE COST” - We estimate that the respondents would have an average salary of \$100,000/year (\$48.08/hour):

Radio Applicants contracting legal portion of form/meeting with contractors to coordinate information

1,170 applications x 50% x 1.5 hour/consultation x \$48.08	= \$ 42,190
403 applications x 50% x 1.33 hour/consultation x \$48.08	= \$ 12,885
487 applications x 50% x 1.5 hour/consultation x \$48.08	= \$17,561
595 applications x 50% x 1.5 hour/consultation x \$48.08	= \$ 21,456

Radio Applicants completing general and legal portion of form without outside contracting assistance/completing form themselves

1,170 applications x 50% x 3.5 hours/form x \$48.08	= \$ 98,444
403 applications x 50% x 3.33 hours/form x \$48.08	= \$ 32,261
487 applications x 50% x 3.5 hours/form x \$48.08	= \$ 40,976
595 applications x 50% x 4.5 hours/form x \$48.08	= \$ 64,367

TV Applicants contracting legal portion of form/meeting with contractors to coordinate information

154 applications x 75% x 2 hours/consultation x \$48.08	= \$ 11,106
49 applications x 75% x 1.83 hours/consultation x \$48.08	= \$ 3,234
588 applications x 75% x 1.25 hour/consultation x \$48.08	= \$ 26,505
375 applications x 75% x 2 hours/consultation x \$48.08	= \$ 27,045

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TV Applicants completing general and legal portion of form without outside contracting assistance/completing the form themselves

154 applications x 25% x 12 hours/form x \$48.08	= \$ 22,213
49 applications x 25% x 4.83 hours/form x \$48.08	= \$ 2,845
588 applications x 25% x 3.25 hours/form x \$48.08	= \$ 22,970
375 applications x 25% x 12 hours/form x \$48.08	= \$ 54,090

TOTAL ANNUAL "IN-HOUSE COST" = \$ 500,148

13. Annual Cost Burden: We assume that the 50% of radio respondents and 75% of TV respondents would use a communications attorney to complete the legal portion of the FCC 303-S. This communications attorney is estimated to have an average salary of \$300/hour.

Radio Applicants contracting legal portion of form

1,170 applications x 50% x 2.75 hours x \$300	= \$ 482,625
403 applications x 50% x 2.58 hours x \$300	= \$ 155,961
487 applications x 50% x 2.75 hours x \$300	= \$ 200,888
595 applications x 50% x 3.75 hours x \$300	= \$ 334,688

TV Applicants contracting legal portion of form

154 applications x 75% x 10.5 hours x \$300	= \$ 363,825
49 applications x 75% x 3.33 hours x \$300	= \$ 36,713
588 applications x 75% x 2.5 hours x \$300	= \$ 330,750
375 applications x 75% x 10.5 hours x \$300	= \$ 885,938

A licensee must submit a fee for each commercial application by a AM/FM/TV broadcast station at \$170/application. The fee for each FM/TV Translator broadcast station filed is \$60/application.

1,650 Commercial AM/FM/TV x \$170	= \$ 280,500
1,612 Low Power/Translators x \$60	= \$ 96,720

An AM, FM, TV, Class A TV or LPTV licensee must also give local public notice of the filing of the renewal application over-the-air in accordance with 47 C.F.R. Section 73.3580. There is no direct cost to the licensee for the over-the-air announcement. AM/FM/TV stations that are off-the-air must give local public notice by publishing an announcement 6 times in a newspaper of general circulation in the community or area being served. FM/TV Translator stations must give local public notice by publishing an announcement once in a newspaper of general circulation in the community or area served. The cost of this publication is estimated to be \$250.00/publication.

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261 AM/FM/TV stations off-the-air x 6 publications x \$250/publication = \$ 391,500
 1,305 FM/TV Translators x 1 publication x \$250/publication = \$ 326,250

TOTAL ANNUAL COST BURDEN TO RESPONDENTS: = \$3,886,358

14. Cost to the Federal Government. The Commission will use professional staff at the GS-13/Step 5 level (\$48.35/hour), paraprofessional staff at the GS-11/Step 5 level (\$33.92/hour), and clerical staff at the GS-5 level/Step 5 level (\$18.50/hour) to process the FCC 303-S.

Radio/Translator Applications estimated to be filed: 3,411

Average processing time: 1.55 hours

Clerical	1.25 hours	x	\$18.50/hour x 3,411	= \$ 78,879
Paraprofessional	0.15 hours	x	\$33.92/hour x 3,411	= \$ 17,355
Professional	0.15 hours	x	\$48.35/hour x 3,411	= <u>\$ 24,738</u>
				= \$ 120,972

Commercial TV Applications estimated to be filed: 175

Average processing time: 2.5 hours

Clerical	1.0 hours	x	\$18.50/hour x 175	= \$ 3,238
Paraprofessional	1.5 hours	x	\$48.35/hour x 175	= <u>\$ 12,692</u>
				= \$ 15,930

Noncommercial TV Applications estimated to be filed: 49

Average processing time: 1.5 hours

Clerical	1.0 hours	x	\$18.50/hour x 49	= \$ 907
Paraprofessional	0.5 hours	x	\$48.35/hour x 49	= <u>\$ 1,185</u>
				= \$ 2,092

LPTV/TV Translator Applications estimated to be filed: 943

Average processing time: 1.0 hours

Clerical	.75 hours	x	\$18.50/hour x 943	= \$ 13,084
Paraprofessionals	.25 hours	x	\$33.92/hour x 943	= <u>\$ 7,997</u>
				= \$ 21,081

Total Processing Costs = \$ 160,075

30% Overhead Costs = \$ 48,023

Total Cost to the Federal Government: = \$ 208,098

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15. Reason for Changes in Burden or Cost: We have program changes to the annual burden hours of + 2,676 and cost burden + 1,737,809 due to the Commission's adoption of the Diversity Order and its other changes to the form. Form 303-S has been revised (1) to include a new certification concerning a commercial licensee's compliance with the Commission's rule against discrimination in advertising sales agreements, (2) to include a new certification concerning a station's adherence to its minimum operating schedule during the preceding license term, and (3) to eliminate the requirement that certain full power AM and FM licensees submit an RF emissions exhibit. We also made modifications to the general Instructions for Form 303-S that do not add burdens because they are editorial in nature. The Commission notes that the burden hours and burden costs published in the *Federal Register* on October 13, 2010 (75 F.R. 62816) have been reduced to reflect that only applicants for renewal of commercial broadcast stations are required to complete the new certification in Section II, Item 7 that their advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements contain nondiscrimination clauses. Noncommercial stations, by their own nature, do not enter into commercial sales agreements.

16. Plans for Publication: The data will not be published.

17. Display of OMB Approval Date: We are seeking approval to not display the expiration date of this collection. By displaying the expiration date on this form we are limiting its use to only three years. OMB approval of the expiration date of the information collection will be displayed at 47 CFR Section 0.408.

18. Exceptions to the Certification Statement: The Commission published a Federal Register Notice ("the Notice") on October 13, 2010 (75 F.R. 62816) seeking comments from the public on the information collection requirements contained in this supporting statement. The Commission made changes to the following items that were published in the Notice, the total annual burden hours changed from 10,480 hours to 10,403 hours and the total annual cost burden changed from \$3,898,510 to \$3,886,358. These changes (reductions) were made due to Commission staff re-evaluating the estimated burdens associated with the form after a comment was received requesting clarification that only commercial broadcast stations are required to complete the certification in Section II, Item 7. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.