

INSTRUCTIONS FOR FCC 349

APPLICATION FOR AUTHORITY TO CONSTRUCT OR MAKE CHANGES IN AN FM TRANSLATOR OR FM BOOSTER STATION

GENERAL INSTRUCTIONS

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

- I. General Information
- II. Legal Qualifications
- III. Preparer's Certification (for preparer of engineering sections of the application)
- III-A Engineering Data
- IV. Point System (Noncommercial Educational)

Applicants must complete Sections I, II and III of this application. However, in Section II, an applicant for minor change in facilities need fill out only Items 1, 3, 4, and 5. In Section II, an applicant for major change in facilities need fill out only Items 1, 3, 4, 5, 11, and 12. Applicants for new or major changes to stations operating on channels reserved for noncommercial educational use only (i.e., FM channels 200-220) must submit Section IV as well.

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

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

FCC Rules may be purchased from the Government Printing Office (GPO). Current prices may be obtained from the GPO Customer Service Desk at (202) 512-1803. For payment by credit card, call (202) 512-1800, M-F, 8 a.m. to 4 p.m. e.s.t; facsimile orders may be placed by dialing (202) 518-2233, 24 hours a day. Payment by

check may be made to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954.

C. **Electronic Filing of Application Forms.** The Commission is currently developing electronic versions of various broadcast station application and reporting forms, such as this application form. As each application form and report goes online, the Commission will by Public Notice announce its availability and the procedures to be followed for accessing and filing the application form or report electronically via the Internet. For a six-month period following the issuance of the Public Notice, the subject application form or report can be filed with the Commission either electronically or in a paper format. Electronic filing will become mandatory, on a form-by-form basis, six months after each application form or report becomes available for filing electronically.

D. **Paper Filing of Application Forms.** Applicants that prepare this application in paper form should file an original and two copies of this application and all exhibits. Applicants should follow the procedures set forth in Part 0 and Part 74 of the Commission's Rules. Amendments to previously filed applications should be prepared and submitted in original and two copies, signed in the same manner as the original application, and should contain the following information to identify the associated application:

- (1) Applicant's name.
- (2) Call letters or specify "NEW" station.
- (3) Channel number.
- (4) Community of license.
- (5) File number of application being amended (if known).
- (6) Date of filing of application being amended (if file number is not known).
- (7) Facility ID Number.

E. **Public Notice Requirements.**

- (1) 47 C.F.R. Section 73.3580 requires that applicants for construction permits for new FM translator or FM booster stations and for major change in existing FM translator or FM booster facilities (as defined in 47 C.F.R. Section 74.1233(a)(1)) give local notice in a newspaper of general circulation in the community to which the station is licensed. This publication requirement also applies with

respect to major amendments. See 47 C.F.R. Section 73.3580(g).

- (2) Completion of publication must occur immediately after the tendering for filing of the application or amendment, or immediately following notification to the applicant by the FCC that public notice is required. Compliance or intent to comply with the public notice requirements must be certified by the applicant in this application. The required content of the local notice is described in Paragraph (g) of 47 C.F.R. Section 73.3580; Worksheet #1 attached to these instructions provides additional guidance. Proof of publication need not be filed with this application.
- F. **Public Inspection File.** A copy of the completed application and all related documents shall be made available for inspection by the public. The station records should be maintained at an accessible location in one of the communities of license of the translator or booster, except that the station records of a translator or booster owned by the licensee of the primary station rebroadcast may be kept at the same place where the primary station's records are kept. See 47 C.F.R. Sections 74.1281, 73.1125.
- G. **Defective Applications.** Applicants should provide all information requested by this application. Responses indicating "on file" are not acceptable. If any portions of the application are not applicable, the applicant should so state. **Defective or incomplete applications will be returned without consideration.** Inadvertently accepted applications are also subject to dismissal.
- H. **Current Information.** In accordance with 47 C.F.R. Section 1.65, applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and material changes in the information furnished in this application. This requirement continues until the FCC action on this application is no longer subject to reconsideration by the Commission or review by any court.
- I. **Worksheets and Certifications.** This application requires applicants to certify compliance with many statutory and regulatory requirements. Detailed instructions and worksheets provide additional information regarding Commission rules and policies. These materials are designed to track the standards and criteria which the Commission applies to determine compliance and to increase the reliability of applicant certifications. They are not intended to be a substitute for familiarity with the Communications Act and the Commission's regulations, policies, and precedent. While applicants are required to review all application instructions and worksheets, they are generally not required to complete or retain any documentation created or collected to complete the application. Applicants who claim points in Section IV, however, have different
- requirements, as explained in Section IV.
- J. **Exhibits.** This application is presented primarily in a "Yes/No" certification format. However, it contains places for submitting explanations and exhibits where necessary or appropriate. Each certification constitutes a material representation. Applicants may only mark the "Yes" certification when they are certain that the response is correct. A "No" response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. Thus, a "No" response to a certification item **will not** cause the immediate dismissal of the application if this form provides an "Exhibit Box" for the item, indicating that filing an exhibit is acceptable, and if an appropriate exhibit is submitted.
- K. **Financial Qualifications.** Applicants are not required to certify as to their financial qualifications on FCC Form 349. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses, 13 FCC Rcd 15920, 15989 (1998) ("Auctions Order"). Nevertheless, the Commission's substantive financial qualification requirements are unchanged. All applicants for new broadcast facilities must have reasonable assurance of committed financing sufficient to construct the proposed facility and operate it for three months without revenue **at the time they file the FCC Form 349**. See Liberty Productions, 7 FCC Rcd 7581, 7584 (1992); Merrimack Valley Broadcasting, Inc., 82 FCC 2d 166, 167 (1980).
- L. **Site Certification.** Applicants filing this FCC Form 349 also are not required to certify that the site specified in FCC Form 349 is available for its intended use. See Auctions Order, 13 FCC Rcd at 15988. Nevertheless, the Commission's substantive site availability requirements are unchanged. All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available **at the time they file FCC Form 349**. See William F. and Anne K. Wallace, 49 FCC 2d 1424, 1427 (Rev. Bd. 1989); Genesee Communications, Inc., 3 FCC Rcd 3595 (1988); National Innovative Programming Network, 2 FCC Rcd 5641 (1987).
- M. **Signatures.** **The applicant, or the applicant's authorized representative, must sign the application.** Depending on the nature of the applicant, the application should be signed as follows: if a sole proprietorship, personally; if a partnership, by a general partner; if a corporation, by an officer; for an unincorporated association, by a member who is an officer; if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the application for his or her client, but only in cases of the applicant's disability or absence from the United States. If the application is filed electronically, the signature will consist of the electronic

equivalent of the typed name of the individual. See Report and Order in MM Docket No. 98-43, 13 FCC Rcd 23,056, 23,064 (1998).

INSTRUCTIONS FOR SECTION I – GENERAL INFORMATION

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

Applicants should use only those state abbreviations approved by the U.S. Postal Service.

Facility ID Number. Radio and TV Facility ID Numbers can be obtained at the FCC's Internet Website at www.fcc.gov/mb. Once at this website, scroll down and select CDBS Public Access. You can also obtain your Facility ID Number by calling: Radio -202-418-2700, TV - 202-418-1600. Further, the Facility ID Number is now included on all Radio and TV authorizations and postcards.

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

- C. **Item 3: Fees.** The Commission is statutorily required to collect charges for certain regulatory services to the public. Generally, applicants seeking authority to construct a new broadcast station or modify an outstanding authorization are required to submit a fee with the filing of FCC Form 349. Government entities, however, are exempt from this fee requirement. Exempt entities include possessions, states, cities, counties, towns, villages, municipal organizations, and political organizations or subparts thereof governed by elected or appointed officials exercising sovereign direction over communities or governmental programs. Also exempt are full-service noncommercial educational radio and TV broadcast licensees and permittees, **provided** that the proposed facility will be operated noncommercially. See 47 C.F.R. Section 1.1114.

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

The Commission's fee collection program utilizes a U.S. Treasury lockbox bank for maximum efficiency of collection and processing. Prior to the institution of electronic filing procedures, all FCC Form 349 applications requiring the remittance of a fee, or for which a waiver or deferral from the fee requirement is requested, must be submitted to the appropriate post office box address. See 47 C.F.R. Section 0.401(b). A listing of the required fee and the address to which FCC Form 349 should be mailed or otherwise delivered are also set forth in the "Media Services Fee Filing Guide." This document can be obtained either by writing to the Commission's Forms Distribution Center, 9300 E. Hampton Drive, Capitol Heights, Maryland 20743, or by calling 1-800-418-FORM and leaving a request on the answering machine provided for this purpose. See also 47 C.F.R. Section 1.1104. The Fee Filing Guide also contains a list of the Fee Type Codes needed to complete this application.

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

FCC Form 159 must be submitted with any application subject to a fee received at the Commission.

Procedures for payment of application fees when applications are filed electronically can be found by clicking on the CDBS link to the Electronic Filing Introductory page on the Media Bureau's Home Page website at www.fcc.gov/mb.

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

Applicants hand-delivering FCC Forms 349 may receive dated receipt copies by presenting copies of the applications to the acceptance clerk at the time of delivery. For mailed-in applications, a "return copy" of the application should be furnished and clearly marked as a "return copy." The applicant should attach this copy to a stamped, self-addressed envelope. Only one piece of paper per application will be stamped for receipt purposes.

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

All previous editions obsolete.

FCC 349 Instructions
Edition
Date

D. **Item 4: Facility Information.** This question asks that the applicant specify whether it is applying for an FM translator or an FM booster station as well as the community or communities to which the proposed station will be licensed.

E. **Item 5: Purpose of Application.** This question requires that the applicant identify the purpose of the application and provide certain identifying information for the facilities proposed in the FCC Form 349.

NOTE: In this question, the applicant should specify whether the filing will constitute a "minor" change application/amendment or a "major" change application/amendment. In the case of FM Translator stations, a "major" amendment is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. All other changes will be considered minor.

INSTRUCTIONS FOR SECTION II – LEGAL INFORMATION

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

B. **Item 2: Organization of Applicant.** This question asks the applicant to specify its organizational structure. If the applicant's structure fits none of the categories of business entities enumerated, the applicant must check the box marked "Other" and attach an exhibit describing in detail its organizational structure.

C. **Item 3: Compliance with 47 C.F.R. Section 74.1232(d).** This two-part question relates to the applicant's compliance with the restrictions on FM translator operation adopted by the Commission in MM Docket No. 88-140. In that rulemaking proceeding, the Commission tightened and/or clarified several technical and operational requirements for FM translator stations after affirming that the proper role for that service was to supplement the service provided by full-service FM radio broadcast stations. The amended regulations prohibit the licensee of a commercial FM station that will be rebroadcast, or any entity "having any interest whatsoever [in] or any connection with" the licensee of such a "primary" station, from owning an FM translator that will operate outside the protected service contour of that primary station. Because of the potential for abuse, the Commission intended this restriction to be read very

broadly. Report and Order in MM Docket No. 88-140, 5 FCC Rcd 7212, 7244, note 25 (1990). Therefore, pursuant to 47 C.F.R. §74.1232(d), interested and connected parties include, but are not limited to, group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members, and business associates. "Business associates" has been defined to include a situation in which one of the translator principals owns or works for a business that advertises on the primary station. Letter to Mr. Eric Redd and Christopher D. Imlay, Esq., DA 98-876, 13 FCC Rcd 25,188 (M.M. Bur. 1998). The underlying rationale for this prohibition has been to prevent FM station licensees from using FM translators as a competitive means for extending their stations' service areas.

NOTE: Section 74.1232(d) does not apply to FM translator applicants proposing noncommercial educational operation.

In situations where a licensee establishes that the proposed facility's service contour will include a substantial amount of "white area," the Commission may grant requests for waiver of Section 74.1232(d). The Commission has defined a "white area" as any area outside the coverage contour of **any** full-time aural service. In order for licensees of commercial primary stations to have an interest in or connection with translators serving such areas, the Commission requires a showing of a lack of service in accordance with the stated "white area" definition. See Report and Order in MM Docket No. 88-140, 5 FCC Rcd at 7216; Kevin C. Boyle, Esq., 11 FCC Rcd 2348 (M.M. Bur. 1996).

The Commission adopted rules in MB Docket No. 07-172 that would allow AM stations to use FM translator stations to rebroadcast the AM signal locally, retransmitting their AM programming as a fill-in service. The cross-service translating rules limit FM translators to providing fill-in service only, specifically within the primary AM station's authorized service area. In addition, the Commission limited the cross-service rule changes to "currently authorized FM translators," that is, those translators with licenses or permits in effect as of May 1, 2009. Report and Order in MB Docket 07-172, FCC 09-59, released June 29, 2009.

Accordingly, part "a" of this question asks the applicant to certify that the FM translator applicant is not also the licensee or permittee of the commercial primary station to be rebroadcast and that none of the principals in the FM translator applicant have any interest in or connection with the primary station. If there is any interest or connection whatever, the applicant must answer "No" to this question. The applicant may then disclose or describe the relationship or connection in an appropriate Exhibit.

Part "b" of this question asks the applicant to certify that the FM translator station will be used as a fill-in service.

In the FM service, the coverage contour of the FM translator station must not extend beyond the protected coverage contour of the commercial FM primary station to be rebroadcast. For purposes of this question, the "protected coverage contour" is:

Non-reserved band

Class B Stations 0.5mV/m 54 dBu (50,50) contour

Non-reserved band

Class B1 Stations 0.7 mV/m 57 dBu (50,50) contour

All other FM

Station Classes 1 mV/m 60 dBu (50,50) contour

In the AM service, the FM translator's entire 1 mV/m coverage contour must be contained within the greater of either: (i) the 2 mV/m daytime contour of the commercial AM primary station to be rebroadcast, or (ii) a 25-mile radius centered at the commercial AM primary station's transmitter site.

If the answer to both "a" and "b" is "No" and no waiver has been justified, the application will be dismissed as unacceptable for filing under 47 C.F.R. Sections 73.3566(a) and 74.1232(d).

Applicants for FM booster stations, as well as applicants proposing noncommercial educational translator operation, should mark "N/A" to both parts of this question.

D. Item 4: Compliance with 47 C.F.R. Section 74.1232(e).

This question requires the FM translator applicant to certify that it complies with the rule regarding financial and technical assistance from the primary station to be rebroadcast, which rule also was adopted by the Commission in MM Docket No. 88-140. Applicants proposing FM translator operation for which the translator contour extends beyond the protected contour of the commercial primary station to be rebroadcast may not "receive any support, either directly or indirectly, from the commercial primary FM radio broadcast station" or from any entity "having any interest whatsoever [in] or any connection with" the licensee of such a commercial primary station. See 47 C.F.R. Section 74.1232(e). Pursuant to 47 C.F.R. §74.1232(e), "[i]nterested and connected parties" include but are not limited to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members, and business associates. This provision is to be interpreted very broadly. Report and Order in MM Docket No. 88-140, 5 FCC Rcd at 7244, note 25 (1990). "Business associates" has been defined to include a situation in which one of the translator principals owns or works for a business that advertises on the primary station. Letter to Mr. Eric Redd and Christopher D. Imley, Esq., DA 98-876 13 FCC Rcd 25,188 (M.M. Bur. 1998).

Notwithstanding these restrictions, FM translators may

receive "technical assistance" from the commercial primary station to the extent of installing or repairing equipment or making adjustments to equipment to ensure compliance with the terms of the translator operator's construction permit and license. "Technical assistance" here refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. It does not include the provision of equipment for the translator's operation or direct funding for the translator operator's discretionary use. Furthermore, such technical assistance must occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment. Thus, applicants for new FM translator stations may not be promised or receive financial or technical assistance during the application process from the commercial primary station or any person interested in or connected with that station. Memorandum Opinion and Order in MM Docket No. 88-140, 8 FCC Rcd 5093, 5096 (1993).

47 C.F.R. Section 74.1232(e) provides that an other area FM translator station (i.e., FM translator station whose coverage contour extends beyond the protected contour of the commercial FM primary station) shall not receive any support, before, during, or after construction, either directly or indirectly, from the commercial primary FM radio broadcast station, or from any person or entity having an interest or connection with the commercial primary FM station. For the purposes of this rule, interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members, business associates, and advertisers.

If the translator applicant is receiving or has been promised from the primary station or any party interested in or connected to that station: (1) financial support; (2) technical support over and above what is specified in Section 74.1232(e); or (3) technical assistance of any sort prior to grant of the requested permit, it should answer "No" to this question and provide all pertinent details and, if necessary, request a waiver in the appropriate Exhibit.

Applicants for FM booster stations, as well as applicants proposing noncommercial educational translator operation, should mark "N/A" to this question.

Since the primary station financial support and technical assistance prohibition of Section 74.1232(e) does not apply to "fill-in" FM translators, applicants proposing to rebroadcast the signal of an AM primary station should mark "N/A" to this question.

E. Item 5: Rebroadcast Certification. An FM Translator operator proposing to rebroadcast the signal of a primary station which it does not own must obtain written permission of that station **prior** to retransmission of that signal. See 47 C.F.R. Section 74.1284. Item 5 requires

the applicant to certify that such authority has been received.

Additionally, the Commission must be notified of the call letters of each station rebroadcast, as well as any changes in primary stations.

For purposes of this item, "rebroadcast" means the reception by radio of the programs or other signals of a radio or television station and the simultaneous or subsequent retransmission of such program or signals for direct reception by the general public. See Section 74.1284(a).

FM translator applicants proposing to rebroadcast the signal of stations that they own, as well as applicants for FM booster stations, should mark the box labeled "N/A."

F. Items 6 and 7: Character Issues/Adverse Findings.

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

Where the response to Item 6 is "No," the applicant must submit an exhibit that includes an identification of the party having had the interest, the call letters and location of the station or file number of the application or docket, and a description of the nature of the interest or connection, including relevant dates. The applicant should also fully explain why the unresolved character issue is not an impediment to a grant of this application.

In responding to Item 7, the applicant should consider any relevant adverse finding that occurred within the past ten years. Where that adverse finding was fully disclosed to the Commission in an application filed on behalf of this station or in another broadcast station application and the Commission, by specific ruling or by subsequent grant of the application, found the adverse finding not to be disqualifying, it need not be reported again and the applicant may respond "Yes" to this item. However, an adverse finding that has not been reported to the Commission and considered in connection with a prior application would require a "No" response.

Where the response to Item 7 is "No," the applicant must provide in an exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another pending application, or as required by 47 C.F.R. Section 1.65(c), the applicant need only provide an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing. The applicant should also fully explain why the adverse finding is not an impediment to a grant of this application.

NOTE: As used in this question, the term "party to the application" includes any individual or entity whose ownership or positional interest in the applicant is attributable. An attributable interest is an ownership interest in or relation to an applicant or licensee which will confer on its holder that degree of influence or control over the applicant or licensee sufficient to implicate the Commission's multiple ownership rules. See 47 C.F.R. Section 73.3555, as revised and explained in Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, FCC 99-207, released August 6, 1999, on reconsideration, FCC 00-438, released January 19, 2001. See also, Report and Order in MM Docket No. 83-46, 97 FCC 2d 997 (1984), reconsideration granted in part, 58 RR 2d 604 (1985), further modified on reconsideration, 61 RR 2d 739 (1986). General guidelines are set forth below.

INVESTORS AND CREDITORS: Certain interests held by substantial investors in, or creditors of, the applicant may be attributable and the investor reportable as a party to the application, if the interest falls within the Commission's equity/debt plus (**EDP**) attribution standard. Under the **EDP** standard, the interest held, aggregating both equity and debt, must exceed 33% of the total asset value (all equity plus all debt) of the applicant, a broadcast station licensee, cable television system, daily newspaper or other media outlet subject to the Commission's broadcast multiple ownership rules **AND** the interest holder must either also hold an attributable interest in a media outlet in the same market or supply over 15% of the total weekly broadcast programming hours of the station in which the interest is held. For example, the equity interest of an insulated limited partner in a limited partnership applicant would normally not be considered attributable. However, under the **EDP** standard, that interest would be attributable if the limited partner's interest exceeded 33% of the applicant's total asset value **AND** the limited partner also held a 5% voting interest in a radio or television station licensee in the same market.

INDIVIDUAL APPLICANT: The natural person seeking to hold in his or her own right the authorization

specified in this application is a party to the application.

PARTNERSHIP APPLICANT: Each partner, including all limited partners may be parties to the application. However, a limited partner in a limited partnership is **not** considered a party to the application **IF** the limited partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership. Sufficient insulation of a limited partner for purposes of this certification would be assured if the limited partnership arrangement:

- (1) specifies that any exempt limited partner (if not a natural person, its directors, officers, partners, etc.) cannot act as an employee of the limited partnership if his or her functions, directly or indirectly, relate to the media enterprises of the company;
- (2) bars any exempt limited partner from serving, in any material capacity, as an independent contractor or agent with respect to the partnership's media enterprises;
- (3) restricts any exempted limited partner from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business;
- (4) empowers the general partner to veto any admissions of additional general partners admitted by vote of the exempt limited partners;
- (5) prohibits any exempt limited partner from voting on the removal of a general partner or limits this right to situations where the general partner is subject to bankruptcy proceedings, as described in Sections 402 (4)-(5) of the Revised Uniform Limited Partnership Act, is adjudicated incompetent by a court of competent jurisdiction, or is removed for cause, as determined by an independent party;
- (6) bars any exempt limited partner from performing any services to the limited partnership materially relating to its media activities, with the exception of making loans to, or acting as a surety for, the business; and
- (7) states, in express terms, that any exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership.

Notwithstanding conformance of the partnership agreement to these criteria, however, the requisite certification cannot be made **IF** the limited partner's interest is attributable under the Commission's Equity/Debt Plus attribution standard described below; or **IF** the respondent has actual knowledge of a material involvement of a limited partner in the management or operation of the media-related businesses of the partnership. In the event that the respondent cannot

certify as to the noninvolvement of a limited partner, the limited partner will be considered as a holder of an attributable interest.

LIMITED LIABILITY COMPANY APPLICANT: The Commission treats a LLC as a limited partnership, each of whose members is considered to be a party to the application. However, where a LLC member is insulated in the manner specified above with respect to a limited partnership and where the relevant state statute authorizing the LLC permits a LLC member to insulate itself in accordance with the Commission's criteria, that LLC member is not considered a party to the application.

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

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

If a single entity holds more than 50% of the voting stock and a simple majority is all that is required to control corporate affairs, and minority interest was acquired before December 14, 2000, no other stockholder need be

reported, unless that entity's interest is attributable under the Commission's Equity/Debt Plus attribution standard described above. If the minority interest was acquired on or after December 14, 2000, it must be reported.

An investment company, insurance company or trust department of a bank is not considered a party to this application, **IF** its aggregated holding accounts for less than 20% of the outstanding votes in the applicant **AND IF**:

- (1) such entity exercises no influence or control over the corporation, directly or indirectly; and
- (2) such entity has no representatives among the officers and directors of the corporation.

ANY OTHER APPLICANT: Each executive officer, member of the governing board and owner or holder of 5% or more of the votes in the applicant is considered a party to the application.

G. **Item 8: Alien Ownership and Control.** All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit or station license to an alien, a representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any entity of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or an entity organized under the laws of a foreign country. The Commission may also deny a construction permit or station license to a licensee directly or indirectly controlled by another entity of which more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or another entity organized under the laws of a foreign country. Any such applicant seeking Commission consent to exceed this 25% benchmark in Section 310(b)(4) of the Act must do so by filing a petition for declaratory ruling pursuant to Section 1.5000 *et seq.* of the Commission's rules.

Compliance with Section 310 is determined by means of a two-prong analysis, one pertaining to voting interests and the second to ownership interests. See, e.g., BBC License Subsidiary L.P., 10 FCC Rcd 10968 (1995). The voting interests held by aliens in a licensee through intervening domestically organized entities are determined in accordance with the multiplier guidelines for calculating indirect ownership interests in an applicant as set forth in the "Corporate Applicant" Instructions above. For example, if an alien held a 30-percent voting interest in Corporation A which, in turn, held a non-controlling 40-percent voting interest in Licensee Corporation B, the alien interest in Licensee Corporation B would be calculated by multiplying the alien's interest in Corporation A by that entity's voting interest in Licensee

Corporation B. The resulting voting interest (30% x 40% = 12%) would not exceed the 25% statutory benchmark. However, if Corporation A held a controlling 60% voting interest in Corporation B, the multiplier would not be utilized and the full 30 percent alien voting interest in Corporation A would be treated as a 30 percent interest in Licensee Corporation B, *i.e.*, an impermissible 30% indirect alien voting interest in the licensee. If Partnership A held a 40% voting interest in Licensee Corporation B, that voting interest would be similarly impermissible if any general partner or any non-insulated limited partner of partnership A was an alien, regardless of his or her partnership interest. See also *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, FCC 16-128, paras. 67-72 (rel. Sept. 30, 2016) (2016 *Foreign Ownership Order*).

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

In order to complete this two-prong analysis, an applicant must determine the citizenship of each entity holding either a voting or equity interest or explain how it determined the relevant percentages. Corporate applicants and licensees whose stock is publicly traded must determine the citizenship of interest holders who are known or should be known to the company in its ordinary course of business, including: (1) registered shareholders; (2) officers, directors, and employees; (3) interest holders reported to the Securities and Exchange Commission; (4) beneficial owners identified in annual or quarterly reports and proxy statements; and (5) any other interest holders that are actually known to the company, such as through transactions, litigation, proxies, or any other source. Statistical sampling surveys are no longer necessary. Although direct inquiry and publicly available resources may be used to determine citizenship of known or should-be-known interest holders, street addresses are not sufficient for this purpose. For more detailed information on identifying and calculating foreign interests, see 2016 *Foreign Ownership Order*, paras. 44-72.

If the combined total foreign ownership (foreign voting interests and foreign equity interests) identified under this methodology does not exceed 25%, a declaratory ruling is not necessary to grant the application. A subsidiary or affiliate of a licensee already named in a foreign ownership declaratory ruling may rely on that ruling, and by certifying compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign

governments, certifies that it and the licensee named in the declaratory ruling are in compliance with the terms and conditions of the original foreign ownership declaratory ruling. See 47 CFR § 1.5004(b).

applicant's eligibility as a small business, including the establishment of de facto and de jure control; and to list and summarize any investor protection agreements. See 47 C.F.R. Section 1.2112(b).

H. **Item 9: Programming.** Applicants for broadcast construction permits need no longer file a specific program service proposal. Nevertheless, prior to making the certification called for in Item 9, the applicant should familiarize itself with its obligation to provide programming responsive to the needs and interests of the residents of its community of license. See Programming Information in Broadcast Applications, 3 FCC Rcd 5467 (1988).

I. **Item 10: Local Public Notice.** Applicants should refer to General Instruction E, above, to respond to this question.

J. **Item 11: Auction Authorization.** The Commission's Part 1 auction rules require all winning bidders for construction permits or licenses to include certain exhibits with their long-form applications. **If this application is being submitted to obtain a construction permit for which the applicant was a winning bidder in an auction**, then the applicant must, pursuant to 47 C.F.R. Section 73.5005(a), include an exhibit containing the information required by the following Part 1 auction rules, if applicable.

- (1) Section 1.2107(d) requires the applicant to provide a detailed explanation of the terms, conditions, and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement it had entered into relating to the competitive bidding process. See 47 C.F.R. Section 1.2107(d).
- (2) Section 1.2110(i) requires applicants claiming designated entity status to describe how they satisfy the requirements for eligibility for such status, and to list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements, and any other agreements, including oral agreements, which establish that the designated entity will have both de facto and de jure control of the entity. See 47 C.F.R. Section 1.2110(i).
- (3) Section 1.2112(a) requires that each long-form application fully disclose the real party or parties in interest and disclose specified ownership information, including identifying any party holding a 10 percent or greater interest in the applicant. See 47 C.F.R. Section 1.2112(a).
- (4) Section 1.2112(b) requires each applicant claiming status as a "small business" to disclose specified gross revenue information; to list and summarize all agreements or instruments that support the

K. **Item 12: Anti-Drug Abuse Act Certification.** This question requires the applicant to certify that neither it nor any party to the application is subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

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

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

L. **Item 13. Equal Employment Opportunity Program.** Applicants seeking authority to construct a new broadcast station are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time employees in its station employment unit must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asian or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). This program is submitted to the Commission as the Model EEO Program on FCC Form 396-A, which should be filed simultaneously with this application. If an applicant proposes to employ less than five full-time employees in its station employment unit, no EEO program for women or minorities need be filed.

General guidelines for developing an Equal Employment Opportunity program are set forth in FCC Form 396-A.

INSTRUCTIONS FOR SECTION III – PREPARER'S

All previous editions obsolete.

FCC 349 Instructions
Edition
Date

CERTIFICATION AND ENGINEERING DATA

- A. **Preparer's Certification.** When someone other than the applicant has prepared the engineering section of the FCC Form 349, Section III requires that person to certify, to the best of his/her knowledge and belief, the veracity of the technical data supplied. The Section III preparer's certification on Page 3 of FCC Form 349 need not be completed if the engineering portion of the application has been prepared by the applicant. In that event, the applicant's certification on Page 3 of FCC Form 349 will encompass both the legal and engineering sections of the application.
- B. **General Engineering Instructions for Section III-A.** The engineering section contains a "Tech Box" to incorporate in one central location all critical technical data required for engineering review. In the event that there are any discrepancies between data in the "Tech Box" and data submitted elsewhere in the application, the data in the "Tech Box" will be controlling.
- C. **Notification Requirements.** All applicants must comply with the requirements of 47 C.F.R. Section 73.1030. Specifically, applicants must notify United States Government radio astronomy installations, radio receiving installations, and FCC monitoring stations of the proposed facility and its possible impact on their operations. The Commission need not be informed of the date of such notification.

SECTION III-A – ENGINEERING

- A. **Tech Box:** The applicant must accurately specify the requested facilities in Items 1 through 10 of the Tech Box. Conflicting data found elsewhere in the application will be disregarded. All items must be completed. The response "on file" is not acceptable. The response "not applicable" is not acceptable unless otherwise noted below.

Item 1: Channel. The proposed channel must be between 201 and 300. See 47 C.F.R. Section 73.201.

Item 2: Primary Station. The Call Sign, City, State, and Channel of the station to be rebroadcast must be entered.

Item 3: Delivery Method. The proposed signal delivery method must comply with 47 C.F.R. Section 74.1231. The restrictions are as follows:

- All FM translators may retransmit the signal of a primary FM or AM radio broadcast station, or another translator which has been received over the air, converted to the authorized channel, and suitably amplified.
- FM translators providing "fill-in" service – i.e., the FM translator's (a) 1 mV/m coverage contour does not extend beyond the protected contour of

the commercial FM primary station to be rebroadcast, or (b) entire 1mV/m coverage contour is contained within the greater of either: (i) the 2 mV/m daytime contour of the commercial AM primary station to be rebroadcast, or (ii) a 25-mile radius centered at the commercial AM primary station's transmitter site, and the FM translator's 1mV/m coverage contour does not extend beyond a 40-mile radius centered at the AM station's transmitter site – may use over-the-air reception or terrestrial facilities to receive the primary signal rebroadcast.

- An FM booster station or a noncommercial educational FM translator station **operating on a reserved channel (channels 201-220, 88.1 MHz-92.1 MHz) which is owned and operated by the licensee of the primary noncommercial educational FM station being rebroadcast** may use over-the-air reception as well as alternative signal delivery methods, including satellite and terrestrial microwave facilities.

If the signal is to be received via another translator, indicate the call sign of that translator in the space provided.

Item 4: Antenna Location Coordinates. The proposed antenna site must be specified using North American Datum 27 (NAD 27) coordinates. Coordinates read from GPS receivers must be converted to NAD 27 before use.

Item 5: Antenna Structure Registration Number. Most towers greater than 61 meters (200 feet) in height, or those located near airports require antenna registration numbers. See 47 C.F.R. Section 17.4. If the tower does not require registration, indicate that registration is Not Applicable, or if the FAA has not yet ruled on a proposed structure, indicate whether the FAA Notification has been filed with the FAA.

Items 6-8: Elevation and Heights. All heights must be in meters, rounded to the nearest whole number.

Item 9: Effective Radiated Power. The effective radiated power must be entered in kilowatts, and rounded pursuant to 47 C.F.R. Section 73.212.

Item 10: Transmitting Antenna. All applicants must indicate what type of antenna is to be used, along with the antenna manufacturer and model number. Applicants proposing a directional antenna must specify the antenna rotation in whole degrees. Applicants proposing a directional composite antenna must also complete all other sections in Item 10. Relative field values (0.001-1.000) must be entered for every 10 degrees on the unit circle. Up to five azimuths may be added at the bottom of the table for additional accuracy. If the "No Rotation" box is checked, the antenna pattern will be entered with 0 Degrees oriented towards True North in the Commission's

database. However, if the "Rotation" question is completed, the antenna pattern will be rotated clockwise by the number of whole degrees indicated in the "Rotation" box. For example, if the maximum relative field value from the table is 0 Degrees, and the Rotation is 135 Degrees, the maximum lobe of the antenna will be oriented at 135 Degrees in the Commission's database. All directional antennas must comply with 47 C.F.R. Section 74.1235(i)

- B. **Additional questions.** Certification 11 need only be answered by FM Booster applicants and Fill-in FM Translator applicants. All applicants must complete certifications 12-15.

Item 11: Fill-in Translator/Booster service area. Applicants for FM fill-in translator stations or for FM Booster stations must certify that the proposed facility coverage contour complies with the specific service restrictions. See 47 C.F.R. Sections 74.1201(g) and 74.1232(d) and (f).

In the FM service, the coverage contour of the FM translator station must not extend beyond the protected coverage contour of the commercial FM primary station to be rebroadcast. For purposes of this question, the "protected coverage contour" is:

Non-reserved band
Class B Stations 0.5mV/m 54 dBu (50,50) contour

Non-reserved band
Class B1 Stations 0.7 mV/m 57 dBu (50,50) contour

All other FM
Station Classes 1 mV/m 60 dBu (50,50) contour

In the AM service, the FM translator's entire 1 mV/m coverage contour must be contained within the greater of either: (i) the 2 mV/m daytime contour of the commercial AM primary station to be rebroadcast, or (ii) a 25-mile radius centered at the commercial AM primary station's transmitter site.

FM Booster stations must certify that the service contour of the proposed facility is completely within the protected coverage contour of the primary station it rebroadcasts.

FM Booster stations will only be authorized to the licensee or permittee of the FM station whose signals the booster will rebroadcast. See 47 C.F.R. Section 74.1232(f).

Applicants for Non-fill-in or partial fill-in FM Translators should mark "N/A" to this question. However, a Non-fill-in or partial fill-in FM translator station rebroadcasting a commercial FM station may not be authorized to the licensee of the station it rebroadcasts. See 47 C.F.R. Section 74.1232(d). See Item 3, Legal Certifications.

Item 12: Interference. The applicant must certify that the proposal complies with the Commission's contour overlap and interference protection provisions. In order to answer "Yes" to this question, the applicant must submit exhibits with sufficient information to demonstrate that the proposed facility complies with the applicable rule sections.

All proposed translator and booster facilities must provide exhibits demonstrating compliance with 47 C.F.R. Section 74.1204. Failure to provide exhibits demonstrating lack of prohibited overlap may result in dismissal of the application.

Any proposed translator on the reserved band (channels 201-220) must provide exhibits demonstrating compliance with 47 C.F.R. Section 74.1205. If compliance with Section 74.1205 is by an agreement, the application must include a copy of that agreement. See 47 C.F.R. Section 74.1205(a). Proposed translators must protect all full-service TV6 stations, low power TV6 stations, and previously authorized TV6 translator stations.

Item 13: Unattended Operation. FM Translator and booster stations may be operated without a designated person in attendance **if the following requirements are met:**

- (1) If the transmitter site is not readily accessible at all hours and in all seasons, the translator/booster operator has established a way to turn the transmitting apparatus on or off from a point that is readily accessible at all hours and in all seasons.
- (2) The transmitter is equipped with circuits that will automatically shut down the transmitter in the absence of a signal on the input channel.
- (3) The on/off control, if at a location other than at the transmitter site, is protected from tampering.
- (4) The Commission is supplied with the name, address, and telephone number of at least one person who may be contacted to secure suspension of operation should such action be deemed necessary by the Commission.
- (5) If lighting and painting of the antenna and supporting structure are required, the translator/booster operator will make arrangements for daily inspection and logging of the lighting and associated control equipment, as required by 47 C.F.R. Sections 17.47-17.49.

See 47 C.F.R. Section 74.1234. Accordingly, Item 13 asks whether the applicant either does not propose "unattended operation" of its facility, or, if unattended

operation is proposed, Item 13 asks the applicant to certify that it will comply with Section 74.1234.

Item 14: Multiple Translators. This question requires the applicant to certify that it does not have any interest in an FM translator that serves substantially the same area and that rebroadcasts the same signal as the proposed translator. If it cannot so certify, the applicant must demonstrate the **technical need** for the additional translator. See Section 74.1232(b).

Item 15: Environmental Protection Act. The National Environmental Policy Act of 1969 requires all federal agencies to ensure that the human environment is given consideration in all agency decision-making. Since January 1, 1986, applications for new broadcast stations, modifications of existing stations, and license renewals must contain either an environmental assessment that will serve as the basis for further Commission review and action, or an indication that operation of the station will not have a significant environmental impact. See Section 1.1307(b). In this regard, applicants are required to look at eight environmental factors. These factors are self-explanatory, except for the evaluation of whether the station adequately protects the public and workers from potentially harmful radiofrequency (RF) electromagnetic fields. Worksheet #2 includes both a general environmental evaluation and specific sub-sections for RF exposure analysis. These pages are designed to facilitate and substantiate the certification called for in Section IIIA, Item 15. Their use is voluntary, but strongly encouraged.

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

General population/uncontrolled exposure limits apply to situations in which the general public may be exposed or in which persons who are exposed as a consequence of their employment may not be made fully aware of the potential for exposure or cannot exercise control over their exposure. Members of the general public are always considered under this category when exposure is not employment-related.

Occupational/controlled exposure limits apply to human exposure to RF fields when persons are exposed as a consequence of their employment and in which those persons who are exposed have been made fully aware of the potential for exposure and can exercise control over their exposure. These limits also apply where exposure is of a transient nature as a result of incidental passage through a location where exposure levels may be above the

general populations/uncontrolled limits as long as the exposed person has been made fully aware of the potential for exposure and can exercise control over his or her exposure by leaving the area or some other appropriate means.

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

The RF worksheets and tables appended to Worksheet 2 will enable certain categories of stations to determine whether or not the proposed facility will have a significant environmental impact as defined by 47 C.F.R. Section 1.1307. All applicants can use the general Environmental Worksheet. Some, but not all, stations will be able to use the RF worksheets. Generally, the RF worksheets can only be used in the following situations: (1) single use tower; (2) single tower with several FM/FM translators; or (3) a multiple tower AM array with no other user co-located within the array. Additionally, the RF worksheets can be used in regard to an AM station only if access to the AM station is restricted by a fence or other barrier that will preclude casual or inadvertent access to the site and warning signs are posted at appropriate intervals describing the potential for RF exposure. See "RF Exposure Compliance Worksheet Instructions" for more detail on eligibility.

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

If the applicant is not eligible to use the worksheets, it is not an indication that the proposed facility will cause excessive exposure. Generally, applicants that are not

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

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

- (1) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high-intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.
- (2) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) by zoning, planning, environmental and other local, state, or federal authorities on matters relating to environmental effects.
- (3) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.
- (4) A discussion of environmental and other considerations that led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects; and any alternative sites or facilities that have been or reasonably might be considered.
- (5) If relevant, a statement why the site cannot meet the FCC guidelines for RF exposure with respect to the public and workers.

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

SECTION IV – POINT SYSTEM FACTORS

On channels reserved for noncommercial educational use, the Commission will grant the application of a translator providing fill-in service over one that extends the area of the primary station. In the event of conflicting mutually

exclusive applications of the same type (fill-in or non fill-in), however, the Commission will conduct a paper hearing process by applying a point system to select one application for grant. The point system was established in Report and Order, Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Docket No. 95-31, FCC 00-120, 15 FCC Rcd 7386 (2000). The applicant's qualification for points is determined as of the closing of the filing window, assuming the applicant continues to qualify for all points claimed at the time of selection. Thus, points cannot be enhanced by changes made after the close of the deadline for filing of competing applications, but may be reduced by such changes.

Item 1: Established Local Applicant. Applicant should complete Worksheet #3. Established local applicants may claim 3 points. An applicant is considered established if it has been local for at least the 24 months immediately preceding application. A nongovernmental applicant is local if, within 25 miles of the reference coordinates for the proposed community of license, applicant has a school campus, its primary physical headquarters, or the primary residences of 75% of its governing board members. A local headquarters or residence must be a primary place of business or residence and not, for example, a post office box, lawyer's office, branch office, or vacation home. Governments are also considered local throughout the area within their jurisdiction (For example, a state government is local throughout a state, whereas a city Board of Education is local throughout the city). An applicant claiming points as an established local applicant, must place supporting documentation in a local public inspection file and submit to the Commission copies of the documentation. Examples of acceptable documentation include corporate material from the secretary of state, lists of names, addresses, and length of residence of board members, and copies of governing documents requiring a 75% local governing board, course brochures indicating that classes have been offered at a local campus for the preceeding two years, etc.

Item 2: Diversity of Ownership: If no party to the application has an attributable interest in another authorized station with an overlapping principal community contour, the applicant can claim 2 points. Parties are those people or entities defined in the Instructions to Section II, Items 6 and 7. For purposes of this question, only same service stations (radio or TV) are relevant. For example, an applicant for a new noncommercial educational FM translator station must consider whether there are attributable interests in overlapping radio stations (AM or FM stations and FM translators), but need not consider any attributable TV station for purposes of claiming this point. When counting translator stations count all non-fill-in stations, *i.e.*, those that extend outside the applicant's primary station's service contour. An applicant claiming points for diversity of ownership must place supporting documentation in a local public inspection file and submit to the Commission copies of the documentation. The preferred documentation is a contour map showing the principal community contours of the proposed station and of other attributable stations whose

principal community contours overlap or come within 10 miles of the proposed station's contours. Applicants with no other attributable stations or with attributable stations more distant should so state.

Item 3: State-wide Network: If the Applicant has not claimed a credit for local diversity in Question 2 above, it should complete Worksheet 4 to see whether it qualifies for a 2 point credit as a state-wide network. Applicants may not claim both the state-wide network and local diversity credit. Both public and private entities can qualify for the state-wide network credit, provided that they meet the requirements set out in 47 C.F.R. Section 73.7003(b)(3), which are incorporated into Worksheet 4. National and regional networks generally will not qualify for this credit. Applicants who determine, after completing Worksheet 4, that they qualify should answer "Yes." All others should answer "No." Applicants claiming points as a state-wide network must place supporting documentation in their local public inspection file and submit to the Commission copies of the documentation. Preferred documentation includes identification of the names, locations, accrediting bodies, and number of schools which the applicant is currently serving and those that it will serve, and an indication of whether the schools are under the applicant's jurisdiction or are being served pursuant to a coordinated agreement with another authority. If the schools are not under the applicant's jurisdiction, the applicant should include documentation of the terms of its agreement with the entity with authority over the schools.

Item 4: Technical Parameters. An applicant that provides the best technical proposal among the competing applicants, in terms of area and population served, may be eligible for additional points. Applicant should indicate the area and population within its proposed 60 dBu service contour. Area must be measured in square kilometers and exclude significant areas of water, e.g., ocean and lakes. Population should be measured using the most recent census block data available from the United States Bureau of Census. If applicant's claimed coverage is superior to all others in terms of both area and population by at least 10%, the Commission will award 1 point. If the proposal is superior to all others by at least 25%, the Commission will instead award 2 points. The applicant should place in its local public inspection file a statement of how the technical parameters were calculated, e.g., the year and blocks of census information used, and the method used to determine area, including the amount of area excluded for specific large areas of water. The applicant should submit to the Commission copies of this information.

Tie Breakers

If two or more applicants are tied under the point system, the Commission will apply a series of tie breakers, until the tie is broken. If the tie cannot be broken by Questions 5 or 6 below or by voluntary settlement, the Commission will select the first application received.

Item 5(a): Existing Authorizations. If mutually exclusive applicants differ in their number of existing authorizations, the applicant with the fewest attributable authorizations at the time of filing will be chosen. Applicant should indicate the number of attributable radio authorizations held by parties to the application nationwide. Include both licenses and construction permits, whether commercial or noncommercial. Count all full service AM and FM stations. Count translator stations providing non-fill-in service (i.e., those extending a station's service area). Do not count translators providing fill-in only service in determining the number of stations for this question.

Item 5(b): Indicate the number of other attributable fill-in authorizations. The Commission will consider this in the event of a tie between applicants seeking fill-in service.

Item 6: Pending Applications. If a tie remains between mutually exclusive applicants after considering question 5 (existing authorizations), the Commission will select the applicant with the fewest pending radio applications at the time of filing. Applicant should indicate the number of applications in which parties to the application hold an attributable interest. Include applications for new stations and for major changes to existing stations, whether commercial or noncommercial full service or translator (other than fill-in station). Do not include other applications (e.g., voluntary assignment of license, license renewal, minor change in existing facilities.)

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PAPERWORK REDUCTION ACT

We have estimated that each response to this collection of information will take 1.0 to 1.5 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this burden estimate, or on how we can improve the collection and reduce the burden it causes you, please e-mail them to pra@fcc.gov or send them to the Federal Communications Commission, AMD-PERF, Paperwork Reduction Project (3060-0405), Washington, DC 20554. Please DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0405.

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