

FCC 345

APPLICATION FOR CONSENT TO ASSIGN CONSTRUCTION PERMIT OR LICENSE FOR TV OR FM TRANSLATOR STATION OR LOW POWER TELEVISION STATION OR TO TRANSFER CONTROL OF ENTITY HOLDING TV OR FM TRANSLATOR OR LOW POWER TELEVISION STATION

GENERAL INSTRUCTIONS

A. **When to Use This Form.** This form is to be used when applying for FCC consent to: (1) assign the construction permit or license for a TV or FM translator station or a low power television station; (2) transfer control of an entity holding a TV or FM translator station or a low power television station; or (3) assign or transfer any associated auxiliary stations (*see* 47 C.F.R. Part 74, SubParts D, E, F, and H) and UHF translator booster stations (*see* 47 C.F.R. Section 74.701), **provided that** the transaction does not also involve the transfer or assignment of a commonly owned or controlled primary station.

NOTE: When the licensee/permittee of a commonly owned or controlled primary station is filing an application for assignment of a permit or license or for transfer of control, the licensee/permittee of the primary station shall include all associated booster and auxiliary authorizations in its application on FCC Form 314, 315, or 316, whichever is applicable.

B. **Structure of Form.** This form consists of the following sections:

- I. General Information (licensee/permittee and contact representatives, if any)
- II. Assignor/Transferor
- III. Assignee/Transferee

C. **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. 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.

D. Public Notice Requirements:

(1) 47 C.F.R. Section 73.3580 requires that applicants for consent to assignment of a construction permit or license for an AM, FM, or TV broadcast station give local notice in a newspaper of general circulation in the community to which the station is licensed. For full-service AM, FM, and TV stations, local notice is also required to be broadcast over the station, if operating. However, if the station is the only operating station in its broadcast service licensed to the community involved, publication of the notice in a newspaper is not required. (Noncommercial educational FM stations are classified as a "different service" from commercial FM stations for purposes of this policy.) The publication requirement also applies with respect to major amendments to applications as defined in 47 C.F.R. Section 73.3578(b).

(2) Local notice in a newspaper of general circulation in the community or area to be served is also required for assignments of license that involve low power TV, TV translator, TV booster, FM translator, and FM booster station authorizations. Compliance or intent to comply with the public notice requirements must be certified 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.

E. **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.

F. **Paper Filing of Application Forms.** Applicants that prepare this application in paper form should file an original and two copies of this application form and all exhibits. Both electronic and paper filers should follow the procedures set forth in Part 0 and Part 73 of the Commission's rules. Amendments to previously filed applications must be prepared, signed and filed in the same manner as the original application.

G. **Public Inspection File.** A copy of the completed application and all related documents shall be made available for inspection by the public in the Licensee/Permittee's public inspection file pursuant to 47 C.F.R. Section 73.3526 for commercial stations and Section 73.3527 for noncommercial educational stations.

H. **Defective Applications.** Applicants should provide all information called for 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. See 47 C.F.R. Section 73.3564(b)

I. **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 significant 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.

J. **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 and are designed to increase the reliability of applicant certifications. These instructions and worksheets track the standards and criteria which the Commission applies to determine compliance. They are not designed 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 not required to complete or retain any documentation created or collected to complete the application.

K. **Exhibits.** This application is presented primarily in a "Yes/No" certification format. However, it contains appropriate 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 an

exhibit is acceptable, and if an appropriate exhibit is submitted.

L. **Signatures. Both parties to the transaction 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; if an unincorporated association, by a member who is an officer; for 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: Names/Addresses.** In Section I, applicants should use only those state abbreviations approved by the U.S. Postal Service.

FCC Registration Number (FRN). To comply with the Debt Collection Improvement Act of 1996, the applicant must enter its FRN number, a ten-digit unique entity identifier for anyone doing business with the Commission. The FRN can be obtained through the FCC webpage at <http://www.fcc.gov> or by manually submitting FCC Form 160. FCC Form 160 is available for downloading from <http://www.fcc.gov/formpage.html> or by calling 1-800-418-3676. Questions concerning the FCC Registration Number can be directed to the Commission's Registration System help desk at <http://www.CORES@fcc.gov> or by calling 1-877-480-3201.

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 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.

The name of the licensee/permittee must be stated in Item 1 exactly as it appears in the authorization to be assigned or transferred.

B. **Item 2: Third-party Representative.** If the licensee/permittee 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 to assign licenses or permits of AM, FM, or TV broadcast stations are required to submit

a fee with the filing of FCC Form 345. 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 noncommercial educational radio and TV broadcast licensees and permittees, **provided** that the station(s) being acquired will continue to operate 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 345 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 fees required for the assignment of various types of broadcast station construction permits and licenses and the addresses to which FCC Form 345 should be mailed or otherwise delivered are also set forth in the "Mass Media Services Fee Filing Guide." This document can be obtained either by writing to the Commission's Form Distribution Center, 9300 E. Hampton Drive, Capital Heights, Maryland 20743, or by calling 1-800-418-FORM. 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.

A separate fee payment must be submitted for each FCC Form 345 filed. Where multiple stations are being assigned on one FCC Form 345, a single payment covering the total required fee, calculated according to the number of AM, FM, or TV station permits or licenses covered by that FCC Form 345, must be made.

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.

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

Applicants who wish to pay for **more than one application in the same lockbox with a single payment** may also submit a single FCC Form 159. When paying for multiple filings in the same lockbox with a single payment instrument, applicants must list each filing as a separate item

on FCC Form 159 (Remittance Advice). If additional entries are necessary, applicants should use FCC Form 159C (Continuation Sheet).

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 Mass 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. Licensees/Permittees interested in this option must first contact the Credit and Debt Management Center at (202) 418-1995 to make the necessary arrangements.

Applicants hand-delivering FCC Forms 345 may receive a dated receipt copy by presenting a complete copy of the filing 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 fees and payment procedures, applicants should consult the "Mass Media Services Fee Filing Guide."

- C. **Item 4: Auction Authorization.** Under the Commission's competitive bidding licensing procedures, applicants seeking to assign or transfer control of a broadcast construction permit or license within three years of receipt of the original construction permit by means of competitive bidding must inform the Commission that the permit or license was obtained through competitive bidding. See 47 C.F.R. Section 1.2111(a). Item 4 requires the applicant to identify those authorizations that were obtained through competitive bidding, and for which FCC consent to assignment is sought in this application.

The Commission's auction rules also require an applicant seeking approval of an assignment of a license or construction permit within three years of receipt of such authorization by means of competitive bidding to file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the consideration that the applicant will receive in return for the assignment of its license or permit. See 47 C.F.R. Sections 1.2111(a), 73.5009(a). **If applicable, this information should be submitted as an exhibit to Item 4.**

INSTRUCTIONS FOR SECTION II -- ASSIGNOR/TRANSFEROR

- 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: Type of application.** FCC Form 345 may be used for both assignments of license/permit and transfers of control, so long as the proposed transaction meets any one of the criteria set forth in General Instruction A above. Item 2 of Section II requires the assignor/transferor to specify whether the parties seek consent to an assignment or transfer of control.

C. **Item 3: Applicant name.** The exact and complete name of the assignor or each transferor must be stated in Section II, Item 3: if the assignor/transferor is a corporation, 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 assignor/transferor, the person's full legal name.

Facility ID Number. Radio and TV Facility ID Numbers can be obtained at the FCC's Internet Website at www.fcc.gov/mmb/asd/seacall.html or by calling: Radio - 202-418-2730, TV - 202-418-1600. Further, the Facility ID Number is now included on all Radio and TV authorizations and postcards.

D. **Item 4: Third-party Representative.** If the assignor/transferor 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.

E. **Item 5: Authorizations to be Assigned/Transferred.** Unless specifically enumerated as excluded authorizations, the authorizations for all subsidiary communications services (SCAs), FM and TV booster stations, and auxiliary service stations authorized under Subparts D, E, F, and H of 47 C.F.R. Part 74 will be included in the assignment of the license of the primary station(s). Applicants should list the call signs, locations, and other facility identifying information of all authorizations to be assigned (including booster and auxiliary service stations) in a separate exhibit.

F. **Item 6: Agreements for Sale/Transfer of Station.** All applicants must submit to the Commission with this application and place in the public inspection file of each subject station a complete and final copy of the unredacted contract for the assignment or transfer of the authorizations that are the subject of this application, including all exhibits and attachments. The application and contracts must be retained in the public inspection file until **final** action is taken on this application, with the exception that any application granted pursuant to a waiver of any Commission rule must be retained in the public file for as long as the waiver is in effect. Under 47 C.F.R. Sections 74.781 (for low power TV, TV translator, or TV booster stations) and 74.1281 (for FM translator and FM booster stations), licensees must maintain "adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcast, and other pertinent documents." The station records are to be kept for two years, and are to be maintained at a suitable location in one of the communities of license for the station, except that the station records of a booster station or translator owned by the licensee of the

primary station may be kept at the same place where the primary station records are kept, *i.e.*, at the primary station's main studio. See 47 C.F.R. Sections 73.3526(b), 73.3527(b). Accordingly, in this item, applicants are asked to certify that a complete copy of the assignment/transfer application (with unredacted contracts) has been placed in the station's records.

In Item 6c, applicants are asked to certify that the contracts/agreements for assignment of the subject authorizations "comply fully with the Commission's rules and policies." In order to complete this certification, applicants must consider a broad range of issues. Worksheet #2 provides guidance on key compliance issues to facilitate applicants' review of their proposed transactions, and to help applicants identify issues where additional explanatory exhibits may be required or helpful.

G. **Items 7 and 8: Character Issues/Adverse Findings.** These questions require an evaluation of any unresolved character issues involving the assignor/transferor or any of its principals, as well as any relevant adverse findings by a court or administrative body. Applicants should review the instructions for Section III, Items 6 and 7, of this form before completing this item.

H. **Item 10: Auction Authorization.** This question asks the assignor/transferor to certify that the proposed assignment will comply with the "unjust enrichment" provisions of the Commission's competitive bidding rules, 47 C.F.R. Section 1.2111(d)(1). Applicants must review the instructions for Section III, Item 12 before completing this item.

I. **Item 11: 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. Applicants should review the instructions for Section III, Item 13, of this form before completing this item.

J. **Item 12: Anti-Discrimination Certification.** This question requires the assignor to certify that neither it nor any party to the application has violated the Commission's prohibition against discrimination on the basis of race, color, religion, national origin or sex in the sale of a commercially operated FM translator, TV translator, or low power television station. See [In re Promoting Diversification of Ownership in the Broadcasting Services](#), Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922 (Mar. 5, 2008). Where the response to Item 12 is "no," the assignor must provide in an exhibit a full disclosure of the persons and matters involved. The assignor should also fully explain why the violation is not an impediment to a grant of this application. For transactions involving the sale or transfer of FM translator, TV translator, or low power television stations operated on a non-commercial educational basis, the assignor should select "N/A" in response to this question.

- A. **Item 1: Certification.** Assignees/transferees must review the instructions for Section II, Item 1 before completing this item.
- B. **Item 2: Name of Assignee/Transferee.** The name of the assignee or each transferee must be stated exactly in Section III, Item 2. The name of the assignee/transferee shall be the exact corporate name, if transferee is a corporation; if a partnership, the name of all general partners and 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 the assignee or transferee(s) are individual applicants, the full legal name of each person.
- C. **Item 3: Third-party Representative.** If the assignee/transferee 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 Section III, Item 3.
- D. **Item 4: Nature of Applicant.** This question asks the assignee/transferee to specify its organizational structure. If the assignee's/transferee'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.
- E. **Item 4: Agreements for Sale/Transfer of Station.** This question requires the assignee/transferee to certify that the written agreement submitted with the application and contained in the licensee/permittee's station records embodies the complete and final agreement between the parties and that the agreement complies fully with the Commission's rules and policies regarding station sales contracts. The assignee/transferee must undertake an independent evaluation of the contract in order to make this certification. Worksheet #2 provides guidance on key compliance issues to facilitate applicants' review of their proposed transactions, and to help applicants identify issues where additional explanatory exhibits may be required or helpful.
- F. **Items 6, 7: Character Issues/Adverse Findings.** Section III, Item 6 requires the assignee/transferee 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. Item 7 inquires whether the assignee/transferee 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 Questions 6 and 7, Section III, applicants should review the Commission's character qualification 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 Section III, Item 6, is "No," the assignee/transferee 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 assignee/transferee should also fully explain the referenced matter, setting forth the reasons why the matter is not an impediment to a grant of this application.

In responding to Section III, Item 7, the assignee/transferee 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 assignee/transferee 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 Section III, Item 7, is "No," the assignee/transferee 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 U.S.C. 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 assignee/transferee should also fully explain the referenced matter, setting forth reasons why the matter 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. 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 also 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 is attributable if, aggregating both equity and debt, it exceeds 33 percent 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 or cross-ownership rules – **AND** the interest holder also holds (1) an attributable interest in a media outlet in the same market, or (2) supplies over 15 percent 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, but, under the **EDP** standard, that interest would be attributable if the limited partner's interest exceeded 33 percent of the applicant's total asset value **AND** the limited partner also held a 5 percent voting interest in a radio or television station licensee in the same market.

The interest holder may, however, exceed the 33 percent threshold without triggering attribution where such investment would enable an eligible entity to acquire a broadcast station provided that: (1) the combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or (2) the total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. See In re Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922 (Mar. 5, 2008).

The Commission defines an "eligible entity" as any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 C.F.R. § 121-201, and holds (1) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or (2) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (3) more than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

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, if the applicant has actual knowledge of a material involvement of a limited partner in the management or operation of the media-related businesses of the partnership, the limited partner will be considered as a party to this application.

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 x .20 = .05) and, therefore, are considered parties to this application. In applying the multiplier, 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.

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, the representative of an alien, a foreign government or a 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 Commission's 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's voting interest in Corporation B was 60%, 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% alien indirect voting interest in the licensee. Were Corporation A a partnership holding 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, regardless of their partnership interest, was an alien. *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*).

Assignees/transferees on FCC Form 345 must also comply with the separate alien equity ownership benchmark restrictions of Section 310. Under the second prong of the analysis, an assignee/transferee 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 assignee/transferee must determine the citizenship of each shareholder or else 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).

- H. **Item 9: Financial Qualifications.** An assignee/transferee on FCC Form 345 must certify that it is financially qualified to effectuate its proposal, with sufficient net liquid assets on hand or available from committed sources of funds to consummate the transaction and operate the facilities for three months without additional revenue. This certification includes all contractual requirements, if any, as to collateral, guarantees, and capital investments. See Financial Qualifications Standard, 87 FCC 2d 200 (1981).

Documentation supporting this certification need not be submitted with this application, but must be made available to the Commission upon request. Financial statements relied on to make this certification should be prepared in accordance with generally accepted accounting principles.

- I. **Item 10: Rebroadcast Certification.** An FM or TV 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. Sections 74.784 (TV translators) and 74.1284 (FM Translators). Item 10 requires that the assignee/transferee in an FM or TV translator transaction 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 Sections 74.784(a) and 74.1284(a).

Low Power Television Station applicants, as well as FM or TV translator applicants proposing to rebroadcast the signal of stations that they properly own, should mark the box labeled "N/A."

- J. **Item 11: 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 rule making 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 at 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 7212, 7216 (1990); 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.

- K. **Item 12: 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. Imlay, 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.

- L. **Item 13: Auction Authorization.** The competitive bidding rules adopted by the Commission include certain provisions to prevent "unjust enrichment" by entities that acquire broadcast authorizations through the use of bidding credits or other special measures. Specifically, the holder of a broadcast license or construction permit, who successfully utilized a bidding credit to obtain the authorization, is required to reimburse the government for the total amount of the bidding credit, plus interest based on the rate for ten-year U.S. Treasury obligations applicable on the date the construction permit was granted, as a condition for Commission approval of any assignment or transfer of that license or construction permit, if the authorization will be acquired by an entity that does not meet the eligibility criteria for the bidding credit. See 47 C.F.R. Sections 1.2111(d)(1), 73.5007. The amount of this payment will be reduced over a five-year period. See 47 C.F.R. Sections 1.2111(d)(2), 73.5007. No payment is required if (1) the authorization is transferred or assigned more than five years after the initial issuance of the construction permit; or (2) the proposed transferee or assignee meets the eligibility criteria for the bidding credit.

In accordance with these provisions, this item requires that the assignee certify that either (1) more than five years have passed since the assignor received its authorization(s) via the competitive bidding process; or (2) the proposed assignee meets the eligibility criteria for the bidding credit. If such certification cannot be made, then the applicant must answer "No" and tender the applicable reimbursement payment to the United States Government. See 47 C.F.R. Sections 1.2111(d), 73.5007, 73.5008.

- M. **Item 14: Anti-Drug Abuse Act Certification.** This question requires the assignee/transferee 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 Section III, Item 13 constitutes a certification that neither the assignee transferee 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 of that statute.

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; 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.

- N. **Item 15. Assignee/Transferee's Equal Employment Opportunity Program.** Applicants seeking authority to obtain assignment of the construction permit or license of a station or acquire control of an entity holding a construction permit or license of a commercial, noncommercial or international 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 as part of the 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.

NOTE: This Broadcast Equal Employment Opportunity Model Program Report (FCC Form 396-A) is to be utilized only by applicants for new construction permits and by assignees and transferees.

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