

(3) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

In addition, within 5 days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit setting forth:

(4) A certification that neither the applicant nor its principals has paid or will pay any money or other consideration in exchange for the dismissal or withdrawal of the application; and

(5) The terms of any oral agreement relating to the dismissal or withdrawal of the application.

(c) If a competing applicant seeks to dismiss or withdraw its application after the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of the any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses of the applicant;

(2) The exact nature and amount of any consideration paid or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement;

(4) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

(5) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

In addition, within 5 days of the applicant's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(6) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the withdrawing applicant in exchange for the dismissal or withdrawal of the application; and

(7) The terms of any oral agreement relating to the dismissal or withdrawal of the application.

(d) For the purpose of this section:

(1) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) An application shall be deemed to be pending before the Commission from the time an application is filed with Commission until an order of the Commission granting or denying the application is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, and prosecuting its application.

(4) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as nonfinancial concessions that confer any type of benefit on the recipient.

[54 FR 22598, May 25, 1989, as amended at 61 FR 18291, Apr. 25, 1996]

§ 73.3525 Agreements for removing application conflicts.

(a) Except as provided in § 73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

(1) The reasons why it is considered that such agreement is in the public interest;

(2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;

(3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; *Provided* That this provision shall not apply to *bona fide* merger agreements;

(4) The exact nature and amount of any consideration paid or promised;

(5) An itemized accounting of the expenses for which it seeks reimbursement; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) Except where a joint request is filed pursuant to paragraph (a) of this section, any applicant filing an amendment pursuant to § 73.3522 (b)(1) and (c), or a request for dismissal pursuant to § 73.3568 (b)(1) and (c), which would remove a conflict with another pending application; or a petition for leave to amend pursuant to § 73.3522(b)(2) which would permit a grant of the amended application or an application previously in conflict with the amended application; or a request for dismissal pursuant to § 73.3568(b)(2), shall file with it an affidavit as to whether or not consideration (including an agreement for merger of interests) has been promised to or received by such applicant, directly or indirectly, in connection with the amendment, petition or request.

(c) Upon the filing of a petition for leave to amend or to dismiss an application for broadcast facilities which has been designated for hearing or upon the dismissal of such application on the FCC's own motion pursuant to § 73.3568, each applicant or party remaining in hearing, as to whom a conflict would be removed by the amendment or dismissal shall submit for inclusion in the record of that proceeding an affidavit stating whether or not he has directly or indirectly paid or promised consideration (including an agreement for merger of interests) in connection with the removal of such conflict.

(d) Where an affidavit filed pursuant to paragraph (c) of this section states that consideration has been paid or

promised, the affidavit shall set forth in full all relevant facts, including, but not limited to, the material listed in paragraph (a) of this section for inclusions in affidavits.

(e) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(f) Requests and affidavits which relate to an application which has not been designated for hearing shall bear the file number of such application. If the affiant is also an applicant, the affidavit shall also bear the file number of affiant's pending application(s). Requests and affidavits which relate to an application which is designated for hearing shall bear the file number of that application and the hearing docket number and will be acted on by the presiding officer.

(g) For the purposes of this section an application shall be deemed to be "pending" before the FCC and a party shall be considered to have the status of an "applicant" from the time an application is filed with the FCC until an order of the FCC granting or denying it is no longer subject to reconsideration by the FCC or to review by any court.

(h) For purposes of this section, "legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, prosecuting, and settling its application for which reimbursement is being sought.

(i) For purposes of this section, "other consideration" consists of financial concessions, including, but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(j) For purposes of this section, an "ancillary agreement" means any agreement relating to the dismissal of an application or settling of a proceeding, including any agreement on the part of an applicant or principal of an applicant to render consulting services to another party or principal of another party in the proceeding.

(k) The prohibition of collusion as set forth in §§ 1.2105(c) of this chapter and 73.5002, which becomes effective upon the filing of short-form applications, shall apply to all broadcast services subject to competitive bidding.

NOTE: Although § 74.780 of the Rules makes this section generally applicable to low power TV, TV translators, and TV booster stations, paragraph (b) of this section shall not be applicable to such stations.

[56 FR 28097, June 19, 1991, as amended at 63 FR 48624, Sept. 11, 1998; 85 FR 46794, June 18, 2020]

§ 73.3526 Online public inspection file of commercial stations.

(a) *Responsibility to maintain a file.* The following shall maintain for public inspection a file containing the material set forth in this section.

(1) Applicants for a construction permit for a new station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(2) and (e)(10) of this section. A separate file shall be maintained for each station for which an application is pending. If the application is granted, paragraph (a)(2) of this section shall apply.

(2) Every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. In addition, every permittee or licensee of a commercial TV or Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(15) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

(b) *Location of the file.* The public inspection file shall be located as follows:

(1) An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license.

(2)(i) A television or radio station licensee or applicant shall place the contents required by paragraph (e) of this section of its public inspection file in the online public file hosted by the Commission.

(ii) A station must provide a link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website, and provide contact information on its website for a station representative that can assist any person with disabilities with issues related to the content of the public files. A station also is required to include in the online public file the station's address and telephone number, and the email address of the station's designated contact for questions about the public file.

(3) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; "The Public and Broadcasting"; Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself; Children's television programming reports; and DTV transition education reports. In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.

(c) *Access to material in the file.* For any applicant described in paragraph (b)(1) of this section that does not include all material described in paragraph (e) of this section in the online public file hosted by the Commission, the portion of the file that is not included in the online public file shall be available for public inspection at any time during regular business hours at an accessible place in the community of license. The applicant must provide information regarding the location of the file, or the applicable portion of