

two television stations within the relevant DMA. One way to satisfy these criteria would be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit, and that no reasonable offer from an entity outside the market has been received. We will entertain waiver requests as follows:

(1) If one of the broadcast stations involved is a "failed" station that has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application.

(2) For paragraph (b) of this section only, if one of the television stations involved is a "failing" station that has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the application; and consolidation of the two stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity.

(3) For paragraph (b) of this section only, if the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.

NOTE 8: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535-1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application of the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

NOTE 9: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band by an entity that owns, operates, controls or

has a cognizable interest in AM radio stations in the 535-1605 kHz band.

NOTE 10: Authority for joint ownership granted pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary for the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.

[59 FR 49007, Sept. 26, 1994, as amended at 59 FR 62613, Dec. 6, 1994; 61 FR 10690 and 10692, Mar. 15, 1996; 64 FR 50645, 50666, Sept. 17, 1999; 65 FR 36379, June 8, 2000]

**§ 73.3556 Duplication of programming on commonly owned or time brokered stations.**

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24 hour period.

(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on September 16, 1992, shall bring that arrangement into compliance within one year thereafter.

[57 FR 18093, Apr. 29, 1992, as amended at 57 FR 42706, Sept. 16, 1992]

EFFECTIVE DATE NOTE: At 57 FR 18093, Apr. 29, 1992, § 73.3556 was added, effective August 1, 1992. At 57 FR 35763, Aug. 11, 1992, the effective date was deferred pending action by the agency. At 57 FR 37888, Aug. 21, 1992, the effective date was further deferred. At 57 FR 42706, Sept. 16, 1992, paragraph (a) was revised and paragraph (c) was added, effective September 16, 1992.

**§ 73.3561 Staff consideration of applications requiring Commission action.**

Upon acceptance of an application, the complete file is reviewed by the staff and, except where the application

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is acted upon by the staff pursuant to delegation of authority, a report containing the recommendations of the staff and any other documents required is prepared and placed on the Commission's agenda.

[44 FR 38499, July 2, 1979]

### § 73.3562 Staff consideration of applications not requiring action by the Commission.

Those applications which do not require action by the Commission but which, pursuant to the delegations of authority set forth in subpart B of part 0, may be acted upon by the Chief, Mass Media Bureau, are forwarded to the Mass Media Bureau for necessary action. If the application is granted, the formal authorization is issued. In any case where it is recommended that the application be set for hearing, where a novel question of policy is presented, or where the Chief, Mass Media Bureau desires instructions from the Commission, the matter is placed on the Commission agenda.

[49 FR 14509, Apr. 12, 1984]

### § 73.3564 Acceptance of applications.

(a)(1) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for applications for minor modifications of facilities in the non-reserved FM band, as defined in § 73.3573(a)(2), long form applications subject to the provisions of § 73.5005 found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, a deficiency letter will be issued and the applicant will be required to supply the missing or corrective information. Applications that are not substantially complete will not be considered and will be returned to the applicant.

(2) In the case of minor modifications of facilities in the non-reserved FM band, applications will be placed on public notice if they meet the following two-tiered minimum filing requirements as initially filed in first-come/first-serve proceedings:

- (i) The application must include:
  - (A) Applicant's name and address,
  - (B) Applicant's signature,
  - (C) Principal community,
  - (D) Channel or frequency,
  - (E) Class of station, and
  - (F) Transmitter site coordinates; and
- (ii) The application must not omit more than three of the following second-tier items:
  - (A) A list of the other media interests of the applicant and its principals,
  - (B) Certification of compliance with the alien ownership provisions contained in 47 U.S.C. 310(b),
  - (C) Tower/antenna heights,
  - (D) Effective radiated power,
  - (E) Whether the antenna is directional or omnidirectional, and
  - (F) An exhibit demonstrating compliance with the contour protection requirements of 47 CFR 73.215, if applicable.
- (3) Applications found not to meet minimum filing requirements will be returned to the applicant. Applications found to meet minimum filing requirements, but that contain deficiencies in tender and/or acceptance information, shall be given an opportunity for corrective amendment pursuant to 73.3522 of this part. Applications found to be substantially complete and in accordance with the Commission's core legal and technical requirements will be accepted for filing. Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment.
  - (b) Acceptance of an application for filing merely means that it has been the subject of a preliminary review by the FCC's administrative staff as to completeness. Such acceptance will not preclude the subsequent dismissal of the application if it is found to be patently not in accordance with the FCC's rules.
  - (c) At regular intervals, the FCC will issue a Public Notice listing all long form applications which have been accepted for filing. Pursuant to §§ 73.3571(h), 73.3572, and 73.3573(f), such notice shall establish a cut-off date for