

A Radio Broadcaster's Guide to License Renewal

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The FCC's radio license renewal cycle is now underway, with the first batch of applications due by June 3, 2019. Given that their most recent license renewal filing may have been eight years ago, radio licensees must reacquaint themselves with the license renewal process, including pre-filing and post-filing announcements, and be prepared to certify their stations' compliance with the FCC's Rules over those past eight years.

The state-by-state license renewal cycle for radio stations that will take place over the next three years commenced on **April 1, 2019**. That was when the first batch of radio broadcasters (DC, MD, VA, and WV) began airing their pre-filing announcements ahead of the **June 1, 2019**¹ filing date for their license renewal applications. The cycle then repeats, with a license renewal application deadline (based on state) occurring on the first day of every other month until 2022, by which time all full power, FM translator, and LPFM stations should have filed applications seeking a new eight-year license term. Stations can determine their license renewal date by reviewing the [FCC's state-by-state license renewal timeline](#).

The FCC's license renewal application form (FCC Form 2100, Schedule 303-S) may at first appear straightforward, consisting mostly of yes/no questions. However, appearances can be deceiving, as evidenced by the countless fines, consent decrees, and other enforcement actions levied against stations that either failed to verify the accuracy of their certifications before filing, failed to timely file their license renewal application, or whose failure to comply with the FCC's rules over their eight-year license term became apparent at license renewal time.

Those risks have increased significantly in this license renewal cycle, as it will be the first one in which all broadcast station Public Inspection Files are online. The ability of the FCC, petitioners, and anyone else to review a station's Public Inspection File online, at any time of day or night, and to peruse the electronic time stamps indicating exactly when documents were uploaded, creates a regulatory minefield for any applicant that has not been fastidious in preparing for its license renewal and in completing its license renewal application.

The bulk of the license renewal application consists of certifications whereby the applicant confirms its compliance with various FCC rules and requirements. If an applicant certifies it has complied with those rules and requirements, and that assertion is not contested by a petitioner or the FCC's own records, the FCC will generally not request additional evidence of compliance and will grant the station's license renewal application. Where the application is challenged by a petitioner with evidence that one or more of the station's certifications is false, the FCC may ask the applicant for additional information to determine if grant of the license renewal application will serve the public interest.

¹ While the filing date for license renewal applications always falls on the 1st of the respective month, where the 1st is a Saturday, Sunday, or holiday, applicants are permitted to file on the next business day following that date. As a result, license renewal applications for radio stations in DC, MD, VA, and WV may be filed as late as Monday, June 3, 2019.

One of the certifications that carries the highest risk of generating a fine is the certification that the station has timely placed all required documents in its Public Inspection File. The base fine for a Public Inspection File violation is \$10,000, and the FCC can adjust that amount upward if it finds multiple or egregious violations have occurred.

That means a station whose online Public Inspection File is not complete is already subject to a sizable fine. Falsely certifying compliance in the license renewal application creates the risk of additional fines, and in extreme cases, may persuade the FCC that license renewal is simply not in the public interest.

As a result, before completing the license renewal application, stations should thoroughly review their Public Inspection File to ensure it is complete and that the time stamps indicate all documents were timely uploaded. If the Public Inspection File is not complete, stations should upload the missing documents as quickly as possible and be prepared to disclose that fact in their license renewal application. With the Public Inspection File now online, it is easy for the FCC or a petitioner to challenge the accuracy of a station's license renewal certifications—quite different from the days when a broadcast employee might reach retirement age without ever encountering a Public Inspection File visitor. It is therefore even more important to a station's well-being during this renewal cycle to fix any problems spotted as promptly as possible rather than just pretending those problems don't exist when certifying rule compliance in the license renewal application.

The License Renewal Process

The first point to note is that a license renewal application is just that—an application—and not a guarantee of a new license term. The Communications Act of 1934, as amended (the "Act") requires all radio broadcasters to obtain from the FCC an authorization to operate. By filing Schedule 303-S, an applicant requests its authorization be extended for another eight years. The Act requires the FCC to grant such an application only if it finds that during the preceding license term: (1) the station has served the public interest, convenience, and necessity; (2) the licensee has not committed any serious violations; and (3) there have been no other violations by the licensee of the FCC's rules and regulations which, taken together, would constitute a pattern of abuse. To this end, the FCC invites petitions to deny, informal objections, and comments from the public for every license renewal application, and will review the application and these other submissions to make a determination as to whether the station at issue is deserving of license renewal.

Pre-Filing and Post-Filing Announcements

Full power commercial and noncommercial radio stations and LPFM stations must air pre-filing license renewal announcements once a day on the 1st and 16th days of the two months leading up to the license renewal application deadline. For example, a station that has a license renewal application due on August 1 must air pre-filing announcements on June 1, June 16, July 1, and July 16, for a total of four announcements. At least two of the four announcements must air between 7:00 am and 9:00 am and/or 4:00 pm and 6:00 pm.

Special rules apply to noncommercial educational stations that do not normally operate during a month when their announcements would otherwise be due to air, as well as to stations that are silent at that time for other reasons.

Once the license renewal application has been filed, full power commercial and noncommercial radio and LPFM stations must broadcast six post-filing license renewal announcements. These announcements must air once a day on the 1st and 16th days of the month for three months, starting on the day the license renewal application is due. A station with an August 1 license renewal application deadline must air post-filing announcements on August 1, August 16, September 1, September 16, October 1, and October 16. At least three of these announcements must air between 7:00 am and 9:00 am and/or 4:00 pm and 6:00 pm. At least one announcement must also air in each of the following time periods: between 9:00 am and noon, between noon and 4:00 pm, and between 7:00 pm and midnight.

Broadcasters can find sample pre-filing and post-filing announcement texts, as well as other announcement-related information, in [our recent Advisory on the subject](#).

Though FM translator stations must file license renewal applications at the same time as full power radio stations licensed to communities in the same state, they are not required to broadcast pre-filing or post-filing announcements. Instead, upon filing a license renewal application for an FM translator, the licensee must publish a public notice of the filing at least once in a daily, weekly or biweekly newspaper published or having circulation in the community served by the translator. If there is no such newspaper, the licensee must determine an appropriate means of providing the required notice to the general public, such as posting it in the local post office or other public place. Broadcasters can find sample FM translator notices and other information specific to FM translator license renewals in our recent [Advisory on meeting these obligations](#).

The FCC has indicated that broadcasters who are eligible to seek license renewal for both their FM translator station and the full power station it rebroadcasts using the same application form can forgo running the newspaper public notice of the FM translator's license renewal filing.

Once all license renewal announcements have been aired or published, both full power and FM translator licensees must, within seven days of the last announcement, place a certificate in their Public Inspection File attesting to the station's compliance with the FCC's public notice requirements.

Schedule 303-S: Application for Renewal of Broadcast Station License

The license renewal application is Schedule 303-S of Form 2100 (instructions and sample form available [here](#)).

Broadcasters should not make the mistake of rushing through the application or guessing when filling it out. While the application form itself is only about 8 printed pages, it comes with 18 pages of instructions and 11 additional pages of worksheets intended to assist applicants in correctly filling out the form.

The FCC advises that applicants should not certify a statement in the application as being correct unless they are absolutely certain the statement is indeed accurate. A station licensee seeking a waiver of a particular rule or policy, or that is uncertain whether it has fully complied with the rule or policy for which the form seeks a certification of compliance, should answer "No" to that certification. Schedule 303-S includes spaces for explanations and exhibits, and according to the FCC, a "No" response to any of the questions "**will not** cause the immediate dismissal of the application provided that an appropriate exhibit is submitted." An applicant should review any such exhibits or explanations with counsel prior to filing.

In answering questions in the Schedule 303-S, the relevant reporting period is the licensee's entire 8-year license term. If the license was assigned or transferred via FCC Form 314 or 315 during the license term, the instructions to the license renewal application form indicate that the relevant reporting period is just the time since consummation of that last assignment or transfer. Similarly, if the licensee most recently received a short-term license renewal, the application reporting period would cover only that abbreviated license term.

Parties to the Application

Some of the certifications an applicant is asked to make in Schedule 303-S relate solely to the station, and some—such as character certifications—relate to any "party to the application." A party to the application is any individual or entity that has an attributable interest in a station. This includes all parties whose ownership interest, positional interest (i.e., an officer or director), or other relation to the applicant confers on that party a sufficient degree of influence or control over the licensee to merit FCC attention.

For a corporation, this typically includes all officers, directors, and shareholders with a 5% or greater voting interest; for an LLC, its officers and members; and for a partnership, all partners. However, each form of entity comes with its own caveats, limitations, and unique rules for determining attributable interest holders. For example, limited partners are normally attributable interest holders unless they have been “insulated” from partnership decisions pursuant to very specific FCC requirements. Filers should reach out to counsel prior to filing if there are any questions about who the FCC would consider a party in interest to the license renewal application.

Character Issues, Adverse Findings and FCC Violations

Pursuant to the FCC's statutory obligation to consider any serious rule violations or patterns of abuse, each *licensee* must 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.” Where the applicant is unable to make this certification, it must include an exhibit identifying the party involved, the call letters and location of the station (or file number of the FCC application or docket), and describe the party's connection to the matter, including all relevant dates. The applicant must also explain why the unresolved character issue “is not an impediment” to grant of the license renewal application.

Applicants must also certify whether the licensee or any party to the application has been the subject of an adverse finding in any civil or criminal proceeding involving a felony, a mass-media related antitrust or unfair competition charge, a false statement to another governmental entity, or discrimination. The applicant must report adverse findings from the past ten years and include an exhibit explaining the matter in detail and why it should not be an impediment to a grant of the license renewal application. Note, however, that a station does not need to report an adverse finding that was disclosed to the FCC in the context of an earlier station application where it was subsequently found by the FCC to be not disqualifying.

The application form also asks the applicant to certify that the FCC has not brought any formal actions against the station during the current license term, such as a Notice of Apparent Liability, Notice of Violation, or similar finding of a rule violation. Applicants should not use this section to self-disclose any violations not previously identified by the FCC.

Foreign Ownership and Control

The applicant must also certify that the licensee has complied with Section 310 of the Act regarding foreign influence over the station. Section 310 generally prohibits the FCC from issuing a 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. It also prohibits, absent a special ruling from the FCC, a license being issued to an entity of which more than 20% of the capital stock is owned or voted by aliens, their representatives, or a foreign government or its representative, or where 25% of the capital stock of the licensee's parent company 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.

Station Operations

The license renewal application also requires stations to certify that they are currently operational, as the FCC will not renew the license of a station that is not broadcasting.

In a similar vein, Section 73.1740 of the FCC's Rules sets forth the minimum operating hours for commercial broadcast stations, and Section 73.561 of the Rules establishes minimum operating hours for noncommercial educational FM stations. In the license renewal application, stations must certify that they were not silent or operated less than the required minimum number of hours for a period of more than 30 days during the previous term. If they cannot, they must include an exhibit disclosing the relevant details and explaining why it should not adversely affect the station's license renewal.

Stations must also certify as to several statements regarding Radiofrequency Electromagnetic (RF) exposure of the public and workers at the transmitter site. Stations that were previously renewed and which have had no changes at their transmitter site since their last renewal application will generally be able to certify compliance with this statement. Stations that have had a material change in the RF environment at their transmitter site must assess the impact of that change before certifying RF compliance and may need to submit an exhibit demonstrating the station's compliance with RF requirements.

Related Filings and Materials

Other Certifications

Successfully navigating the license renewal application also requires stations to certify that the rest of their regulatory house is in order. For example, applicants must also certify that they have timely made other regulatory filings, such as the Biennial Ownership Report on FCC Form 2100, Schedule 323 or 323-E, and confirm that their advertising agreements do not discriminate on the basis of race or gender and contain non-discrimination clauses. As with all other certifications in the application form, stations must accurately respond and be prepared to provide documentation supporting their certifications if later requested by the FCC.

EEO

Depending on staff size, one of the items stations must certify is that they have timely placed in their Public Inspection File, as well as on their website, the annual Equal Employment Opportunity ("EEO") report. Certain stations must also certify that they filed their EEO Mid-Term Report with the FCC (while the FCC recently eliminated the requirement that certain stations file an EEO Mid-Term Report, that change will have no impact until the next license renewal cycle).

Generally, a radio station that is part of a Station Employment Unit that employs fewer than five full-time employees is exempt from these requirements. However, at license renewal time, *all stations*, regardless of staff size, must file FCC Form 2100, Schedule 396, the Broadcast EEO Program Report. Stations in a Station Employment Unit with fewer than five full-time employees will only need to complete part of the form before filing it. As a practical matter, because of the mechanics of the FCC's filing system, an applicant will generally be unable to file its license renewal application until it provides in that form the file number generated by the FCC upon the filing of the station's completed Schedule 396.

Conclusion

This Advisory discusses some of the more important elements of the license renewal process. The full process is complex, and because of that, the best way to approach it is to start as early as possible. In that regard, we encourage stations to prepare a **sample application** and to reach out to their counsel in completing the application. If handled poorly, the license renewal process can be an expensive, painful, and drawn-out affair. However, a station faces it only once every eight years, so it is well worth putting forth the effort to make the process as smooth as possible for your stations.