

Broadcast License Renewal (2011-2015)

*Buckle Your FCC Seatbelt: It Could Be
a Bumpy Ride*

Summary

- Select statistics from last renewal cycle
- License Renewal Legal Standard
- Renewal Mechanics & Deadlines
 - What to do and when to file
 - Filing Late: Case Study No. 1
- Renewal Recommendations
- FCC Form 303-S -- Application for License Renewal
 - Questions / Answers / Scope
 - Rule Compliance Reviews
- Getting Designated for Hearing: Case Study No. 2
- What's New for This Renewal Cycle
- The Little Known and the Unknown

License Renewal Standard

- Three part test under Cmcn Act 309(k)
 - Served the public interest, convenience and necessity
 - No serious violations of the Act or Rules
 - No other violations which, taken together, constitute a pattern of abuse
- Meet standard = license is renewed
- Don't meet standard = application denied or granted with conditions (notice/hearing)

License Renewal (2003-07)

- Different than prior renewal cycles
- Much more aggressive enforcement approach
- What was deemed insignificant in prior cycles became the subject of fines in this one
- Public File rule was Exhibit No. 1
 - Must certify that everything required to be in your public file was timely placed there, and stayed there for the required period
 - Issues/Programs Lists led the failure list
- For TV, children's commercial limits was hot item
 - Must certify that never violated; requires verification
 - Public file certifications



Select *Radio* Renewal Stats (Last Cycle)

CY	NALs	Con. Decree
2005	88 - \$578,000	1 - \$15,000
2006	194 - \$972,500	2 - \$6,000
2007	361 - \$431,000	2 - \$60,000
2008	59 - \$210,000	1 - \$10,000
<i>Total</i>	702 / \$2,191,500	6 / \$91,000



Source: Audio Division, FCC (Legal)

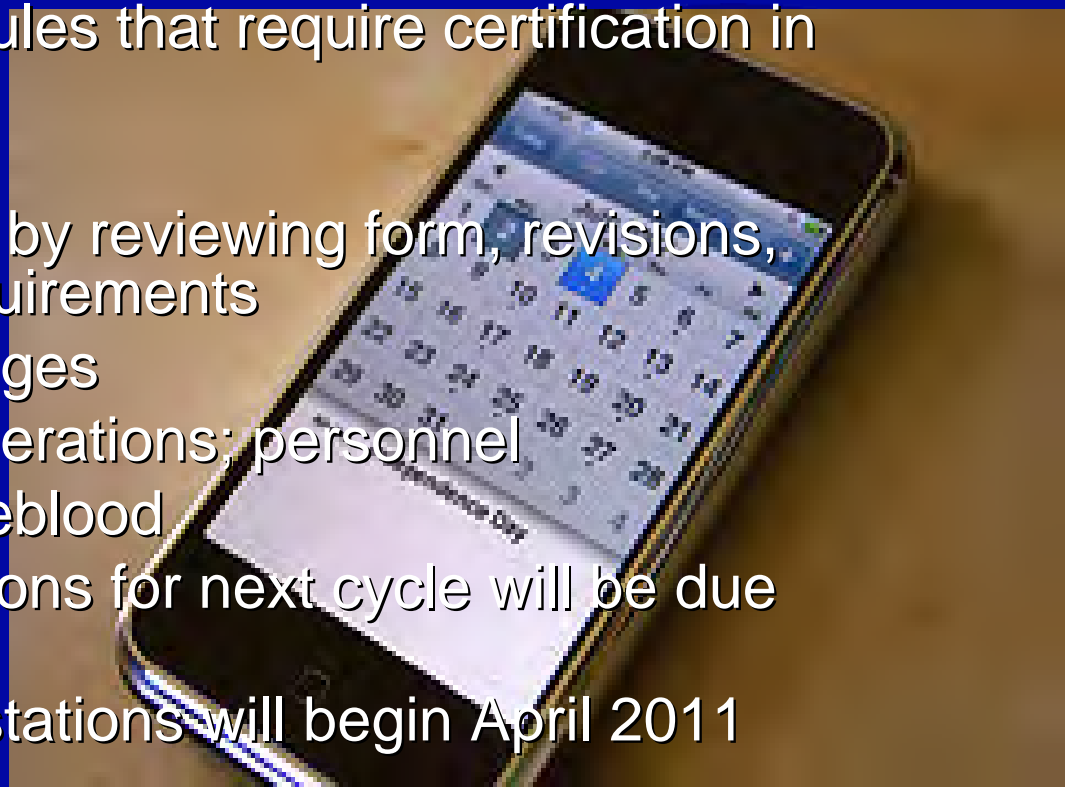
Two Most Violated Rules – Public File & Late Filing

No. 1 Rule of License Renewal

***NEVER CARELESSLY OR FALSELY
CERTIFY ANYTHING IN YOUR
RENEWAL APPLICATION***

License Renewal Recommendations

- Keys to uneventful license renewal
 - Daily compliance with all rules
 - Special emphasis on rules that require certification in renewal application
 - File **TIMELY!**
 - Prepare ahead of time by reviewing form, revisions, certifications; filing requirements
 - Monitor FCC rule changes
 - Reduce risk in daily operations; personnel
 - Your license is your lifeblood
- The first renewal applications for next cycle will be due June 1, 2011
 - Pre-Actions for those stations will begin April 2011



License Renewal Mechanics

- Courtesy Renewal Notice Postcard
 - 6 Months Out from license expiration
 - FCC usually sends, but not a requirement
- Pre-Filing Announcements
 - 6 months prior to license expiration
- Electronically File FCC Form 303-S
 - 4 months prior to license expiration
- Simultaneously file
 - Ownership Report (Form 323 or 323-E)
 - EEO Form 396 + last two EEO public file reports
- Post-Filing Announcements



License Renewal Timelines

If the station's license expires in:	Make Pre-Filing Announcements on the 1st and 16th day of the previous	File the Form 303-S Renewal Application by the First Weekday of	Make Post Filing Announcements on the 1st and 16th day of
February	August & September	October	October, November, & December
April	October & November	December	December, January, & February
June	December & January	February	February, March & April
August	February & March	April	April, May, & June
October	April & May	June	June, July, & August
December	June & July	August	August, September, & October

Filing Late: Case Study No. 1

- WOLY(AM), Battle Creek Michigan
 - Deadline for Renewal App – June 1, 2004
 - No Renewal Application is filed
 - FCC Letter 2 years later
 - License has expired; deleting call letters
 - License renewal app finally filed Jan 15, 2009 along with late-filed petition for reconsideration; STA request
 - Letter Decision Feb 23, 2009 denies all
 - No Response to 2006 Letter
 - Treats filing as petition for reconsideration, even though late
 - Renewal file over 4.5 years too late
 - License Deleted

Filing Late: Lessons Learned

- Know your deadline and file timely
- If miss deadline, take following actions
 - File Renewal App as soon as you realize you're late
 - Simultaneously seek special temporary authority to operate
- If less than one year, penalty is usually a fine
 - App processing will be significantly delayed (2-4 years)
- If more than one year, license forfeiture is possible

License Renewal Processing

- Normal Renewal Application Processing
 - Renewal app action four months after filing
 - Only if no problems in application
 - Coincides with normal expiration date
- If not granted by then, something's up
 - Commission is behind
 - “No” answers create delays; referral to legal
 - Petitions to Deny can be filed for 90 days after renewal application filing (service)
 - Not unusual for staff to contact applicant
 - Telephone call or in writing
 - Be cautious; cooperate; honesty; be timely

FCC Form 303-S

- Used by all stations filing for renewal
- Latest version July 2008; further revision possible
- Must be filed electronically
- Instructions and familiarity with the rules/policies are key
- Certifications cover the entire 8 year license term
 - If acquired during license term, certification covers period when license is held
- All answers are for licensee and any party to the application
- Checking YES or NO more complex than it appears



The image shows a tilted view of the FCC Form 303-S, 'APPLICATION FOR RENEWAL OF BROADCAST STATION LICENSE'. The form is divided into sections, with 'Section 1 - General Information - TO BE COMPLETED BY ALL APPLICANTS' being the primary focus. It contains various fields for applicant information, including legal name, mailing address, city, telephone number, FCC registration number, and facility ID number. There are also checkboxes for 'Governmental Entity' and 'Noncommercial License'. The form is set against a dark blue background.

FCC Form 303-S | Legal Section

- *Q2 – Character Issues*
 - Misconduct that violates Act or FCC rule/policy
 - Certain non-FCC misconduct
 - Review character qualifications policies
- *Q3 – Adverse Findings*
 - By Court/Admin Body in civil/criminal matter (last 10 yrs)
 - Felony
 - Mass-media related antitrust
 - Mass-media related unfair competition
 - Fraudulent statements to another government body
 - Discrimination
 - Most Common is EEOC complaints; EEO lawsuits
 - Exceptions if previously reported to FCC
- Full Disclosure Required if answer YES

FCC Form 303-S | Legal Section

- *Q4 – FCC Violations*
 - Prior instructions were vague
 - Prompted self-disclosure of violations
 - Clarified last renewal cycle
 - For purposes of renewal app only:
 - Disclose only violations of the Act or rules “*as preliminarily or finally determined by the Commission staff, or a court of competent jurisdiction*”
 - Includes Notices of Apparent Liability, Forfeiture Orders
 - Do not include self-discovered violations here
 - Other questions may prompt such disclosures

FCC Form 303-S | Section III & IV

- *Biennial Ownership Report*
 - Filing certification only (should have filed four)
 - Timeliness and completeness are factors
- *EEO Program*
 - Certify filing of Form 396 with renewal app
 - Must provide file number
 - Certify posting most recent EEO PF Report
 - No change from last cycle's question (yet)
 - Trigger is five or more full time employees (30 hours / week on average)

FCC Form 303-S | Section III & IV

- *Local Public File*

- Certification that documents placed in the public file at correct times
- Past eight years is involved
- Many separate requirements
- Can be painstaking if you haven't reviewed your public file regularly
- Must disclose in an exhibit all missing and late filed items, identify steps to reconstruct and prevent future problems



Form 303-S | Section IV – The TV Chronicles

- *Violent Programming*
 - *Must disclose complaints from public*
- *Children's Commercial Limits*
 - *3-5 overages in eight years de minimus*
 - *Fines not issued*
- *Children's Programming*
- *Form 398 Filing*
 - *Staff can check online and does*
 - *If you did not timely file, admit it*
- *CORE Programming Certification*

Snapshot Rule Review: Public File

- Biennial Ownership Report and “related materials”
 - Most current report must always be in file
 - Contracts or list of contracts must also be in file
 - 73.3613 defines contracts that must be filed
- Radio Quarterly Issues/Programs Lists
 - Every qtrly list must remain in file for entire renewal cycle
 - Complete and place in file by 10th day after each quarter
 - Brief narrative on issues given significant treatment
 - Programs addressing by date/time/title/duration
- Donor Lists (NCE Stations)
 - Lists of donors supporting specific programs
 - Retained for two years from date program is aired

Snapshot Rule Review: EEO

- General Non-Discrimination Policy
- Outreach and Reporting Requirements
- Stations with five or more full time employees
- Annual EEO public file report (website posting)
- Mid-Term Report (Form 397)
 - Radio stations with 11 or more full timers
 - TV stations with 5 or more full timers
- Religious Broadcasters
 - May discriminate on basis of religious views if job requirement
 - Outreach among those that share religious beliefs

Designated for Hearing: Case Study No. 2

- *In re San Francisco Unified School District*
 - KALW
 - 1997 Renewal Application
 - Designated for hearing seven years later in 2004
 - No ALJ Decision until 2006
- Petition to Deny filed Nov 1997 by former employee
 - Alleged failure to maintain public file
 - Programs/Issues Lists
 - Supplemental ownership reports
 - Donor Lists
 - Alleged EEO violations
 - Alleged misrepresentation to FCC

Designated for Hearing: Case Study No. 2

- FCC designation order concluded:
 - Failed to include proper materials in public file
 - False certification and misrepresentation issues specified
 - Based on affidavits of former employee
 - Raised public file deficiencies to station's attention
 - Station manager and licensee claimed "confusion"
 - Raised substantial and material question as to licensee's intent to deceive the Commission
 - Commission relies on licensees in self-policing role
 - Fraud, lack of candor called into question "propriety of granting renewal application"
- ALJ to also consider whether fine not greater than \$300,000 was warranted

Designated for Hearing: Case Study No. 2

- ALJ had power to determine issues; renewal
 - Added issue of meritorious service on amount of fine
 - Added issue of misrepresentation to Enforcement Bureau
- Four day evidentiary hearing; live testimony
- Claim of “reliance on counsel” rejected (refused to waive privilege; no specifics on advice sought)
- Findings:
 - Ownership report question was singular; mistake
 - GM solicited improper answers from board member based on erroneous information
 - Board member testimony was credible
 - Reliance on GM and counsel weighed in licensee favor
- 2 year renewal + \$10,000 fine
- Denial only in the most egregious cases

Designated for Hearing: Case Study No. 2

- Lessons Learned
 - Disgruntled employee is often source of complaints
 - Internal knowledge makes them dangerous
 - Take any allegation of non-compliance by an employee seriously
 - Take immediate actions to investigate/remedy situation
 - Memorialize everything and consult counsel
 - Termination and state laws come into play; whistle blower
 - Knowledge of officer/director signing application is key
 - Know the rules
 - Incredible expense and delay
- This is extreme case of what can happen
- Any “no” certification will cause delay

What's New for this Renewal Cycle

- The FCC Chairman and Commissioners
- What's Old Is New Again
- Localism and diversity are the new buzzwords
- More mature EEO rule bears watching
- Could change mid-cycle depending on speed of reform; legal challenges

The Little Known and the Unknown

- Non-discrimination in advertising
 - Adopted to halt exclusionary practices by advertisers (i.e., “no urban stations” clauses)
 - Effective since August 2008
 - Order required renewal certifications
 - Advertising contracts do not discriminate
 - Advertising contracts have non-discrim clauses
 - Renewal App not yet updated
- Non-discrimination in station sales
 - Effective since July 2008
 - Minority/Female and viewpoint diversity
 - Order requires certification in assignment app
 - Application not updated yet

The Little Known and the Unknown

- Form 355 (Still Suspended)
- EEO Rules
 - Expected emphasis item for new Commissioners
 - Renewed focus on enforcement
 - December 2008 fines
 - “Lack of diversity in ownership due to lack of enforcement”
 - Enforcement statistics examined
 - Form 395 to report employee racial/minority status
 - Data/Stats order in April 2008

Your seatbelt is now buckled . . . and you are prepared for turbulence



Remain Vigilant!