

§ 73.3597 Procedures on transfer and assignment applications.

(a) If, upon the examination of an application for FCC consent to an assignment of a broadcast construction permit or license or for a transfer of control of a corporate permittee or licensee, it appears that the station involved has been operated on-air by the current licensee or permittee for less than one year, the application will be designated for hearing on appropriate issues unless the FCC is able to find that:

(1) The permit or license was not authorized either through the Minority Ownership Policy or after a comparative hearing or, in the case of low power TV and TV translator stations, the permit or license was not authorized after a lottery in which the permittee or licensee benefited from minority or diversity preferences;

(2) The application involves an FM translator station or FM booster station only;

(3) The application involves a *pro forma* assignment or transfer of control; or

(4) The assignor or transferor has made an affirmative factual showing, supported by affidavits of a person or persons with personal knowledge thereof, which establishes that, due to unavailability of capital, to death or disability of station principals, or to other changed circumstances affecting the licensee or permittee occurring subsequent to the acquisition of the license or permit, FCC consent to the proposed assignment or transfer of control will serve the public interest, convenience and necessity.

(5) the assignee or transferee has made an affirmative factual showing, supported by affidavits of a person or persons with personal knowledge thereof, which established that the proposed transaction would involve an assignment or transfer to a minority-owned or minority controlled entity in furtherance of our Minority Ownership Policy.

(b)(1) The commencement date of the one-year period set forth in paragraph (a) of this section shall be the date on which the station initiated program tests in accordance with § 73.1620 or § 74.14.

(2) In determining whether the station has been operating on-air for one year, the FCC will calculate the period between the date of initiation of program tests (as specified in paragraph (b)(1) of this section) and the date the application for transfer or assignment is tendered for filing with the FCC.

(c)(1) As used in paragraphs (c) and (d) of this section:

(i) *Unbuilt station* refers to an AM, FM, or TV broadcast station or a low power TV or TV translator station for which a construction permit is outstanding, and, regardless of the stage of physical completion, as to which program tests have not commenced or, if required, been authorized.

(ii) *Seller* includes the assignor(s) of a construction permit for an unbuilt station, the transferor(s) of control of the holder of such construction permit, and any principal or such assignor(s) or transferor(s) who retains an interest in the permittee or acquires or reacquires such interest within 1 year after commencing program tests.

(iii) The provisions of paragraphs (c) and (d) of this section apply only to mutually exclusive noncommercial educational applications filed on or after the release of the Report and Order in MM Docket 98-43, where the construction permit is issued pursuant to settlement agreement.

(2) The FCC will not consent to the assignment or transfer of control of the construction permit of an unbuilt station if the agreements or understandings between the parties provide for, or permit, payment to the seller of a sum in excess of the aggregate amount clearly shown to have been legitimately and prudently expended and to be expended by the seller, solely for preparing, filing, and advocating the grant of the construction permit for the station, and for other steps reasonably necessary toward placing the station in operation.

(3)(i) Applications for consent to the assignment of a construction permit or transfer of control shall, in the case of unbuilt stations, be accompanied by declarations both by the assignor (or transferor) and by the assignee (or transferee) that, except as clearly disclosed in detail in the applications,

there are no agreements or understandings for reimbursement of the seller's expenses or other payments to the seller, for the seller's retention of any interest in the station, for options or any other means by which the seller may acquire such an interest, or for any other actual or potential benefit to the seller in the form of loans, the subsequent repurchase of the seller's retained interest, or otherwise.

(ii) When the seller is to receive reimbursement of his expenses, the applications of the parties shall include an itemized accounting of such expenses, together with such factual information as the parties rely upon for the requisite showing that those expenses represent legitimate and prudent outlays made solely for the purposes allowable under paragraph (c)(2) of this section.

(d)(1) Whenever an agreement for the assignment of the construction permit of an unbuilt station or for the transfer of control of the permittee of an unbuilt station, or any arrangement or understanding incidental thereto, provides for the retention by the seller of any interest in the station, or for any other actual or potential benefit to the seller in the form of loans or otherwise, the question is raised as to whether the transaction involves actual or potential gain to the seller over and above the legitimate and prudent out-of-pocket expenses allowable under paragraph (c)(2) of this section. In such cases the FCC will designate the assignment or transfer applications for evidentiary hearing. However, a hearing is not mandatory in cases coming within paragraph (d)(2) of this section.

(2) It is not intended to forbid the seller to retain an equity interest in an unbuilt station which he is transferring or assigning if the seller obligates himself, for the period ending 1 year after commencing program tests, to provide that part of the total capital made available to the station, up to the end of that period, which is proportionate to the seller's equity share in the permittee, taking into account equity capital, loan capital, and guarantees of interest and amortization payments for loan capital provided by the seller before the transfer or assignment. This condition will be satisfied:

(i) In the case of equity capital: By paid-in cash capital contributions proportionate to the seller's equity share;

(ii) In cases where any person who has an equity interest in the permittee provides loan capital: By the seller's provision of that part of the total loan capital provided by equity holders which is proportionate to the seller's equity share; and

(iii) In cases where any person cosigns or otherwise guarantees payments under notes given for loan capital provided by nonequity holders: By similar guarantees by the seller covering that part of such payments as is proportionate to the seller's equity share. However, this condition shall not be deemed to be met if the guarantees given by persons other than the seller cover, individually or collectively, a larger portion of such payments than the ratio of the combined equities of persons other than the seller to the total equity.

(3) In cases which are subject to the requirements of paragraphs (d)(2) (i), (ii) and (iii) of this section:

(i) The assignee's (or transferee's) application shall include a showing of the anticipated capital needs of the station through the first year of its operation and the seller's financial capacity to comply with the above requirements, in the light of such anticipated capital needs.

(ii) The FCC will determine from its review of the applications whether a hearing is necessary to ensure compliance with the above requirements.

(iii) Compliance with the above requirements will be subject to review by the FCC at any time, either when considering subsequently filed applications or whenever the FCC may otherwise find it desirable.

(iv) Within 30 days after any time when a seller is required to provide equity or loan capital or execute guarantees, the permittee shall furnish the FCC a written report containing sufficient details as to the sources and amounts of equity capital paid in, loan capital made available, or guarantees obtained as to enable the FCC to ascertain compliance with the above requirements.

(v) No steps shall be taken by the permittee to effectuate arrangements

for the provision of equity or loan capital from sources not previously identified and disclosed to the FCC, until 30 days after the permittee has filed with the FCC a report of such arrangements and of provisions made for the seller's compliance with the above requirement.

(vi) The provisions of paragraphs (d)(3) (iv) and (v) of this section shall cease to apply 1 year after commencing program tests.

(4) Applications subject to this paragraph (d) of this section will, in any event, be designated for evidentiary hearing in any case where the agreements, arrangements or understandings with the seller provide for the seller's option to acquire equity in the station or to increase equity interests he retains at the time of the assignment or transfer of control. An evidentiary hearing will similarly be held in any case in which the assignee(s), transferee(s) or any of their principals, or any person in privity therewith, has an option to purchase all or part of the seller's retained or subsequently acquired equity interests in the station.

[44 FR 38509, July 2, 1979, as amended at 47 FR 24580, June 7, 1982; 47 FR 55930, Dec. 14, 1982; 48 FR 9012, Mar. 3, 1983; 48 FR 27207, June 13, 1983; 50 FR 6946, Feb. 19, 1985; 53 FR 36787, Sept. 22, 1988; 63 FR 70050, Dec. 18, 1998]

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

(i) Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes) or

(ii) the grant of the permit is the subject of administrative or judicial review (*i.e.*, petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting documentation. All notifications must be filed in triplicate with the Secretary and must be placed in the station's local public file.

(d) A permittee must notify the Commission promptly when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God will automatically cease six months from the date of the notification described in paragraph (c) of this section, unless the permittee submits additional notifications at six month intervals detailing how the act of God continues to cause delays in construction, any construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments.

(e) Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.

[63 FR 70050, Dec. 18, 1998, as amended at 65 FR 7648, Feb. 15, 2000; 68 FR 12761, Mar. 17, 2003; 69 FR 53352, Sept. 1, 2004]

§ 73.3601 Simultaneous modification and renewal of license.

When an application is granted by the FCC necessitating the issuance of a modified license less than 60 days prior