

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) Except as provided in the last two sentences of this paragraph, 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. Except as provided in the last two sentences of this paragraph, 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. A LPFM permittee unable to complete construction within the time frame specified in the original construction permit may apply for an eighteen month extension upon a showing of good cause. The LPFM permittee must file for an extension on or before the expiration of the construction deadline specified in the original construction permit. An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license. For purposes of the preceding sentence, an "eligible entity" shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121 through 201, at the time the transaction is approved by the FCC, and holds

(1) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will hold the construction permit; or

(2) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will hold the construction permit, provided that no other person or entity owns or controls more than 25 percent of the out-

standing stock or partnership interests; or

(3) More than 50 percent of the voting power of the corporation that will hold the construction permit if such corporation is a publicly traded company.

(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:

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

(2) 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; or

(3) A request for international coordination, with respect to an original construction permit for a new DTV station, has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received, or the licensee or permittee is challenging the response from Canada or Mexico on the grounds that the facility as approved would not permit the station to serve the population that is both approved by the Commission and served by the station's TV (analog) facility to be vacated by February 17, 2009.

(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

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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 FR 5684, Jan. 30, 2008; 73 FR 28369, May 16, 2008]

§ 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 to the expiration date of the license sought to be modified, and an application for renewal of the license is granted subsequent or prior thereto (but within 30 days of expiration of the present license), the modified license as well as the renewal license shall be issued to conform to the combined action of the FCC.

[44 FR 38511, July 2, 1979]

§ 73.3603 Special waiver procedure relative to applications.

(a) In the case of any broadcast applications designated for hearing, the parties may request the FCC to grant or deny an application upon the basis of the information contained in the applications and other papers specified in paragraph (b) of this section without the presentation of oral testimony. Any party desiring to follow this procedure should execute and file with the FCC a waiver in accordance with paragraph (e) of this section, and serve copies on all other parties, or a joint waiver may be filed by all the parties. Upon the receipt of waivers from all parties to a proceeding, the FCC will decide whether the case is an appropriate one for determination without the presentation of oral testimony. If it is deter-

mined by the FCC that, notwithstanding the waivers, the presentation of oral testimony is necessary, the parties will be so notified and the case will be retained on the hearing docket. If the FCC concludes that the case can appropriately be decided without the presentation of oral testimony, the record will be considered as closed as of the date the waivers of all the parties were first on file with the FCC.

(b) In all cases considered in accordance with this procedure, the FCC will decide the case on the basis of the information contained in the applications and in any other papers pertaining to the applicants or applications which are open to public inspection and which were on file with the FCC when the record was closed. The FCC may call upon any party to furnish any additional information which the FCC deems necessary to a proper decision. Such information shall be served upon all parties. The waiver previously executed by the parties shall be considered in effect unless within 10 days of the service of such information the waiver is withdrawn.

(c) Any decision by the FCC rendered pursuant to this section will be in the nature of a final decision, unless otherwise ordered by the FCC.

(d) By agreeing to the waiver procedure prescribed in this section, no party shall be deemed to waive the right to petition for reconsideration or rehearing, or to appeal to the courts from any adverse final decision of the FCC.

(e) The waiver provided for by this section shall be in the following form:

WAIVER

Name of applicant .....  
Call letters .....  
Docket No. ....

The undersigned hereby requests the FCC to consider its application and grant or deny it in accordance with the procedure prescribed in § 73.3603 of the FCC's rules and regulations. It is understood that all the terms and provisions of \_\_\_\_\_ are incorporated in this waiver.

[44 FR 38511, July 2, 1979]