

on the grounds or reasons then obtaining and will forthwith notify the applicant and all known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. If, however, the issue to be resolved is limited to the mutual exclusivity of applications for initial authorizations or for major changes to existing stations, that mutual exclusivity shall be resolved pursuant to competitive bidding procedures identified in subpart I (unreserved channels) or point system procedures identified in subpart K (reserved channels).

[65 FR 36379, June 8, 2000]

§ 73.3594 Local public notice of designation for hearing.

(a) Except as otherwise provided in paragraph (c) of this section when an application subject to the provisions of § 73.3580 (except for applications for International broadcast, low power TV, TV translator, FM translator, and FM booster stations) is designated for hearing, the applicant shall give notice of such designation as follows: Notice shall be given at least twice a week, for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing, in a daily newspaper of general circulation published in the community in which the station is located or proposed to be located.

(1) However, if there is no such daily newspaper published in the community, the notice shall be given as follows:

(i) If one or more weekly newspapers of general circulation are published in the community in which the station is located or proposed to be located, notice shall be given in such a weekly newspaper once a week for 3 consecutive weeks within the 4-week period immediately following the release of the FCC's order, specifying the time and place of the commencement of the hearing;

(ii) If no weekly newspaper of general circulation is published in the community in which the station is located or proposed to be located, notice shall be

given at least twice a week for 2 consecutive weeks within the 3-week period immediately following the release of the FCC's orders, specifying the time and place of the commencement of the hearing in the daily newspaper having the greatest general circulation in the community in which the station is located or proposed to be located.

(2) In the case of an application for a permit pursuant to Section 325(c) of the Communications Act, the notice shall be given at least twice a week for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing in a daily newspaper of general circulation in the largest city in the principal area to be served in the United States by the foreign radio broadcast station.

(3) In the case of an application for change in the location of a station, the notice shall be given both in the community in which the station is located and in the community in which the station is proposed to be located.

(b) When an application which is subject to the provisions of § 73.3580 and which seeks modification, assignment, transfer, or renewal of an operating broadcast station is designated for hearing (except for applications for an International broadcast, low power TV, TV translator, FM translator, or FM booster stations), the applicant shall, in addition to giving notice of such designation as provided in paragraph (a) of this section, cause the same notice to be broadcast over that station at least once daily for 4 days in the second week immediately following the release of the FCC's order, specifying the time and place of the commencement of the hearing. In the case of both commercial and noncommercial TV broadcast stations such notice shall be broadcast orally with the camera focused on the announcer. The notice required by this paragraph shall be broadcast during the following periods:

(1) For commercial TV stations, between 7:00 p.m. and 10:00 p.m.

(2) For commercial AM and FM stations, between 7:00 a.m. and 10:00 a.m., but if such stations do not operate during those hours, then between 6:00 p.m. and 9:00 p.m.

(3) For noncommercial educational TV stations, between 7:00 p.m. and 10:00 p.m., but if the period of broadcast of notice falls within a portion of the year during which such stations do not broadcast, then such stations need not comply with the provisions of this paragraph.

(4) For noncommercial educational AM and FM stations, between 3:00 p.m. and 10:00 p.m., but if the period of broadcast of notice falls within a portion of the year during which such stations do not broadcast, then such stations need not comply with the provisions of this paragraph.

(c) If the station in question is the only operating station in its broadcast service which is located in the community involved, or if it is a noncommercial educational station, publication of the notice in a newspaper, as provided in paragraph (a) of this section, is not required, and publication by broadcast over that station as provided in paragraph (b) of this section shall be deemed sufficient to meet the requirements of paragraphs (a) and (b) of this section. However, noncommercial educational stations which do not broadcast during the portion of the year in which the period of broadcast of notice falls must comply with the provisions of paragraph (a) of this section.

(d) The notice required by paragraphs (a) and (b) of this section shall state:

(1) The name of the applicant or applicants designated for hearing.

(2) The call letters, if any, of the stations or stations involved, and the frequencies or channels on which the station or stations are operating or proposed to operate.

(3) The time and place of the hearing.

(4) The issues in the hearing as listed in the FCC's order or summary of designation for hearing.

(5) A statement that a copy of the application, amendment(s), and related material are on file for public inspection at a stated address in the community in which the station is located or is proposed to be located. See §§ 73.3526 and 73.3527.

(e) When an application for renewal of license is designated for hearing, the notice shall contain the following additional statements:

(1) Immediately preceding the listing of the issues in the hearing:

The application of this station for a renewal of its license to operate this station in the public interest was tendered for filing with the Federal Communications Commission on *(date)*. After considering this application, the FCC has determined that it is necessary to hold a hearing to decide the following questions:

(2) Immediately following the listing of the issues in the hearing:

The hearing will be held at *(place of hearing)* commencing at *(time)*, on *(date)*. Members of the public who desire to give evidence concerning the foregoing issues should write to the Federal Communications Commission, Washington, DC 20554, not later than *(date)*. Letters should set forth in detail the specific facts concerning which the writer wishes to give evidence. If the FCC believes that the evidence is legally competent, material, and relevant to the issues, it will contact the person in question.

(Here the applicant shall insert, as the date on or before which members of the public who desire to give evidence should write to the FCC, the date 30 days after the date of release of the FCC's order specifying the time and place of the commencement of the hearing.)

(f) When an application for a low power TV, TV translator, FM translator, or FM booster station which is subject to the provisions of § 73.3580 is designated for hearing, the applicant shall give notice of such designation as follows: Notice shall be given at least once during the 2-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing in a daily, weekly or biweekly publication having general circulation in the community or area to be served. However, if there is no publication of general circulation in the community or area to be served, the applicant shall determine an appropriate means of providing the required notice to the general public, such as posting in the local post office or other public place. The notice shall state:

(1) The name of the applicant or applicants designated for hearing.

(2) The call letters, if any, of the station or stations involved, the output channel or channels of such stations, and, for any rebroadcasting, the call

letters, channel and location of the station or stations being or proposed to be rebroadcast.

(3) The time and place of the hearing.

(4) The issues in the hearing as listed in the FCC's order or summary of designation for hearing.

(5) If the application is for renewal of license, the notice shall contain, in addition to the information required by paragraphs (f) (1) through (4) of this section, the statements required by paragraph (e) of this section.

(g) Within 7 days of the last day of publication or broadcast of the notice required by paragraphs (a) and (b) of this section, the applicant shall file a statement in triplicate with the FCC setting forth the dates on which the notice was published, the newspaper in which the notice was published, the text of the notice, and/or, where applicable, the date and time the notice was broadcast and the text thereof. When public notice is given by other means, as provided in paragraph (f) of this section, the applicant shall file, within 7 days of the giving of such notice, the text of the notice, the means by which it was accomplished, and the date thereof.

(h) The failure to comply with the provisions of this section is cause for dismissal of an application with prejudice. However, upon a finding that applicant has complied (or proposes to comply) with the provisions of Section 311(a)(2) of the Communications Act, and that the public interest, convenience and necessity will be served thereby, the presiding officer may authorize an applicant, upon a showing of special circumstances, to publish notice in a manner other than that prescribed by this section; may accept publication of notice which does not conform strictly in all respects with the provisions of this section; or may extend the time for publishing notice.

[44 FR 38508, July 2, 1979, as amended at 47 FR 21495, May 18, 1982; 48 FR 9012, Mar. 3, 1983; 49 FR 38132, Sept. 27, 1984; 51 FR 19347, May 29, 1986; 52 FR 21686, June 9, 1987; 58 FR 51251, Oct. 1, 1993]

§ 73.3597 Procedures on transfer and assignment applications.

(a) If, upon the examination of an application for FCC consent to an assign-

ment 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