



PUBLIC NOTICE

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MEDIA BUREAU REMINDS ALL COMMERCIAL BROADCASTERS OF THE OBLIGATION TO PLACE TIME BROKERAGE, JOINT SALES, AND SHARED SERVICES AGREEMENTS INTO THEIR PUBLIC FILE

As the broadcast license renewal cycle moves forward, the Media Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) reminds commercial broadcast licensees of their obligation to ensure that every “sharing” agreement pertaining to the operation of the station whether involving the lease of airtime, the joint sale of advertising, or the sharing of operational services, is retained in their Online Public Inspection Files (OPIF). For example, if a station agrees to lease broadcast time to a third party, a copy of this agreement must be placed in OPIF within 30 days.¹

Commercial broadcast licensees have a long-standing obligation to place in their OPIF, within 30 days of their execution, public copies of every agreement or contract involving the lease of airtime on a licensee’s station (or of another station by the licensee) and every agreement for the joint sale of advertising time involving the station.² The Commission’s rules also require that commercial television broadcast stations retain agreements under which a station provides or collaborates to provide station-related services to any stations with which it is not under common de jure control.³ Copies of any of these agreements may be redacted as necessary to protect confidential or proprietary information, but they must be retained in OPIF as long as they remain in force.⁴ This requirement applies equally to

¹ See, e.g., *Rama Communications, Inc.*, File Number: EB-09-TP-0067, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 15246 (EB 2010) (imposing a \$25,000 forfeiture on a station for, among other violations, failing to place a Time Brokerage Agreement into its public file).

² 47 CFR §§ 73.3526(e)(14), (16). The obligation to retain Time Brokerage Agreements in particular was adopted in order to “make it easier for the Commission and others to properly monitor time brokerage to ensure that licensees retain control of their stations and adhere to the Communications Act, Commission Rules and policies and the antitrust laws.” *Revision of Radio Rules and Policies*, MM Docket No. 91–140, Report and Order, 7 FCC Rcd 2755, 2789 (1992). Noncommercial educational stations, which are prohibited from engaging in both for-profit time brokering and the sale of advertising time, do not have similar record-keeping requirements. 47 CFR § 73.503(c), (d); 47 CFR § 73.3527.

³ 47 CFR § 73.3526(e)(18) (requiring that the substance of oral agreements also be recorded and retained). This rule was adopted in the *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, MB Docket Nos. 07-294, 09-182, 14-50, 04-256, Second Report and Order, 31 FCC Rcd 9864, 10009-22, paras. 341-75 (2016), *aff’d*, *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 07-294, 09-182, 14-50, 04-256, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9855-56, paras. 117-19 (2017).

⁴ *Id.* For example, substantive terms not suitable for redaction typically include language addressing such matters as FCC compliance responsibilities – in contrast to such matters as commercially sensitive financial data, which may be appropriate to redact. See, e.g., *In re Joseph A. Sofio*, Memorandum Opinion and Order, 32 FCC Rcd 1781, 1784-86, paras. 10-13 (2017) (where Commission found that certain information, such as parties’ names, contained

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agreements involving stations in the same market or in different markets,⁵ and there is no exception for foreign programming.

We emphasize to licensees that these requirements apply based on the substance of an agreement, rather than the agreement's title. Regardless of how an agreement is styled or labeled, if it covers the provision of programming time, sale of advertising, or provision of services among commercial broadcast stations, it must be retained in the station's OPIF even if it is not specifically identified as a "Time Brokerage Agreement," "Local Marketing Agreement," "Joint Sales Agreement," or "Shared Services Agreement."⁶

As the Commission has explained, the purpose of the public file is to "encourage a continuing dialogue between broadcasters and the public to ensure stations meet their obligations and remain responsive to the needs of the local community."⁷ Given this goal, and the flexibility to redact confidential and proprietary information, licensees uncertain about whether a given agreement must be retained should err on the side of inclusion.

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in agreements demonstrating applicant's having met program eligibility requirements was not properly withheld from public view as confidential).

⁵ 47 CFR §§ 73.3526(e)(14), (16), (18).

⁶ See, e.g., 47 CFR § 73.3555, Notes 2(j) (defining time brokerage or local marketing agreements, by which one station provides programming to, and sells the advertising time for, another in-market station) and 2(k) (defining joint sales agreements, by which one station sells the advertising time for another in-market station); see also 47 CFR § 73.3526(e)(18) (defining shared services agreements, by which a station provides or collaborates to provide station-related services to stations with which it is not under common de jure control).

⁷ Media Bureau, FCC, *The Public and Broadcasting* 27 (2019); see also *supra* note 2.