

WORKSHEETS FOR FCC FORM 318

APPLICATION FOR CONSTRUCTION PERMIT FOR A LOW POWER FM BROADCAST STATION

WORKSHEET #1a - FAMILY RELATIONSHIPS

This worksheet is for use in connection with Section II, Question 5c of FCC Form 318, which requires the applicant to certify that the applicant and the parties to the application are in compliance with the Commission's policies relating to media interests of immediate family members (i.e., husband, wife, father, mother, sister, brother, son and/or daughter). This worksheet need not be submitted with the application and retention of this worksheet is not required. However, an applicant's ability to produce a copy upon request may prove helpful in determining compliance with the Commission's rules and policies.

The Commission does not presume that media interests of immediate family members should be attributed to the applicant and the parties to the application. This presumption, however, is rebuttable. Accordingly, the applicant should examine the media interests of the principals' immediate family members to determine whether or not those media interests will be independent and not subject to common influence or control. See *Policy Statement, Clarification of Commission's Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992); *Sevier Valley Broadcasting, Inc.*, 10 FCC Rcd 9795 (1995). **An applicant should review this worksheet if the answer to the following question is "Yes":**

Does any member of the immediate family (i.e., husband, wife, father, mother, sister, brother, son and/or daughter) of any party to the application have any interest in or connection with any other broadcast station, pending broadcast application, or daily newspaper in the same area? ☐ Yes ☐ No

For purposes of this policy, a low power FM and a full-service broadcast station are in the same area if the entire proposed area of service of the low power FM station is encompassed by the full-service station's principal community coverage contour (2 mV/m contour for AM stations; 1 mV/m (60 dBu) for FM stations, including FM translator stations and FM booster stations; Grade A contour for TV stations, including TV translator stations and LPTV stations). A low power FM station and a daily newspaper are in the same area if the low power FM station's proposed area of service encompasses the entire community in which the daily newspaper is published. (A daily newspaper is one that is published four or more days per week, is in the dominant language in the market, and is circulated generally in the community of publication. A college newspaper is not considered to be circulated generally. See 47 C.F.R. Section 73.3555(d) and Note 6.) Two low power FM stations are considered to be in the same area if their transmitting antennas are located within seven miles of one another.

If the answer to the above-stated question is "Yes," answer the following questions for each such relationship:

1. Has the family member who is not included as a party to the application been involved in negotiations for the construction of the station? ☐ Yes ☐ No
2. Has the family member who is not included as a party to the application provided financing or otherwise been involved in the process of making financial arrangements for the construction of the station? ☐ Yes ☐ No
3. Is this the first broadcast ownership interest of the family member who is a party to the application? ☐ Yes ☐ No
4. Are the family members involved together in the management or operation of any other media ☐ Yes ☐ No
5. Are there any agreements, arrangements or understandings, either written or oral, between the family members with same-area media interests for the participation of one family member in the financial affairs, commercial practices, programming, or employment practices of the other family member's media entity. Consider, for example, joint sales agreements, local marketing agreements, and arrangements to share facilities or personnel. ☐ Yes ☐ No

If the applicant answers "No" to questions 1 through 5 above, the applicant may conclude that it is in compliance with the Commission's policies relating to media interests of immediate family members. If the applicant answers "Yes" to any one of questions 1 through 5 above, the applicant must answer "No" to Section II, Question 5c of FCC Form 318, and must submit an explanatory exhibit providing a detailed statement regarding the business or media relationship involved between family members.

WORKSHEET #1b - INVESTOR INSULATION AND NON-PARTY INFLUENCE OVER ASSIGNEE/APPLICANT

This section of the worksheet may be used in connection with Section II, question 5d of FCC Form 318, which requires the applicant to certify that it complies with the Commission's restrictions relating to the insulation and non-participation of non-party investors and creditors. See *Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*, 14 FCC Rcd 12559 (1999). It indicates the kinds of contractual relationships that may, in the Commission's view, exceed the authority of a properly insulated investor or demonstrate some indicia of de facto control by a creditor.

I. Investor Insulation

If an applicant is a limited partnership or a limited liability company ("LLC") that seeks to insulate partners or members in accordance with the Commission's attribution rules, the applicant shall ensure that each such limited partner or LLC member is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership or LLC. To ensure that each such limited partner or LLC member is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership or LLC, the applicant must answer the following inquiries. Do the limited partnership or LLC enabling documents:

- a. specify that any exempt limited partner/LLC member (if not a natural person, its directors, officers, partners, etc.) cannot act as an employee of the limited partnership/LLC member if his or her functions, directly or indirectly, relate to the media enterprises of such entity? ☐ Yes ☐ No
- b. bar any exempt limited partner/LLC from serving, in any material capacity, as an independent contractor or agent with respect to the partnership/LLC's media enterprises? ☐ Yes ☐ No
- c. restrict any exempt limited partner/LLC member from communicating with the limited partnership/LLC, the general partner, or any LLC management committee on matters pertaining to the day-to-day operations of its business? ☐ Yes ☐ No
- d. empower the general partner/LLC management committee to veto any admissions of additional general partners/LLC members admitted by vote of the exempt limited partners/LLC members? ☐ Yes ☐ No
- e. prohibit any exempt limited partner/LLC member from voting on the removal of a general partner/LLC member or limit this right to situations where the general partner/LLC member is (i) subject to bankruptcy proceedings, as described in Section 402(4)-(5) of the Revised Uniform Limited Partnership Act, (ii) is adjudicated incompetent by a court of competent jurisdiction, or (iii) is removed for cause, as determined by an independent party? ☐ Yes ☐ No
- f. bar any exempt limited partner/LLC member from performing any services to the limited partnership/LLC materially relating to its media activities, with the exception of making loans to, or acting as a surety for, the business? ☐ Yes ☐ No
- g. state, in express terms, that any exempt limited partner/LLC member is prohibited from becoming actively involved in the management or operation of the media businesses of the limited partnership/LLC? ☐ Yes ☐ No

If the answer is "Yes" to **each** of these conditions with regard to every limited partner and LLC member that the applicant seeks to insulate **and** the relevant state statute authorizing the LLC permits a LLC member to insulate itself in accordance with the Commission's criteria, the applicant may certify that it complies with the Commission's restrictions regarding insulation of non-party investors. If "No" to the foregoing, the applicant must respond "No" to Section II, Item 5d of FCC Form 318 and submit an explanatory exhibit detailing the rights of any non-party investor and setting forth the applicant's reasons for not treating the investor as a party to the application.

II. Non-Party Influence Over Applicant

A. Non-party investors, *i.e.*, investors with nonattributable interests, may have very limited powers over the operations of a licensee. Accordingly, with respect to any agreement, arrangement or understanding involving insulated parties or other investors with nonattributable interests, including creditors, secured parties, program suppliers, and any other persons not disclosed as parties to this application, does such agreement:

1. give any non-party investor the right to vote on any matters decided by the applicant's board of directors, partnership committee or other management group; ☐ Yes ☐ No
2. give any non-party investor the right to attend, or appoint an observer to attend, applicant board, partnership or other management meetings; ☐ Yes ☐ No
3. place any limitation on applicant programming discretion; ☐ Yes ☐ No
4. give any non-party investor the right to vote on, approve or restrict applicant's actions on any matter relating to programming, personnel or finances; ☐ Yes ☐ No
5. give any non-party creditor or any bond, debenture or warrant holder the right to vote on, approve or restrict the applicant's actions on any matter relating to programming, personnel or finances; ☐ Yes ☐ No
6. give any non-party investor that holds a non-voting convertible interest the right to convert such an interest and acquire control of the applicant based on the applicant's actions relating to programming, personnel and finances; ☐ Yes ☐ No
7. give any non-party investor, creditor, or bond, debenture or warrant holder the right to vote on, approve or deny the selection or removal of a general partner of an applicant partnership or a member of the applicant's governing body; and ☐ Yes ☐ No
8. give any non-party investor, creditor, or bond, debenture or warrant holder the right to convert, tender or require the tendering of stock pursuant to a put-or-call agreement based on the actions of the applicant relating to programming, personnel or financing. ☐ Yes ☐ No

If the answer to all of these conditions is "No" with regard to every non-party investor and creditor, **and there are no other provisions that cede de facto control to a non-party**, applicant may certify that it complies with the Commission's restrictions regarding non-participation of non-party investors and creditors. If the answer to any of these inquiries is "Yes," the applicant must respond "No" to Section II, Item 5d of FCC Form 318 and submit an exhibit detailing the rights of any non-party investor and setting forth the applicant's reasons for not treating the investor as a party to the application.

☐ Yes ☐ No

B. With respect to any loan agreement, has the applicant ensured that such agreement:

1. includes an unconditional promise by the applicant to pay on demand or on a specific date a sum certain; ☐ Yes ☐ No
2. contains a fixed or defined variable rate of interest on the loan; and ☐ Yes ☐ No
3. does not prohibit the redemption of the loan by the applicant, or permit redemption at the option of the lender only? ☐ Yes ☐ No

If the answer to each of these inquiries is "Yes," and if there are no other provisions that may give non-party investors control, the applicant may conclude that it complies with the Commission's restrictions regarding non-participation of non-party investors and creditors. If not, the applicant must respond "No" to Section II, Item 5d of FCC Form 318 and submit an exhibit detailing the rights of the lender and the obligations of the applicant for each loan agreement.