October 2017

Church Participation in Federal Communications Commission Licensing and Administration

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I. Introduction

Traditional broadcast outlets, FM and standard (AM) radio and television stations, are a substantial source of information and entertainment for most Americans. Statistics reveal that Americans view an average of seven hours of television every day,¹ and that television is the primary news source for approximately one-third of Americans.² Although television is a medium which undeniably molds the values of many of its viewers,³ for most American communities there is a scarcity of broadcast outlets to provide unique and diverse views on public affairs and

¹ This paper was presented at the twenty-third annual meeting of Diocesan Attorneys held in Monterey, California.
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³ A recent study conducted by the University of Michigan reported that middle-class white persons who increase the time they spend watching television are more likely to favor racial and sexual equality. The report stated that these concepts are generally supported on television programming. See Comm. Daily, Mar. 19, 1987, at 7.
controversial issues of public importance. These communities remain dependent upon a limited number of broadcast outlets, which plainly have a profound effect on the formation and acceptance of public values.

The process by which broadcast licenses are granted and renewed and by which broadcast stations operate requires community involvement in order to fulfill the statutory goal that broadcast licenses should be granted solely to those who are willing to respond to local needs and interests. The purpose of this article is to provide local churches and state Catholic conferences with relevant information, thereby enabling them to participate more fully in this process. In addition, this article provides an introduction to the basic elements of a broadcast licensee's statutory responsibilities.

II. THE CHURCH'S INTEREST IN BROADCAST LICENSEES WHICH RESPOND TO LOCAL NEEDS AND INTERESTS

On a national level, the United States Catholic Conference ("USCC") works to shape federal communications policy to ensure that broadcast outlets are licensed to those who serve the public interest, the standard for broadcast activity set by the Communications Act of 1934. These efforts are aimed at maintaining a Federal Communications Commission ("the Commission" or "FCC") regulatory framework that allows for meaningful public participation in the licensing and renewal of individual broadcast stations. The USCC recognizes that this sort of relationship between the public and broadcast stations is a critical component of keeping communities well informed regarding both mainstream opinions and opinions of groups with unique, minority perspectives. For many parts of the country, these groups with minority perspectives include Catholic or-

* See R. Jennings, Diversity of Communications Facilities in American Communities, in Reply Comments of United States Catholic Conference, app. A (filed Nov. 8, 1984) [hereinafter USCC Comments]. The USCC Comments were filed in response to a Notice of Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licenses, 49 Fed. Reg. 20,317 (1984) [hereinafter 1984 Notice of Inquiry]. The 1984 Notice of Inquiry terminated in a report released by the FCC on August 23, 1985. See Inquiry into Section 73,910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees, 102 F.C.C.2d 145 (1985). The Jennings report contained in the USCC Comments found that approximately seventeen percent of communities in the sample have only one broadcast station which is not owned by an entity which also owns another media outlet within that community (including a daily or weekly newspaper). USCC Comments, supra. Only two percent of communities have a radio outlet which is not similarly cross-owned. Id. Although cable is available to more than half of the communities, only thirty-five percent of communities receive open channels for local use ("access channels"), and local news is carried on only 8.5 percent of the systems. Id. New video systems, such as multi-point distribution systems, are available in only 3.6 percent of communities. Id.
ganizations. In a majoritarian society, the dissemination of diverse ideas and opinions through the broadcast media is essential to maintaining a fair and humane society.

Translation of these principles into favorable results requires a meaningful partnership between USCC work on the national level and state and local efforts. The USCC can help to ensure that the regulatory system allows broad public participation in licensing proceedings but only the dioceses, through their attorneys and communications directors, and other organizations can actually participate in those proceedings. It is through this participation that they can have a direct impact on the dissemination of ideas and opinions in their own communities.

If a television or radio station fails to broadcast a reasonable amount of coverage of important local events or fails to report the strongly held views of a community group (such as a Catholic parish or diocese), the organization whose members view or listen to that station has an interest in petitioning the Commission to deny the renewal of the station's license. If an applicant for a new television or radio station lacks the fundamental quality of trustworthiness which is expected of broadcasters who are licensed to serve the public interest, once again it is the diocese or other entity which has a stake in the outcome of the application proceeding. This diocese or other entity can and should inform the Commission by filing a petition to deny the application. However, if a diocese is aggrieved by a gross lack of programming regarding a controversial local issue, such as the establishment of sex education programs or health clinics in schools, or by a broadcaster's failure to report accurately (or failure to report at all) its perspective on such issue, the diocese need not wait until the errant station's license is being considered for renewal. Traditionally, the diocese could file a fairness doctrine complaint with the Commission.

Immediately before this article was completed, the fairness doctrine, an inherent part of the broadcaster's obligations, was alive and well. In a case on remand from the United States Court of Appeals for the District of Columbia Circuit, however, the FCC recently voted that the fairness doctrine unconstitutionally burdens a broadcaster's first amendment rights. Syracuse Peace Council v. Television Station WTVH, 63 Rad. Reg. 2d (P & F) 541, 541 (Aug. 13, 1987). Several challenges to that decision were filed and transferred from the Second Circuit to the D.C. Circuit, where they are now pending. Syracuse Peace Council v. FCC, No. 87-1516 (D.C. Cir. 1987). Legislative initiatives to codify the fairness doctrine are also under consideration, despite the threat of presidential veto. See Comm. Daily, Sept. 14, 1987, at 7-8. Given the uncertainty of judicial and legislative activity, the authors include the discussion of the fairness doctrine as it had existed with the caveat that its future is very uncertain.
III. BRIEF OVERVIEW OF BROADCAST REGULATION

A. Public Interest Standard of the Communications Act

The fundamental goal of federal regulation of broadcasting, embodied in the Communications Act of 1934 ("the Communications Act"), is to ensure that the licensees of broadcast outlets serve the public interest. "[I]n return for 'the free and exclusive use of a limited and valuable part of the public domain,' broadcasters [are] to be 'burdened by enforceable public obligations.'" In amending the Communications Act in 1959, Congress reaffirmed this singularly important concept of the public trust: "[B]roadcast frequencies are limited and, therefore, they have been necessarily considered a public trust. Every licensee who is fortunate in obtaining a license is mandated to operate in the public interest. . . ."

This fundamental underpinning of broadcasting—that licensees are public trustees—is woven throughout the Communications Act and has been endorsed by the Supreme Court: "The Commission is specifically directed to consider the demands of the public interest in the course of granting licenses, renewing them, and modifying them." The Court has firmly held that Congress intended the public interest standard as requiring licensees to provide programming in the public interest. The obligation to serve the public interest "essentially requires the licensee to provide nonentertainment programming that responds to the needs of the licensee's broadcast community."

B. Transition from Ongoing Government Oversight to Increased Reliance Upon Ongoing Public Oversight of Licensees

Until the early 1980's, the Commission interpreted the public interest standard as requiring licensees to provide considerable documentation

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9 Throughout this article, "licensees" refers to broadcast licensees.
11 Id. at 380. See also Banzhaf v. FCC, 405 F.2d 1082, 1095 n.49 (D.C. Cir. 1968) ("At the very least, th[e] language [of the Senate Report accompanying the 1959 amendments to the Act which codified the fairness doctrine] appears to be an acknowledgement of and acquiescence in the settled Commission and judicial construction that the public interest standard applies to program content."), cert. denied, 396 U.S. 842 (1969).
to the Commission regarding their programming policies. Regulations re-
quired licensees to broadcast certain amounts and types of non-entertain-
ment programming, to follow specific procedures to ascertain community 
needs, and to provide documentation of these efforts when applying for 
renewals and new facilities. Specifically, renewing licensees and new ap-
plicants were required to document categories and amounts of program-
ming which broadcast in the past and which were scheduled to be broad-
cast in the upcoming license term; the amount of commercials which were 
broadcast (or scheduled to be broadcast); and the names, titles, and spe-
cific questions asked of community leaders who were interviewed to de-
termine community needs.

Since the Commission's adoption of various deregulatory initiatives,\(^{18}\) radio and television licensees are no longer required to supply detailed 
information in initial and renewal applications regarding the manner in 
which they determine community needs and reach their programming de-
cisions. Presently, they must only provide, in a "public file,"\(^{14}\) a summarization of their programming proposals and actual performance and, in a 
brief renewal form,\(^{18}\) certification that they have met their public interest 
obligations. Notwithstanding the fact that the Commission has eliminated 
many regulations prescribing the manner in which licensees must exercise 
their public service objectives, those fundamental obligations remain 
intact:

> [W]e are not in this proceeding relieving a licensee of all programming re-

ponsibilities. . . . [T]he Commission's involvement in the area of non-en-
tertainment programming has always been driven by a concern that issues 

\(^{18}\) See Deregulation of Radio, 84 F.C.C.2d 968, 968-69 (report & order) (deregulation “as-

sures that service in the public interest will continue without unnecessarily burdensome reg-

ulations of uniform applicability that fail to take into account local conditions, tastes or des-


\(^{14}\) A "public file" is compiled by a broadcaster and consists of official reports, community 

letters including complaints, listings of current community issues and station programs re-

sponding to such issues, and other important documents reflecting the licensee's operations. 
FCC regulation requires that the public file be kept for public inspection in the community of license and in a location convenient for perusal by community members. 47 C.F.R. § 
73.3526(a), (d) (1986).

\(^{18}\) One result of the Commission's decision to effect various deregulatory measures has been 
the elimination of the detailed license renewal form and the institution of a shorter form, 
printed on a postcard.
of importance to the community will be discovered and addressed in pro-
gramming so that the informed public opinion, necessary in a functioning
democracy, will be possible. Given our conclusion with respect to existing
economic incentives, however, we believe that our new regulatory approach
should place greater emphasis on the role of the marketplace in achieving
our regulatory objectives. In addition, deletion of quantitative guidelines as
to programming responsibilities comports more closely with the Commis-
sion's programming concerns.\footnote{Deregulation of Commercial Television, 98 F.C.C.2d at 1091 (footnote omitted).}

In the wake of this elimination of the aforementioned broadcast reg-
ulations, the Commission and the courts have recognized the necessity of
public participation in the licensing process. Such participation is needed
to provide the Commission with the information on licensee performance
that it no longer collects through explicit licensee regulatory standards.
The onus is now on the public to collect detailed information on licensee
performance when a licensee faces renewal or a new application for a
broadcast facility is filed. The basic method of participation is to petition
the Commission to deny a licensee's application for renewal or for a new
broadcast facility.

During the past twenty years, requirements for standing to file "peti-
tions to deny" have been eased in order to effectuate the purpose of the
Communications Act: "[T]o protect the public."\footnote{FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 477 (1940).} For example, the
United States Court of Appeals for the District of Columbia Circuit rec-
ognized that broadcast listeners, as well as competing applicants, have
standing to file petitions to deny applications and stated: "[U]nless the
listeners—the broadcast consumers—can be heard, there may be no one
to bring programming deficiencies or offensive overcommercialization to
the attention of the Commission in an effective manner."\footnote{Office of Communication of United Church of Christ v. FCC, 359 F.2d 994, 1004-05 (D.C.
Cir. 1966).} The court fur-
ther explained that "community organizations [such] as civic associations,
professional societies, unions, churches, and educational institutions or
associations" are the types of consumers of broadcast services envisioned
as the proper "representatives of broad as distinguished from narrow in-
terests, public as distinguished from private or commercial interests."\footnote{Id. at 1005 (emphasis added).} The unique value of petitions filed by listeners and viewers, as distin-
guished from potential commercial broadcasters (competitors of a licen-
see), is that listeners and viewers will "vindicate the broad public interest
relating to a licensee's performance of the public trust inherent in every
license."\footnote{Id. at 1006.}
The importance of the public in application proceedings has been consistently emphasized by the courts. In vacating a portion of an FCC decision which eliminated the requirement that broadcasters must retain logs of programs they broadcast for public perusal, the D.C. Circuit held that an attempt by the Commission to deprive interested parties (including itself) of the vital information needed to establish a *prima facie* case in a petition to deny "seems almost beyond belief." In a subsequent case, the D.C. Circuit reaffirmed that "[the Commission] relies . . . on public participation in the form of petitions to deny to ensure that applicants for license renewal have met their public interest obligations under [the Act]."

IV. **Standards for New Licensees and Regulation and Renewal of License Operations in the Public Interest**

A. **Overview**

An applicant for a new broadcast license must establish certain basic qualifications. These include good character, United States citizenship, financial suitability, technical expertise, equal employment opportunity compliance, and compliance with multiple ownership requirements. Questions regarding an applicant's possession of these basic qualifications may be raised in a citizen's petition to deny the application. An existing licensee, applying for renewal of its license, must certify that it has retained these basic qualifications. A petition to deny the renewal based on facts alleging that the licensee lacks those qualifications will be considered by the Commission. Additionally, renewal applicants are required to establish that they have fulfilled their fundamental obligation to serve the public interest by broadcasting programs which respond to the needs and interests of their communities of license. These qualifications will be explored in depth.

B. **Specific Qualifications**

1. **Good Character**

The Communications Act requires that applicants for new facilities and renewal provide certain information to the Commission to establish their character qualifications. As part of its deregulatory effort, in 1986 the Commission narrowed the types of behavior and actions it will consider in determining whether a new applicant or licensee facing renewal

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has the requisite character qualifications to operate a broadcast station. In the period prior to 1986, the Commission could weigh conduct in areas other than those regulated by the Communications Act in order to ensure that broadcasters exercised good editorial judgment and operated in the public interest. Formerly, the Commission considered adjudicated and unadjudicated violations of securities, tax, antitrust and various state laws.\textsuperscript{33}

Since 1986, when the Commission amended its rules, the conduct which is considered has been substantially limited. At present, the Commission considers the final findings of other governmental entities that an applicant has made fraudulent representations to those entities. It does not, however, consider the existence of ongoing investigations.\textsuperscript{34} Violations of criminal laws resulting in convictions are considered if the violations involve false statements or dishonesty.\textsuperscript{35} Similarly, adjudicated violations of antitrust laws involving non-broadcast businesses are considered only if the Commission deems them relevant to an applicant’s proclivity for truthfulness; antitrust violations involving broadcast businesses are considered in any event.\textsuperscript{36} Finally, the Commission examines violations of the Communications Act and of FCC rules or policy; misrepresentations to the Commission; misuse of FCC processes; and deceptive or fraudulent programming.\textsuperscript{37}

2. Citizenship

The Communications Act prohibits non-citizens, foreign governments and foreign corporations from holding a broadcast license.\textsuperscript{38} The statute also defines improper foreign control of a business entity which holds a license as alien ownership of one-fifth or more of the capital stock or the presence of a non-citizen on the board of directors or among the officers.\textsuperscript{39}

3. Financial Showing

A new applicant must certify to the Commission that it has adequate funds to construct the station and operate it for three months without incoming revenue. It is both noteworthy and typical of the present lack of

\textsuperscript{33} See Establishment of a Uniform Policy To Be Followed in Licensing of Radio Broadcast Stations Cases in Connection With Violations by an Applicant of Laws of the U.S. Other Than The Communications Act of 1934, as amended, 42 F.C.C.2d 399 (1951).

\textsuperscript{34} Character Qualifications in Broadcast Licensing, 59 Rad. Reg. 2d (P & F) 801, 813 (Jan. 22, 1986).

\textsuperscript{35} Id. at 813-14.

\textsuperscript{36} Id. at 816-18.

\textsuperscript{37} Id. at 822-25.

\textsuperscript{38} 47 U.S.C. § 310(a), (b) (1982).

\textsuperscript{39} Id. § 310(b)(3).
specificity demanded of licensees that no financial statement is required.

4. Technical Expertise

A new applicant must answer “electrical engineering” portions of the application form, indicating that its “staffing, studio and equipment plans are adequate to effectuate to a reasonable degree” its programming at the frequency and power for which it is applying. Additionally, its equipment must meet FCC technical standards or be among the types and models listed on the Commission’s list of certified equipment.

5. Equal Employment Opportunity Compliance

Applicants for new facilities and renewal applicants must adopt and file with the Commission an equal employment opportunity (“EEO”) program. The Commission provides a model program for licensees and requires the applicant to list the number, race, and job categories of employees, as well as the percentage of minorities in the community workforce. Renewal applicants whose EEO forms indicate that they fail to meet the Commission’s guidelines for appropriate ratios of minority and female employees will be reviewed to determine if good faith recruitment efforts have been made. If this review reveals that insufficient efforts have been made, the Commission may renew the license for less than the full license term and then re-examine the EEO program.

6. Multiple Ownership

Generally, no single entity may own or control more than fourteen stations within any one type of service (AM or FM radio, or television), or own or control any number of television stations which have an aggregate

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31 47 C.F.R. § 73.2080(b) (1986). In accordance with FCC guidelines:
   (1) stations with less than five full-time employees will continue to be exempt from having a written EEO [Equal Employment Opportunity] program; (2) stations with five to ten full-time employees will have their EEO programs reviewed if minority groups and/or women are not employed on their full-time staffs at a ratio of 50% of their workforce availability overall and 25% in the upper-four Form 395 job categories; (3) stations with 11 or more full-time employees will have their EEO program reviewed if minority groups and/or women are not employed full time at a ratio of 50% of their availability in the workforce overall and 50% in the upper-four job categories; and (4) all stations with 50 or more full-time employees will have their EEO programs reviewed.

national audience reach exceeding thirty percent.²³ Although various combinations of ownership are also prohibited, waivers may be granted.²⁴ These combinations include more than one of the same type of station in the same community (for example, two AM radio stations in the same town) if the signal of both would overlap; and an AM/FM, or FM/television combination in the same community.²⁵

7. Overall Programming Obligations

Licensees are required to ascertain and respond to, with appropriate programs, the needs and interests of the communities they are licensed to serve. Regulations specifying the manner in which licensees were required to regularly survey community members regarding community issues and document the results of such surveys were eliminated in the early 1980's. This elimination initially occurred with respect to radio licensees and then for television licensees. The underlying statutory obligation to serve the public interest by providing community responsive programming, however, remains the bedrock obligation of each licensee.

The Supreme Court has held that the public interest standard of the Communications Act requires licensees to broadcast programs addressing local interests.²⁶ The inclusion of community responsive programs within the definition of public interest obligations has been consistently emphasized by the federal courts.²⁷ The Commission does not specify precisely what constitutes community responsive programming and does not require any set amount of non-entertainment programming. The Commission has emphasized that a licensee has editorial discretion to discover and address “issues of importance to the community,”²⁸ and defines an “issue” as a “point of discussion, debate, or dispute . . . [a] matter of wide public concern.”²⁹

In exercising its discretion to make programming decisions, the licensee is not completely at liberty. It may not “ignore the strongly felt needs

²³ See 47 C.F.R. § 73.3555(d)(1), (2) (1986).
²⁴ See Notice of Proposed Rulemaking: Amendment of Section 73.355 of the Commission’s Rules, the Broadcast Multiple Ownership Rules, 2 F.C.C. Rec. 1138 (MM Docket No. 87-7, Feb. 20, 1987); 47 C.F.R. § 73.3555 (1986).
²⁵ See 47 C.F.R. § 73.3555(a), (b) (1986).
of a significant segment” of the community. At the same time, a licensee need not program to respond to every issue arising in its community. If other television or radio stations have aired programs covering an issue, a licensee will not be deemed deficient with respect to its public interest obligation for not addressing that issue. By permitting licensees to take into account the programming of other stations when making their own program choices, the Commission is seeking to encourage stations to offer specialized programming and, simultaneously, affirming that the “the responsibility of each licensee to contribute to the overall mix of issue-responsive programming is a fundamental duty for which licensees will be held individually accountable.”

8. Fairness Obligations

The fairness doctrine, which was in effect from the advent of broadcast regulation until 1987, imposed a two-fold obligation on licensees: to schedule adequate time for discussion of controversial issues of public importance; and to provide a reasonable opportunity for opposing views. In 1987, in response to a constitutional challenge by a licensee previously found to have violated the fairness doctrine, the Commission held that the fairness doctrine is not in the public interest, is unconstitutional because it impermissibly chills the exercise of first amendment rights by broadcasters, and reduces the diversity of views available to the public in contravention of first amendment rights. The case had been remanded to the Commission by the D.C. Circuit with instructions to consider the licensee’s constitutional arguments. The court predicted, in its remand decision, the Commission’s ultimate conclusion that the fairness doctrine is unconstitutional by examining the Commission’s fairness doctrine report issued in 1985. In this report, the FCC noted the probability that

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42 Deregulation of Commercial Television, 104 F.C.C.2d at 367-68.
43 See supra note 5. Although the fairness doctrine has been eliminated by the Commission (it should be noted that an appeal of this decision is pending before the D.C. Circuit), other related statutory obligations remain. One example is the “equal opportunity rule.” 47 C.F.R. § 73.1940 (1986). The equal opportunity rule mandates that a broadcaster who allows one legally qualified candidate for local, state or federal office to purchase time must also allow opposing candidates to purchase equal amounts of time during approximately the same time of day. Id.
46 See Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees, 102 F.C.C.2d 145, 156
the doctrine is violative of the Constitution.\textsuperscript{47}

At the time of its decision regarding the constitutionality of the fairness doctrine, the Commission was subject to Congress’ directive, issued in 1986 as part of the budget allocation for the FCC, that it should take no action to eliminate or modify the fairness doctrine until it reported to Congress an alternative means of advancing the goals fostered by the doctrine.\textsuperscript{48} On the same day that it issued the implicated decision, the Commission issued a report to Congress in which it stated that total elimination of the fairness doctrine would best serve the first amendment.\textsuperscript{49} Congressional reaction to the elimination of the doctrine and the simultaneous issuance of the mandated report and decision was particularly angry. At the time of this writing, congressional figures have declared their intention to attach an amendment codifying the fairness doctrine to the first available bill which would not be vetoed by President Reagan.\textsuperscript{50}

In the absence of legislation overturning the Commission’s decision
that eliminated the fairness doctrine or appellate or Supreme Court reversal of the decision, the obligations of the fairness doctrine will not be enforced. The Commission contends, however, that this does not leave the public without the regulatory means of enforcing its right to have available diverse ideas over the airwaves. The Commission asserts that its existing programming requirements and its decision not to enforce the fairness doctrine "does not absolve licensees of their public trust responsibilities to present programming that meets the needs of their communities." Furthermore, "licensees remain obligated to . . . refrain from activities such as news distortion and presenting false and deceptive programming." In light of the strong support in Congress and the unsettled judicial treatment of the fairness doctrine, it is worthwhile to examine the doctrine as it was developed by the Commission and the courts before 1987.

The obligation imposed by the fairness doctrine to provide an adequate amount of time for discussion of controversial issues of public importance was interpreted broadly by the Commission as requiring a "reasonable" amount of time. Controversial issues of public importance included issues covered by other local media outlets, issues to which government official and community leaders devoted attention, and issues likely to have an important impact on the community at large. The obligation to afford a reasonable opportunity for contrasting views was not traditionally satisfied by the licensee's mere adoption of a general policy of granting demands for equal time. Instead, the licensee had to act affirmatively, either by presenting the opposing viewpoint with an appropriate spokesperson or by attempting to locate potential spokespersons to present opposing views. The licensee did not always need to present every view on every subject, but was required to make provisions for every major viewpoint on the issue.

It is important to acknowledge that equal time was not required. Nonetheless, a grave imbalance among the amount and frequency of time afforded different views did violate the doctrine. The balance required

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52 Id.
54 Id. at 13.
55 Id. at 14.
57 Fairness Report, 48 F.C.C.2d at 15.
58 Id. at 16-17.
by the fairness doctrine was measured by evaluating the licensee's overall programming and not by evaluating one program or even one broadcast day.\textsuperscript{98}

The fairness doctrine has been applied to editorial advertising; specifically, "editorials paid for by the sponsor" which present a meaningful statement addressing and advocating a point of view on a controversial issue of public importance.\textsuperscript{99} The Commission's example of an editorial advertisement subject to the fairness doctrine is instructive:

An example of an overt editorial advertisement would be a thirty- or sixty-second announcement prepared and sponsored by an organization opposed to abortion which urges a constitutional amendment to override a decision of the Supreme Court legalizing abortion under certain circumstances. While the brevity of such announcements might make it difficult to develop the issue in great detail, they could, nevertheless, make a meaningful contribution to the public debate, and we believe that the fairness doctrine should be fully applicable to them.\textsuperscript{100}

Similar advertisements on the opposite side of the debate may also fall under this guideline.

9. Public File

Licensees are required to maintain, at their station or elsewhere in their community of license, a file open to the public which contains documents respecting their broadcast operations.\textsuperscript{101} In its deregulation effort, the Commission eliminated, along with other former regulatory methods for ensuring that broadcasters use their licenses in the public interest, forms requiring detailed information regarding past and proposed programming, commercialization and non-entertainment guidelines, procedures for ascertaining community needs and program logs. Nonetheless, the Commission and the courts have emphasized the critical importance of the public file to a determination of a broadcaster's performance: "[T]he information necessary to conduct an in-depth review of a licensee's performance will be available at the station in the public inspection file. Interested citizens need only visit that file to avail themselves of the information necessary to support a complaint or petition to deny . . . ."\textsuperscript{102}

Judicial decisions have removed all doubt about whether the maintenance of public files is essential to implementation of communications

\textsuperscript{98} Id. at 17.
\textsuperscript{99} Id. at 22.
\textsuperscript{100} Id.
\textsuperscript{101} 47 C.F.R. § 73.3526 (1986).
\textsuperscript{102} Id. at 22.
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statutes: "If the Commission's goal is public participation in the license renewal process, the least it can do is assure that public files contain the minimum amount of information required to begin the process . . . ."64 The public file must be available to the public during reasonable hours and must contain the following information:

* quarterly "program-issues" list, specifying community issues occurring in the past three months, and the programs the licensee aired to address them;
* most recent renewal application;
* most recent Ownership Report;
* Annual Employment Reports filed with the Commission after the date that the station's license was last renewed;
* most recent Model Equal Employment Opportunity Program;
* "The Public and Broadcasting—A Procedural Manual";65
* a letter file for letters received from members of the public; and
* a file for requests for time by candidates for public office.66

V. PARTICIPATION IN LICENSING APPLICATIONS AND OPERATIONS

Members of the public may bring a new applicant's or existing licensee's lack of qualifications or poor prior performance to the attention of the Commission during several stages of the licensing process. A petition to deny may be filed against an applicant filing an initial application for a new facility or against an existing licensee applying for renewal.67 During the license term, a complaint alleging violations of licensing obligations may be filed against the licensee.68

The basic structure of the process for public participation in initial licensing, ongoing operations and renewal is outlined below:

A. Initial application for new broadcast facility is tendered to Commission:

Timing:

* Within 30 days of filing, applicant must give notice of filing in local newspaper (of community of license for which application is filed) at regular intervals.69
* Commission assigns a file number and issues a notice of the filing in an FCC publication entitled Public Notice (released periodically), listing applications accepted for filing, and listing a date (not less than thirty

65 This manual is published by the Commission to explain, in general terms, a citizen's rights before the FCC.
66 See 47 C.F.R. § 73.3526 (1986); see also id. § 73.3527 (1986) (public file requirements for noncommercial stations).
68 See 47 C.F.R. § 73.3584(a) (1986).
69 Id. § 73.3580 (1986).
days after release of the Public Notice) by which petitions to deny must be filed.  

Standing:
* A petitioner (other than a competing broadcaster) asserts that he is a resident of the community the applicant is seeking to serve and lists his ties to that community (residence and workplace in the community, knowledge of community needs and problems).  
* Local groups affiliated with a national organization (as a diocese may be perceived to be) should make clear that the petitioner is local, members of which are residents of the community or work in the community of application and, if the head of that affiliate (such as the bishop) or a coordinating official (diocesan director of communications) is a resident or whose office is located in the community of application, that person should be listed by name.

Grounds:
* Petitioner must present specific factual allegations indicating that a grant of the license would be prima facie inconsistent with the public interest.  
* Specificity is required; mere conclusions do not constitute appropriate grounds for a petition to deny.  
* Grounds for a petition include facts within the personal knowledge of the petitioner that the applicant lacks one or all of the basic qualifications to be a Commission licensee—good character, U.S. citizenship, financial showing, technical expertise, equal employment opportunity and multiple ownership compliance.  
* Programming performance is not a threshold qualifying issue for new applicants, although it may be considered if the applicant is being compared to other competing applicants and material and substantial differences between proposed program plans exist.

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70 Id. §§ 73.3571-73 (1986). Issues of Public Notice are available from the Commission's printing service, but do not appear in the Federal Register. The USCC Office of General Counsel receives this publication.
74 See, e.g., Central Fla. Enters., Inc. v. FCC, 695 F.2d 37, 43 (D.C. Cir. 1978) (incumbent's past performance is highly relevant), cert. denied, 460 U.S. 1084 (1983).
75 See, e.g., West Coast Media, Inc. v. FCC, 695 F.2d 617, 621 (D.C. Cir. 1982) (financial difficulty considered), cert. denied, 464 U.S. 816 (1983); Central Fla. Enters., Inc. v. FCC, 595 F.2d 37, 43 (D.C. Cir. 1978) (incumbent's past performance is highly relevant), cert. denied, 460 U.S. 1084 (1983); Bilingual Bicultural Coalition v. FCC, 595 F.2d 621, 628 (D.C. Cir. 1978) (employment practices considered only to extent of effect on broadcast policies); Community Telecasting Corp. v. FCC, 317 F.2d 592, 593-94 (D.C. Cir. 1963) (broadcast experience considered).
76 See Deregulation of Commercial Television, 96 F.C.C.2d 1076, 1096 (1984); Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 333 (1965); see also Johnston Broad-
Affidavit and Service:

* Petition to deny must be supported by an affidavit of a person or persons with personal knowledge of the facts alleged and the petition must be served on the application. 

B. Renewal application is tendered for filing:

Timing:

* Renewal applications are filed near the end of licensee's term of license, and notice of the filing is printed in the Public Notice. Television license terms are five years, radio license terms are seven years; license terms are staggered by the state in which the license is located. 

* Six months prior to the expiration of the license term, a similar notice must be broadcast by the licensee on the 1st and 16th days of that month stating that a renewal application will be filed, and that comments may be filed, that the broadcaster will provide information on where and when to file (in its public file), and the date of the expiration of the license term. 

* One month before the license term ends (and after the application for renewal is filed) the licensee must give notice of the filing by broadcasting announcements during the morning and afternoon on the 1st and 16th day of the month. The notice must state the same information noted in the preceding paragraph and that a copy of the application is available during business hours. 

* Petitions to deny may be filed anytime after the renewal application is filed, until the last day of the last full calendar month of the renewal applicant's license term. 

Standing:

* Petitioner must be a regular viewer or listener of the licensee's station or, if petitioner is an organization, its members must be regular viewers or listeners of the station. 

* See standing discussion under "Initial application," supra, for standing requirements for local agents related to national organizations.

Grounds:

* As with initial applications, a petition to deny must present specific allegations of fact indicating that a grant of renewal would be **prima facie** casting Co. v. FCC, 175 F.2d 351, 359 (D.C. Cir. 1949) (decisional significance accorded only to "material and substantial differences" between proposed programming). 


79 Id. § 73.3580(d)(4)(i) (1986).

80 Id. § 73.3580(d)(4)(ii) (1986).

81 Id. § 73.3584 (1986).

82 KSAY Broadcasting Co., 29 Rad. Reg. 2d (P & F) 809, 812 (Mar. 6, 1974).

83 See Time-Life Broadcasting, Inc., 23 Rad. Reg. 2d (P & F) 1146, 1146 (Mar. 29, 1972) (conclusory contention that a station had not served the public interest because program-
inconsistent with the public interest.  

* Grounds for a petition to deny a renewal include the failure of the licensee to meet basic qualifications—good character, U.S. citizenship, financial showing, technical expertise, equal employment opportunity and multiple ownership compliance—and the failure to meet its programming obligation to offer a reasonable amount of programming addressing local needs and issues.  

* When a licensee files its renewal application, the Commission will not examine that licensee's programming during the license term unless it receives petitions to deny the renewal, alleging that the licensee failed to meet its public interest programming obligations or a competing applications filed. Thus, the Commission will presume compliance with the "basic renewal standard," that a licensee addressed community issues with responsive programming and complied with other legal requirements, unless a petitioner brings to the Commissioner's attention the licensee's inadequate programming performance.

Affidavit:

* See "Initial application" discussion, supra.

C. Informal Objection:

Any person who lacks standing or does not comply with procedural rules will be deemed to have filed an informal objection (for example, late-filed petitions to deny, or petitions lacking an affidavit). Informal objections may be filed any time before the application for new facility or renewal is granted. Informal objections are given equal weight by the Commission in making licensing decisions with petitions to deny. However, persons filing informal objections are not parties to the licensing hearing proceeding and will not automatically be able to participate in a hearing on the new license or renewal application, if such a hearing is held.

D. Complaints:

Timing

* Complaints may be made at any time during the term of license.

* A complaint initially should be directed to the licensee whose performance was obtained from a national network did not support a petition to deny); Time-Life Broadcasting, Inc., 23 Rad. Reg. 2d (P & F) 1165, 1165 (Mar. 22, 1972) (undocumented allegations that station's news contained an "Anglo bias" were not sufficient to require hearing on station's license renewal application).

88 47 C.F.R. § 73.3587 (1986).


91 Under the Administrative Procedure Act, a license for which a renewal application is timely docketed remains in force until the Commission acts either to grant or to deny the application. 5 U.S.C. § 558(c) (1982).


93 See 47 C.F.R. § 73.3587 (1986).

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ance is being challenged.\textsuperscript{11}

- If no answer or an unsatisfactory answer is received, then the complaint should be directed to the Commission, which will require a response from the licensee, and forward a copy to the complaint.\textsuperscript{22}

\textit{Consent:}

- Licensee complaints should include complainant's name and address; call letters and location of the station; name of the program about which the complaint relates and date and time of broadcast; succinct statement of licensee wrongdoing; relief sought; copies of any previous correspondence with licensee.

VI. SUMMARY AND CONCLUSION

The Bishops, individually and collectively, have important voices in contemporary society, speaking publicly on economic, social and family issues. Hopeful that their voices will be heard even more clearly and effectively in the future, the Bishops have a stake in the operations of regulated broadcast media. This concern must be reflected on two levels: on the national level, by influencing the regulatory framework to help ensure that the public interest is served; and on the local level, by taking advantage of rights within that framework to monitor and participate in renewals and initial licensing of television and radio facilities.

On a daily basis, the USCC receives and monitors FCC news releases, public notices, rule changes, listings of renewal and initial applications granted and listings of dates for the filing of petitions and other information essential to effective participation in the regulatory processing. It is the goal of the USCC to disseminate this information and initiate a system for notice to dioceses of upcoming licensing and renewal actions, thereby facilitating diocesan participation. An effective partnership between the USCC and local dioceses would give the Church a more effective voice in the broadcast media. A serious effort by the Church to participate in licensing and regulation of broadcast outlets should result in a more responsive broadcast media.


\textsuperscript{22} Id.