



**Effective: December 08, 2004**

UNITED STATES CODE ANNOTATED  
TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS  
CHAPTER 5--WIRE OR RADIO COMMUNICATION  
SUBCHAPTER III--SPECIAL PROVISIONS RELATING TO RADIO  
PART I--GENERAL PROVISIONS  
§ 307. Licenses

(a) Grant

The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

(b) Allocation of facilities

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) Terms of licenses

(1) Initial and renewal licenses

Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, the public interest, convenience, or necessity would be served by such action.

(2) Materials in application

In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings.

(3) Continuation pending decision

Pending any administrative or judicial hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to [section 405](#) or [section 402](#) of this title, the Commission shall continue such license in effect.

(d) Renewals

No renewal of an existing station license in the broadcast or the common carrier services shall be granted more than thirty days prior to the expiration of the original license.

(e) Operation of certain radio stations without individual licenses

(1) Notwithstanding any license requirement established in this chapter, if the Commission determines that such authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the following radio services: (A) the citizens band radio service; (B) the radio control service; (C) the aviation radio service for aircraft stations operated on domestic flights when such aircraft are not otherwise required to carry a radio station; and (D) the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio station.

(2) Any radio station operator who is authorized by the Commission to operate without an individual license shall comply with all other provisions of this chapter and with rules prescribed by the Commission under this chapter.

(3) For purposes of this subsection, the terms "citizens band radio service", "radio control service", "aircraft station" and "ship station" shall have the meanings given them by the Commission by rule.

(f) Notwithstanding any other provision of law, (1) any holder of a broadcast license may broadcast to an area of Alaska that otherwise does not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery even if another holder of a broadcast license begins broadcasting to such area, (2) any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such area, and shall not be fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary.

CREDIT(S)

(June 19, 1934, c. 652, Title III, § 307, 48 Stat. 1083; June 5, 1936, c. 511, § 2, 49 Stat. 1475; July 16, 1952, c. 879, § 5, 66 Stat. 714; Sept. 13, 1960, Pub.L. 86-752, § 3, 74 Stat. 889; Apr. 27, 1962, Pub.L. 87-439, 76 Stat. 58; Aug. 13, 1981, [Pub.L. 97-35, Title XII, § 1241\(a\)](#), 95 Stat. 736; Sept. 13, 1982, [Pub. L. 97-259, Title I, § § 112, 113\(a\)](#), 96 Stat. 1093; Feb. 8, 1996, [Pub.L. 104-104, Title II, § 203, Title IV, § 403\(i\)](#), 110 Stat. 112, 131; Dec. 8, 2004, [Pub.L. 108-447](#), Div. J, Title IX [Title II, § 213(1), (2)], 118 Stat. 3431.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1952 Acts. House Report No. 1750, see 1952 U.S.Code Cong. and Adm.News, p. 2234.

1960 Acts. House Report No. 1800, see 1960 U.S.Code Cong. and Adm.News, p. 3516.

1962 Acts. House Report No. 1562, see 1962 U.S.Code Cong. and Adm.News, p. 1565.

1981 Acts. [Senate Report No. 97-139](#) and [House Conference Report No. 97- 208](#), see 1981 U.S.Code Cong. and Adm.News, p. 396.

1982 Acts. [Senate Report Nos. 97-191](#) and [97-404](#), and [House Conference Report No. 97-765](#), see 1982 U.S. Code Cong. and Adm.News, p. 2237.

1996 Acts. [House Report No. 104-204](#) and [House Conference Report No. 104-458](#), see 1996 U.S. Code Cong. and Adm. News, p. 10.

2004 Acts. [House Conference Report No. 108-792](#), see 2004 U.S. Code Cong. and Adm. News, p. 2577.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S46.

#### References in Text

This chapter, referred to in subsec. (e), was in the original "this Act", meaning Act June 19, 1934, c. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

#### Amendments

2004 Amendments. Subsec. (c)(3). [Pub.L. 108-447](#), Div. J, Title IX [Title II, § 211(1)], struck out "any hearing" following "Pending" and inserted "any administrative or judicial hearing", and inserted "or section 402" after "section 405".

Subsec. (f). [Pub.L. 108-447](#), Div. J, Title IX [Title II, § 211(2)], added subsec. (f).

1996 Amendments. Subsec. (c). [Pub.L. 104-104, § 203](#), restructured existing provisions into pars. (1) to (3) and, as so restructured, substituted provisions providing 8 year term for licenses of broadcasting stations for provisions providing 5 year term for licenses of television broadcasting stations, 7 year term for licenses of radio broadcasting stations, and 10 year term for other broadcasting stations.

Subsec. (e). [Pub.L. 104-104, § 403\(i\)](#), added provisions relating to the aviation radio service and the maritime radio service.

1982 Amendments. Subsec. (c). [Pub. L. 97-259, § 112](#), redesignated subsec. (d) as (c), in (c) as so redesignated substituted "ten years" for "five years" following "station) shall be for a longer term than" and "term of not to exceed", and added following "not to exceed seven years" provision that the term of any license for the operation of any auxiliary broadcast station or equipment which can be used only in conjunction with a primary radio, television, or translator station shall be concurrent with the term of the license for such primary radio, television, or translator station. Former subsec. (c), which required the Commission to study proposal that Congress allocate fixed percentages of broadcasting facilities to nonprofit activities and report recommendations, with reasons, to Congress not later than Feb. 1, 1935, was struck out.

Subsec. (d). [Pub. L. 97-259, § 112\(a\)](#), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). [Pub. L. 97-259, § 112\(a\)](#), 113(a), added subsec. (e) and redesignated former subsec. (e) as (d).

1981 Amendments. Subsec. (d). [Pub.L. 97-35](#) substituted provisions authorizing term of five years for a television broadcasting station license, seven years for a radio broadcasting station license, and five years for any other class of license, with comparable provisions for renewal, for provisions authorizing term of three years for a broadcasting station license, and five years for any other class of station license, with comparable provisions for renewal.

1962 Amendments. Subsec. (e). Pub.L. 87-439 inserted "in the broadcast or the common carrier services" preceding "shall be granted."

1960 Amendments. Subsec. (d), Pub.L. 86-752 added the last sentence dealing with the Commission's authority to grant licenses for periods shorter than 3 years.

1952 Amendments. Subsec. (d). Act July 16, 1952 provided that upon the expiration of any license, any renewal applied for may be granted "if the Commission finds that public interest, convenience, and necessity would be served thereby", and that pending a hearing and final decision on an application for renewal and the disposition of any petition for a rehearing the Commission shall continue the license in effect.

1936 Amendments. Subsec. (b). Act June 5, 1936 amended subsec. (b) generally.

#### Effective and Applicability Provisions

1981 Acts. Section 1241(b) of [Pub.L. 97-35](#) provided that: "The amendments made in subsection (a) [amending subsec. (d) of this section] shall apply to television and radio broadcasting licenses granted or renewed by the Federal Communications Commission after the date of the enactment of this Act [Aug. 13, 1981]."

#### CROSS REFERENCES

Determination procedures regarding forfeiture liability inapplicable to licensee hereunder, see [47 USCA § 503](#).

#### CODE OF FEDERAL REGULATIONS

Amateur radio services, see [47 CFR § 97.1](#) et seq.

Aviation services, see [47 CFR § 87.1](#) et seq.

Cable television relay service, see [47 CFR § 78.1](#) et seq.

Cable television service, see [47 CFR § 76.1](#) et seq.

Commercial radio operators, see [47 CFR § 13.1](#) et seq.

Connection of terminal equipment to telephone network, see [47 CFR § 68.1](#) et seq.

Construction, marking and lighting of antenna structures, see [47 CFR § 17.1](#) et seq.

Delegation of authority, see [47 CFR § 0.201](#) et seq.

Employee responsibilities and conduct, see [47 CFR § 19.735-101](#) et seq.

Experimental, auxiliary and special broadcast and other program distributional services, see [47 CFR § 74.1](#) et seq.

Extension of lines and discontinuance of services by carriers, see [47 CFR § 63.01](#) et seq.

Industrial, scientific and medical equipment, see [47 CFR § 18.101](#) et seq.

Miscellaneous rules relating to common carriers, see [47 CFR § 64.1](#) et seq.

Personal radio services, see [47 CFR § 95.1](#) et seq.

Private land mobile radio services, see [47 CFR § 90.1](#) et seq.

Private operational fixed microwave service, see 47 CFR § 94.1 et seq.

Radio broadcast services, see [47 CFR § 73.1](#) et seq.

Radio frequency devices, see [47 CFR § 15.1](#) et seq.

#### LAW REVIEW COMMENTARIES

[FCC authority to regulate the Internet: Creating it and limiting it. James B. Speta, 35 Loy. U. Chi. L.J. 15 \(2003\).](#)

Into the woods: Broadcasters, bureaucrats, and children's television programming. Ronald J. Krotoszynski, Jr., [45 Duke L.J. 1193 \(1996\)](#).

Public's airwaves: What does the public interest require of television broadcasters? Reed E. Hundt, [45 Duke L.J. 1089 \(1996\)](#).

[Selective hearing: A challenge to the FCC's indecency policy. 12 N.Y.L.Sch.J.Hum.Rts. 347 \(1995\).](#)

The new spectrum auction law. Nicholas W. Allard, [18 Seton Hall Legis.J. 13 \(1993\)](#).

#### LIBRARY REFERENCES

##### American Digest System

Telecommunications  385, 388, 392.

Key Number System Topic No. 372.

##### Corpus Juris Secundum

[CJS Telecommunications § 153](#), In General.

[CJS Telecommunications § 155](#), Public Interest, Convenience, or Necessity in General.

[CJS Telecommunications § 158](#), Renewal.

[CJS Telecommunications § 168](#), Allocation as to States, Areas, or Populations Served.

#### RESEARCH REFERENCES

##### Encyclopedias

[78 Am. Jur. Proof of Facts 3d 1](#), Equal Opportunity for Broadcast Time for Political Candidates.

[Am. Jur. 2d Telecommunications § 142](#), Generally; Issuance.

[Am. Jur. 2d Telecommunications § 147](#), Factors Considered on Application for New License; or for Renewal or Transfer of License.

##### Forms

[Federal Procedural Forms § 62:149](#), Notice of Proposed Rulemaking -- Broadcast Assignments [[5 U.S.C.A. § 553\(E\)](#)]; [47 C.F.R. § 1.403](#)].

[Federal Procedural Forms § 62:208](#), Applications -- Prescribed Forms; Filing; Information Required.

[1A West's Federal Forms § 323](#), Application for Stay-Federal Court Civil Case.

[26 West's Legal Forms § 2.130](#), Ombudsman.

[Am. Jur. Pl. & Pr. Forms Telecommunications § 10](#), Order -- by Federal Communications Commission -- Designating Applications for Hearing on Stated Issues -- Mutually Exclusive Applications.

[Am. Jur. Pl. & Pr. Forms Telecommunications § 37](#), Notice -- of Proposed Rulemaking -- Broadcast Assignments.

Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 72:775](#), Joint Request for Approval of Agreement Removing Conflict.

[Federal Procedure, Lawyers Edition § 72:814](#), Generally.

[Wright & Miller: Federal Prac. & Proc. § 3526](#), Congressional Control of Lower Federal Court Jurisdiction.

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#### I. GENERALLY

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##### [1](#). Constitutionality


Congress had power to authorize Radio Commission to delete existing radio stations in order to make fair and equitable allocation of licenses, wave-lengths, time for operation, and station power to each of the states within each zone. [Federal Radio Commission v. Nelson Bros. Bond & Mortg. Co. \(Station WIBO\)](#), [U.S. Dist. Col. 1933](#), [53 S.Ct. 627](#), [289 U.S. 266](#), [77 L.Ed. 1166](#), rehearing denied [54 S.Ct. 856](#), [292 U.S. 613](#), [78 L.Ed. 1472](#). [Commerce](#)  [59](#)


Requirement that broadcasting stations operate in the "public interest" furnishes the framework within which [U.S.C.A. Const. Amend. 1](#) would apply, such that activities or policies of broadcaster, if valid under this chapter,

would normally also meet the constitutional standard. [Mark v. F. C. C., C.A.1 1972, 468 F.2d 266. Constitutional Law](#)  [90.1\(9\)](#)


## 2. Purpose


This section was intended to avoid concentration of broadcasters around biggest city in area. [Communications Inv. Corp. v. F. C. C., C.A.D.C.1981, 641 F.2d 954, 206 U.S.App.D.C. 1. Telecommunications](#)  [1112](#)


The policy of this chapter is clear that no person is to have anything in the nature of property right as a result of granting of broadcast license and the channels presently occupied remain free for new assignment to another licensee in the interest of the listening public; it is not the purpose of this chapter to protect a licensee against competition but to protect the public. [Brandywine-Main Line Radio, Inc. v. F. C. C., C.A.D.C.1972, 473 F.2d 16, 153 U.S.App.D.C. 305, certiorari denied 93 S.Ct. 2731, 412 U.S. 922, 37 L.Ed.2d 149. Telecommunications](#)  [1097](#)

The purpose of this chapter is to secure to the people of the several states and communities a fair, efficient, and equitable distribution of radio service, and the discretion which the Commission is directed to exercise is not absolute. [Heitmeyer v. F.C.C., App.D.C.1937, 95 F.2d 91, 68 App.D.C. 180. Telecommunications](#)  [1079](#)


## 3. Construction with other laws

Section 331 of this title, requiring Commission to order reallocation of a very high frequency commercial television broadcast station to a licensee who agrees to reallocate its channel in a community within a state in which there is allocated no such channel, overrode requirement of this section to provide a hearing when two bona fide license applications which are mutually exclusive are being considered. [Multi-State Communications, Inc. v. F.C.C., C.A.D.C.1984, 728 F.2d 1519, 234 U.S.App.D.C. 285, certiorari denied 105 S.Ct. 431, 469 U.S. 1017, 83 L.Ed.2d 358. Telecommunications](#)  [1131\(1\)](#)



Public interest standard of this chapter did not require the Commission to establish regulations implementing national policy in favor of the handicapped as reflected in the Rehabilitation Act of 1973, section 794 of Title 29. California [Ass'n of Physically Handicapped, Inc. v. F.C.C., C.A.9 \(Cal.\) 1983, 721 F.2d 667, certiorari denied 105 S.Ct. 121, 469 U.S. 832, 83 L.Ed.2d 63. Civil Rights](#)  [1033\(2\)](#)

Provision of subsec. (b) of this section authorizing Commission to make distribution of licenses, frequencies, and hours of operation among several states so as to provide a fair, efficient, and equitable distribution of radio service to each of same must be read in light of § 303 of this title giving Commission power to determine location of classes of stations or individual stations and to make regulations not inconsistent with law deemed necessary to prevent interference between stations, and to make rules and regulations not inconsistent with law necessary to carry out provisions of this chapter as a whole. [Logansport Broadcasting Corp. v. U.S., C.A.D.C.1954, 210 F.2d 24, 93 U.S.App.D.C. 342. Statutes](#)  [208](#)


## 4. Rule-making

Where Commission, pending acquisition of additional experience, preferred to proceed on case-by-case basis in comparative renewal hearings to develop criteria, court would not direct Commission to proceed by rule making to clarify what constitutes superior service. [Citizens Communications Center v. F. C. C., C.A.D.C.1972, 463 F.2d 822, 149 U.S.App.D.C. 419. Telecommunications](#)  [1144](#)


Commission's statement establishing rebuttable presumption that, where applicant's proposed five mv/m daytime contour penetrates the geographic boundaries of any community with a population of over 50,000 persons and that

community has a population of at least twice that of the applicant's specified community, the applicant realistically proposes to serve the larger community rather than his specified smaller community is a reasonable provision for administration of this section is not a substantive act adopted without formal rule-making procedure and is not infirm for vagueness. [Fischer v. F. C. C., C.A.D.C.1969, 417 F.2d 551, 135 U.S.App.D.C. 134. Administrative Law And Procedure](#)  460; [Telecommunications](#)  1122


#### 5. Power of Commission to refuse license

Regulatory powers of Commission over radio broadcasting stations center around grant of licenses, and Commission may not apply any sanctions other than refusal or revocation of a license to enforce its decisions. [Regents of University System of Ga. v. Carroll, U.S.Ga.1950, 70 S.Ct. 370, 338 U.S. 586, 94 L.Ed. 363. Telecommunications](#)  1087

#### 6. Terms of licenses

This section limiting Commission's license grants to terms of three years imposes restriction only upon period for which Commission itself may confer license and does not place inexorable limitation on duration of licenses themselves in light of specific congressional provision for continuation of licenses involved in renewal process until such time as "final decision" on question of renewal is made. [Committee for Open Media v. F. C. C., C.A.D.C.1976, 543 F.2d 861, 177 U.S.App.D.C. 376. Telecommunications](#)  619

#### 7. Length of renewal proceeding

While five-year delay in television license renewal proceedings, during which Federal Communications Commission determined what effect licensee's broadcasting of obscene material would have on its renewal petition, was undesirably long, delay was not so egregious as to warrant mandamus requiring immediate resolution by the agency, since obscenity issue was delicate one requiring FCC to balance policy and constitutional considerations. [In re Monroe Communications Corp., C.A.D.C.1988, 840 F.2d 942, 268 U.S.App.D.C. 235. Mandamus](#)  87

## II. GRANT OF LICENSES

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
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**Rights conferred by grant of licenses** [32, 33](#)


**Rights conferred by grant of licenses - Generally** [32](#)


**Rights conferred by grant of licenses - Rejection of certain programs** [33](#)


[31](#). Grant of licenses generally

Congress has power to grant and deny broadcasting licenses and to delete existing stations. [Red Lion Broadcasting Co. v. F. C. C., U.S.Dist.Col.1969, 89 S.Ct. 1794, 395 U.S. 367, 23 L.Ed.2d 371. Telecommunications](#)  1092



#### [32](#). Rights conferred by grant of licenses--Generally

A radio station licensee does not obtain any vested interest in any frequency. [Ashbacker Radio Corp. v. F.C.C., U.S.Dist.Col.1945, 66 S.Ct. 148, 326 U.S. 327, 90 L.Ed. 108. Constitutional Law](#)  101


The policy of this chapter is that a broadcasting licensee does not have a property right as result of the granting of a license. [American Broadcasting Co. v. F.C.C., C.A.D.C.1951, 191 F.2d 492, 89 U.S.App.D.C. 298, Telecommunications](#)  [1145](#)

This chapter does not confer a right upon anyone to broadcast any material at any time whether or not such person has a contract with licensed broadcasting station for such a broadcast. [Massachusetts Universalist Convention v. Hildreth & Rogers Co., D.C.Mass.1949, 87 F.Supp. 822, affirmed 183 F.2d 497, Telecommunications](#)  [1149](#)


### [33. ---- Rejection of certain programs, rights conferred by grant of licenses](#)


This section in imposing on holders of license to operate a radio broadcasting station, a duty to broadcast in the public interest, does not by implication confer upon those contracting for broadcasting time, a right, notwithstanding a contractual provision entitling licensee to reject programs, to have material broadcast except when content is not in the public interest, which is enforceable by action in the federal district court by action requiring court to decide whether program rejected by licensee is in the public interest. [Massachusetts Universalist Convention v. Hildreth & Rogers Co., C.A.1 \(Mass.\) 1950, 183 F.2d 497, Telecommunications](#)  [1149](#); [Telecommunications](#)  [1155\(1\)](#)

### [34. Denial of license to all applicants, grant of licenses](#)


Federal Communications Commission erred in rescinding 13 microwave radio station licenses which had officially been granted to an applicant at a time when no competing application had been effectively filed and under circumstances in which FCC rules had been properly followed; the agency could not deviate from its rules in order to achieve what it deemed to be justice in the individual case. [Reuters Ltd. v. F.C.C., C.A.D.C.1986, 781 F.2d 946, 251 U.S.App.D.C. 93, Telecommunications](#)  [1037](#)

### [35. Political affiliation, grant of licenses](#)


The Federal Communications Commission was authorized to dismiss an application for a radio operator's license where applicant refused to fully answer questions directed to him as to his membership in the Communist Party and in any group advocating overthrow of the federal government by force or violence. [Blumenthal v. F. C. C., C.A.D.C.1963, 318 F.2d 276, 115 U.S.App.D.C. 305, certiorari denied 83 S.Ct. 1679, 373 U.S. 951, 10 L.Ed.2d 706, Telecommunications](#)  [1099\(2\)](#)

Government cannot adopt a policy of granting broadcast licenses only to Republicans and Democrats and denying them to others. [Greenberg v. Bolger, E.D.N.Y.1980, 497 F.Supp. 756, Constitutional Law](#)  [90.1\(9\)](#)

### [36. Previous applications, grant of licenses](#)

Federal Communications Commission's action in denying an application for a broadcast station is tested only by public interest, free from any inequity that may have devolved upon the applicant because of Commission's prior action with reference to an application by another company, and in determining the public interest, Commission was required to consider the fact of such other grant in passing on the application. [Sayger v. F. C. C., C.A.D.C.1962, 312 F.2d 352, 114 U.S.App.D.C. 112, Telecommunications](#)  [1131\(1\)](#)

### [37. Priority of applications, grant of licenses](#)


Although Commission is required to grant license for a radio broadcasting station only in the public interest, Commission is not thereby required to ignore fact of priority in making of applications and to leave field open to all comers until actual grant of license is made. [Colonial Broadcasters v. F.C.C., App.D.C.1939, 105 F.2d 781, 70 App.D.C. 258, Telecommunications](#)  [1102\(1\)](#)


**III. PUBLIC CONVENIENCE, INTEREST, OR NECESSITY**


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
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

[61](#). Public convenience, interest, or necessity generally


Commission's judgment regarding how public interest is best served is entitled to substantial judicial deference. [F. C. C. v. WNCN Listeners Guild, U.S. Dist. Col. 1981, 101 S.Ct. 1266, 450 U.S. 582, 67 L.Ed.2d 521, Telecommunications](#)  [1142](#)


Requiring those who wish to obtain a radio or television broadcast license to demonstrate that such would serve the "public interest" does not restrict the speech of those who are denied licenses but, rather, preserves the interest of the people as a whole in free speech. [F. C. C. v. National Citizens Committee for Broadcasting, U.S. Dist. Col. 1978, 98 S.Ct. 2096, 436 U.S. 775, 56 L.Ed.2d 697, Telecommunications](#)  [1097](#)


The standard, embodied in requirement that Commission be guided, in granting licenses, by "public interest, convenience, or necessity", leaves wide discretion and calls for imaginative interpretation; and while not a standard that lends itself to application with exactitude, it expresses a policy, born of years of unhappy trial and error, that is as concrete as complicated factors for judgment in such field of delegated authority permit, and it is not too indefinite a standard for fair enforcement. [F.C.C. v. RCA Communications, U.S. Dist. Col. 1953, 73 S.Ct. 998, 346 U.S. 86, 97 L.Ed. 1470. Telecommunications](#)  [1097](#)


The "public interest" with which the Commission is charged is that involved in granting licenses. [Radio Station WOW v. Johnson, U.S. Neb. 1945, 65 S.Ct. 1475, 326 U.S. 120, 89 L.Ed. 2092](#), conformed to [19 N.W.2d 853, 146 Neb. 429](#), motion denied [66 S.Ct. 11. Administrative Law And Procedure](#)  [3](#); [Telecommunications](#)  [1097](#)

The standard provided by this chapter for licensing of radio broadcasting station is public interest, convenience or necessity and denial of a station license on that ground, if valid under this chapter, is not a denial of "free speech". [National Broadcasting Co. v. U.S., U.S. N.Y. 1943, 63 S.Ct. 997, 319 U.S. 190, 87 L.Ed. 1344. Constitutional Law](#)  [90.1\(9\)](#); [Telecommunications](#)  [1080](#); [Telecommunications](#)  [1092](#)


License to operate television station may be granted only when it would be in public interest. N. A. A. C. [P. v. F. C. C., C.A.D.C. 1982, 682 F.2d 993, 221 U.S.App.D.C. 44. Telecommunications](#)  [1097](#)


In the area of broadcasting, the interest of the public is the chief concern. [Kennedy for President Committee v. F. C. C., C.A.D.C. 1980, 636 F.2d 417, 204 U.S.App.D.C. 145. Telecommunications](#)  [1075](#)


The demands of public interest are prime considerations for the Commission in granting broadcasting licenses, renewing licenses and modifying them. [Brandywine-Main Line Radio, Inc. v. F. C. C., C.A.D.C. 1972, 473 F.2d 16, 153 U.S.App.D.C. 305](#), certiorari denied [93 S.Ct. 2731, 412 U.S. 922, 37 L.Ed.2d 149. Telecommunications](#)  [1097](#)

Use of air waves by those whose public interest qualifications have not been established is barred. [Folkways Broadcasting Co. v. Federal Communications Commission, C.A.D.C. 1967, 379 F.2d 447, 126 U.S.App.D.C. 393. Telecommunications](#)  [1097](#)

Applicants for licenses to operate standard radio broadcasting stations could claim no unlimited right to compete, independent of considerations of public interest. [Kessler v. F. C. C., C.A.D.C. 1963, 326 F.2d 673, 117 U.S.App.D.C. 130. Telecommunications](#)  [1097](#)

The Federal Communications Commission acts under the statutory standards of public interest in granting or denying an application for a radio operator's license. [Blumenthal v. F. C. C., C.A.D.C. 1963, 318 F.2d 276, 115 U.S.App.D.C. 305](#), certiorari denied [83 S.Ct. 1679, 373 U.S. 951, 10 L.Ed.2d 706. Telecommunications](#)  [1097](#)

The standard of action established by this chapter is that public interest, convenience, and necessity must be served, and within that framework the Commission is free to exercise its expert judgment, but it cannot act unconstitutionally, arbitrarily, or capriciously, and it must proceed within the scope of authority granted to it. [WOKO v. Federal Communications Commission, App.D.C. 1946, 153 F.2d 623, 80 U.S.App.D.C. 333](#), certiorari granted [66 S.Ct. 968, 327 U.S. 776, 90 L.Ed. 1005](#), reversed on other grounds [67 S.Ct. 213, 329 U.S. 223, 91 L.Ed. 204. Telecommunications](#)  [614](#)

The requirement that the Commission in granting or refusing a radio license shall act as public convenience, interest or necessity requires, is not a grant of unlimited power but only the right to control the range of investigation in ascertaining what, within the compass of this chapter, is proper to satisfy the requirements. [Stahlman v. F.C.C., App.D.C. 1942, 126 F.2d 124, 75 U.S.App.D.C. 176. Telecommunications](#)  [1097](#)

The interest, convenience, and necessity of the public is an essential test for the privilege of operating a radio station. [Black River Valley Broadcasts v. McNinch](#), App.D.C.1938, 101 F.2d 235, 69 App.D.C. 311, certiorari denied 59 S.Ct. 793, 307 U.S. 623, 83 L.Ed. 1501. [Telecommunications](#) 1097

[62](#). Delegation of power, public convenience, interest, or necessity

Prime time access rule makes no improper delegation to networks and their affiliates of the Commission's power to declare what is in public interest. [National Ass'n of Independent Television Producers and Distributors v. F. C. C.](#), C.A.2 1975, 516 F.2d 526. [Constitutional Law](#) 64

[63](#). UHF or VHF stations, public convenience, interest, or necessity

In determining whether license for ultra high frequency television channel should issue, appropriate consideration is what public interest dictates, and if that interest commands a withholding of license from all applicants either because of too extensive media control or because of questionable character qualification, Commission must disallow permit until qualified application is made. [WEBR, Inc. v. F.C.C.](#), C.A.D.C.1969, 420 F.2d 158, 136 U.S.App.D.C. 316. [Telecommunications](#) 1106

[64](#). Considerations governing public convenience, interest, or necessity

Finding of Commission that both owner of existing radio, broadcasting station which sought authority to move the station, and license applicant which sought license to construct a competing station, were legally, technically and financially qualified to undertake proposed construction and operation and that there was need in community for services of both stations and that no question of electrical interference between stations was involved, were sufficient to comply with requirements of this section relating to public interest, convenience or necessity involved in issue of license to construct competing station. [F.C.C. v. Sanders Bros. Radio Station](#), U.S.Dist.Col.1940, 60 S.Ct. 693, 309 U.S. 470, 309 U.S. 642, 84 L.Ed. 869, 84 L.Ed. 1037. [Telecommunications](#) 1111


Requirement that Radio Commission grant licenses "as public convenience, interest or necessity requires" was not grant of unlimited power but had to be interpreted in light of context, nature of radio transmission and reception, scope, character, and quality of services, and, as between states, relative advantages accruing to public through distribution of facilities. [Federal Radio Commission v. Nelson Bros. Bond & Mortg. Co. \(Station WIBO\)](#), U.S.Dist.Col.1933, 53 S.Ct. 627, 289 U.S. 266, 77 L.Ed. 1166, rehearing denied 54 S.Ct. 856, 292 U.S. 613, 78 L.Ed. 1472. See, also, [Yankee Network v. Federal Communications Commission](#), 1939, 107 F.2d 212, 71 App.D.C. 11. [Telecommunications](#) 1097


In determining whether to grant license for proposed common carrier communications service, the Commission must determine whether such service will be beneficial to the community to be served, and which among the competing applicants will best provide that service, and the Commission should consider whether the new service will create a net benefit to the communications system as a whole, and whether its immediate or future interaction with the existing and anticipated systems will be beneficial or detrimental. [Network Project v. F. C. C.](#), C.A.D.C.1975, 511 F.2d 786, 167 U.S.App.D.C. 220. [Telecommunications](#) 619

The basic charter of the Commission is to act in the public interest in application for license for radio broadcasting station, and Commission grants or denies a license as the public interest, convenience, and necessity dictate, and whatever factual elements make up that criterion in any given problem must be considered by Commission. [Carroll Broadcasting Co. v. F.C.C.](#), C.A.D.C.1958, 258 F.2d 440, 103 U.S.App.D.C. 346. [Telecommunications](#) 1097

Neither the Commission's "review" function under § 309 of this title nor its licensing function under this section is performed merely by determination that applicant is legally, technically and financially qualified to receive grant of broadcasting license. [Clarksburg Pub. Co. v. F.C.C.](#), C.A.D.C.1955, 225 F.2d 511, 96 U.S.App.D.C. 211.


[Telecommunications](#)  [1132](#)[65. Adequacy of existing service, public convenience, interest, or necessity](#)


Under this section regulating issuance of radio licenses, frequencies, etc., public interest is served by effective competition between broadcasters on different frequencies covering same area, and if there be only one applicant for given frequency in given area, community need for new station and relative ability above minimum requirements of applicant to render service are immaterial in determining whether to issue license. [Easton Pub. Co. v. F.C.C., C.A.D.C.1949, 175 F.2d 344, 85 U.S.App.D.C. 33. Telecommunications](#)  [1109](#)

Where the Commission has found, on abundant evidence, that a city and the area adjacent to it will not be overserved by the granting of an application for a new radio broadcasting license and that there will be no interference between the new station and other stations elsewhere using the same frequency, its order granting the application will be affirmed over the objections that the city is already adequately supplied and that the grant of the application will create interference. [Pulitzer Pub. Co. v. F.C.C., App.D.C.1937, 94 F.2d 249, 68 App.D.C. 124. Telecommunications](#)  [1112](#)


[66. Competition, public convenience, interest, or necessity](#)


Applicants for licenses to operate standard radio broadcasting stations could claim no unlimited right to compete, independent of considerations of public interest. [Kessler v. F. C. C., C.A.D.C.1963, 326 F.2d 673, 117 U.S.App.D.C. 130. Telecommunications](#)  [1097](#)


Competitive practices may make applicant for television broadcasting license unworthy, whether or not they violate antitrust laws. [Philco Corp. \(Philco\) v. F. C. C., C.A.D.C.1961, 293 F.2d 864, 110 U.S.App.D.C. 387. Telecommunications](#)  [1100](#)

Where newspaper applied for permit to operate radio broadcasting station, evidence sustained Commission's finding that newspaper's refusal to print certain items and to serve certain advertisers was for purpose of suppressing competition and presented a substantial basis for Commission's conclusion that permit should not be granted. [Mansfield Journal Co. \(FM\) v. Federal Communications Commission, C.A.D.C.1950, 180 F.2d 28, 86 U.S.App.D.C. 102. Telecommunications](#)  [1124](#)

[67. Destruction or loss of service, public convenience, interest, or necessity](#)

Commission has duty to determine whether economic fact of another broadcast licensee in an area would be to damage or destroy service of an existing licensee to extent incompatible with public interest. [Folkways Broadcasting Co. v. F. C. C., C.A.D.C.1967, 375 F.2d 299, 126 U.S.App.D.C. 123. Telecommunications](#)  [1110](#)

Commission's rules embodying the Commission's legislative judgment that new services which destroy an existing radio broadcast service beyond the 0.5 mv/m contour are normally more in the public interest than the service they destroy are reasonable and within Commission's discretion. [Interstate Broadcasting Co. v. F. C. C., C.A.D.C.1963, 323 F.2d 797, 116 U.S.App.D.C. 327. Telecommunications](#)  [1112](#)

Where the effect of granting an application for a new radio broadcasting license will be to destroy the ability of the holder of the old license to carry on in the public interest, the application should be denied. [Pulitzer Pub. Co. v. F.C.C., App.D.C.1937, 94 F.2d 249, 68 App.D.C. 124. Telecommunications](#)  [1109](#)

Where the grant of a license for a new broadcasting station will defeat the ability of the holder of an old license to carry on in the public interest, the application should be denied unless there are overweighing reasons of a public nature for granting it, especially where neither licensee will be financially able to render adequate service. [Great](#)

[Western Broadcasting Ass'n v. F.C.C., App.D.C.1937, 94 F.2d 244, 68 App.D.C. 119. Telecommunications 1109](#)

**68.** Diversity of ownership, public convenience, interest, or necessity-- Generally

Although diversification of ownership of broadcast stations and daily newspapers furthers statutory and constitutional policies and although separating existing newspaper-broadcast combinations would promote diversification, there was no basis to require Commission to "presume" that existing co-located newspaper-broadcast combinations did not serve the public interest, especially since such a presumption would not comport with Commission's long-standing and judicially approved practice of giving controlling weight, in some circumstances, to its more general goal of achieving the best practicable service to the public. [F. C. C. v. National Citizens Committee for Broadcasting, U.S.Dist.Col.1978, 98 S.Ct. 2096, 436 U.S. 775, 56 L.Ed.2d 697. Telecommunications 1122](#)

**69.** ---- Minority ownership, diversity of ownership, public convenience, interest, or necessity

Minority ownership policies of the Federal Communications Commission (FCC) are justified not only as remedies for victims of discrimination, but also to promote programming diversity which is important governmental objective that can serve as constitutional basis for preference policy. [Metro Broadcasting, Inc. v. F.C.C., U.S.Dist.Col.1990, 110 S.Ct. 2997, 497 U.S. 547, 111 L.Ed.2d 445, rehearing denied 111 S.Ct. 15, 497 U.S. 1050, 111 L.Ed.2d 829. Constitutional Law 230.3\(1\); Telecommunications 1102\(4\)](#)

**70.** Economic injury to existing station, public convenience, interest, or necessity

Though economic injury to an existing radio broadcasting station is not a ground for denying a new application for a radio station, yet if situation in a given area is such that available revenue will not support good service in more than one station, public interest may well be in the licensing of one station rather than two stations, since to license two stations where there is revenue for only one station may result in no good service at all, and therefore economic injury to existing station, while not in and of itself a matter of moment, becomes important when on the facts it spells diminution or destruction of service. [Carroll Broadcasting Co. v. F.C.C., C.A.D.C.1958, 258 F.2d 440, 103 U.S.App.D.C. 346. Telecommunications 1110](#)

A mere showing that the income of an existing radio broadcasting station may be reduced if another station enters its field is not sufficient to justify Commission's refusal to grant new license but the competition must affect public interest, convenience and necessity which is the criterion under which the Commission must act. [Tri-State Broadcasting Co., Station KTSM v. F.C.C., App.D.C.1939, 107 F.2d 956, 71 App.D.C. 157. Telecommunications 1110](#)


**71.** Economic interest of applicant, public convenience, interest, or necessity

Considerations as to advertising revenues a television station will earn in an area cannot be controlling in allocating and distributing television service, as television and radio are affected with a public interest, and the nation allows its air waves to be used as a matter of privilege rather than of right. [Television Corp. of Mich., Inc. v. F. C. C., C.A.D.C.1961, 294 F.2d 730, 111 U.S.App.D.C. 101. Telecommunications 1098](#)


**72.** Efficiency of service, public convenience, interest, or necessity

The alleged fact that applicant seeking a license to operate a direct public radio telegraph service between United States and Norway could give an efficient service at a small additional cost to itself without causing electrical interference or using additional frequency did not show that Commission acted arbitrarily or capriciously in finding that public interest, convenience, or necessity would not be served by granting the license. [Mackay Radio & Tel. Co. v. F.C.C., App.D.C.1938, 97 F.2d 641, 68 App.D.C. 336. Telecommunications 1037](#)


73. Environmental concerns, public convenience, interest, or necessity

National Environmental Policy Act, section 4321 et seq. of Title 42, does not permit the Commission to confine itself to consideration of only those environmental issues raised by parties. [Washington Utilities and Transp. Com'n v. F.C.C., C.A.9 1975, 513 F.2d 1142](#), certiorari denied [96 S.Ct. 62, 423 U.S. 836, 46 L.Ed.2d 54. Telecommunications](#)  [628](#)


74. Experience in broadcasting, public convenience, interest, or necessity


The Communications Commission was not arbitrary in awarding meritorious consideration, favorable to one of several applicants for a television station, on the basis of broadcast experience attributable to many years of experience gleaned by president of the corporation and owner of ten percent of its stock where he was to devote his full time to operation of the station. [Community Telecasting Corp. v. F. C. C., C.A.D.C.1963, 317 F.2d 592, 115 U.S.App.D.C. 181. Telecommunications](#)  [1102\(1\)](#)


75. Familiarity with local needs, public convenience, interest, or necessity


Commission could require that applicant for commercial frequency modulation station demonstrate earnest interest in serving local community by evidencing familiarity with its particular needs in effort to meet them and was not required to grant license merely because it was established that sole applicants were legally, financially and technically qualified. [Henry v. F. C. C., C.A.D.C.1962, 302 F.2d 191, 112 U.S.App.D.C. 257](#), certiorari denied [83 S.Ct. 37, 371 U.S. 821, 9 L.Ed.2d 60. Telecommunications](#)  [1097](#)

76. Financial capability of applicant, public convenience, interest, or necessity


An important element of "public interest and convenience" affecting the issuance of a radio broadcasting license is ability of license applicant to render the best practicable service to the community reached by its broadcasts and, in order that such ability may be assured, this chapter contemplates inquiry by Commission into an applicant's financial qualifications to operate the proposed radio station. [F.C.C. v. Sanders Bros. Radio Station, U.S.Dist.Col.1940, 60 S.Ct. 693, 309 U.S. 470, 309 U.S. 642, 84 L.Ed. 869, 84 L.Ed. 1037. Telecommunications](#)  [1097](#)


Where initial loan commitment letter, which on its face satisfied the Commission, provided that station's assets would constitute the bank's security for the loan and where the bank had stated its willingness to go forward with the loan even if no land, buildings or broadcast equipment were available for collateral, it was illogical for the Commission to conclude that the station was not financially qualified for television broadcast license on basis of bank's statement in interrogatory that collateral required "will depend on the conditions existing at the time the loan is required." [Las Vegas Valley Broadcasting Co. v. F. C. C., C.A.D.C.1978, 589 F.2d 594, 191 U.S.App.D.C. 71](#), certiorari denied [99 S.Ct. 2050, 441 U.S. 931, 60 L.Ed.2d 659](#), rehearing denied [99 S.Ct. 2896, 442 U.S. 947, 61 L.Ed.2d 319. Telecommunications](#)  [1098](#)

Failure of radio broadcaster, which was operating on probationary one-year renewals, to file annual financial reports for eight out of nine years, despite repeated request to do so, was sufficient to support denial of application to operate radio station. [Gordon County Broadcasting Co. \(WCGA\) v. F. C. C., C.A.D.C.1971, 446 F.2d 1335, 144 U.S.App.D.C. 334. Telecommunications](#)  [1098](#)


Finding of Commission that applicant for ultra high frequency television license had sufficient financial resources to build station and operate it for one year without fear of financial destruction resulting in station failure or resale and that applicant's projection of costs were reasonable and was supported by record. [WEBR, Inc. v. F.C.C., C.A.D.C.1969, 420 F.2d 158, 136 U.S.App.D.C. 316. Telecommunications](#)  [1124](#)


Standard for judging financial qualification of applicant for television station license is whether it has sufficient


funds to cover estimated construction costs and first year operating expenses; and basis and reasonableness of estimates of costs and expenses are material considerations. [West Michigan Telecasters, Inc. v. F. C. C., C.A.D.C.1968, 396 F.2d 688, 130 U.S.App.D.C. 39. Telecommunications](#)  [1098](#)

The field of radio broadcasting its open to anyone, if there is an available frequency over which he can broadcast without interference to others, and if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel. [F.C.C. v. Stahlman, D.C.D.C.1941, 40 F.Supp. 338, affirmed 126 F.2d 124, 75 U.S.App.D.C. 176. Telecommunications](#)  [1096](#)


[77. First Amendment principles, public convenience, interest, or necessity](#)


Diversity of views and information on airwaves serves important First Amendment values since benefits of such diversity are not limited to members of minority groups who gain access to broadcasting industry by virtue of ownership of policies but redound to all members of viewing and listening audience. [Metro Broadcasting, Inc. v. F.C.C., U.S.Dist.Col.1990, 110 S.Ct. 2997, 497 U.S. 547, 111 L.Ed.2d 445, rehearing denied 111 S.Ct. 15, 497 U.S. 1050, 111 L.Ed.2d 829. Telecommunications](#)  [1102\(4\)](#)

Granting or renewal of broadcasting licenses on willingness of stations to present representative community views on controversial issues is consistent with ends and purposes of constitutional provisions forbidding abridgement of freedom of speech and press. [Red Lion Broadcasting Co. v. F. C. C., U.S.Dist.Col.1969, 89 S.Ct. 1794, 395 U.S. 367, 23 L.Ed.2d 371. Constitutional Law](#)  [90.1\(9\)](#)


Any violation of [U.S.C.A.Const. Amend. 1](#) or the antitrust laws with respect to proposed common carrier satellite communications systems would constitute a violation of statutory standards requiring that licenses serve the "public interest, convenience, and necessity." [Network Project v. F. C. C., C.A.D.C.1975, 511 F.2d 786, 167 U.S.App.D.C. 220. Telecommunications](#)  [1282](#)

[78. Fraud or misleading information, public convenience, interest, or necessity](#)

Deliberate misrepresentations may, by themselves, justify denial of an application for a broadcasting license. [Crowder v. F. C. C., C.A.D.C.1968, 399 F.2d 569, 130 U.S.App.D.C. 198, certiorari denied 89 S.Ct. 400, 393 U.S. 962, 21 L.Ed.2d 375. Telecommunications](#)  [1099\(2\)](#)


A corporation's application for a radio station license may be rejected because of deception or concealment of facts even though deception served no purpose and the concealed facts were immaterial, and innocence of some stockholders cannot immunize corporation from consequences of deception. [Independent Broadcasting Co. v. F.C.C., C.A.D.C.1951, 193 F.2d 900, 89 U.S.App.D.C. 396, certiorari denied 73 S.Ct. 14, 344 U.S. 837, 97 L.Ed. 652. Telecommunications](#)  [1099\(2\)](#)

[79. Interference with other channels, public convenience, interest, or necessity](#)


Ten per cent interference rule, which provides in effect with reference to daytime stations that standard broadcast station may not be assigned to a channel where interference from stations assigned to same or closely adjacent channels will affect more than ten per cent of population in proposed station's normally protected primary service area, was not intended to be merely a guide, but a "fixed, certain rule" to be waived only in unusual circumstances in which it is clearly demonstrated that public interest requires such exceptional action. [Sayger v. F. C. C., C.A.D.C.1962, 312 F.2d 352, 114 U.S.App.D.C. 112. Telecommunications](#)  [1112](#)

[80. Local ownership, public convenience, interest, or necessity](#)


Since local ownership has been recognized to be a factor of some, if relatively slight, significance even in context of initial broadcast-licensing decisions, it is not unreasonable for Commission to consider it as one of several factors


militating against divestiture of existing colocated combinations, i.e., commonly owned radio or television broadcast stations and daily newspapers located in the same community. [F. C. C. v. National Citizens Committee for Broadcasting, U.S. Dist. Col. 1978, 98 S.Ct. 2096, 436 U.S. 775, 56 L.Ed.2d 697. Telecommunications](#)  [1101](#)


**81.** Moral fitness, public convenience, interest, or necessity

Commission was not required to consider character of a 12 percent stockholder in corporation operating television station in determining whether public interest would be served by allowing television network programs to go to that station, where such stockholder did not participate in the management, operation, or control of the station. [Wrather-Alvarez Broadcasting, Inc. v. F.C.C., C.A.D.C.1957, 248 F.2d 646, 101 U.S.App.D.C. 324. Telecommunications](#)  [1148](#)


**82.** Nature and type of programming, public convenience, interest, or necessity--Generally


Broadcasting may be regulated in light of rights of viewing and listening audience, and widest possible dissemination of information from diverse and antagonistic sources is essential to welfare of public. [Metro Broadcasting, Inc. v. F.C.C., U.S. Dist. Col. 1990, 110 S.Ct. 2997, 497 U.S. 547, 111 L.Ed.2d 445, rehearing denied 111 S.Ct. 15, 497 U.S. 1050, 111 L.Ed.2d 829. Telecommunications](#)  [1148](#)

Insubstantial variations in television programming proposals contained in private agreement which is incorporated within license application do not ordinarily raise a question of licensee's ability to operate in public interest. [National Ass'n for Better Broadcasting v. F. C. C., C.A.D.C.1978, 591 F.2d 812, 192 U.S.App.D.C. 203. Telecommunications](#)  [1152](#)


The public interest does not necessarily demand that all radio stations become commercial or that none be supported by religious bodies. [Evangelical Lutheran Synod of Missouri, Ohio, and Other States v. F.C.C., App.D.C.1939, 105 F.2d 793, 70 App.D.C. 270. Telecommunications](#)  [1097](#)

**83.** ---- News programming, nature and type of programming, public convenience, interest, or necessity

Under this section, broadcasting stations are required to operate in the public interest and to devote a reasonable percentage of their broadcast time to presentation of news and programs devoted to the consideration and discussion of public issues. [Kay v. F. C. C., C.A.D.C.1970, 443 F.2d 638, 143 U.S.App.D.C. 223. Telecommunications](#)  [1153\(1\)](#)

Under this chapter, Commission, in case of any particular application for radio broadcasting license, especially if there are competing applications, may properly consider the advantageous situation which one applicant may have by reason of his ability to more easily and accurately gather news and broadcast it by reason of association with news gathering agencies of the press. [F.C.C. v. Stahlman, D.C.D.C.1941, 40 F.Supp. 338, affirmed 126 F.2d 124, 75 U.S.App.D.C. 176. Telecommunications](#)  [1102\(1\)](#)

**84.** Nature of applicant's business, public convenience, interest, or necessity

Although licensee's business as such is not regulated by Commission, the qualifications of licensee and character of his business may be weighed by Commission in determining whether to grant a license to radio broadcasting station. [Regents of University System of Ga. v. Carroll, U.S.Ga.1950, 70 S.Ct. 370, 338 U.S. 586, 94 L.Ed. 363. Telecommunications](#)  [1099\(1\)](#)

**85.** Number of persons serviced, public convenience, interest, or necessity

Where 19.1% of population within proposed nighttime radio service area would have failed to receive broadcasts, Commission did not abuse discretion in refusing to grant authorization for service based on its rule generally

refusing authorization when 10% of prospective audience would not have received broadcasts, notwithstanding showing that station's programs directed to local Negro community in Albany, Georgia area compared favorably with other stations in area. [James S. Rivers, Inc., \(WJAZ\) v. F. C. C., C.A.D.C.1965, 351 F.2d 194, 122 U.S.App.D.C. 29. Telecommunications 1112](#)

That overall result of authorizing additional full time stations on thirteen of twenty-five clear channel frequencies would result at best in bringing to only an additional 600,000 people of 25,000,000 without it an acceptable primary night-time service did not constitute failure of Commission to carry out its obligations under section 303(f) of this title and subsection (b) of this section. [Goodwill Stations, Inc. v. F. C. C., C.A.D.C.1963, 325 F.2d 637, 117 U.S.App.D.C. 64. Telecommunications 1112](#)

**86. Passive ownership, public convenience, interest, or necessity**

Written covenants in radio broadcast license applicant's limited partnership agreement and testimony of applicant's partners established de jure legal authority consistent with Federal Communications Commission (FCC) integration and insulation requirements and credible commitment to act in accordance with that authority; all partners testified that they would carry out their promises pertaining to integration. [Bechtel v. F.C.C., C.A.D.C.1992, 957 F.2d 873, 294 U.S.App.D.C. 124, opinion after remand, modified, reversed and remanded 10 F.3d 875, 304 U.S.App.D.C. 100, issued, certiorari denied 113 S.Ct. 57, 506 U.S. 816, 121 L.Ed.2d 26. Telecommunications 1102\(3\)](#)

**87. Profit-motive, public convenience, interest, or necessity**

Service in the public interest presupposes an intent to operate a broadcast facility as represented, for the duration of the license, under commission supervision, honestly without concealment, and responsive to broadcasting needs of the community and nation, although it does not exclude an intention to profit from operation of the broadcast facilities. [Crowder v. F. C. C., C.A.D.C.1968, 399 F.2d 569, 130 U.S.App.D.C. 198, certiorari denied 89 S.Ct. 400, 393 U.S. 962, 21 L.Ed.2d 375. Telecommunications 1097](#)

**88. Public health, public convenience, interest, or necessity**


In absence of evidence to the contrary, Congress would be deemed to have acquiesced in determinations of Radio Commission and the Commission that authority to license in the public interest includes authority to consider the public health. [Banzhaf v. F. C. C., C.A.D.C.1968, 405 F.2d 1082, 132 U.S.App.D.C. 14, certiorari denied 90 S.Ct. 50, 396 U.S. 842, 24 L.Ed.2d 93, certiorari denied 90 S.Ct. 51, 396 U.S. 842, 24 L.Ed.2d 93. Statutes 219\(5\)](#)



**89. Technological considerations, public convenience, interest, or necessity**

The licensing function of the Commission cannot be discharged merely by finding that there are no technological objections to the granting of a radio broadcasting license. [National Broadcasting Co. v. U.S., U.S.N.Y.1943, 63 S.Ct. 997, 319 U.S. 190, 87 L.Ed. 1344. Telecommunications 1096](#)


Federal Communications Commission (FCC) did not act arbitrarily and capriciously by refusing to deem broadcasting license applicant technically qualified, even though all three applicants' antenna sites were not acceptable and; it deemed other two applicants technically qualified; first applicant's original air hazard designation was based on excessive height of its proposed tower, while, in contrast, other two applicants received air hazard determinations based on later discovery that there would be electromagnetic interference (EMI) with local airport's instrument landing system. [CHM Broadcasting Ltd. Partnership v. F.C.C., C.A.D.C.1994, 24 F.3d 1453, 306 U.S.App.D.C. 345, rehearing and rehearing en banc denied, rehearing denied 1994 WL 585671. Telecommunications 1103](#)

**90. Trafficking in licenses, public convenience, interest, or necessity**

Trafficking in broadcasting licenses is condemned because a government license granted in reliance on an applicant's stated intention to operate should not, instead, be bartered away for profit, that is, the license should not be granted to a person whose primary intent is to sell the license at a profit rather than to operate a station in the public interest. [Crowder v. F. C. C., C.A.D.C.1968, 399 F.2d 569, 130 U.S.App.D.C. 198](#), certiorari denied [89 S.Ct. 400, 393 U.S. 962, 21 L.Ed.2d 375](#). [Telecommunications](#)  [1117](#)

Whether application is for original grant or for transfer of television station license, commission must be assured that interested parties do not seek station for sale rather than service. [L. B. Wilson, Inc. v. F. C. C., C.A.D.C.1968, 397 F.2d 717, 130 U.S.App.D.C. 156](#). [Telecommunications](#)  [1096](#); [Telecommunications](#)  [1117](#)

[91](#). Violations of law or regulations, public convenience, interest, or necessity

The "public interest, convenience or necessity" standard for issuance of licenses to broadcasting companies implies a requirement that the applicant be law abiding, and the Commission may consequently refuse to issue a license to company whose broadcasts violate the criminal law. [American Broadcasting Co., Inc. v. U.S., S.D.N.Y.1953, 110 F.Supp. 374](#), affirmed [74 S.Ct. 593, 347 U.S. 284, 98 L.Ed. 699](#). [Telecommunications](#)  [1152](#)

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
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[121](#). Duty of Commission, allocation of facilities


Where choice of either of two applicants or two communities for radio station might be within reason upon facts, courts cannot hold that new station license must be denied merely because there is no compelling factual difference between applicants; and in such case Commission has wide discretion and court must insure only that factual situation has been fully explored. [Easton Pub. Co. v. F.C.C., C.A.D.C.1949, 175 F.2d 344, 85 U.S.App.D.C. 33. Telecommunications](#)  [1102\(1\)](#); [Telecommunications](#)  [1143](#)

[122](#). Communities within section, allocation of facilities--Generally


In omnibus rule-making proceeding to allocate nearly 700 new FM channels pursuant to adoption of new intermediate classes of FM stations, FCC did not engage in reasoned decision making in determining that village with population of 150 was a "community" for allocation purposes, and allocating it a channel in preference to a community with population of over 7,000, where the Commission did not address claim that businesses and other establishments in the village were not aimed primarily at local residents, and failed to consider applicability of the "quiet village doctrine." [Reeder v. Federal Communications Com'n, C.A.D.C.1989, 865 F.2d 1298, 275 U.S.App.D.C. 199. Telecommunications](#)  [1112](#)

At comparative hearing on license applications for mutually exclusive television stations, the Commission properly denied the challenger's request for the addition of a "307(b) issue," where that applicant failed to make the necessary first showing that "the Southland" was a community, let alone a separate community in need of television service; moreover, the challenger failed to present a prima facie showing that Norwalk, the one clearly identified community, was significantly independent of Los Angeles from an economic and cultural standpoint. [Fidelity Television, Inc. v.](#)


[F. C. C., C.A.D.C.1975, 515 F.2d 684, 169 U.S.App.D.C. 225](#), rehearing denied, certiorari denied [96 S.Ct. 271, 423 U.S. 926, 46 L.Ed.2d 253](#). [Telecommunications](#)  [1131\(1\)](#)

Federal Communications Commission's characterization of application for radio station in boroughs located 10.5 and 12 miles from Pittsburgh, with station to cover 98% of population of Pittsburgh, as Pittsburgh application for purpose of this section requiring equitable distribution of radio service and characterization of another application to cover one-third of Pittsburgh and to be located in borough 3.5 miles from Pittsburgh as an application for that borough was not adequately supported by record and case must be remanded for reconsideration or explanation of order granting only borough application. [Miners Broadcasting Service, Inc. v. F. C. C., C.A.D.C.1965, 349 F.2d 199, 121 U.S.App.D.C. 222](#). [Telecommunications](#)  [1112](#)


[123](#). ---- Attribution to community, communities within section, allocation of facilities


Broadcasting company's construction permit to build AM radio station in community that did not have station required that the station be attributed to that community for purposes of statute requiring equitable distribution of radio service in considering license applications, although broadcasting company did not intend to construct station with frequency indicated on permit and had attempted to abandon the permit. [Baker v. F.C.C., C.A.D.C.1987, 834 F.2d 181, 266 U.S.App.D.C. 155](#). [Telecommunications](#)  [1112](#)

[124](#). Treatment of two communities as one, allocation of facilities


Exceptional Commission rule treating two communities as one for purpose of broader comparison between mutually exclusive applicants was extended without appropriate explanation where Commission used rule in manner which disqualified one of mutually exclusive applicants. [Miners Broadcasting Service, Inc. v. F. C. C., C.A.D.C.1965, 349 F.2d 199, 121 U.S.App.D.C. 222](#). [Telecommunications](#)  [1112](#)

[125](#). Suburban stations distinguished, allocation of facilities


Where applicant for radio license had not presented necessary proof to justify grant of 10,000 watt, nondirectional station designated for a community of 3,000, when station would provide the most powerful daytime service to a metropolitan area of some 736,000 persons, Commission properly applied policy statement placing burden on applicant to demonstrate that desired grant was in fact a request for a transmission outlet for the outlying community rather than just another central city licensee and properly rejected application. [Fischer v. F. C. C., C.A.D.C.1969, 417 F.2d 551, 135 U.S.App.D.C. 134](#). [Telecommunications](#)  [1122](#)

Use by Commission of its policy statement, which was designed as an expeditious method for distinguishing in first instance between a true suburban station and one which, though physically located in suburb, would actually serve the central city, was reasonable in relation to granting of radio broadcast license in Beaumont, Texas area to one applicant instead of another. [Woodland Broadcasting Co. v. F. C. C., C.A.D.C.1969, 414 F.2d 1160, 134 U.S.App.D.C. 264](#). [Telecommunications](#)  [1112](#)


[126](#). Ten percent rule, allocation of facilities

Commission's adoption of "10% Rule" setting up standard for dealing with applications disclosing objectionable interference but recognizing necessity for fair, efficient, and equitable distribution of limited number of frequencies for radios was proper exercise and implementation of power committed to it to perform task of providing for orderly use of available radio facilities. [Guinan v. F. C. C., C.A.D.C.1961, 297 F.2d 782, 111 U.S.App.D.C. 371](#). [Telecommunications](#)  [1105](#)


[127](#). Involuntary public broadcasting licensure, allocation of facilities

Commission's power to license broadcasters exists only insofar as there is demand for same, and nothing in this chapter authorizes Commission to create licensees, or to force anyone to become public access broadcasters, whether to "increase outlets" or for any other reason. [Midwest Video Corp. v. F. C. C., C.A.8 1978, 571 F.2d 1025](#), certiorari granted [99 S.Ct. 77, 439 U.S. 816, 58 L.Ed.2d 107](#), affirmed [99 S.Ct. 1435, 440 U.S. 689, 59 L.Ed.2d 692](#). [Telecommunications](#)  [1092](#)


[128](#). Inaction as limiting scope of application, allocation of facilities


On a standard comparative issue, the Commission was not required to consider broadcasting company, which had applied for Class III radio station at community within county, with other broadcast companies applying for Class III radio station in a nearby city within same county, but could exclude first company on basis of Communications Act of 1934, § 307(b), subsec. (b) of this section, where company by inaction signified willingness to be treated as applying for license for community only. [Dacre v. F. C. C., C.A.D.C.1965, 352 F.2d 647, 122 U.S.App.D.C. 171](#). [Telecommunications](#)  [1126](#)


[129](#). Individual and corporation treated as one, allocation of facilities


In view of the Commission's valid treatment of individual and his wholly owned corporation as single applicant for high-band paging channel, the individual and the corporation were properly precluded from accepting the benefits of the grant and at same time denying the conditions upon which it was made. [Capital Tel. Co., Inc. v. F. C. C., C.A.D.C.1974, 498 F.2d 734, 162 U.S.App.D.C. 192](#). [Telecommunications](#)  [1092](#)

[130](#). UHF and VHF stations, allocation of facilities


Allocation of Commission of new VHF television assignments did not contravene the congressional directive that FCC achieve UHF-VHF comparability. [Springfield Television of Utah, Inc. v. F.C.C., C.A.10 1983, 710 F.2d 620](#). [Telecommunications](#)  [1105](#)

Commission did not act arbitrarily or capriciously nor abuse its discretion in determining that appropriate remedy for need to improve New Jersey television service was combination of local service obligations owed to viewers by New Jersey UHF stations and additional special New Jersey service responsibility imposed on New York City and Philadelphia VHF stations, despite contention that such remedy was not reasonably related to problem diagnosed by the Commission and that the special service requirement was unenforceable; further, record supported Commission's rejection of various other remedies considered. [New Jersey Coalition for Fair Broadcasting v. F. C. C., C.A.3 1978, 574 F.2d 1119](#). [Telecommunications](#)  [1112](#)


Fact that Commission had previously refused to assign a VHF channel to area where UHF licensees were located was not a basis for setting aside subsequent decision to make such an assignment, where Commission found that circumstances had changed, i.e., that policy of UHF protection against VHF, although still valid, had lost some measure of its urgency and was not to be looked upon as an inflexible across-the-board barrier to VHF assignment. [Plains Television Corp. v. F. C. C., C.A.D.C.1971, 440 F.2d 276, 142 U.S.App.D.C. 248](#). [Telecommunications](#)  [1106](#)


Action of Federal Communications Commission in deleting the only VHF television channel assigned to Springfield, Illinois, and reassigning it to St. Louis and Terre Haute and substituting for it in Springfield two UHF channels did not violate this section concerning distribution of licenses and frequencies among the several states and communities and was not arbitrary and capricious under the circumstances. [Fort Harrison Telecasting Corp. v. F. C. C., C.A.D.C.1963, 324 F.2d 379, 116 U.S.App.D.C. 347](#), certiorari denied [84 S.Ct. 665, 376 U.S. 915, 11 L.Ed.2d 611](#). [Telecommunications](#)  [1112](#)

[131](#). Effective area-wide service, allocation of facilities


Where Commission noted that radio-paging transmitter belonging to individual applicant would cover entire communications market completely and adequately and noted that if any part of the area did not receive adequate service from its transmitter, applicant could apply for authority to add additional transmitters to reach any deficient area, the individual applicant was assured of effective area wide service even though the Commission denied application of corporation wholly owned by the individual applicant for allocation of another channel for radio-paging service. [Capital Tel. Co., Inc. v. F. C. C., C.A.D.C.1974, 498 F.2d 734, 162 U.S.App.D.C. 192. Telecommunications](#)  [1042](#)


### [132. Compromise, allocation of facilities](#)


When one applicant desires both of two available frequencies and another qualified applicant is available, the Commission will grant one frequency to each applicant as matter of sound policy. [Capital Tel. Co., Inc. v. F. C. C., C.A.D.C.1974, 498 F.2d 734, 162 U.S.App.D.C. 192. Telecommunications](#)  [1105](#)


Both daytime and fulltime broadcasters have legitimate claims to use of the AM band during transitional presunrise hours, and Commission could not be faulted for believing compromise between competing claims constituted the best solution. [WBEN, Inc. v. U. S., C.A.2 1968, 396 F.2d 601, certiorari denied 89 S.Ct. 238, 393 U.S. 914, 21 L.Ed.2d 200, certiorari denied 89 S.Ct. 240, 393 U.S. 914, 21 L.Ed.2d 200. Telecommunications](#)  [1113](#)

### [133. Considerations governing allocation of facilities](#)


In considering applications for radio licenses, principle objectives of Federal Communications Commission are provision of service of local origin to as many communities as possible, provision of some service to all of nation or as much as possible, and provision of as many program choices to as many listeners as possible. [North Texas Media, Inc. v. F.C.C., C.A.D.C.1985, 778 F.2d 28, 250 U.S.App.D.C. 155. Telecommunications](#)  [1102\(1\)](#)


Neither provisions pertaining to duties of the Commission, nor priorities established by the Commission express rigid and inflexible standards in regard to assignment of television service, but the Commission has a broad measure of discretion in dealing with the problems of allocation and distribution of service. [Television Corp. of Mich., Inc. v. F. C. C., C.A.D.C.1961, 294 F.2d 730, 111 U.S.App.D.C. 101. Telecommunications](#)  [1087](#)

Under this section requiring assignment of licenses, frequencies, etc., among communities so as to provide fair distribution of radio service Commission must take cognizance of every feature of existing service. [Easton Pub. Co. v. F.C.C., C.A.D.C.1949, 175 F.2d 344, 85 U.S.App.D.C. 33. Telecommunications](#)  [1112](#)


While this chapter recognizes that field of radio broadcast services is one of free competition, there is vested in the Commission the authority to choose between applicants whose applications are mutually exclusive, and comparative considerations as to the services to be rendered govern the Commission's application of the standard of public interest, convenience or necessity. [Broadcasters, Inc. v. Morristown Broadcasting Corp., D.C.N.J.1960, 185 F.Supp. 641. Telecommunications](#)  [1102\(1\)](#)


### [134. Fair, efficient, and equitable distribution, allocation of facilities](#)

By directing the Commission to provide fair and equitable distribution of radio service, this section protects both the general public and other broadcasters. [Capital Tel. Co., Inc. v. F. C. C., C.A.D.C.1974, 498 F.2d 734, 162 U.S.App.D.C. 192. Telecommunications](#)  [1076](#)


The Commission is entrusted with fairly and efficiently licensing stations over the United States. [Wheeling Antenna Co. v. U. S., C.A.4 \(W.Va.\) 1968, 391 F.2d 179. Telecommunications](#)  [1092](#)

### [135. Ability to serve communities, allocation of facilities](#)


Commission, in awarding AM licenses between mutually exclusive applicants for different communities, can select one community over another on basis of former's need without first finding that applicants are approximately equal in their ability to serve their respective communities. [F.C.C. v. Allentown Broadcasting Corp., U.S. Dist. Col. 1955, 75 S.Ct. 855, 349 U.S. 358, 99 L.Ed. 1147.](#) [Telecommunications](#)  [1112](#)


Finding of Commission on comparative determination of several applications for new radio stations that larger community was in greater need than smaller nearby community would not support grant of application without findings as to comparative qualities of program proposals of the several applicants or of lack of any particular type of service in either community or of greater ability of either applicant to meet that need. [Easton Pub. Co. v. F.C.C., C.A.D.C. 1949, 175 F.2d 344, 85 U.S.App.D.C. 33.](#) [Telecommunications](#)  [1132](#)


### [136.](#) Absence of transmitting station, allocation of facilities


Lack of transmitting station in state or community relates to this chapter's requirement of equitable distribution of service among states and communities only when a local station would add a quality of service which is not duplicated by station located elsewhere, and thus equitable distribution of transmission facilities is not independent test which the Commission must apply, and the key to analysis is whether the service provided by television stations is adequately distributed to viewers in the several states and communities. [New Jersey Coalition for Fair Broadcasting v. F. C. C., C.A.3 1978, 574 F.2d 1119.](#) [Telecommunications](#)  [1112](#)

### [137.](#) Adequacy of existing service, allocation of facilities--Generally

Under section of Federal Communications Act relating to licensing of radio stations, where two or more mutually exclusive applicants have specified different communities of license, FCC must determine relative need to each applicant's proposed service area for new reception service and relative need of each applicant's proposed community of license for new transmission service. [New Radio Corp. v. F.C.C., C.A.D.C. 1986, 804 F.2d 756, 256 U.S.App.D.C. 211.](#) [Telecommunications](#)  [1112](#)

Federal Communications Commission could rationally decide that *Huntington* doctrine, providing that if competing broadcasting applicants provide substantially same high-powered service to broad metropolitan area, then fact that one applicant proposes to construct station in suburb not currently served by broadcasting station does not entitle it to § 307(b) licensing preference, does not apply to applicants who propose to construct stations in neighboring communities, absent showing that one community's need for self-expression is adequately served by stations in other community. [Beaufort County Broadcasting Co. v. F.C.C., C.A.D.C. 1986, 787 F.2d 645, 252 U.S.App.D.C. 89.](#) [Telecommunications](#)  [1112](#)

On question of availability of existing radio transmission service for two different communities for which standard broadcast license was sought by different applicants, crucial consideration was to what extent existing stations programmed for needs of communities for which licenses were sought, not where studios of such existing stations were located. [Jupiter Associates, Inc. v. F. C. C., C.A.D.C. 1969, 420 F.2d 108, 136 U.S.App.D.C. 266.](#) [Telecommunications](#)  [1112](#)

Deprivation of television service to any group is undesirable, and can be justified on an application to the Commission only by offsetting factors, and Commission should take such approach to an application to move a transmitter, rather than approach that more service to more people, even to a group already well served is prima facie desirable, and that a determination must be made of whether such advantage is offset by negative factor of loss of service to others. [Television Corp. of Mich., Inc. v. F. C. C., C.A.D.C. 1961, 294 F.2d 730, 111 U.S.App.D.C. 101.](#) [Telecommunications](#)  [1114](#)

Under subsec. (b) of this section providing that Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and

equitable distribution of radio service, where populations of southwest were underserved by radio broadcast, decision of Commission granting application for license to southwestern radio station on stated frequency and "breaking down" that frequency to allow two or more class I stations at night, was proper and in the public interest, even if network competition would be adversely affected by restriction of operation of prior licensee on such frequency. [American Broadcasting-Paramount Theatres, Inc. v. F.C.C., C.A.D.C.1960, 280 F.2d 631, 108 U.S.App.D.C. 83. Telecommunications 1112](#)

Action of Commission granting increased wattage to radio station was supported by the evidence and was within the Commission's authority and its long standing policy of furnishing at least one primary radio service to all substantial populations of the country, even though it resulted in interference with reception of another broadcaster with same kilocycle band by 54 percent of the population in a formerly interference-free area. [Beaumont Broadcasting Corp. v. F.C.C., C.A.D.C.1952, 202 F.2d 306, 91 U.S.App.D.C. 111. Telecommunications 1112](#)

In determining whether to award permit to radio station which would displace existing station over large area, fact that interference area would continue to receive primary service from five stations and that most of it would receive primary service from nine stations would not make irrelevant a comparative weighing of service furnished by existing station. [Democrat Printing Co. v. F.C.C., C.A.D.C.1952, 202 F.2d 298, 91 U.S.App.D.C. 72. Telecommunications 1112](#)

[138.](#) ---- AM and FM stations, adequacy of existing service, allocation of facilities

This section requiring assignment of licenses, frequencies, etc., among communities so as to provide fair distribution of radio service does not require that the Commission give prohibitive weight to existence of AM stations when allocating television stations or new FM stations. [Easton Pub. Co. v. F.C.C., C.A.D.C.1949, 175 F.2d 344, 85 U.S.App.D.C. 33. Telecommunications 1112](#)

[139.](#) ---- UHF and VHF stations, adequacy of existing service, allocation of facilities

Commission is permitted to consider the existence of UHF channels in making its determination of equitable service under this chapter, and is permitted to find that UHF or VHF channels alone are sufficient to meet the statutory service requirements. [New Jersey Coalition for Fair Broadcasting v. F. C. C., C.A.3 1978, 574 F.2d 1119. Telecommunications 1112](#)

[140.](#) Availability of alternative broadcasting, allocation of facilities

In adopting new rule granting limited predawn AM broadcasting rights on a broad scale to daytimers some of whom had formerly been granted more ample privileges on the sufferance of the fulltimers, with increased interference with predawn broadcasting by fulltimers, Commission could validly consider whether listener who would lose service of regional fulltimer would generally have reasonably satisfactory alternative broadcasting available. [WBEN, Inc. v. U. S., C.A.2 1968, 396 F.2d 601, certiorari denied 89 S.Ct. 238, 393 U.S. 914, 21 L.Ed.2d 200, certiorari denied 89 S.Ct. 240, 393 U.S. 914, 21 L.Ed.2d 200. Telecommunications 1113](#)

Commission's grant of an application for a television station to move its transmitter was not justified on basis of finding of Commission that although about 900 people would be deprived of any service, and about 42,000 people of all but one service, over 100,000 people would gain Grade A service. [Television Corp. of Mich., Inc. v. F. C. C., C.A.D.C.1961, 294 F.2d 730, 111 U.S.App.D.C. 101. Telecommunications 1114](#)

[141.](#) Commercial or non-commercial facilities, allocation of facilities

Federal Communications Commission did not abuse its discretion in refusing to allocate and reserve television channel at substandard spacing for educational use and could not be held to have acted arbitrarily or capriciously in concluding that third full-time network commercial facility in another town was to be preferred to full-time non-

commercial educational facility. [Pennsylvania State University v. F. C. C., C.A.D.C.1962, 304 F.2d 956, 113 U.S.App.D.C. 80. Telecommunications 1105](#)

Where Commission held a comparative proceeding to determine which of the three applicants, one of which was a university conducted by a religious order, should be awarded authority to operate commercial television channel there was no impropriety in Commission's differentiating the educational and religious organization involved from the usual business corporation in applying its customary comparative criteria. [Noe v. F.C.C., C.A.D.C.1958, 260 F.2d 739, 104 U.S.App.D.C. 221, certiorari denied 79 S.Ct. 607, 359 U.S. 924, 3 L.Ed.2d 627. Telecommunications 1102\(1\)](#)

#### 142. Competition, allocation of facilities

Distribution of second AM license to community in order to secure local competition for originating and broadcasting programs of local interest is within allowable area of discretion vested in Commission. [F.C.C. v. Allentown Broadcasting Corp., U.S.Dist.Col.1955, 75 S.Ct. 855, 349 U.S. 358, 99 L.Ed. 1147. Telecommunications 1112](#)

Decision of Federal Communications Commission in assigning a VHF television channel in Missouri area to St. Louis rather than to Rolla-Salem which would have established virtually a one station monopoly in the latter area in which the use of UHF would provide opportunities for greater number of local outlets and choice of services and would not deprive large surrounding area of a needed competitive service was not arbitrary and capricious. [Fort Harrison Telecasting Corp. v. F. C. C., C.A.D.C.1963, 324 F.2d 379, 116 U.S.App.D.C. 347, certiorari denied 84 S.Ct. 665, 376 U.S. 915, 11 L.Ed.2d 611. Telecommunications 1112](#)

Public interest question, material to consideration by Commission of application for broadcasting station license, may be involved if one of two mutually exclusive applicants buys out sole competitor who "voluntarily" withdraws. [Clarksburg Pub. Co. v. F.C.C., C.A.D.C.1955, 225 F.2d 511, 96 U.S.App.D.C. 211. Telecommunications 1100](#)

#### 143. Deception or evasiveness of applicant, allocation of facilities

Reluctance, evasiveness and lack of candor of applicant's principal witnesses would not be bar to Commission's grant of license for broadcasting station. [F.C.C. v. Allentown Broadcasting Corp., U.S.Dist.Col.1955, 75 S.Ct. 855, 349 U.S. 358, 99 L.Ed. 1147. Telecommunications 1099\(2\)](#)

Broadcast license applicant's reliance on advice of counsel in claiming to own property to which he had no legal title provided no support for decision of Review Board of the Federal Communications Commission overruling administrative law judge's determination that applicant misled FCC in view of fact that counsel was himself an officer and a director of corporation owned by applicant, and was therefore interested party in application proceeding. [WHW Enterprises, Inc. v. F.C.C., C.A.D.C.1985, 753 F.2d 1132, 243 U.S.App.D.C. 394. Telecommunications 1099\(2\)](#)

#### 144. Diversity of programming, allocation of facilities

Commission, at comparative hearing on license applications for mutually exclusive television stations, concluded on sufficient evidence that the licensee's station was operated autonomously, and there was also sufficient evidence to support the Commission's findings that there was sufficient opportunity to present diverse views through the area's 126 radio stations, 12 commercial television stations and 350 newspapers, including two general circulation dailies. [Fidelity Television, Inc. v. F. C. C., C.A.D.C.1975, 515 F.2d 684, 169 U.S.App.D.C. 225, rehearing denied, certiorari denied 96 S.Ct. 271, 423 U.S. 926, 46 L.Ed.2d 253. Telecommunications 1124](#)

In awarding television channel, the diversification factor of the applicant is important but may be counterbalanced by other factors, and the test lies in whether the Commission's performance of its duty of determining which

applicant will better serve the public interest, it is shown to have considered diversification of control in connection with all relevant factors and the Commission may reject a newspaper's application and grant that of a competing nonnewspaper applicant if it acts reasonably and if it does so after considering and comparing all other relevant factors. [Massachusetts Bay Telecasters, Inc. v. F.C.C., C.A.D.C.1958, 261 F.2d 55, 104 U.S.App.D.C. 226, certiorari denied 81 S.Ct. 1094, 366 U.S. 918, 6 L.Ed.2d 241. Telecommunications 1100; Telecommunications 1101](#)

145. Economic injury to existing station, allocation of facilities

Evidence sustained finding of Commission that the expected competition would not result in such reduction in income to existing station as to require deterioration of its service to the listening public. [Tri-State Broadcasting Co., Station KTSM v. F.C.C., App.D.C.1939, 107 F.2d 956, 71 App.D.C. 157. Telecommunications 1143](#)

146. Economic efficiency of proposals, allocation of facilities

Federal Communications Commission, in deciding applications for permit to establish new cellular radio communications system, was entitled to take notice of relative cost differences between expansion plans without obligating itself to engage in wholly different analysis as to economic efficiency of coverage proposals and did not abuse discretion. [Gencom Inc. v. F.C.C., C.A.D.C.1987, 832 F.2d 171, 265 U.S.App.D.C. 403. Administrative Law And Procedure 459; Telecommunications 1038](#)

147. Homogeneity of area, allocation of facilities

This section providing that the Commission shall make such distribution of licenses, frequencies and of power among the several states and the communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same does not mean that the Commission frequency grants are limited solely to the environs of one metropolitan area, and the Commission may, in a proper case, decide that a given area is so homogeneous in regional needs, character and interests that a single area-wide frequency allocation would best serve the policy of this section. [Jackson Broadcasting & Television Corp. v. F.C.C., C.A.D.C.1960, 280 F.2d 676, 108 U.S.App.D.C. 128. Telecommunications 1112](#)


148. Intent to serve community, allocation of facilities

Applicant for broadcasting license did not meet burden of showing that subsequent applicant, to whom license was awarded based on § 307(b) licensing preference, did not intend to serve community of 3,000 in which its station would be constructed, though community bordered on much larger community, and though applicant proposed to construct high-powered FM station capable of serving 600,000 people; defeated applicant, who had unsuccessfully applied for license to serve larger community was accordingly not affected by retroactive abolition of *Berwick* doctrine. [Beaufort County Broadcasting Co. v. F.C.C., C.A.D.C.1986, 787 F.2d 645, 252 U.S.App.D.C. 89. Telecommunications 1124; Telecommunications 1131\(1\)](#)


149. Interference with other channels, allocation of facilities


Where Commission gave notice in 1962 that technical issue of amount of injury fulltime AM broadcasters would be caused by increased interference resulting from grant of limited predawn broadcasting rights to daytimers would be considered, Commission was justified in refusing to consider fragmentary study on presunrise propagation conditions which was not submitted by broadcasting association until July 1966 and which would have required Commission to undertake lengthy full scale inquiry at that time. [WBEN, Inc. v. U. S., C.A.2 1968, 396 F.2d 601, certiorari denied 89 S.Ct. 238, 393 U.S. 914, 21 L.Ed.2d 200, certiorari denied 89 S.Ct. 240, 393 U.S. 914, 21 L.Ed.2d 200. Telecommunications 1113](#)

So long as a radio station in operation was operating at a certain frequency, it was proper for Commission to deny an


application for another station on basis of interference, even though applicant proposed a first local transmission facility whose programming was to be geared to different community requirements. [Greenwich Broadcasting Corp. v. F. C. C., C.A.D.C.1961, 294 F.2d 913, 111 U.S.App.D.C. 129. Telecommunications](#)  [1111](#)

[150. Local needs, allocation of facilities--Generally](#)


For purposes of this section requiring Commission to make such distribution of licenses as shall provide a fair, efficient, and equitable distribution of radio service, fairness to community is furthered by recognition of local need for community radio mouthpiece. [F.C.C. v. Allentown Broadcasting Corp., U.S.Dist.Col.1955, 75 S.Ct. 855, 349 U.S. 358, 99 L.Ed. 1147. Telecommunications](#)  [1112](#)


Even though Federal Communications Commission historically followed policy of localism as sound means of promoting goal of efficient public service pursuant to this chapter, when new technology permitted objectives to be obtained through novel means that required alteration or abandonment of past policies, Commission could adjust its means to retain fidelity to legislative end. [National Ass'n of Broadcasters v. F.C.C., C.A.D.C.1984, 740 F.2d 1190, 239 U.S.App.D.C. 87. Telecommunications](#)  [614](#)

[151. ---- Self-expression, local needs, allocation of facilities](#)


In requiring a fair and equitable distribution of radio service among several states and communities, this section encompasses not only the reception of an adequate signal but also community needs for programs of local interest and importance and for organs of local self-expression. [Pinellas Broadcasting Co. v. F.C.C., C.A.D.C.1956, 230 F.2d 204, 97 U.S.App.D.C. 236, certiorari denied 76 S.Ct. 650, 350 U.S. 1007, 100 L.Ed. 869. Telecommunications](#)  [1112](#)

[152. Location of station, allocation of facilities--Generally](#)


Fact that city for which standard broadcast license was sought by one radio station was located 45 miles away from New York City while another city for which such a license was sought by another radio station was located only 14 miles away from New York City was not of significance to Commission in deciding whether to issue licenses where no New York City station devoted significant amount of its programming to needs of either city for which licenses were sought. [Jupiter Associates, Inc. v. F. C. C., C.A.D.C.1969, 420 F.2d 108, 136 U.S.App.D.C. 266. Telecommunications](#)  [1112](#)

The Federal Communications Commission is not bound in every case though it might be bound in some to consider evidence with respect to other possible locations in determining whether, in the public interest, to grant an application for a license, modification or renewal. [Allegany County Broadcasting Corp. v. F. C. C., C.A.D.C.1965, 348 F.2d 778, 121 U.S.App.D.C. 166. Telecommunications](#)  [1123](#)


[153. ---- Centrality of location, location of station, allocation of facilities](#)


Where Commission determined that VHF television Channel 10 should serve the relatively small triangular area in the south central portion of Michigan west of Jackson and south of Lansing and selected Parma and Onondaga, in combination, as the station cities since they were centrally located in such area, the Commission could award such channel to a commercial station which proposed to operate 66 hours a week out of its Jackson and Onondaga studios and to a university which proposed to operate an educational television schedule for 38 hours a week from East Lansing, 35 miles from Jackson, and was not required to award the channel solely to Jackson. [Jackson Broadcasting & Television Corp. v. F.C.C., C.A.D.C.1960, 280 F.2d 676, 108 U.S.App.D.C. 128. Telecommunications](#)  [1112](#)

[154. ---- Out-of-state stations, location of station, allocation of facilities](#)


Commission is permitted to rely on out-of-state stations to meet an area's service requirements, and has discretion to allocate stations without regard to political boundaries so long as radio and television service is equitably distributed. [New Jersey Coalition for Fair Broadcasting v. F. C. C., C.A.3 1978, 574 F.2d 1119. Telecommunications](#)  [1112](#)


#### [155. Mass media holdings, allocation of facilities](#)

Concentration of local communications media in hands of applicant, who was publisher of only local newspaper, and licensee of one of two FM radio stations and of the only television station, would not be bar to grant of AM license. [F.C.C. v. Allentown Broadcasting Corp., U.S.Dist.Col.1955, 75 S.Ct. 855, 349 U.S. 358, 99 L.Ed. 1147. Telecommunications](#)  [1101](#)


Where Commission has concluded, after comparative hearing between two competing applicants for a television station construction permit, that there are only slight differences between the applicants in other respects, it may attach decisive significance to fact that one applicant is disassociated from existing media of mass communications in the area affected while other applicant owns radio and television stations and newspapers in the area. [McClatchy Broadcasting Co. v. F.C.C., C.A.D.C.1956, 239 F.2d 15, 99 U.S.App.D.C. 195, on rehearing 239 F.2d 19, 99 U.S.App.D.C. 199, certiorari denied 77 S.Ct. 664, 353 U.S. 918, 1 L.Ed.2d 665, rehearing denied 77 S.Ct. 858, 353 U.S. 952, 1 L.Ed.2d 860, certiorari denied 77 S.Ct. 662, 353 U.S. 918, 1 L.Ed.2d 665. Telecommunications](#)  [1101](#)

#### [156. Mileage spacing, allocation of facilities](#)

Federal Communications Commission (FCC) did not abuse its discretion in declining to grant FM radio station applicant waiver of FCC's minimum spacing rules, despite applicant's alleged public interest considerations in support of waiver; applicant had not shown that it would be offering service to unserved or underserved area, applicant had not explained relationship between short-spaced licensee's failure to upgrade its facilities and public interest that would be served by granting waiver, FCC was not required to treat short-spaced licensee's silence as independent basis for finding that waiver grant would serve public interest, and FCC could find that preservation of choice of applicants was not sufficient public interest to support waiver. [Red Rock Broadcasting, Inc. v. F.C.C., C.A.D.C.1996, 94 F.3d 698, 320 U.S.App.D.C. 364. Telecommunications](#)  [1112](#)


Absent showing that no properly spaced site was available for construction of proposed FM transmitter, fact that proposed transmitter would provide first local service to city did not weigh in favor of waiver of mileage spacing requirements. [North Texas Media, Inc. v. F.C.C., C.A.D.C.1985, 778 F.2d 28, 250 U.S.App.D.C. 155. Telecommunications](#)  [1112](#)

#### [157. Minimum business area coverage, allocation of facilities](#)


Where applicant for radio license made no showing that would justify a waiver of rule governing minimum business area coverage requirements and rule requiring that main studio be located in principal community or at transmittal site, application was properly denied. [Fischer v. F. C. C., C.A.D.C.1969, 417 F.2d 551, 135 U.S.App.D.C. 134. Telecommunications](#)  [1114](#)

#### [158. Minority ownership or participation, allocation of facilities](#)


Federal Communications Commission, in evaluating two mutually exclusive applications for construction permit to establish new radio station, properly gave one applicant a "substantial enhancement" for its ownership by a minority who would fully participate in station management. [West Michigan Broadcasting Co. v. F.C.C., C.A.D.C.1984, 735](#)


[F.2d 601, 236 U.S.App.D.C. 335](#), certiorari denied [105 S.Ct. 1392, 470 U.S. 1027, 84 L.Ed.2d 782](#).  
[Telecommunications](#)  [1102\(4\)](#)

[159](#). Net effect, allocation of facilities


Commission, in carrying out its obligation to make such distribution of licenses, frequencies and power among the states and communities as to provide a fair, efficient and equitable distribution of service, may weigh the net effect on the community or communities to be served. [Carter Mountain Transmission Corp. v. F. C. C., C.A.D.C.1963, 321 F.2d 359, 116 U.S.App.D.C. 93](#), certiorari denied [84 S.Ct. 442, 375 U.S. 951, 11 L.Ed.2d 312](#).  
[Telecommunications](#)  [1112](#)

[160](#). Nighttime efficiency, allocation of facilities


This section requiring the Federal Communications Commission in considering applications for licenses and modification to make a fair and equitable distribution of radio service did not require the Commission on an application to move a station from one community to another and to permit operation in the other community on a full time basis to consider also issue of comparative nighttime efficiency as between the two communities where applicant's existing station had never operated at night and where applicant proposed only one station location in the city to which it sought to move. [Allegany County Broadcasting Corp. v. F. C. C., C.A.D.C.1965, 348 F.2d 778, 121 U.S.App.D.C. 166](#). [Telecommunications](#)  [1113](#)


Refusal of Federal Communications Commission to authorize higher power for two clear channel radio stations was not inconsistent with and did not defeat purposes of subsection (b) of this section requiring Commission to distribute power to provide equitable distribution of radio service having in mind large areas dependent for nighttime standard broadcast service upon secondary service afforded by clear channel stations. [Goodwill Stations, Inc. v. F. C. C., C.A.D.C.1963, 325 F.2d 637, 117 U.S.App.D.C. 64](#). [Telecommunications](#)  [1112](#)


[161](#). Nonduplication rule, allocation of facilities

Commission nonduplication rule, requiring that CATV system, upon request, maintain local station's exclusivity as program outlet against lower priority or more distant duplicating signals, does not violate statutory requirements that the Commission foster a fair, efficient and equitable distribution of service, despite theory that rule impermissibly favors television broadcasters over CATV and unlawfully seeks to regulate competition between them. [Winchester TV Cable Co. v. F. C. C., C.A.4 1972, 462 F.2d 115](#), certiorari denied [93 S.Ct. 439, 409 U.S. 1007, 34 L.Ed.2d 300](#).  
[Telecommunications](#)  [1238\(6\)](#)

[162](#). Number of persons served, allocation of facilities

Determination of the FCC, not to award license to radio broadcaster that proposed to serve small community of under 3,000 people that was currently without any broadcast facility, was reasonable application of "quiet village" doctrine. [New South Broadcasting Corp. v. F.C.C., C.A.D.C.1989, 879 F.2d 867, 279 U.S.App.D.C. 21](#).  
[Telecommunications](#)  [1112](#)

Record supported Federal Communications Commission's decision awarding dispositive preference to broadcast license applicants who proposed to place station in community with one daytime-only radio station for its 34,000 residents, thereby eliminating from further consideration applicant who proposed placing station in community which shared common border with former community and had five radio stations serving 86,000 residents. [WHW Enterprises, Inc. v. F.C.C., C.A.D.C.1985, 753 F.2d 1132, 243 U.S.App.D.C. 394](#). [Telecommunications](#)  [1112](#)

Commission has duty to forestall excessive concentration of FM assignments in larger cities and ensure adequate service to smaller communities and "sparsely populated" regions. [Communications Inv. Corp. v. F. C. C., C.A.D.C.1981, 641 F.2d 954, 206 U.S.App.D.C. 1](#). [Telecommunications](#)  [1112](#)

Commission erred in assigning AM frequency in Los Angeles-Long Beach area solely on basis of size of population to be served, without considering Los Angeles' need for still another AM station and without considering fact that another applicant would supply first local service in another city. [Pasadena Broadcasting Co. v. F. C. C., C.A.D.C.1977, 555 F.2d 1046, 181 U.S.App.D.C. 109. Telecommunications 1112](#)

Review Board of Commission did not err in using applicant suburban standard broadcasting station's existing 2 mv/m contour in assessing impact of station's application for 5 mv/m contour upon adjoining city where station's 2 mv/m contour reached 90.2% of population of adjoining city while proposed operation would reach 99.4% of that population. [Northeast Broadcasting, Inc. v. F. C. C., C.A.D.C.1968, 400 F.2d 749, 130 U.S.App.D.C. 278. Telecommunications 1114](#)

On comparative hearing by the Commission of mutually exclusive applications by Michigan radio station for change of frequency and power and of Ohio radio station for increase of power, Commission properly granted application of Michigan station and denied application of Ohio station without prejudice, where as result of granting of application of Michigan station 5000 persons who had no primary daytime radio service would be served, and where proposed additional coverage by Ohio station would reach no area or person not already served by some radio station. [Radio Cincinnati v. F.C.C., C.A.D.C.1949, 177 F.2d 92, 85 U.S.App.D.C. 292. Telecommunications 1112](#)

#### 163. Policy matters, allocation of facilities

Allotment of frequencies involves technical and policy matters which Congress intended to leave to broad discretion of Commission. [Springfield Television of Utah, Inc. v. F.C.C., C.A.10 1983, 710 F.2d 620. Telecommunications 1135](#)

#### 164. Pre-dawn broadcasting, allocation of facilities

This section requiring Commission to distribute licenses so as to provide fair, efficient and equitable distribution of radio service to various parts of nation did not preclude Commission from adopting rule granting limited predawn AM broadcasting rights to daytimers, some of whom had formerly been granted more ample privileges, with increased interference with predawn broadcasting by fulltimers, nor was Commission conclusion that limited presunrise service distributed widely throughout nation is more "equitable" than more generous dispensation limited to an ever diminishing number of localities irrational. [WBEN, Inc. v. U. S., C.A.2 1968, 396 F.2d 601, certiorari denied 89 S.Ct. 238, 393 U.S. 914, 21 L.Ed.2d 200, certiorari denied 89 S.Ct. 240, 393 U.S. 914, 21 L.Ed.2d 200. Telecommunications 1113](#)


#### 165. Reciprocity practices, allocation of facilities

At comparative hearing on license applications for mutually exclusive television stations, Commission did not act arbitrarily, capriciously, or illegally in refusing to give the existing licensee a demerit or to disqualify it for the reciprocity practices outlined in the record. [Fidelity Television, Inc. v. F. C. C., C.A.D.C.1975, 515 F.2d 684, 169 U.S.App.D.C. 225, rehearing denied, certiorari denied 96 S.Ct. 271, 423 U.S. 926, 46 L.Ed.2d 253. Telecommunications 1131\(2\)](#)


#### 166. Temporary authorization, allocation of facilities


Temporary authorization by Federal Communications Commission for operation of a television station should not be made the basis of preferring the holder of the authorization over other competing applicants for a permanent license. [Fort Harrison Telecasting Corp. v. F. C. C., C.A.D.C.1963, 324 F.2d 379, 116 U.S.App.D.C. 347, certiorari denied 84 S.Ct. 665, 376 U.S. 915, 11 L.Ed.2d 611. Telecommunications 1102\(1\)](#)


167. Unqualified applicant, allocation of facilities


There need not be comparative treatment of respective community needs in situation where two applicants are competing for mutually exclusive permit for construction of radio station, once it has been established that one of competing applicants is basically unqualified. [Guinan v. F. C. C., C.A.D.C.1961, 297 F.2d 782, 111 U.S.App.D.C. 371. Telecommunications](#)  [1112](#)


168. Hearing, allocation of facilities


Applicant for broadcasting license had burden of making straightforward threshold showing that competing applicant, to whom license was awarded based on § 307(b) licensing preference, would not realistically provide broadcasting service to community it proposed to serve in order to be entitled to *Berwick* hearing on issue. [Beaufort County Broadcasting Co. v. F.C.C., C.A.D.C.1986, 787 F.2d 645, 252 U.S.App.D.C. 89. Telecommunications](#)  [1122](#)

On record, there was substantial and material question of intent of FM broadcasting stations in connection with their applications to move transmitters away from community of license to site overlooking larger and more lucrative market, and it was error to grant applications without holding hearing for resolution of such substantial and material question. [Communications Inv. Corp. v. F. C. C., C.A.D.C.1981, 641 F.2d 954, 206 U.S.App.D.C. 1. Telecommunications](#)  [1129](#)

The Commission was not required to enlarge issues on a hearing to move a radio station and expand hours to determine whether it would be more technically feasible and efficient to utilize a certain frequency during nighttime hours in one city than another where an evidentiary hearing had been held and among the issues was whether grant of the application would comply with statute requiring fair, efficient and equitable distribution of radio service, and on such issue Commission considered comparative ease of service as between communities where station was located and where applicant sought to move. [Allegany County Broadcasting Corp. v. F. C. C., C.A.D.C.1965, 348 F.2d 778, 121 U.S.App.D.C. 166. Telecommunications](#)  [1133](#)

Where application for construction permit for radio station at Paducah, Kentucky on a frequency of 1560 kc. and application to use that same frequency at Fort Oglethorpe, Georgia, were designated by Commission for comparative hearing in a consolidated proceeding and licensee of New York station already operating on that frequency was named as a party but before hearing, application as to Fort Oglethorpe was dismissed, there was no longer need, after dismissal, for a comparative hearing as to respective qualifications of two applicants or for a determination as to which if either of two applicants might the better establish its right, within meaning of § 307 of this title requiring Commission to make such distribution of frequencies as to provide a fair, efficient and equitable distribution of radio service, and it only remained for Commission to determine whether public interest required granting of application for Paducah station so as to provide a fair, efficient and equitable distribution of radio service. [Interstate Broadcasting Co. v. F.C.C., C.A.D.C.1959, 265 F.2d 598, 105 U.S.App.D.C. 224. Telecommunications](#)  [1131\(1\)](#)

Action of the Commission in granting a permit for operation of another television station in the same area of reception as an existing licensed station, though required to observe under this section the conditions to provide a fair and equitable distribution of radio service to communities involved is not required to cover the same ground again where it had already considered such matters in other related proceedings. [Gerico Inv. Co. v. F.C.C., C.A.D.C.1958, 255 F.2d 893, 103 U.S.App.D.C. 141. Telecommunications](#)  [1131\(1\)](#)

Where application of Michigan radio station for change of frequency and power and application of Ohio radio station for increase of power were "mutually exclusive," meaning that both could not be granted as proposed because of objectionable interference which would result, a comparative hearing before the Commission was required. [Radio Cincinnati v. F.C.C., C.A.D.C.1949, 177 F.2d 92, 85 U.S.App.D.C. 292. Telecommunications](#)  [1131\(1\)](#)

## V. RENEWALS


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
Adaption of programming to changed circumstances, nature and type of programming [218](#)  
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
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[191](#). Renewals generally


Specific criteria for determining whether incumbent licensee had performed in superior manner include: (1) elimination of excessive and loud advertising, (2) delivery of quality programs, (3) extent to which incumbent has reinvested profit from his license to service of viewing and listening public, (4) diversification of ownership of mass media, and (5) independence from governmental influence in promoting objectives of [U.S.C.A.Const. Amend. 1. Citizens Communications Center v. F. C. C., C.A.D.C.1972, 463 F.2d 822, 149 U.S.App.D.C. 419. Telecommunications](#)  [1094](#)


Where, though wholly owned subsidiary of corporate publisher of newspaper had operated television station for nearly 12 years, that operation had been conducted for most part under various temporary authorizations while its right to operate for a regular 3-year period had been under challenge, and not until approximately 5 years after station began broadcasting did subsidiary receive a license to operate station, and even then its license was issued for a period of 4 months only because of Commission's concern with inroads made by subsidiary upon rules governing fair adjudication, action of Commission in applying to renewal proceedings same criteria that it normally applied for hearing new applications was not improper. [Greater Boston Television Corp. v. F. C. C., C.A.D.C.1970, 444 F.2d 841, 143 U.S.App.D.C. 383, certiorari denied 91 S.Ct. 2229, 403 U.S. 923, 29 L.Ed.2d 701, rehearing denied 92 S.Ct. 30, 404 U.S. 877, 30 L.Ed.2d 125, certiorari denied 91 S.Ct. 2233, 403 U.S. 923, 29 L.Ed.2d 701, motion to recall mandate denied 463 F.2d 268, 149 U.S.App.D.C. 322, certiorari denied 92 S.Ct. 2042, 406 U.S. 950, 32 L.Ed.2d 338. Telecommunications](#)  [1094](#)


[192](#). Power of Commission, renewals

If the Commission determines that a licensee has engaged in improper programming it can impose a variety of remedial sanctions including: admonishment of licensee for irresponsible programming judgments, imposition of a forfeiture for programming inconsistent with public interest, declaration that licensee has failed to comply with Commission policies, issuance of a "short term" renewal, designation of license renewal application for full evidentiary hearing, and denial of license renewal. [Muir v. Alabama Educational Television Com'n, C.A.5 \(Ala.\) 1982, 688 F.2d 1033, certiorari denied 103 S.Ct. 1274, 460 U.S. 1023, 75 L.Ed.2d 495. Telecommunications](#)  [1155\(1\)](#)


[193](#). Interim operation, renewals

Where court held that Commission's renewal of license was not sustained by record because hearing on license renewal was improperly conducted, court would permit licensee to be one applicant for license and allow Commission to consider plan for interim operation. [Office of Communication of United Church of Christ v. F. C. C., C.A.D.C.1969, 425 F.2d 543, 138 U.S.App.D.C. 112. Telecommunications](#)  [1144](#)


Commission may in some circumstances award interim authorization to radio broadcasting company without holding hearing, if it is clear that public interest would thus be served. [Beloit Broadcasters, Inc. v. F. C. C., C.A.D.C.1966, 365 F.2d 962, 125 U.S.App.D.C. 29. Telecommunications](#)  [1129](#)

Forfeiture was properly imposed against licensee, which continued to operate seven translator stations for fifteen months after its licenses were rescinded and it was ordered to cease operating the stations; licenses for the seven translator stations were terminated as of the date of Federal Communications Commission (FCC) order, which was never stayed, and licensee's court appeals were not "pending" so that licenses remained in effect until appeals were final. [U.S. v. Peninsula Communications, Inc., D.Alaska 2004, 335 F.Supp.2d 1013. Telecommunications](#) 


[1169](#)[194. Delegation of duty, renewals](#)

While the Commission acted properly in adopting amendments to prime time access rule which allowed network broadcasting in access time for public affairs, documentary and children's programs, it was improper delegation of Commission's duty of policing rule when it admonished licensees not to use exemption for network programs during access time on Saturday except for "compelling public interest reasons." [National Ass'n of Independent Television Producers and Distributors v. F. C. C., C.A.2 1975, 516 F.2d 526. Constitutional Law](#)  [76](#)


[195. Commercial or public broadcasting standards, renewals](#)

Fact that public television station has duty to comply with Rehabilitation Act of 1973, section 701 et seq. of Title 29, does not support the quite different conclusion that Commission must evaluate public station's service to handicapped community by more stringent standard than that applicable to commercial stations. [Community Television of Southern California v. Gottfried, U.S. Dist. Col. 1983, 103 S.Ct. 885, 459 U.S. 498, 74 L.Ed.2d 705. Telecommunications](#)  [1153\(5\)](#)


[196. Persons entitled to object, renewals](#)

"Public intervenor" who objects to renewal of broadcaster's license and who is seeking no license or private right is like complaining witness who presents evidence to police or prosecutor whose duty it is to conduct affirmative and objective investigation of all facts and to pursue his prosecutorial and regulatory function if there is probable cause to believe violation has occurred. [Office of Communication of United Church of Christ v. F. C. C., C.A.D.C. 1969, 425 F.2d 543, 138 U.S.App.D.C. 112. Telecommunications](#)  [1131\(1\)](#)


[197. Resubmission of application, renewals](#)

Where, prior to expiration of its operating license, broadcaster filed application for renewal with the Commission, and where final decision on question of renewal of such license had not been made by date such renewed license would have expired, this section required extension of vitality of broadcaster's license notwithstanding that at no time during pendency of renewal application was such application resubmitted. [Committee for Open Media v. F. C. C., C.A.D.C. 1976, 543 F.2d 861, 177 U.S.App.D.C. 376. Telecommunications](#)  [1094](#)

[198. Conditions of renewal, renewals](#)


Communications Act did not require Federal Communications Commission to impose requirements concerning captioning of television programs for hearing-impaired viewers as condition for renewal of broadcast license. [California Ass'n of the Physically Handicapped, Inc. v. F.C.C., C.A.D.C. 1988, 840 F.2d 88, 268 U.S.App.D.C. 208, rehearing denied 848 F.2d 1304, 270 U.S.App.D.C. 272. Telecommunications](#)  [1094](#)



[199. Public convenience, interest, or necessity, renewals](#)


Commission is free under this section to alter license renewal application as it sees fit, provided that Commission still has sufficient information to make required "public interest" determination. [Black Citizens for a Fair Media v. F.C.C., C.A.D.C. 1983, 719 F.2d 407, 231 U.S.App.D.C. 163, certiorari denied 104 S.Ct. 3545, 467 U.S. 1255, 82 L.Ed.2d 848. Telecommunications](#)  [1128](#)


In Commission's weighing of factors in favor of and against renewal of television broadcaster's license, the scale mid-mark must be neither the factors themselves, nor the interests of the broadcasting industry, nor some other secondary or artificial construct, but rather the intent of Congress, which is to say the interests of the listening

public. [Central Florida Enterprises, Inc. v. F. C. C., C.A.D.C.1982, 683 F.2d 503, 221 U.S.App.D.C. 162](#), certiorari denied [103 S.Ct. 1774, 460 U.S. 1084, 76 L.Ed.2d 346](#). [Telecommunications](#)  [1097](#)


In determining whether to renew broadcast license, Commission must give prime consideration to the effectiveness of broadcast licensee in his role as trustee for the public. [Brandywine-Main Line Radio, Inc. v. F. C. C., C.A.D.C.1972, 473 F.2d 16, 153 U.S.App.D.C. 305](#), certiorari denied [93 S.Ct. 2731, 412 U.S. 922, 37 L.Ed.2d 149](#). [Telecommunications](#)  [1097](#)


The public interest finding that Federal Communications Commission must make when it renews broadcast license cannot be inferred from a statement of the obvious truth that a properly operated station will serve the public interest. [Office of Communication of United Church of Christ v. F. C. C., C.A.D.C.1966, 359 F.2d 994, 123 U.S.App.D.C. 328](#). [Administrative Law And Procedure](#)  [486](#); [Telecommunications](#)  [1132](#)



In determining whether grant of application for renewal of license of radio station will serve public interest, convenience and necessity, the Commission has duty to consider performance of applicant in meeting needs of community. [Robinson v. F. C. C., C.A.D.C.1964, 334 F.2d 534, 118 U.S.App.D.C. 144](#), certiorari denied [85 S.Ct. 84, 379 U.S. 843, 13 L.Ed.2d 49](#). [Telecommunications](#)  [1094](#)


Need for broadcasting services in area served by radio station, efficiency of station's transmitting equipment and antenna system, and suitability of its site, are important considerations to be weighed by the Commission in determining whether to grant a renewal license to operate station, but other considerations are also important, including licensee's past conduct and willingness and ability to comply with the law and rules prescribed by the Commission, to guarantee so far as possible a wholesome policy in management and operation. [Greater Kampeska Radio Corp. v. F.C.C., App.D.C.1939, 108 F.2d 5, 71 App.D.C. 117](#). [Telecommunications](#)  [1094](#)

#### [200](#). Past performance, renewals

Retention of a television broadcast license hinges on a determination that past service has been in the public interest and that future service will likely be superior to that offered by competing applicants. [Las Vegas Valley Broadcasting Co. v. F. C. C., C.A.D.C.1978, 589 F.2d 594, 191 U.S.App.D.C. 71](#), certiorari denied [99 S.Ct. 2050, 441 U.S. 931, 60 L.Ed.2d 659](#), rehearing denied [99 S.Ct. 2896, 442 U.S. 947, 61 L.Ed.2d 319](#). [Telecommunications](#)  [1094](#)

Licensee's past programming performance varying substantially from its prior representations before Commission can be grounds for denial of renewal application. [Columbus Broadcasting Coalition v. F. C. C., C.A.D.C.1974, 505 F.2d 320, 164 U.S.App.D.C. 213](#). [Telecommunications](#)  [1152](#)


In granting an initial broadcast license the Federal Communications Commission must of necessity engage in some degree of forecasting future performance; in a renewal proceeding past performance is its best criterion. [Office of Communication of United Church of Christ v. F. C. C., C.A.D.C.1966, 359 F.2d 994, 123 U.S.App.D.C. 328](#). [Administrative Law And Procedure](#)  [327](#); [Telecommunications](#)  [1094](#)

In passing on application for renewal of radio broadcasting license, Commission must notice applicant's conduct in his previous use of permit. [Trinity Methodist Church, South, v. Federal Radio Commission, App.D.C.1932, 62 F.2d 850, 61 App.D.C. 311](#), certiorari denied [53 S.Ct. 317, 288 U.S. 599, 77 L.Ed. 975](#). [Telecommunications](#)  [1094](#)


#### [201](#). Average performance, renewals

Performance that is merely average, whether solid or not, does not warrant renewal of television broadcasting license and is not of special relevance at comparative renewal hearing without a finding that challenger's performance would likely be no more satisfactory. [Central Florida Enterprises, Inc. v. F. C. C., C.A.D.C.1978, 598 F.2d 37, 194 U.S.App.D.C. 118](#), certiorari dismissed [99 S.Ct. 2189, 441 U.S. 957, 60 L.Ed.2d 1062](#).


[Telecommunications](#)  [1152](#)[202. Bad faith, renewals](#)



Commission properly takes television programming proposals contained in private agreement incorporated within license application seriously, and evidence of bad faith or of insubstantial performance is relevant to television broadcast license renewal inquiry. [National Ass'n for Better Broadcasting v. F. C. C., C.A.D.C.1978, 591 F.2d 812, 192 U.S.App.D.C. 203. Telecommunications](#)  [1152](#)


[203. Conflicts of interest, renewals](#)


Issues raised by petitioner with respect to conglomerate character of television networks and conflicts of interest and other problems allegedly flowing therefrom did not have such relevance to individual station license renewals as to necessitate pursuit by Commission in renewal proceedings. [Martin-Trigona v. F. C. C., C.A.D.C.1970, 432 F.2d 682, 139 U.S.App.D.C. 249. Telecommunications](#)  [1100](#)


[204. Discriminatory employment practices, renewals](#)


Media watchdog's charges that radio station's license renewal application should be denied because station maintained discriminatory employment practices, did not provide effective training program and deliberately misrepresented in its annual employment reports that two employees were American Indians were properly rejected as insufficiently specific and inadequately documented as most recent employment report did not establish a prima facie case of discrimination and there were no claims of misrepresentations in the report, Commission policy does not require formal training program and under then applicable instructions licensees could rely on stated beliefs of employees as to racial origins. [Community Coalition for Media Change v. F. C. C., C.A.D.C.1980, 646 F.2d 613, 207 U.S.App.D.C. 278. Telecommunications](#)  [1099\(3\)](#)

The Commission, in considering license renewals, is not charged with an undifferentiated mandate to enforce antidiscrimination laws; the Commission is not the Equal Employment Opportunity Commission, and a license renewal proceeding is not a Title VII suit. [Bilingual Bicultural Coalition on Mass Media, Inc. v. F. C. C., C.A.D.C.1978, 595 F.2d 621, 193 U.S.App.D.C. 236. Telecommunications](#)  [1094](#); [Telecommunications](#)  [1099\(3\)](#)


Intentional employment discrimination by television licensee puts seriously into question licensee's character qualifications to remain a licensee and almost invariably will disqualify broadcaster from position of public trusteeship. [Los Angeles Women's Coalition for Better Broadcasting v. F. C. C., C.A.D.C.1978, 584 F.2d 1089, 190 U.S.App.D.C. 108. Telecommunications](#)  [1099\(3\)](#)

In view of repeated statements by Commission that broadcasting licensees have obligations with respect to affirmative action in employment as well as with respect to nondiscrimination, it is not enough for licensees simply to avoid discrimination among persons who apply to them; licensees are obligated to establish contacts in their communities of license which would be likely to foster an interest in broadcasting among minorities and which would also bring the licensee's interest to the attention of qualified minority job seekers. [Black Broadcasting Coalition of Richmond v. F. C. C., C.A.D.C.1977, 556 F.2d 59, 181 U.S.App.D.C. 182. Telecommunications](#)  [1099\(3\)](#)


Evidence supported finding that composition of minority staff of television, AM and FM radio stations fell within range of reasonableness when compared to percentage of minorities in stations' service area, in proceeding on petition to deny license renewal applications. [Columbus Broadcasting Coalition v. F. C. C., C.A.D.C.1974, 505 F.2d 320, 164 U.S.App.D.C. 213. Telecommunications](#)  [1124](#)


Commission should consider how best to provide fair and reasonable opportunity for those challenging license renewals to seek explanations for underemployment of minority groups and provide challengers with procedural tools, such as depositions, to develop reasons for statistical disparities between population makeup and employment of minorities. [Bilingual Bicultural Coalition of Mass Media, Inc. v. F. C. C., C.A.D.C.1974, 492 F.2d 656, 160 U.S.App.D.C. 390. Telecommunications](#)  [1131\(1\)](#)


#### [205. Economic injury, renewals](#)


Proper time to present economic injury issue is in proceeding concerned with issuance of license for television station, and once grant of license is final, such matter becomes irrelevant, except perhaps in very unusual circumstances, until license comes up for renewal. [Valley Telecasting Co. v. F. C. C., C.A.D.C.1964, 338 F.2d 278, 119 U.S.App.D.C. 169. Telecommunications](#)  [1131\(1\)](#)


#### [206. Employment practices, renewals](#)

Neither Rehabilitation Act nor Communications Act required Federal Communications Commission to require television stations to adopt equal employment opportunity programs for the handicapped. [California Ass'n of the Physically Handicapped, Inc. v. F.C.C., C.A.D.C.1988, 840 F.2d 88, 268 U.S.App.D.C. 208](#), rehearing denied [848 F.2d 1304, 270 U.S.App.D.C. 272. Civil Rights](#)  [1220](#); [Telecommunications](#)  [1076](#)

Commission analyzes the employment practices of licensees only to the extent that those practices affect obligation of licensees to provide programming that fairly reflects the tastes and viewpoints of minority groups, and to the extent those practices raise questions about the character and qualifications of licensees. [Bilingual Bicultural Coalition on Mass Media, Inc. v. F. C. C., C.A.D.C.1978, 595 F.2d 621, 193 U.S.App.D.C. 236. Telecommunications](#)  [1099\(1\)](#)

Even apart from question of past intentional discrimination in employment, underrepresentation of certain groups in a television licensee's workforce, particularly in professional and operations categories where decision-making responsibility is located, may result in programming which fails adequately to serve the community. [Los Angeles Women's Coalition for Better Broadcasting v. F. C. C., C.A.D.C.1978, 584 F.2d 1089, 190 U.S.App.D.C. 108. Telecommunications](#)  [1099\(3\)](#)

In view of Commission's insistence that affirmative action is a separate obligation of broadcast licensees, independent of nondiscrimination, fact that radio and television station had hired some women and minority workers could not shield station's affirmative action efforts from scrutiny in connection with the station's applications for license renewal; it is possible that a station which performs its obligation of nondiscrimination will have minority of female employees and yet be lacking in affirmative action programs of the positive sort envisioned by the Commission. [Black Broadcasting Coalition of Richmond v. F. C. C., C.A.D.C.1977, 556 F.2d 59, 181 U.S.App.D.C. 182. Telecommunications](#)  [1099\(3\)](#)

Commission's role with respect to broadcast license renewal application is not to adjudicate past violations by licensee of section 2000e et seq. of Title 42 pertaining to discrimination in employment, but rather to determine if licensee is complying with its own equal employment opportunity rules; thus it is not abuse of Commission's discretion for it to measure adequacy of equal employment opportunity plans in part by their results and that policy was not inconsistent with its usual discounting of improvements in programming. [National Organization For Women, New York City Chapter v. F. C. C., C.A.D.C.1977, 555 F.2d 1002, 181 U.S.App.D.C. 65. Telecommunications](#)  [1094](#)

#### [207. Expectancy of renewal, renewals](#)

Standard of Commission for purposes of determining television station's application for renewal of license that

renewal expectancy is factor to be weighed with all other factors and, the better the past record, the greater the renewal expectancy "weight," is valid insofar as it is for benefit of broadcast consumers, not for incumbent broadcasters. [Central Florida Enterprises, Inc. v. F. C. C., C.A.D.C.1982, 683 F.2d 503, 221 U.S.App.D.C. 162, certiorari denied 103 S.Ct. 1774, 460 U.S. 1084, 76 L.Ed.2d 346. Telecommunications 1094](#)

Although not a precise concept, renewal expectancies of a commercial television station licensee derived from "meritorious service" are a natural aspect of the public interest inquiry in a comparative licensing hearing; moreover, weighing of policies under public interest standard is task delegated to the Commission in the first instance. [Central Florida Enterprises, Inc. v. F. C. C., C.A.D.C.1978, 598 F.2d 37, 194 U.S.App.D.C. 118, certiorari dismissed 99 S.Ct. 2189, 441 U.S. 957, 60 L.Ed.2d 1062. Telecommunications 1094; Telecommunications 1131\(2\)](#)

#### 208. Experience of licensee, renewals

In comparative hearing when licensee applies for renewal of television license, experience of short-term licensee may be considered by Commission. [Consolidated Nine, Inc. v. F. C. C., C.A.D.C.1968, 403 F.2d 585, 131 U.S.App.D.C. 179. Telecommunications 1131\(1\)](#)

#### 209. Financial situation of applicant, renewals

Evidence showing that applicant was insolvent and that territory was adequately served by other stations was sufficient to support refusal to renew license. [Boston Broadcasting Co., Station WLOE v. Federal Radio Commission, App.D.C.1933, 67 F.2d 505, 62 App.D.C. 299, certiorari denied 54 S.Ct. 103, 290 U.S. 679, 78 L.Ed. 586.](#)

Evidence respecting applicant's insolvency warranted Radio Commission in denying application for renewal of license for radio broadcasting station. [Sproul v. Federal Radio Commission, App.D.C.1931, 54 F.2d 444, 60 App.D.C. 333. Telecommunications 1124](#)

#### 210. Fraud or deception by applicant, renewals

Commission may refuse to renew a broadcast license where there has been willful and knowing misrepresentation or lack of candor on the part of licensee in dealing with the Commission. [Leflore Broadcasting Co., Inc. v. F. C. C., C.A.D.C.1980, 636 F.2d 454, 204 U.S.App.D.C. 182. Telecommunications 1094](#)

Refusal to renew radio stations' licenses because of double or fraudulent billing engaged in for more than five years, with knowing participation of licensee's sole shareholder, despite many Commission warnings that licensee engaged in that practice risked license revocation, did not obligate Commission to explain its failure to revoke license of network for engaging in single, relatively brief episode of wrongdoing, with lack of knowledge of applicable rules and consequences by its decision-makers, although licensee contended that the dispositions in the two cases amounted to disparate treatment, calling for explanation. [White Mountain Broadcasting Co., Inc. v. F. C. C., C.A.D.C.1979, 598 F.2d 274, 194 U.S.App.D.C. 355, certiorari denied 100 S.Ct. 449, 444 U.S. 963, 62 L.Ed.2d 375. Telecommunications 1164](#)

In view of evidence that two station managers appointed by television broadcast licensee knew of the station's clipping practices, absence of proof that the individual licensee knew of the clipping practices did not preclude Commission from denying the licensee's renewal application upon a finding of fraudulent billing practices. [Las Vegas Valley Broadcasting Co. v. F. C. C., C.A.D.C.1978, 589 F.2d 594, 191 U.S.App.D.C. 71, certiorari denied 99 S.Ct. 2050, 441 U.S. 931, 60 L.Ed.2d 659, rehearing denied 99 S.Ct. 2896, 442 U.S. 947, 61 L.Ed.2d 319. Telecommunications 1161](#)

Misrepresentations by broadcast licensee at time it acquired its license by transfer concerning the nature of the

programs it proposed to broadcast provided ample justification for the Commission to refuse to renew broadcast license. [Brandywine-Main Line Radio, Inc. v. F. C. C., C.A.D.C.1972, 473 F.2d 16, 153 U.S.App.D.C. 305, certiorari denied 93 S.Ct. 2731, 412 U.S. 922, 37 L.Ed.2d 149. Telecommunications 1099\(2\)](#)

Commission, in determining application for renewal of license of broadcasting station, need not consider public service rendered by station if licensee is disqualified by its attempts to deceive Commission. [Continental Broadcasting, Inc. v. F. C. C., C.A.D.C.1971, 439 F.2d 580, 142 U.S.App.D.C. 70, certiorari denied 91 S.Ct. 2207, 403 U.S. 905, 29 L.Ed.2d 681. Telecommunications 1129](#)

That television station, which had promised 17.3 percent live programming in year, achieved only 16.14%, was not substantial deviation such as would warrant denial of renewal of license. [American Federation of Musicians v. F. C. C., C.A.D.C.1966, 356 F.2d 827, 123 U.S.App.D.C. 74. Telecommunications 1152](#)

Willingness of applicant for renewal of radio station license to deceive the Commission by representing that he lacked knowledge of broadcast material which had been subject of complaints justified refusal to grant application on basis that applicant did not possess requisite qualifications to be licensee and that grant of his application would not serve public interest. [Robinson v. F. C. C., C.A.D.C.1964, 334 F.2d 534, 118 U.S.App.D.C. 144, certiorari denied 85 S.Ct. 84, 379 U.S. 843, 13 L.Ed.2d 49. Telecommunications 1094](#)

Commission need not consider public service rendered by a radio station where the licensee is disqualified from renewal of its license based on its attempts to deceive the Commission. [Immaculate Conception Church of Los Angeles v. F. C. C., C.A.D.C.1963, 320 F.2d 795, 116 U.S.App.D.C. 73, certiorari denied 84 S.Ct. 196, 375 U.S. 904, 11 L.Ed.2d 145. Telecommunications 1099\(2\)](#)

#### 211. Geographical area served, renewals


Applicant, for standard broadcast license which chose, in its application to Commission to seek license to serve only named community was required to establish transmission needs of only that community and fact that it was precluded from showing how it served other communities did not vitiate decision, in view of commission's rule requiring that applicant apply either for license for one city or community, or for license for service to more than one community. [Jupiter Associates, Inc. v. F. C. C., C.A.D.C.1969, 420 F.2d 108, 136 U.S.App.D.C. 266. Telecommunications 1123](#)


#### 212. Good faith, renewals


Broadcast licensee has broad discretion in giving specific content to duties to strike balance between various interests of the community or to provide reasonable amount of time for presentation of programs devoted to discussion of public issues, and on application for renewal of license Commission will focus on licensee's overall performance and good faith rather than on specific errors it may find him to have made. [Banzhaf v. F. C. C., C.A.D.C.1968, 405 F.2d 1082, 132 U.S.App.D.C. 14, certiorari denied 90 S.Ct. 50, 396 U.S. 842, 24 L.Ed.2d 93, certiorari denied 90 S.Ct. 51, 396 U.S. 842, 24 L.Ed.2d 93. Telecommunications 1153\(1\)](#)

Commission's denial of a corporation's application for renewal of a radio broadcast license was within discretion committed to the Commission where substantial evidence sustained findings that station's program proposals had not been made in good faith, and that the station's program logs were altered with intent and purpose of deceiving the Commission. [Immaculate Conception Church of Los Angeles v. F. C. C., C.A.D.C.1963, 320 F.2d 795, 116 U.S.App.D.C. 73, certiorari denied 84 S.Ct. 196, 375 U.S. 904, 11 L.Ed.2d 145. Telecommunications 1099\(2\)](#)


#### 213. Incumbency, renewals

Although a broadcast license must be renewed every three years and the licensee must show that renewal would serve the public interest, the licensee who has given meritorious service has a legitimate renewal of expectancy that is implicit in the structure of this chapter and which should not be destroyed absent good cause. [F. C. C. v. National Citizens Committee for Broadcasting](#), U.S. Dist. Col. 1978, 98 S.Ct. 2096, 436 U.S. 775, 56 L.Ed.2d 697. [Telecommunications](#)  [1094](#)


A radio station licensee does not obtain any vested interest in any frequency. [Ashbacker Radio Corp. v. F.C.C.](#), U.S. Dist. Col. 1945, 66 S.Ct. 148, 326 U.S. 327, 90 L.Ed. 108. [Constitutional Law](#)  [101](#)

This chapter precludes any preference with respect to issuance of commercial television broadcasting license based on incumbency per se. [Central Florida Enterprises, Inc. v. F. C. C.](#), C.A.D.C. 1978, 598 F.2d 37, 194 U.S.App.D.C. 118, certiorari dismissed 99 S.Ct. 2189, 441 U.S. 957, 60 L.Ed.2d 1062. [Telecommunications](#)  [1131\(1\)](#)


#### [214](#). Maintenance of proper records, renewals

Where, during investigation of broadcasting station by Commission, station manager had submitted 139 spurious documents, which were purported to be genuine contracts for advertising, and which were prepared for purpose of concealing facts material to investigation, where, with knowledge of licensee, station had failed to maintain proper and accurate program logs, licensee had failed to file time brokerage contracts with Commission, and licensee's principals had failed to exercise adequate control or supervision over station, denial by Commission of application for renewal of license was not abuse of discretion. [Continental Broadcasting, Inc. v. F. C. C.](#), C.A.D.C. 1971, 439 F.2d 580, 142 U.S.App.D.C. 70, certiorari denied 91 S.Ct. 2207, 403 U.S. 905, 29 L.Ed.2d 681. [Telecommunications](#)  [1099\(2\)](#)


#### [215](#). Monopolistic practices, renewals


Commission, which had granted broadcasting company's application for renewal of its broadcasting license for television station, erred in divorcing background of alleged past monopolistic practices by broadcasting company's parent from protestant's allegations of current monopolistic and other improper conduct. [Philco Corp. \(Philco\) v. F. C. C.](#), C.A.D.C. 1961, 293 F.2d 864, 110 U.S.App.D.C. 387. [Telecommunications](#)  [1100](#)


#### [216](#). Moral fitness, renewals

Evidence in proceeding for renewal of radio license, wherein applicant for competitive new authority raised question of licensee's moral fitness, supported finding that licensee's encouragement of third person's alleged "strike" application, which adversely affected complaining party's application, did not rise to level of character defect necessitating denial of renewal. [Pressley v. F. C. C.](#), C.A.D.C. 1970, 437 F.2d 716, 141 U.S.App.D.C. 283. [Telecommunications](#)  [1094](#)


#### [217](#). Nature and type of programming, renewals--Generally

A licensee is expected to ascertain and respond to community needs and problems in its nonentertainment programming in order to earn a renewal expectancy. [Monroe Communications Corp. v. F.C.C.](#), C.A.D.C. 1990, 900 F.2d 351, 283 U.S.App.D.C. 367, opinion after remand, reconsideration denied, remanded. [Telecommunications](#)  [1094](#)


Commission's depth of inquiry in proceeding for renewal of television broadcast license was sufficient to sustain its finding that television station's programming had amply met ascertained needs of community and had satisfied percentage guidelines for various program types. [National Ass'n for Better Broadcasting v. F. C. C.](#), C.A.D.C. 1978, 591 F.2d 812, 192 U.S.App.D.C. 203. [Telecommunications](#)  [1152](#)


Applicant for renewal of television or radio station license must run on his record in demonstrating that his past programming performance has been responsive to needs of his broadcast area. [Columbus Broadcasting Coalition v. F. C. C., C.A.D.C.1974, 505 F.2d 320, 164 U.S.App.D.C. 213. Telecommunications](#)  [1094](#)


[218.](#) ---- Adaption of programming to changed circumstances, nature and type of programming, renewals



It serves the public interest for broadcast licensees to adapt their programming to changed circumstances; but licensees cannot disregard programming commitments made to the Commission with little or no explanation. [Leflore Broadcasting Co., Inc. v. F. C. C., C.A.D.C.1980, 636 F.2d 454, 204 U.S.App.D.C. 182. Telecommunications](#)  [1149](#)

[219.](#) ---- Diversity of programming, nature and type of programming, renewals


Commission's policy statement, which concluded that public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters and that change in entertainment programming is therefore not a material factor that should be considered by Commission in ruling on applications for license renewal or transfer was supported by rational explanation and was not inconsistent with this chapter. [F. C. C. v. WNCN Listeners Guild, U.S.Dist.Col.1981, 101 S.Ct. 1266, 450 U.S. 582, 67 L.Ed.2d 521. Telecommunications](#)  [1152](#)

Allegations by operators of video dating service, who were unsuccessful in attempting to sell their program to the five Washington, D.C., commercial television stations, that the stations failed to provide for local self-expression utilizing local talent and to present programming specifically designed to serve the local adult nonmarried population formed no basis for denying license renewal to the stations. [Walker v. F. C. C., C.A.D.C.1980, 627 F.2d 352, 200 U.S.App.D.C. 299. Telecommunications](#)  [1152](#)



To ensure that television programming reflects minority interests, Commission must invoke prospective administrative sanctions, including short-term license renewals and license renewals conditioned on reporting, thereby enabling FCC to monitor broadcasters' progress in recruiting and hiring minority workers. [Los Angeles Women's Coalition for Better Broadcasting v. F. C. C., C.A.D.C.1978, 584 F.2d 1089, 190 U.S.App.D.C. 108. Telecommunications](#)  [1099\(3\)](#)

How a broadcast licensee responds to what may be conflicting and competing needs of regional or minority groups remains largely within its discretion; it may not flatly ignore a strongly expressed need, but there is no requirement that a station devote 20% of its broadcast time to meet need expressed by 20% of its viewing public; until such problem is addressed in the rule-making procedure, scope of Commission review remains whether or not licensee has reasonably exercised its discretion. [Stone v. F. C. C., C.A.D.C.1972, 466 F.2d 316, 151 U.S.App.D.C. 145. Telecommunications](#)  [1149](#); [Telecommunications](#)  [1155\(1\)](#)

[220.](#) ---- Excessive violence, nature and type of programming, renewals



In ruling upon petition to deny renewal of television broadcast license, Commission did not abuse its discretion in declining to pursue allegations of excessive violence in television programming. [National Ass'n for Better Broadcasting v. F. C. C., C.A.D.C.1978, 591 F.2d 812, 192 U.S.App.D.C. 203. Telecommunications](#)  [1155\(1\)](#)

[221.](#) ---- Fairness doctrine, nature and type of programming, renewals


In view of Commission's findings that AM-FM broadcast licensee failed to observe the "fairness doctrine," that it violated the "personal attack" principle and misrepresented to the Commission its programming plans, Commission was justified in refusing to renew broadcast license on consideration of the licensee's total performance. [Brandywine-Main Line Radio, Inc. v. F. C. C., C.A.D.C.1972, 473 F.2d 16, 153 U.S.App.D.C. 305, certiorari denied 93 S.Ct. 2731, 412 U.S. 922, 37 L.Ed.2d 149. Telecommunications](#)  [1099\(2\)](#); [Telecommunications](#) 


[1153\(2\); Telecommunications](#)  [1153\(3\); Telecommunications](#)  [1152; Telecommunications](#)  [1153\(4\)](#)

[222](#). ---- Format changes, nature and type of programming, renewals


Radio licensee may alter its programming format without permission of Commission during license term, but change will be factor to be weighed on application for renewal, and change proposed to be made by transferee is similarly relevant to consideration of transfer application submitted during license term. [Citizens Committee v. F. C. C., C.A.D.C.1970, 436 F.2d 263, 141 U.S.App.D.C. 109.](#) [Telecommunications](#)  [1149; Telecommunications](#)  [1152](#)


[223](#). ---- News programming, nature and type of programming, renewals

Generally, broadcast licensee's news judgment will not be questioned by Commission unless there is extrinsic evidence of deliberate distortion or news staging or licensee consistently fails to report news events of public importance that could not in good faith be ignored. [National Organization For Women, New York City Chapter v. F. C. C., C.A.D.C.1977, 555 F.2d 1002, 181 U.S.App.D.C. 65.](#) [Telecommunications](#)  [1153\(1\)](#)


News programming can be considered by Commission in evaluating public interest programming of applicant for renewal of television broadcasting license, although the news programming cannot be primary means of serving public interest. [Alianza Federal de Mercedes v. F. C. C., C.A.D.C.1976, 539 F.2d 732, 176 U.S.App.D.C. 253.](#) [Telecommunications](#)  [1094](#)

[224](#). ---- Public service broadcasting, nature and type of programming, renewals



Public affairs programming is matter left largely in discretion of licensee and can never be measured by simple percentage test. [Columbus Broadcasting Coalition v. F. C. C., C.A.D.C.1974, 505 F.2d 320, 164 U.S.App.D.C. 213.](#) [Telecommunications](#)  [1153\(1\)](#)

Television and radio licensee has responsibility to serve public interest by providing information about cigarettes' unique threat to public health and therefore Commission did not err in stating that it would consider treatment of that subject when it assessed a station's overall public service performance. [Larus & Brother Co. v. F. C. C., C.A.4 \(Va.\) 1971, 447 F.2d 876.](#) [Telecommunications](#)  [1153\(1\)](#)

[225](#). Probationary authorization, renewals

Where Commission had issued probationary one-year license because broadcaster had not been able to meet burden of showing that renewal of its license for three years was in public interest and circuit court had remanded case for Commission's failure to permit intervention by members of listening public to object to renewal of license, licensee had yet to demonstrate that it was in public interest for license to be renewed. [Office of Communication of United Church of Christ v. F. C. C., C.A.D.C.1969, 425 F.2d 543, 138 U.S.App.D.C. 112.](#) [Telecommunications](#)  [1144](#)


[226](#). Quantitative standards, renewals

Commission acted reasonably, and within its statutory and constitutional authority, in declining to adopt quantitative program standards for television broadcasters involved in comparative renewal proceedings; such standards were not required by [U.S.C.A.Const. Amend. 1.](#) [National Black Media Coalition v. F. C. C., C.A.D.C.1978, 589 F.2d 578, 191 U.S.App.D.C. 55.](#) [Constitutional Law](#)  [90.1\(9\); Telecommunications](#)  [1152](#)


[227](#). Racial or offensive remarks by commentators, renewals

The Commission regulations concerning personal attack are not beyond the scope of the congressionally conferred power to assure that stations are operated by those whose possession of licenses serves the public interest.


[Brandywine-Main Line Radio, Inc. v. F. C. C., C.A.D.C.1972, 473 F.2d 16, 153 U.S.App.D.C. 305](#), certiorari denied [93 S.Ct. 2731, 412 U.S. 922, 37 L.Ed.2d 149. Telecommunications](#)  [1153\(4\)](#)


Evidence resulting from monitoring of licensee's broadcasting, and as to cutting off of network program and disparaging remarks with reference to Negroes made by two commentators had probative value on question of renewal of license and should have been considered by Commission. [Office of Communication of United Church of Christ v. F. C. C., C.A.D.C.1969, 425 F.2d 543, 138 U.S.App.D.C. 112. Telecommunications](#)  [1123](#)



#### [228. Specific group needs, renewals](#)


Operators of a video dating service failed to show that the needs of its so-called group were such that the Washington, D.C., commercial television stations "could not reasonably or in good faith ignore" them; apart from the need to date and find a mate, most of the TV needs of nonmarried adults are not substantially different from the needs of adults in general and there is no substantial reason why the renewal of television licenses should be made dependent upon the station catering to such an isolated need in which most unmarried adults do not need outside commercial assistance. [Walker v. F. C. C., C.A.D.C.1980, 627 F.2d 352, 200 U.S.App.D.C. 299. Telecommunications](#)  [1152](#)

#### [229. Violations of law or regulations, renewals](#)

Although Commission would be obligated to consider possible relevance of violation of Rehabilitation Act of 1973, section 701 et seq. of Title 29, in determining whether or not to renew lawbreaker's license, in absence of direction in Rehabilitation Act itself and without any expression of such intent in legislative history, it could not be assumed that Congress instructed Commission to take original jurisdiction over processing charges that its regulatees have violated Rehabilitation Act. [Community Television of Southern California v. Gottfried, U.S.Dist.Col.1983, 103 S.Ct. 885, 459 U.S. 498, 74 L.Ed.2d 705. Telecommunications](#)  [1152](#)

Although a showing of harm occasioned by licensee's violation of Commission rule governing moving of main television studio was relevant to severity of sanction imposed, failure to show injury did not excuse a plain violation, for purpose of determining whether broadcasting license should be renewed. [Central Florida Enterprises, Inc. v. F. C. C., C.A.D.C.1978, 598 F.2d 37, 194 U.S.App.D.C. 118](#), certiorari dismissed [99 S.Ct. 2189, 441 U.S. 957, 60 L.Ed.2d 1062. Telecommunications](#)  [1114](#)

Where television broadcast licensee had engaged in practice of "clipping" parts of network broadcasts to insert local advertising, in violation of federal communication rules and of the station's affiliation contract with network, and where the licensee had made misrepresentations in response to Commission inquiries, non-renewal of broadcast license was not a disproportionately severe sanction. [Las Vegas Valley Broadcasting Co. v. F. C. C., C.A.D.C.1978, 589 F.2d 594, 191 U.S.App.D.C. 71](#), certiorari denied [99 S.Ct. 2050, 441 U.S. 931, 60 L.Ed.2d 659](#), rehearing denied [99 S.Ct. 2896, 442 U.S. 947, 61 L.Ed.2d 319. Telecommunications](#)  [1103](#); [Telecommunications](#)  [1163](#)


The refusal by the Commission to renew a license for violation of the Commission's rules is a proper, but a drastic, exercise of Commission's power if station has deliberately violated a rule duly promulgated within scope of Commission's rulemaking powers. [American Broadcasting Co., Inc. v. U.S., S.D.N.Y.1953, 110 F.Supp. 374](#), affirmed [74 S.Ct. 593, 347 U.S. 284, 98 L.Ed. 699. Telecommunications](#)  [1094](#)


#### [230. Time of determination, renewals](#)


Question of whether broadcast licensee is operating in the public interest, the established standard for license renewal, is determined at the time of renewal and at this time the Commission must take the licensee's total performance into account, including its adherence to the fairness doctrine. [Brandywine-Main Line Radio, Inc. v. F. C. C., C.A.D.C.1972, 473 F.2d 16, 153 U.S.App.D.C. 305](#), certiorari denied [93 S.Ct. 2731, 412 U.S. 922, 37](#)


[L.Ed.2d 149. Telecommunications](#)  [1097](#)



[231. Hearing, renewals](#)

A hearing on petition opposing grant of renewal television broadcasting licenses is required only when petition makes substantial and specific allegations of fact which if true would indicate that grant of the application would be prima facie inconsistent with public interest, and hearing is not required when facts are undisputed or case turns only on inferences to be drawn from facts already known and legal conclusions to be derived from those facts. [Alianza Federal de Mercedes v. F. C. C., C.A.D.C.1976, 539 F.2d 732, 176 U.S.App.D.C. 253. Telecommunications](#)  [1129](#)

In cases involving license renewal application, there must be single full comparative hearing in which all applicants may develop evidence and have their applications judged on all relevant criteria, including plans for integration of minority groups into station operation. [Citizens Communications Center v. F. C. C., C.A.D.C.1972, 463 F.2d 822, 149 U.S.App.D.C. 419. Telecommunications](#)  [1131\(2\)](#)

Allegations by objectors to renewal of radio station's license failed to present material questions of fact with respect to fairness doctrine violations, or caliber of programming generally, requiring hearing. [Hale v. F. C. C., C.A.D.C.1970, 425 F.2d 556, 138 U.S.App.D.C. 125. Telecommunications](#)  [1155\(1\)](#)

Where court held that Commission's renewal of license was not sustained by record because hearing on license renewal was improperly conducted, court would permit licensee to be one applicant for license and allow Commission to consider plan for interim operation. [Office of Communication of United Church of Christ v. F. C. C., C.A.D.C.1969, 425 F.2d 543, 138 U.S.App.D.C. 112. Telecommunications](#)  [1144](#)

Where application for a license to use same frequency as was being used at radio station of first broadcasting company, was granted in favor of second broadcasting company because of erroneous testimony of expert engineers that proposed station would not cause objectionable interference with station of first broadcasting company but objectionable interference allegedly resulted, and thereafter second broadcasting company filed an application for renewal, Commission should have granted petition of first broadcasting company for a hearing on the application for renewal and should not have granted the renewal without a hearing. [Radio Station WOW v. F.C.C., C.A.D.C.1950, 184 F.2d 257, 87 U.S.App.D.C. 226. Administrative Law And Procedure](#)  [470](#); [Telecommunications](#)  [1131\(1\)](#)

47 U.S.C.A. § 307, 47 USCA § 307

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