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## INFORMATIONAL MEMORANDUM

*From Cary S. Tepper*

**September 1, 2008**

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### **Certain Radio & TV Stations in AK, FL, HI, IA, MO, OR, PR, VI & WA Must Prepare Annual EEO Public File Reports by October 1<sup>st</sup>**

If your radio or TV station employs five or more full-time people, and you are located in Alaska, Florida, Hawaii, Iowa, Missouri, Oregon, Puerto Rico, the Virgin Islands or Washington, you should prepare an EEO Public File Report for the past twelve months and place that report in your station's Public File no later than October 1st and post a copy of that report on your station's web site (if you maintain a web site). Please be reminded that the FCC defines a full-time employee as someone who works 30 or more hours per week. Stations that employ fewer than five full-time people are exempt from this obligation.

### **Ownership Reports Due Soon For AK, FL, HI, IA, MO, OR, PR, VI & WA**

All commercial and noncommercial radio stations in Iowa and Missouri, and all commercial and noncommercial TV stations in Alaska, Florida, Hawaii, Oregon, Puerto Rico, the Virgin Islands and Washington must electronically file an FCC Biennial Ownership Report on or before October 1, 2008. If you would like our assistance in preparing and filing your ownership report, please call us.

### **Annual FCC Regulatory Fees Due on September 25, 2008**

The FCC recently announced that **September 25, 2008** is the due date for payment of Fiscal Year 2008 FCC Regulatory Fees. Although the FCC sent out letter reminders to many broadcasters that included fee dollar amounts, not everyone received those letters and sometimes the fee information provided by the FCC was incorrect. Also, the FCC letters do not provide any fee information for your broadcast auxiliaries.

Please be reminded that the FCC changed the location of the government Lockbox from Pittsburgh to St. Louis, and the Lockbox Number has changed, too. If you would like our assistance in determining your fee, or submitting your paperwork to the FCC when it becomes due, please call or email us. Since we no longer have same-day delivery capability to the new government Lockbox, we need to receive your FCC fee checks no later than September 22, 2008 to ensure timely FCC filing. (Late fee payments are assessed a 25% penalty.)

### **FCC Announces Revision Of Annual Employment Report Form 395-B**

The FCC just announced that Annual Employment Report Form 395-B will be revised to include enhanced racial, ethnicity and employment category questions. The FCC has not required broadcasters to file annual employment reports since 2000, so these revisions to FCC Form 395-B is a reasonable indication that annual employment report filings will resume in the near future.

### **Is Your EAS Handbook Located In Your Studios?**

A copy of your EAS Handbook must be located at the normal operator duty position or where the EAS equipment is installed, and the handbook must be available to all staff responsible for authenticating messages and initiating actions. If you do not have a copy of the FCC's EAS Handbook, please call or email us immediately.

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## Establishing a Proper Time Brokerage Relationship

Quite often our clients are approached by other broadcasters seeking to lease broadcast time pursuant to a Time Brokerage Agreement. If you are considering such a relationship, please remember that basic FCC policy in this area focuses upon three aspects of the time brokerage relationship: finances, personnel and programming.

**Finances:** Although the programming broker might be obligated to pay you a stated consideration for the use of your station's broadcast time, the broker should not directly pay any of the operational expenses of the broadcast station, such as rent, utilities or the salaries of your employees. (However, you may be reimbursed by the broker for such expenses.) Also, you should continue to maintain a checking account for the station, and you should continue to write out checks on that account for such things as rent, property taxes, ASCAP fees, BMI fees, station maintenance and employee salaries.

**Personnel:** You, as the licensee, must maintain supervisory control over the operations of your broadcast station at all times. As such, you must maintain a "meaningful staff presence" at the station, which the FCC views as at least one managerial and one staff person on a full time basis during regular business hours, Monday through Friday. The managerial person *must* be employed by you, *must* have knowledge of the FCC Rules regarding proper station operations, know when to cancel or suspend certain programs that violate FCC Rules or company programming standards, and should know how to maintain the Public File and Political Broadcast File.

**Programming:** You must maintain the right to reject or suspend any of the broker's programs without penalty in times of emergency or when you believe in your good faith judgment that certain programming is not in the public interest. You must retain the right to broadcast a certain amount of local, issues-oriented programming to fulfill your programming obligations to the station's community of license. In a nutshell, you must have authority to make all final programming decisions for your broadcast station. Also, you, in your role as the FCC license holder, will be ultimately responsible for compliance with the local programs-issues programming requirements.

Also, please consider the following with regard to time brokerage relationships:

**Overall contract rights:** Pursuant to FCC policy, you, as the licensee, must retain the right to reject or substitute programming (including commercial advertising) without excessive fee or penalty, and you must retain the right to terminate the Time Brokerage Agreement without excessive fee or penalty.

**Standard Operating Checklist:** In light of the foregoing, FCC policy and certain provisions of a standard Time Brokerage Agreement should require the licensee to be responsible for the following tasks or obligations: (1) maintaining meaningful management staff presence at the broadcast station studios (discussed above); (2) refraining from receiving, handling or sending out the broker's mail; (3) remaining responsible for airing a sufficient amount of community interest programming on the station, and for preparing and maintaining the station's quarterly issues/programs list; (4) broadcasting an on-air announcement that program time has been purchased by the broker each time the station begins to broadcast a block of brokered time; (5) ensuring that the station's on-air identification is aired hourly in accord with the FCC rules. (The hourly identification should include the station's call letters, immediately followed by the community of license. The only information that may be broadcast between the call letters and the community of license is the station's channel number or frequency.); (6) reserving the right to preempt or interrupt the broker's programming as necessary for the broadcast of special events of local, regional or national importance, or in times of emergency; (7) maintaining a toll-free telephone number for the station's listeners or viewers within the city-grade contour area. (The broker may reimburse you for the cost of the toll-free telephone line, but should not directly pay for it.); (8) remaining responsible for the payment of the station's studio rent, transmitter site rent and utility costs. All of the station's operating costs should be paid out of your bank account, although the broker may reimburse you for some or all of these costs.

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**\*\* Please remember that Informational Memos are sent to you at no charge \*\***