

## Get ready to renew: The public file

All radio broadcast station licenses are scheduled to expire between 2011 and 2014. With the first set of licenses set to expire Oct. 1, 2011 and the application for renewal due four months prior, FCC-licensed college radio stations need to begin readying for the renewal process. Renewal applications for stations in the first group – those located in District of Columbia, Maryland, Virginia and West Virginia – are due June 1, 2011.

The FCC has indicated it will not mail postcard notices to licensees, but will send a courtesy email notice to those licensees with a valid email address on file. The Commission has also stressed failure to receive a notice does not excuse a licensee from timely compliance with the license renewal requirements.

In the spring 2011 *CBI Insights*, we shared with some information on how to ensure the FCC has the station's correct mailing list on file. This time, we will address the station's public file and its compliance with 47 CFR Section 73.3527. A non-commercial educational radio station's public file should include the 11 items listed here.

1. Authorization - Your license to broadcast granted by the FCC.
2. Applications - Any applications you submitted to the FCC. This should be all the paperwork from your most recent license renewal and any additional applications you may have filed.
3. Contour Maps - Maps of the area served by your broadcast signal.
4. Ownership reports - The most recent FCC 323-E form indicating the station ownership (probably your school's Board of Trustees or similar governing board).
5. Political file - a record of air time requests made by political candidates.
6. EEO Report - FCC 396, the Broadcast Equal Employment Opportunity Program Report. Stations that employ fewer than five full-time employees are not required to file this report.
7. FCC Investigation - Material relating to any complaint about the station filed with the FCC.
8. Local Public Notice Announcements - Certification the station ran announcements indicating the license was up for renewal and asking for public comment.
9. The Public and Broadcasting - A procedural manual from the FCC. Download it from the FCC Web site, making sure you have the July 2008 version.
10. Quarterly Issues and Programs List - A list of the most significant public issues facing your community and responsive programming aired each quarter.
11. Donor lists - A list of donors supporting specific programs. These lists shall be retained for two years from the date of the broadcast of the specific program supported. If your station does not accept donations, place a letter in the public file to that effect.

Stations should work with their licensee to ensure that all steps and deadlines are met. More information is available at [fcc.gov/mb/audio/renewal/](http://fcc.gov/mb/audio/renewal/) with a list of exact deadlines available at [fcc.gov/mb/audio/renewal/renewal-dates-by-date.doc](http://fcc.gov/mb/audio/renewal/renewal-dates-by-date.doc).

License Expiring	State/Territory
Oct. 1, 2011	District of Columbia, Maryland, Virginia, West Virginia
Dec. 1, 2011	North Carolina, South Carolina
2012	Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Puerto Rico, Tennessee, Virgin Islands, Wisconsin
2013	Arizona, California, Colorado, Idaho, Iowa, Kansas, Missouri, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming
2014	Alaska, American Samoa, Connecticut, Delaware, Guam, Hawaii, Maine, Mariana Islands, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Saipan, Vermont, Washington

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Questions? Comments?

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# Guide to non-commercial radio underwriting

By Adam Schulman

Legal Fellow, Student Press Law Center

Over-the-air educational radio stations are licensed to operate as “non-commercial” broadcasters – but what it means to be ‘non-commercial’ can be confusing. Regulators have established lines that educational broadcasters cannot cross from acceptable sponsorship messages into unacceptable advertisements. It’s important to know these boundaries to minimize the risk of a budget-busting fine.

## Basics of the law

FM frequencies between 87.9(MHz) and 91.9(MHz) are reserved by the FCC for non-commercial educational broadcast stations. In virtue of their special educational mission, non-commercial educational stations are subject to heightened regulations. All radio broadcast stations, commercial and non-commercial alike, are required to announce that a particular program is paid for by an outside party and disclose the identity of that sponsor. Non-commercial stations’ liberty to broadcast certain commercial speech, however, is further constrained.

Educational stations are regulated by both Congress and by the Federal Communications Commission. In the early 1980s Congress amended the Communications Act of the 1934 to include section 399b, which regards commercial speech of educational television and radio stations.

Section 399b prohibits the broadcasting of any “advertisement,” defined to be a message that is broadcast in exchange for remuneration and that “promotes any for-profit company’s service, facility or product.” The key distinction to note is that between identification (permissible) and promotion (impermissible).

## What is permissible?

The difficulty has long been distinguishing announcements that promote and those that identify. Invariably, some announcements will straddle the borderline. Following clamors for clarification, the FCC has issued multiple reports regarding what subject matter is acceptable. In 1984 the FCC issued its most illuminating report on the subject, in which the agency expressly endorsed certain “enhanced” donor or underwriter acknowledgements. The expansion encompasses “(1) logograms or slogans which identify and do not promote, (2) location information, (3) value neutral descriptions of a product line or service,

and (4) brand and trade names and product of service listings.” Later, the FCC added telephone numbers to the permitted list. While telephone numbers and location information are clear enough, whether a description is “value neutral” is far more nebulous. Most borderline judgment calls focus on just that question, whether the information is proper value neutral description or improper promotion.

It may be helpful to look at a few examples of language that the FCC ultimately deemed acceptable. The FCC has approved use of the following phrases: “professional equipment and supplies,” “home style food,” “an intelligent four-wheel drive system,” “surgery never has to be unpleasant,” “only” (if “only” is used to indicate the store has the only goods of an identified kind within a geographic area).

## What is impermissible?

The FCC, likewise, has decreed certain practices to be definitely off limits. Underwriting announcements and donor acknowledgements must not interrupt regular programming. In a 1992 report, the Commission forbids inclusion of “qualitative and comparative descriptions of the donor’s products or services,” specifically proscribing: 1. Announcements containing price information (e.g. “7.7% interest rate available now”); 2. Announcements containing a call to action (e.g. “Stop by our showroom to see a model”); 3. Announcements containing an inducement to buy, sell, rent or lease (e.g. “six months’ free service,” “A bonus available this week,” “Special gift for the first 50 visitors”).

Examples of impermissibly violative language are more numerous. The following language has been held to be overly comparative: “more” (as in “more vivid,” “more realistic,” “more choices,” “see more get more”); “most” (as in “the people that know most about...,” “the best fastest most comfortable way to Poland,” “most recent selection when it comes to rims,” “most loved,” “most trusted,” “most anticipated”); “best” (as in “best airline in the world”); “number one”; “greatest”; “biggest variety”; “hottest”; “doing things right”; “special” (as in “special place, always with something special for you”); “is a member of the Professional Photographers of America”.

The following language has been found impermissibly qualitative: “efficient, economical, dependable, dedicated, prompt, fair price, reliable and excellent”; “quality financial services”; “friendly efficient crew”; “convenient”; “pretty to

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## National student production awards deadline May 13

Thirty-seven CBI member schools represented the 90 finalists from the 2010 National Student Production Awards, an annual competition organized by CBI. To get your school's name on the list, submit your audio, video or combined category entries via askcbi.org by 11:59 p.m. on **Friday, May 13, 2011.**

Entries are to be original work by students for a campus media outlet or college credit course. Entry is FREE for CBI member stations. The entry fee for non-members is \$50 per entry per category, with payment to be processed online at the time of submission.

### VIDEO/TELEVISION CATEGORIES

- Best Comedy
- Best Station Promo
- Best Public Service Announcement
- Best Newscast
- Best News Reporting
- Best Special Broadcast
- Best Vodcast
- Best Sportscast
- Best Documentary/Public Affairs
- Best General Entertainment Program

### AUDIO/RADIO CATEGORIES

- Best DJ
- Best Station Promo
- Best Public Service Announcement
- Best Newscast
- Best News Reporting
- Best Feature Show or Broadcast
- Best Documentary
- Best Podcast
- Best Sports Reporting
- Best Sports Play-By-Play
- Best Regularly Scheduled Entertainment Program

### COMBINED CATEGORIES

- Best Student Media Web Site
- Best Community Involvement
- Best Station Imaging

The contest is open to all campus radio stations (broadcast, Internet and cable/closed circuit), television facilities and other student media outlets. All entries must be from between June 1, 2010 and May 13, 2011. Entries are limited to two per category per station. The official rules, along with the entry form, is at askcbi.org.

**IF YOU BROADCAST LIMITED HOURS, YOU RISK HAVING A TIMESHARE AGREEMENT FORCED UPON YOUR STATION.**

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**CONTACT CURTIS BROTHERS, WCPE OUTREACH COORDINATOR FOR MORE INFORMATION: CURTIS@THECLASSICALSTATION.ORG OR 800.556.5178**



## Session proposals accepted for fall

CBI is now accepting proposals for sessions at the fall 2011 National College Media Convention to be held in Orlando, Oct. 27-30, 2011. In addition to session proposals from broadcast and new media professionals, students, advisers and managers, CBI also needs students to lead roundtables on topics like programming, production, sports and station management.

More than 90 broadcast sessions/events are being planned, with hundreds more involving other student media. All proposals should be submitted via askcbi.org before June 1.



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ELECTRONIC  
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*“Underwriting,” continued from page 2*

catch my fancy. . . strong. . . sharp. . . beautiful safety design. . . detailed lines, gorgeous power acceleration.”; “established”; “beautiful”. The FCC has declared that the “factuality” or “truth” of the description has no relevance to determining whether it should be considered a promotion or not.

#### **Penalties for violation**

Violators subject themselves to a range of penalties. At the less severe end of the spectrum, the FCC issues warning letters if it appears that the violation complained of was minor or the licensee had a previously unblemished record.

On the other hand, willful and repeated failure to comply will be met with monetary fines. “Repeated” has been construed to mean that the act was committed more than once, or lasts more than one day. The base amount for such a fine is \$2,000, although that amount can be adjusted upward or downward based on the circumstances of violator and violation. After-the-fact remedial efforts, such as terminating

the program(s) that have committed the violation, are not considered to be reasons for lessening a fine.

Generally, the two most significant factors in determining the severity of the fine are the number of illegal broadcasts and the durational period thereof. The FCC has levied a \$20,000 forfeiture for 10 announcements over a 15-month period, a \$12,500 forfeiture for thousands of announcements over a nine-month period, a \$10,000 forfeiture for 288 announcements over a one-month period, a \$5,000 forfeiture for eight announcements on two days over a week-long period, a \$2,500 forfeiture for four announcements on two days over a week long-period. Countless other cases end in consent decrees, in which the parties arrive at a settlement agreement.

#### **Conclusion**

As a matter of federal policy, there are legitimate reasons to question whether it makes sense to draw a line between promotion and identification. This elusive

standard is prone to producing seemingly inconsistent outcomes, and strict enforcement could chill legitimate speech. Nevertheless, this is the rule under which broadcasters must live. In light of FCC precedent, broadcasters would be well-advised to avoid any qualitative or comparative statements. Simply put, when designing a message one might consider using fewer adjectives and more nouns.

Adam Schulman (J.D., Georgetown, 2010) is a legal fellow at the Student Press Law Center in Arlington, Va. The Center provides free legal advice and information as well as low-cost educational materials for student journalists on a wide variety of legal topics. For a longer version of this article, a guide to music licensing for broadcasting and Webcasting, the First Amendment on the Air, and many more resources for student journalists and advisers, please visit the Student Press Law Center at SPLC.org. Legal guides are located under the “Know Your Rights” content tab.