

# Time Brokerage Checklist

The following is excerpted from the excellent *Profitably Buying and Selling Broadcast Stations*, by Erwin Krasnow, John Pelkey and John Wells King.

According to co-author Erwin Krasnow, "The checklist is designed as a tool to be used by both the licensee and the time broker for assuring that the operation of the TBA/LMA complies with FCC rules and policies."



King, Krasnow, Pelkey

The following checklist summarizes the terms of the Time Brokerage Agreement between \_\_\_\_\_ ("Licensee") and \_\_\_\_\_ ("Programmer") and provides recommendations on complying with the letter and the spirit of the Agreement. Although Programmer has contracted for the right to use the broadcast transmission facilities of Station \_\_\_\_\_, the essential ingredient of the Agreement is that Licensee continues to be ultimately responsible for programming, personnel and finances. Accordingly, the Licensee is still in charge and has the absolute right to reject any program or commercial furnished by Programmer which it deems is not in the public interest.

**□ Overall Operation of Station.** Licensee shall retain ultimate control and authority over the policies, programming and operations of the Station, including, without limitation, the right to decide whether to accept or reject any programming or advertisements, the right to refuse any programming or part of programming deemed by Licensee to not be in the public interest or to not meet Licensee's programming standards, the right to interrupt or preempt any programming at any time in order to broadcast programming deemed by Licensee to be of significant national, regional or local interest, and the right to take any other actions necessary for compliance with federal, state and local laws, the Communications Act and the rules, regulations and policies of the Commission (including the prohibition on unauthorized transfers of control) and the rules, regulations and policies of other federal government entities, including the Federal Trade Commission and the Department of Justice. Licensee has reserved up to two hours per week of programming time on Sunday between the hours of 6:00 a.m. and 12 Noon during which it may broadcast programming of its choice.

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*Here's how Myrtle Beach, SC WXYZ listeners are staying connected.*

- › **Internet:** 93% accessed the Internet in the past month.
- › **Online Shopping:** 26% spent \$250 or more on Internet purchases in the past year.
- › **Cell Phones:** 94% subscribe to wireless cell phone service.
- › **Streaming:** 55% listened to music or music events online in the past month.

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Source: Scarborough Research, Myrtle Beach, SC Metro Mid-Tier Spring 2008 Release

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## Recommended Actions:

1. Schedule periodic meetings with Programmer's staff (the meetings should be conducted by Licensee's General Manager).
2. Monitor Programmer's programming to make sure that it complies with FCC rules and policies, including, but not limited to, obscene and indecent programming and sponsorship identification.
3. Maintain written records of meetings with Programmer's staff and of instances where the programming of Programmer has been preempted.
4. Establish a mutually-acceptable method of dealing with the press and members of the public with the goal of dispelling any perception that Programmer, as opposed to the Licensee, owns and operates the Station.

□ **Responsibility for Employees and Related Expenses.** Licensee will provide and be responsible for the Station's personnel necessary for the broadcast transmission of Programmer's programs (including, without limitation, the General Manager of the Station and another full-time employee). Licensee shall maintain insurance reasonably satisfactory to Programmer covering the Station's facilities. Whenever on the Station's premises, all personnel shall be subject to the overall supervision of Licensee's General Manager.

## Recommended Actions:

1. Continue to employ a General Manager and another full-time employee.
2. Continue to pay in a timely fashion the salaries, taxes, insurance and related costs for the above personnel, lease payments, utilities, taxes, etc. and provide Programmer with a schedule of such timely payments (including invoices) within 30 days following the end of each month.
3. Make sure that Programmer pays for the salaries, commissions, taxes, insurance and all other related costs for all personnel employed by it.

□ **Political Advertising.** Any qualified political candidate will have access to the Station at the rates

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prescribed by the Station pursuant to the Communications Act and the rules, regulations and policies of the Commission. All requests for the purchase of political advertising time must be approved by the General Manager.

Recommended Actions:

1. Advise candidates for public office that all orders for the purchase of time must be approved by the General Manager.
2. Advise Programmer's sales personnel that any questions concerning the Station's political broadcasting policies (e.g., lowest unit charges, equal opportunities, reasonable access to the Station's facilities) should be directed to the General Manager.
3. Be familiar with the FCC's political broadcasting rules (e.g., the need to provide each candidate with a written statement disclosing the Station's political advertising policies)

□ **Responsibility of Licensee's Employees.** The General Manager and other full-time employee or employees shall report to and be accountable solely to the Licensee. The General Manager shall direct the day-to-day operation of the Station. Whenever on the Station's premises, Programmer's personnel shall be subject to the supervision and the direction of Licensee's General Manager and other full-time employee or employees.

Recommended Actions:

1. Don't allow Programmer's employees to assume managerial functions at the Station.
2. Make sure that a management-level person employed by the Licensee is either at the Station or reachable by telephone during normal business hours.

□ **Compliance with Governmental Requirements.** Licensee shall at all times be solely responsible for meeting all of the Commission's requirements with respect to public service programming and for maintaining the political and public inspection files and the Station's logs. Licensee shall also retain the right to break into Programmer's programming in case of an emergency. Licensee will be responsible for the proper broadcast of station identification announcements.

Recommended Actions:

1. Monitor the Station's programming to make sure



The image is a promotional graphic for Patrick Communications. It features a large, stylized white letter 'P' on a green background with white wavy lines. Below the 'P', the words 'PATRICK COMMUNICATIONS' are written in a large, white, serif font. Underneath the company name, the phone number '410-799-1740' and the website 'patcomm.com' are listed. The bottom half of the graphic has a dark grey background with white text listing services: 'MEDIA BROKERAGE', 'TOWER AND TELECOM BROKERAGE', 'FAIR MARKET VALUE AND ASSET APPRAISALS', and 'RESTRUCTURING SERVICES'. At the very bottom, the website URL 'http://www.patcomm.com' is displayed in white.

that appropriate station identification announcements are broadcast (station identification announcements containing the call letters followed by the name of the city of license must be broadcast at the beginning and ending of each day of operation, and hourly, as close to the hour as feasible at a natural break in programming).

2. Make sure that the Station's local public inspection file is in order. (The Time Brokerage Agreement should be placed in the local file.)

□ **Issues/Programs List.** Licensee shall, on a regular basis, assess the needs of its community, address those needs in connection with the preparation of its public affairs programming, and document such needs and programming in a quarterly report (the "issues/programs list"). Licensee shall also record those needs and place the issues/programs list in the public inspection file. Further, Licensee shall receive written information from Programmer with respect to such of Programmer's programs which are responsive to public needs and interests as to assist Licensee in the preparation of required programming in the satisfaction of his community service needs and in preparation of the issues/programs list. At Licensee's request, Programmer shall submit to Licensee in writing monthly reports in a form reasonably satisfactory to Licensee and Programmer, which reports will cover programs and commercials delivered by Programmer and broadcast by the Station.

Recommended Actions:

1. Prior to the beginning of each quarter, the General Manager should advise Programmer of the community needs and issues of greatest importance which should be treated by the Programmer during the forthcoming quarter and shall confer with Programmer as to the scheduling and broadcast of programs which will be responsive to those community needs and interests.
2. Immediately after the end of each quarter, Programmer shall furnish the General Manager with a list of issue-responsive programs and public service announcements (PSAs) (including a brief description of the program or PSA, the length of the program or announcement, and the date and time on which it was broadcast). The General Manager shall include this material in preparing the issues/programs list for the Station.

□ **Filing of Reports with FCC.** Licensee shall file with the FCC the Biennial Ownership Report (FCC Form 323) and Mid-Term EEO Report (FCC Form 397) for the Station. All reports and applications required to be filed with the Commission (including ownership reports and renewal applications) or any other government entity, department or body in respect of the Station, will be filed in a timely manner and will be true and complete and accurately present the information contained and required thereby. All such reports and documents, to the extent required to be kept in the public inspection files of the Station, will be kept in such files.

□ **Sponsorship Identification and Payola/Plugola.** On an annual basis, or more frequently if requested by the licensee, Programmer agrees to execute and provide Licensee with Anti Payola/Plugola Affidavits.

Recommended Action:

- Make sure that you receive from Programmer copies of Anti Payola/Plugola Affidavits signed by employees of Programmer who are involved in the selection of programming.

—The authors are broadcast attorneys at Garvey Schubert Barer,  
[www.gsblaw.com](http://www.gsblaw.com)



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