

## **Get Ready for Renewal – A New Certification Minimum Operating Schedule & Failure to Operate for 30+ Days**

Legal Alert  
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Garvey Schubert Barer Legal Update, January 3, 2011.

The renewal form (FCC Form 303-S) for the renewal cycle that begins for many radio stations this year contains a new question: Has the station been silent, or operated less than the minimum operating schedule, for any period of more than 30 days? The question is based upon a suspicion that more stations are silent than have requested silent authority.

FCC rules require that a station file a notice with the FCC if it goes off the air or does not operate in accordance with its license for 10 consecutive days (the “Notice”). If the station is unable to resume operations in accordance with the rules by the 30th day, the station must request special temporary authority (“STA”). If the station has been silent for a substantial period during its renewal term, the FCC could decide not to renew the license, or to impose a fine if the station did not seek an appropriate STA.

The new question requires the licensee to certify that, “during the preceding license term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days.” If that certification cannot be answered “yes,” an exhibit is required. Most notices and STA requests can be viewed in the FCC’s database.

If the station has been silent or failed to meet the minimum operating schedule for more than 30 days, the licensee must specify the exact dates when the station was silent or operated for less than the prescribed schedule. The licensee will need to review its operating logs for the last eight years in order to make this certification.

The minimum operating schedule for commercial AM and FM stations in Rule 73.1740 is:

Two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday.

Class D stations which have been authorized nighttime operations need comply only with the minimum requirements for operation between 6 a.m. and 6 p.m., local time.

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After the first 36 months of operations, TV Stations must operate not less than 2 hours in each day of the week, and not less than a total of 28 hours per calendar week. Test patterns and unrelated aural transmissions are not counted in computing program service.

Class A TV stations must operate not less than 18 hours each day of the week.

Unlike radio and Class A TV stations, the renewal application does not include a minimum operating schedule certification for full-service TV stations.

The minimum operating schedule for noncommercial FM stations, set forth in Rule 73.561, requires them:

to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods.

*A word of caution to noncommercial educational FM stations:* If the station operates for less than 12 hours per day each day of the year, another applicant can file a request to share time with the station by the petition to deny deadline. If the request is granted, the station will be required to share use of the frequency with that other share time applicant for the next renewal term.

Noncommercial educational AM and TV stations are not required to operate on a regular schedule and no minimum hours of operation are specified.

Even if no minimum operating schedule is set forth in the rules, the hours of actual operation during a license period can be taken into consideration in the renewal process for any station. Although the renewal application does not specifically ask for the operating schedule of TV stations, a station will need to respond if the FCC requests additional information or an objection to the application raises the issue.

*This memorandum contains information of a general nature and should not be regarded as legal advice. The firm will be pleased to provide additional details and to discuss matters contained in this memo as they may apply in specific situations.*