

TO: All South Carolina Broadcasters

FROM: The South Carolina Broadcasters Association

DATE: September 10, 2003

SUBJECT: **New Alternative Broadcast Inspection Program “ABIP” Agreement with FCC Enforcement Bureau - Detailed Memo of Explanation**

The South Carolina Broadcasters is pleased to provide your station with a copy of the new Alternative Broadcast Inspection Program Agreement (the “ABIP Program Agreement”) between the Association and the FCC’s Enforcement Bureau (the “Bureau”). In an effort to promote more uniform practices and procedures among broadcasters, ABIP inspectors, and the FCC, including its Regional and District offices nationwide, last year the National Alliance of State Broadcasters Associations (“NASBA”) and the Bureau began extensive discussions about their respective experiences under these ABIP Programs which have been in effect for many years. Both organizations expressed strong support for these programs and were constructive in discussing and resolving problems that have arisen over the years.

As a result of those discussions, there is now a standard, nationwide form of agreement that every State Broadcasters Association, which intends to continue operating an ABIP Program, has either executed, or will soon execute, with the Bureau. The mutual goal of the parties has been to preserve the fundamental benefits flowing from participation in these ABIP Programs as well as to promote a better understanding of how these programs are intended to operate. The need for greater clarity has grown over time because stations that have become the subject of Notices of Apparent Liability for

Forfeiture have objected to the assessment of forfeitures on the ground that the FCC's inspection was inappropriate under the applicable ABIP Program.

Now for the specifics:

1. The Association and the Bureau entered into the new ABIP Program Agreement as of August 15, 2003. Accordingly, the effective date of the new arrangement is September 29, 2003 which is forty-five (45) days after the date of the new Agreement. The existing ABIP agreement between the Association and FCC's Field Office will continue to control until the effective date of this Agreement after which the new Agreement will govern.

2. Under the new arrangement, the Association is required to provide stations holding Certificates of Compliance (the or a "Certificate") with a copy of the new ABIP Program Agreement by October 10, 2003, which is within ten (10) business days of the effective date of the new Agreement. Accordingly, a copy of the new Agreement is enclosed. The Association is also required to provide stations with a copy of the new Agreement at the time when it provides the station with a letter agreement to be inspected. You are urged to read the new Agreement very carefully. That Agreement, and only that Agreement, will control the relationship between a particular station participating in the ABIP Program and the Bureau.

3. Under the new arrangement, the Bureau has agreed that if a station holds a valid, un-expired Certificate, and the written notice and public disclosure requirements, described below, have been satisfied, neither it nor its District or Regional offices, will inspect the station for the remaining term of the Certificate except in the following

circumstances under which the Bureau may initiate the following types of inspections at any time:

a. If the Bureau is pursuing a complaint made against a station (a “Complaint Driven Inspection”), the Bureau is free to pursue an investigation or enforcement action against the station for any violation relating to the subject of the complaint as well as for any other related or unrelated violation that it discovers during its Complaint Driven Inspection. **(This “exception” is no different from the “exception” contained in former ABIP Programs.)**

b. If the Bureau is inspecting a station regarding tower safety issues (a “Targeted Tower Safety Inspection”), then the inspection and any related enforcement action is limited to the station’s transmitter site for public safety issues which issues are confined to the antenna site(s) of the station and its compliance with the FCC’s regulations relating to tower lighting, tower painting, posting of the antenna registration for a radio or television broadcast station, RF radiation from antennas on the tower, and fencing/enclosure of an AM tower. Such an inspection would not include, for example, EAS or any other facilities of the station, including but not limited to the station’s studio and interior of the transmitter building. If, during a Targeted Tower Safety Inspection, the Bureau were to find any instance of existing or potential regulatory noncompliance that fell outside the scope of that type of inspection, the Bureau has agreed to refer such matters back to the station, without adverse action, for resolution through a process of notification to the ABIP Inspector, remedy and re-inspection under the ABIP Program. **(This “exception” has been narrowed in scope. Under former ABIP Programs, which allowed for “Targeted Inspections” as an “exception” to the no full, random**

inspection rule, at the FCC has the broad option of including any regulatory compliance subject to its list of matter that could become the focus of a “Targeted Inspection.” The unlimited scope of the former “Targeted Inspection” exception raised a concern that the “exception” was swallowing the general rule against full, random inspections. That concern has now been eliminated since “Targeted Tower Safety Inspections” are the only form of “Targeted Inspections” that are contemplated and such inspections have now been limited as noted above.)

c. If the Bureau is inspecting the public inspection file of a station for compliance with the FCC’s political time or equal employment opportunity public file regulations, any instance of existing or potential regulatory noncompliance that falls outside the scope of that type of inspection will be referred back to the station, without adverse action. Resolution will be through a process of notification to the ABIP Inspector, remedy and re-inspection under the ABIP Program. **(The portion of this “exception” which relates to political time is not new; the portion relating to equal employment opportunity is new as a result of the FCC’s adoption of new EEO regulations.)**

4. If a station holds a previously issued, and otherwise valid and un-expired Certificate, and the station timely complies with the public disclosure requirements spelled out below, and the Association timely complies with the written notice requirements spelled out below, the station’s Certificate will continue to be honored by the Commission until the expiration of its stated term. If the original term of the station’s Certificate was less than three (3) years, by operation of the new ABIP Program Agreement, the original term of the Certificate has been automatically extended by one

year for a total of three (3) years. **(In some states, Certificates of Compliance were issued for only two year terms whereas in other states such Certificates run for three years. Now, nationwide, they all run for three-year terms.)**

5. If a station has already notified the Association that it wishes to receive a new ABIP inspection and has made the requisite payment to the Association, the station will receive an agreement form or letter from the Association confirming such request and providing the station with an estimate of when the station may be inspected. The Association's letter agreement is regarded under the new ABIP Program Agreement as the station's contract to be inspected. Under the new arrangement, any station awaiting an ABIP inspection has the following choice to make: As one choice, the station may obtain the same benefits which a station holding a valid Certificate of Compliance receives, but only for a "grace period" of 150 days from the date of such contract to be inspected, if and only if it directs the Association to notify the Bureau that such station is under a contract to be inspected. Under this option, the station will have a total of 150 days from the date of the contract, (i) to be inspected, (ii) to cure any existing or potential nonconformance with the Commission's regulations which the ABIP inspector may have identified, (iii) to be re-inspected if necessary, and (iv) to receive a Certificate. Unless the station has been issued a Certificate before the end of the 150-day "grace period," the benefits expire (unless the station continues to hold a previously issued, valid and unexpired Certificate) and the station is at risk of a full, random FCC inspection. The Bureau does not intend to conduct full, random inspections of any station that is engaged in an ABIP inspection prior to the expiration date of the "grace period" so long as the written notice and public disclosure requirements, described below, have been satisfied.

There is no provision in the new arrangement for extending the “grace period.” Thus, no station may count on the Bureau or the Field Office extending the “grace period.”

Alternatively, a station may choose not to have the Association inform the FCC of the impending ABIP inspection in which case the station will not have the benefits of any “grace period” and therefore such station assumes the risk of a full, random FCC inspection at any time. In either case, these are risks that only the station, and not the Association, can evaluate. The decision belongs solely to the station. It is the responsibility of each station wishing to be inspected to notify the Association in writing that it wants the Association to notify the relevant District/Regional Agent Office(s) of the impending inspection. Absent such written notice to the Association, or in the presence of ambiguous notice, the Association will not notify the District/Regional Agent Office(s) in which case the station will not receive the benefits of the “grace period.”

(The requirement that the Bureau be notified in advance of an ABIP inspection if a station wishes to take advantage of the “grace period” benefits is new for most ABIP Programs. The notice provision is intended to avoid those circumstances where FCC inspectors have gone to stations, only to find out that they were awaiting ABIP inspections. The fixed term for the “grace period” is intended to provide a reasonable, but certain, period of time when a station can be expected to have completed the ABIP inspection process.)

6. In order for a station to take advantage of the grand-fathering of an otherwise valid and un-expired Certificate, the station and the Association must each take certain actions no later than October 29, 2003 which is within thirty (30) days of the effective date of the new ABIP Program Agreement. A station holding a valid, un-

expired Certificate must (i) by October 29, 2003 display its Certificate in plain view at the station, e.g., on the wall in the entrance area of the station's main studio, and/or in the station's FCC authorizations binder at its main studio and (ii) verbally inform any person who enters the main studio of the station and identifies himself or herself as an FCC inspector seeking to conduct an FCC inspection that the station holds a valid Certificate of Compliance. Furthermore, the Association must, by the same October 29, 2003, deadline, provide the relevant District and/or Resident Agent Office(s) of the Bureau with a true and correct copy of the station's Certificate which identifies the station and shows the expiration date of the Certificate, and at the same time provide the station with a confirming copy for its files. Attachment I to the new Agreement sets forth the relevant District/Regional Agent Office(s), including contact information, for those stations within the jurisdiction of this Association.

7. If a station wishes to take advantage of the "grace period" benefits of holding a contract to be inspected under the ABIP Program, the station and the Association must each take certain actions either (i) by October 29, 2003, which is within thirty (30) days of the effective date of the new ABIP Program Agreement where the contract to be inspected was entered into before the effective date of the new agreement or (ii) within thirty (30) days of the date of the contract for an ABIP inspection where such contract was entered into on or after September 29, 2003, which is the date of the new Agreement. A station holding a valid contract to be inspected must (i) by the pertinent deadline display its contract to be inspected in plain view at the station, e.g., on the wall in the entrance area of the station's main studio, and/or in the station's FCC authorizations binder at its main studio and (ii) verbally inform any person who enters the

main studio of the station and identifies himself or herself as an FCC inspector seeking to conduct an FCC inspection that the station holds a valid ABIP contract to be inspected. Furthermore, at the option of the station to be inspected, the Association must, by the pertinent deadline, notify the relevant District and/or Resident Agent Office(s) of the Bureau of the impending inspection by providing the Bureau with the call sign of the station, the date of the ABIP contract to be inspected and the estimated date of inspection.

8. The conduct of ABIP inspections (and follow-ups) remains the same with some added clarity relating to procedures. Upon completion of an ABIP inspection, the ABIP inspector must promptly inform the station in writing of his or her findings and conclusions. If a station has not received such information promptly from the ABIP inspector, the matter should be reported to the Association. Furthermore, no Certificate of Compliance can be issued unless the ABIP inspector has informed the station in writing of his or her findings and conclusions. If the ABIP inspector discovers no existing or potential non-conformance with the FCC's regulations, he or she shall promptly notify the station and the Association in writing in which case the Association will promptly send to the station the original executed Certificate of Compliance and simultaneously send a copy of the Certificate to the FCC district or resident agent office responsible for the area in which the station is located. The Association will send a copy of the Certificate to the FCC either by certified mail, by overnight delivery by private courier or by standard mail in which latter case the Association will provide the FCC with either a fax or electronic copy of the Certificate. If a station does not "pass" an ABIP inspection the first time around, it is the station's responsibility to remedy all matters brought to its attention by the ABIP inspector and to report such action to the

ABIP inspector. The decision of the ABIP inspector to accept or not accept such remedial action and the decision whether a re-inspection will be required are matters left to the good faith discretion of the ABIP inspector. Where required, a fully satisfactory re-inspection will be a condition precedent to the issuance of a Certificate of Compliance. Any re-inspection will be conducted by the original ABIP inspector unless he or she is not reasonably available. If a re-inspection is required, the notice procedures for original inspections are to be followed.

9. While the Bureau is not required to take into consideration the fact that a station holds a valid Certificate of Compliance or has a contract to be inspected, the Bureau has agreed that it may, if circumstances warrant and in its discretion, give consideration to the station's participation in the ABIP Program in mitigation of any violation, forfeiture amount or other sanction or remedy.

10. The new ABIP Program Agreement is intended to benefit any and all broadcast stations that participate in the program, whether such participants are Association members or not.

11. As under the former program, the new ABIP Program Agreement makes it clear that, since this is a cooperative program between the FCC and the broadcast industry, and that the program is designed to help the broadcast industry increase the level of regulatory compliance generally, neither the Enforcement Bureau nor the Association is in a position to assume, and neither does assume, any liability under the Agreement to each other, to any station, or to any ABIP Inspector, as a result of the agreement, the ABIP Program or the conduct of any station or ABIP Inspector.

These ABIP Programs have helped to improve the national level of FCC compliance overall. They have also helped individual stations not only to reduce the risk of violations, but also to hold their respective staffs to a high level of compliance in this important area. If your station has any questions now or in the future about the Association's new ABIP Program, please do not hesitate to call or e-mail the Association's offices at (803) 732-1186. If your station is inspected by the Commission, for any reason, please let us know. We are eager to have this new arrangement reflect the continued excellent cooperation between the Enforcement Bureau and the Association which has been a hallmark of these ABIP Programs.