



# Broadcast Newsletter

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## **MID-TERM EEO FORM 397 FILINGS BEGIN**

Whether it is random EEO audits or annual EEO public file reports, the FCC's EEO documentation and filing obligations never seem to end. Certain stations can now add an old friend to the EEO to-do list – the Form 397.

First, the good news. Not all broadcast stations have to file the form, though in the form instructions, all stations are given the “option” of submitting one anyway even if they don't meet the criteria for doing so. That's nice. But we digress. Radio stations that are part of station employment units (SEUs) with 10 or more full-time employees, or a TV station that is part of an SEU with 5 or more full-time employees, are required to file the Form 397.

An SEU is a station or group of commonly owned stations in the same market that share at least one employee. A full-time employee is one that permanently works 30 hours or more per week. All stations in the SEU must be listed in the Form 397.

Stations that must file the Form 397 also have the privilege of attaching their two most recent EEO annual public file reports. Those reports are prepared annually (on the anniversary date of the license renewal application filing deadline) and placed in a station's public inspection file and on the station's website.

So when is the Form 397 due? The answer isn't an easy one. But the title of the form – Broadcast Mid-Term Report – gives a clue. The form must be filed on the 4-year anniversary of a station's last license renewal application filing deadline. The first stations to file will be radio stations in the District of Columbia, Maryland, Virginia and West Virginia whose filing deadline is June 1, 2015, four years from the June 1, 2011 deadline for filing for their last license renewal. Stations in SEUs must file Form 397, on a rolling basis going forward, on the 4-year anniversary of their most recent license renewal application filing deadline.

Confused? Watch our newsletter “**Dates to Remember**” for reminders.

## ANNUAL REGULATORY FEE RULEMAKING PUBLISHED

Like clockwork, once a year, the FCC tees up a proposed rulemaking that stares really hard at what they charge FCC license holders for the privilege of using their licensed spectrum. It's a money game that matters, because the fees they collect go a long way to funding their operations. Yes, that's the cold hard truth. The agency that regulates you also sets the amount you have to pay for temporary use of the spectrum they've licensed to you.

Most of the time, the FCC leaves well enough alone, and the fees you pay remain fairly static. That appears to be the case this year, as this [link](#) will demonstrate, though the final adoption of the rates won't come for several more weeks.

Don't worry no fees will be due until September, so your summer months won't be interrupted with a payment due date. We'll report on the deadline for payment in a future edition of the newsletter.

## COMMERCIAL FM AUCTION 98 DEADLINES

The short form filing window for Auction 98, featuring 131 commercial FM permits, closed on May 28, 2015. The FCC's next step will be to issue public notices regarding those short-form applications that are accepted and those that have errors. There will be a short time for applicants with errors to file amendments.

Upfront payments for the auction are due by June 29, 2015. The Auction itself is scheduled to begin July 23, 2015. As has become standard practice, the FCC will host a mock auction in the few days prior to the start of the auction itself. For a review of the auction procedures, click [here](#).

During the short-form application window, the FCC froze the filing of ALL commercial and non-commercial FM minor modification applications. That freeze has now been lifted. Or should we say the ice has melted? Whatever, feel free to file away.

## FCC INCENTIVE AUCTION UPDATE

During May, the FCC released its finalized and OMB-approved Form 2100, Schedule 381, with instructions, that all TV broadcasters will have to electronically file – probably sometime in early July – using the FCC's new LMS filing system. The form seeks information verifying license accuracy and other facility information. In its notice about the form, the FCC announced that in early-June, it will release a listing of TV facilities to be used by TV stations in verifying the FCC's databases using Form 2100. According to the notice, TV stations will have 30 days from the date the TV facility listing is published to file the required Form 2100 schedule.

The FCC also released three auction simulations designed to demonstrate what TV spectrum would remain or be repurposed, depending upon the FCC's clearing target. The FCC will not decide the clearing target until just prior to the auction. Commissioner Ajit Pai released a statement in connection with the simulations that called into question their accuracy, specifically given that no information from Mexican TV interference was considered in the simulations.

Early-2016 is still the FCC's projected timing for the auction, though it must still await the outcome of a decision by the 3-judge panel of the DC Circuit Court that, in March, held oral arguments on NAB's and Sinclair's challenge to the FCC's Incentive Auction Report & Order. In addition, the FCC itself must issue a decision addressing various petitions for reconsideration of its original incentive auction order. Reports are that the FCC will tweak some of its earlier decisions. The FCC also has to issue an order on its auction procedures.

For June and July, full power and Class A television station licensees should remain alert for the FCC's listing of TV facilities, and timely prepare and file the Form 2100, Schedule 381. Notwithstanding the uncertainty that remains, the FCC is moving forward with confirming/refining its databases.

## **LPFM GROUP WANTS MORE POWER**

REC Networks has filed a request with the FCC proposing to increase the maximum power for LPFM stations from 100 to 250 watts. In addition, they are seeking a bit more freedom to make minor changes to their facilities, urging the FCC to classify certain new license modifications as minor. According to its filing, REC Networks would also like to eliminate the current requirement that co-owned translators rebroadcasting an LPFM station have service contour overlap with the primary LPFM station. Another change sought is elimination of LPFM stations having to protect FM translators on second adjacent channels.

The FCC has not turned the REC Networks filing into a rulemaking yet. Instead, it has only issued a notice announcing the REC Networks filing. But that alone may be telling, as the FCC sometimes takes this approach as a trial balloon.

If the FCC acts on REC Networks' request, it may not be a good sign for AM stations, who were seeking a special window to allow them to apply for FM translators. The Chairman recently signaled that he had some issue with such a window, and the FCC has not issued an order in its now nearly 2-year old AM revitalization proceeding. This is a classic illustration of how bureaucracy and partisanship hurt licensees.

## **FCC EXTENDS DEADLINE FOR NEW EMERGENCY ACCESSIBILITY REQUIREMENT**

About a year ago, the FCC modified its closed-captioning rules, and among (many) other things, added a requirement for video program providers (i.e., all TV stations) to begin using – by May 26, 2015 – a secondary audio stream to provide emergency information provided visually during non-newscast programming so blind or visually impaired could hear such information.

At the request of NAB and others, the FCC has now granted an extension of the deadline until November 30.

The new secondary audio stream requirement does not apply to EAS initiated emergency information.

## **IHEART COMMUNICATIONS TAGGED \$1 MILLION FOR FAKE EAS ALERTS**

After an investigation that stretched several months, the FCC recently announced a \$1 million fine against IHeart Communications for the misuse of fake EAS tones on the Bobby Bones Show. The fine amount was part of a settlement agreement with the FCC, and included an admission by IHeart that the EAS tones violated the FCC's EAS rules. In addition, IHeart implemented a 3-year compliance and reporting plan and removed all simulated or actual EAS tones from the company's audio production library.

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Actual resolution of legal issues depends upon many factors, including variations of facts and applicable Federal laws. This publication is not intended to provide legal advice on specific subjects, rather, it seeks to provide insight into legal developments and issues that we feel could be useful to our clients and friends.

## DATES TO REMEMBER

**May 11, 2015:** Incentive auction general sessions and individual meetings in Orlando, FL

**May 12, 2015:** Incentive auction meetings and general information session in Miami, FL

**May 13, 2015:** comments on DBS Market Modification NPRM due

**May 18, 2015:** Incentive auction meetings and general information sessions in Boston, MA

**May 18, 2015:** FM translator auction 98 Short Form applications (Form 175) filing window opens at 12pm ET

**May 18 – 28, 2015:** freeze on commercial or NCE FM minor modification applications

**May 19, 2015:** Incentive auction meetings and general information sessions in Hartford, CT

**May 28, 2015:** FM translator Auction 98 Short Form applications (Form 175) filing window Closes at 6pm ET.

**May 28, 2015:** Reply comments on DBS Market Modification NPRM due

**June 1, 2015: AM & FM Stations in DC, Maryland, Virginia & West Virginia:** if full-time employee threshold is met, complete EEO public file report and place same in public file as well as post on station website. **If station has 11 or more full-time employees,** prepare and electronically file mid-term EEO Form 397 and place copy of filed report in your public inspection file. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

**AM & FM Stations in Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming:** if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

**TV & Class A Stations in Arizona, DC, Idaho, Maryland, Nevada, New Mexico, Utah, Virginia, West Virginia & Wyoming: NCE TV Stations in Michigan & Ohio:** if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website.

**TV & Class A Stations in Michigan & Ohio:** if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

**AM & FM Stations in Michigan & Ohio:** if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website.

**June 1, 2015:** Incentive auction meetings and general information sessions in Austin, TX

**June 2, 2015:** Incentive auction meetings and general information sessions in Dallas, TX

**June 8, 2015:** Incentive auction meetings and general information sessions in Chicago, IL

**June 9, 2015:** Incentive auction meetings and general information sessions in Milwaukee, WI

**June 23, 2015: TV, Class A & LPTV Stations in Delaware & Pennsylvania:** complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.  
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