



Broadcast Newsletter

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FCC DOUBLES DOWN ON EEO WEB-ONLY RECRUITING SOURCE PROHIBITION

In the U.S. access to the internet is possible for anyone. For the vast majority of employers in the U.S., advertising job openings on the internet is the surest way to get a response. But for a broadcaster with an obligation to advertise job vacancies as part of a broad outreach requirement, neither of the above is true – according to the FCC.

Seems crazy, huh? But that’s still the policy. In a challenge to an earlier FCC decision finding that a broadcaster’s web-only advertising for openings was insufficient for broad outreach to the community, the broadcaster even provided statistics to the FCC showing that more than 2/3 of homes in their area were connected to the internet, arguing that internet advertising was far more effective than print advertising. But the FCC – despite the opportunity and good facts to find otherwise – doubled down on its current policy that web-only job vacancy advertising is not sufficient to widely disseminate job information to the community. The FCC focused on the roughly 1/3 of the population that did not have readily available access to the internet.

The FCC’s policy has been around for a while, but in recent years, there’s been a call to change the policy given the rise in internet use and access. Obviously, the FCC is not ready to do that. We note that even a newspaper does not reach everyone in a community (especially given declining subscription rates), so it seems a bit pointless for the FCC to hang its hat in this decision on the numbers of homes not connected to the internet. You can read more about their rationale [here](#).

At any rate, remember this. For broadcasters with five or more full time employees (30 hours/week) that have a job vacancy, the FCC's EEO outreach policy does not require a set number of sources for wide dissemination of job vacancies, but it most certainly does not allow for dissemination using only the internet.

EAS AND ETRS: WHAT BROADCASTERS NEED TO DO BY AUGUST 26TH

As we reported last month, the FCC is planning a new National EAS test in a few more weeks (we now know it will be September 28th), and in advance of that test, all broadcasters (except for TV and FM translators) must register in the [EAS Test Reporting System \(ETRS\)](#).

Registering in ETRS is fairly straightforward, but you will need the licensee FRN and password to do so. That filing will automatically generate an email to the email address supplied in the registration. Your login and password are provided in that email, so if it doesn't arrive, something went wrong. Once you have the login and password, you must submit EAS Form One – for each station -- no later than August 26, 2016. That form auto-fills a station's information (call sign, location, coordinates) once the station facility identification number is entered. After that, required information includes the station's EAS designation, the stations that are monitored, make and model of EAS equipment used, software version used, and various other disclosures.

It helps to approach the process with a load of patience (or alternatively, with a punching bag nearby). The pull down menus are cumbersome. The little question marks that suggest they will give you an answer if you get befuddled are not helpful. And best of all, the system pauses and gives a "working" warning every now and again, after which the screen blinks and updates. It takes only a few

seconds, but it is quite lovely, even reassuring in a quirky, government-knows-best sort of way. When you're done and certify that only the truth has been provided in the form, you can submit the form, and the system will congratulate you (that's nice).

There's a [public notice](#) about the process in case details are missing above. We're not sure what will happen if a station misses the August 26, 2016 deadline, but would rather no one test the system to find out.

SECOND FM TRANSLATOR WINDOW FOR AM STATIONS NOW OPEN

The second FM translator filing window for AM stations opened today, July 29th. In this window, Class A and B AM stations are eligible to file applications seeking to relocate non-reserved band translators up to 250 miles for use with an AM station. Class C and D stations can also participate in this window, even though they were eligible to participate in the 6-month window that ended on July 28, 2016.

The second window will not be as long as the first one. It will instead last for only three months, ending at 5:59 p.m. eastern time on October 31, 2016.

After this second window closes, AM stations will have one last shot at obtaining new FM translator authorizations from the FCC, but that is through an auction window that was projected to be scheduled sometime in 2017 (not yet announced), with mutually exclusive applicants having to outbid one another for the construction permit. If an application filed during the auction window is not mutually exclusive with another one (a singleton), that applicant "wins" the permit without having to bid for it.

The preceding paragraph comes with an important caveat. All auctions are conducted by the FCC's Wireless Bureau staff, and they are the ones that have to issue the public notice announcing the auction. And they are insanely busy at the moment with the TV Auction, which could extend into 2017. No other auctions have been scheduled, not even one that includes about 200 applicants from the old 2003 FM translator filing window. So a 2017 FM translator auction for AM stations might well be pushed until later (much later). And with that caveat, if you're an AM station looking for a translator, you just might want to get one through this last 250-mile waiver window.

FORWARD AUCTION IS NEXT

The FCC will start the forward auction on August 16, 2016, roughly six weeks after the close of the reverse auction at the end of June. And instead of the original 99 forward auction bidders that filed paperwork to become eligible, only 62 made it to the finish line by ponying up the necessary funds to begin round one.

The television broadcast industry are watching and waiting to see if the 62 bidders can help the FCC raise just north of \$88 billion in order to pay provisionally winning TV stations from the reverse auction and reimburse repack costs to the stations that remain. Some doubt whether the forward auction will produce those funds. We lack a crystal ball (or a supercomputer) and will therefore not wager a guess. But if the forward auction starting in August does not raise the funds, we do know that the auction itself will enter round two, where the FCC will set a new clearing target, reset the dollar amounts, and notify the provisional winners from the reverse auction that bidding has begun once more.

We know you're fighting off the effects of auction fatigue, but hang in there.

APPLICATION FEE INCREASE

Last month, we wrote about increases in annual regulatory fees that will be paid sometime this September. Now, the FCC has decided to increase its application fees, something it had not done for a few years. So renewal applications, license modification applications, ownership reports, call sign changes and the like will all cost a little more, starting in the next few weeks. You can read about the fee increases [here](#) (the broadcast fees are on page 26).

DATES TO REMEMBER

August 1, 2016:

AM & FM Stations in California, North Carolina & South Carolina: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as post on station website.

AM & FM Stations in Illinois & Wisconsin: 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 and place copy in public file.

TV & Class A Stations in North Carolina & South Carolina: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as on station website and 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 and place copy in public file.

TV & Class A Stations in California, Illinois & Wisconsin: if full-time employee threshold is met, complete EEO public file report and post same in online public file and station website. **NCE Stations in California Only:** also file biennial ownership report via Form 323-E and place copy in public file.

August 26, 2016

All broadcast stations (except TV and FM Translators) must register in the EAS Test Reporting System (ETRS) and file EAS Form One.

September 28, 2016

National EAS Test.

October 1, 2016:

AM & FM Stations in Florida, Puerto Rico, Virgin Islands, Alaska, American Samoa, Guam, Hawaii, Oregon and Washington: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as post on station website.

AM & FM Stations in Iowa and Missouri: 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 and place copy in public file.

TV & Class A Stations in Florida, Puerto Rico and the Virgin Islands: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as on station website and 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 and place copy in public file.

TV & Class A Stations in Iowa, Missouri, Alaska, American Samoa, Guam, Hawaii, Oregon and Washington: if full-time employee threshold is met, complete EEO public file report and post same in online public file and station website. **NCE Stations in Alaska, American Samoa, Guam, Hawaii, Oregon and Washington:** also file biennial ownership report via Form 323-E and place copy in public file.

October 31, 2016

Second AM Station FM Translator window closes at 5:59 p.m. eastern time.

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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.

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