



# Broadcast Newsletter

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## **NATIONAL EAS TEST AUGUST 11<sup>TH</sup>**

The FCC’s 2021 Nationwide test of the Emergency Alert System is slated for August 11, 2021 with a back-up date of August 25. This [public notice](#) spells out the procedures.

By now, EAS participants should have filed ETRS **Form One** identifying their station, equipment and related technical details. That form can be corrected up until August 5 (or filed for the first time if a station forgot to file it earlier this month when due). ETRS **Form Two** must be filed no later than August 12, 2021, and will report whether the test was received and transmitted. ETRS **Form Three** must be filed no later than September 27, 2021, and will report any issues that an EAS participant experienced with the test. It is possible to file ETRS Form Three when the ETRS Form Two is filed.

In an unusual move, on July 22 the FCC sent emails from [alerting@fcc.gov](mailto:alerting@fcc.gov) with a reminder to the low-power broadcasting community about the upcoming test. We have not previously seen email reminders in advance of national tests. Participation and compliance by low-power stations has been problematic in the past, so the FCC may be adding to its outreach efforts to change that narrative.

## **AUCTION 109 BRINGS ANTI-COLLUSION CITATIONS**

The FCC’s Auction 109 for several FM and AM radio frequencies began on July 23 and will continue for the next several days. Bidders in the auction are bound by the FCC’s anti-collusion rules to be sure that bidders (or related parties) don’t collude to obtain a desired result in the auction.

As Auction 109 began, the FCC published two [letters](#) to bidders that had disclosed to the FCC a pre-auction meeting discussing a merger between the bidders, and also considered merging their upfront payments to have greater bidding eligibility in the auction. Despite the bidders’ characterization of the meeting/discussion as not violating the anti-collusion rules, the FCC disagreed and found that the discussion of merging bidding credits implicated the

applicants' bidding strategy and therefore violated the rules. The FCC referred the matter to the Enforcement Bureau for a complete investigation and warned that further participation in the auction could "exacerbate" this violation and possibly increase the likelihood and severity of possible sanctions.

As a reminder, since the Auction 109 short form filing deadline, applicants have been prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline. Bidders are reminded to take precautions to avoid any 3<sup>rd</sup> party employed for advice pertaining to its participation, bids or bidding strategies becoming a conduit for prohibited communications. Certain business discussions might touch upon subject matters that could convey information related to bidding strategies, including management, sales, local marketing agreements, and other transactional agreements. Be very careful -- the penalties for violating the anti-collusion rules are substantial.

## NEW APPLICATION FILING FEES NOW IN EFFECT

You may have a bit of sticker shock when filing applications with the FCC these days. Higher filing fees went into effect on July 15, 2021. A complete list of the fees can be reviewed [here](#), but a few examples might get your attention. Full power station license renewal applications went up from \$200 to \$325 each, and renewals for FM translators jumped from \$70 to \$175 each. Want to file a minor change for an FM translator? Those used to have no fee, but will now cost you \$210 each. Call letter changes were \$110 and are now \$175 each. Filing fees apply to commercial stations.

## NOVEMBER NCE RADIO FILING WINDOW PROCEDURES ANNOUNCED

The FCC has announced the [procedures](#) for the November 2-9, 2021 filing window for new NCE

radio stations. These are a must-read for any entity interested in participating in the filing window. Now when we say "must-read" that includes every footnote, as those often contain critical information that can be the difference between having a viable application or getting a dismissal.

The public notice reminds participants of the filing and documentation requirements, and notes that the application form (as revised to include reasonable assurance information) will become available in LMS on August 2, 2021. While filing cannot occur until the window opens November 2<sup>nd</sup>, the ability to load and begin working on applications is invaluable and all participants should take full advantage to get their applications completed early. Per an earlier public notice, applicants can only file up to ten applications in the filing window.

## FCC MOVES TO TWEAK POLITICAL PROGRAMMING RULES

At its August 5<sup>th</sup> meeting, the FCC is poised to adopt a Notice of Proposed Rulemaking to update its political programming and recordkeeping rules to conform the rules to statutory amendments, increase transparency and reflect modern campaign practices.

In particular, the [draft NPRM](#) released ahead of the vote proposes to revise the definition of "legally qualified candidate for public office" to add the use of social media and creation of a campaign website to the existing list of activities that may be considered in determining whether an individual running as a write-in candidate has made a "substantial showing" of his or her candidacy in order to be entitled to lowest unit rates and other candidate rights.

In addition, the draft NPRM proposes a revision to the FCC's political recordkeeping rules to include any request for the purchase of advertising time that "communicates a message relating to any political matter of national importance" and to specify the records that must be maintained. Stations were required to take these actions before under the Bipartisan Campaign Reform Act of 2002, but the FCC's rules have not previously been updated to include the requirements.

## FCC BEGINS PROCESS TO REINSTATE EEO FORM 395-B

On July 23, 2021, the FCC adopted a [Further Notice of Proposed Rulemaking](#) to refresh the existing record regarding the statutorily mandated collection of data on the FCC Form 395-B (Annual Employment Report). The form was originally designed to gather workforce composition data from broadcasters on an annual basis but was suspended in 2001 in the wake of a court decision vacating certain aspects of the FCC's EEO rules. Revisions to the form in 2004 were made, but the form has remained suspended due to confidentiality concerns.

The FNPRM seeks input on the legal, logistical and technical issues surrounding the form, but makes no tentative conclusions, as is sometimes the case in rulemaking proceedings. Changes to the form are contemplated. Comments are due 30 days after publication of the FNPRM in the Federal Register. If the FCC concludes that reinstatement of the Form 395-B and filing requirements is necessary, then, barring any legal challenges, we estimate that filings would not be required until late 2022.

## FCC ISSUES FINES AND ADMONISHMENTS TO TV STATIONS FOR PUBLIC FILE LATE UPLOADS

We have long surmised that online public file late uploads for TV stations this renewal cycle would result in monetary fines because TV stations were using the online public file (instead of paper) for the entire 8-year license term (unlike radio, which transitioned in 2018).

In recent days, our hunch has proven accurate. The FCC [admonished](#) a TV station in Virginia for uploading one issues/programs list more than one year late and 11 others between one day and one month late.

But other TV stations in Virginia received notices of apparent liability for [monetary forfeitures](#) for uploading four quarterly issues/programs lists more than a year late and three between one day and one month late in one case, and uploading five lists more than a year late, one list between one month and one year late, and three lists between one day

and one month late in another. The licensee of both stations noted that the lists were timely prepared but not uploaded due to an administrative oversight. That oversight cost the licensee \$9,000.

Maybe one day the FCC will enable its systems to allow stations to set up reminder emails or text messages so OPIF uploads are not missed. But until then, calendaring these with multiple reminders across multiple devices and employees is a good idea. Otherwise, stations will have the privilege of parting with cash.

Thus far, the Media Bureau has treated radio stations much more leniently than TV during renewal application processing. We believe this is because radio had only transitioned to the online public file in early 2018. Late uploads for radio stations – even in situations where most quarterly issues/programs list uploads for the license term are uploaded just before filing the renewal application – have, so far, not resulted in fines or admonishments. Of course, completely missing uploads for radio receives much more scrutiny, but often result in a consent decree without a fine. The TV decisions above reflect an entirely different approach.

We strongly encourage broadcasters to implement procedures that involve at least two-person knowledge and control of public file uploads to avoid any oversights. The date and time of public file uploads is readily apparent for each item uploaded, so there is no hiding from noncompliance. As a reminder, if a document is uploaded to the wrong folder in the public file, there is an option to relocate it to the proper folder and retain its original date/time stamp. Deleting and re-uploading a document will result in a new date/time stamp, and if that action is taken after a deadline, the upload will show up as late.

## DATES TO REMEMBER

### August 2, 2021

**Radio Stations located in California** – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required under the new local public notice rule.

**Television Stations located in Illinois and Wisconsin** – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required under the new local public notice rule.

**Radio and TV Stations located in California, Illinois, Wisconsin, North Carolina and South Carolina:** if five (5) full time employee threshold is met, prepare EEO public file report covering the period from August 1, 2020 – July 31, 2021, upload it to the station online public inspection file and post it on the station website.

**All Interested Parties for Nov 2-9 NCE Filing Window:** Application for window filing becomes available in LMS.

## August 5, 2021

**All Broadcast Stations Required to Have EAS Equipment:** Deadline to update or correct earlier-filed ETRS Form 1 for 2021 National EAS Test.

## August 11, 2021

**All Broadcast Stations Required to Have EAS Equipment:** National EAS Test. File ETRS Form 2.

## September 27, 2021

**All Broadcast Stations Required to Have EAS Equipment:** Deadline to file ETRS Form 3 for the 2021 National EAS Test conducted August 11.

## September, 2021

**All Commercial Broadcast Stations:** Unless exempt, remit 2021 Annual Regulatory Fees (the deadline for the payment will be announced sometime in late August). Fee Filer is not yet available to pay fees.

## October 1, 2021

**Radio Stations located in Alaska, American Samoa, Guam, Hawaii, Marianas Islands, Oregon and Washington** – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required under the new local public notice rule.

**Television Stations located in Iowa and Missouri** – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required under the new local public notice rule.

**Radio and TV Stations located in Alaska, American Samoa, Guam, Hawaii, Marianas Islands, Oregon, Washington, Iowa, Missouri, Florida, Puerto Rico and the Virgin Islands:** if five (5) full time employee threshold is met, prepare EEO public file report covering the period from October 1, 2020 – September 30, 2021, upload it to the station online public inspection file and post it on the station website.

**All Commercial and Noncommercial Broadcast Stations, except for LPFM, TV Translator, or Radio Translator Stations:** First date to file biennial ownership report in LMS. Information must be current as of October 1, 2021. The deadline for submitting the report is December 1, 2021. For commercial station licensee entities, new fee of \$85 per station will apply.

## October 5 – November 9, 2021

**Filing Freeze:** the FCC will not accept FM reserved band minor change applications or FM non-reserved band adjacent channels (channels 221 –223) and intermediate frequency (IF) (channels 254-274) minor change applications after 11:59 p.m. EDT, October 4, 2021 through the close of the NCE filing window ending at 7:00 pm EST on November 9, 2021.

## November 2-9, 2021

**Filing Window for New NCE-FM Stations.** The window will open at 12:01 am EDT on Tuesday, November 2, 2021, and close at 6:00 pm EST on Tuesday, November 9, 2021.

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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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