



Broadcast Newsletter

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ROSENWORCEL AND SOHN FCC NOMINATIONS

President Biden has announced that Acting FCC Chairwoman Jessica Rosenworcel will be permanent chair at the Commission and has nominated Gigi Sohn as the fifth FCC Commissioner. As a sitting Commissioner, Ms. Rosenworcel assumed her role as permanent chairwoman immediately, but her five-year term as Commissioner will end this year and she must be nominated for a new five-year term and approved by the Senate. That nomination will likely be paired with Gigi Sohn’s. Both have been staunch supporters of net-neutrality. With the addition of Ms. Sohn, there will be three Commissioners appointed by Democrats, giving them a 3-2 majority over Republican appointed Commissioners Carr and Simington.

BIENNIAL OWNERSHIP REPORTS DUE NO LATER THAN DECEMBER 1

The FCC began accepting biennial ownership reports from broadcasters on October 1, and the two-month filing window to file the report will end December 1, 2021. All commercial and noncommercial broadcast stations must file a biennial ownership report with the FCC. Only low power FM stations, TV translator stations, and FM translator stations are exempt from the requirement.

For those that have not yet filed, we note that the FCC’s Licensing and Management System for electronically filing the report is periodically behaving erratically, either ending a session unexpectedly or slowing down during a session. With a special filing window for new NCE-FM stations between November 2-9, LMS will likely be taxed to keep up with the number of filings. Don’t wait until the end of the two-month window either. That is prime time for procrastinators racing to complete reports, and the rush can crash the system.

On a related side note, if broadcasters filed a “certification” report in 2019 confirming that there were no changes to an earlier filed report, and now want to file another “certification” of no change report, the file number of the earlier filed report (not the 2019 report) must be specified in the form.

Detailed information on the ownership report forms and requirements can be reviewed at this [link](#).

NOVEMBER 2-9 NCE RADIO FILING WINDOW FAST APPROACHING

Beginning at 12:01 AM Eastern on November 2, 2021, interested parties will be able to file applications under the NCE points system for new NCE-FM construction permits. The applications are filed on Form 340 in the FCC's Licensing and Managing System. The announced [procedures](#) are very detailed, as are the instructions to the Form 340. Applicants should carefully review the procedures and form instructions to ensure that their application meets all requirements. The window will close at 6:00 p.m. Eastern on November 9, 2021.

Applicants are limited to filing 10 applications in the filing window. That limit applies to attributable parties as well – i.e., an applicant and all parties attributable to that applicant (directors, officers) together have a limit of 10 applications. If board members or officers serve on boards of other possible filers in the window, be sure to confirm whether those other entities are participating in the filing window in order to avoid going over the 10-application limit. If the 10-application limit is exceeded, the FCC will only process the first 10 applications filed.

As a reminder, these applications require specific information and a separately prepared exhibit to prove that an applicant has reasonable assurance for any tower site not owned by the applicant. The full name of the person contacted, the person's telephone number, and whether the contact person is the tower owner, agent, or authorized representative must be uploaded as an exhibit to the application. The earlier that site assurance can be obtained the better, as technical exhibits must be prepared in support of the application and affect points claims.

Applicants that file in the window must establish a public file in the proposed community of license and place a copy of the application in the file. The file

must be at a location that is accessible to the public during normal business hours.

The FCC has given no indication as to how quickly it will process the applications, but step one will be to determine and issue a list detailing which applications are singletons and which are mutually exclusive with other applications and must therefore be decided via a 307(b) preference or if that is not applicable, on the points system and any tiebreakers.

Typically, within a few weeks of the filing window closing, all applications become available in LMS so that parties can review and assess – on their own – whether an application is mutually exclusive with others, and if so, which applicant is likely to prevail.

FM FILING FREEZE ENDS NOVEMBER 9

In connection with the FCC's scheduled November 2021 filing window for new noncommercial FM radio stations, a limited application filing freeze began October 1 and will continue until 7 p.m. Eastern on November 9. The freeze includes all reserved band minor change applications and amendments, as well as minor change applications and amendments for non-reserved channels 221, 222, 223 and IF channels 254-274.

EEO FCC FORM 395-B UPDATE

The FCC's proceeding to consider reinstating the EEO Form 395-B as an annual filing requirement for broadcasters is nearing an end, and we assess that the form will likely be adopted as a reinstated requirement once the FCC Commissioner nomination process concludes. The exact content of the form or how long it will take to complete remain to be seen. The prior version of the Form annually collected race/ethnicity/gender information but was suspended by the FCC nearly 20 years ago when its EEO rules in place then were deemed unconstitutional.

ANNUAL CHILDREN'S TV REPORT AND COMMERCIAL LIMITS CERTIFICATIONS AROUND THE CORNER

In three months, commercial full power and Class-A TV stations will have to prepare and file children's television reports for 2021 and upload children's television commercial limits certifications to their public file for 2021. The actual deadline is January 30, 2021 (which lands on a Sunday so it will roll to January 31, 2022 under the FCC's rules).

Yes, we know that the deadline is far away but we also know that preparation of the children's television report or commercial certifications requires deep dives into station records and programming for the past year, a very time-consuming process. The good news? The report is currently available and can be loaded in LMS so work can begin now. Plus, stations can start reviewing records now for preparing the commercial limits public file certification.

Remember that the children's television report requires inputs for compliance and totals for each quarter of the year, so the form can be completed now for at least the first three (3) quarters of 2021. Stations can also make determinations now as to which compliance option they will use.

Did we say that we highly recommend starting on the 2021 children's television report and commercial limits certification now? If not, we'll say it here. We highly recommend starting on these now.

DATES TO REMEMBER

Through November 9, 2021

Filing Freeze In Effect: 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 until after 7:00 pm Eastern 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.

December 1, 2021

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

Radio Stations located in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont – 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 Colorado, Minnesota, Montana, North Dakota and South Dakota – 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 Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Alabama, Georgia, Colorado, Minnesota, Montana, North Dakota, and South Dakota: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from December 1, 2020 – November 30, 2021, upload it to the station online public inspection file and post it on the station website.

Full Power TV, Class A, and LPTV Stations: Deadline to file FCC Form 2100, Schedule G, and pay 5% of gross revenues from any ancillary or supplementary services provided between October 1, 2020 and September 30, 2021. NCE TV stations pay on 2.5% of gross revenue. Ancillary and supplemental services do not include free over the air video content, but do include computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, or audio signals, and subscription video. Stations that provided no such services do not have to file a report.

January 10, 2022

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete 4th Quarter 2021 issues/program lists and upload to online public file.

Class A TV Stations Only: deadline to complete and post to your online public file a 4th Quarter 2021 certification of ongoing Class A eligibility.

January 30, 2022

TV & Class A stations (commercial only): compile and post to the station online public file records certifying

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For more info, contact Joe Chautin or Mark Balkin.

Phone 985.629.0777

Fax 985.629.0778

www.hardycarey.com

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.

 Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW
1080 West Causeway Approach
Mandeville, Louisiana 70471-3036