



Broadcast Newsletter

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JOE CHAUTIN TO INTERVIEW FCC COMMISSIONER NATHAN SIMINGTON

Our firm’s managing partner, Joe Chautin, will be attending the National Religious Broadcaster’s convention in Nashville, Tennessee from March 7-11. Joe will interview FCC Commissioner Nathan Simington in a “fireside chat” format from 9:30 – 10:45 am on Wednesday March 9, in the Delta C/D Main Ballroom. Joe will also host a workshop on the FCC’s EEO Rules from 11:15a – 12n on Thursday, March 10 (for those who need to satisfy EEO menu options, this will count as partial credit). Safe travels to all attending the convention. Joe will also be at the National Association of Broadcasters convention in Las Vegas in late April 2022.

NEW FCC MEDIA AND ENFORCEMENT BUREAU CHIEFS, GENERAL COUNSEL APPOINTMENTS

Effective February 1, 2022, FCC Chairwoman Jessica Rosenworcel appointed new chiefs of the Media and Enforcement Bureaus.

Holly Saurer is now chief of the Media Bureau, succeeding Michelle Carey. Saurer has been Rosenworcel’s Legal Advisor for Media for the past year and previously served as Deputy Bureau Chief, Associate Bureau Chief, Senior Legal Advisor and Attorney-Advisor with the Media Bureau’s Policy Division. She is well versed in broadcast regulatory matters.

The new Enforcement Bureau Chief is Loyann Egal, who succeeds Rosemary Harold. She was Acting Chief of the Bureau. Prior to that, Egal was a Deputy Chief in the Foreign Investment Revision Section of the US Department of Justice’s National Security Division. In a prior Enforcement Bureau stint, she established and led the Universal Service Fund Strike Force, the FCC’s first white collar fraud unit.

Also new is Michele Ellison as General Counsel. She was acting General Counsel. Prior to that, she was the FCC’s Deputy General Counsel for nearly 25 years.

GOT TV REPACK FUNDS? THE FCC MAY BE VISITING YOU.

In a recent [Public Notice](#) providing an update on the post-2017 auction of television spectrum and repacking of stations into channels 2-36, the FCC addressed the status of allocations based upon remaining funds and reminded full power and Class A TV stations assigned to repack phases 6-10 to file for final expenses by the previously-announced March 22, 2022 deadline.

The FCC also announced a post-implementation site visit program, something it has long contemplated but had yet to announce or begin. Through a third-party contractor, the FCC will begin making post-implementation site visits to facilities of certain Reimbursement Fund participants to validate the existence and operational status of post-transition equipment for which the entity received reimbursement, and to ensure that such equipment is being used by the fund participant for its intended purpose. The sites will be selected from a statistically valid sample of Fund participants located in the contiguous United States.

Site visits will consist of one or two contractor staff who will spend one or two days onsite to physically inspect the facility and equipment. While onsite, the contractor staff also will verify the existence and functionality of equipment listed in the entity's Reimbursement Form. The contractor will report its findings to the FCC.

The FCC will contact each station's repack reimbursement contact person to notify entities selected for site visits. Letters will be sent by both overnight mail and email to the entity's reimbursement point of contact and will be copies to a station's counsel of record, if any. The contractor will provide stations an opportunity to participate in a pre-visit teleconference to coordinate timing and other details of the visit. Pre-visit teleconferences will be set at mutually convenient times thereafter. Site visits are expected to begin in March 2022 and continue through the end of the year.

FCC UPDATES BROADCAST RADIO TECHNICAL RULES

In a [Report & Order](#) released February 17, 2022, the FCC updated several of its broadcast radio technical rules that were either outdated or unnecessary.

All but one of the proposed changes in the proceeding were adopted. The changes included (1) eliminating the maximum rated transmitter power limit rule for AM stations set out in section 73.1665(b) of the rules; (2) updating the noncommercial educational (NCE) FM community of license coverage requirement set out in sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) to match that used in section 73.515; (3) updating the signal strength contour overlap requirements for NCE FM Class D stations set out in section 73.509(b) to harmonize with the contour overlap requirements for all other NCE FM stations, set out in section 73.509(a); (4) eliminating the requirement for broadcast services to protect grandfathered common carrier services in Alaska operating in the 76-100 MHz frequency band, set out in sections 73.501(b), 74.1202(b)(3), 74.702(a)(1), and 74.786(b); (5) amending the definition of an "AM fill-in area" set out in section 74.1201(j) to conform to section 74.1201(g); and (6) amending allocation and power limitations for broadcast stations within 320 kilometers of the Mexican and Canadian borders, set out in sections 73.207(b) and 74.1235(d), to eliminate conflicting provisions and comply with current treaty requirements.

NAB objected to and the FCC did not adopt a proposed change that would have eliminated the requirement that applicants demonstrate the effect of their FM transmitting antenna on nearby FM or TV broadcast antennas, set out in section 73.316(d).

Stations should be sure that consulting engineers preparing technical portions of applications on their behalf are familiar with the new rules changes.

POLITICAL BROADCASTING RULE CHANGES PARTIALLY TAKE EFFECT

The tweaks to the political broadcasting rules adopted in the FCC's January 25, 2022 [order](#) were published in the Federal Register on February 10, 2022. As a result, on March 14, 2022, the rule change amending the definition of "legally qualified candidate" will go into effect. The rule change added the use of social media and creation of a campaign website to the existing list of activities that may be considered by stations in determining whether an individual running as a write-in candidate has made a "substantial showing" of his/her bona fide candidacy.

The other rule changes aligning the FCC's political file rules with the Bipartisan Campaign Reform Act of 2002 will not take effect until after the Office of Management and Budget approves them, and the FCC issues a subsequent public notice announcing the effective date.

These changes formally extended the FCC's political file requirements to any request for the purchase of advertising time that "communicates a message relating to any political matter of national importance" (i.e., issue ads).

The records that must be placed in the political file for an issue ad are (a) whether the request to purchase broadcast time is accepted or rejected; (b) the rate charged for the broadcast time; (c) the date and time the communication is aired; (d) the class of time purchased; (e) the issue to which the communication refers; and (f) the name of the person purchasing the time, the name/address/phone of a contact person for that individual, and a list of the chief executive officers or members of the executive committee or of the board of directors of the group purchase the time.

Broadcasters should remember that the FCC has been enforcing this requirement anyway because it was federal law, so stations should be following these steps now without regard to the effective date of these rule changes.

SENATE COMMITTEE TO VOTE ON SOHN NOMINATION

On March 2, the U.S. Senate Commerce Committee will vote on the nomination of Gigi Sohn

to become an FCC Commissioner. If approved by the Committee, her nomination will head to the full Senate for a vote there. Sohn has agreed to recuse herself from certain broadcast copyright matters if approved for a stint at the FCC. Until a 3rd Democratically appointed FCC Commissioner is appointed, more controversial matters requiring a 3-2 majority vote, such as net neutrality and possible new EEO reporting obligations, cannot move forward.

TV AUCTION 112 PROCEDURES AND DATES SET

In a February 10th [Public Notice](#), the FCC announced all procedures and deadlines for the upcoming auction of 27 full power television station construction [permits](#).

The first step for interested parties is a critical one – due diligence. Is a tower available to support the a station location? Can reasonable assurance be obtained for use of an existing tower or for a potential tower site? What power levels are permissible under the FCC's rules? What are the projected population counts? What potential interference issues are there? Of the 27 permits, 15 are for VHF channels. Is it possible to migrate those to UHF?

Any applicant interested in bidding on a permit must first file Form 175 during a filing window that opens on March 17, 2022 at 12:00 p.m. ET and closes on March 30, 2022 at 6:00 pm ET. This filing requires detailed information about bidding parties and potential bidding credits.

For those applicants whose Form 175 applications are approved as complete, upfront payments via wire transfer are due no later than May 6, 2022 at 6:00 p.m. ET. Untimely upfront payments will disqualify an applicant from participation. The actual auction will begin on June 7, 2022.

DATES TO REMEMBER

March 17, 2022

Window to file Short Form 175 Application in Auction 112 for any of 27 full power television construction permits opens at 12:00 p.m. Eastern Time.

March 22, 2022

Full power and Class A TV stations assigned to Incentive Auction Repack Phases 6-10:

Deadline to file all documentation and invoices for reimbursement of repack expenses

March 30, 2022

Window to file Short Form 175 Application in Auction 112 for any of 27 full power television construction permits closes at 6:00 p.m. Eastern Time.

March 31, 2022

Deadline for all commercial radio stations playing music licensed by Global Music Rights (GMR) to either sign the licensing agreement reached in the litigation with the Radio Music Licensing Committee or to cease playing GMR licensed music.

April 1, 2022

Radio Stations located in Delaware and Pennsylvania – 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 Texas – 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 Delaware, Pennsylvania, Texas, Indiana, Kentucky and Tennessee: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from April 1, 2021 – March 31, 2022, upload it to the station online public inspection file and post it on the station website.

April 10, 2022

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete 1st Quarter 2022 issues/program lists and upload to online public file.

Class A TV Stations Only: deadline to complete and post to your online public file the 1st Quarter 2022 certification of ongoing Class A eligibility.

May 6, 2022

Upfront payments deadline of 6:00 p.m. Eastern Time to qualify to bid on any of 27 full power television construction permits.

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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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