



# Broadcast Newsletter

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## **HCCB AT NAB LAS VEGAS**

Safe travels to all attending the NAB Convention in Las Vegas. HCCB's managing partner Joe Chautin will be there April 23-26. If you'd like to meet with him while there, let him know by email at [jchautin@hardycarey.com](mailto:jchautin@hardycarey.com) or call/text to 504-439-2350.

## **BROADCAST STATION EEO AUDIT ANNOUNCED**

On March 21, 2022, the FCC's Enforcement Bureau announced an EEO Audit of 280 broadcast television and radio stations, giving them until May 5, 2022 to respond to the audit. The notice and list of stations can be found [here](#). Double check to see if any of your stations are on it.

This is the first of what is usually two annual EEO audits by the Bureau. The other one will probably be issued in late summer or early fall. Stations no longer have to mail documents to the FCC to respond to EEO audits – an upload to the station public file by the deadline is sufficient. Following that, the Bureau staff review the submissions and either ask for more information or issue an “all clear” letter to the station. Stations on the list are required to post the audit letter, response, and later correspondence in the EEO Audits folder of the public file.

The audit requires locating and submitting a substantial amount of documentation unless a station employment unit is exempt because it has fewer than five full time employees, completed an earlier audit, or because of its status as a religious broadcaster. Stations should start early to ensure there is enough time to completely respond.

Even if your station is not on the list, now is a good time to cross-check your EEO obligations, record-keeping, and public file reports. Is your SEU retaining dated records of all job postings/announcements? Are you periodically evaluating, and if necessary, updating the sources used to recruit candidates for job vacancies? Can you tell from your

records which sources produced interviewees and how many, and then which source produced the interviewee that was ultimately hired? Do you have documentation of the menu option activities the SEU completed? Do you know which employees participated in those activities? For non-exempt stations, all of this and more is required to respond to an EEO audit.

## **FCC REPACK SITE VISITS.**

In a [Public Notice](#) last month, the FCC announced that a post-implementation site visit program was beginning and that its third-party contractor would be reaching out to randomly selected repack stations to schedule visits. To our knowledge, those contacts have not yet begun, and we have heard no reports from TV stations scheduling a visit. The purpose of the visits is 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.

If your station received repack funds, be looking for a letter via overnight mail and via email to the entity's reimbursement point of contact. 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.

## **TV AUCTION 112 UPDATE**

The short-form application deadline of March 30<sup>th</sup> has now passed for entities interested in bidding on 27 full power television station construction [permits](#). The FCC's TV Auction 112 [Public Notice](#) provides additional details about the auction and related procedures.

The FCC will next issue a public notice announcing those applicants whose short form applications are approved as complete, or those with errors that require correction. We expect that notice within the next 2-3 weeks. Following that, 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 auction begins June 7, 2022.

## **FCC FOREIGN SPONSORSHIP ID RULES IN EFFECT**

Despite pending litigation over the legality of the new foreign sponsorship identification rules, the FCC [announced](#) that they became effective March 15, 2022. A court hearing in April will consider whether the new rules impose unnecessary burdens under the First Amendment, but a decision in that case is not expected for several months, and may be appealed.

The new rules require broadcasters to identify sponsors of any block of programming on the station if the sponsor qualifies as a "foreign governmental entity," which includes governments of foreign countries, foreign political parties, certain agents of foreign principals, and US based foreign media outlets. That identification must be in the form of an on-air disclosure and a public file disclosure.

We are in the process of notifying clients of their specific obligations under the new rules, and should finish doing so during April. If you have questions in the interim, please contact us.

## **MEDIA BUREAU ISSUES TWO TENTATIVE SELECTEE ORDERS FOR NEW NCE RADIO STATIONS**

During March, the FCC issued two orders tentatively selecting applicants from mutually exclusive groups to be awarded NCE radio station construction permits. The [first](#) was issued on March 9 and the [second](#) on March 24. An earlier decision also selected a tribal entity as selectee.

Applicants selected in the orders must now wait for 30 days after the FCC's notice accepting the application for filing to see if there are any objections filed. If not, permits should be issued shortly after the end of the 30-day period.

So far, the FCC's orders have made selections based upon fair distribution analysis, where one applicant's proposal is superior in coverage/population to others in the group. Later, we expect selection orders that analyze the points

claimed by applicants in a group, where the applicant with the highest points is selected.

## **FCC ISSUES HEAVY PUNISHMENT TO LPTV BROADCASTER**

On March 7, 2022, the FCC entered into a significant [Consent Decree](#) with a low power television station licensee. The licensee had relocated several stations multiple times in violation of the FCC's policy requiring that facilities be permanently constructed. In one case, a station had been "hopped" to different temporary locations eight times in order to move it to a desired location. A 2017 FCC decision had fined another broadcaster for similar violations.

In exchange for retaining some of its licensed stations or permits, the licensee agreed to pay a \$250,000 fine, relinquish 10 stations and 85 construction permits, and assign an additional 23 licenses and 12 permits to unrelated third parties.

## **DATES TO REMEMBER**

### **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 1<sup>st</sup> 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 1<sup>st</sup> Quarter 2022 certification of ongoing Class A eligibility.

### **May 5, 2022**

Deadline for stations on the FCC EEO Audit list to complete and upload their responses to the station public file.

### **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.

### **June 1, 2022**

**Television Stations located in Arizona, Idaho, Nevada, New Mexico, Utah and Wyoming** – 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 Washington DC, Maryland, Virginia, West Virginia, Michigan, Ohio, Arizona, Idaho, Nevada, New Mexico, Utah, and Wyoming:** if five (5) full time employee threshold is met, prepare EEO public file report covering the period from June 1, 2021 – May 31, 2022, upload it to the station online public inspection file and post it on the station website.

### **July 10, 2022**

**TV, Class A, AM & FM Stations (commercial & noncommercial):** deadline to complete 2<sup>nd</sup> 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 2<sup>nd</sup> Quarter 2022 certification of ongoing Class A eligibility.

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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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