



# Broadcast Newsletter

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## **FCC ENFORCEMENT BUREAU PURSUING STATIONS OVER NATIONAL EAS TEST NONCOMPLIANCE**

In recent weeks, the FCC's Enforcement Bureau has sent hundreds of broadcast stations official letters of inquiry regarding their compliance with the 2021 National EAS Test. In cases that we are aware of, those letters were sent via certified mail, return receipt, to the station mailing address. The letter gives stations 30 days to respond to the inquiry with documentation along with either affidavits or declarations under penalty of perjury. The inquiry sets out a series of questions that ask about the submission of the ETRS Forms 1, 2 and 3 for the 2021 National EAS Test. A spreadsheet is provided and must be completed in electronic format. Responses must be emailed to representatives at the Enforcement Bureau.

For several years, the FCC has warned that it might take enforcement action against stations that did not properly participate in the annual National EAS Tests, but to our knowledge, this is the first time it has taken formal action regarding compliance. We do not know whether, after receiving responses to its inquiries, the FCC will fine or take other actions against stations for noncompliance, but that seems likely unless perhaps there were circumstances that were out of the station's control.

The focus of the FCC'S inquiries appears to be stations that did not file the ETRS Forms 1, 2 or 3. The Form 1 is filed before the test to report on station equipment and receive stations, while Form 2 is filed on the day of the test to report receipt and retransmission of the test, and Form 3 is filed after the test to report any issues. Neglecting to file any of the forms leaves a gap in information for the test and hinders the FCC's ability to assess the success of a test. Stations should proceed with caution and ensure that all information submitted is 100% accurate.

We anticipate an announcement soon regarding the 2022 National EAS Test, so stations should take these recent developments seriously and be sure to have equipment and personnel ready to participate in and properly report on the

upcoming test. Typically, the National Test reporting begins during the summer. In 2021, the initial public notice was in June. The actual test was conducted in early August and the ETRS Form 1 deadline was in early July.

## **FCC BROADCAST OPERATIONS INSPECTIONS RESUME**

The FCC recently lifted its halt to broadcast station inspections that was put in place during the pandemic, and advised all of its Field Offices that those inspections should resume. Stations should be on the alert for possible visits from the FCC.

If a station receives a visit from the FCC, the individual will provide credentials to confirm that they represent the FCC and the purpose of their visit. Usually, they request access to certain specific items or to visit transmitter sites. Stations should take this opportunity to refamiliarize their personnel on actions to take during an FCC inspection. Cooperation is paramount. Refusing access or telling an inspector to leave are sure ways to draw unwanted attention to the station. In most instances, the process is quite cordial, and inspectors understand that things like station logs or transmitter site access may take a moment.

Many state broadcaster associations have Alternative Broadcast Inspection Programs. For stations that voluntarily participate in those and receive a certificate, the FCC is advised and will not randomly visit the station for an inspection for 3 years. The exception is that if the FCC receives a complaint, an inspection/visit can occur despite the ABIP certification.

## **BROADCAST STATION EEO AUDIT RESPONSES DUE MAY 5TH**

For stations on the FCC's March 21, 2022 EEO audit list, the deadline to respond is May 5, 2022. The notice and list of stations can be found [here](#).

Stations no longer 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.

If your station is on the list, and you need more time to respond, the FCC routinely grants extensions. Extensions can be requested via the FCC email contact on the audit letter.

## **TV AUCTION 112 UPDATE**

The FCC issued a [public notice](#) announcing the applicants submitting short-form applications for the June 2022 auction of 27 full power television station construction [permits](#). Separate lists of applicants whose applications are [complete](#), [incomplete](#), or [rejected](#) are included.

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.

## **LEGAL BATTLE CONTINUES OVER FOREIGN SPONSORSHIP ID RULES**

The April 12, 2022 oral argument in the DC Circuit case by broadcasters challenging the constitutionality of the FCC's new foreign sponsorship identification rules revealed few clues about the potential outcome or the timing of a decision in the case. Broadcasters are arguing that the scope of the requirements is overly broad and burdens their First Amendment rights. Recent world events, including Russian actions in Ukraine, add an interesting backdrop that could make it more difficult to throw out or narrow the new rules.

Despite the litigation, the FCC [announced](#) in March 2022 that the new rules became effective. For any entity purchasing a block of programming, stations need to take reasonable diligence actions to find out – from the programmer and independently via U.S. databases – whether the program sponsor qualifies as a “foreign governmental entity” and if so, to make certain on air and public file disclosures. Records of those diligence efforts must be maintained. For any programming agreements that were in place on a station as of March 15, 2022, the station has until September

15, 2022 to perform diligence. Any new programming agreements must comply with the new rule.

If you have questions about compliance, or would like a certification form that you can send to programmers, please contact us.

## **MEDIA BUREAU REQUESTS NEW COMMENT IN FM BOOSTER GEOTARGETING RULEMAKING**

On April 18, 2022, the FCC issued a [public notice](#) setting new comment and reply comment periods for its ongoing [rulemaking](#) proposing the use of FM booster stations for geo-targeted content. The request comes after testing of the proposed technology was conducted in California and Mississippi under experimental authority, and [reports](#) were issued addressing the technology, its compatibility with EAS, and impact on digital FM broadcasts. NAB has already filed comments opposing the new rules. Comments can be filed via ECFS.

## **DATES TO REMEMBER**

### **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.

### **June 3, 2022**

Mock Auction for TV Auction 112

### **June 7, 2022**

Bidding Begins in TV Auction 112

### **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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