



Broadcast Newsletter

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GET READY FOR FCC REGULATORY FEES

In the next several days, the FCC is expected to issue its Report & Order adopting the annual regulatory fees that will be due in September. Broadcasters have uniformly opposed the proposed 13% increase in broadcast station fees, but various media reports indicate that the FCC will proceed with the increase. Commercial station licensees should plan accordingly.

Either simultaneously with release of the Report & Order, or in the days immediately following, the FCC's Media Bureau will issue a public notice announcing fee payment procedures and the availability of their Fee Filer system to remit the fees. That notice will also establish the deadline for remitting the fees. Any fee that is not timely paid will incur a 25% penalty. In addition, we expect the Media Bureau to open their "Fee Look Up" webpage (www.fccfees.com) around the same time. That webpage simplifies looking up how much a station owes and is very helpful as a cross check on amounts due, but often doesn't become available until a week after fees are announced. The link is not active right now, so it is possible that the FCC will no longer use that webpage.

In past years, licensee's whose total regulatory fees for all stations was less than \$1,000 were automatically exempted from having to remit fees. We anticipate that there will be a slight increase in the *de minimis* \$1,000 amount, but even that adjustment may not be enough to exempt a licensee given the anticipated across-the-board increase in fees. Licensees that were exempt last year under the *de minimis* standard should not presume that will be the case this year.

Non-profit licensees of commercial stations are exempt from annual regulatory fees, but must have submitted proof of non-profit status to the FCC. Non-profit licensees of commercial stations should check the status of their station in the FCC's systems to confirm that they are indeed exempt and have not been assessed a fee.

Payments can only be electronically submitted, via credit card or electronic funds transfer. We recommend credit card, as it is the simplest method. CORES username logins are needed to submit fees. For stations that have been acquired in the past year, regulatory fees often show up under the prior licensee's name and have to be added to the new licensee's account to make payment.

Our firm will contact all commercial station clients once the FCC's Report & Order is adopted and fee information becomes available. If you have any questions, please let us know.

SECOND 2022 BROADCAST STATION EEO AUDIT ANNOUNCED

On August 19, 2022, the FCC's Enforcement Bureau announced a second round of EEO Audits for this calendar year. Unlike the March 2022 audit, which included 280 broadcast television and radio stations, this audit includes only 152 stations. The notice and list of stations can be found [here](#). Stations on the list have until October 7, 2022 to respond. 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.

In the past, the Bureau staff reviewed the submissions and either asked for more information or issued an "all clear" letter to the station. With this EEO Audit, the FCC has, for the first time, stated that it will no longer issue letters to stations upon completion of its audit response reviews. As a result, the only contact a station may receive from the staff is if there is a question during their review. We have no idea what prompted this change in policy. From a legal perspective, we considered the "all clear" letters essential to concluding that a station's EEO program was compliant. Without those, a station will not know when review is complete and will only be able to surmise, based upon the absence of staff contact, that all must be well with their program. Let's just say that we see this as less than optimum.

Unless exempt from having to respond, stations on the audit list are required to post the audit letter,

response, and later correspondence in the EEO Audits folder of the public file, and maintain it there through the end of the station license term.

EEO audits require 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.

CONSENT DECREE AND HEFTY FINE FOR SPONSORSHIP ID RULE VIOLATIONS

On August 5, 2022, the FCC released an [order](#) fining a low power television station \$60,000 for violations of the sponsorship identification rules. In addition, the station entered into a consent decree with a five-year compliance plan and reporting obligations.

The station admitted to broadcasting appearances by various legally qualified candidates and spokespersons for commercial entities on what was purportedly a news interview and public affairs program without providing on-air sponsorship identification announcements disclosing that the interviews were paid-for events. The station was offering "all-in-one" advertising packages that included spots and a personal live interview in the news program.

Section 73.1212(a) of the FCC's rules requires that "when a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) that such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) by whom or on whose behalf such consideration was supplied."

The FCC's sponsorship identification rules implement the Communications Act's requirements and have been around for years. Of late, the FCC has made compliance with the rule a top priority. The sizable fine in this case would likely have been higher had the FCC not taken into account the station's ability to pay. As it was, the station agreed to pay the fine in 60 installments.

If you're not certain about your station's compliance with the rule in certain circumstances, consult legal counsel.

FCC ISSUES FIRST POINTS DECISIONS FROM 2021 NCE-FM FILING WINDOW

On August 2, 2022, the FCC released an [order](#) selecting the highest-points winning applications from 27 mutually exclusive groups of applications filed in its November 2021 filing window. With the adoption of the order, the FCC accepted the tentative selectees' applications for filing and the time periods for legal challenges began running. In coming weeks, unchallenged selectees will see construction permits issued.

There remain several pending mutually exclusive groups without points decisions. We expect future orders to decide those groups.

EAS EQUIPMENT VULNERABILITY ALERT ISSUED

On August 5, 2022, the Chief of the FCC's Public Safety & Homeland Security Bureau sent out emails to EAS participants titled "EAS Security Advisory" announcing that the Federal Emergency Management Agency (FEMA) had issued an [advisory](#) on a potential vulnerability in certain EAS encoder/decoder devices that have not been

updated to the most recent software versions. The message noted that the Bureau had previously warned about this vulnerability. The FEMA notice pointed out that the security vulnerability was going to be made public at a Las Vegas tech conference, which prompted the advisory action.

Under the FCC's rules, EAS participants are responsible for ensuring that EAS equipment is installed so that the monitoring and transmitting functions are available. The email contains a blunt statement that failure to receive or transmit EAS messages during national tests or actual emergencies because of an equipment failure may subject the EAS participant to enforcement actions. EAS participants should update EAS devices with latest software and security patches, change default passwords, make sure that systems are behind a firewall and review audit logs regularly to make sure that there has been no unauthorized access.

THIRD AND FINAL REPACK REIMBURSEMENT FILING DEADLINE NEARS

A recent FCC [public notice](#) reiterates that the third and final deadline for submission of repack reimbursement invoices is September 6, 2022. This final deadline is applicable to low power television, television translator and FM stations, along with cable companies. Stations that do not file a final Form 399 with invoices will automatically be closed out by the FCC, meaning that some expenses may not be reimbursed. Extensions of the deadline can be requested via the filing of a legal STA request in LMS, but filing one this late should be for matters that are outside of the station's control.

DATES TO REMEMBER

September 6, 2022

LPTV, TV Translator and FM Stations That Incurred Repack Costs – deadline for submitting all invoices supporting request for reimbursement of expenses, and final Form 399.

September 9, 2022

Lowest Unit Rate – LUR period start date for the November 8, 2022 general election in all states and territories.

September 15, 2022

Broadcast Stations Leasing Airtime to Third Parties

– deadline for station third party programmers leasing airtime on the station as of March 15, 2022 (that continue in effect) to verify foreign entity status to the station for purposes of new foreign sponsorship identification rule.

Mid-September-Ish

All commercial broadcast stations - the payment window to remit annual regulatory fees typically falls in mid-September. Amounts due should become available just prior to the payment window.

October 1, 2022

Radio and TV Stations located in Alaska, American Samoa, Florida Guam, Hawaii, Iowa, Missouri, N. Mariana Islands, Oregon, Puerto Rico and Washington: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from October 1, 2021 – September 30, 2022, upload it to the station online public inspection file and post it on the station website.

October 3, 2022

Television 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.

October 10, 2022

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete 3rd 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 3rd Quarter 2022 certification of ongoing Class A eligibility.

December 1, 2022

Radio and TV Stations located in Alabama, Georgia, Colorado, Minnesota, Montana, North Dakota, South Dakota, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from December 1, 2021 – November 30, 2022, upload it to the station online public inspection file and post it on the station website.

Television Stations located in Connecticut, Maine, Massachusetts, New Hampshire, Vermont and Rhode Island – 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.

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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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