



Broadcast Newsletter

IN THIS ISSUE:

AM RADIO SWINGS BACK IN BATTLE OVER CAR RADIOS	1
EEO MID-TERM REVIEWS BEGIN JUNE 1ST.....	1
ANNA GOMEZ NOMINATED FOR VACANT COMMISSIONER SEAT	2
MEDIA BUREAU ENDS COVID-RELATED LOWEST UNIT CHARGE RELIEF	3
FCC EEO AUDIT RESPONSES DUE JUNE 8	3
FCC PROPOSES LOWER BROADCAST REGULATORY FEES	3
DATES TO REMEMBER.....	3-4

AM RADIO SWINGS BACK IN BATTLE OVER CAR RADIOS

After the FCC's efforts over the last several years to revitalize AM radio, and the redoubled efforts of many broadcasters to preserve and improve AM service, the recent announcement by Ford Motor Company that it would not be including AM radio in its electric vehicles was a gut punch. The response has been nuanced and swift.

Initially, many looked to the FCC for a response. But the FCC does not have jurisdiction over radio receiver manufacturers because Congress has not previously given it that authority, so they were unable to take any meaningful action in response to Ford's announcement.

In the days following the announcement, a few legislators captured Ford's decision as impacting public safety. That ultimately became the rallying cry, and eventually ended up with the introduction of the AM for Every Vehicle Act in Congress to mandate that AM be included in cars. As drafted, the bipartisan legislation would require the National Highway Traffic Safety Administration to conduct a rulemaking making it a requirement for AM radio to be included in all vehicles. That legislation has to be adopted and signed into law first, the rulemaking completed, and the new rule then has to become effective. The FCC will be required to cooperate with NHTSA in the process. But even with best efforts, we're probably looking at an end of 2024 effective date for a federal regulation mandating AM in all vehicles.

Ford pivoted in response, announcing that its 2024 electric vehicles would include AM radio. Its 2023 electric vehicles apparently will not.

EEO MID-TERM REVIEWS BEGINNING JUNE 1ST

As we previewed in last month's newsletter, the FCC will begin conducting EEO reviews at the mid-point of station license terms, starting with radio stations in Washington DC, Maryland, Virginia and West Virginia on or about June 1,

2023. The FCC issued a [public notice](#) marking the start of the process, which will continue cyclically for the next four years.

Mid-term EEO reviews are required by the Communications Act and Section 73.2080(f)(2) of the FCC's rules. These reviews are mandated for TV station employment units with five or more full time employees, and for radio station employment units with eleven or more full time employees. Reviews are matched to the date four years after the deadline for stations to file their license renewal applications.

EEO mid-term reviews are much like the reviews that the FCC's Enforcement Bureau conducts during the license renewal process, where they review a station employment unit's last two EEO public file reports (the current one and the one prior), and can request additional information from licensees as necessary. The public notice indicates that FCC Enforcement Bureau staff will "inform licensees of any necessary improvements in recruitment practices to ensure that they are in compliance with the Commission's EEO rules, and take other enforcement action as appropriate."

Stations will not know when the staff is conducting the review so being sure that the required EEO public file reports are uploaded timely is important. If all is well, a station will not hear anything from the staff. If there are issues, and the staff reaches out, responding completely and timely is critical.

For TV station employment units with five or more full-timers, completing and uploading the regular EEO public file report by the required deadline is all that will be necessary. TV mid-term reviews won't begin until June 1, 2024. TV stations with fewer than five full-timers do not prepare or upload an annual EEO public file report, and will not be subject to mid-term review.

For radio station employment units with five or more full-timers, the station online public file will contain a "yes/no" question under a "Mid-Term Review" tab to disclose whether the employment unit has 11 or more full-timers. That question should be answered when the annual EEO public file report is uploaded at the license mid-term point (i.e., fourth anniversary of the license renewal

application filing deadline). Those who answer yes will be subject to review. Those who answer no will not be.

ANNA GOMEZ NOMINATED FOR VACANT FCC COMMISSIONER SEAT

President Biden has nominated Anna Gomez for the vacant FCC Commissioner seat, combining her nomination with that of Geoffrey Starks and Brendan Carr for renewed five-year terms. Gomez is an attorney and previously served as legal advisor to FCC Chairman Bill Kennard and most recently served a stint on the NTIA addressing international spectrum use. Her positions on broadcast matters are largely unknown. A timeline for hearings in the Senate has not yet been announced, but we anticipate her approval by late summer at the earliest.

The addition of a third Democratically-appointed FCC Commissioner will likely move certain agenda items forward. For broadcasters, the most immediate matter will probably be a Report & Order in the ongoing EEO proposed rulemaking that primarily focused on the reinstatement of EEO Form 395-B requiring broadcasters to report annually on the gender, race and ethnicity of its workforce. The form was suspended over two decades ago when the FCC's EEO rules were found unconstitutional, but never reinstated after the FCC adopted new broad outreach EEO requirements. The rulemaking contemplates the possibility of the data being submitted on a confidential basis and not being specifically linked to a particular broadcast station or station employment unit. The FCC is prohibited from using any collected data to take enforcement actions against stations, and plans to use the information to further its public interest goals surrounding broadcast ownership diversity. NAB and others have supported reinstatement of the form, with exemptions for employers with over 100 employees who already submit similar information to the EEOC.

If Gomez is approved, we anticipate that the EEO rulemaking item will move forward in the fall, but approval of the new form will take some time. Perhaps the earliest point for a rule requiring

submission of Form 395-B data is approximately a year from now.

MEDIA BUREAU ENDS COVID-RELATED LOWEST UNIT CHARGE RELIEF

In 2020, at the height of the COVID-19 pandemic, the FCC issued a public notice announcing that broadcasters would be able to exclude free time that they provided to commercial advertisers when calculating the lowest unit charge amounts they could charge for political ads. Many stations had done so to assist businesses during the pandemic and with recovery afterward. The free time that could be excluded was conditioned upon it not being part of a commercial contract for paid time, or being bonus spots.

In a May 15, 2023 [public notice](#), the FCC rescinded that relief, effective immediately. As a result, stations should now include on a going forward basis any free time that they provide to commercial advertisers when computing their lowest unit charge.

FCC EEO AUDIT RESPONSES DUE JUNE 8

Responses to the April 24, 2023 FCC Enforcement Bureau EEO audit for broadcast stations are due June 8, 2023. About 254 randomly selected radio and television stations were selected for audit. Stations on the audit list may be exempt if their license renewal was granted after February 1, 2021 or if they have been audited or included in an audit response in 2021 or 2022. The exemption is not automatic, however. Stations in these circumstances must email the FCC at EB-EEO@fcc.gov for additional guidance on whether a response is required. If you are pressed for time, email that same address to request an extension.

FCC PROPOSES LOWER BROADCAST REGULATORY FEES

Yes, you read that headline correctly. After many years of increased regulatory fees for broadcast stations, the FCC has proposed lowering the fees commercial broadcasters will have to pay this fall. The lower fees are outlined in the FCC's notice of proposed [rulemaking](#), and on average will result is

a savings of near 10%. The rulemaking also proposes to add a new tier for radio stations that would ultimately lower fees for the smallest of broadcasters. Comments are due June 14.

Typically, the FCC issues a final order in this proceeding in late August or early September, and then announces the deadline for payment of fees.

DATES TO REMEMBER

June 1, 2023

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, 2022 – May 31, 2023, upload it to the station online public inspection file and post it on the station website.

Mid-Term EEO Review for Radio stations located in Washington DC, Maryland, Virginia and West Virginia: if station employment unit has **eleven (11) or more full-time employees**, an independent **mid-term EEO review** of your last two EEO public file reports by the FCC will occur in connection with the 2022-23 EEO public file report due June 1, and when uploading the report, indicate that the SEU has 11 or more full-timers using the "Mid-Term Review" tab in the OPIF settings section. If the SEU has **between five and ten full-time employees**, when uploading the 2022-23 report, indicate that the SEU has fewer than 11 full-timer employees using the "Mid-Term Review" tab in the OPIF settings section (by doing so, no mid-term review of the SEU will take place).

June 8, 2023

Deadline for radio and television stations identified in the FCC Enforcement Bureau's April 24, 2023 announced [audit](#) to upload audit responses to the public file.

June 13, 2023

Deadline to file reply comments in the FCC's Low Power Protection Act rulemaking.

June 14, 2023

Deadline to file reply comments in the FCC's FY 2023 Annual Regulatory Fees rulemaking.

July 10, 2023

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete and upload to online public file the 2nd Quarter 2023 issues/program lists and any foreign sponsorship identification reports.

Class A TV Stations Only: deadline to complete and post to your online public file the 2nd Quarter 2023 certification of ongoing Class A eligibility.

Noncommercial Broadcast Stations: deadline to complete and post to your online public file the 2nd Quarter 2023 report for any 3rd Party Fundraising conducted during the quarter.

August 1, 2023

Radio and TV stations located in North Carolina, South Carolina, Illinois, Wisconsin, and California: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from August 1, 2022 – July 31, 2023, upload it to the station online public inspection file and post it on the station website.

Mid-Term EEO Review for Radio stations located in North Carolina and South Carolina: if station employment unit has **eleven (11) or more full-time employees**, an independent **mid-term EEO review** of your last two EEO public file reports by the FCC will occur in connection with the 2022-23 EEO public file report due August 1, and when uploading the report, indicate that the SEU has 11 or more full-timers using the "Mid-Term Review" tab in the OPIF settings section. If the SEU has **between five and ten full-time employees**, when uploading the 2022-23 report, indicate that the SEU has fewer than 11 full-timer employees using the "Mid-Term Review" tab in the OPIF settings section (by doing so, no mid-term review of the SEU will take place).

October 1, 2023

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

Deadline for all **Full Power Commercial and Noncommercial Television** stations to place/confirm their 2024-26 carriage election statement in the public file (and if applicable, email the election to any MVPD providers for which carriage is initially being sought) **and** deadline for all **Class-A and Low Power Television** stations eligible for mandatory carriage to send notice of their 2024-26 carriage election via email to MPVD providers.

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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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