



# Broadcast Newsletter

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## **FCC ADOPTS NEW TELEVISION ATSC 3.0 PROPOSED RULES**

In a [3<sup>rd</sup> Report & Order](#), the FCC has largely adopted its proposed rules for the ongoing ATSC 3.0 “Next Gen” television conversion. Among other actions, the R&O extended for four years, through July 17, 2027, the existing rule requiring that ATSC 1.0 “Lighthouse” signals contain programming “substantially similar” to a station’s ATSC 3.0 primary video stream, as well as the current A/322 standard for new ATSC 3.0 transmissions.

The FCC also decided that ATSC 3.0 stations airing multicast streams on other stations in a market can seek to modify their licenses to include, for regulatory compliance purposes only, programming streams being hosted by other stations on the ATSC 3.0 originating station’s license. Currently, multicast streams aired on other stations remain the responsibility of host stations under currently regulatory structures, although contractual arrangements typically specify obligations for the originating station to ensure compliance and indemnify the host station in the event of non-compliance.

## **FCC ANNOUNCES NOVEMBER 2023 LPFM FILING WINDOW**

In a brief public [notice](#) issued June 22, 2023, the FCC’s Media Bureau announced a November 1-8, 2023 filing window for new Low Power FM (LPFM) station construction permits, stating that more details will follow in coming weeks. LPFM is a noncommercial radio service, but they can operate and applications can be filed for spectrum throughout the entire FM band (channels 201-300).

During the window, applicants will have to file Form 2100, Schedule 318 to express an interest in an LPFM permit. Mutually exclusive applicants will be decided on the NCE points system, and rely on point claims in submitted applications. Numerous decisions from the 2021 full power FM noncommercial filing window have provided helpful interpretations of the FCC’s policies governing points decisions.

Part of the reason the Bureau announced this window so early is for potential applicants to perform due diligence and retain engineering or other assistance well in advance of the filing window. While there are many vendors claiming to provide necessary engineering services for these types of applications, we encourage applicants to move early in retaining well-qualified and experienced engineers – inaccurate data or calculations create legal challenges, add cost to LMS to allow loading of applications by late August so that application drafts can be prepared and completed before the filing window.

As with other noncommercial filing windows, applicants cannot improve their points position after the filing window closes. Applicants should carefully scrutinize application responses and required exhibits to ensure there are no errors.

We anticipate a public notice with substantial details and information in the coming weeks. In the interim, we encourage potential applicants to review the FCC's [2019 Report & Order](#) modifying the rules and procedures for filing LPFM applications and selecting and licensing competing LPFM applications. Though not a definitive indicator of spectrum availability, the FCC still has an LPFM Channel Finder [link](#) which can be a helpful initial tool.

## **NORTH AND SOUTH CAROLINA RADIO STATIONS UP NEXT FOR EEO MID-TERM REVIEWS**

The FCC has begun EEO reviews at the mid-point of station license terms, starting with radio stations. In a [public notice](#) marking the start of the process, the FCC previewed how the process will work and the schedule for these reviews over the next four years. Radio stations in North and South Carolina are up next, with reviews occurring on or about August 1<sup>st</sup>.

Mid-term EEO reviews are required by the Communications Act and Section 73.2080(f)(2) of the FCC's rules 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 radio station employment units with five or more full-timers, the station online public file contains 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 HEARINGS COMPLETE; TIMELINE FOR VOTE UNCERTAIN**

The US Senate's Commerce Committee recently held a hearing on Anna Gomez, President Biden's nominee for the vacant fifth FCC Commissioner seat. The same hearing addressed the renominations of sitting FCC Commissioners Geoffrey Starks and Brendan Carr for renewed five-year terms. Questions were asked about the FCC's recently terminated broadcast license assignment proceeding involving Standard General's proposed acquisition of TEGNA.

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. Though there has been some suggestion that the Gomez nomination could be approved as early as July, the timeline remains unclear.

## FCC ONLINE FILING SYSTEMS HICCUP

In the latest glitch involving FCC online filing systems, the FCC's Universal Licensing (ULS), Antenna Structure Registration, Tower Construction Notification, and E-106 filing systems took an operational nap starting on the evening of June 9 until resurfacing eleven days later on June 21.

The FCC issued a notice on [June 13<sup>th</sup>](#) about the outages, extending certain filing deadlines. A new notice came out on [June 21<sup>st</sup>](#) announcing that operations had been restored, and extending all regulatory filing deadlines until Friday, June 30, 2023, longer than originally announced. If you attempted a filing during these down periods and are uncertain of whether filings have now been timely made, please contact us for assistance.

Without any public notice, the FCC's Licensing Management System (LMS) also had a serious 4-5-day period when documents could not be uploaded to applications, and therefore could not be completed and filed. The FCC displayed a banner when LMS users logged in, but the banner only stated that the FCC was experiencing issues with document "downloads" from LMS. This issue has now been rectified.

## DATES TO REMEMBER

### July 10, 2023

**TV, Class A, AM & FM Stations (commercial & noncommercial):** deadline to complete and upload to online public file the 2<sup>nd</sup> 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 2<sup>nd</sup> Quarter 2023 certification of ongoing Class A eligibility.

**Noncommercial Broadcast Stations:** deadline to complete and post to your online public file the 2<sup>nd</sup> Quarter 2023 report for any 3<sup>rd</sup> 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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