



Broadcast Newsletter

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MARCH 11 COMMENT DEADLINE FOR APPLICATION PRIORITIZATION RULEMAKING

The FCC has announced March 11 as the deadline for filing comments in the pending [Notice of Proposed Rulemaking](#) proposing an application prioritization rule based upon applicants certifying that they air certain amounts of local programming.

The FCC's announced goal with the proposed rule is to incentivize stations to support "local journalism" and provide programming that responds to the needs and interests of the communities they are licensed to serve. However, the rule would only apply to "non-routine" or "complex" renewal, assignment and transfer of control applications. A "complex" application with a local programming certification would be prioritized over a "complex" application without one. Whether to provide the certification in these applications will be left to broadcast station discretion. The NPRM also seeks comment on how to define local programming and how much local programming would have to be aired before a certification can be made.

Reply comments are due April 8, 2024.

FCC MOVES AHEAD WITH REINSTATING EEO FORM 395-B FOR BROADCAST STATIONS

By a 3-2 vote, the FCC adopted a [Report & Order](#) reinstating EEO Form 395-B to collect race, gender and ethnicity of broadcast station employees. The form was thrown out as unconstitutional over 20 years ago when the data was used to enforce hiring quotas, and then suspended after another court rejected the FCC's attempt to reinstate it as part of its new EEO broad outreach rules. The FCC majority reinstating the form this time noted that it would not be used to enforce the FCC's employment nondiscrimination and EEO requirements, but only to analyze industry trends and report to Congress.

The two dissenting Commissioners did so because the data being collected was being made public, essentially creating a “scorecard” of a station’s employee makeup that would put pressure on stations to make diverse hires. Commissioner Carr’s [dissent](#) offers a synopsis of the Constitutional law issues that could form the basis for a legal challenge to the reinstated rule. Commissioner Simington’s [dissent](#) focuses on his position that the FCC’s mandate goes beyond its authority.

We would not be surprised to see a legal challenge to the FCC’s decision, but even if that occurs, the likelihood of the new filing requirement being stayed is very dependent upon the judge appointed to hear the case. Broadcast stations or station employment units with five or more full-time employees (30 hours/week) should, therefore, add September 30, 2024 to their calendars as a filing deadline. The form is being revised, and the Media Bureau will issue a public notice when the form is available in LMS for preparation and filing. Stations must use a payroll period in the months preceding the filing deadline.

LOW POWER FM WINDOW APPLICATIONS BEING PROCESSED

On February 1, the Media Bureau issued a [public notice](#) announcing the procedures being followed in processing the 1,336 low power FM applications filed during the early December 2023 filing window. The notice provides important details about singleton and mutually exclusive applications, amendments, and settlement agreements, including the timing for certain of those actions. Singleton applications have already been placed on public notice, and permits for those should be issued in the next few weeks.

A number of objections have been filed by an individual named Albert Adam David. Many of those relate to whether an officer of the applicant signed the application. Those may slow the processing of both individual and mutually exclusive applicants.

EEO MID-TERM REVIEWS FOR TV STATIONS START SOON

The FCC’s rule requiring a mid-term review of EEO compliance for broadcast stations kicked in last June 1 for radio stations and will begin this June 1 for television stations. Since license renewals are staggered by state over a three-year period, with radio starting first, and TV a year later, the mid-term review occurs using the same staggered schedule.

Licenses are issued for eight-year terms, and the mid-term review occurs four years after the deadline stations last had to file their license renewal application. On June 1, 2024 the first television stations (those in Washington DC, Maryland, Virginia and West Virginia), will begin the cycle of TV stations having a mid-term EEO compliance review.

Unlike radio stations, where a mid-term EEO review is triggered for stations or station employment units with 11 or more full-time employees, the trigger for TV stations is only 5 or more full-time employees. Radio stations have to tell the FCC in their online public files if they have 11 or more full-time employees, but that is not necessary for TV stations since the FCC can tell if a TV station has five or more full-time employees by noting whether the station uploads an annual EEO public file report which has the same employee threshold.

Stations do not have to submit anything to the FCC for the EEO mid-term review to take place. The staff begins their reviews automatically, and only contacts the station if it needs more information to evaluate compliance. If a review occurs, and nothing is amiss, the station will not receive or hear anything from the FCC.

DATES TO REMEMBER

March 11, 2024

Deadline for comments in the FCC’s Application Prioritization rulemaking

Deadline for all broadcast stations with SAGE EAS Equipment to prioritize the CAP-enabled emergency alert message if one is received

April 1, 2024

Radio and TV Stations located in Indiana, Kentucky, Tennessee, Texas, Delaware & Pennsylvania: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from April 1, 2023 – March 31, 2024, 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 Indiana, Kentucky and Tennessee: 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 2023-24 EEO public file report due April 1, and when uploading the report, stations must 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 2023-24 report, station should indicate that the SEU has fewer than 11 full-time 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)

April 10, 2024

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete and upload to online public file the 1st Quarter 2024 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 1st Quarter 2024 certification of ongoing Class A eligibility

Noncommercial Broadcast Stations: deadline to complete and post to your online public file the 1st Quarter 2024 report for any 3rd Party Fundraising conducted during the quarter

June 1, 2024

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, 2023 – May 31, 2024, 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 Michigan and Ohio: 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 2023-24 EEO public file report due June 1, and when uploading the report, stations must 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 2023-24 report, station should indicate that the SEU has fewer than 11 full-time 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)

Mid-Term EEO Review for Television stations located in Washington DC, Maryland, Virginia and West Virginia: if station employment unit has **five (5) 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 your upload of the 2023-24 EEO public file report due June 1. By uploading an EEO public file report, the FCC automatically knows that your television station meets the 5 or more full-time employee threshold for a mid-term review. There is therefore no OPIF mechanism available or needed to specify how many employees the SEU has

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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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