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Broadcast Newsletter

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APRIL 2024

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FCC ALLOWS FM BOOSTER STATION "GEOCASTING"

Just over four years after the original petition for rulemaking was filed in March 2020, the FCC agreed in early April 2024 to allow FM booster stations to broadcast 3 minutes of programming per hour that is different from their primary station. The new policy will allow targeted advertising or programming in the particular part of the primary station's coverage area where the booster is authorized.

The specific application and processing rules for program-originating FM booster stations are not yet in place, and in the same action, the FCC initiated a further notice of proposed rulemaking to decide how to authorize new FM booster stations. The notice proposes to allow applications for new program-originating FM booster stations on a first-come, first-served basis, but requests comment on how to resolve mutually-exclusive applications. The FCC also proposes allowing existing FM booster stations to begin program origination by filing a formal notification at least 15 days in advance, and halt program origination via a notification filed at least 30 days after suspending operations. Program originating FM boosters would not be allowed to operate when their primary station is not operating. The FCC also wants input on its proposal to limit each full power FM station to only 25 program originating boosters.

Further comments are requested on the FCC's proposal to allow program-originating FM booster stations to cause "limited" interference to its primary station, on whether the booster station's signal must be synchronized with the primary station, on EAS alerts retransmission requirements, on a proposal to require a booster station to maintain a political folder in the primary station's online public file for any advertising exclusively accepted and aired on the booster station, and on whether program-originating boosters should be prohibited from airing content prohibited on the primary station (i.e., a noncommercial primary station airing commercial content on a booster).

Comments are due May 16 and reply comments by June 17.

FCC Launches Review of Video Marketplace and Restrictions on Independent Video Programming

In a wide-ranging Notice of Proposed Rulemaking, the FCC is examining and seeking information on various practices in the video marketplace that may be stifling the distribution and availability of independent programming, including non-network affiliated television broadcast stations. In particular, the FCC is seeking comment on whether independently programmed television stations are facing obstacles to securing carriage on cable and other multi-channel video programming distributors (MVPDs).

In the rulemaking proceeding, the FCC proposes to prohibit two types of contractual provisions in program carriage agreements between independent programmers and MVPDs -- most favored nation (MFN) provisions, and unreasonable alternative distribution method (ADM) provisions – and seeks comment on its authority to do so.

Random EEO Audit Responses Due May 6

May 6th is the response deadline for those broadcast stations included in the FCC's March 22, 2024 public notice commencing a random audit of radio and television station EEO compliance over the past two years. Approximately 250 stations were included on the audit list. Every station in the station employment unit must upload the audit response to their online public file. The online public file has an EEO section that includes a "EEO Audits" subfolder where audit materials are to be uploaded.

We anticipate a second random EEO audit of broadcast stations this summer, with approximately another 250 stations included. EEO compliance is a "hot" item at the FCC these days. All stations should ensure that they are following all requirements, periodically reviewing their EEO program, and where applicable, documenting outreach and recruitment efforts.

FCC Fines TV Station for Children's TV and Public File Violations

In the most recently concluded television station renewal cycle, rule violations were often addressed in consent decrees requiring stations to adopt compliance plans, but often avoiding monetary fines. A few days ago, the FCC issued a Notice of Apparent Liability for $3,000 to a Class A TV station licensee that violated the FCC's children's television and issues/programs reporting requirements.

One quarterly issues/programs list was uploaded over four years late. The licensee explained that it had acquired the station at the end of that calendar quarter, and only programmed the station for the last two weeks of the quarter. The FCC rejected that excuse, noting that the licensee should have timely uploaded the list covering the programming during that two-week period.

The licensee also self-reported in its renewal application that it had now timely filed six children's television reports prior to 2019 when the report was required to be filed quarterly. Three were filed one year late, two were filed one year and a month late, and one was one day late. The licensee claimed that it had misunderstood the rule and believed that it was not required to file children's television reports. The FCC rejected the argument, finding that lack of knowledge was no excuse for the violations.

The FCC could have fined the station substantially more but, based on various factors, concluded that a $3,000 fine was appropriate. The station's license renewal application will remain pending and not be granted until the forfeiture is paid or the proceeding otherwise concluded.

All broadcast stations should take note that any late filings or public file uploads are significant matters before the FCC, risking fines and renewal application grant delays. The FCC's online public file uploads bear date-time stamps, so there is no way to escape scrutiny for late uploads. The same applies for FCC application filings that automatically appear in the public file (i.e., children's television reports). If your station does not have a built-in cross check to ensure timely filings and uploads, we recommend you implement one now.

Comment Deadline Extended for Broadcast Station Mandated Emergency Operational Outages Reporting

Comments can now be filed through May 13th in the FCC's rulemaking proposing to change from optional to mandatory broadcast station operational status reporting during emergencies. Currently, stations have the option of reporting status during disasters using the FCC's Disaster Information Reporting System (DIRS). If adopted, the new rule would require stations affected during or within a certain range of disasters to file reports in both DIRS and in the Network Outage Reporting System (NORS).

The new requirements would improve government reporting on disaster impacts as well as the funneling of government assistance to affected stations. The reply comment deadline was also extended, and is June 12.

Noncommercial Station Enters Consent Decree for Airing Commercials and Not Identifying Program Sponsors

A New York noncommercial radio station facing a petition to deny, several informal objections to its license renewal application, and the FCC's inquiries and investigation of alleged rule violations has entered into a consent decree agreeing to pay a fine of $25,000, implement a comprehensive compliance plan with annual compliance reports, and receive a short-term, 2-year license renewal.

The petitions and objections raised issues with three programs repeatedly aired by the station that contained comparative/qualitative descriptions, price information, calls to action, and inducements to buy products or services provided by program guests. Either the program host or guest created the products and services being promoted, which were related to the topics of their program discussions and interviews. The FCC cited to https://enterpriseefiling.fcc.gov/dataentry/public/tv/pleadingDetails.html?pleadingFileNumber=0000189933 of the programs filed in the renewal application proceedings. In addition to violating the FCC's non-commercialization policies for NCE broadcasters, the FCC concluded that the station failed to properly identify programming sponsors under the Sponsorship ID rule.

While it has become more infrequent for the FCC to issue outright notices of apparent liability to NCE stations for violations of these rules, this case demonstrates the potential risks for not policing program content. Noncommercial broadcasters cannot air commercial advertising, defined as material broadcast for any remuneration intended to promote any service, facility, or product of for-profit entities. Contributors of funds to noncommercial stations can receive on-air acknowledgments that identify, but do not promote, the contributor's products, services, or businesses. Promotion occurs when material includes comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.

Dates to Remember

May 6, 2024

EEO Random Audit Response Deadline for stations identified in the FCC's EEO Random Audit Public Notice issued March 22, 2024

May 16, 2024

Deadline to file comments in the FCC's FM Booster Geocasting FNPRM.

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, each station in the SEU must indicate that the SEU has 11 or more full-timers using the "Mid-Term Review" tab is the OPIF settings section. If the SEU has **between five and ten full-time employees**, when uploading the 2023-24 report, each station in the SEU 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. Therefore unlike for radio, there is no OPIF

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