



Broadcast Newsletter

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FCC AMENDS AND CLARIFIES FOREIGN SPONSORSHIP IDENTIFICATION REQUIREMENTS

In a long-awaited decision that followed a 2022 effort to impose new foreign sponsorship identification requirements on broadcasters, and a legal challenge that followed it, the FCC has now issued a [Report & Order](#) that amends and clarifies the existing rules. One clarification related to short-form advertising was not contemplated by the FCC in its rulemaking proceeding and will likely result in a new legal challenge to the rules.

The Order first addresses a ruling by the U.S. Court of Appeals for the District of Columbia Circuit that vacated the 2022 rule requiring broadcasters to check U.S. databases as part of foreign sponsorship identification requirements. That verification requirement has now been replaced with an approach that gives broadcast licensees two options for demonstrating that they have met their duty of inquiry in seeking to obtain the information needed to determine whether the programming being provided by a lessee is sponsored by a foreign governmental entity. The first option is the use of FCC-provided short certification statements (or your own) that both stations and programmers would have to sign. The second option is for the programmer to provide printouts of their own FARA database search showing that they are not registered. While stations would have to maintain records of their inquiries, the FCC decided against adopting its earlier proposed requirement for stations to upload certifications of non-foreign status to the station online public file.

The FCC's Order also took an unusual step in seeking to clarify its earlier use of the term "short-form advertising" as being exempt from foreign sponsorship ID requirements. Instead of leaving broadcasters with some discretion, it significantly narrowed exempt advertising by determining exemption based on whether an advertisement falls with another section of the general sponsorship ID rules (where the sponsor is clear from the use of the advertiser's name or product). The FCC also clarified that political candidate ads would be exempt from foreign sponsorship identification

requirements, but that issue ads and paid public service announcements would not be exempt. The parts of the decision about advertising will likely draw a legal challenge, since the FCC had not forecasted in the rulemaking that it intended to narrow the types of advertising that are exempt from the rule.

The FCC also decided against creating a blanket exemption for religious programming or locally produced/distributed programming, but did clarify that programming on noncommercial educational stations is exempt because of the existing restriction prohibiting leased airtime on NCE stations (such stations are instead allowed to charge an amount to program providers based upon station operating costs).

The open question about this latest FCC Order is whether it will be legally challenged, and if so, whether some or all of the rule changes go into effect or are halted by a court.

Currently, based on earlier-adopted foreign sponsorship identification rules, commercial stations should be documenting inquiries to paid programmers to confirm that they are not foreign entities or sponsors, and retaining that documentation. In the event a programmer is in fact foreign or foreign-sponsored, the program can still air, but an on-air and public file disclosure must be made. If your station has questions on what is currently required, please contact us.

FCC ADMONISHES STATIONS FOR MISSING ADVERTISING NONDISCRIMINATION CLAUSES

Sixteen years ago, the FCC [adopted](#) a rule prohibiting stations from discriminating in advertising contracts on the basis of race or ethnicity, requiring that ad contracts contain nondiscrimination clauses. At the time, the Commission had become aware that certain advertising sales practices on commercial stations allowed advertisers to prohibit their ads from airing on stations targeting certain demographics. For example, some advertising contracts contained “no urban/no Spanish” clauses intended to minimize the proportion of African American or Hispanic

customers patronizing an advertiser’s venue, or that presumed that African Americans or Hispanics could not be persuaded to buy an advertiser’s product or service.

The new advertising non-discrimination rule came with an added requirement for commercial station licensees to certify on their license renewal applications that their advertising practices did not discriminate on the basis of race or ethnicity, and that their advertising contracts contained nondiscrimination clauses. Instances where the FCC had to take enforcement action about this rule have been few and far between, with stations regularly certifying to full compliance in their license renewal applications.

Fast forward to now. About two weeks ago, the FCC [admonished](#) a commercial television station for violating the rule when the station could not certify in its 2021 license renewal application that it had included non-discrimination clauses in its ad contracts. The station did clarify that it did not discriminate in advertising on the basis of race or ethnicity, but stated that it had only begun including nondiscrimination clauses in ad contracts “going forward.” The FCC considered that it had been presented no evidence that the station had engaged in discriminatory practices, and so admonished the station instead of issuing a monetary forfeiture. But the station’s license renewal was held up for three years in the process. Two other stations were admonished for similar violations.

Can you remember the last time you checked your station’s ad contracts to be sure that they include non-discrimination language, or added that language to the email signature block of your advertising reps in those instances when a formal ad “contract” is not being signed?

Is your ad contract nondiscrimination clause explicit and always present? Double check so you can be confident in making the required certification for your station’s entire 8-year license term when you file the station’s next license renewal application. If you need an example, here’s one: “In accordance with Paragraphs 49 and 50 of the FCC’s Report and Order No. FCC 07-217, this station is prohibited from and does not discriminate or allow

discrimination in any contract for advertising on the Station based on race or ethnicity, and all advertising aired pursuant to this agreement is evaluated, negotiated, and completed without regard to race or ethnicity.”

UPDATE ON EEO 395-B FILING MANDATE

The FCC’s Order reinstating the EEO Form 395-B filing requirement for broadcasters became effective June 3, 2024, but the Media Bureau has not yet issued the public notice announcing that stations must file the form by September 30th of this year. Given the status of legal challenges to the new mandate and that the form itself and its instructions are still being finalized, time appears to be running out on the prospect of stations having to file the form this fall. If the Media Bureau’s public notice isn’t issued in coming weeks, stations would not be obligated to file the form until September 2025.

In addition to the petitions for review that were filed in the US Court of Appeals (District of Columbia) by the National Religious Broadcasters and in the US Fifth Circuit Court of Appeals by the Texas Association of Broadcasters, the NAB has now filed its on petition for partial reconsideration with the FCC arguing, among other things, that the FCC lacked authority to reimpose the form for radio stations.

WHAT BROADCASTERS SHOULD EXPECT IN THE SECOND HALF OF 2024

There’s been plenty to write about in the first half of 2024 when it comes to broadcast regulation. From the ordinary to the new, here’s what to look for in the second half of 2024.

On the “ordinary” side, it is quite possible that there will be a scheduled National EAS test this fall where all stations with EAS equipment will need to file one form before the test, and two after the test. An annual test is not mandated but is often scheduled. Be sure your equipment’s software is up to date.

For all commercial stations, annual regulatory fees will be due in the second half of September.

Regulatory fee amounts have been [proposed](#) and appear to once again be lower overall. Adoption of the new regulatory fees normally occurs late-August.

There is still a possibility that broadcast stations with five or more full-time employees will have to file the new Form 2100, Schedule 395-B by September 30th reporting on workforce race, gender and ethnicity. The Media Bureau is going to issue a new public notice if that filing becomes necessary. Litigation and form approvals may end up making that announcement impossible, in which case the earliest that stations would have to submit the report would be a year later in September 2025 (see our article elsewhere in this newsletter).

The new form is different from station EEO public file reports, which are still due for stations or station employment units with five or more full-timers on the anniversary of the date the station would file its renewal application. Forgetting to upload that report to the station public file and on the station website has resulted in large fines, so be vigilant. Upcoming deadlines for this report vary by state and are covered in our dates to remember at the end of the newsletter.

There are no biennial ownership reports due this fall – those won’t be due until fall of 2025.

On the “new” regulatory horizon, we’re expecting a proposed rulemaking on whether the FCC should require broadcasters to include disclosures in political ads when they contain AI-generated content, teeing up another contested issue for decision. The FCC’s May 22nd [news release](#) provided some details.

August 20th will mark the first day that Class A, LPTV and TV Translator Stations can file channel-change major modification applications. Details were [announced](#) in late-May. Channel change applications will be processed on a first-come, first-serve basis and will be “cut off” daily for purposes of determining mutual exclusivity. Working on these applications early is the key to getting filed on the first day.

Late in the year, we may see a Report & Order in the FCC’s [rulemaking](#) proceeding to impose new

rules or make tweaks to current FCC regulations applicable to Class A and Low Power TV stations. The comment cycle will be complete by late-August (see our article elsewhere in this newsletter).

The FCC's new recently-[adopted](#) foreign sponsorship identification rules will likely take effect this fall, unless a further legal challenge prevents the FCC from imposing the new requirements. The new requirements applying the rules to issue advertisements could make life difficult for broadcasters during election season this fall.

FCC ISSUES 2023 NATIONWIDE EAS TEST REPORT

On June 27, 2024, the FCC's Public Safety and Homeland Security Bureau issued a [report](#) on the outcome of the 2023 Nationwide EAS Test. There was significant improvement in the reception and retransmission rates of the test due to use of the Common Alerting Protocol (CAP), which was more reliable than over-the-air methods. More test participants reported equipment configuration issues and equipment failures than in previous tests. About 23% of EAS equipment units were either using outdated software or equipment no longer supported by software updates. Five of the six poorest-performing geographic regions were territories of the United States.

The Bureau's report recommends that the Commission adopt rules to improve the operational readiness of EAS Participants, as well as to ensure that EAS Participants are installing software updates in a timely manner and have plans for replacing equipment that is no longer supported by the manufacturer. In addition, the Bureau recommended actions that EAS Participants should take to improve the reliability and reach of the EAS.

A National EAS Test for this year has not yet been announced, but stay tuned, as those announcements usually come mid-to-late-summer.

FCC PUSHES FORWARD WITH CLASS A TV | LPTV RULEMAKING

The FCC has [adopted](#) a rulemaking to overhaul its Class A, low power television and television

translator rules, and [announced](#) a July 29th deadline to file comments in the proceeding. The scope of the rule changes is broad, and several new rules are proposed.

The rulemaking considers requiring certain LPTV stations to maintain an online public inspection file and adopting procedures for establishing one. Related to that rule change is another one that would specify public inspection and political broadcasting requirements applicable to all LPTV stations.

On the technical side, the NPRM seeks to amend the method for calculating the maximum distance that a displaced or channel sharing station may move under the LPTV/TV translator displacement rule, revising the LPTV/TV translator minor change rule to clarify the maximum distance that Class A and LPTV/TV translator stations may move. Changes to the timing and triggers for displacement applications are also proposed. Another rule change would prohibit LPTV/TV translator station operations above TV channel 36.

DATES TO REMEMBER

August 1, 2024

Radio and TV Stations located in Illinois, Wisconsin, California, North Carolina and South Carolina: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from August 1, 2023 – July 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 Illinois and Wisconsin: 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 August 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 in 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 North Carolina and South Carolina:** 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 August 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. So unlike for radio, there is no OPIF mechanism available or needed for TV stations to specify the number of SEU employees

August 20, 2024

First Day for Class A TV, LPTV and TV Translator Stations to begin filing “first-come, first-serve” channel change applications pursuant to the Media Bureau’s decision to lift the filing freeze for certain major modification applications

September 2024

All commercial broadcast stations (unless exempt) will have to pay annual regulatory fees once the FCC issues the order and related public notices. Typically, the deadline to pay falls in the last third of the month. Failure to timely pay regulatory fees results in an automatic fine equal to 25% of the owed fee.

October 1, 2024

Radio and TV Stations located in Florida, Puerto Rico, Virgin Islands, Iowa, Missouri, Alaska, American Samoa, Guam, Hawaii, Marianas Islands, Oregon and Washington: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from October 1, 2023 – September 30, 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 Iowa and Missouri:** 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 October 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 in 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 Florida, Puerto Rico and the Virgin Islands:** 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 October 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. So unlike for radio, there is no OPIF mechanism available or needed for TV stations to specify the number of SEU employees

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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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