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## **FCC LOSES LEGAL CHALLENGE TO REINSTATED EEO FORM 395-B**

In a May 19<sup>th</sup> [decision](#) that may well have other repercussions for FCC authority, the US Fifth Circuit Court of Appeals has overturned the FCC's decision to reinstate the EEO Form 395-B to collect gender, race and ethnicity information about broadcast station workforces. The FCC will not appeal the decision. As a result, the prospect of having to complete and file the form to publicize employment workforce information is something stations no longer have to plan for or worry about.

When the case was briefed during the prior FCC administration, five different arguments were made to defend reinstatement of the form. The Court only dealt with the first one, where the FCC argued that it had statutory authority to collect the employment data but cited legislation tied to earlier legal actions overruling sections of the FCC's EEO rules. Because the Form 395-B data collection derived from those previously overturned rules, the Court found here that the EEO 395-B data collection was unlawful because it was beyond the FCC's statutorily granted authority.

In tossing out the Form 395-B, the Court clarified that the FCC's "public interest" standard was not some unfettered right for the FCC to set policy and rules but could only properly be employed in executing actions based on specific granted Congressional authority. The impact of that finding could have far-reaching implications for many FCC actions and cause the agency to examine its ability to continue enforcing some rules or policies.

While not focused on gathering the same data, other FCC EEO rules requiring the public reporting of job vacancy outreach, recruiting and hiring might also be scrutinized as being beyond the FCC's scope of authority in the EEO arena. Further legal challenges an action by the FCC on its own motion could put other EEO requirements into a permanent trash bin. We note that the current EEO rules and employment information gathering are the subjects of the FCC's "Delete, Delete, Delete" proceeding and many licensees have called for their elimination.

## INEVITABLE CHANGE

The FCC has been flooded with comments from broadcasters and others in its *Delete, Delete, Delete* proceeding, and we're watching closely to see how they move forward given that many requests for rule elimination or modification will require different approaches. One thing is clear - there are enough regulations that no longer make sense or produce their intended purpose or outcome, so change is inevitable. So, the only real questions that remain are which rules will change or be eliminated and how fast that will occur.

On the change front, the FCC's Media Bureau is apparently a prime candidate. FCC Commissioner Nathan Simington recently wrote an [article published in the Daily Caller](#) that called for staff reductions in the Media Bureau and changes to the FCC's licensing systems. Simington said the Commission was "entangled by outdated practices that burden consumers, broadcasters, and taxpayers alike." Simington and his new Chief of Staff Gavin Wax pointed to the Media Bureau as "overstaffed" with too many resources dedicated to traditional radio and TV broadcasters whose relevance is contracting in their view.

The Simington/Wax broadside didn't stop there. They criticized the Media Bureau's regulatory approach, claiming that "rather than confining itself to its core statutory mission of overseeing physical transmission infrastructure, the Bureau has strayed into content regulation and competition policy, particularly in areas that arguably fall outside the FCC's legal mandate." They also claim that enforcement is not politically neutral. Ultimately, they suggest that Media Bureau staffers should get moved to other Bureaus that are struggling with staffing such as the new Space Bureau.

As for the FCC's licensing systems, Simington and Wax called for automated workflows for non-contentious licenses, and abandonment of the current model requiring manual processing of all applications. Simplified application processing is not a new subject at the FCC, and we're in favor of any changes to application processing that remove the subtle staff "requirements that often change

from staffer to staffer or from one application to another.

## REPUBLICAN FCC MAJORITY

While his last official day has not been specified, Democratic FCC Commissioner Geoffrey Starks' announcement at the FCC's May Open Meeting that it would be his last meeting means that a Republican 2-1 majority at the FCC is imminent. The swearing in of Olivia Trusty, whose nomination as the third Republican appointed FCC commissioner has been approved in Senate committee but still needs a full Senate vote, would make it a 3-1 Republican majority.

We'll be watching for how soon FCC Chairman Carr moves on deregulatory efforts with the new majority. Many issues are "teed up" in the "Delete, Delete, Delete" proceeding, and could be ripe for quick action.

## DATES TO REMEMBER

### June 2, 2025

**Radio and TV Stations located in Michigan, Ohio, Arizona, Idaho, Nevada, New Mexico, Utah, Wyoming, Maryland, Washington DC, Virginia and West Virginia:** if five (5) full time employee threshold is met, prepare EEO public file report covering the period from June 1, 2024 – May 31, 2025, 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 Arizona, Idaho, Nevada, New Mexico, Utah and Wyoming:** 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 2024-25 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 in the OPIF settings section. If the SEU has **between five and ten full-time employees**, when uploading the 2024-25 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 Michigan and Ohio:** 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 2024-25 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 mechanism available or needed for TV stations to specify the number of SEU employees.

## June 6, 2025

**Deadline to file reply comments** in the ATSC 3.0 Transition NPRM

## July 10, 2025

**TV, Class A, AM & FM Stations (commercial & noncommercial):** deadline to complete and upload to online public file the 2<sup>nd</sup> Quarter 2025 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 2025 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 2025 report for any 3<sup>rd</sup> Party Fundraising conducted during the quarter

## August 1, 2025

**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, 2024 – July 31, 2025, 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 California:** 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 2024-25 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 is the OPIF settings section. If the SEU has **between five and ten full-time employees**, when uploading the 2024-25 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 Illinois and Wisconsin:** 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 2024-25 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. Therefore 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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