Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW

Broadcast Newsletter

www.hardycarey.com MAY 2024

IN THIS ISSUE:

LEGAL CHALLENGES FILED OVER EEO 395-B FILING MANDATE

The FCC's Media Bureau recently announced that the Order reinstating the EEO Form 395-B filing requirement for broadcasters was published in the Federal Register and will become effective on June 3, 2024.

In the days just before that announcement, two petitions for reconsideration of the Order were filed with the FCC, and separate petitions for review 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. While it is unlikely that the FCC's 3-2 majority will overturn its decision on reconsideration, the court actions may provide a mechanism to stay the filing requirement until legal challenges are complete. But that is certainly not a given. The FCC has filed a motion to consolidate the two legal proceedings.

The FCC's "effective date" announcement noted that because the form, as adopted, may contain new or modified information collection requirements, compliance with the Order's filing requirements will not be required until the Office of Management and Budget (OMB) completes review of any information collections required under the Paperwork Reduction Act. When that is complete, the Media Bureau will issue a notice announcing the date when broadcasters must begin complying with the filing requirement.

So, will stations have to file the form by September 30th of this year, as the rule requires? It's not out of the question. OMB review could go quickly, followed by the Media Bureau compliance notice. At that point, it would be up to a court action to halt the filing requirement, the likelihood of which depends upon several factors. So, stations with five or more full-time employees, or in a station employment unit with five or more, should preserve payroll data for a pay period in July, August, or September to be ready to report on the race, ethnicity, and gender of employees in the unit – just in case all approvals are received and legal challenges fail.

FCC Jumps into Political AI Content Arena

In a May 22nd news release, the FCC announced that FCC Chair Jessica Rosenworcel has circulated a new proposal with the other four FCC commissioners on whether the FCC should require broadcasters to include disclosures in political ads when they contain AI-generated content. Commissioner Carr immediately labeled the effort ill-advised and without authority, raising concerns that the effort would impose new regulation on broadcasters, but not online providers, and create an unlevel playing field.

The circulated proposal must come before the agency for a vote and, if approved, would commence a rulemaking proceeding with the receipt of comments from broadcasters and the public. Final action would follow, with a vote by the Commissioners on whether to approve any new AI disclosure regulations. Given the time constraints, new rules would likely not become effective to have any impact on national elections this fall.

The news release provides some details, indicating that a proposed rule would require an on-air disclosure and written disclosure in broadcasters' political files when there is AI-generated content in political ads. The disclosure requirements would apply to both candidate and issue advertisements. Defining AI-generated content – a complicated and nuanced issue -- would also be necessary.

The news release points to the Bipartisan Campaign Reform Act as providing the Commission with authority regarding political advertising, and protecting the public from false, misleading, or deceptive programming. State legislatures across the country have passed legislation addressing AI-content in political advertising, creating the potential for conflict between those laws and the FCC's requirements. Efforts to exclude broadcasters from liability under state laws could be frustrated by the FCC's disclosure requirements.

FCC Partially Lifts Filing Freeze for Class A, LPTV and TV Translator Stations

On May 28, 2024, the FCC's Media Bureau announced that beginning August 20, 2024, the current 14-year freeze on major modification applications by Class A television, low power television and television translator stations will be partially lifted to allow those stations to file channel change applications. Geographic changes greater than 30 miles will not be allowed until a future date.

The filing opportunity will allow stations that have not had an opportunity to change channels since prior to the Incentive Auction the ability to resolve viewer reception issues that cannot be resolved through means other than a channel change. It will also allow stations to improve television service to existing viewers prior to providing an opportunity for other major modifications, such as moving greater than 30 miles, or allowing interested parties to apply for new stations.

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. If two applications conflict with each other, applicants will be given an opportunity to resolve the conflict through settlement or engineering amendments during a specified filing window. Submitted applications with errors will have a one-time 30-day opportunity to amend, so long as new application conflicts are not created. Any application that fails to come into compliance will be dismissed.

Interested stations can begin working on channel change modification applications now in the FCC's Licensing Management System. Engineering consultants should be retained now to ensure that desired channel change application technical portions can be accurately and timely completed. A major change filing fee of $4,755 for Class A television channel changes, and $865 for LPTV and TV translator stations will apply. Applications filed will have to use the 2020 census numbers to compute interference, per a separately issued notice announcing that all applications filed on or after August 1, 2024 will be required to use the 2020 census numbers.

FCC Launches Proceeding to Overhaul Rules for Class A and Low Power TV Stations

At its June 6th meeting, the FCC is expected to adopt a proposed rulemaking to overhaul and adopt new rules applicable to Class A and low power television stations. A draft of the rulemaking has been made public, and two special dockets were created to receive any input before the June 6th scheduled vote. Actual new and changed rules would only be adopted after the FCC votes to approve the rulemaking, and receives comments from the public and broadcasters.

The proposed rule changes are significant and, in many cases, would alter the regulatory landscape for lower powered television stations. Possible rules include requiring certain LPTV stations to comply with the same online public file requirements applicable to full power and Class A television stations, making public inspection and political broadcasting rules applicable to all LPTV stations, changing minimum operating and video programming requirements for LPTV stations, imposing new requirements for changing a Class A or LTPV station's community of license, and changing numerous technical rules regarding operation of lowered powered television stations. Class A and LPTV station owners should pay close attention to this proceeding and consider weighing in with comments.

Dates to Remember

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. So unlike for radio, there is no OPIF mechanism available or needed for TV stations to specify the number of SEU employees.

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 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 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.

For more info, contact Joe Chautin or Mark Balkin.

Phone 985.629.0777

Fax 985.629.0778
www.hardycarey.com

Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW
1080 West Causeway Approach
Mandeville, Louisiana 70471-3036