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IN THIS ISSUE:

MEDIA BUREAU LAUNCHES SECOND RANDOM EEO AUDIT OF 2024 1

FCC FINES EXPN FOR FALSE EAS ALERTS 2

MEDIA BUREAU ANNOUNCES DECEMBER NCE-TV FILING WINDOW AND FILING FREEZES 2

DATES TO REMEMBER........................3

MEDIA BUREAU LAUNCHES SECOND RANDOM EEO AUDIT OF 2024

The FCC Enforcement Bureau issued an October 18th public notice announcing its second round of random broadcast station EEO audits. Approximately 150 broadcast radio and television stations are on the list, though some may be exempt as a result of being included in prior random EEO audits in the past two years. If your station is on the list, step one is to upload the audit letter to the station public file in the EEO section under the EEO Audits tab.

Responses to the audit are to be uploaded to the station online public file no later than December 2, 2024, although stations can request an extension if needed. An email to eb-eeo@fcc.gov is required along with a good cause showing. The Bureau is pretty prompt in responding to those requests, but until they do respond and grant more time, the prior deadline remains in effect.

Due to potential impacts from hurricanes Helene and Milton, stations in Florida, Georgia, North Carolina, South Carolina, Tennessee and Virginia who need more time to respond can simply use January 16, 2025 to respond in lieu of having to request additional time. If a station in those states has unique circumstances that makes even the January 16 deadline impossible, they should contact the Enforcement Bureau to discuss options.

As we've written before, full responses to a random EEO audit can take considerable time, so stations should start early. If errors to annual EEO public file reports are noted during preparation for a response, stations should not delete and upload a new report to the station public file, since that will result in the report appearing to have been uploaded late. Instead, upload an "amendment" document to make the correction. Good record keeping is the key to reducing the burden of responding to EEO audits.

Last month, we mentioned the scrutiny of the FCC staff during a mid-term EEO review, which applies to radio station employment units with 11 or more full-timers, or television station employment units with 5 or more full-timers. The same scrutiny applies to random EEO audits.

Stations receiving correspondence from the Enforcement Bureau requesting additional information or clarifications should respond promptly.

FCC Fines ESPN for False EAS Alerts

On October 17, 2024, the FCC announced that ESPN must pay a nearly $150,000 fine for including an EAS alert tone in commercials promoting the start of the NBA season a year ago.

The use of an actual or simulated EAS alert tone is prohibited in the absence of an actual emergency. On numerous previous occasions, the FCC has warned that the use of simulated or actual EAS tones for non-authorized purposes—such as commercial or entertainment purposes—can lead to "alert fatigue," causing the public to become desensitized to the alerts, or questioning or simply disregarding whether a particular alert is intended to warn about a real, imminent threat or some other cause. In addition, the misuse of simulated or actual EAS codes can result in false activations of the EAS that can spread false information or lock out legitimate activations of the EAS, threatening public safety.

Complaints to the FCC about the ESPN false EAS alerts prompted a formal FCC inquiry. In responding to the inquiry, ESPN admitted that a "brief, less than two second excerpt of the EAS Attention Signals, immediately followed by a . . . voiceover of a man who states, in an exaggerated, stentorian tone, that 'we interrupt our program to bring you this important message," had been transmitted a total of six times during a four-day period on two ESPN-owned networks. While ESPN admitted that "some members of the production team may have discussed the presence of the excerpt of the EAS Attention Signals in the Promo Spot, they did not comprehend that its use was prohibited, and that it was revisiting processes and reeducating personnel on the rules.

Interestingly, while the FCC did fine ESPN for six separate violations and included upward adjustments due to prior violations of the same rule and the number of people in the audience, it did not point to ESPN's failure to self-report the violations, which is also a requirement under the FCC's rules.

Media Bureau Announces December NCE-TV Filing Window and Filing Freezes

The FCC will accept applications from non-profit and governmental organizations for 12 noncommercial educational television station construction permits in Alabama, Alaska, California, Idaho, Iowa, New Mexico, Oregon, Texas and Virginia. The Media Bureau released a public notice on October 10th with application instructions and details on the FCC's points system for deciding among competing applicants.

The filing window will open at 12:01 a.m. EST on December 4 and closed at 6:00 p.m. EST on December 11, 2024. The application form is currently available in LMS so that applicants can begin preparing the application and the several exhibits that are necessary to be accepted for filing and included in the selection process.

Those thinking of applying should retain an experienced attorney and consulting engineer now to ensure that applications can be completed and submitted on time. The FCC's post NCE filing window decisions are rife with examples of applications that are incomplete and legally or technically insufficient for an applicant to be awarded a permit. A careful reading of the public notice and all footnotes is critical. Before submission, a careful re-reading of the public notice and cross-checking – preferably by more than one individual – is highly recommended, based upon our experience.

These filing windows always prompt filing freezes that impact other broadcasters. In this case, the FCC immediately stopped accepting petitions to amend the TV Table of Allotments for new reserved NCE TV channels on October 10th. In addition, it will stop accepting rulemaking petitions for full power TV stations to change channels, as well as both minor and major change applications for full power and Class A television stations, beginning at 12:01 a.m. EST on December 3, 2024 (one day prior to the start of the filing window) through the end of the filing window at 6:00 p.m. EST on December 11, 2024.

DATES TO REMEMBER

December 1, 2024

Radio and TV Stations located in Alabama, Georgia, Colorado, Minnesota, Montana, North Dakota, South Dakota, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from December 1, 2023 – November 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 Colorado, Minnesota, Montana, North Dakota and South Dakota: 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 December 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 Alabama and Georgia: 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 December 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

Full Power TV, Class A, and LPTV Stations: **Deadline** to file FCC Form 2100, Schedule G, and pay 5% of gross revenues from any ancillary or supplementary services provided between October 1, 2023 and September 30, 2024. NCE TV stations pay on 2.5% of gross revenue. Ancillary and supplemental services do not include free over the air video content, but do include computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, or audio signals, and subscription video. Stations that provided no such services do not have to file a report.

January 10, 2025

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete and upload to online public file the 4th 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 4th Quarter 2024 certification of ongoing Class A eligibility.

Noncommercial Broadcast Stations: deadline to complete and post to your online public file the 4th Quarter 2024 report for any 3rd Party Fundraising conducted during the quarter.

January 30, 2025

All Commercial Full Power and Class A Television Stations – deadline to complete and submit the 2024 children's television report in LMS ***and*** separately upload children's television commercial limits certifications for all of 2024 in the station online public file.

January 31, 2025

Web Streaming Stations: deadline to remit annual license fee and related statement of account with SoundExchange for the statutory license allowing streaming of sound recordings on the web. Payment can be made on SoundExchange's online filing portal "Licensee Direct."

For more info, contact Joe Chautin or Mark Balkin.

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