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

# Broadcast Newsletter

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## NEW CHAIRMAN MOVES QUICKLY ON SEVERAL FRONTS

New FCC Chairman Brendan Carr has had a very busy first eleven days in office, issuing a flurry of notices, announcements, letters and other statements.

In response to President Trump's Executive Order eliminating government diversity, equity and inclusion (DEI) initiatives and policies, Chairman Carr issued a public notice eliminating all FCC DEI initiatives undertaken by the prior administration. He stated that the FCC will be focused on its statutory mission without promoting invidious forms of discrimination. The FCC's existing EEO rules for broadcasters are not affected by the DEI policy elimination.

The Chairman also announced staff appointments, including his senior counsel for Media and Enforcement matters, Erin Boone. In a separate announcement, Carr named acting chiefs of the various FCC Bureaus and named Ms. Boone as acting Media Bureau Chief. She previously served as chief of staff for Republican Commissioner Nathan Simington.

Quickly following her appointment as Acting Media Bureau Chief, Ms. Boone issued orders reversing three decisions made by the Media Bureau in the final days of the prior administration -- a political advertising equal opportunities complaint, a news distortion complaint against a Philadelphia television station, and another against a New York television station. In each case, the basis for the reversal of the decision and reinstatement of the complaint was that there was not a sufficient period for investigating the complaint allegations. FCC Commissioner Gomez issued a statement opposing the complaint reinstatements.

Carr also sent a letter to PBS and NPR notifying them that he had requested the FCC's Enforcement Bureau, with assistance from the Media Bureau, launch an investigation to determine whether their stations are complying with the noncommercial nature of their licenses. In particular, the investigation will consider whether "NPR and PBS member stations are broadcasting underwriting announcements that cross the line into prohibited commercial advertisements.

The letter notes that the investigatory findings may be relevant to Congress' decision on whether to continue providing funds to the Corporation for Public Broadcasting, a percentage of which is received by NPR and PBS stations. As of this writing, the Enforcement Bureau had not yet initiated any proceedings. Commissioners Gomez and Starks issued statements opposing Carr's actions.

Carr also took other actions not affecting broadcasters, halting a rulemaking on internet bulk-billing for apartments or multi-tenant units.

## Olivia Trusty Nominated for FCC Commissioner

President Trump has nominated Olivia Trusty to fill the vacant FCC Commissioner position created by the resignation of Jessica Rosenworcel. Trusty's nomination has been praised by all four current Commissioners and numerous other government officials and individuals familiar with her experience. Trusty's prior experience as Senate Commerce Committee Policy Director provides her with unique insight to communication and technology issues. She currently serves on staff for the Senate Armed Services Committee.

Trusty's nomination must be approved by the Senate. The timing of hearings or a vote on her nomination is unknown.

## FCC LMS and Online Public File Systems Unreliable in Recent Filing Deadlines

At numerous points during the month of January, the FCC's online license management system (LMS) used in the filing and granting of applications and reports by broadcasters was either unavailable or operated with large latencies. As of this writing, the FCC had not extended any filing deadlines. The FCC's online public file (OPIF) system was also slow or unavailable. While slower functioning is usually experienced at peak times, the periodic unavailability of LMS and OPIF for multiple periods each day were very unusual.

All commercial TV stations had to draft and file annual children's television reports in LMS and upload annual children's television commercial limits certifications/documentation by January 30. Poor LMS and OPIF system performance directly hampered those efforts.

We learned for the first time in trying to obtain FCC action on pending applications that the FCC staff experiences these same interruptions in service. So, delays in application grants were also an outcome of these latest system glitches.

We've long said that the FCC should not make compliance more difficult or time-consuming. Unfortunately, that's exactly what happened in January.

If not addressed in the short- or long-term, broadcasters should continue to expect serious interruptions in LMS and OPIF when many stations face the same deadlines. Planning for and filing well ahead of deadlines is always recommended.

## AM Radio for Every Vehicle Act Introduced Again

Senator Ted Cruz has re-introduced the AM Radio for Every Vehicle Act in the US Senate, the latest attempt to pass legislation mandating that car manufacturers include AM radio access in vehicles. Despite bipartisan support, earlier attempts to pass the legislation have been hampered by other legislative priorities.

## TV Station Fined $369,190 for Failure to Participate in Nationwide EAS Tests

The FCC has fined a Texas television station $369,190 for failing to properly participate in nationwide EAS tests in 2018, 2019 and 2021. While the station had equipment installed, its employees were not familiar with the station's obligations or how the EAS equipment functioned. In an attempt to show compliance, they created and aired their own EAS alerts instead of properly receiving and retransmitting the distributed national EAS test alert message. The station made things worse by certifying that it had received and retransmitted the alerts in the EAS Test Reporting System.

The FCC does not conduct nationwide EAS Tests every year, but when they do, their notices announcing the test always contain a warning that stations not properly participating may be subject to enforcement action. However, we really have not seen such actions, thus far. In the case of this Texas TV station, the FCC decided to make a pretty good example.

Other fines may be in the works, but one thing is clear: EAS violations are serious matters, and compliance must be a top priority for stations to avoid potentially significant fines.

## FCC Application Fees Jump 17%

In an action mandated by Congress, the FCC published a January 7, 2025 order increasing FCC application fees based upon inflation and increases in the Consumer Price Index. These adjustments are required every two years. The application fee increase in 2022 was nearly 12%. For 2024, there is a 17% increase.

The new fee increase won't be effective until 30 days after it is published in the Federal Register. We have not seen that publication yet, but it should occur soon. If you are considering filing an application, you might want to do so sooner rather than later.

On January 3, 2025, the Enforcement Bureau issued a similar order increasing monetary fines to reflect inflation.

## FCC Publishes Seventh Report on Station Ownership

The FCC published its 7th Report on Ownership of Broadcast Stations, compiling data from biennial ownership reports filed by all broadcast stations every two years. The report reflects data on the gender, race, and ethnicity of broadcast station owners as of the 2023 biennial ownership report, and focuses on "attributable" and "majority" ownership interests. The data is sometimes used to inform FCC rulemaking efforts.

## Dates to Remember

**February 1, 2025**

**Radio and TV Stations located in Arkansas, Louisiana, Mississippi, Kansas, Nebraska, Oklahoma, New Jersey and New York:** if five (5) full time employee threshold is met, prepare EEO public file report covering the period from February 1, 2024 to January 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 Kansas, Nebraska and Oklahoma**: 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 February 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 Arkansas, Louisiana and Mississippi**: 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 February 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

**February 3, 2025**

Deadline for **affected commercial FM stations** to file requests for wavier of the FCC's FM Programming Non-Duplication Rule reinstated last June. Those filing waivers are in compliance until the FCC issues a decision on the waiver request. Absent a waiver filing, compliance by Feb 3 deadline is required.

**March 9, 2025**
Daylight savings time begins; AM daytime-only radio stations or those operating with pre-sunrise and post-sunset authority should check their licenses or PSRA-

PSSA authorizations to be sure they are operating during authorized hours

**April 1, 2025**

**Radio and TV Stations located in Indiana, Kentucky, Tennessee, Texas, Delaware, and Pennsylvania:** if five (5) full time employee threshold is met, prepare EEO public file report covering the period from April 1, 2024 to March 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 Texas**: 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 April 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 Indiana, Kentucky and Tennessee:** 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 April 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

**April 10, 2025**

**TV, Class A, AM & FM Stations (commercial & noncommercial)**: deadline to complete and upload to online public file the 1st 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 1st Quarter 2025 certification of ongoing Class A eligibility

**Noncommercial Broadcast Stations**: deadline to complete and post to your online public file the 1st Quarter 2025 report for any 3rd Party Fundraising conducted during the quarter



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