March 22, 2022

Legal Memorandum

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# Commission Announces First Round of 2022 EEO Audits;

# Responses Due by May 5, 2022

Approximately 200 radio stations, 80 TV stations, and their corresponding employment units will be part of the FCC’s first batch of EEO (“equal employment opportunity”) audits of 2022, according to a [Public Notice](https://protect-us.mimecast.com/s/6gK-C0RpB4t2DKyrhJRDYl?domain=docs.fcc.gov) (the “Notice”) issued yesterday. The Commission has already begun mailing audit letters to the selected stations; those stations must upload their audit responses by **May 5, 2022** to their online public inspection files (“OPIF”).

Per the Commission’s EEO rules, each year approximately five percent of all radio and television stations are randomly selected for EEO audits. Although audit letters are issued to individual stations, it’s important to note that an EEO audit applies to any and all stations in the identified station’s “employment unit.” Generally, any commonly owned stations in the same market that share at least one common employee are part of the same employment unit for FCC EEO reporting and audit purposes.

The form EEO audit letter describes, among other things, the specific data requested by the Commission, procedures for responding, and special circumstances for time-brokered stations, as well as limited exceptions pursuant to which broadcasters may be relieved of the requirement to submit a full audit response. The data requested in the audit letter is extensive, and stations identified in the audit will need to act promptly to respond. As with any government audit, consultation with counsel is advisable.

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# **TODAY, March 22, 2022:** Deadline for Reimbursement Submissions

# for Stations Repacked in Phases 6–10

**Today, March 22, 2022, is the reimbursement invoice submission deadline for all broadcasters who were assigned to repack Phases 6–10 and who are eligible for reimbursement as part of the now-concluded spectrum repack**. As we’ve previously written, the Commission [established](https://docs.fcc.gov/public/attachments/DA-20-1171A1.pdf) firm deadlines by which eligible broadcasters affected by the spectrum repack must submit any remaining reimbursement invoices and other necessary documentation. Deadlines vary based on stations’ assigned transition Phases, as well as by type of broadcast service, as follows:

* **Today, March 22, 2022:** Deadline for final reimbursement submissions from the approximately 440 repacked stations assigned to Phases 6–10.
* **September 5, 2022:** Deadline for final reimbursement submissions from FM, LPTV, and translator stations, as well as others (e.g., MVPDs and broadcasters who have obtained an extension).

The deadlines are calibrated to try and provide FCC staff sufficient time to process all remaining requests prior to the deadline applicable to the Reimbursement Fund, which deadline Congress set by law: on July 3, 2023, any “unobligated” amounts currently earmarked for reimbursement will be released and deposited into the U.S. Treasury.

Recall that expenses are reimbursable when incurred, and therefore stations can submit reimbursement invoices even while final construction remains ongoing. Importantly, the Commission has taken a hard stance on the current reimbursement deadlines, emphasizing that it does “not anticipate a need to grant extensions of the assigned invoice submission deadlines” for reimbursement; the Commission has stated that extension requests will only be granted in extreme circumstances outside of the requesting entity’s control, such as a local zoning issue or a “force majeure” event.

As a final reminder, recall that each broadcaster seeking reimbursement must retain all documentation relating to reimbursement for a period ending 10 years after the date on which the broadcaster receives final payment from the Reimbursement Fund. All reimbursement request submissions are subject to Commission review to prevent waste, fraud, and abuse; all broadcasters seeking reimbursement may be selected at any time—i.e., before or after a station has received reimbursement—for audits, data validations, and site visits (the latter of which were scheduled to begin this month).

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# Procedures Announced for Appeals of Relocation Payment Clearinghouse C-band Reimbursement Decisions

By [Public Notice](https://docs.fcc.gov/public/attachments/DA-22-300A1.pdf) (the “Notice”) the FCC’s Wireless Telecommunications Bureau (the “Bureau”) has announced procedures applicable to those who wish to appeal a reimbursement decision made by the Relocation Payment Clearinghouse (the “RPC”) as part of the ongoing C-band relocation process. Various timing and other procedural requirements apply such that any broadcaster considering an appeal should, upon receiving a C-band reimbursement determination by the RPC, consult with counsel and also carefully and promptly review the Notice in its entirety.

 Fundamentally, the RPC is responsible for making initial determinations about the reasonableness of C-band relocation cost reimbursement claims. However, any disagreements regarding—or unresolved issues relating to—those RPC reimbursement determinations may be appealed to the Bureau. To validly file such an appeal, broadcasters must follow the RPC’s “Dispute Resolution Plan” (available here: <https://cbandrpc.com/resources/>); that plan includes a requirement to first file an objection with the RPC within 20 days of the date on which the RPC issues the broadcaster an invoice after review of the broadcaster’s lump sum or actual-cost reimbursement claim. A separate timing requirement applies where a broadcaster wishes to become party to an objection filed by another entity, such as an overlay licensee responsible for payment or cost-sharing obligations. And further procedural and timing requirements apply to any subsequent formal appeal to the Bureau, and such requirements differ as between single-party and multi-party disputes.

 If your station is seeking reimbursement as part of the C-band relocation process and you identify issues with your reimbursement allocation or otherwise, we strongly encourage you to promptly consult with your communications counsel and to be mindful of the fact that timing and procedural requirements are likely to apply and may require swift legal action.

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*Tim Nelson, Editor*

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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