August 22, 2022

Legal Memorandum

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# Commission Announces Second Round of 2022 EEO Audits;

# Responses Due by October 7, 2022

Approximately 128 radio stations, 19 TV stations, and their corresponding employment units will be part of the FCC’s second batch of EEO (“equal employment opportunity”) audits of 2022, according to a recent [Public Notice](https://docs.fcc.gov/public/attachments/DA-22-854A1.pdf) (the “Notice”). The Commission has already begun mailing audit letters to the selected stations; those stations must upload their audit responses by **October 7, 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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# **SEPTEMBER 6, 2022:** Deadline for All Remaining Repack Reimbursement Invoice Submissions (Including FM, LPTV, and TV Translator Stations)

As of this writing, we’re approximately **two weeks** away from the **Tuesday, September 6, 2022,** deadline for all remaining repack reimbursement invoice submissions. (As you likely recall, two other repack reimbursement deadlines have already come and gone for the vast majority of broadcasters repacked in Phases 0–10.) Entities most likely to have remaining reimbursement invoices include FM, LPTV, and TV translator stations, although the September 6, 2022, deadline may also affect some full-power broadcasters who received an extension beyond the reimbursement submission deadline set for their assigned transition phase (as well as MVPDs).

The September 6, 2022, submission deadline is calibrated to try and provide FCC staff sufficient time to process all remaining requests prior to the deadline applicable to the Reimbursement Fund overall, 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 repeatedly taken a hard stance on repack reimbursement deadlines, emphasizing that it does “not anticipate a need to grant extensions of the assigned invoice submission deadlines” for reimbursement. For the September 6th deadline, the Commission [has stated](https://protect-us.mimecast.com/s/bNh4CmZ6PBH56XLXi6OlaS?domain=docs.fcc.gov) both that (1) 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 occurring proximate to the final submission deadline, and (2) the Commission will not grant extensions that do not provide FCC staff with sufficient processing time to complete close-out procedures for all stations.

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 begun earlier this year).

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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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