



Pillsbury
Winthrop
Shaw
Pittman_{LLP}

Special Advisory to Broadcasters
March 2008

Communications Broadcast Advisory

Broadcast Station EEO Advisory

This Broadcast Station EEO Advisory is directed to radio and television stations licensed to communities in: Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas, and highlights the upcoming deadlines for compliance with the FCC's EEO rule.

Introduction

April 1, 2008 is the deadline for stations licensed to communities in the states referenced above to place their Annual EEO Public File Report in the public inspection file and post the report on the station's website, if applicable.

Under the FCC's rule that became effective as of March 10, 2003, all radio and television station employment units ("SEUs"), regardless of staff size, must afford equal employment opportunity to all qualified persons and practice nondiscrimination in employment.

In addition, those SEUs with five or more full-time employees ("Nonexempt SEUs") must also comply with the FCC's three-prong outreach requirements. Specifically, all Nonexempt SEUs must (i) broadly and inclusively disseminate information about every full-time job opening except in exigent circumstances, (ii) send notifications of full-time job vacancies to referral organizations that have requested such notification, and (iii) participate in a specified number of outreach initiatives from the FCC's menu of such options during each of the four, two-year segments that comprise a station's eight-year license term. These "menu option initiatives" include, for example, sponsoring one job fair, attending, rather than sponsoring or co-sponsoring, four job fairs, or having an internship program, in order to earn one menu item credit. In addition, a Nonexempt SEU must prepare and place its Annual EEO Public File Report in its public inspection file and post it on its website, if it has one, on the anniversary date of the filing of its license renewal application with the FCC. The Annual EEO Public File Report summarizes the SEU's EEO activities during the previous 12 months. In all cases, adequate records must be maintained. Stations must also submit the last two such Annual EEO Public File Reports with their license renewal applications, and again at the midpoint of their license terms.

For a detailed description of the EEO rule and practical assistance in preparing a compliance plan, broadcasters should consult "EEO in 2007 and Forward: A Legal Guide to the FCC's EEO Rule and Policies for Broadcasters," published by the Communications Practice Group. This publication is available on the firm's website, www.pillsburylaw.com.

Deadline for the Annual EEO Public File Report for All Nonexempt Radio and Television SEUs Whose Stations Are Licensed to Communities in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas

April 1, 2008 is the date on which Nonexempt SEUs of radio and television stations, including Class A television stations and LPTV stations, licensed to communities in the states identified above, must (i) place their Annual EEO Public File Report in the public inspection files of all stations comprising the SEU and (ii) post the Report on the websites, if any, of those stations. It is contemplated that the Report will cover the period from April 1, 2007 through March 31, 2008. However, Nonexempt SEUs may "cut off" the reporting period up to ten (10) days before April 1 so long as they begin the next annual reporting period as of the next day. For example, if the Nonexempt SEU uses the period April 1, 2007 through March 21, 2008 for this year's report, then next year the Nonexempt SEU must use the period beginning April 22, 2008 through March 31, 2009 (or up to 10 days prior to April 1, 2009) for the 2009 report.

Deadlines for Performing Menu Option Initiatives

The Annual EEO Public File Report must contain a discussion of the menu option initiatives undertaken during the preceding year. As noted above, depending upon the full-time staff size and the location of their stations, Nonexempt radio and television SEUs are required to engage in enough menu option initiatives during each two-year segment to have earned at least 2 or 4 menu option initiative-related credits. Nonexempt SEUs with between 5 and 10 full-time employees and larger SEUs which are located in "smaller markets" must earn at least 2 menu option initiative-related credits over each two-year segment. Nonexempt SEUs with 11 or more full-time employees that are not located in "smaller markets" must earn at least 4 menu option initiative-related credits over each two-year segment. The FCC has defined "smaller market" with reference to the communities of license of the stations comprising the particular SEU. If the communities of license of the stations comprising the SEU are in a county outside of all metropolitan areas or in a county which is itself in a metropolitan area with a population of less than 250,000 persons, the SEU is deemed to be located in a "smaller market" for these EEO credit purposes.

Because the filing date for license renewal applications varies depending on the state in which a station is licensed, the time period in which the menu option initiatives must be completed also varies. Radio and television stations should review the following to determine what two-year segment applies to them:

1. Nonexempt **radio** station SEUs licensed to communities in Delaware, Indiana, Kentucky, Pennsylvania, and Tennessee must have completed at least the requisite minimum number of menu option initiative-related credits during the two-year "segment" between April 1, 2006 and March 31, 2008.
2. For Nonexempt **radio** station SEUs licensed to communities in Texas, the applicable period is April 1, 2007 to March 31, 2009.
3. For Nonexempt **television** station SEUs licensed to communities in Texas, the applicable period is April 1, 2006 and March 31, 2008.

4. For Nonexempt **television** station SEUs licensed to communities in Delaware, Indiana, Kentucky, Pennsylvania, and Tennessee, the applicable period is April 1, 2007 to March 31, 2009.

Deadline for EEO Mid-Term Report Filing for Radio Stations Licensed to Communities in Indiana, Kentucky, and Tennessee.

April 1, 2008 is also the mid-point in the license renewal term of **radio** stations licensed to communities in Indiana, Kentucky, and Tennessee and, consequently, with only limited exceptions, all SEUs of **radio** stations in those states must electronically file the FCC Form 397 Broadcast Mid-Term Report by that date. The FCC Form 397 covers the station's EEO performance and is required to be filed even if a station employment unit ("SEU") has been the subject of a prior FCC EEO audit. While the Form 397 is similar to the FCC Form 396 EEO Program Report that was filed at license renewal time, unlike the Form 396, the Form 397 draws a distinction between radio and TV SEUs based on the number of full-time employees the reporting unit has. Electronic filing of Form 397 is mandatory. A paper version will not be accepted for filing unless accompanied by an appropriate request for waiver of the electronic filing requirement.

Recommendations

It is critical that every SEU maintain adequate records of its performance under the EEO Rule and that it practice overachievement when it comes to earning the requisite number of menu option initiative-related credits. The Commission will not allow credits for menu option initiatives that are not duly reported in an SEU's Annual EEO Public File Report and that are not adequately documented. Accordingly, it is recommended that, before an Annual EEO Public File Report is finalized and placed in the public domain by posting it on a station's website and placing it in the station's public inspection file, the draft document, including supporting material, be reviewed by communications counsel. Finally, we note that the Commission is continuing its program of EEO audits. These random audits check for compliance with the requirements outlined in this Advisory, and are planned to continue indefinitely. For more information on the FCC's EEO rule and its requirements, as well as practical advice for compliance, please contact any of the lawyers in the Communications Practice Section.

For further information, please contact:

Richard R. Zaragoza (bio)
Washington, DC
+1.202.663.8266
richard.zaragoza@pillsburylaw.com

Lauren Lynch Flick (bio)
Washington, DC
+1.202.663.8166
lauren.lynch.flick@pillsburylaw.com

Christine A. Reilly (bio)
Washington, DC
+1.202.663.8245
christine.reilly@pillsburylaw.com