
Enforcement Monitor: FCC Finds Six Broadcasters Apparently Liable for Violations of Equal Employment Opportunity Rule

by Richard R. Zaragoza, Scott R. Flick and Emily J. H. Daniels

In late December 2008, the Federal Communications Commission (“FCC”) released a series of six Notices of Apparent Liability for Forfeiture against broadcasters asserting violations of the FCC’s Equal Employment Opportunity rule (“EEO rule”). In a joint statement appended to each of the six cases, FCC Commissioners Michael J. Copps (now Acting FCC Chairman) and Jonathan S. Adelstein (the “Commissioners”) signaled their strong desire that enforcement of EEO matters be stepped up by the Commission. The Commissioners noted that “Commission enforcement of EEO rules has been inconsistent and, as one consequence, employment in broadcasting does not reflect America.” Specifically, the Commissioners noted that while 251 cases resulted in 86 forfeitures between 1994 and 1997, only 10 cases resulting in 8 forfeitures were released between 2004 and 2007.

Of the six Notices issued, four stem from EEO audits conducted by the Commission and two stem from disclosures made in conjunction with license renewal applications. The majority of these asserted violations result from failure to widely recruit for employees, failure to retain EEO records, and failure to maintain proper records in station public inspection files.

In one case, the licensee of multiple Georgia radio stations was found liable for \$14,000 based on multiple EEO recordkeeping violations. In response to a random EEO audit, the licensee indicated that poor recordkeeping made accurate reporting of the individuals interviewed for full-time openings difficult if not impossible. Additionally, the licensee did not retain adequate EEO records of interviewees or referrals and did not produce documentation of the recruitment initiatives completed. Its EEO reports also failed to list adequate information regarding the total number of interviewees and the recruitment source of interviewees for each vacancy filled. While the licensee produced some job notices circulated to employment referral sources,

the licensee could not demonstrate which source received each notice. Further, evidence of only one recruitment initiative was provided. Based on this poor record-keeping, the FCC found that the station could not have maintained the EEO information required in each station's public inspection file, which constitutes an additional violation of the EEO rules. While the licensee reported that all stations have since revised their EEO policies and now follow an EEO program that ensures full compliance with the FCC's rules, the FCC found that the violations which had already occurred warranted the fine.

In a second case, the licensee of two Washington, D.C. television stations was found liable for \$20,000 for failure to properly recruit for vacant positions and failure to maintain the required records. In response to an audit, the licensee submitted a "Recruitment Reconciliation Form" for each position filled. The Commission found that the forms demonstrated that the licensee failed to properly recruit for 39 of its 90 full-time vacancies because it relied solely on "self-referrals," "employee referrals," or other non-public sources for 32 vacancies, and relied solely on Internet websites as its only public recruitment source for 7 additional vacancies. Because the failure to adequately recruit continued for a long period of time, the FCC further found that the licensee failed to complete the required self-assessment of its efforts to ensure EEO compliance. The licensee also failed to maintain records to document the referral source of 17 hires and the referral sources of 94 interviewees for 45 openings. In turn, this poor record-keeping prevented the licensee from providing the total number of interviewees referred by each recruitment source and the source of each hire, and ensured that the licensee could not have the required records in the station public inspection files. The Commission has established that, although a specific number of recruitment sources is not required, if the sources used cannot reasonably be expected to reach the entire community, the licensee may be found in violation with the Commission's EEO rule. The Commission's policy allows recruitment from as few as one source, but the effort must still be sufficiently broad to reach the entire community. Here, the FCC found that the licensee's repeated reliance on non-public sources, such as internal employee referrals and "self referrals," and its reliance on its own website without use of further sources did not constitute broad public outreach. Accordingly, a \$20,000 fine was proposed.

Similarly, in a third case, the licensee of two Colorado radio stations was found liable for \$14,000 for failure to recruit broadly and retain necessary EEO records. This case is notable because the licensee was found to have violated the FCC's EEO rule by recruiting for 3 open positions using solely on-air advertisements. The Commission found that "On-air ads, with no other recruitment, will reach only those listening to the station at the particular time the ads are aired. All the people in the community listening or watching other stations or not in the audience for any broadcaster will not be aware of the advertising. Thus, in most cases, on-air advertising alone will not be sufficiently broad under our rules."

In light of these decisions, we emphasize that all aspects of EEO rule compliance programs should be carefully reviewed with special emphasis on determining whether there are systems in place to ensure that stations engage in robust, multifaceted, public, and broad outreach efforts to recruit for all full-time vacancies. If you have any questions about these decisions or the Commission's EEO rule, please contact any member of our Communications Practice Section.

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