

## Broadcast Station EEO Advisory

This Broadcast Station EEO Advisory is directed to radio and television stations licensed to communities in: **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York and Oklahoma.**

### Introduction

This **Advisory** highlights some of the upcoming deadlines for compliance with the FCC's new EEO rule. **March 10, 2003** was the effective date for the new rule which generally requires all radio and television station employment units ("SEUs"), regardless of staff size, to afford equal employment opportunity to all qualified persons and to practice nondiscrimination in employment.

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 specified menu of such options during each of the four, two year segments which 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.

For a detailed description of the new EEO rule and practical assistance in preparing a compliance plan, broadcasters should consult "**EEO in 2003 and Forward: A Legal Guide to the FCC's New EEO Rule and Policies for Broadcasters,**" published by the Communications Practice Group. This publication is available on the firm's website, [www.shawpittman.com](http://www.shawpittman.com).

### FCC Form 395-B Deadline

In the past, September 30 has been the annual deadline for filing FCC Form 395-B. In a decision released June 4, 2004, the FCC readopted the requirement that Form 395-B be filed with the FCC by that date each year. However, the FCC allowed, for 2004 only, a one-time filing "grace period" until a deadline date is determined by the FCC in the future. As of the date of this **Advisory**, the FCC has not given notice of a date for the filing of the 2004 or 2005 Form 395-B. Accordingly, no filing on Form 395-B is yet due in 2005.

### Deadline for the Annual EEO Public File Report for all Nonexempt Radio and Television SEUs Whose Stations Are Licensed to Communities in the States Identified Above

**February 1, 2005** 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 and territories 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 period covered by the

Report would be January 31, 2004 through January 31, 2005. However, such Nonexempt SEUs may actually “cut off” the reporting period up to ten (10) days before January 31 so long as they begin the next annual reporting period the day after the immediately prior annual reporting period ended. For example, if the Nonexempt SEU uses the period January 31, 2004 through January 22, 2005 for this year’s report, next year the Nonexempt SEU must use the period beginning January 23, 2005 through January 31, 2006 (or up to 10 days prior to that date) for the 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 perform a specified number of outreach initiatives from the FCC’s menu of such initiatives (“Menu Option Initiatives”) during each two-year segment of their eight-year license terms to qualify them for at least two or four full Menu Option Initiative credits per segment. Specifically, radio and television SEUs with between five and 10 full-time employees, and radio-only SEUs with 11 or more full-time employees but which are located in “smaller markets,” must complete two Menu Option Initiatives during every two-year period. Television SEUs with 11 or more employees, and radio SEUs with 11 or more employees that are located in “larger markets” must complete four such Menu Option Initiatives. The FCC has defined a “smaller market” station as any SEU consisting solely of a station or stations licensed to a community that is in a county outside of all metropolitan areas or is in a metropolitan area with a population of less than 250,000.

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. Stations should review the section below that applies to SEUs in their state.

#### **(1) Menu Option Initiatives Required for Nonexempt Radio SEUs Whose Stations Are Licensed to Communities in Kansas, Nebraska and Oklahoma and for Nonexempt Television SEUs Whose Stations Are Licensed to Communities in Arkansas, Louisiana, Mississippi, New Jersey and New York**

The current two year segment began on March 10, 2003 (the effective date of the new EEO rule) and runs through February 1, 2005, for radio stations licensed to communities in Kansas, Nebraska and Oklahoma and television stations licensed to communities in Arkansas, Louisiana, Mississippi, New Jersey and New York.

Because of when the new EEO rule became effective, this segment is slightly shorter than a full two-year segment and therefore the FCC allows SEUs to prorate their required Menu Option Initiatives. However, the EEO Rule is relatively new, ambiguous in certain respects, and untested. Thus, out of an abundance of caution, radio and television SEUs with between five and 10 full-time employees and radio SEUs with 11 or more full-time employees, but which are located in “smaller markets,” should still strive to perform, by the February 1, 2005 deadline, a sufficient number of Menu Option Initiatives to qualify them for at least two full Menu Option Initiative credits. For the same reason, television SEUs with 11 or more full-time employees and radio SEUs with 11 or more full-time employees, which are not located in “smaller markets,” should still strive to perform, by this same deadline, a sufficient number of Menu Option Initiatives to qualify them for at least four full Menu Option Initiative credits.

#### **(2) Menu Option Initiatives for Radio SEUs Whose Stations Are Licensed to Communities in Arkansas, Louisiana, Mississippi, New Jersey and New York and Television SEUs in Kansas, Nebraska and Oklahoma**

The current two year segment began on February 1, 2004 and runs through January 31, 2006 for radio stations licensed to communities in Arkansas, Louisiana, Mississippi, New Jersey and New York and for television stations licensed to communities in Kansas, Nebraska and Oklahoma.

Radio and television SEUs with between five and 10 full-time employees and radio SEUs with 11 or more full-time employees but which are located in “smaller markets” must perform, by the January 31, 2006 deadline, a sufficient number of Menu Option Initiatives to qualify them for at least two full Menu Option Initiative credits. Radio SEUs with 11 or more full-time employees, which are not located in “smaller markets,” must perform, by this same deadline, a sufficient number of Menu Option Initiatives to qualify them for at least four full Menu Option Initiative credits.

## **Deadline for Renewal Application Filing for Radio Stations Licensed to Communities in Kansas, Nebraska and Oklahoma and Television Stations Licensed to Communities in Arkansas, Louisiana and Mississippi**

February 1, 2005 is also the date by which all radio stations licensed to communities in Kansas, Nebraska and Oklahoma and all television stations licensed to communities in Arkansas, Louisiana and Mississippi must file their license renewal applications with the FCC. Along with their renewal applications, such stations or their SEUs must file FCC Form 396 and, in the case of Nonexempt SEUs, such SEUs must also attach copies of their February 1, 2004 and February 1, 2005 Annual EEO Public File Reports.

### **Recommendations**

It is critical that every SEU maintain adequate records of its performance under the EEO Rule. 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 has begun its program of EEO audits, conducting one in May 2004 and another in October 2004. 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 your obligations under it, as well as practical advice for compliance, please contact any of the lawyers in the Communications Practice Group.

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