
Broadcast Station EEO Advisory

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This Broadcast Station EEO Advisory is directed to radio and television stations licensed to communities in: Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, and Wyoming, and highlights the upcoming deadlines for compliance with the FCC's EEO Rule.

Introduction

June 1, 2008 is the deadline for certain full-power radio and television stations and Class A television stations licensed to communities in Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, and Wyoming to place their Annual EEO Public File Reports in their public inspection files and to post their reports on their station websites, if they have one.

Under the FCC's rule that became effective as of March 10, 2003, all such 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. The FCC's rules define an SEU as a station or group of commonly owned stations in the same market that share at least one employee.

SEUs with five or more full-time employees ("Nonexempt SEUs") must also comply with the FCC's three-prong outreach requirements. The FCC's rules define a full-time employee as a permanent employee that works 30 hours or more per week on a regular basis. 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) earn a certain minimum number of credits, based on participation in various non-vacancy specific outreach initiatives suggested by the FCC, 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 job fairs, attending rather than sponsoring or co-sponsoring job fairs, and having an internship program. In addition, all Nonexempt SEUs must (i) prepare an Annual EEO Public File Report; (ii) place a copy of the Annual EEO Public File Report in the public inspection files of all stations within that SEU; and post a copy of the Annual EEO Public File Report on those stations' websites, if they have websites. All three of these actions must be completed by the anniversary date of the filing of the station's license renewal application with the FCC. The Annual EEO Public File Report summarizes the SEU's EEO activities during the previ-

ous 12 months. In all cases, adequate records must be maintained. Certain stations must also submit the two most recent 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 Arizona, the District of Columbia, Idaho, Maryland, Michigan, Ohio, New Mexico, Nevada, Utah, Virginia, West Virginia, and Wyoming

June 1, 2008 is the date on which Nonexempt SEUs of radio and television stations, including Class A television 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 June 1, 2007 through May 31, 2008. However, Nonexempt SEUs may "cut off" the reporting period up to ten (10) days before June 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 June 1, 2007 through May 21, 2008 for this year's report, then next year the Nonexempt SEU must use the period beginning May 22, 2008 through May 31, 2009 (or up to 10 days prior to June 1, 2009) for its 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. 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. 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 licensed to communities in the states identified above should review the following to determine what two-year segment applies to them:

- Nonexempt **radio** station SEUs licensed to communities in Michigan and Ohio must have earned at least the requisite minimum number of menu option initiative-related credits during the two-year segment between June 1, 2006 and May 31, 2008.
- For Nonexempt **radio** station SEUs licensed to communities in Arizona, the District of Columbia, Idaho, Maryland, New Mexico, Nevada, Utah, Virginia, West Virginia, and Wyoming, the applicable period is June 1, 2007 to May 31, 2009.

- For Nonexempt **television** station SEUs licensed to communities in Arizona, the District of Columbia, Idaho, Maryland, New Mexico, Nevada, Utah, Virginia, West Virginia, and Wyoming, the applicable period is June 1, 2006 and May 31, 2008.
- For Nonexempt **television** station SEUs licensed to communities in Michigan and Ohio, the applicable period is June 1, 2007 to May 31, 2009.

Deadline for EEO Mid-Term Report Filing for Radio Stations Licensed to Communities in Michigan and Ohio and Television Stations Licensed to Communities in the District of Columbia, Maryland, Virginia, and West Virginia

June 1, 2008 is also the mid-point in the license renewal term of **radio** stations licensed to communities in Michigan and Ohio and **television** stations licensed to communities in the District of Columbia, Maryland, Virginia, and West Virginia. Full-power and Class A television station SEUs with fewer than 5 full-time employees have the option of filing or not filing FCC Form 397, "Broadcast Mid-Term Report," with the FCC by that date. However, the FCC's staff does recommend that television stations with fewer than 5 full-time employees file the form. Full-power and Class A television stations with 5 or more full-time employees must file Form 397. LPTV stations, which are not required to maintain public inspection files or prepare and submit Annual EEO Public File Reports, are not required to file an FCC Form 397 **unless** they are part of an SEU that is otherwise required to file due to the SEU's relationship to one or more Class A and/or full-power television or radio stations. Only those radio station SEUs with more than 10 full-time employees must file an FCC Form 397 with the FCC.

The FCC Form 397 is comprised of three sections. The first section requires the licensee to certify the number of full-time employees. The second section requires the licensee to identify the individual responsible for the SEU's EEO program. The third section relates to Annual EEO Public File Reports. Television station SEUs with fewer than 5 full-time employees which decide to file the form with the FCC need complete only the first section. Television station SEUs with 5 or more full-time employees must complete all sections of the FCC Form 397 as well as supply copies of the SEU's two most recent Annual EEO Public File Reports. Radio station SEUs with more than 10 full-time employees must also complete all sections of the FCC Form 397 as well as provide copies of the SEU's two most recent Annual EEO Public File Reports. 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 under the FCC's EEO Rule, and are expected to continue indefinitely. In short, any station may become the subject of an FCC audit at any time. 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.

Live Link

EEO in 2007 and Forward: A Legal Guide to the FCC's EEO Rule and Policies for Broadcasters, Pillsbury Communications Practice, June 2007 (PDF, 67 pages)

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