
Broadcast Station EEO Advisory

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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, 2009 is the deadline for stations licensed to communities in the States/Territories 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) 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, a Nonexempt SEU must prepare and place its Annual EEO Public File Report in its public inspection file and post it on the website of all stations comprising the SEU, if they have websites, 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 most recent 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 2008 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 the States and Territories Identified Above

April 1, 2009 is the date on which Nonexempt SEUs of radio and television stations, including Class A television stations, licensed to communities in the States/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. LPTV stations are also subject to the broadcast EEO rules even though LPTV stations are not required to maintain a public inspection file. Therefore, if an LPTV station has five or more full-time employees, or is part of a Nonexempt SEU, it must prepare and maintain an internal copy of its Annual EEO Public File Report. It is contemplated that the Report will cover the period from April 1, 2008 through March 31, 2009. 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 day right after the cut-off day used in the immediately prior Report. For example, if the Nonexempt SEU uses the period April 1, 2008 through March 21, 2009 for this year’s report (up to 10 days prior to March 1, 2009), then next year the Nonexempt SEU must use the period beginning March 22, 2009 through March 31, 2010 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 **Texas** must have earned at least the requisite minimum number of menu option initiative-related credits during the two-year “segment” between April 1, 2007 to March 31, 2009.
- For Nonexempt **radio** station SEUs licensed to communities in **Delaware, Indiana, Kentucky, Pennsylvania, and Tennessee**, the applicable period is April 1, 2008 and March 31, 2010.
- 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.

- For Nonexempt **television** station SEUs licensed to communities in **Texas**, the applicable period is April 1, 2008 and March 31, 2010.

Deadline for EEO Mid-Term Report (FCC Form 397) Filing for Radio Stations Licensed to Communities in Texas and Television Stations Licensed to Communities in Indiana, Kentucky, and Tennessee

April 1, 2009 is also the mid-point in the license renewal term of **radio** stations licensed to communities in **Texas** and of **television** stations licensed to communities in **Indiana, Kentucky, and Tennessee**. Nonexempt **radio** station SEUs with eleven or more full-time employees in those States/Territories must electronically file the FCC Form 397 Broadcast Mid-Term Report ("397 Report") by **April 1, 2009**. Nonexempt radio station SEUs that are subject to this reporting requirement must attach copies of the SEU's two most recent Annual EEO Public File Reports to their 397 Report. **All television** station SEUs, regardless of the number of full-time employees, licensed to communities in **Indiana, Kentucky, and Tennessee** must electronically file the 397 Report by **April 1, 2009**. Television SEUs with *five or more* full-time employees are required to attach copies of the SEU's two most recent Annual EEO Public File Reports to their 397 Report. SEUs that have been the subject of a prior FCC EEO audit must still file FCC Form 397 by the deadline. 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.

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