Communications

November 11, 2010

Broadcast Station EEO Advisory

by Lauren Lynch Flick and Christine A. Reilly

*This Broadcast Station EEO Advisory is directed to radio and television stations licensed to communities in: **Alabama**, **Colorado**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **Minnesota**, **Montana**, **New Hampshire**, **North Dakota**, **Rhode Island**, **South Dakota** and **Vermont**, and highlights the upcoming deadlines for compliance with the FCC's EEO Rule.*

Introduction

December 1, 2010 is the deadline for broadcast stations licensed to communities in the States/Territories referenced above to place their Annual EEO Public File Report in their public inspection files and post the report on their website, if they have one. In addition, certain of these stations, as detailed below, must electronically file their EEO Mid-term Report on FCC Form 397 by December 1, 2010.

Under the FCC's EEO rule, 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 EEO credits, based on participation in various non-vacancy-specific outreach initiatives ("Menu Options") suggested by the FCC, during each of the two-year segments (four segments total) that comprise a station's eight-year license term. These Menu Option initiatives include, for example, sponsoring job fairs, attending job fairs, and having an internship program.

Nonexempt SEUs must prepare and place their Annual EEO Public File Report in the public inspection files and on the websites of all stations comprising the SEU (if they have a website), by the anniversary date of the filing deadline for that station's FCC license renewal application. The Annual EEO Public File Report summarizes the SEU's EEO activities during the previous 12 months, and the licensee must maintain adequate records to document that information. Stations must submit the most recent two Annual EEO Public File Reports at the midpoint of their license terms and with their license renewal applications.

For a detailed description of the EEO rule and practical assistance in preparing a compliance plan, broadcasters should consult "EEO in 2009 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, http://www.pillsburylaw.com/index.cfm?pageid=34&itemid=39276.

Exempt SEUs, that is, those with fewer than 5 full time employees, do not have to prepare or file Annual or Mid-term EEO Reports.

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

Consistent with the above, December 1, 2010 is the date on which Nonexempt SEUs of radio and television stations, licensed to communities in the States/Territories identified above, including Class A television stations, 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. Be aware that 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 these Reports will cover the period from December 1, 2009 through November 30, 2010. However, Nonexempt SEUs may "cut off" the reporting period up to ten (10) days before December 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 November 30, 2009 through November 22, 2010 for this year's report (cutting off up to 10 days prior to December 1, 2010), then next year, the Nonexempt SEU must use a period beginning November 23, 2010 for its 2011 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. The FCC's EEO rules require each Nonexempt SEU to earn a minimum of two or a minimum of four Menu Option initiative-related credits, depending on the number of full-time employees and market size of the Nonexempt SEU.

- Nonexempt SEUs with between 5 and 10 full-time employees, regardless of market size, must earn at least 2 Menu Option initiative-related credits over each two-year segment.
- Nonexempt SEUs with 11 or more full-time employees, 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, 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 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 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 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 current two-year segment applies to them:

- Nonexempt **radio** station SEUs licensed to communities in Colorado, Minnesota, Montana, North Dakota and South Dakota, must have earned at least the required number of Menu Option initiative-related credits during the two-year "segment" between December 1, 2008 to November 30, 2010, as well as during the previous two-year "segments" in their license terms.
- Nonexempt **radio** station SEUs licensed to communities in Alabama, Connecticut, Georgia, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, must have earned at least the requisite minimum number of Menu Option initiative-related credits during the two-year "segment" between December 1, 2009 and November 30, 2011, as well as during the previous two-year "segments" in their license terms.
- Nonexempt **television** station SEUs licensed to communities in Alabama, Connecticut, Georgia, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, must have earned at least the requisite minimum number of Menu Option initiative-related credits during the two-year "segment" between December 1, 2008 to November 30, 2010, as well as during the previous two-year "segments" in their license terms.
- Nonexempt **television** station SEUs licensed to communities in Colorado, Minnesota, Montana, North Dakota and South Dakota, must have earned at least the requisite minimum number of Menu Option initiative-related credits during the two-year "segment" between December 1, 2009 and November 30, 2011, as well as during the previous two-year "segments" in their license terms.

Deadline for Filing EEO Mid-Term Report (FCC Form 397) for Television Stations Licensed to Communities in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont

December 1, 2010 is the mid-point in the license renewal term of **television** stations licensed to communities in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Nonexempt television station SEUs licensed to communities in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont must electronically file the 397 Report by December 1, 2010. Licensees subject to this reporting requirement must attach copies of the SEU's two most recent Annual EEO Public File Reports to their 397 Report.

Note that SEUs that have been the subject of a prior FCC EEO audit are not exempt and must still file FCC Form 397 by the deadline. Electronic filing of FCC 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 overachieving when it comes to earning the requisite number of Menu Option credits. The FCC will not give credit 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, before an Annual EEO Public File Report is finalized and placed in the public domain by posting it on a station's website or placing it in the public inspection file, the draft document, including supporting material, should 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 attorneys in the Communications Practice.

If you have any questions about the content of this Client Alert, please contact the Pillsbury attorney with whom you regularly work, or the authors of this alert.

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