

EEO in 2008 and Forward: A Legal Guide to the FCC's EEO Rule and Policies for Broadcasters

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1. Introduction

On November 20, 2002, the FCC released a Second Report and Order and Third Notice of Proposed Rulemaking (the "Second R&O") in which it adopted new equal employment opportunity rules and policies for broadcasters and for multi-channel video programming distributors (the "EEO Rule").² A complete copy of this EEO Rule as it relates to broadcasters is attached hereto as **Attachment A**.

The FCC's action was in response to the Court's decision in *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, *rehearing denied* 253 F.3d 732 (D.C. Cir. 2001), *cert. denied*, 122 S.Ct. 920 (2002) ("*Association*") in which the U.S. Court of Appeals for the D.C. Circuit vacated the EEO rule which the Commission had adopted in early 2000 (the "2000 EEO Rule").³ The Commission suspended various EEO-related reporting requirements, including the filing of the Annual Employment Report on FCC Form 395-B which had been used for years to publicly identify the race, ethnicity and gender of employees at all nonexempt radio and television stations.

While the 2000 EEO Rule was in effect for only about a year, the rule mandated equal employment opportunity and nondiscrimination as well as required broadcasters to elect one of two outreach options to widely disseminate information concerning job vacancies to members of the public—Option A and Option B. In *Association*, the court held that Option B was unconstitutional under the equal protection component of the Due Process Clause of the Fifth Amendment because it required broadcasters selecting Option B to report the race and sex of each job applicant. The Court further found that since Option B could not be severed from the rest of the 2000 EEO Rule, the entire rule must be vacated.

In adopting the EEO Rule, the Commission has concluded that it has the statutory authority to retain its equal employment opportunity mandate and its anti-discrimination prohibition as well as to promulgate new broad outreach requirements for full-time employees, namely employees whose regular work schedules are 30 or more hours per week. The prior requirement for the filing of FCC Form 395-B, the Annual Employment Report, remains for the time being suspended under the Second R&O. Recently the FCC modified the 395-B form to conform it to the classifications used by the EEOC on EEO-1. The FCC is in the process of seeking Office of Management and Budget ("OMB") approval for the new form. The State Broadcasters Associations have objected to OMB approving the revised form because the FCC has not yet determined whether the form will be filed on a public or confidential basis. As of the date of this publication, OMB has not issued its ruling.

Simultaneously with its adoption of the *Second R&O*, the FCC also issued a *Third Notice of Proposed Rulemaking* (the "*Third NPRM*") which requests comment on the applicability of the EEO Rule to part-time

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² A complete copy of the *Second R&O* is available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-303A1.doc.

³ Our Section successfully represented the State Broadcasters Associations in the *MD/DC/DE Broadcasters* case and earlier represented the Lutheran Church-Missouri Synod in its successful challenge of the EEO rule that existed prior to 2000.

positions, i.e., positions with regular work schedules of less than 30 hours per week. Comments and reply comments have been filed and the matter remains pending without decision.

The 2002 EEO Rule mirrors Option A of the 2000 EEO Rule. Like the previous rule, the EEO Rule requires extensive outreach efforts, substantial recordkeeping, periodic reports filed with the FCC and the placement of those reports in stations' public inspection files and posting on their websites. Broadcasters must also analyze the results of their recruitment efforts to ensure that broad outreach is being achieved. Under the EEO Rule, broadcasters will continue to face the prospect of complaints filed by members of the public throughout the license term, petitions to deny at license renewal time and periodic FCC audits and/or investigations. Therefore, it is imperative that every broadcaster carefully review not only the EEO Rule, but also the entire *Second R&O* to ensure full compliance with the FCC's requirements. No broadcaster should simply rely upon his or her recollection of the 2000 EEO Rule or upon recordkeeping systems developed for that former rule.

The Commission has stated that it intends to vigorously enforce these EEO requirements. The public interest and civil rights groups which participated in the Commission's 2002 EEO rule making have demonstrated that they will be critically interested in each station's performance in the area of EEO. Broadcasters must assume that those groups will continue to make their views known to the FCC, on a station-by-station basis, not only at renewal time but throughout the license period. Accordingly, full compliance with the letter and spirit of the EEO Rule will remain a station's best evidence that it is taking these requirements very seriously.

As with the prior rules, the EEO Rule applies to broadcast "station employment units." A "station employment unit" ("SEU") is one or more stations that are commonly owned or controlled, located in the same market and share at least one employee.⁴ SEUs with fewer than five full-time employees are exempt from the EEO Rule outreach requirements but must abide by the equal employment opportunity and anti-discrimination requirements. The fact that a broadcaster may be located in a market where the minority labor force is less than five percent does not exempt that broadcaster from any aspect of the EEO Rule. Unless the SEU employs less than five full-time employees, the SEU must have a fully compliant broad outreach recruitment program.

The 2002 EEO Rule became effective on March 10, 2003. Petitions for reconsideration and clarification of the EEO Rule and polices remain pending before the FCC without decision.

2. The Equal Employment Opportunity and Anti-discrimination Rule

A. The General Rule

The FCC has recodified the requirements that the licensees and permittees of all commercial and noncommercially operated AM, FM, TV, Class A TV, LPTV, and International broadcast stations must afford equal opportunity in employment to all qualified persons and that no person shall be discriminated against in employment on the basis of race, color, religion, national origin or sex. The Commission has stated that a station that discriminates against minorities or women is not responsive to the needs and interests of the entire community and thus will not be able to fulfill its responsibilities as a public trustee, and that, furthermore, unlawful discrimination raises an issue as to the basic character of a licensee. All such broadcast permittees and licensees, regardless of staff size, are subject to the rule requiring equal employment opportunity and prohibiting unlawful employment discrimination.

⁴ An employee who is also an owner holding a 20% or greater voting interest in a licensee is not considered a station "employee" for EEO purposes as long as no single owner has greater than 50% voting control of the licensee.

Low Power FM station permittees and licensees must also afford equal employment opportunity to all qualified persons, and may not discriminate against any person on the basis of race, color, religion, national origin or gender.⁵ However, the EEO program requirements of the EEO rule do not apply to LPFM stations.⁶

In addition, all broadcast permittees and licensees, regardless of staff size, are required by Section 1.65 of the FCC's Rules to report to the FCC, on an annual basis, any adverse findings or adverse final actions involving discrimination complaints. Such report, if required, should be filed by the annual anniversary date of the filing of the station's license renewal application.

The *Second R&O* announces that the FCC has retained its policy of generally deferring action on individual discrimination complaints pending final action by the EEOC or a court of competent jurisdiction, but it will consider final determinations of employment discrimination in making licensing decisions. However, the Commission has also stated that it reserves the discretion to consider allegations of discrimination prior to final determination such as where there are "well-documented allegations of discrimination made by a large number of individuals" or "well-supported allegations of discrimination that shock the conscience or are particularly egregious."

The *Second R&O* states that the FCC's concern is not limited to intentional discrimination. According to the FCC, the public interest standard of the Communications Act is sufficiently broad to also cover discrimination that may arise as a result of practices and policies that are unintentionally discriminatory.

B. The Application of the Equal Employment Opportunity/Anti-Discrimination Rule to Religious Broadcasters

Under the EEO Rule, religious broadcasters may establish religious belief or affiliation as a job qualification for all station employees or for only particular job positions. However, they may not discriminate on the basis of race, color, national origin or sex from among those who share their religious belief or affiliation and are expected to make reasonable good faith efforts to recruit widely among their co-religionists. The EEO Rule defines a religious broadcaster as a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

3. Broadcast EEO Program Requirements

A. General EEO Program

The EEO Rule sets forth certain general Equal Employment Opportunity Program ("EEO Program") requirements that must be adhered to. Specifically, every SEU with 5 or more full-time employees must establish and maintain an EEO Program. Under the terms of that program, the nonexempt SEU must:

- (1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;
- (2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation.

⁵ 47 C.F.R. 73.881.

⁶ *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018, fn. 1 (Nov. 20, 2002).

- (3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;
- (4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and
- (5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

The Commission has also identified specific measures that nonexempt SEUs must take and periodically analyze:

- (1) Disseminate the station's equal employment opportunity program to job applicants and employees;
- (2) Review seniority practices to ensure that such practices are nondiscriminatory;
- (3) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion or sex discrimination;
- (4) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;
- (5) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;
- (6) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and
- (7) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

It is very important that every SEU with five or more full-time employees not only implement an effective EEO Program as contemplated above, but also maintain an adequate paper trail demonstrating that each of the elements and tasks identified above is being carried out in a meaningful way. The point person for EEO at such SEUs should have meaningful input into the setting of the EEO policy and program and meaningful oversight and responsibility for implementation and enforcement of the EEO policy and program.

B. Three Outreach Prongs

In addition to the above, the EEO Rule contains a three-prong EEO outreach requirement designed to ensure broad outreach to potential male and female applicants of all races and ethnicities.

1. Outreach Prong 1 – Recruitment for All Full-time Vacancies

SEUs with five or more full-time employees must recruit for all full-time vacancies, except in exigent circumstances. The crux of the recruitment obligation is wide dissemination of information concerning each job vacancy. In circumstances where recruitment may not be feasible, such as where there is an immediate need to replace an employee who departs without notice and whose duties cannot be filled, even briefly, by other station employees, the Commission has stated that the broadcaster is excused from the obligation to widely recruit before hiring. However, according to the Commission, these circumstances should be rare. If an SEU is considering hiring a full-time employee without the benefit of broad recruitment, the SEU should seek the advice of communications counsel before going ahead. The reason is that there is a high likelihood that the Commission and the public interest and civil rights groups will have an institutional concern with any full-time hire that was not the subject of broad recruitment.

The Commission contemplates that broadcasters will recruit using “sources designed to achieve broad outreach” in order “to insure that all segments of the population have an equal opportunity to compete for broadcast...employment and that no segment is subjected to intentional or unintentional discrimination.” The EEO Rule requires broadcasters to develop and use for each full-time job vacancy a variety of recruitment sources that can be reasonably expected, collectively, to reach “the entire community.” “A broadcaster may widely disseminate job postings through any combination of methods sufficient to ensure that its recruitment efforts are inclusive.” For purposes of this outreach requirement, the definition of “community” is left to a licensee’s good faith discretion, but the licensee should consider “community” as encompassing, at a minimum, its community of license. Depending upon the technical coverage of the station, the geographic scope of its marketing, promotional and advertising practices, Nielsen and Arbitron market definitions, and the locations of locally-based community groups which have requested to be given notice of job vacancies, “community” may for a particular station also include the entire county in which the station is licensed as well as the Arbitron market and Metropolitan Statistical Area (“MSA”) in the case of counties located in an MSA. To minimize the risk of second guessing by third parties and the Commission, stations should use as geographically broad a definition of “community” as is realistic for the particular station and its operations.

The Commission has stated that broadcasters will not be required to demonstrate that they received a response from a particular segment of the community or that a particular segment of the community was actually aware of a particular vacancy. Nor will the Commission require that recruitment be “targeted to a specific segment” of the community, only that a station’s EEO “recruitment sources be reasonably calculated to reach the entire community.” The Commission made these statements in response to concerns expressed in the rulemaking that a broadcaster may be required to reach out to an infinite number of occupational, ideological, sociological, historical, recreational, political, philosophical, economic segments, etc. in every community.

In FCC Form 396-A (“Broadcast Equal Employment Opportunity Model Program Report”) the Commission has stated that it contemplates that a broadcaster will develop “specialized referral sources” to insure wide dissemination of job openings. The Commission has added: “Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.”

The State Broadcasters Associations have twice sought, in 1999 and in 2002, to have the Commission accept the Internet as a universal, common, broadcast standard for the wide dissemination of job vacancy information. Their “Internet Plus” proposal was comprised of well publicized use of the Internet for job vacancy postings and “safety valve” notices to locally-based referral organizations which request to be placed on a station’s “mailing list” of job vacancy notices. The State Associations’ dual proposal was intended (i) to remove the uncertainty inherent in the Commission’s goal of “inclusiveness,” through the

use of intermediate referral organizations, and (ii) to promote increased effectiveness and efficiency in the recruitment process through direct Internet-based communications between broadcasters and potential applicants. Under the "Internet Plus" approach, every broadcaster would know what would truly constitute compliance with the wide dissemination requirement.

The fact that the Commission has, to date, rejected the "Internet Plus" proposal means that there is no clear, unambiguous standard against which to measure a station's compliance with the wide dissemination requirement. What is known is that Internet-only dissemination is not enough. That being said, the Commission has stated that stations have the discretion to determine which combination of recruitment sources or methods will produce the widest and most inclusive outreach. A combination of the following sources and dissemination methodologies should, therefore, be evaluated for every full-time job opening:

- (1) Post full-time job vacancies on the station's own job bank web page and/or on the job bank web pages of its State Broadcasters Association, the National Alliance of State Broadcasters Associations, the National Association of Broadcasters and other organizations in order to insure that the station's outreach is as geographically widespread as technology permits and so that the greatest number of people can be made aware of the job opening and compete for it. If a station uses the Internet as one method of broad outreach, it should air spots promoting that fact so that its listeners or viewers become accustomed to looking for job postings on broadcast-related Internet websites.
- (2) Send, or cause a responsible third-party to send, notices of job openings to all referral organizations which have asked to be placed on the station's "mailing list" for its postings. Many State Broadcasters Associations maintain lists of referral organizations on a state-wide, regional and national basis in order to help stations in their recruitment efforts. At least one State Broadcasters Association acts as a responsible third-party and routinely mails notices of job openings for its members to a list of over 700 referral organizations.
- (3) Expand such "mailing lists" to include local, statewide and regional women's and minority groups; local and area high schools, trade schools, two year colleges, four year colleges and universities; churches, business and professional organizations, including organizations with substantial numbers of minority and female members; and send, or cause a responsible third-party to send, notices of job openings to such groups, educational institutions, churches and other organizations.
- (4) Promote the job opening over the licensee's station(s).
- (5) Advertise the job opening over other radio and television stations,
- (6) Advertise the job opening in local newspapers with wide circulation as well as in newspapers directed to minorities and women;
- (7) Advertise the job opening in relevant trade periodicals.
- (8) Promote the job opening at job fairs.
- (9) Post the job opening in the offices of the station(s) so that the station's employees can compete for the opening as well as refer others to the station(s).
- (10) Other referral sources and methodologies.

The Commission has not stated that a station must purchase broadcast air time or take out print ads every time there is a job opening. There should be a periodic review of the sources/methods used for recruitment to determine which sources are producing applicants, including women and minorities. Stations should work with non-productive sources to try to make them productive. New sources should be added as they become known. The more sources/methods used on a usual and customary basis, the less risk there will be that a station's efforts could be second-guessed in a serious way. On the other hand, the more sources used, the greater the burden on stations to evaluate their productivity and to make sure that contact information remains current. **All advertisements and job vacancy notices, regardless of the manner in which they are distributed, should contain a statement that the broadcaster is an equal opportunity employer ("EOE") to advise the public of the employer's EEO and nondiscrimination commitment.**

In the *Second R&O*, the Commission has made it clear that "word-of-mouth" recruitment is neither unlawful nor inappropriate so long as it is accompanied by broad recruitment efforts as well: "broadcasters are free to use non-public recruitment sources and to interview and hire persons referred by such sources, so long as they also use public recruitment sources sufficient to achieve broad outreach and fairly consider the applications generated by those sources." Where it is common that most of a station's hires originate from "word-of-mouth" or employee referrals such station should re-double its efforts to include public recruitment sources and to document those efforts thoroughly.

Broadcasters may also engage in joint recruitment efforts, but each broadcaster remains individually legally responsible for meeting the broad outreach obligation. For example, it would be permissible for a station to arrange with its State Broadcasters Association or another reputable third party which would routinely mail, fax or e-mail notices of job openings for stations to a long list of referral organizations.

A broadcaster must afford "reasonable time after recruitment is initiated for applications to be filed before the position is filled." The Commission has stated that it would have concerns where there is "evidence that an entity has pre-selected a successful candidate without considering the applications of other applicants..." Where applications were received as the result of prior vacancy-specific recruitment efforts conducted in accordance with the EEO Rule, the FCC has permitted a broadcaster to use applications generated three months prior to the hire at issue.

Temporary hires and interns are not subject to the recruitment requirement of the EEO Rule. However, if a temporary hire or an intern were subsequently considered for a permanent position, the permanent position would first have to be subject to broad recruitment. Such recruitment must also take place where a former employee is being considered for re-hire. Recruitment is not necessary for internal promotions unless the job position from which the person is being promoted was not previously the subject of broad recruitment. Recruitment is not required for non-employee volunteers.

2. Outreach Prong 2 – Notification to Community Groups

So that “no segment of the community is inadvertently omitted from recruitment efforts,” the FCC is also requiring broadcasters, as a “safety valve,” to provide notification of full-time job vacancies to organizations involved in assisting job seekers upon request by such organizations. There is no limit on the number of organizations that may request notification. Broadcasters must maintain a list of all these organizations and make certain that they are sent notice of all such vacancies. Stations have the right to determine how they will provide notice to requesting parties, i.e. by e-mail, fax or letter. As mentioned above, stations may use third-parties to disseminate such notices to these referral organizations so long as each station accepts the fact that it remains legally responsible for full compliance with the requirement. Accordingly, broadcasters should only rely upon reputable organizations to perform the ministerial function of sending the notices and require adequate proof of which announcements were sent to which referral organizations on which date. Furthermore, since records of the contact data for each such organization, including the name and telephone number of the contact person at each organization, must be maintained by stations and will have to be disclosed in each Annual EEO Public File Report, third party organizations need to provide that information to stations on a regular basis.

Broadcasters must make reasonable efforts to publicize the fact that qualifying referral organizations may ask to be placed on a “mailing list” for information about all or certain types of job openings at the station(s). Publicity may be accomplished through the use of over-the-air announcements and/or newspaper advertisements, either individually sponsored or sponsored jointly by in-market broadcasters and/or State Broadcasters Associations. We continue to advise stations periodically to air announcements inviting eligible organizations to contact the station so that stations can add them to their mailing list for notices of job openings.

An organization that wants to be notified of job vacancies need only notify a broadcaster once, and then it is entitled to notification of all future full-time vacancies. If a broadcaster wishes to ascertain a group’s continuing interest, it may contact the group, but if the group indicates a continuing interest in receiving notifications, or does not respond one way or another, the organization should be treated as entitled to continue to receive such notices unless there is clear proof that the organization has gone out of business or has moved and its forwarding address information is unavailable.

According to the Commission, the obligation to notify recruitment sources that request notice of job openings is a supplement to, not a substitute for, a licensee’s core obligation to widely disseminate information about job vacancies. If a licensee does not receive any requests for notice of vacancies, it is still responsible for ensuring that notices of openings are widely disseminated in the community.

3. Outreach Prong 3 – Menu Option Initiatives

The purpose of these activities is to “further broaden outreach efforts to reach segments of the labor force who may be inadvertently omitted from vacancy-specific recruitment.” Specifically, SEUs with five to ten full-time employees and SEUs with larger full-time staffs but whose stations are located in “smaller markets” must perform enough of the following menu option initiatives to earn at least two menu option credit within each two-year period of its eight year license term. SEUs with more than ten full-time employees and whose stations are not located in “smaller markets” must earn at least four credits within each two-year period. A “smaller market” station is defined 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.

The non-job vacancy specific menu options include:

- i) participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;
- ii) hosting of at least one job fair;
- iii) co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;
- iv) participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops and similar activities;
- v) establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;
- vi) participation in job banks, Internet programs, and other programs designed to promote outreach generally (i.e., that are not primarily directed to providing notification of specific job vacancies);
- vii) participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;
- viii) establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;
- ix) establishment of a mentoring program for station personnel;
- x) participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;
- xi) sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;
- xii) listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;
- xiii) provision of assistance to unaffiliated non-profit entities in the maintenance of websites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

⁷ Currently, the FCC is using the information regarding Metropolitan Statistical Areas ("MSAs") and their populations that can be found at <http://www.whitehouse.gov/omb/bulletins/95-04.html>. MSAs with populations of fewer than 250,000 people are defined as Level C and D MSAs or PMSAs. New MSA information based on the 2003 Census has been released by the Office of Management and Budget, but as of this publication, the FCC staff advises that it has not yet adopted any of the new information for use under the EEO Rule.

- xiv) provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;
- xv) provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;
- xvi) participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

The specific steps and details regarding the implementation of these menu options are left to the reasonable discretion of the broadcaster. While the Commission has declined to quantify the amount of effort that a broadcaster must devote to a particular menu option initiative selected, it has cautioned that token efforts will be found inadequate. Joint participation is permitted so long as each station's participation shows "meaningful involvement in the activity for which credit is sought." Simply lending a station's name or providing money in a joint undertaking will not be viewed as adequate participation. If credit is sought for the joint hosting of a job fair, the broadcasters must also participate in a meaningful way in the "planning and implementation of the event." In time, the Commission is expected to give more guidance concerning compliance with the menu option prong. Accordingly, stations should consult with communications counsel as to the credit eligibility of a particular activity in order to reduce the risk that a particular activity will be found not eligible for regulatory credit.

Broadcasters must, of course, retain sufficient documentation to verify that they have engaged in the specific activities, including records identifying the scope of their participation and the names and titles of the station personnel involved.

The various State Broadcasters Associations are aware of these requirements and have taken, and continue to take, steps to institute many of these initiatives in order to help SEUs generate the necessary credits, such as scholarship programs, internships, etc. Accordingly, SEUs should contact their respective state associations and ask what programs currently exist or are in development in which the SEU may participate in a meaningful way so that the SEU could appropriately claim a credit under this Commission EEO requirement.

A cautious approach would be to practice "overachievement" in this area since there is always the risk that the Commission may decline for any number of reasons, to accept a credit for a particular activity.

4. Outreach Requirements for Religious Broadcasters

Religious broadcasters who elect to apply a religious qualification to a particular position are not required to strictly comply with the broad outreach requirement or the menu options with respect to that position. Rather they must make reasonable, good faith efforts to recruit applicants for that position, without regard to race, color, national origin or gender, among those who are qualified based on their religious belief or affiliation. However, with respect to positions that are not subject to a religious qualification, religious broadcaster SEUs which employ five or more full-time employees must fully comply with Prongs 1 and 2 of the EEO Rule described above with respect to those positions. If a religious broadcaster SEU has five or more full-time employees in positions that are not subject to a religious qualification, it must also comply with Prong 3 mentioned above. A religious broadcaster SEU who employs five or more full-time persons and does not treat any of its positions as subject to a religious qualification must comply with all three prongs. A religious broadcaster who treats all of its positions as subject to a religious qualification is

exempt from all three prongs, but, as mentioned above, must still make good faith efforts to recruit applicants without regard to race, color, national origin or gender from among its co-religionists.

4. Recordkeeping

A. General Obligations

All SEUs, *regardless of staff size*, must provide equal opportunities to all qualified persons and comply with the Commission's prohibition against unlawful employment discrimination. However, according to the EEO Rule, only SEUs which employ five or more full-time employees must maintain documentation of their compliance with the general EEO Program requirements as well as with the three outreach prong requirements.

Specifically, every nonexempt SEU must retain documentation showing that it has reviewed and acted upon, those elements and tasks of its EEO Program described in Section III.A. above. In addition, each nonexempt SEU must maintain a list of each vacancy for a full-time permanent position that was filled during the pertinent review period, identified by job title, along with documentation demonstrating the specific steps taken, including sources used, to recruit for each such vacancy. Notice of an opening may be publicized in the electronic media, the print media, over the Internet as well as to individual referral sources. Accordingly, documentation could include copies of over-the-air announcements, newspaper advertisements, trade periodical ads, web page announcements, as well as e-mails, letters and faxes to specific recruitment sources. In order to be deemed sufficient, the records must show the dates/times when the job vacancy notices were publicized or sent, as the case may be. Such records should also contain the name of the media/Internet source used as well as the recruitment organizations to which the notice was sent, including the address, telephone number, e-mail address if applicable, contact person and the method by which the source received its notification, i.e., by e-mail, fax, U.S. mail, overnight courier, etc., as appropriate. Such records may be maintained in an electronic form.

NOTE—Absent a showing of extraordinary circumstances, the Commission will not give credit to any activity that cannot be supported by adequate records.

B. Specific Recordkeeping

Nonexempt SEUs have to collect and retain the following information:

- (1) listings of all full-time job vacancies filled by the station employment unit, identified by job title;
- (2) the recruitment sources used to fill each vacancy, including any organizations which requested notification (such organizations should be separately identified) and the name, address, contact person and telephone number of each recruitment source contacted to fill each position;
- (3) dated copies of all advertisements, letters, e-mails, faxes, etc., announcing each vacancy;
- (4) documentation necessary to demonstrate performance of the Prong 3 menu options, e.g., job fairs, mentoring programs, including sufficient information to disclose fully the nature of the initiative and the scope of the SEU's participation, including the station personnel involved;
- (5) the total number of interviewees for each vacancy and the referral source for each interviewee;
and

- (6) the date each vacancy was filled and the recruitment source that referred the hiree.

This Legal Guide does not contain a suggested recordkeeping form for assuring compliance with the general EEO Program requirements identified at Section III.A. since each station's approach to achieving compliance with those requirements will be very different. However, attached hereto as **Attachment B** is a set of recordkeeping forms which, subject to appropriate tailoring, can be used to help stations document their compliance with the Outreach Prongs and assist them in preparing their Annual EEO Public File Report discussed below.

Specifically, four forms are provided. The first form, **Form B-1**, is a sample text of a broadcast or print notice that stations can use to notify organizations which assist job seekers that such organizations may request to be placed on the station's "mailing list" to receive notices of job vacancies at the station. The second form, **Form B-2**, is a sample form for collecting information about those sources that respond to this notice and are therefore entitled to receive information about job openings at the station on a routine basis. The third form, **Form B-3**, is to be used in connection with each specific job opening and provides a checklist for compliance with both the outreach and the recordkeeping requirements applicable to each specific opening. *It is recommended that a separate file folder be opened for each job vacancy at the station and that a separate **Form B-3** be placed in the folder and completed for each opening.* The final form, **Form B-4**, is a form on which information regarding the Prong 3 Menu Option efforts can be recorded. The data/information from **Forms B-3** and **B-4** will be needed each year to complete the Annual EEO Public File Report.

C. Recordkeeping for Religious Broadcasters

The EEO recordkeeping requirements for non-secular broadcasters are applicable to the non-religious qualified full-time positions of religious broadcasters. As relates to religious qualified full-time positions, religious broadcasters must still retain documentation as to each such vacancy, the recruitment sources used, the date the vacancy was filled and the recruitment source of the hiree. The FCC states that it needs this information to monitor whether the religious broadcaster is making reasonable, good faith efforts to recruit among persons who meet the applicable religious qualification. The forms provided at **Attachment B** may, subject to appropriate tailoring, be used for this purpose.

D. Retention Period for EEO Outreach Records

The Commission requires licensees to retain all records documenting their outreach efforts until the final grant of the renewal application covering the license term during which the recruitment effort/activity took place.

5. FCC EEO Reporting/filing Requirements

The FCC's EEO Rule once again places special emphasis on making EEO information readily available to the public and to the FCC.

A. The “Annual EEO Public File Report”

The EEO Rule requires every nonexempt SEU to prepare on an annual basis, an “Annual EEO Public File Report” comprised of the following

- (1) a list of all full-time vacancies filled by the station employment unit during the preceding year, identified by job title;
- (2) the recruitment sources used to fill each vacancy, (including organizations entitled to notification of vacancies which should be separately identified), as well as the address, contact person, and telephone number of each source;
- (3) a list of the recruitment source that referred the hiree for each full-time vacancy;
- (4) data reflecting the total number of persons interviewed for each full-time job vacancy in the preceding year;
- (5) the total number of interviewees referred by each recruitment source; and
- (6) a list and brief description of the Outreach Prong 3 menu options implemented during the preceding year.

Attached hereto as **Attachment C** is a sample form of annual “EEO Public File Report.” The contents of the report should be derived from the data/information gathered using **Forms B-3** and **B-4** hereto.

Annual EEO Public File Report for Religious Broadcasters

Religious broadcasters with full-time hires subject to a religious qualification only need to include the information contemplated in the first three items listed above.

Filing and Posting of Annual EEO Public File Report

Annually, on the anniversary of the date on which its license renewal application is due to be filed, each nonexempt SEU must (i) place in the public inspection file of each of the stations comprising the SEU and (ii) post on each such station’s website (if it has one) the station’s “Annual EEO Public File Report.”⁸

All nonexempt SEUs must place in their public inspection files, and post on their websites, their Annual EEO Public File Reports “on” their respective anniversary renewal filing dates. However, these nonexempt SEUs may end the period covered by their Reports up to 10 days prior to the due date, e.g., May 22 for the June 1 Report. The Media Bureau is allowing this earlier cut-off so that nonexempt SEUs will have adequate time to prepare, have reviewed and finalize their Reports, place them in their public inspection files, and post them on their websites. So that there are no gaps in days covered from one Annual EEO Public File Report to the next, nonexempt SEUs choosing to “cut-off” their reporting period should add the days cut-off to the period covered by the next Annual EEO Public File Report.

While the Reports must be kept in the public inspection file for the full license term, the *Second R&O* makes clear that *only* the most current Annual EEO Public File Report need be posted on the website.



⁸ If the stations in the SEU are in different renewal cycles, the SEU has the discretion to select whichever renewal cycle is represented by one of the stations in the SEU.

Accordingly, a station may (and should) remove from its website the immediately preceding Annual EEO Public File Report once the current one has been posted.

B. “Broadcast Mid-Term Report” on FCC Form 397

All television station SEUs with five or more full-time employees, and all radio station SEUs with eleven or more full-time employees, must file a “Broadcast Mid-Term Report” on FCC Form 397 with the Commission by the first day of the month which constitutes the mid-point of their license terms. A copy of that report form is attached hereto as **Attachment D**. The two Annual EEO Public File Reports for the two annual periods preceding the date of filing must accompany the Form 397 filing. The form also requires the SEU to identify by name and title the particular official who has been assigned “overall responsibility for equal employment opportunity” at the station. The SEU should assume that this person may be called by the FCC or a third party to verify this information and to determine whether the person’s appointment is bona fide. Accordingly, the person should be knowledgeable about and very much involved in setting, implementing and enforcing the station’s EEO policy and program. The person should also be made aware that the FCC or a third party may call him or her to ascertain such involvement.

C. “Broadcast Equal Employment Opportunity Program Report” on FCC Form 396

In addition, all stations must file with their renewal applications a “Broadcast Equal Employment Opportunity Program Report” on FCC Form 396, a copy of which is attached as Attachment E. Licensees must attach to the Form 396 copies of the station’s two Annual EEO Public File Reports covering the preceding two annual periods, and provide a narrative statement describing how the station achieved “broad and inclusive” outreach during those two years. If the licensee had experienced any difficulties in its outreach efforts, it is afforded the opportunity to explain those difficulties in the narrative statement. The FCC has clarified that Form 396 also requires the reporting of each complaint filed against a station alleging unlawful employment discrimination during the most recent license term, whether the complaint is pending or was adjudicated and whether the complaint was resolved in favor of or adverse to the licensee. Stations should be aware that they may be required to report complaints of unlawful employment discrimination not just based on race, national origin, color, religion or gender, but also on other unlawful grounds such as age. All types of discrimination complaints should be disclosed to communications counsel for assessment under this requirement.

Form 396 also requires that the licensee identify by name and title the particular official who has overall responsibility for EEO at the station. Since the FCC, or a third-party, may contact this person, he or she should be knowledgeable about and involved in the station’s EEO policy and program. Furthermore, if the person is replaced for any reason while the license renewal application is pending, the Commission should be promptly notified of the name of the new person with such responsibility.

D. “Broadcast Equal Employment Opportunity Model Program Report” on FCC Form 396-A

Any Form 301 construction permit application, Form 314 assignment application, or Form 315 transfer application that involves an SEU that will employ five or more full-time employees must include a “Broadcast Equal Employment Opportunity Model Program Report” on FCC Form 396-A, a copy of which is attached hereto as **Attachment F**. Form 396-A requires the identification of the recruitment sources that the applicant, proposed assignee or proposed transferee intends to contact as part of its broad recruitment efforts.

6. Time Brokerage Agreements

If a station is being operated under a Time Brokerage Agreement, a Local Marketing Agreement, or the equivalent, the licensee's Annual EEO Public File Report, Form 397 Mid-Term Report and Form 396 will include data only concerning the recruitment efforts for its own full-time employees, and not concerning the broker's efforts for its own employees. A broker who is also the licensee of another station or stations in the market should include recruitment activity concerning full-time positions at the station it brokers in the reports it prepares for its own station(s) that is (are) most closely affiliated with and in the same market as the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, it should include the information for the brokered station in the reports for the station it owns that is geographically the closest to the brokered station.

7. EEO Enforcement

In order to ensure compliance with the EEO Rule, the Commission has stated that it will conduct random audits and targeted investigations of licensees, requesting information relating to a licensee's EEO efforts. The Commission has stated that it annually will randomly select for audit approximately five percent of all licensees. In addition to the random audits, the Commission has stated that it may conduct an inquiry whenever it finds evidence of a possible violation of the EEO Rule. A paper inquiry by the Commission could range from a request for documentation of a station's recruitment efforts to a request for the EEO-related contents of a station's public inspection file. Depending on the circumstances of the case, the inquiry could also include a request for EEO data covering any period during the license term, as well as witness interviews regarding the station's EEO conduct. The Commission has also indicated that the public may bring to its attention any problems that they find with a station's Annual EEO public file reports.

In a Public Notice released May 28, 2004, the Media Bureau began its first EEO audits of approximately 200 radio stations and 70 television stations. These random audits have continued since then. Copies of the most recent EEO Random Audit Public Notice and a sample EEO Audit Letter are attached as **Attachment G**. The letter well illustrates the seriousness of such an audit, as well as the importance of adequate record keeping and detailed compliance with each of the sub-sections of the Commission's EEO regulations. It is recommended that any licensee that is subject to an EEO audit or other inquiry or investigation, seek the advice of communications counsel early enough in the process so there is sufficient time for such counsel to evaluate all pertinent issues relative to the particular licensee or station, to assist in determining what documents and other information should be provided, and to review in advance any draft response to the FCC.

The following types of action and inaction could constitute **violations** of the EEO Rule: engaging in any type of unlawful employment discrimination; failing to maintain an effective EEO Program (token efforts are not enough); failing to send out notices of all full-time openings to all referral organizations which have requested such information; failing to recruit for all full-time vacancies absent exigent circumstances; failing to *broadly/widely* recruit throughout the community for all full-time vacancies absent exigent circumstances; failing to adequately substantiate that exigent circumstances actually existed; failing to fully and accurately document recruitment efforts for each job hire; failing to engage in the requisite number of non-vacancy menu option activities during each of the two year periods which comprise the license term; *failing to self-assess by routinely reviewing the EEO Program for effectiveness and to implement efforts to improve the program*; failing to timely file with the FCC a complete and accurate mid-term report with two accurate and complete Annual EEO Public File Reports; failing to timely place in the public inspection file the required EEO documentation; failing to timely place in its public file and post on a station website the required Annual EEO Public File Report; failing to timely file with the FCC a complete and accurate Form 396 or Form 397; not timely responding to a Commission inquiry or responding but being nonresponsive or

evasive; engaging in misrepresentation or lack of candor regarding outreach efforts or other EEO-related information; etc.

FCC sanctions for deficiencies in a licensee's EEO compliance include admonishments, imposition of reporting conditions (possibly goals and timetables), monetary forfeitures, short term renewal of license, designation for a license renewal hearing, designation for license revocation hearing, and loss of license. Thus far, the FCC sanctions imposed have involved large monetary forfeitures and reporting conditions.

In *Emmis Television Licensee, LLC*, the Commission found that the Emmis licensee failed to recruit at all for 11 (22%) of 51 full-time vacancies, failed to keep interviewee or referral data for any hires, failed to include required information in two annual public file reports, and failed to self-assess adequately.⁹ Accordingly, the Commission imposed a forfeiture of \$18,000.¹⁰ The *Emmis* case has been used by the Commission in subsequent cases to determine the monetary amount of forfeitures imposed. For example, in *KDAY(FM)*, the Commission found that the licensee failed to recruit at all for 21 (39%) of its 54 vacancies, failed to recruit adequately for 27 (50%) of its 54 vacancies, and failed to self-assess its EEO program.¹¹ The Commission found that relying on only one of the following recruitment sources was insufficient: the Internet, a college, flyers, a group interview, a broadcast association, on-air ads, an accounting firm, a communications institute, a single job fair, and a seminar.¹² Finding these violations more numerous than those in *Emmis*, the Commission assessed a forfeiture of \$20,000.¹³ In *Viper Communications*, the Commission found that the station in question failed to engage in the required outreach initiatives.¹⁴ Determining this to be a less significant violation than the violations in *Emmis*, the Commission imposed a forfeiture of \$8,000.¹⁵ Finally, in *New Northwest Broadcasters LLC*, the Commission held that relying solely on walk-ins, the Internet, and referrals by other employees violated the EEO requirements.¹⁶ Specifically, the Commission found that the licensee failed to recruit or recruit widely for 13 (52%) of its 25 vacancies, keep adequate records for 5 (20%) of its 25 vacancies, and self-assess its EEO program.¹⁷ Finding the violations somewhat less pronounced than those in *Emmis*, the Commission assessed a monetary forfeiture of \$12,000—\$5,000 for failing to recruit, \$5,000 for failing to recruit widely, \$1,000 for failing to keep adequate records, and \$1,000 for failing to self-assess.¹⁸

In the first two weeks of February 2007, the Federal Communications Commission imposed a series of fines on stations EEO violations and launched a new series of random audits. On February 7, 2007, in *Inland Empire Broadcasting Corporation*, the Commission fined two licensees \$5,000 each for failing to broadly recruit for four of ten (40%) full-time vacancies, instead relying on referrals from advertising clients, salespeople, and other individuals to fill those vacancies. This decision is notable because this represents one of the first times that the FCC has fined a station for minor to moderate EEO violations. As indicated above, most fines have been for nearly complete failures to recruit or file the necessary documentation. On February 8, 2007, in *Three Trees Communications, Inc.*, the Commission fined the licensee of three Georgia radio stations \$13,000 for failing to engage in any EEO initiatives and for failing to place EEO

⁹ Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13860 (2005) (forfeiture paid).

¹⁰ *Id.*

¹¹ Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 20130 (2005)

¹² *Id.*

¹³ *Id.*

¹⁴ Memorandum Opinion and Order and Notice of Apparent Liability, 20 FCC Rcd 20254 (2005).

¹⁵ *Id.*

¹⁶ Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 06-1921 (released September 27, 2006).

¹⁷ *Id.*

¹⁸ *Id.*

public file reports in its public file, as required by Sections 73.2080(c)(6) and 73.3526(e)(7) of the Commission's Rules. On February 9, 2007, in *Liberman Television of Dallas License Corp.*, the Commission fined the licensee of a Texas radio station \$20,000. The Bureau found that the station failed to properly recruit for 30 of its 54 (55.6%) full-time vacancies because the station relied solely on walk-ins to fill 11 of those vacancies and on referrals from employees and other individuals to fill 19 of those vacancies. In assessing the fine, the Commission noted that "although we do not require a specific number of recruitment sources, if a source or sources cannot reasonably be expected, collectively, to reach the entire community, the licensee may be found in noncompliance with the Commission's EEO Rule." Additionally, the Bureau audit found that the station did not retain all documentation necessary to support the data reported on its 2004 and 2005 EEO public file reports, in violation of Section 73.2080(c)(5) of the Commission's rules. The public file reports also failed to list the total number of interviewees for full-time vacancies and the number of interviewees referred by each recruitment source, in violation of Sections 73.2080(c)(6)(iv) and 73.3526(e)(7). Finally, the Commission found that the station failed to place its EEO public file report in its public inspection file. On February 12, 2007, in *New Northwest Broadcasters LLC*, the Commission fined a licensee \$12,000 for failing to comply with the EEO recruitment, recruitment source, self-assessment, and recordkeeping requirements. In this case, the Commission reaffirmed its belief that in order for recruitment efforts to be sufficiently broad, non-Internet sources must also be employed.

In March 2008, the Commission issued a series of admonishments against stations whose EEO activities had been found wanting. Of particular note, on March 25, the FCC admonished Entravision Holdings, LLC for its recruitment practices at four Texas radio stations during the two year period of April 2003 to April 2005.¹⁹ In its response to the FCC's random EEO audit, the licensee reported that the stations used the licensee's corporate website, station on-air advertisements, word-of-mouth, walk-ins, unsolicited job applications, or internal job postings to recruit for its full-time openings during the period. From 2003 to 2004, eight out of its nine full-time vacancies were filled in this manner as was the case for all four of its full-time vacancies from 2004 to 2005. The Commission acknowledged that it does not require use of a specific number of recruitment sources, but emphasized that the efforts undertaken must be "sufficiently broad."²⁰ The sources used must "reasonably be expected, collectively, to reach the entire community" in order to be found in compliance with the Commission's rules.²¹ In parsing through the various types of efforts engaged in by the licensee, the Commission said that relying on a station's own employees or on the station's own contacts does not constitute recruitment for purposes of the Commission's EEO rules because such efforts are not "public outreach." Implicit in this is that the FCC apparently feels that this type of "outreach" is more reminiscent of an "old boy's network" and thus not truly "public" outreach. The Commission also stated that a "walk-in" may be a "source" of an interviewee or hiree, but it is not a recruitment effort. In addition, the Commission emphasized that a station may not rely exclusively on the Internet as a recruitment effort and thus must use non-Internet sources at the same time. Lastly, the FCC held that as a result of licensee's failure to recruit properly for all of its full-time vacancies, the broadcaster also failed to adequately analyze its recruitment program on an ongoing basis to ensure that it was effective in achieving "broad outreach." The Commission determined that the licensee willfully and repeatedly failed to comply with its EEO rules. However, because the violations occurred during the immediately prior license term and the licenses of the four audited stations had already been renewed, the statute of limitations barred the Commission from imposing a fine on the licensee. The FCC, however, issued an admonishment and ordered the licensee (and any successor licensee should the stations be sold) to submit additional EEO information to the FCC by May 1, 2008, May 1, 2009, and May 1, 2010. Specifically, the four Texas radio stations, and others that may be in the same station employment unit,

¹⁹ Letter to Barry Friedman from Lewis Pulley, Assistant Chief, Policy Division (released March 25, 2008).

²⁰ *Id.*

²¹ *Id.*

must, on an annual basis, submit their then most recent Annual EEO Public File Reports to the Commission for review. The information must include the total number of interviewees for each full-time vacancy for the preceding reporting year, the referral source of each interviewee, the recruitment source which referred the hiree of each full-time vacancy, and dated copies of all advertisements, letters, bulletins, faxes, emails, or other communications advertising each full-time vacancy in the preceding reporting year. The FCC stated that it expected the licensee to “take the steps necessary to ensure that its staff understands and complies with “the Commission’s EEO rules and “caution[ed]...that we will not hesitate to impose appropriate sanctions...for any further violations.”²²

Beyond solely monetary forfeitures, the Communications Act of 1934, as amended, precludes the Commission from granting a renewal of license where the license holder has engaged in serious violations of the Act or in a pattern of violations of the Act. Accordingly, the EEO Rule represents a critical full compliance goal for broadcast stations.

8. Conclusion

The EEO Rule requirements are very broad and detailed in the efforts, documentation, and reporting required. A violation can result in serious penalties. Therefore, broadcasters should treat this aspect of FCC rule compliance with the same level of diligence, truthfulness and careful record keeping and reporting that they devote to their filings with the FCC, the Internal Revenue Service and other agencies..

Except for the forfeiture cases noted above, the FCC has not yet had an opportunity to formally interpret the EEO regulations. Nor has it acted on the several petitions for reconsideration and clarification of its EEO regulations which have been pending before the FCC since 2003. Consequently, subsequent actions by the Commission could result in changes to those regulations. Accordingly, it is the responsibility of each individual reading this publication, including those involved in station recruiting and hiring, to remain fully abreast of developments in this area.



²² *Id.*

ATTACHMENT A—Section 73.2080 of the Commission’s Rules and Regulations

The Broadcast EEO Rule

I. Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Subpart H - Rules Applicable to All Broadcast Stations

Section 73.2080 is amended to delete the present language in its entirety and replace it with the following:

§ 73.2080. Equal employment opportunities (“EEO”).

- (a) **General EEO policy.** Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.
- (b) **General EEO program requirements.** Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. Under the terms of its program, a station shall:
- (1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;
 - (2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;
 - (3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;
 - (4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and
 - (5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.
- (c) **Specific EEO program requirements.** Under the terms of its program, a station employment unit must:
- (1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based

on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

- (i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.
 - (ii) In addition to such recruitment sources, a station employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).
- (2) Engage in at least four (if the station employment unit has more than ten full-time employees and is not located in a smaller market) or two (if it has five to ten full-time employees and/or is located entirely in a smaller market) of the following initiatives during each two-year period beginning with the date stations in the station employment unit are required to file renewal applications, or the second, fourth or sixth anniversaries of that date.
- (i) participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;
 - (ii) hosting of at least one job fair;
 - (iii) co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;
 - (iv) participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;
 - (v) establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;
 - (vi) participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);
 - (vii) participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;
 - (viii) establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

- (ix) establishment of a mentoring program for station personnel;
 - (x) participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;
 - (xi) sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;
 - (xii) listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;
 - (xiii) provision of assistance to unaffiliated non-profit entities in the maintenance of websites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;
 - (xiv) provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;
 - (xv) provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;
 - (xvi) participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.
- (3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.
- (4) Periodically analyze measures taken to:
- (i) Disseminate the station's equal employment opportunity program to job applicants and employees;
 - (ii) Review seniority practices to ensure that such practices are nondiscriminatory;
 - (iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;
 - (iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;
 - (v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

- (vi) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and
 - (vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.
- (5) Retain records to document that it has satisfied the requirements of paragraphs (c)(1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:
- (i) listings of all full-time job vacancies filled by the station employment unit, identified by job title;
 - (ii) for each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;
 - (iii) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;
 - (iv) documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;
 - (v) the total number of interviewees for each vacancy and the referral source for each interviewee; and
 - (vi) the date each vacancy was filled and the recruitment source that referred the hiree.
- (6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its website, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):
- (i) a list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;
 - (ii) for each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

- (iii) the recruitment source that referred the hiree for each full-time vacancy during the preceding year;
 - (iv) data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and
 - (v) a list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year.
- (d) **Small Station Exemption.** The provisions of paragraphs (b) and (c) of this section shall not apply to station employment units that have fewer than five full-time employees.
- (e) **Definitions.** For the purposes of this Rule:
- (1) a full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.
 - (2) a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.
 - (3) a smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.
- (f) **Enforcement.** The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing five or more persons in full-time positions, except where noted.
- (1) All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 396, information provided on its Form 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.
 - (2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station and each radio station that is part of an employment unit of more than ten full-time employees four years following the station's most recent license expiration date as specified in § 73.1020. Each such licensee is required to file with the Commission the Broadcast Mid-Term Report (FCC Form 397) four months prior to that date. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 397, its Report should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

-
- (3) If a station is subject to a time brokerage agreement, the licensee shall file Forms 396, Forms 397, and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Forms 396, Forms 397 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its own station that is geographically closest to the brokered station.
- (4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO Rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Forms 396, Forms 397, and EEO public file reports. To determine compliance with the EEO Rule, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of the EEO Rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.
- (5) The public may file complaints throughout the license term based on a station's Form 397 or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§73.3584 and 73.3587-3589 of the Commission's Rules.
- (g) **Sanctions and Remedies.** The Commission may issue appropriate sanctions and remedies for any violation of this Rule.

ATTACHMENT B

Sample Recordkeeping Forms

Recordkeeping Form B-1**For Internal Station Use****Text for Advising Organizations that Assist Job Seekers That They May Request to Be Placed on a List to Receive All Job Notices From The Station****SAMPLE BROADCAST/PRINT NOTICE SEEKING ORGANIZATIONS**

Station(s) _____ is/are looking for organizations that regularly distribute information about employment opportunities to job applicants or have job applicants to refer. If your organization would like to receive notification of job vacancies at our station(s), please notify:

_____ [person] _____ at _____ [address] _____ [e-mail] _____

_____ [phone no.] _____. Station(s) _____ is/are an Equal Opportunity Employer [and

encourages minorities and females to apply]

Recordkeeping Form B-2

For Internal Station Use

Organizations Which Request to Receive Job Vacancy Notices From The Station Should Be Listed Here and Be Advised of Each Opening at the Station(s)

Use This Information In Completing Appendix 2 of the EEO Public File Report

ORGANIZATIONS REQUESTING NOTIFICATION

1. Recruitment Source:_____ Date Source Initially Requested

Contact Person:_____ Notification:

Address:_____ Date Source Requested

Phone:_____ Fax:_____ Notification Cease:

e-mail address:_____

2. Recruitment Source:_____ Date Source Initially Requested

Contact Person:_____ Notification:

Address:_____ Date Source Requested

Phone:_____ Fax:_____ Notification Cease:

e-mail address:_____

3. Recruitment Source:_ Date Source Initially Requested

Contact Person:_____ Notification:

Address:_____ Date Source Requested

Phone:_____ Fax:_____ Notification Cease:

e-mail address:_____

4. Recruitment Source:_ Date Source Initially Requested

Contact Person:_____ Notification:

Address:_____ Date Source Requested

Phone:_____ Fax:_____ Notification Cease:

e-mail address:_____

- 5. Recruitment Source: _____ Date Source Initially Requested
Contact Person: _____ Notification:
Address: _____ Date Source Requested
Phone: _____ Fax: _____ Notification Cease:
e-mail address: _____

- 6. Recruitment Source: _____ Date Source Initially Requested
Contact Person: _____ Notification:
Address: _____ Date Source Requested
Phone: _____ Fax: _____ Notification Cease:
e-mail address: _____

- 7. Recruitment Source: _____ Date Source Initially Requested
Contact Person: _____ Notification:
Address: _____ Date Source Requested
Phone: _____ Fax: _____ Notification Cease:
e-mail address: _____

- 8. Recruitment Source: _____ Date Source Initially Requested
Contact Person: _____ Notification:
Address: _____ Date Source Requested
Phone: _____ Fax: _____ Notification Cease:
e-mail address: _____

- 9. Recruitment Source: _____ Date Source Initially Requested
Contact Person: _____ Notification:
Address: _____ Date Source Requested
Phone: _____ Fax: _____ Notification Cease:
e-mail address: _____

Recordkeeping Form B-3

For Internal Station Use

This Form Should Be Used to Create a Job Vacancy Folder For Each Vacancy At the Station(s)

Use This Information In Completing Appendices 1 and 2 of the EEO Public File Report

NEW JOB VACANCY

Part A

I. General Information

- 1. Job Title: _____
- 2. Station: _____
- 3. Date Position Opened: _____
- 4. Date Position Filled: _____
- 5. Documentation of Dissemination of Notice: Has Part B of this form detailing recruitment efforts undertaken been completed and dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing this vacancy attached hereto?

Yes [] No []

II. Interviewees

- 1. List of people interviewed for this position:

Name	Date	Recruitment Source
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Total number of people interviewed for this position: _____

III. Hiree

Person ultimately hired for this position:

Name: _____

Recruitment Source: _____

Approval:

General Manager: _____ Date: _____

Recordkeeping Form B-3**RECRUITMENT SOURCES UTILIZED****Part B**

1. Was a copy of the job notice for this vacancy posted in a place where employees would easily see it at the station(s) and at other stations in the group?

Yes [] No []

Date posted: _____

Attach a copy of notice posted.

2. Was a copy of the job notice for this vacancy sent to any third party for distribution to its list of referral organizations (i.e. state broadcasters association)?

Yes [] No []

Name of Third Party: _____

Date sent: _____

Attach proof of sending to third party.

Attach copy of third party's proof of distribution.

3. Was a copy of the job notice for this vacancy sent to all of the organizations on the station's list of organizations entitled to receive copies of such notices (Form B-2)?

Yes [] No []

Date sent: _____

Attach a copy of the current list of such organizations.

Attach proof of sending to such organizations.

4. Was a copy of the job notice posted on the station(s) website or on any other websites?

Yes [] No []

Dates posted: _____

Attach copies of notices posted _____ and identify websites by URL's

5. Was a copy of the job notice for this vacancy sent to any additional organizations or advertised in any additional media outlets?

Yes [] No []

Complete the following information for each additional source utilized for advertising the vacancy. Attach copies of newspaper advertisements and scripts of radio/television advertisements. Attach proof of publication.

a) Name of Source: _____

Contact Person: _____

Address: _____

Telephone: _____ Fax: _____

E-mail: _____

How was notification given to this source? _____

b) Name of Source: _____

Contact Person: _____

Address: _____

Telephone: _____ Fax: _____

E-mail: _____

How was notification given to this source? _____

c) Name of Source: _____
Contact Person: _____
Address: _____

Telephone: _____ Fax: _____
E-mail: _____
How was notification given to this source? _____

d) Name of Source: _____
Contact Person: _____
Address: _____

Telephone: _____ Fax: _____
E-mail: _____
How was notification given to this source? _____

e) Name of Source: _____
Contact Person: _____
Address: _____

Telephone: _____ Fax: _____
E-mail: _____
How was notification given to this source? _____

f) Name of Source: _____

Contact Person: _____

Address: _____

Telephone: _____ Fax: _____

E-mail: _____

How was notification given to this source? _____

g) Name of Source: _____

Contact Person: _____

Address: _____

Telephone: _____ Fax: _____

E-mail: _____

How was notification given to this source? _____

Recordkeeping Form B-4

SUPPLEMENTAL RECRUITMENT ACTIVITIES UNDERTAKEN BY THE STATION

Station(s) Claiming Credit: _____

1. Type of Activity Under EEO Rule:[Job Fair, Scholarship Program, Etc.] _____

Date of Station Participation: [On date; From date to date] _____

Participating Employees: _____

Host/Sponsor of Activity: _____

Brief Description of Activity and Station Participation: _____

2. Activity _____

Date _____

Participating Employees: _____

Host/Sponsor of Activity: _____

Brief Description of Activity and Station Participation: _____

ATTACHMENT C

Sample "Annual EEO Public File Report Form"

Sample Annual EEO Public File Report Form

[Station Call Signs]

Annual EEO Public File Report

The purpose of this EEO Public File Report (“Report”) is to comply with Section 73.2080(c)(6) of the FCC’s EEO Rule. This Report has been prepared on behalf of the Station Employment Unit that is comprised of the following station(s): [Station Call Sign(s) and Communities of License] and is required to be placed in the public inspection files of these stations, and posted on their websites, if they have websites.

The information contained in this Report covers the time period beginning _____ to and including _____ (the “Applicable Period”).

The FCC’s EEO Rule requires that this Report contain the following information:

1. A list of all full-time vacancies filled by the Station(s) comprising the Station Employment Unit during the Applicable Period;
2. For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to Section 73.2080(c)(1)(ii) of the EEO Rule, which should be separately identified), identified by name, address, contact person and telephone number;
3. The recruitment source that referred the hiree for each full-time vacancy during the Applicable Period;
4. Data reflecting the total number of persons interviewed for full-time vacancies during the Applicable Period and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and
5. A list and brief description of the initiatives undertaken pursuant to Section 73.2080(c)(2) of the FCC rules.

Appendices 1, 2 and 3 which follow have been designed, in the aggregate, to provide the required information. Please note that the numbers listed on Appendix 2 under the column entitled “Full-time Positions for Which This Source Was Utilized” refer to the number of the full-time job positions listed on Appendix 1.

For purposes of this Report, a vacancy was deemed “filled” not when the offer was extended but when the hiree accepted the job offer.

Appendix 1 to Sample "Annual EEO Public File Report" Form

Covering the Period from _____ to _____

Station(s) Comprising Station Employment Unit: [Station Call Sign(s)]

Section 1: Vacancy Information

	Full-time Positions Filled by Job Title	Recruitment Source of Hiree
1		
2		
3		
4		
5		

Total Number of Persons Interviewed During Applicable Period: _____

Appendix 2 to Sample "Annual EEO Public File Report" Form

Covering the Period from _____ to _____

Station(s) Comprising Station Employment Unit: [Station Call Sign(s)]

Section 2: Recruitment Source Information

	Recruitment Source (Name, Address, Telephone Number, Contact Person)	Total Number of Interviewees This Source Has Provided During This Period (If Any)	Full-time Positions for Which This Source Was Utilized
A			
B			
C			
D			
E			
F			
G			
H			

* Indicates sources that have requested notification of job openings.

Appendix 3 to Sample “Annual EEO Public File Report” Form

Covering the Period from _____ to _____

Station(s) Comprising Station Employment Unit: [Station Call Sign(s)]

Section 3: Supplemental (Non-Vacancy Specific) Recruitment Activities Undertaken by [Station Call Sign(s)]

[Description of the activities.]

ATTACHMENT D

Broadcast Mid-Term Report FCC Form 397

BROADCAST MID-TERM REPORT

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)		E-Mail Address (if available)
FCC Registration Number (FRN)	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION:

Commercial Broadcast Station

Noncommercial Broadcast Station

- | | | |
|--|---|--|
| <input type="checkbox"/> Radio | <input type="checkbox"/> TV | <input type="checkbox"/> Educational Radio |
| <input type="checkbox"/> Low Power TV | <input type="checkbox"/> Educational TV | |
| <input type="checkbox"/> International | | |

List call sign and location of all stations included on this report. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through III should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

Name		Street Address	
City	State	Zip Code	Telephone No. ()

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a television station employment unit that employs five or more full-time station employees must file a full and complete Broadcast Mid-Term Report. If a television station employment unit employs fewer than five full-time employees, only the first two pages of this report need be filed.

A copy of this Mid-Term Report must be kept in the station's public file. Failure to meet these requirements may result in sanctions or remedies. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

Consider as "full-time" employees all those permanently working 30 or more hours a week.

SECTION I.

Does your station employment unit employ fewer than five full-time employees, if television, or fewer than eleven full-time employees, if radio? Yes No

If yes, you do not have to file this form with the FCC. However, you have the option to complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full-time employees, if television, or eleven or more full-time employees, if radio, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:

- A. By licensee, if an individual;
- B. By a partner, if a partnership (general partner, if a limited partnership);
- C. By an officer, if a corporation or an association; or
- D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT
(U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

SECTION II.

RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

SECTION III.

MID-TERM REPORT

Television station employment units with five or more full-time employees and radio station employment units with more than ten full-time employees filing in the middle of the license term must attach a copy of each of the two most recent EEO public file reports (the reports from this year and last year). Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

EXHIBIT 1

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

We have estimated that each response to this collection of information will average 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0922), Washington, D.C. 20554. We will also accept your comments via the Internet if you send them to PRA@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0922.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

ATTACHMENT E

Broadcast Equal Employment Opportunity Program Report

FCC Form 396

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT

(To be filed with broadcast license renewal application)

(For FCC Use Only)

Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION :

Commercial Broadcast Station

Noncommercial Broadcast Station

- Radio TV
 Low Power TV
 International

- Educational Radio
 Educational TV

List call sign and location of all stations included on this report. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through IV should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No

CONTACT PERSON IF OTHER THAN LICENSEE

Name		Street Address	
City	State	Zip Code	Telephone No. ()

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a license renewal applicant whose station employment unit employs five or more full-time station employees must file a report of its activities to ensure equal employment opportunity. If a station employment unit employs fewer than five full-time employees, no equal employment opportunity program information need be filed. If a station employment unit is filing a combined report, a copy of the report must be filed with each station's renewal application.

A copy of this report must be kept in the station's public file. These actions are required to obtain license renewal. Failure to meet these requirements may result in sanctions or license renewal being delayed or denied. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

DISCRIMINATION COMPLAINTS. Have any pending or resolved complaints been filed during this license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)? Yes No

If so, provide a brief description of the complaint(s), including the persons involved, the date of the filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

--

Does your station employment unit employ fewer than five full-time employees? Yes No
Consider as "full-time" employees all those permanently working 30 or more hours a week.

If your station employment unit employs fewer than five full-time employees, complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full-time employees, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:

- A. By licensee, if an individual;
- B. By a partner, if a partnership (general partner, if a limited partnership);
- C. By an officer, if a corporation or an association; or
- D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT
(U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

The purpose of this document is to provide broadcast licensees, the FCC, and the public with information about whether the station is meeting equal employment opportunity requirements.

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

I. EEO PUBLIC FILE REPORT

Attach as an exhibit one copy of each of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

Exhibit No.

II. NARRATIVE STATEMENT

Provide a statement in an exhibit which demonstrates how the station achieved broad and inclusive outreach during the two-year period prior to filing this application. Stations that have experienced difficulties in their outreach efforts should explain.

Exhibit No.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour, 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0113), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0113.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

ATTACHMENT F

Broadcast Equal Employment Opportunity Model Program Report

FCC Form 396-A

GUIDELINES TO THE MODEL EEO PROGRAM

The model EEO program adopted by the Commission for construction permit applicants, assignees, and transferees contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

I. GENERAL POLICY

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of qualified persons.

II. RESPONSIBILITY FOR IMPLEMENTATION

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

III. POLICY DISSEMINATION

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

IV. RECRUITMENT

The applicant should specify the recruitment sources and other techniques it proposes to use to attract qualified job applicants. The purpose of the listing is to assist the applicant in developing specialized referral sources to ensure wide dissemination of vacancy information as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I. GENERAL POLICY

It will be our policy to provide equal employment opportunity to all qualified individuals without regard to race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It will also be our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have adopted an Equal Employment Opportunity Program which includes the following elements:

II. RESPONSIBILITY FOR IMPLEMENTATION

Name/Title

will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be the responsibility of all persons making employment decisions with respect to the recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. POLICY DISSEMINATION

To ensure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts will be made:

- The station's employment application forms will contain a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.
- Appropriate notices will be posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, State or Federal agency if they believe they have been the victims of discrimination.
- We will seek the cooperation of unions, if represented at the station, to help implement our EEO program and all union contracts will contain a nondiscrimination clause.
- Other (specify)

IV. RECRUITMENT

To ensure that information concerning each full-time vacancy is widely disseminated, we propose to use the following list of recruitment sources consistent with the requirements of 47 C.F.R. Section 73.2080:

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

We have estimated that each response to this collection of information will take one (1) hour. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0113), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to pra@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0113.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

ATTACHMENT G**Public Notice**

**Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554**

DA 08-787

Released: April 3, 2008

FCC COMMENCES 2008 EEO AUDITS

On April 2, 2008, the Federal Communications Commission mailed the first of its Equal Employment Opportunity (EEO) audit letters for 2008 to randomly selected radio and television stations. In accordance with the provisions of Sections 73.2080(f)(4) and 76.77(d) of the Commission's EEO rules, the FCC is auditing the EEO programs of randomly selected broadcast licensees and multi-channel video programming distributors (MVPDs). Each year, approximately five percent of all stations and MVPDs are selected for random EEO audits.

A list of the radio and television stations to which the audit letters were sent is attached.

News Media Contact: Mary Diamond (202) 418-2388
Media Bureau Contact: EEO Staff at 202-418-1450

April 2, 2008

Dear Licensee:

1. In accordance with the provisions of 47 C.F.R. § 73.2080(f)(4) of the Commission's Equal Employment Opportunity ("EEO") rules, the station employment unit (the "Unit") that includes your above-referenced station (the "Station") has been randomly selected for an audit of its EEO program. (A copy of Section 73.2080 of the Commission's rules is enclosed for your reference.)

2. If the Unit is not required under our rules to have an EEO recruitment program due to the size of its full-time workforce (having fewer than five full-time employees, defined as employees regularly assigned to work 30 hours a week or more), you must still respond to this audit letter.

However, in your response, you must provide only a list of the Unit's full-time employees, noted by job title and the number of hours each is regularly assigned to work per week, and a response to Question 3(e) below. Also, in formulating your response, please see Questions 4(a) and (b) below regarding brokers and brokered stations, for instructions in situations in which the applicable employment unit has fewer than five full-time employees.

3. Audit Data Requested. If the Unit employs five or more full-time employees, provide the following information in your response to this letter, including an explanation regarding any requested information that you are unable to provide:

(a) The Unit's two most recent EEO public file reports, described in 47 C.F.R. § 73.2080(c)(6). For any stations in the Unit that have websites, provide each web address. If the Unit's most recent EEO public file report is not included on or linked to each of these websites, in violation of that subsection, indicate each station involved and provide an explanation of why the report is not so posted or linked.

(b) For each Unit full-time position filled during the period covered by the above EEO public file reports, or since your acquisition of the Station, if after that period, dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing the position, as described in 47 C.F.R. § 73.2080(c)(5)(iii). Include copies of all job announcements sent to any organization (identified separately from other sources) that has notified the Unit that it wants to be notified of Unit job openings, as described in 47 C.F.R. § 73.2080(c)(1)(ii).

(c) In accordance with 47 C.F.R. § 73.2080(c)(5)(v), the total number of interviewees for each vacancy and the referral source for each interviewee for all full-time Unit vacancies filled during the period covered by the above-noted EEO public file reports.

(d) Documentation demonstrating performance of Unit recruitment initiatives described in 47 C.F.R. § 73.2080(c)(2) during the periods covered by the above-noted EEO public file reports, such as participation at job fairs, mentoring programs, and training for staff. Specify the Unit personnel involved in each such recruitment initiative. Also, provide the total number of full-time employees of the Unit and state whether the population of the market in which the stations included in the Unit operate is 250,000 or more. Based upon these two factors, determine and state whether the Unit is required to perform two or four initiatives within a two-year period, pursuant to 47 C.F.R. §§ 73.2080(c)(2) and (e)(3).

(e) Disclose any pending or resolved complaints involving the Station filed during the Station's current license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the Unit on the basis of race, color, religion, national origin, or sex. For each such complaint, provide: (1) a brief description of the allegations and issues involved; (2) the complainant and other persons involved; (3) the date of the complaint's filing; (4) the court or agency before which it is pending or was resolved; (5) the file or case number; and (6) the disposition and date thereof or current status. Note that all complaints must be reported, regardless of their status or disposition.

(f) In accordance with 47 C.F.R. § 73.2080(b), for the period from March 10, 2003 (or from the first day of the Station's current license term, if after that date) until the date of this letter, describe the responsibilities of each level of Unit management to ensure enforcement of Unit EEO policies and describe how the Unit has informed employees and job applicants of its EEO policies and program.

(g) In accordance with 47 C.F.R. § 73.2080(c)(3), for the period from March 10, 2003 (or from the first day of the Station's current license term, if after that date) until the date of this letter, describe the Unit's efforts to analyze its EEO recruitment program to ensure that it is effective and address any problems found as a result of such analysis.

(h) In accordance with 47 C.F.R. § 73.2080(c)(4), for the period from March 10, 2003 (or from the first day of the Station's current license term, if after that date) until the date of this letter, describe the Unit's efforts to analyze periodically its measures taken to examine pay, benefits, seniority practices, promotions, and selection techniques and tests to ensure that they provide equal opportunity and do not have a discriminatory effect, and if the Unit has one or more union agreements, describe how the Unit cooperates with each union to ensure EEO policies are followed for the Unit's union-member employees and job applicants.

(i) If your entity is a religious broadcaster and any of its full-time employees are subject to a religious qualification as described in 47 C.F.R. § 73.2080(a) of the rules, so indicate in your response to this letter and provide data as applicable to the Unit's EEO program. For example, for full-time hires subject to a religious qualification, only a record of the hire listed by job title and date filled, the recruitment sources used for the opening, and the source of the hiree must be maintained. No other records would be required for those hires. If five or more full-time positions are not subject to a religious qualification, the licensee must maintain all records for such hires and complete the initiatives required under 47 C.F.R. § 73.2080(c)(2). Otherwise, a religious broadcaster is not required to perform these initiatives.

4. Time Brokerage.

(a) **Brokered station(s).** If the Unit employs fewer than five full-time employees and any station included in it is subject to a time brokerage agreement, in addition to responding to this letter and providing us a list of the Unit's full-time employees listed by job title (and the number of hours each employee is assigned to work) and a response to question 3(e) above, you must immediately forward a copy of this letter to the broker under each such agreement, which must also respond to Question 4(b) below.

(b) **Brokers.** The broker of any Unit station referenced above must supply the Commission with the information requested herein regarding the broker's full-time employees who work at each such brokered station. If this letter is addressed to you requesting data about a station licensed to you, and

you also broker a station in another employment unit, you must send us the information requested herein for each of your stations and your full-time employees at each brokered employment unit, if the recruitment data for any such brokered unit is included with that for your own station referenced above. See 47 C.F.R. § 73.2080(f)(3). If your employees at your own station(s), combined with your employees at the station(s) you are brokering, total fewer than five full-time employees, however, you need not provide such information. Instead, you must respond to this letter by the deadline described below by providing us with a list of your station unit's full-time employees (listed by job title and number of hours regularly assigned to work per week) and the same type of list for the full-time employees you employ at the brokered station(s), and a response to Question 3(e) above

5. Procedures. All responses must be postmarked within thirty (30) calendar days from the date of this letter. The response must be in the form of a statement signed by an officer, partner or other principal of the Station licensee or broker or, in the case of a noncommercial educational station, by an officer, member or other principal of the licensee. Send the response to EEO Staff, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554. To knowingly and willfully make any false statement or conceal any material fact in response to this audit is punishable by fine or imprisonment (see 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17), revocation of any station license or construction permit (47 U.S.C. § 312(a)(1)), and/or forfeiture (47 U.S.C. § 503). Failure to respond to this audit letter by the deadline is also punishable by sanctions in accordance with 47 C.F.R. § 73.2080(g).

6. In accordance with 47 C.F.R. § 73.3526(e)(10) (for commercial stations) and 47 C.F.R. § 73.3527(e)(11) (for noncommercial educational stations), copies of which are also enclosed, you are required to place a copy of this letter and your response in the public inspection file of each affected station. Consequently, your response should not include personal information about individuals, such as social security numbers, home addresses, or other personally identifiable information. We do not require that employment units retain such information in their records, or that such information be provided in response to this letter.

7. If our EEO random audits sent in 2006 or 2007 included the Station, or if the Station's most recent license renewal application was granted, by final order, within the past 18 months, you may not have to provide a response to this letter. If you believe that the Station falls within one of these categories, before responding to this letter, please so state in an e-mail, providing the specifics of the audit or renewal, sent to the undersigned at lewis.pulley@fcc.gov. Upon receipt of this information, we will advise you if a response is necessary under the circumstances.

Should you have any questions regarding this matter, please contact the EEO Staff at (202) 418-

1450. Thank you for your cooperation.

Sincerely,

Lewis C. Pulley

For further information, please contact:

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