

Annual EEO Public File Report Deadline for Stations in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas

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April 1, 2019 is the deadline for broadcast stations licensed to communities in **Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas** to place their Annual EEO Public File Report in their Public Inspection File and post the report on their station website. In addition, certain of these stations, as detailed below, must also electronically file an EEO Mid-Term Report on FCC Form 397 by **April 1**.¹

Under the FCC's EEO Rule, all radio and television station employment units ("SEUs"), regardless of staff size, must afford equal opportunity to all qualified persons and practice nondiscrimination in employment.

In addition, those SEUs with five or more full-time employees ("Nonexempt SEUs") must also comply with the FCC's three-prong outreach requirements. Specifically, Nonexempt SEUs must (i) broadly and inclusively disseminate information about every full-time job opening, except in exigent circumstances, (ii) send notifications of full-time job vacancies to referral organizations that have requested such notification, and (iii) earn a certain minimum number of EEO credits, based on participation in various non-vacancy-specific outreach initiatives ("Menu Options") suggested by the FCC, during each of the two-year segments (four segments total) that comprise a station's eight-year license term. These Menu Option initiatives include, for example, sponsoring job fairs, participating in job fairs, and having an internship program.

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

In addition, all TV station SEUs with five or more full-time employees and all radio station SEUs with 11 or more full-time employees must submit to the FCC the two most recent Annual EEO Public File Reports at the mid-point of their eight-year license term along with FCC Form 397—the Broadcast Mid-Term EEO Report.

Exempt SEUs—those with fewer than five full-time employees—do not have to prepare or file Annual or Mid-Term EEO Reports.

¹ The FCC recently adopted an order eliminating the Form 397 requirement. However, because that change does not go into effect until May 1, 2019, stations must still file the Mid-Term Report. See *infra* Deadlines for Filing EEO Mid-Term Report (FCC Form 397) for Television Stations Licensed to Communities in Delaware and Pennsylvania.

For a detailed description of the EEO Rule and practical assistance in preparing a compliance plan, broadcasters should consult *The FCC's Equal Employment Opportunity Rules and Policies – A Guide for Broadcasters* published by Pillsbury's Communications Practice Group. This publication is available at: <http://www.pillsburylaw.com/publications/broadcasters-guide-to-fcc-equal-employment-opportunity-rules-policies>.

Deadline for the Annual EEO Public File Report for Nonexempt Radio and Television SEUs

Consistent with the above, **April 1, 2019** is the date by which Nonexempt SEUs of radio and television stations licensed to communities in the states identified above, including Class A television stations, must (i) place their Annual EEO Public File Report in the Public Inspection Files of all stations comprising the SEU, and (ii) post the Report on the websites, if any, of those stations. LPTV stations are also subject to the broadcast EEO Rule, even though LPTV stations are not required to maintain a Public Inspection File. Instead, these stations must maintain a “station records” file containing the station’s authorization and other official documents and must make it available to an FCC inspector upon request. Therefore, if an LPTV station has five or more full-time employees, or is otherwise part of a Nonexempt SEU, it must prepare an Annual EEO Public File Report and place it in the station records file.

These Reports will cover the period from April 1, 2018 through March 31, 2019. However, Nonexempt SEUs may “cut off” the reporting period up to ten days before March 31, so long as they begin the next annual reporting period on the day after the cut-off day used in the immediately preceding Report. For example, if the Nonexempt SEU uses the period April 1, 2018 through March 21, 2019 for this year’s report (cutting it off up to ten days prior to March 31, 2019), then next year, the Nonexempt SEU must use a period beginning March 22, 2019 for its report.

Deadline for Performing Menu Option Initiatives

The Annual EEO Public File Report must contain a discussion of the Menu Option initiatives undertaken during the preceding year. The FCC’s EEO Rule requires each Nonexempt SEU to earn a minimum of two or four Menu Option initiative-related credits during each two-year segment of its eight-year license term, depending on the number of full-time employees and the market size of the Nonexempt SEU.

- Nonexempt SEUs with between five and ten full-time employees, regardless of market size, must earn at least **two** Menu Option credits over each two-year segment.
- Nonexempt SEUs with 11 or more full-time employees, located in the “smaller markets,” must earn at least **two** Menu Option credits over each two-year segment.
- Nonexempt SEUs with 11 or more full-time employees, not located in “smaller markets,” must earn at least **four** Menu Option credits over each two-year segment.

The SEU is deemed to be located in a “smaller market” for these purposes if the communities of license of the stations comprising the SEU are (1) in a county outside of all metropolitan areas, or (2) in a county located in a metropolitan area with a population of less than 250,000 persons.

Because the filing date for license renewal applications varies depending on the state to which a station is licensed, the time period in which Menu Option initiatives must be completed also varies. Radio and television stations licensed to communities in the states identified above should review the following to determine which current two-year segment applies to them:

- Nonexempt **radio** station SEUs licensed to communities in **Delaware, Indiana, Kentucky, Pennsylvania and Tennessee** must earn at least the required minimum number of Menu Option credits during the two year “segment” between April 1, 2018 and March 31, 2020, as well as during the previous two-year “segments” of their license terms.

- Nonexempt **radio** station SEUs licensed to communities in **Texas** must have earned at least the required minimum number of Menu Option credits during the two-year “segment” between April 1, 2017 and March 31, 2019, as well as during the previous two-year “segments” of their license terms.
- Nonexempt **television** station SEUs licensed to communities in **Texas** must earn at least the required minimum number of Menu Option credits during the two-year “segment” between April 1, 2018 and March 31, 2020, as well as during the previous two-year “segments” of their license terms.
- Nonexempt **television** station SEUs licensed to communities in **Delaware, Indiana, Kentucky, Pennsylvania and Tennessee** must have earned at least the required minimum number of Menu Option credits during the two-year “segment” between April 1, 2017 and March 31, 2019, as well as during the previous two-year “segments” of their license terms.

Deadline for Filing EEO Mid-Term Report (FCC Form 397) for Television Stations Licensed to Communities in Delaware and Pennsylvania

April 1, 2019 is the mid-point in the license renewal term of **television** stations licensed to communities in **Delaware and Pennsylvania**. If a station in one of these respective groups belongs to a **television** SEU with five or more full-time employees, it must electronically file the Form 397 Report by **April 1**. Licensees subject to this reporting requirement must attach copies of the SEU’s two most recent Annual EEO Public File Reports to their FCC Form 397 Report.

Note that SEUs that have been the subject of a prior FCC EEO audit are not exempt and must still file FCC Form 397 by the deadline. Electronic filing of FCC Form 397 is mandatory. A paper version will not be accepted for filing unless accompanied by an appropriate request for waiver of the electronic filing requirement.

Recommendations

It is critical that every SEU maintain adequate records of its performance under the EEO Rule and that it practice overachieving when it comes to earning the required number of Menu Option credits. The FCC will not give credit for Menu Option initiatives that are not duly reported in an SEU’s Annual EEO Public File Report or that are not adequately documented. Accordingly, before an Annual EEO Public File Report is finalized and made public by posting it on a station’s website or placing it in the Public Inspection File, the draft document, including supporting material, should be reviewed by communications counsel.

Finally, note that the FCC is continuing its program of EEO audits. These random audits check for compliance with the FCC’s EEO Rule, and are sent to approximately five percent of all broadcast stations each year. Any station may become the subject of an FCC audit at any time. For more information on the FCC’s EEO Rule and its requirements, as well as practical advice for compliance, please contact any of the attorneys in the Communications Practice.