Communications

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Broadcast Station EEO Advisory

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This Broadcast Station Advisory is directed to radio and television stations licensed to communities in California, Illinois, North Carolina, South Carolina, and Wisconsin, and highlights the upcoming deadlines for compliance with the FCC's EEO Rule.

August 1, 2012 is the deadline for broadcast stations licensed to communities in California, Illinois, North Carolina, South Carolina, and Wisconsin to place their Annual EEO Public File Report in their public inspection files and post the reports on stations' websites.

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

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

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

For a detailed description of the EEO rule and practical assistance in preparing a compliance plan, broadcasters should consult "Making It Work: A Broadcaster's Guide to the FCC's Equal Employment Opportunity Rules and Policies" published by the Communications Practice Group. This publication is available at: http://www.pillsburylaw.com/siteFiles/Publications/CommunicationsAdvisoryMay2011.pdf.

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

Consistent with the above, **August 1, 2012** is the date on which Nonexempt SEUs of radio and television stations licensed to the communities identified above, including Class A television stations, must (i) place their Annual EEO Public File Report in the public inspection files of all stations comprising the SEU, and (ii) post the Report on the websites, if any, of those stations. Be aware that LPTV stations are also subject to the broadcast EEO rules even though LPTV stations are not required to maintain a public inspection file. Therefore, if an LPTV station has five or more full-time employees, or is part of a Nonexempt SEU, it must prepare and maintain an internal copy of its Annual EEO Public File Report.

These Reports will cover the period from August 1, 2011 through July 31, 2012. However, Nonexempt SEUs may "cut off" the reporting period up to ten days before August 1, so long as they begin the next annual reporting period on the day after the cut-off day used in the immediately prior Report. For example, if the Nonexempt SEU uses the period August 1, 2011 through July 22, 2012 for this year's report (cutting off up to 10 days prior to August 1, 2012), then next year, the Nonexempt SEU must use a period beginning July 23, 2012 for its next 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 rules require each Nonexempt SEU to earn a minimum of two or four Menu Option initiative-related credits, 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 initiative-related 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 initiative-related credits over each two-year segment.
- Nonexempt SEUs with 11 or more full-time employees, not located in "smaller markets," must earn at least four Menu Option initiative-related 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 California, North Carolina, and South Carolina must have earned at least the required minimum number of Menu Option initiative-related credits during the two-year "segment" between August 1, 2011 and July 31, 2013, as well as during the previous two-year "segments" in their license terms.

- Nonexempt **radio** station SEUs licensed to communities in Illinois and Wisconsin must have earned at least the required minimum number of Menu Option initiative-related credits during the two-year "segment" between August 1, 2010 and July 31, 2012, as well as during the previous two-year “segments” in their license terms.

- Nonexempt **television** station SEUs licensed to communities in California, North Carolina, and South Carolina must have earned at least the required minimum number of Menu Option initiative-related credits during the two-year "segment" between August 1, 2010 and July 31, 2012, as well as during the previous two-year “segments” in their license terms.

- Nonexempt **television** station SEUs licensed to communities in Illinois and Wisconsin must have earned at least the required minimum number of Menu Option initiative-related credits during the two-year "segment" between August 1, 2011 and July 31, 2013, as well as during the previous two-year “segments” in their license terms.

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 and 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 expected to continue indefinitely. Any station may become the subject of an FCC audit at any time. For more information on the FCC’s EEO Rule and its requirements, as well as practical advice for compliance, please contact any of the attorneys in the Communications Practice.

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

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