

## **FCC EEO COMPLIANCE REMINDER: Recent FCC Audits and Enforcement Actions Require That Broadcasters Review Their EEO Programs**

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In November 2002, the FCC adopted the current EEO Rules with which broadcast stations must comply. For the initial two years of their existence, FCC enforcement of these rules was invisible, as there were no fines or other public actions to remind broadcasters of the importance that the FCC places on stations reaching out to their communities to foster a diverse workplace. Because of this lack of enforcement activity, many broadcasters may have become lax in their compliance with the rules.

However, in May 2004, the FCC began the first of its random EEO audits of broadcast stations. Since then, approximately every three months, the FCC has randomly selected several hundred broadcasters for a review of their EEO compliance. Once selected, the broadcaster has to submit to the FCC its public records of EEO compliance, as well as extensive supporting documents demonstrating compliance with all facets of the FCC's EEO Rules.

In recent months, these audits, and the renewal of license process, have led to the first fines that we have seen under the 2002 Rules. At least three separate broadcast groups have been fined between \$8,000 and \$20,000 for their failure to comply with the EEO Rules. In each of these cases, broadcasters have failed to comply with the most basic outreach requirements of the EEO Rules – or, at the very least, they have been unable to document their efforts. Because of their failures in outreach or record-keeping, the Commission in each case found that other violations of the rules – such as the requirement that broadcasters self-assess their EEO program – grew out of the initial violations.

Given the FCC's clear intent to vigorously enforce its EEO Rules, broadcasters need to be sure that they are observing all of the requirements of these rules. This memo is meant to remind broadcasters of their obligations under the rules, and to provide some suggestions on how to maintain compliance with the rules. Of course, this is a complicated subject, with many nuances, so this memo should be taken only as general advice. For specific situations, you should always contact your station's lawyer for advice.

### **What Was the Commission Thinking?**

#### ***The Basics of the Rules***

There are several aspects to the FCC's EEO policy. Initially, for all stations, there is the basic requirement that a broadcaster not discriminate. The obligation to avoid discrimination, and to report on any legal claims that are filed against a station alleging that discrimination has occurred, applies to all broadcasters, regardless of the number of employees at a station. This policy has been part of FCC policy for almost 50 years, and its continued application should not be a surprise to broadcasters.

In addition to the general obligation of all broadcasters to avoid discrimination, the 2002 Rules adopted a three-pronged affirmative action requirement designed to bring new people into the broadcast industry. In essence, the Commission's goal was to expand the hiring pool, by giving the public more notice of broadcast job openings and more information about the duties and requirements for broadcast positions. Some aspects of the rules that were highlighted in the recent cases in which stations were fined include the following:

**Wide Dissemination:** The first two prongs of the 2002 Rules mandate wide-dissemination of information about specific job openings at broadcast stations. The purpose of these rules are to give the general public information about specific job openings at broadcast stations. The Commission feared that too many broadcast positions were filled through an “old-boy’s network” of broadcast consultants and word-of-mouth referrals. The Commission thus established a requirement, detailed in later sections of this memo, that broadcasters publicize job openings in a manner designed to reach beyond the “old-boy’s” network, and to let all groups within the station’s community know of specific openings.

**Supplemental Efforts:** The Commission also felt that the public might have some reluctance to apply for broadcast jobs if they did not know the duties and responsibilities of such jobs, or the qualifications necessary to fill those positions. Thus, the Commission imposed on broadcasters an obligation to, in effect, educate the public about broadcast jobs. This obligation is reflected by the Menu Options spelled out in the third prong of the 2002 Rules, and detailed below.

**Self-Assessment:** In addition, the Commission has imposed duties on broadcasters to self-assess their programs to make sure that they are working. Each of the recent fines included a penalty for the station’s failure to self-assess, as the Commission felt that a broadcaster could not be assessing its program if it had not kept track of its recruiting efforts.

**Documentation:** Paperwork is also a large part of the EEO requirements, as a broadcaster must document for the public its EEO outreach efforts on a yearly basis, and must keep substantial additional internal records on an on-going basis. Each of these obligations is set forth in more detail below.

### **To What Stations Do These Rules Apply?**

As mentioned above, every broadcaster is subject to the basic requirement that they not discriminate in the hiring or advancement of employees at their stations. However, the new outreach requirements as set out in the 2002 Rules apply only to “station employment units” with five or more full-time employees. Station employment units with fewer than five full-time employees are exempt from Wide Dissemination, the supplement efforts reflected by the Menu Options, and the yearly Public File Report requirements, each of which is discussed further below.

To the FCC, a **full-time employee** is one who works 30 or more hours per week. Station owners are not considered employees if they own at least 20 percent of the stations ownership interest unless there is a single owner with more than a 50 percent interest, in which case only the controlling owner is not considered to be an employee.

A “**station employment unit**” is a station or group of commonly owned or controlled stations serving essentially the same area who share at least one common employee. Thus, a cluster of co-owned radio stations with a common General Manager (or Traffic Director or janitor, etc.) would be a single employment unit. If there are five full-time employees in the unit, the outreach requirements apply. Stations in the same market should be considered part of the same employment unit, even if the licenses are held by different business entities, if those entities are commonly owned or controlled. The Commission will consider licensees as commonly owned for the purpose of the EEO Rule if 50 percent or more of the voting control of each of the licensees is held by the same persons or entities.

If a station is subject to a time brokerage agreement, the licensee’s yearly Public File Report should include data concerning only its own recruitment efforts for full-time positions and not the efforts of the broker. If a licensee is a broker of another station in the same market in which it owns a station, the licensee’s EEO program should cover its employees at the brokered station as well as those employees at its own stations. If a licensee-broker does not own a station in the same market as the brokered station, then it must include information concerning its employees at the station that it is brokering in the yearly Public File Report for the station that it owns that is geographically closest to the brokered station.

Thus, for all but the smallest stations, the outreach requirements of the 2002 Rules apply. The requirements of these Rules are set forth in the Sections below.

## **Section I : Recruitment Requirements**

The 2002 Rules established a three-pronged recruitment requirement for all broadcasters with 5 or more full-time employees. There are limited exceptions to some of these requirements for religious broadcasters, which are set forth in a special section below.

### **Prong 1 – Wide Dissemination**

The 2002 Rules require broadcasters to widely disseminate information concerning each full-time (30 hours or more) job vacancy that is filled at the station. Only in cases of vacancies filled in **exigent circumstances**, such as when an employee departs without notice and his responsibilities cannot be fulfilled, even briefly, by other station employees, can wide dissemination be avoided. The Commission has indicated that true exigent circumstances will be very rare. If a station can fill a position when an employee is on vacation, the station should be able to temporarily staff a position while doing at least some wide dissemination for the vacancy. However, the FCC will, in rare circumstances, recognize as an exigent circumstance "the availability of a talent so unique and exceptional" that a broadcaster could reasonably conclude that a comparable talent is unlikely to be found by recruitment. Such a circumstance could arise, for instance, if a station seeks to hire the top salesperson from a competitor – not to fill a vacancy, but to create a new position for that person because of the person's unique talents. The FCC expects vacancies filled without recruitment to be rare relative to the number of vacancies for which recruitment is conducted.

And just what does **wide dissemination** require? Broadcasters must develop and use for each vacancy a recruitment source or list of recruitment sources sufficient to ensure that all groups within the station's community have the opportunity to become aware of the vacancy. The broadcaster must ensure that its recruitment efforts are inclusive, and are reasonably calculated to reach the entire community. The rule does not dictate the number or type of sources that a broadcaster must use, but does recognize that there may be some sources that alone may reach all groups within a community. For instance, there may be a daily newspaper that the broadcaster concludes is so widely read that every significant group within the community would have notice of a job opening if that opening were advertised in the paper. Other sources, perhaps including a station group's own airwaves, may also be found to reach the entire community. However, relying on a single source for any vacancy is risky, and should be done only if the station can document from past experience that the single source brings in qualified applicants from a wide cross section of the community, representing all of the various groups within the community.

The same recruitment sources are not required to be used for every hire, and broadcasters may modify their sources as required – and in fact must modify their sources if they find that these sources are not producing quality interviewees from outside of the traditional broadcast employment sources. The Commission's rules do not require that any specific community group be contacted for any opening – unlike the old rules which had required that minority organizations be contacted about vacancies – as long as the source or sources they use could "reasonably be expected, collectively, to reach the entire community." To insure inclusiveness, it is advisable that, in addition to media sources, broadcasters send notices to large educational institutions, minority organizations, and other organizations in their communities likely to represent significant groups of the community's residents.

Broadcasters are not required to use recruitment sources that, in their good faith judgment, are unlikely to obtain responses from applicants qualified for a particular job. For example, a television broadcaster need not place a job notice in the local newspaper for a meteorologist if they do not believe that the local newspaper would be likely to reach qualified applicants for a particular opening. But stations must find some source that would likely reach a diverse group of potential applicants. For specialized positions, such as a meteorologist, trade publications with a wide national distribution can be used. However,

stations are advised to use local sources for virtually all openings to make sure that the groups within your community are made aware of such openings.

Broadcasters can use non-public recruitment sources – such as word of mouth referrals – as long as they also use public recruitment sources sufficient to achieve broad outreach and fairly consider the applications generated by those sources. Broadcasters may use joint recruitment efforts, and may use (but are not required to use) the services of outside organizations, such as employment agencies or state broadcast organizations, to design or implement recruitment efforts. However, each broadcaster remains individually responsible for compliance with the rules. Stations may also use regional or national recruitment sources; the Commission will consider such sources when assessing a broadcaster's EEO record.

In certain circumstances, broadcasters need not recruit for each vacancy. If a broadcaster has already recruited for a position in accordance with the rules, and in its judgment the applications received remain viable at a later date (e.g. if another opening for the same type of job arises within 3 months of the first opening), it may make additional hires for substantially the same position originally advertised from the existing pool of applications without initiating a new recruitment process. In addition, the broadcaster may also consider additional applications received at job fairs or through other non-vacancy-specific efforts for the position.

In addition, the rules do not require recruitment for **internal promotions**, or for **temporary or part-time employees**. For internal promotions, perhaps the FCC believes that, when an employee is promoted, his or her job will have to be filled, so the wide dissemination would occur for that position. Many broadcasters hire employees initially on a part-time or temporary basis with the possibility of retaining them on a permanent basis if their performance is satisfactory. In that instance, if wide dissemination was done at the time of the part-time or temporary hire, the later decision to convert the employee's status to full-time in the same, or essentially the same, job may be treated as a promotion, and would not require further recruiting. If an employee is hired as a part-time or temporary employee without recruitment, however, then the station must engage in wide dissemination of the vacancy before the part-time or temporary employee is considered for a permanent full-time position.

After beginning recruitment, broadcasters must allow a reasonable time for applications to be filed before filling the position. The FCC has recognized that a shorter time might sometimes be necessary because of extraordinary circumstances, but cautioned that excessive instances of hires being made shortly after beginning recruitment could result in a finding of noncompliance if the evidence suggests that the broadcaster is not in good faith allowing adequate time for applicants to respond to its outreach efforts or is not considering their applications.

The Commission will judge the success of an employment unit's wide dissemination based on the diverse nature of the **interviewees and hires** made by the station. As set forth below, the station must keep records of the recruitment sources by which interviewees and those hired learned of the job opening. If too many of these people come to the station through the traditional broadcast sources (e.g., consultants, walk-ins, and word-of-mouth referrals from existing employees), then the Commission could find a violation. So reach out to your community and make sure that all groups within the community know of job openings at your stations, and be sure to interview and fully consider the qualifications of applicants from diverse sources. For your reference, a **checklist of simple steps** to remember when opening a full-time position is available as **Attachment A**.

## **Prong 2 – Notice to Community Groups**

Under the 2002 EEO Rules, broadcasters must provide notice of each full-time job vacancy at the station to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers if that organization has requested such notice. The Commission expects broadcasters to make reasonable efforts to publicize this notification requirement through on-air announcements, press releases, newspaper ads, and notices posted on the station's web site. Stations

are advised to run an on-air announcement on a regular schedule advising community groups of the ability to get on the station's list of groups that will be contacted. We would suggest a notice every two weeks, in all different dayparts, alerting organizations of their ability to request notice of job openings.

Broadcasters have discretion as to how they provide notice to requesting parties, including through the use of e-mail and facsimiles. A broadcaster may maintain an electronic list of recruitment sources and notify all the sources simultaneously with a single e-mail when a vacancy occurs. While there is no requirement in the Commission rules, we advise Clients to notify organizations by other means if the station decides to send notice by e-mail, and an organization does not have e-mail capabilities. Notification may also be made as part of joint recruitment efforts among broadcasters, but each broadcaster participating in the joint recruitment efforts remains individually responsible for making the requested notifications related to its employment unit. Furthermore, in their yearly Public File Report, stations must separately identify those sources requesting notification, so stations are advised to carefully maintain their list of requesting organizations.

### **Prong 3 – Supplemental Efforts**

Even if a broadcaster has no job openings in a given year, those station employment units with 5 or more full-time employees must engage in **supplemental efforts** to educate the public about the job positions available at a broadcast station and the qualifications necessary to fill those positions. Broadcasters must complete two (for broadcast employment units with five to ten full-time employees or ones with more than ten employees that are located in smaller markets) or four (for employment units with more than ten full-time employees located in larger markets) of these supplemental efforts within a two-year period. The two-year period generally runs from the time a licensee files its license renewal application to the second, fourth, and sixth anniversary of that date. If a broadcaster owns a station or stations for less than the full two-year period, it is responsible only for the period after it acquired the stations, and must complete a prorated number of Menu Options within the available time period.

For purposes of deciding whether an employment unit must perform two, rather than four Menu Options during the relevant two-year period, the Commission has decided that a small market station employment unit is one consisting solely of a station or stations licensed to communities located in a county that is outside of all metropolitan areas, as defined by OMB, or located in a metropolitan area that has a population of less than 250,000. This should apply to stations in most markets below the 100 largest markets. The Commission recognized that smaller market stations often lack the resources to support some of the Prong 3 recruitment initiatives.

The Commission suggested 16 **Menu Options** from which a broadcaster can choose to satisfy this requirement. These 16 options are as follows:

- (1) Participation in at least four **job fairs** by station personnel who have substantial responsibility for hiring decisions.
- (2) **Hosting** at least **one job fair**.
- (3) **Co-sponsoring at least one job fair** with an organization in the business and professional community whose membership includes substantial participation of women and minorities.
- (4) Participation in at least four **activities sponsored by community groups** active in broadcast employment issues, including conventions, career days, workshops and similar activities.
- (5) The establishment of an **internship** program designed to assist members of the community to acquire skills needed for broadcast employment.

(6) Participation in general (not vacancy-specific) **outreach efforts** by such means as job banks or Internet programs.

(7) Participation in **scholarship programs** directed to students who wish to pursue a broadcasting career (simply donating money to someone else's scholarship program is not sufficient to qualify for a credit)

(8) & (9) The establishment of **training** and **mentoring** programs to allow station personnel to acquire skills that could qualify them for higher level positions. These options would not be satisfied by ordinary training required for employees to perform their current positions, but instead should train employees for career advancement.

(10) Participation in at least four events or programs relating to career opportunities in broadcasting sponsored by **educational institutions**.

(11) Sponsorship of at least two **events in the community designed to inform the public as to employment opportunities in broadcasting**.

(12) Listing each upper-level opening in a **job bank or newsletter** of a media trade group with a broad-based membership, including participation of women and minorities.

(13) Providing **assistance to outside non-profit entities** in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting.

(14) Providing **training to management level personnel** as to methods of ensuring equal employment opportunity and preventing discrimination.

(15) Providing **training to personnel of outside recruitment organizations** that would enable them to better refer job candidates for broadcast positions.

(16) Participation in activities other than the fifteen listed options that the licensee has designed to further the goal of disseminating information about employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

Broadcasters can accomplish Menu Options on a joint basis with other broadcasters, state broadcaster associations and other organizations, or with a corporate licensee's corporate headquarters. To earn credit for a joint undertaking, the broadcaster must have a "meaningful involvement" in the activity – such as meaningful input into the planning and implementation of an event – and cannot just lend its name to an activity or provide money where the activity is otherwise entirely conducted by another entity such as a trade association or the licensee's corporate headquarters.

Many of these Menu Options can be met by normal station activities, provided that these activities are revised slightly so as to focus on educating the public as to the duties and responsibilities of broadcast positions, how members of the public can train for such positions, and how they can learn about the availability of these positions. For instance, station tours or open houses can be turned into activities to educate the public as to broadcast positions (Option 11), if your staff is trained to present that kind of information. Appearances of staff members at school events or community groups can also meet Menu Options if the station staff members talk about the responsibilities of various broadcast jobs, and the training and availability of such positions (Options 4 or 10). Stations should over-achieve on the number of Menu Options that they complete, as the Commission has yet to issue any formal rulings interpreting what activities are sufficient to garner credit.

## Special Outreach Rules for Religious Broadcasters

Religious broadcasters that apply a religious qualification to all of their employees are not required to comply with the broad outreach recruitment requirement or the Menu Options, but must make reasonable, good faith efforts to recruit applicants, without regard to race, color, national origin or gender, among all of those who are qualified based on their religious belief or affiliation. In other words, the religious broadcaster needs to do some sort of dissemination among those who have the religious affiliation necessary for employment to insure that it is not just those who are already in the broadcast industry who hear of the job vacancy. If religious broadcasters establish a religious qualification for some, but not all, of their positions, then the requirement applies to those positions that are subject to the religious qualification. In that instance, for positions not subject to a religious qualification, religious broadcasters must comply with Prongs one and two. A religious broadcaster that treats five or more its full-time positions as non-religious must meet all three Prongs of the recruitment program, including the Menu Options. Obviously, a religious broadcaster that treats none of its positions as subject to a religious qualification must comply with all three prongs.

## Section II: Recordkeeping and Reporting Requirements

To ensure that stations maintain sufficient records of their recruitment efforts, the Commission established the following recordkeeping and reporting requirements:

(1) **Internal Records.** Broadcasters must collect, and maintain in internal files, certain information that is not routinely submitted to the Commission, or made available to the public. However, this material will be necessary to respond to any Commission EEO audit, or to otherwise support the broadcaster's public filings should they be questioned during the processing of a license renewal, or in a complaint to the Commission. These non-public records include:

(A) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(B) For each such vacancy, the recruitment sources used to fill the vacancy (including, if applicable, organizations entitled to notification under Prong 2, which must be separately identified), identified by name, address, contact person and telephone number;

(C) Dated copies of all advertisements, bulletins, letters, faxes, e-mails or other communications announcing vacancies;

(D) Documentation necessary to demonstrate performance of the Prong 3 Menu Options, for example, job fairs, mentoring programs and so forth (e.g. thank-you letters, affidavits of employees who performed the option, etc.);

(E) The total number of **interviewees** for each vacancy and the **referral source** for each interviewee; and

(F) The date each job was filled and the recruitment source that referred the person who was hired. Note that broadcasters need not obtain records of the recruitment sources of applicants, only of those interviewed and hired.

Stations must retain all records documenting outreach efforts until the grant of the renewal application covering the license term during which the hire or activity occurs. If a licensee acquired a station pursuant to an assignment or transfer that required Commission approval of an FCC Form 314 or 315 during the license term, it need not retain records pertaining to the outreach efforts of a prior licensee. Records may be maintained in an electronic format, for example by scanning documents into a computer format.

Religious broadcasters that apply a religious qualification to some or all of their hires need only retain, in the case of hires subject to the qualification, documentation on the full-time vacancies filled, the recruitment sources used, the date each vacancy was filled, and the recruitment sources of the hires.

(2) **Annual Public File Report.** Broadcasters must create an Annual Public File Report, and place it in the station public file on the **anniversary date of the filing of their license renewal application**. The report should cover all hiring and supplemental efforts done for a one-year period ending 10 days before the report is due to be placed in the public file. The report should include the following:

- (A) A list of all full-time vacancies filled during the preceding year, identified by job title;
- (B) A list of the recruitment source(s) used to fill those vacancies (including organizations entitled to notification of vacancies pursuant to Prong 2), including the address, contact person, and telephone number of each source;
- (C) A list of the recruitment sources that referred the people hired for each full-time vacancy;
- (D) Data reflecting the total number of interviewees for the full-time vacancies during the preceding year, and the total number of interviewees referred by each recruitment source (in providing these numbers, make sure that the number of interviewees by source, when added together, equals the total number of interviewees that you report); and
- (E) A list and brief description of Prong 3 Menu Options implemented during the preceding year, providing sufficient detail to demonstrate that your supplemental efforts were substantial.

Broadcasters may use any format in their Public File Report to avoid unnecessary duplication as long as the report clearly provides the required information. For example, if a broadcaster used the same recruitment sources for all its vacancies, it may maintain a single list of those sources which indicates that they were used for all vacancies. If a broadcaster used different sources for different vacancies, it may maintain a master list of all its sources and use a cross-reference system to show which sources were used for which vacancies. A **model format for an Annual Public file report** is available as **Attachment B** to this memorandum. This model form should be tailored to your station's own practices.

The Annual Public File Report is maintained in the station's file until the next license renewal is granted. So, by the end of a license term, a licensee would have eight reports in their public file. The 2002 Rules also require that the Annual Public File Report be posted on the station's web site, if the station has a website. Only the most recent report need be maintained on the website. Once a new report is created, the previous year's report may be removed from the website, even though it is maintained in the paper public inspection file.

Religious broadcasters with hires subject to a religious qualification must include, for full-time vacancies subject to the qualification, only the information listed in (A) and (B) above, along with information concerning the recruitment sources that referred the persons hired.

(3) **Renewal Applications.** At license renewal time, broadcasters must submit the station's Annual Public File Report for the two years prior to the renewal filing along with an FCC Form 396, which is submitted in conjunction with the renewal application. All stations, even if they have fewer than five full-time employees, must submit an FCC Form 396. For stations with fewer than five full-time employees, the Form 396 requires a certification that the stations are in fact exempt from the Recruitment Program, and asks if there have been any complaints of discrimination against the station during the prior renewal term. For stations with five or more full-time employees, the FCC requires that the station, in addition to submitting the Annual Public File Reports and complaint information, to provide a written statement as to the success of its EEO program. The person in charge of the EEO program must also be identified on the Form.

(4) **Mid-Term Reports.** Television stations with five or more full-time employees and radio stations with more than ten full-time employees must also submit a Mid-Term EEO Report. That report requires information similar to the FCC Form 396, and is filed on the four year anniversary of the filing of the station's license renewal.

(5) **FCC Audits.** The Commission has promised to audit 5% of all broadcast stations annually. Since May of 2004, the FCC has been releasing audit notices about once every three months, with each list containing several hundred licensees. If a single station in an employment unit is selected for audit, the report for the whole unit must be submitted. In a typical audit letter, the FCC asks for the prior two years' Annual Public File Reports, and all background data supporting the wide dissemination and supplemental efforts detailed in those reports. The FCC also asks for information concerning the broadcaster's self-assessment of its EEO Program, and for details of any discrimination complaints.

### **Section III: Self Assessment**

One of the surprises of the FCC's audit process has been an inquiry as to how the broadcaster has engaged in **self-assessment of its EEO outreach program**. In truth, this should come as no surprise, as the rules specifically require that periodic self-assessment be conducted by each broadcaster. Clearly, for FCC purposes, the most important aspect to this self- assessment is making sure that the Wide Dissemination being conducting is really bringing in a diverse pool of applicants. Broadcasters should review the interview pools that it develops for every vacancy and insure that the pool includes applicants from a wide variety of recruitment sources. If the broadcaster finds that all of its interviewees, or all of the people that it hires, are from traditional broadcast sources, (e.g., consultants and word-of-mouth referrals), then it should re-evaluate it recruitment program, and identify other sources that are more likely to produce diverse applicants and interviewees. This evaluation should be done on an on-going basis.

In addition, the Commission requires that an employment unit assess the following:

1. Whether it regularly conveys its **EEO program** to employees and applicants.
2. Its **seniority practices**, to ensure that they are not discriminatory.
3. Its **salary and benefits** programs, to ensure that they provide equal pay for equal work and are not used in any discriminatory manner.
4. **Promotions**, to ensure that they are not based on any discriminatory practices.
5. Whether it has avoided any indication in **its recruiting advertisements** that there is any preference for persons of a particular race, national origin or gender.
6. **Union agreements**, if they exist, to make sure that they provide for equal opportunities for all.
7. **Selection techniques**, to avoid tests or other hiring evaluation techniques that could be discriminatory in effect.

The station employment unit should keep internal records of its self-assessment activities. In that way, if the station is selected for an audit, it will be able to provide details of how it has met its obligations under these rules.

### **Conclusion**

Obviously, the FCC has made clear that EEO remains an important objective. Thus, broadcasters must use care to fully implement the program that the FCC has mandated. While the program may appear

burdensome on first review, if the station establishes routine processes and procedures, many of the programs obligations can be met in the normal course of the station's business. A few adjustments here and there, and some record-keeping to document your efforts, are important to a successful program. Set up the systems and keep the records, so that satisfying the FCC's EEO Rules becomes second nature.

This advisory provides a broad summary of the FCC's EEO rules. For your reference, a **copy of the FCC's EEO Rules** is available as **Attachment C**. For more information on your obligations, and practical compliance advice, please contact any of the lawyers in the Davis Wright Tremaine LLP Broadcast Practice Area.

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## **EEO Compliance Checklist: Eight Simple Steps to Remember When you Open a New Full-Time Position**

- 1. Start a New File**  
When you open a new full-time position, set up a new file. This should be an internal file – *not* placed in the public inspection file. This will allow you to track the resumes and the interviewees you receive for the position, as well as to retain and organize the dated copies of any advertisements you place, postings you make, or correspondence that you send out announcing the opening of this particular position.
- 2. Write a Job Description and Post the Job**  
Write a description of the job, including the skills that a qualified applicant must have and what the job entails. Post this description at the station and on the station's web site, if it has one, to encourage people to apply for the position. Place a copy of the description in your internal file.
- 3. Decide What Recruitment Sources to Use**  
Review your list of recruitment sources (such as local educational institutions, local newspapers and publications, employment agencies, local job boards, the state broadcasters' association, and your station) and decide what combination of sources will allow you to notify all segments of your community about this position and also yield a number of qualified candidates. Prepare a list of the sources you have decided to use for this position, and place that list in your internal file.
- 4. Widely Disseminate the Job Opening Announcement**  
Once you have come up with a list of recruitment sources that you think will properly inform all the significant groups within your community about the new job opening, send out a notice to those sources providing the job description and encouraging qualified applicants to apply to for the job. Notices can be sent by fax, letter, or email. If your list of recruitment sources for this particular job include the station, the station's web site, or publications, create and run the appropriate posting or advertisement. Keep copies of all notices that you send out in your internal file, and a record of the names, addresses, and telephone numbers of the contact at each recruitment source you use.
- 5. Make Sure to Send a Job Notice to Those Sources Who Have Requested to Receive Information**  
Qualified recruitment sources can request that the station inform them of all job openings at the station. As you disseminate information about the job opening to your community, review your list of people that have requested to receive such notifications and make sure to send a copy of the job announcement to anyone on the list. Keep a copy of these notices, and the names, addresses, and telephone numbers of the contact people at each source in your public file.
- 6. Interview Qualified Applicants**  
Once you start to receive responses from applicants, select and interview a number of qualified applicants. As you interview each candidate, keep track of where the interviewee heard of the job opening. Keep this information in the internal file that you are maintaining for this job opening.

**7. Fill the Position**

Once you find a suitable candidate for the job hire them and make a note in the file about where that person heard about the job opening.

**8. Compile the Info from This Job for Your Annual Public File Report**

Every 12 months, on the anniversary of the filing of the station's license renewal application, the station will need to summarize all of the full-time job openings that the station filled in the past year. Among other things, this annual summary will require: a.) a list of the job openings during the past year, b.) the sources used to recruit for those positions (by name of source, with the name, address, and telephone number of the contact person at that source), and c.) where the interviewees and hirees heard about the job opening. From the documents you have kept under steps 1 – 7 above, compile this information and have it ready for inclusion in your annual public file report. Once you have filled this position and sorted through your data to come up with the required public file information, you can close the file, though you should keep the file and all the documentation you have accumulated for the remainder of the renewal period as an internal file (*not* as a public file document). This documentation could be important should your EEO record ever be challenged, or should the station undergo an EEO audit by the FCC.

## SAMPLE

## 2006 - ANNUAL EEO PUBLIC FILE REPORT

The purpose of this EEO Public File Report ("Annual EEO Report") is to comply with Section 73.2080(c)(6) of the FCC's Equal Employment Rules. This Annual EEO Report summarizes the relevant hiring and EEO outreach conducted by the following stations, which collectively form a single Station Employment Unit for purposes of the EEO Rules:

Call Sign	Community	FIN
WXYZ(TV)	Anywhere, USA	1234
WXYZ-LP	Anywhere, USA	12344
WXY-LP	Anywhere, USA	12345

The information contained in this Annual EEO Report covers the time period from **May 29, 2005 to, and including, May 31, 2006** (the "Applicable Period"). Consistent with the FCC's Rules, this Annual EEO Report contains the following information:

1. A list of all full-time vacancies filled by the Station(s) during the Applicable Period;
2. For each such vacancy, the recruitment source(s) utilized to fill the vacancy, including any such sources that have asked to receive information from the station(s) about any new job openings, which are separately identified;
3. The recruitment source that referred the Hiree for each full-time vacancy filled during the Applicable Period;
4. Data reflecting the total number of persons interviewed for all 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 community outreach activities, not directly related to the opening of job positions, undertaken by the station(s) during the Applicable Period.

The following sections provide the required information, and summarize the station(s) EEO efforts during the Applicable Period. This Annual Report was placed in each station's public inspection file on **June 1, 2006**, and posted on the stations' web site, in accordance with the FCC's EEO Rules.

## SAMPLE

SECTION 1: Full-Time Job Openings Filled During This PeriodTime Period Covered: **May 29, 2005 to May 31, 2006**Stations in Employment Unit: **WXYZ(TV), WXYZ-LP, WXYX-LP**

Full-time Positions Filled By Job Title and Date Filled		Recruitment Source of Hiree
1	Account Executive 6/30/05	On-Air Ads
2	Program Director 8/13/05	The Daily Chronicle
3	Weatherman 9/1/05	University of Anywhere
4	Traffic Operator 11/14/05	Station Web Site
5	Cameraman 3/5/06	Walk-in

Total Number of People Interviewed for All Job Positions: 23

## SAMPLE

SECTION 2: Recruitment SourcesTime Period Covered: **May 29, 2005 to May 31, 2006**Stations in Employment Unit: **WXYZ(TV), WXYZ-LP, WXY-LP**

Recruitment Source (Name, Address, Telephone Number, Contact Person)		Total Number of Interviewees This Source Has Provided During This Period	Full-time Positions for Which This Source Was Utilized
1.	Internal Station Postings	2	All Positions
2.	Station Web Site Postings <a href="http://www.callsign.com">www.callsign.com</a>	4	All Positions
3.	On-Air Recruitment Ads WXYZ(TV) Station Manager	3	All Positions
4.	Walk-ins	2	All Positions
5.	The Daily Chronicle Joe Smith Address Phone	2	Positions 1,3, 5
6.	State Association of Broadcasters P.O. Box 123 Anywhere, State	1	All Positions
7.	Anywhere State School of Broadcast Journalism Prof. Joe Smith Address Phone	1	Positions 1,2, 3
8.	University of Anywhere Office of Career Planning Joe Smith Address Phone	3	Positions 2, 3, 5
9.	TV Cameraman Magazine Joe Smith Address Phone	0	Position 5

**Attachment B**

10.	Anywhere City Chamber of Commerce Office of Job Placement Joe Smith Address Phone	0	All Positions
11.	Ass'n. of Hispanic Journalists Joe Smith Address Phone	3	All Positions
12.	NAACP Anywhere City Chapter Joe Smith Address Phone	2	All Positions
13.	The Weekly Anywhere Sentinel Joe Smith Address Phone	0	All Positions

**SAMPLE**

**SECTION 3: Supplemental (Non-Vacancy Specific) Recruitment Activities Undertaken**

Time Period Covered: **May 29, 2005 to May 31, 2006**

Stations in Employment Unit: **WXYZ(TV), WXYZ-LP, WXYL-LP**

1. On-Going Internship Program for Area College Students (§73.2080(c)(2)(v)). This on-going semester internship program has been in place at the station for at least six years. The station welcomes students from area universities and colleges who are motivated and excited about expanding their knowledge and hands-on experience in a vibrant broadcasting environment. Students must be enrolled in a program related to the broadcasting industry, and their internship must be endorsed, supported, and constantly monitored by the sponsoring university. Students are rewarded with course credit hours upon completion of the semester-long program. Internship periods include Fall, Spring and Summer of each year. During the period covered by this report, WXYZ(TV) has had seven student interns involved in this program – three in the Summer session of 2005, one in the Fall of 2005, and three in the Spring session of 2006.
2. Junior Achievement Annual Job Shadow Day (§73.2080(c)(2)(iv)). This annual program takes place during the first week of February each year. The Anywhere Area Chamber of Commerce, who supports educational initiatives in the community, coordinates this day to expose area college and high school students to various careers and work sites across the city. Twenty area students spent the day observing various jobs being performed within station WXYZ(TV), and were allowed to interact with employees. The Programming Director and News Director discussed the different positions and careers possible at a broadcast television station.
3. EEO Training to Upper Level Management- During the Fall of 2005 and the Spring of 2006, WXYZ(TV) provided training to the station's upper level management regarding interviewing techniques to ensure equal opportunity in the hiring process. Station manager Joe Smith and Director of Human Resources Josephine Smith attended both training sessions, which were conducted by the Anywhere Chamber of Commerce.
4. Job Fairs- Station manager Joe Smith and Director of Human Resources Josephine Smith attended four job fairs during the past year on behalf of station WXYZ(TV). Joe and Josephine attended two job fairs at the University of Anywhere, one in June 2005 and one in September 2005. In addition, they attended two job fairs hosted by the School of Broadcast Journalism at Anywhere State. At all four events, Joe and Josephine met with students and discussed careers and advancement in the broadcast industry.

**§ 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 web sites 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 web site, 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.