



January 16, 2009

**Recent FCC Forfeitures for EEO Public File Reporting Violations
Remind Broadcasters that Failure to Comply Can Be Costly**

The FCC recently issued Notices of Apparent Liability (“NALs”) to six broadcast licensees assessing forfeitures ranging from \$7,000 to \$20,000 for failure to comply with the FCC’s EEO recruitment, recordkeeping and reporting requirements. The FCC also imposed special reporting conditions on the licensees (and *any successor licensees of the stations*) for three years to ensure that the stations maintain adequate EEO programs going forward. The EEO violations were found during the FCC’s review of the stations’ EEO public file reports in connection with the stations’ license renewal applications or their responses to the FCC’s random EEO audits. Approximately five percent of all radio and television licensees are randomly audited each year by the FCC to determine compliance with the agency’s EEO rules.

The FCC’s EEO rules generally require licensees to (1) undertake broad outreach to potential employment applicants in the community, (2) maintain detailed records reflecting such outreach efforts, and (3) report such information in the employment unit’s annual EEO Public File Report, which is included in the station’s public inspection file and periodically submitted to the FCC in connection with the licensee’s mid-term EEO report and license renewal application. The NALs cited each licensee’s failure to comply with these requirements in the following respects:

Broad Outreach: Stations must exercise care to widely disseminate notices of each full-time vacancy to organizations that collectively reach the entire community. The FCC found that a broadcaster that relies on Internet sources and on-air advertisements as the employment unit’s only identified recruitment sources has not engaged in sufficiently broad outreach to its community. Instead, stations should use a combination of both Internet and non-Internet sources. The FCC also found that licensees that had relied exclusively on “employee referrals,” “self-referrals” (meaning the employment unit was unable to identify the source of the referral from the applicant’s resume), and other non-public referral sources had not engaged in sufficiently broad outreach efforts. While a specific minimum number of referral sources is not required, employment units should generate a list of recruitment sources that is designed to reach potential applicants from a broad cross-section of the broadcaster’s community.

Recordkeeping: The FCC found that each of the six broadcasters failed to maintain EEO recruitment records that were adequate to demonstrate their stations’ compliance with the EEO rules. Broadcasters should maintain copies of all notices and other communications related to job vacancy announcements, and should carefully record the total number of interviewees referred for each vacancy at the employment unit, and the total number of interviewees referred by each recruitment source. The FCC stated that if an applicant’s resume does not clearly identify the referral source, the broadcaster should seek that information through some other

means, such as asking the applicant during the interview process. In addition, one broadcaster's failure to maintain adequate records of its employment unit's supplemental recruitment initiatives conducted during the reporting period resulted in a finding that the employment unit did not conduct the required minimum number of supplemental recruitment initiatives during the applicable two-year period. Therefore, all records documenting compliance with each aspect of the employment unit's EEO program should be retained.

Regular Self-Assessment: The FCC's EEO rules require that each employment unit periodically assess its EEO program in order to improve its effectiveness. As a result of the FCC's finding that the six broadcasters had failed to maintain adequate EEO records, the FCC also concluded that the broadcasters had necessarily failed to perform the required self-assessment of their respective EEO programs.

Maintenance of Public Inspection File: Although the broadcasters appear to have placed their EEO Public File Reports in their stations' public inspection files in a timely fashion, the FCC nevertheless concluded that the stations had not complied with the public inspection rule because of the broadcasters' failure to properly record and report the EEO data required by the EEO rules.

The forfeitures imposed in the NALs varied depending on the number of violations found by the FCC. For example, one broadcaster was fined \$7,000 for four EEO rule violations, while another was fined \$20,000 for seven violations. In addition to the forfeitures, the FCC imposed special reporting conditions on each of the six broadcasters. The broadcasters are required to submit their EEO Public File Reports to the FCC annually (as opposed to bi-annually) for the next three years. In addition, the broadcasters were required to submit additional information demonstrating compliance with the EEO rules, including dated copies of every advertisement, letter, e-mail or other communication announcing full-time vacancies at the employment unit. Finally, in the event that a station in the employment unit is sold, the buyer also must comply with the reporting conditions until the three-year reporting term expires.

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These decisions are a strong reminder of the importance of complying strictly with the FCC's EEO requirements. If you have any questions about the recruiting, reporting or record-keeping requirements under the FCC's EEO rules, please contact an attorney in our office.

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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