

Some Cautions About EEO Referral Sources

In two of the FCC's final decisions of 2011, its Media Bureau assessed substantial fines and EEO reporting conditions upon the renewals of eleven stations. In each instance, the licensees were found to have relied upon only websites and non-public sources to disseminate the availability of some job openings, compounded by a failure to have engaged in self-assessment to recognize and rectify the problem. Yesterday, in the first seminar held since implementation of the current EEO rules nearly a decade ago, FCC staff emphasized the Commission's intent to scrutinize broadcasters' EEO compliance more strictly, and to impose sanctions upon those who fall short.

The core issue in the recent cases was the licensees' primary reliance upon web sites, word-of-mouth referrals and employee bulletin boards to recruit for a number of their full-time vacancies (in one case, five of 14). The Commission noted that websites and non-public sources do not constitute sufficient recruitment. Rather, it emphasized that the Commission remains committed to its long-standing focus upon broad, public outreach. Thus, while it does not mandate the use of a specific number or type of recruitment sources, it does require that the sources used for each full-time vacancy must reasonably be expected, collectively, to reach the entire community. In that light, it held that relying only on private contacts, or those with limited reach, is insufficient. Similarly, due to the continuing "digital divide," reliance upon Internet sources excludes those without ready access to the web. The Commission stressed that these sources can be used as part of a recruitment program, but only to supplement other means that are calculated to reach all segments of the general public, so as to invite applications from all who might be interested in an open position.

In the past, in evaluating EEO renewal reports and audit responses the Commission has endorsed licensee use of walk-ins, referrals, internal postings, web listings and the like. The recent cases, though, faulted licensees for relying upon such sources for even a small percentage of total full-time hires. In a previous case, the FCC had made clear that when a licensee lacked records of outreach efforts it could not adequately analyze its recruitment program to ensure that it was effective in achieving broad outreach. Similar lapses in the present cases led the Commission to increase the fines, as it held the licensees liable for having failed to recognize their problems, and therefore to have failed to engage in meaningful self-assessment of their EEO performance. Thus, in addition to imposing fines the Commission granted the license renewals subject to a condition that for three years the licensees (or their successors, should the stations be sold) file annual reports detailing their recruitment efforts for each full-time vacancy, including copies of all advertisements, bulletins, letters, faxes, emails and other communications announcing the vacancy, identification of all recruitment sources contacted, and the referral source of each person interviewed.

Participants at yesterday's seminar suggested a variety of means to disseminate job opportunities, including newspaper ads, partnering with local service organizations and public institutions, and presence at community events, as well as job fairs, internships, speaking engagements at schools, and other types of the outreach efforts in which stations are required to engage on a regular basis. The EEO Branch Chief rejected a suggestion that the productivity of Internet sources should provide a substitute for other types of job listings, and especially the need to buy ads in newspapers, which many broadcasters resent as forced support of competitors.

An FCC staff member noted that a common problem in her review of broadcasters' EEO reports is the failure to list and describe outreach initiatives in the required annual EEO public file reports, as well as the difficulty of locating the required posting of those reports on stations' websites. While many stations that have undergone EEO audits, as well as those whose EEO performance has been reviewed as part of their license renewal, have passed muster despite deficient showings, the tenor of the seminar was that lackluster efforts will not suffice in the future.

With the rare exception of genuinely exigent circumstances (such as the need to immediately replace a critical staffer who leaves without warning), it is essential to include a range of public recruitment sources for every full-time job opening. And, of course, it remains crucial to retain documentation of recruitment efforts and outreach activities, as they

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will be required in response to a license renewal challenge or when a station becomes subject to the Commission's ongoing program of random EEO audits.

If we can provide guidance as to compliance with the FCC's EEO requirements, please contact Peter Gutmann (pgutmann@wcsr.com) or (202) 857-4532) or any member of the firm's [Communications Law](#) Group.

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