

FCC Fines Broadcaster \$25K for EEO Violations

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A recent fine imposed by the Federal Communications Commission (FCC) underscores how important it is for broadcasters to keep up with their Equal Employment Opportunity (EEO) obligations.

On October 16, 2023, the FCC's Enforcement Bureau, which is now home to its EEO division, issued a Notice of Apparent Liability (NAL) for \$25,000 against a small, family-owned broadcaster operating two radio clusters in Kansas. Due to financial difficulties, the broadcaster no longer has five full-time employees and therefore is no longer subject to the EEO rules. Nevertheless, the FCC cited issues with the broadcaster's 2020 and 2021 EEO Public File Reports (PFRs) to justify the fine. Specifically, the NAL cited the broadcaster's failure to: (i) timely upload their annual EEO Public File Reports to the stations' online public inspection files (OPIFs); (ii) timely upload their EEO Public File Reports to the stations' websites; (iii) broadly recruit for certain vacancies; (iv) maintain their recruitment records; and (v) analyze their EEO program.

The violations merit a closer look:

1. Late EEO PFR Uploads to the OPIF and Station Websites

The FCC's rules dictate that a station's annual EEO PFR be uploaded to its online public inspection file and station website, if it has one, annually on or before the anniversary of the date on which the station's license renewal application is due. Here, one cluster apparently uploaded one PFR to its OPIF 17 months late and another PFR five months late. The second cluster apparently uploaded a PFR to its OPIF a year late. The FCC was "unable to confirm an exact date as to when the Licensees placed their EEO Public File Reports on their Stations' websites," but cited as evidence of noncompliance a statement by counsel in July 2021 that station management was "in

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the process” of uploading the 2021 PFR to the stations’ websites.

With the advent of the OPIF, the FCC is now readily able to confirm the dates on which documents are uploaded. Broadcasters should be sure to upload PFRs by their due date and double-check to make sure the upload has gone through successfully. Station websites should be updated similarly.

2. Failure to Broadly Recruit

Generally, broadcasters must “broadly recruit” for each full-time vacancy (although there is some nuance for internal transfers/promotions and “exigent circumstances”). While the Commission does not require the use of a specific number of recruitment sources, a broadcaster should reasonably expect the sources it does use “to reach the entire community.” In the NAL, the FCC found that the broadcaster failed to properly recruit for two positions because, for one position, it relied on only an “internal recommendation” and, for the other, it relied solely on announcements aired on its stations.

The lesson for broadcasters here is to use a variety of sources – including online sources with a broad reach, such as Indeed, and more locally focused sources such as a college or university – to advertise full-time job openings. Reliance on only one source will generally constitute a violation of the FCC’s rules, particularly if that source is a “word of mouth” source like a referral by an employee.

3. Failure to Maintain Documents

Not only must broadcasters conduct broad recruitment for each full-time job vacancy, but they must maintain documentation demonstrating that they have done so. In the NAL, the FCC cited the broadcaster for not being able to produce any documents in response to the Enforcement Bureau’s Letter of Inquiry.

In addition to the possibility of having to produce EEO-related documentation in response to an FCC inquiry, documentation must also be produced in response to an EEO audit. Thus, broadcasters should get in the habit of taking screenshots or retaining job posting confirmation emails for each and every online source utilized. If job postings are mailed to recruitment sources, copies of the letters sent should be maintained. The FCC will often accept a broad range of documentation to demonstrate that a source was notified, but failure to retain any documentation will generally result in enforcement action.

4. Failure to Analyze EEO Program

Broadcasters are required by the FCC’s rules to analyze their EEO recruitment efforts on an ongoing basis to ensure that they are “effective in achieving broad outreach to potential applicants, and to address any problems found as a result of such analysis.” In the NAL, the FCC found that, “[g]iven the aforementioned noncompliance with the Commission’s EEO rules” the broadcaster did not comply with its obligation to analyze its EEO program.

On at least a yearly basis, broadcasters should review their PFRs and determine which sources are effective at referring applicants. If the same sources are referring applicants over and over, the broadcaster should consider adding additional sources (preferably, local sources and sources targeted at relevant minority

populations). Ineffective sources can also be removed, although broadcasters may want to consult with counsel before doing so to ensure they are not removing an “entitled” source or one that should be maintained due to its (theoretical) ability to reach lesser-represented segments of the population.

Good EEO policies and practices can help prevent an enforcement action from the FCC. Wiley’s seasoned EEO team has extensive experience counseling clients on EEO compliance programs, including responding to FCC inquiries and audits. Please reach out to any of the authors with questions.