DON'T FORGET EEO – THE FCC HASN'T

The last week of the year has provided broadcasters with an extremely rare event – two groups of stations penalized for inadequate equal employment opportunity.

Despite its program of random audits of radio, TV and cable EEO, the Commission has been criticized for ostensibly weak enforcement since establishing its current EEO program a decade ago. The industry has responded that its performance is compliant and so corrective action is rarely needed. In what may be intended as a signal to the industry, and to placate its critics, the Commission has just imposed fines and reporting conditions on two broadcast clusters in relatively small markets. The nature of their lapses suggests areas of concern and a possible tightening of at least one applicable standard.

The first case involved renewals of a four-station group in the Medford, Oregon market. According to the FCC's *Notice of Apparent Liability*, the licensee failed to recruit properly for all but one of its 29 full-time vacancies over a six-year period. Specifically, it apparently relied solely on "walk in / mail in" or other unsolicited inquiries for six vacancies, Internet websites for seven more, and on-air advertisements for 15 others. The Commission concluded that sole reliance upon such sources constitutes a failure to use recruitment sources sufficient to disseminate information concerning vacancies. Worse, in response to an FCC request the licensee was unable to provide records of the number of recruitment sources or interviewees. As a result, its public file was incomplete and it was unable to analyze adequately the effectiveness of its EEO program. The Commission imposed a $20,000 fine plus a three-year reporting condition requiring annual submission of information to document all vacancy ads, bulletins, letters, faxes, emails or other communications and to provide the referral source of each interviewee.

The second case resulted from an EEO audit of a six-station group in the Joplin, Missouri market which presents a closer call. According to the Commission, the licensee failed to recruit publicly for six of 24 vacancies, relying solely on walk-ins to fill three of them, and word-of-mouth, a business referral and an employee referral to fill the other three. The licensee explained that its walk-ins were in response to periodically-aired generic recruitment ads that promote different radio careers even when there are no current openings. Yet the FCC found that, while permitted, nonspecific ads and private contacts do not satisfy its requirement that licensees conduct public outreach for specific openings. The licensee was further faulted for omitting specific job titles for seven vacancies in a single year's EEO public file report. The result was an $8,000 fine and a three-year reporting condition.

The Medford fine is clearly consistent with FCC practice, which requires that records be kept and that public outreach be conducted for all full-time openings, except on a rare occasion when exigent circumstances require immediate replacement of a suddenly departing employee. Yet many stations, at least in smaller markets, tend to rely heavily upon on-going public outreach of the type conducted by the Joplin stations so that replacements can be hired quickly when unexpected key vacancies arise. Although many stations have passed EEO audits largely on the basis of their participation at community job fairs and similar events, combined with continual general solicitation of potential applicants, the Commission's action may be intended to send a signal that primary reliance upon such efforts can no longer suffice and that it plans to increase EEO scrutiny of licensees regardless of their size or location.

While fines of this magnitude may not spell doom for most station clusters, they do impose other significant burdens. The Medford stations had their 2005 renewals deferred for over five years, respondes to FCC requests for further information consume substantial staff time and legal fees, and the reporting conditions invite follow-up inquiries, extend to successor licensees and could depress station value.

It is essential that non-exempt licensees continue to scrutinize both their EEO practices and EEO record-keeping to ensure compliance with the FCC's evolving requirements.

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