



# **FCC EEO Rules: Updates, Refresher, and Practical Considerations**

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# **DISCLAIMER:**

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# Background and Pending Matters

## ■ Background:

- Since 1969: Rules **Prohibit Discrimination** & Require Stations To Provide **Equal Employment Opportunities**
- Current Rules Adopted in 2002, Apply Broadly to Station Policies, Hiring Processes, and Outreach
- Historically Required Annual Filing of Broadcaster Workforce Demographics Data (Race and Gender) on Form 395-B
- Data Filing Requirement Suspended Since 2001 After DC Circuit Decision

## ■ Pending Matters

- Return of Form 395-B Data Collection/Filing?
- Enhanced Enforcement?



# High-Level Overview

- **Six Main Requirements:**

1. Nondiscrimination
2. General EEO Program
3. Recruitment & Wide Dissemination—Vacancy-Specific Outreach
4. “Menu Option” Outreach Activities—Non-Vacancy Specific Outreach
5. Paperwork—Recordkeeping and Annual Reporting
6. Self-Assessment – EEO Program Analysis

- **FCC’s EEO FAQs Available at:**

[www.fcc.gov/general/eo-frequently-asked-questions#block-menu-block-4](http://www.fcc.gov/general/eo-frequently-asked-questions#block-menu-block-4)

# Scope of the EEO Rules

- **Nondiscrimination** applies to all broadcasters:
  - AM, FM, TV, Class A TV, and LPTV
  - However, religious broadcasters can establish religious belief or affiliation as job requirement
- **What triggers an “EEO Program”?**
  - Station “employment units” (same market, at least one common employee)
  - 5 or more full-time employees (regularly working 30+ hours/week)
    - Owner an “Employee”?
      - No if, 20% or greater ownership interest and no single owner has more than 50%, or
      - No if, greater than 50% ownership interest



# Refresher on FCC EEO Rules—*Nondiscrimination*

- **Nondiscrimination:** Stations **Must Not Make Discriminatory Employment Decisions**—Intentional or Unintentional—on the Basis of Race, Color, Religion, National Origin, or Sex
  - In Addition to Other Federal & State Nondiscrimination Laws
  - FCC Generally Will Defer Action Pending a Court or EEOC Decision
  - Stations Required To Report Any Complaints at License Renewal
  - Annually, Stations Must Report Any Adverse Actions to the FCC (Not Just EEO)
  - FCC Has Noted That a Finding That a Broadcaster Has Engaged in Employment Discrimination Would Raise a Serious Question As to Its Character Qualifications To Be an FCC Licensee

# Refresher on FCC EEO Rules—*General EEO Program*

- **EEO Program:** Stations Must Have a Continuing Program of Specific Practices Designed To Ensure Equal Opportunity & Nondiscrimination
- **General EEO Program Requirements:** Stations Program Must:
  - **Define the responsibility of each level of management** to ensure vigorous enforcement of station EEO policy and establish a procedure to review and control managerial and supervisory performance;
  - **Inform employees and employee organizations** of the EEO policy and program and enlist their cooperation in adhering to the policy and program;
  - **Communicate EEO policy and program and 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;
  - **Conduct a continuing program to exclude** all unlawful forms of **prejudice or discrimination** from its personnel policies and practices and working conditions;
  - **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.



# Refresher on FCC EEO Rules—*Recruitment & Outreach*

- **Recruitment & Outreach Requirements: Stations Must:**
  - **Widely Recruit** for All Full-time Vacancies – “Widely Disseminate Information”
  - **Send Notification** of Full-Time Job Vacancies to **Organizations That Request** Such Notification
  - Depending on Number of Employees and Market Size (*More on this in Later Slides*), Engage in **at Least 2 or 4 Outreach Activities** Selected from Menu of 16 Options
  - Undertake Certain **Recordkeeping & Self-Assessment** Efforts
- **Recruit for All Full-Time (30+ Hours) Vacancies**
  - Widely Disseminate Using Sources **Reasonably Calculated To Reach Qualified Applicants** Throughout the Station’s **Entire Community**
  - Can Rely on Reasonably Current Applications on File for a Substantially Similar Position
  - **Limited Exceptions:**
    - Not Required for **Internal Promotions** of Full-Time Employees (Widespread Recruitment Must Have Occurred for Initial Position) or for **Part-Time** or **Temporary** (<6 Months) Employees (Like Interns)
    - Religious Broadcasters: May limit recruitment by religious affiliation for positions where religious affiliation is a requirement.
    - Not Required for “**Exigent Circumstances**” but Circumstances Must Be *Rare and Justifiable*



# Refresher on FCC EEO Rules—*Recruitment & Outreach*

- **Notification to Requesting Community Groups**
  - Must Provide Notification of Job Vacancies to Organizations That Request Such Notification and Must Keep Providing Notice Until the Organization Says to Stop (*\*Common audit deficiency\**)
  - Should **Publicize the Notification Requirements** (Over the Air; Website; Local Publications) So That Qualifying Groups Are Able To Request Vacancy Notifications
  - Requesting Organization Must Provide the Station With Its Name, Mailing Address, E-mail Address (if Applicable), Telephone Number, and Contact Person, and Identify The Category or Categories of Vacancies for Which It Requests Notice
- **Menu Option Outreach Activities (*further context in later slide*)**
  - Depending on Size of Market (and Employment Unit) Must Engage In Required Number of Initiatives Every 2 Years:
    - *Market outside of “metropolitan area” or < than 250,000 persons: At least 2 Initiatives / 2 Years*
    - *Market in a “metropolitan area” of size > than 250,000 persons: At least 4 Initiatives / 2 years*
  - 16 Menu Options (Job Fairs, Career Days, Internship Programs, Scholarship Programs, Training Programs, Mentoring Programs, etc.)
  - Station Should Have Meaningful Involvement in the Activity
  - The Activity Must Be Employment Related

# Refresher on FCC EEO Rules—*Recordkeeping*

## ■ Recordkeeping

- **Where the “Rubber Meets the Road”**
- Generate and Retain “Non-Public” EEO Information, Including **Dated Supporting Documents** for:
  - **All vacancy notifications**—i.e., advertisements, bulletins, letters, faxes, emails, or other communications announcing vacancies (especially for recruitment sources that are required to be notified!); and
  - **All outreach activities**
- Listings of All Full-Time Job Vacancies Filled By the Station
- For Each Vacancy, the Recruitment Sources Used to Fill the Vacancy
- The Total Number of Interviewees for Each Vacancy and the Referral Source for Each Interviewee
- The Date Each Vacancy was Filled and the Recruitment Source that Referred the Hiree



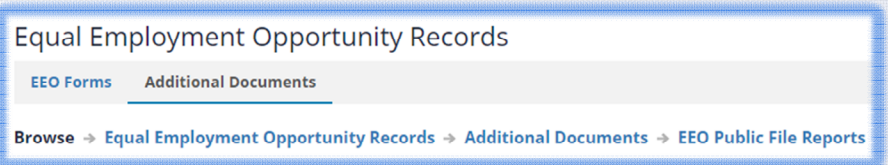
# Refresher on FCC EEO Rules—*Self-Assessment & Reporting*

## ■ Self-Assessment

- Engage in Ongoing Efforts to **Analyze the Productivity of Recruitment Efforts** in Achieving Broad Outreach to All Segments of the Community
- Periodically **Analyze EEO Measures**, Including Such Areas as EEO Program Information Dissemination, Seniority Practices, Pay and Benefits, Promotions, and Selection Techniques, **to Ensure They Are Nondiscriminatory**, (if applicable) Cooperation with Unions
- **Regularly Review** Station EEO Activity and the Records and Documents that Have Been Retained and Stored

## ■ Reporting Requirements

- Annual **EEO Public File Report** (No Standardized FCC Form, but Must Contain Certain Information (See Next Slide)) – 5 or More Full-Time Employees
  - “File” by uploading to Online Public Inspection File
  - Post on Station’s website
- Renewal Filing – FCC Schedule 396
- Demographic Data – Schedule 395-B?
- EEO Audit



# Refresher on FCC EEO Rules—*Reporting (Annual Report)*

- **Due in OPIF and Station Website Each Year**

- Iowa: October 1
- Maryland: June 1
- D.C.: June 1
- Delaware: April 1
- North Carolina: August 1
- Ohio: June 1
- Virginia: June 1

- **Annual EEO Public File Report Must Contain:**

- A list of all full-time vacancies filled by the station during the prior one-year period, identified by job title
- For each such vacancy, the recruitment source(s) used to fill the specific vacancy
- The recruitment source that referred the hiree for each full-time vacancy
- Data reflecting the total number of persons interviewed for full-time vacancies during the relevant period, and, for each recruitment source used in connection with any such vacancies, the total number of interviewees referred by that source
- A list and brief description of the menu option outreach activities undertaken during the relevant period



# Refresher on FCC EEO Rules—*Reporting (Outreach)*

- **16 Categories of Outreach Activities!**
- **Most Typical Qualifying Activities:**
  - Internships (1 Credit)
  - Scholarship Programs (1 Credit)
  - Provision of EEO and Discrimination Training to Management (1 Credit)
  - Station Training and/or Mentoring Programs (1 Credit)
  - Job Fairs (Distinct Qualifying Categories Available; *Careful Review Required*)
    - Did station personnel with hiring authority **participate?** (.25 Credit)
    - Did station **host?** (1 Credit)
    - Did station **co-sponsor** with org. that includes substantial participation by women and minorities? (1 Credit)
  - Participation in Events or Programs Sponsored by Educational Institutions Relating to Career Opportunities in Broadcasting (.25 Credit)
  - Participation in Conventions / Career Days / Workshops / Etc. Sponsored by Organizations in the Community Interested in Broadcast Employment Issues (.25 Credit)
- **Station Must Have “Meaningful Involvement” in the Initiative to Claim Credit**
  - E.g., Lending a Name and Airing Spots May Not Be Enough

# Current EEO Enforcement Activity

- **FCC Reviews EEO Compliance at License Renewal & With Audits**
- **FCC Enforces Rules Primarily Through EEO Audits**
- **Generally 2 Audit Cycles per Year (5% of Stations)**
  - February/March
  - Summer
- **Typical Violations Cited**
  - Failure To Provide Notification of Vacancies
  - Failure To Notify Sources That Requested Vacancies
  - Failure To Maintain Records
  - Failure to Self-Assess
  - Penalties Range From Admonishments to **\$20,000+ Fines** & Imposition of Additional Compliance Procedures & Reporting Requirements
    - License Revocation?
  - Last *Audit* Enforcement Action Was in 2018 (Admonishment); 2022 Renewal (\$32,000)



# Practical Considerations

- Don't Rely Entirely on Employee Referrals, Private Contacts, or Walk-In Applicants; Must Engage in **Widespread Recruitment**
- Keep Track of Organizations That Request To Be Notified of Full-Time Job Vacancies and Ensure That Those Organizations Are Notified When a Vacancy Arises
- The EEO Rules Generally Apply to **All Full-Time Vacancies** – But What About Promotions and Extraordinary Hires? It Depends.

# Practical Considerations

- Be Diligent in Maintaining EEO Records—**Records Are Critical** to Demonstrating Compliance With the FCC’s EEO Rules
  - Stations Must **Proactively Generate and Retain Records** or Risk Being Unable to Effectively Respond to an EEO Audit
- Tie Outreach Activities to Broadcast Careers and Broadcast Employment
- Make It a Special Point of Emphasis to **Evaluate and Discuss EEO Programs** and the Successes or Failures of Particular Recruitment Sources and Techniques and Outreach Activities—And Document that You Did!
- Consider How to **Add to Existing Outreach Activities**, Particularly in Light of **COVID-19**



## QUESTIONS?

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Thanks for your attention!

