



The

Broadcasters' Desktop Resource

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... edited by Barry Mishkind – the Eclectic Engineer

Focus on Regulation

Surviving an FCC "Random EEO Audit"



By Michael Dudding

[February 2015] Among the reporting requirements imposed on broadcasters are those dealing with the Equal Employment Opportunity (EEO) rules – 2500 words contained in Section 73.2080 that some feel creates as much paperwork and anxiety as all the rest of the rules combined.

Michael Dudding, owner of KDSN, Denison IA, set out to satisfy the FCC when selected for a "Random Audit." Then he learned more about how the FCC works – or does not work – than he ever wanted to know.

Getting a straight answer from the FCC is not always easy. In fact, at times, it can seem downright impossible.

This is especially true when dealing with the rules relating to the EEO laws passed by Congress. Every station with 5 or more fulltime employees is supposed to decode and obey the lengthy details of Section 73.2080, largely without any help from the FCC. If that were not daunting enough, a few years ago, the FCC began a series of "Random Audits" where stations were required to prove they had obeyed every detail of the EEO rules – "or else."

It all can make your head spin and, before you know it, you may well end up crossing over to where you begin to feel you are visiting Alice in Wonderland. As Alice found out, it is easy to violate rules that no one can understand. Furthermore, you quickly find out that navigating the system is not cheap.

And, worse, none of the pills solve the problem.

PIONEERING INSPECTION

My personal journey to alternate reality started when I was one of the lucky ones to receive one of the first notices when the Federal Communications Commission implemented a "Random EEO Audit."

Not knowing the difference of this audit versus the information I had posted on line in response to the rules, I hired a Washington DC Legal Firm to help me put the report together for submission.

\$6,000 later, I received a 3-inch 3-ring binder loaded with more information than the Magna Carta. It contained the exact information I had been posting on-line.

I felt relieved when my "Random EEO Audit" was approved by the FCC.

A SECOND RANDOM AUDIT

Then, in 2011 I received a second "Random EEO Audit from the FCC.

As I felt I had learned that what I had been posting on-line was the exact information this audit wanted to examine, I produced the new report myself. Then I called for a second opinion from Ken Benner a long-time friend and one of the most dedicated ABIP (Alternate Broadcast Inspection Program) inspectors in the country. I wanted to make sure I had everything correct, with all the "i's" dotted and "t's" crossed.

Ken sent back a letter of commendation about my "excellent report" ready to be sent to the FCC. I then sent all the requested documents to the FCC's EEO Compliance Division.

FALLING DOWN THE RABBIT HOLE

Months went by with no communication from the FCC, so I began to feel that, once again, the report was accepted and we were OK.

And then it seems that I fell down a rabbit hole.

A telephone call came from a member of the FCC's EEO Compliance Division, apparently driven by an accusation regarding new employees I had just hired. Upon identifying herself, she wanted to talk about the report I had filed.

"It's a pretty good report," I proudly said. "No it's not, Mr. Dudding," was her reply. "In fact, you have some serious violations."

ON THE SPOT

Some minor concerns were corrected during this conversation. But I was stunned when told my radio stations had violated the "90 Day Rule."

Having read section 73.2080 (the FCC EEO requirements) dozens of times, I could not find any documentation dealing with a 90 Day Rule. When I asked where in the FCC Rules this 90 Day Rule could be found, I received a sharp, *"I don't know, it's buried in there somewhere."* I was told the 90 Day Rule meant I was to *"destroy any employ-ment applications after 90 days."*

I developed that my great sin was that I had just hired two staff members whose resumes had been on file for over a year.

OFF WITH HIS HEAD!

When asked if I would be "fined" for any of the alleged violations, this EEO Compliance Officer said, *"I don't know, that's not up to me, but I will give you a website address where you can see what the fines for violations such as yours could be."* [Click.]

With trepidation, I did a search of the page to which she referred, and it showed a fine for the alleged violations she quoted might range between \$5,000 and \$30,000.

After I got back my breath, I recalled thankfully that my insurance policy included "Errors and Omissions," which would have covered any fines, minus a deductible I would have to pay.

Still, being unable to find violations in Section 73.2080 of the FCC's EEO policy, I felt the need to retain the service of another Washington D.C. Broadcast Attorney. This attorney explained that, with the number of EEO files waiting to be reviewed by the FCC, it would be best to simply wait.

\$4,500 later, it was time to begin license renewal for our stations. It turned out my daughter could have given birth to two children during the time my pending EEO alleged violation continued "under review."

With my renewal stalled until the "EEO alleged violation" was resolved, it was time for me to take matters into my own hands. Because of the alleged violation, my license renewal was being withheld. But that is another story.

KNOWING WHERE TO GO

After 18 months of waiting with absolutely no response from the FCC or the DC Attorney, and knowing I had to soon begin the license renewal process for my stations, Ken Benner and I made a last minute decision to arrange a face-to-face meeting with the head of the FCC's EEO Compliance Division to resolve any issues.

That particular gentleman was very gracious and knowledgeable, and he gave me an education on the FCC's EEO policies. When we got to the issue of the 90 Day Rule, he admitted there never had been a 90 Day Rule policy implemented; it was simply a proposal in a 119-page document released in 2002 (MM Docket No. 98-204. Adopted: Nov. 7. Released: Nov. 20, 2002), which proposed requiring destruction of employee applications after one year, but never adopted.

Based on his explanation of the interpretation of another section of the EEO report, we instantly saw how we could remedy things so that we were in full compliance.

As a result we were told everything was in order and we were no longer considered to have committed any EEO violations. Feeling totally vindicated Ken and I thanked him for meeting us and left his office.

Or, so we thought.

A DEADLINE TO MEET

Upon returning home, it was time to begin the stations' License Renewal process.

We followed the Rules: Pre- and Post-filing announcements, filed the Renewal on time, and

waited for the renewal notification from the FCC.

And we waited.

And waited

NOW: A NEW HURDLE

But now came yet another hurdle: Although other nearby stations were getting their renewals, technically we were operating without a license.

One of the big problems with being cited by the FCC for an alleged violation is that you have to sit and wait for the Field Office and/or Enforcement Bureau to send you the paperwork so you can resolve the matter.

In my case, it turned out that the EEO folks decided they had found another minor violation, one that merited holding up our license renewal.

BACK TO DC

Fortunately, Ken had helped me see how to take action.

After more months of waiting and absolutely no response from the FCC and the DC Attorney, I was getting annoyed at paying lawyers but not getting anywhere. So I sought other help, calling on the head of the FCC's Compliance Division.

I quickly learned that my license renewal was being held up because somewhere back in EEO-land another question was raised regarding my Audit Report – the one that we were told was in order.

At issue was the verification of letters sent to colleges, entities which requested information as to employment openings at my station.

APPLYING THE LESSONS LEARNED

We arranged for another meeting in Washington for a face-to-face meeting, hoping again to rap-

idly resolve any license renewal issues. In the end, it took two meetings, one at my Senator's office, and one at the FCC.

The EEO Chief wanted to know if I had, in fact, sent notices to all entities wishing to receive notice when an employment opening becomes available.

We showed him the email, copies, and the employment notices we circulated in case my stations would ever be questioned. I told him I document every employment notice and it is on file, available for his review if needed. He said that was not necessary and I should be cleared of any further Random EEO Audit questions.

It was that quick/simple. And our license renewal arrived on April 20, 2013.

A BETTER WAY

During our visit to the EEO Enforcement Division, I suggested during the meeting that random EEO audits could easily be accomplished by visiting any broadcast station's EEO file, which has to be filed on-line by October 1st each year.

For that reason, I was quite pleased to see FCC Commissioner Michael O'Rielly comment this week that much of the burden of EEO rules could be mitigated by putting all job openings on-line.

O'Rielly noted that many employers – including the FCC itself – use web sites to advertise for employees. He feels that the hours and details of stations trying to comply with the convoluted policy now in the Rules could be reduced significantly by such on-line reports.

Later, I did a random "poll" of a dozen and a half stations with which I was familiar. Checking their on-line EEO reports, I noticed several possible violations, including one station's EEO Report that had not been updated in three years.

Indeed, in my experience the growing number of proposed rules and regulations – along with the possibility of yet more "fines" – has forced many good broadcasters out of this industry that remains one of the most powerful sources of "free" media.

WE WANT MORE DATA

But hold on! Like every government agency, the FCC itself is always in data gathering mode. Now they want to put the entire Public Information File on line.

Some voices have been heard, noting that the TV transition to truly on-line Public Files is still working out the kinks. Also the latest NPRM suggests that tiny stations and non-commercial may be among a group not required to set up a Public File on line.

While it may be conceivable that all these files will be on-line before long – can you imagine how time consuming and detailed it may will be to place the files on-line? And another problem: people writing scripts can automate the process and fine stations – or file against a renewing station – without ever having to trouble to show up personally.



A SOLUTION READY FOR PRIME TIME

One final comment: Ken and I were able to accomplish in 45 minutes what I paid my DC Attorney \$4,500 over 18 months to try to accomplish: A face to face meeting with the FCC to resolve all issues.

My point is: if my station was potentially guilty of an EEO Random Audit violation, why did I not immediately receive formal "hard copy" documentation from the FCC outlining the alleged violation(s)? Is that not protocol? If not, it should be.

Indeed, since I did not receive any such notice either through the US Postal Service or email, why was I forced to delay my license renewal application? That is the \$15,000 question I present to the FCC and other broadcasters (the amount of my costs for this two year "Random EEO Audit" experience, including the loss of time, travel, lodging, attorney fees, etc).

In fact, if broadcasters have any problems with the FCC, in my opinion they should put on their big boy pants (instead of burying their heads in the sand) and directly visit with the FCC department that is in question.

I sure hope the current press for more transparency gains momentum, including broadcasters themselves – and as a result the FCC will treat them with the respect they deserve, and the information they need, without requiring the intervention of lawyers who might – or might not – be in position to help resolve matters.

At the least, you will no longer be stuck trying to understand what is going on at the tea party.

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