



The

Broadcasters' Desktop Resource

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... edited by Barry Mishkind – the Eclectic Engineer

Focus on Regulation

The Public Inspection File Part 5 – The Pesky EEO File



By Ken Benner

[July 2012] We continue with our look at the Public Inspection File. This time something that is, if possible, more political than the Political File.

One of the more perplexing parts of the Public Inspection File is the folder dealing with each station's Equal Employment Opportunity (EEO) efforts.

NOT EIEIO

Unlike the nursery rhyme, EEO is not a joke. It is a serious set of regulations forced on the FCC and broadcasters by Congress.

If your company has five or more full-time staffers working more than 30 hours per week you are required to comply with all parts of the EEO Rules – including placing in the Public Inspection File the specific reports required by Sections 73.3526 (e)(7) and 73.3527 (e)(6) of the FCC Rules and Regulations.

There, the Rules refer you to the Equal Employment Opportunity regulations found in Section 73.2080.

EEO AND THE PIF

In general, the following items are to be maintained in this folder:

1. The Job Titles of all full time hires;
2. The name, address, contact person and phone number of each recruitment source, (i.e., schools, broadcaster's associations, professional organizations, etc.), that have been used to fill each vacancy. Include those organizations entitled to automatic notifications.
3. The recruitment source that referred each full-time person hired;
4. Total number of persons interviewed for each full-time vacancy;
5. Number of persons interviewed referred by each recruitment source;
6. A list and description of all outreach initiatives undertaken (job fairs, etc.) during the past year.

RETENTION

These items are to be retained until grant of the next renewal or license agreement.

In the meantime, as part of the renewal process, Form 396 must be completed before the Form 303-S Renewal Application.

Furthermore, in-between renewals, the FCC may randomly select your station to file a complete EEO Audit Report, detailing your compliance.

WHY IT IS SO IMPORTANT

When you sit down and actually read what is required, it may seem like a lot of detail for each hiring. You might even wonder why the FCC cares about such detail.

The answer is that, largely, it is not the FCC but Congress that passed the laws mandating these EEO requirements on broadcasters. In other words, it is government policy. The FCC merely carries out what its masters demand. Yes, it is a highly political issue, and you are not likely to get anywhere questioning the policy.

That causes a burden, especially for very small Mom & Pop stations. Nevertheless, it is your well-maintained Public Information File EEO folder that is your primary line of defense against potential fines – or worse.

For example it only takes one person, possibly a former disgruntled employee, to file an EEO complaint, real or imagined.

That brings into the picture not only the FCC, but various other US Government and State Departments, including the Justice Department. When this happens, the outcome easily can be financially devastating, as many licensees have learned.

Annoying as it may be to repeat it, your well-maintained Public Information File is your primary means of defense in these instances.

GOING ON DEFENSE

Some stations, dread facing the time and manpower hassles of collecting and putting of all this material together – and then distilling it for the Renewal Application or an EEO Audit Report.

Instead they opt to spend thousands of dollars for some nice law firm to prep the mountain of gobbledy goop.

This can lead to some pretty expensive filings.

The hope is to end up assured they will not be fined or shipped off to the nearest federal prison for some inadvertent omission.

WHAT IS BEHIND THE CURTAIN

Remember the honor and glory of holding an FCC license for a small chunk of the spectrum means, in our democratic society, the grant of such a license often is paired with massive some mandatory hoops to jump.

Since EEO is a major source of such hassles to licensees, it seems worthwhile to share with you some information on the underlying aspects of what is required in the EEO folder.

While not exhaustive, the following short look at the basics of dealing with the maze of EEO may help you as you try to keep this file folder in order.

FILLING AN OPENING

For example, when you have a job opening, you simply cannot hire from your stack of recently obtained applications without addressing the all-important three "Prongs."

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This is true regardless of whether you are a commercial or non-comm radio or TV of any size – large or small. You cannot discriminate, with the one possible exception (unless recently

abolished) for religious stations: they may use religious affiliation as a hiring qualification.

Any other sort of discrimination is an absolute no-no.

ASSEMBLING THE INFORMATION

EEO procedures are based on many requirements, but the process is largely concerned with your compliance with the Three Prongs.

- **Prong #1** says that stations must actively recruit applicants for any fulltime vacancy of 30 hours or more. However, regarding part time hires or hiring done under exigent circumstances, most of the hoops you have to jump through are waived.

For example, you might need a the kid to baby-sit an occasional weekend board shift, or a temporary employee for a special short term promotional shindig or one-night coverage of election returns.

Also, you do not have to hoop jump during exigent instances where an employee shows up drunk or walks out without notice and you have to hire on very short notice.

Filling a position by promotion internally from current staff is another case which does not set off the more detailed requirements.

- **Prong #2** deals with the mandatory efforts stations must make in seeking applicants.

This Prong requires you, as part of the hiring process to notify any organization that distributes or circulates employment info to those seeking jobs, for example;

- announcer schools
- colleges offering broadcast training
- state broadcast associations
- employment agencies, etc. if these folks provide you with adequate info including their name address, phone numbers, and contacts at their insti-

tutions for you to distribute your employment opportunities.

- **Prong #3** is a list of additional options – a “menu” if you will – which stations, depending upon the size of company, must utilize two or four as they seek applicants.

This involves "Menu Options" for which one of my reference tomes lists 16, yes *sixteen* of these required "options" including:

- a) Participation in a minimum of four job fairs staffed by persons who make your station's hiring decisions.
- b) Host a job fair.
- c) With local business and professional folks, co-sponsor job fairs with women and minority groups.
- d) Take part in at least four events involving folks active in radio/TV issues related to employment. For example, career days, conventions, workshops and similar activities.
- e) Join job banks, Internet programs and related efforts.
- f) Get involved with scholarship programs directed to kids interested in joining our profession.
- g) Work on training programs designed to educate your employment unit so as to prepare them for upper-level positions.
- h) Work on mentoring programs to help folks move up your stations' employment ladder.
- i) Take part in at least four events related to opportunities in broadcast.
- j) Sponsor at least two events in your community of license designed to inform the public of the opportunities in radio and TV.

- k) Assist outside non-profit groups in our efforts to provide counseling in our search and development for our slot in the glorious world of broadcast.
- l) Train management level folks in methods to ensure EEO and prevent discrimination.
- m) Get involved with activities other than the preceding items so as to further disseminate information involving opportunities in broadcast.

My suggestion here is to seek out a copy of the NAB Guide "10 Steps to EEO Compliance" to more clearly simplify your comprehension of this potential minefield.

NAVIGATING THE LEGAL JUNGLE

To conclude, I would like to suggest these five options for you to consider:

- 1) Punch up FCC (CFR-47) paragraph 73.2080 from www.fcc.gov, read and study it carefully.
- 2) Try to buy or borrow a copy of the NAB's book "10 Steps to EEO Compliance."
- 3) If you are a member, contact your state broadcaster's association and ask to be

connected to their "free" legal hotline to some lawyer they have on retainer.

- 4) If your bank account has adequate finances, contact your legal counsel, who I am told will charge a modest \$6k to address your EEO compliance in some cases.
- 5) Do as a prominent friend of mine did – pull the plug on your station and take up Ham Radio. You will be "On The Air" with much less grief and costs.

Before leaving, it is prudent to share the usual caution: *Please note: This article is not written by an attorney and does not replace your communications counsel. Its purpose is to offer general tips on how to maintain the various sections of the Public Inspection File. In case of questions, it is always best to contact your attorney.*

I hope I have encouraged you to keep the faith and to do what is right.

Ken Benner, CBRE, has served as an inspector in the FCC's Alternate Broadcast Inspection Program for the past 15 years.

Benner is also Executive Director, Coalition for Transparency, Clarification and Simplification of Regulations Pertaining to American Broadcasting. You can contact Ken at: bennerassociates@me.com

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