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Are Your EEO Initiatives Adequate?

Garvey Schubert Barer Legal Update, September 28, 2007.

Recruitment is at the heart of the FCC's EEO program. Outreach initiatives are a major prong of recruitment. As radio stations approach the midway point of the eight-year license term, now is a good time to take stock of initiatives.

Large market station employment units with more than ten full-time employees must engage in four broad outreach initiatives every two years. The number of initiatives is halved to two in two years for employment units with five to ten full-time employees, or that are located in a smaller market (a metropolitan area as defined by OMB with a population under 250,000, or any area outside all metropolitan areas).

The FCC's guidelines on how stations can be meaningfully involved in outreach provide a good benchmark of performance. Some initiatives require more station involvement than simply lending its name to an activity. Others require active management participation. Token efforts will be found to be inadequate.

Here are some examples of recruitment outreach initiatives that FCC guidelines address.

Job Fair Attendance. One of the initiatives relates to participation in four job fairs over a two year period. To count, job fairs must be attended by station personnel who have substantial responsibility for hiring decisions.

Training and Mentoring. Another initiative pertains to establishing training and mentoring programs designed to enable station personnel to acquire skills that could qualify them for higher level positions. The FCC stated that this initiative is not satisfied by ordinary training required for employees to perform their current positions.

Sponsorship of Initiatives. The FCC stated that sponsorship of initiatives is apparently misunderstood by some as referring only to a financial contribution. Rather, the FCC held that a "sponsor" should have meaningful input into the planning and implementation of a specified event. Simply lending one's name or making a monetary contribution would not be sufficient. Events can be jointly sponsored, so long as each broadcaster seeking credit for sponsoring the event is actively involved in planning and implementing the event.

Scholarship Programs. Stations may jointly maintain a scholarship program, which could be done through a state or local broadcast association. To count as an initiative for a particular station, the broadcaster seeking credit for the initiative needs to participate in the design of the program, the solicitation of prospective scholarship recipients, the interviewing and selection of scholarship recipients, on-air promotion of the program, and evaluation of the effectiveness of the program.

While each employment unit need not be involved in every aspect of the program, meaningful involvement in the program is essential to ensure that the employment unit is fulfilling its responsibility under the FCC's EEO Rule. The number or type of scholarships awarded by a joint scholarship program needs to bear a reasonable relationship to the number of employment units seeking credit for it. The FCC applies the same requirements for scholarship programs maintained by corporate licensees by requiring employment units claiming credit for the scholarship program to be meaningfully involved in the implementation of the program.

Joint Efforts with Other Groups. Broadcasters can perform outreach initiatives on a joint basis, either with other broadcasters, organizations such as state broadcaster associations, or with a corporate licensee's corporate headquarters. A station seeking credit for a particular initiative performed on a joint basis, however, must have a meaningful involvement in the activity for which credit is sought. It is not enough for

the station merely to lend its name to an activity or provide money where the activity is otherwise entirely conducted by another entity such as a trade association or the licensee's corporate headquarters.

For example, with respect to the hosting of job fairs, this initiative could be performed on a joint basis, subject to the qualification that each broadcaster must participate in a meaningful way in the planning and implementation of the event. If a broadcaster's participation amounts to little more than attendance at the job fair, then it can claim credit only for such attendance, even if it has been nominally designated a cosponsor.

Recordkeeping. The annual EEO public file report must identify who from the station participated in each recruitment outreach initiative, the date and location of a particular event, and a description of the station's involvement. Documentation necessary to demonstrate performance of the station's involvement will need to be filed with the FCC in the event the station is audited.

The foregoing list includes the FCC's elaboration on specific initiatives, since the EEO Rule was adopted in 2003, but does not include all of the options the FCC suggested could satisfy the general EEO outreach requirements. The Commission says it wants to give broadcasters flexibility in developing initiatives that may not fall strictly within the scope of the options it specifically enumerated.

How do you measure up? If you've come up short, now is the time to make plans to comply with the recruitment outreach initiatives the Commission requires of broadcasters.

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