



Virginia Association of Broadcasters Legal Review



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FCC ANNOUNCES DATES FOR SEVERAL SPECTRUM AUCTION INFORMATION SESSIONS AND AN LPTV/TRANSLATOR WEBINAR

The FCC has announced the dates for several informational sessions relating to the broadcast spectrum auction.

First, in a [Public Notice](#), the FCC has provided dates and locations for “information sessions” scheduled for February 2015 that are intended “to provide broadcasters with the opportunity to learn more about the auction.” The schedule for these information sessions in February is set forth below. (According to the FCC, the schedule for future visits will be announced in additional public notices.)

February Broadcaster Information Session Locations and Dates

- February 9, 2015: Philadelphia, PA (also covering Harrisburg, PA)
- February 10, 2015: Wilkes Barre-Scranton, PA
- February 11 (general session), 12, and 13, 2015: New York, NY (also covering Tri-State Area and Albany, NY)
- February 24, 2015: Nashville, TN
- February 25, 2015: Atlanta, GA
- February 26, 2015: New Orleans, LA (also covering Hattiesburg, MS)

According to the Public Notice, members of the FCC’s Incentive Auction Task Force will be accompanied by representatives of the investment banking firm Greenhill & Co. in each city to hold a general session about the auction and repacking process and will also be available to meet with individual broadcasters on a confidential basis. The FCC is encouraging broadcasters in markets where visits have not been scheduled to attend the session that is closest to their respective market. Broadcasters interested in attending a general session or arranging a confidential meeting should contact FCC Staffer Mary Margaret Jackson at MaryMargaret.Jackson@fcc.gov or (202) 418-3641.

Second, in another [Public Notice](#), the FCC announced that it will host a webinar on February 17, 2015, at 10:30 a.m. (ET) to “facilitate public input and understanding of issues relating to the impact of the incentive auction and repacking on LPTV and TV translator stations.” According to the Public Notice, additional details will be released closer to February 17.

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LESSONS FROM FCC ENFORCEMENT ACTIONS: EEO REQUIREMENTS

Day-to-day broadcast operations are subject to a wide variety of FCC regulations, each of which presents an opportunity for an operational slip-up that may result in FCC enforcement action. In 2014, the Commission’s reinvigorated Enforcement Bureau issued dozens of NALs (Notices of Apparent Liability) and entered into numerous Consent Decrees which included strict compliance and reporting requirements and *admissions of liability* by broadcasters. Today’s enforcement lesson relates to the Commission’s EEO rules.

Recent Cases Finding Inadequate EEO Vacancy Recruitment

In the course of evaluating the EEO performance of several stations during the license renewal process, the FCC determined that an employment unit consisting of six stations had (i) failed to appropriately recruit for 31% (four of thirteen) of its full-time vacancies, (ii) failed to provide notification of 62% (eight of thirteen) of its full-time vacancies to organizations that were entitled to receive them, and (iii) failed to sufficiently analyze and evaluate its recruitment program. These deficiencies resulted in a \$9,000 fine for the employment unit.

With respect to the four vacancies for which the employment unit failed to adequately recruit, the FCC found that the employment unit’s reliance solely on station website job postings, word-of-mouth referrals, and walk-in applicants was insufficient to meet the FCC’s touchstone that notices of all full-time vacancies be widely disseminated and reasonably calculated to reach the entire community. With respect to the eight vacancy notifications that were not sent to community organizations that had requested them, the employment unit failed to send five of them to two entitled organizations and three of them to one entitled organization. Because these inadequate recruitment practices continued over a two-year period, the FCC inferred that the employment unit failed to adequately assess and evaluate its recruitment practices. The broadcaster was fined \$9,000 for these EEO infractions, and the employment unit was ordered to submit annually (for a three-year period) its EEO Public File Reports and recruitment records to the FCC.

In another case, an employment unit consisting of four stations was fined \$5,000 for its failure to publicly recruit for half (three of six) of its full-time vacancies, relying solely on walk-ins to fill one vacancy and client and employee referrals to fill two vacancies. The FCC found these recruitment efforts to fall short of the type of widespread recruitment contemplated by the EEO rules. To that end, the FCC stated:

Relying only on a licensee's own private contacts, such as employee or client referrals, does not constitute recruitment as contemplated under the Commission's rules, which require public outreach. In addition, although licensees may interview or hire "walk-in" applicants, relying solely on walk-ins does not constitute a recruitment effort under the Commission's rules.

Because the employment unit's failures occurred during an eighteen month period, the FCC inferred that the employment unit failed to adequately assess and evaluate its recruitment practices.

Lessons to Learn

There are several broad principles that stations should learn from these and other representative enforcement actions:

- * Internet-only recruitment (or Internet combined only with word-of-mouth and other non-public recruitment efforts) is not sufficient to comply with the requirements that stations widely disseminate notices of job openings so that they reach the entire community. This remains true even under unusual circumstances, such as the pending sale of a station—the FCC has previously observed that a licensee's uncertainty about its workforce needs does not suspend application of the EEO rules. And, while the FCC has said that, in some circumstances, non-Internet single-source recruitment may be sufficient, it remains risky for stations to rely on one single non-Internet source to fill any vacancy.
- * Reliance by a station on employee referrals, its own private contacts, walk-in applicants, and/or one website does not constitute widespread recruitment; public outreach that is reasonably calculated to reach the station's entire community is required by the FCC's EEO rules.
- * The FCC enforces the self-assessment provisions of the EEO rules. Stations should make it a special point of emphasis to evaluate and discuss their EEO programs and the successes or failures of particular recruitment sources and techniques and outreach activities. Ongoing or repeated EEO compliance deficiencies demonstrate, in the FCC's eyes, failure to perform adequate EEO program assessment.
- * Stations are not able to rely on planned recruitment initiatives that are not fulfilled. Actual participation and fulfillment of outreach activities is required. Stations should assess their accomplishment of outreach initiatives periodically (not just annually) so that alternate or additional activities may be planned, if needed. For example, stations may be well-served to undertake a monthly review of materials retained in the private EEO files to ensure that sufficient "menu option" outreach activities are being conducted by the station.

- * EEO obligations are triggered as soon as the number of full-time employees at a station increases from four to five. Stations contemplating adding additional full-time personnel such that the number of full-time employees would reach the EEO threshold of five should be prepared to comply with all EEO obligations as soon as the fifth full-time staff member is employed.

- * Maintenance of sufficient EEO records is critical to demonstrating compliance with the FCC's EEO rules. Not only do those records substantiate adequate recruitment practices and performance of outreach initiatives, but also those records are required to be maintained in their own right—in other words, failure to maintain records may result in findings of EEO violations. At a minimum, we suggest that stations maintain in their private files (i) a hard copy of each job vacancy notification along with a copy of the addresses of those to whom U.S. postal notifications were sent, and (ii) in the case of e-mail, a hard copy of the transmitted e-mail along with a hard copy of the job vacancy notification (i.e., a hard copy of the electronic attachment). Additionally, stations should maintain in their private files completed registration forms, brochures, agendas, letters confirming attendance, copies of email correspondence, and any other documents that demonstrate participation in outreach initiatives. We suggest collecting these documents as the activities are performed rather than waiting for an audit letter or the station's EEO annual public file report deadline to “trigger” their collection.

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For the past several years, the FCC has announced its first round of EEO audits in February or March, which means that now is a good time to pay close attention to your station's vacancy recruitment practices and other EEO obligations to ensure compliance with the FCC's EEO rules.

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

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