Virginia Association of Broadcasters Legal Review

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Legal Memorandum

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Virginia Noncommercial Television Station Biennial Ownership Reports Due June 1, 2016

Biennial Ownership Reports must be filed with the FCC by June 1, 2016, for all Virginia **noncommercial television** stations, unless a station is owned as part of a group of stations located in different states and the group owner has specified a different, but common, date for all stations. (The Biennial Ownership Report filing deadline for all commercial radio and television stations will be in late 2017, and the Biennial Ownership Report filing deadline for noncommercial radio stations in Virginia was June 1, 2015.) In 2015, the FCC adopted new rules to change (and make uniform) the Biennial Ownership Report filing deadline for all noncommercial broadcasters, but those rules are not yet in effect, and, as a result, noncommercial Virginia television stations need to plan to file by the June 1, 2016, deadline.

Biennial Ownership Reports are generally only required to be filed every two years, and each Virginia noncommercial television station should have filed a biennial report in 2014. The information submitted in the reports is required to be current within 60 days prior to the filing date. With the June 1, 2016, filing deadline rapidly approaching, all noncommercial television stations in Virginia should begin immediately surveying licensee officers, directors, board members, etc., to collect and compile the requisite information for the Biennial Ownership Reports.

Biennial Ownership Reports for noncommercial stations must be filed on FCC Form 323-E. Electronic filing is mandatory, and the FCC will not accept paper filings, unless accompanied by an appropriate waiver request. Once filed, the Biennial Ownership Reports are required to be maintained in each station's public inspection file until superseded by the next ownership report filing.

Noncommercial television stations may wish to contact their communications counsel for assistance with their Biennial Ownership Reports.

EEO Public File Reports Due June 1, 2016, for Virginia Radio and Television Stations

Virginia radio and television stations with five or more full-time employees must place their annual EEO Public File Report in their public inspection file and post it to their website (if they have one) by June 1, 2016.

As stations prepare their 2016 EEO Public File Report, they will want to keep in mind the Commission's EEO recordkeeping requirements. Each year the Commission conducts random audits of radio and television stations for EEO compliance. Stations that pay close attention to the EEO recordkeeping requirements will be in a better position to respond to an EEO audit. The FCC sent out its first round of 2016 EEO audit letters in February, and the FCC typically sends out a second round of EEO audit letters later in the year.

For specific details regarding the contents of the EEO Public File Report and EEO recordkeeping requirements, stations may wish to contact their communications counsel or use the VAB hotline.

EEO Mid-Term Reports (FCC Form 397) Due June 1, 2016, for Certain Virginia Television Stations

The FCC's EEO rules have been in effect for more than a decade, and they require broadcasters to file certain periodic reports with the Commission, including FCC Form 396 (the Broadcast EEO Program Report) at license renewal time and FCC Form 397 (the Broadcast Mid-Term Report) at the midway point of the license term. More specifically, stations are required to file Form 397 at the midway point of their license term on the anniversary of the deadline for filing license renewal applications. For Virginia television stations (commercial and non-commercial), the deadline for filing Form 397 is June 1, 2016. (Certain Virginia radio stations were required to file Form 397 by June 1, 2015.) Stations are required to file Form 397 even if their most recent license renewal application remains pending and has not yet been granted.

FCC Form 397 is a relatively straightforward report that requires television stations (1) to state whether they have five or more full-time employees, and, if they do (2) to attach a copy of the station's EEO Public File Reports for the previous two years (i.e., the reports from 2016 and 2015). Form 397 must be filed electronically on the Commission's website using the CDBS filing system—paper filings will not be accepted unless accompanied by an appropriate waiver request.

Notably, only television stations that are part of an "employment unit" having five or more full-time employees are required to file Form 397. An "employment unit" is any group of commonly-owned or brokered stations located in the same market that share at least one employee. For purposes of the FCC's EEO rules, a "full-time" employee is one who works at least 30 hours per week.

Television stations with fewer than five full-time employees are not required to file Form 397 by June 1, 2016, but are permitted to do so voluntarily. The advantage to a television station with fewer than five full-time employees choosing to voluntarily file Form 397 is that the FCC's EEO Staff will then know definitively that a station employment unit has fewer than five full-time employees. When a television station employment unit with fewer than five full-time employees elects not to file Form 397 voluntarily, it may cause the FCC's EEO Staff to mistakenly believe that the station has failed to comply with a required EEO filing (because the FCC's EEO Staff would have no basis for knowing how many full-time employees there are a the station employment unit). Because there is no FCC filing fee associated with Form 397, television stations with fewer than five full-time employees may wish to consider making a voluntary filing.

Stations with questions about the EEO Mid-Term Report or the FCC's Equal Employment Opportunity Rules should contact their communications counsel or use the VAB hotline.

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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