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## **Adventures in EEO-Land**

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Following up on audits of the EEO performance of a number of broadcast licensees, the Media Bureau has dished out fines ranging from \$3,000 to \$12,000 to three licensees for various shortcomings. In addition to the fines, each of the three is also saddled with reporting requirements for the next three-four years – and if any of the stations happen to be sold in the meantime, the buyer will get stuck with the reporting chores. (Good luck explaining to the buyer exactly why he or she should bear that particular cross.)

As has been invariably the case for years, the “EEO” miscues at issue did *not* involve any actual, or even alleged, illegal discrimination. Rather, in each case the licensee failed to jump through various procedural hoops in just the right way. For example, one licensee failed to send out notices of vacancies to two organizations which had asked to be on its mailing list. It also neglected to “retain fully detailed documentation to support the data reported” in its annual EEO report in its public file. That’ll be \$3,000, please – be sure to make the check payable to the FCC.

There’s more.

One of the licensees was taken to task for re-hiring a former employee to fill a vacancy without undertaking “sufficient recruitment” for that slot. While the Bureau’s decision provides virtually no description of the particular facts here, it seems strange that the Commission would not view re-hires as a permitted exception to the full-tilt-recruitment-*uber-alles* approach. After all, the licensee knows the former employee/re-hire candidate and is perfectly situated to know whether that candidate (who is presumably already familiar with the licensee’s operations) is suited for the job.

Why then go through an elaborate recruitment dance if the result is, reasonably and legitimately, a foregone conclusion? Don’t bother to try to answer that rhetorical question. (That’s kind of like when positions in government agencies are “posted” as if they’re really open for applications when, in fact, it’s understood by all concerned that the positions have already been filled.) The fact of the matter is that, according to the Bureau, re-hires without “sufficient recruitment” can get you a \$3,000 fine and, possibly,

reporting conditions. Again, just make that check payable to the FCC.

One element common to two of the cases was the fact that each licensee had, in its recruitment for at least one vacancy, relied solely (or at least primarily) on Internet web sites as recruitment sources. Bad idea.

According to the Bureau, the Commission's EEO policy "requires a licensee to recruit from non-Internet sources, in addition to any sources from the Internet, in order for its recruitment to sufficiently widely disseminate information concerning the vacancy."

This neo-Luddite aversion to reliance on the Internet is a throw-back to 2002, when the Commission declined to permit such reliance. Back then, the FCC cautiously promised to "continue to monitor the viability of the Internet as a recruitment source" and to "consider whether future circumstances warranted a change". Can we all agree that, in the intervening seven years, Internet accessibility has increased dramatically, as has the extent to which everybody – including the FCC itself – relies on the Internet to conduct routine, day-to-day business? (Any doubters out there are invited to go to the FCC's "Forms" page and count the number of applications and reports that *must* be filed electronically.) Nevertheless, the Commission apparently doesn't think that that dramatic increase is a "circumstance[ ] warrant[ing] a change" in its EEO policy. Go figure.

But if you really want to scratch your head, consider this. The Commission's rules require that each licensee's EEO public file report be posted on that licensee's website. And the two guys that got whacked for over-reliance on the Internet? The reporting conditions that they are now subject to (for the next several years) specifically require them to demonstrate to the Commission, each year, that their EEO reports have been duly posted on the Internet.

Let's get this straight: the Internet is so widespread that it is a matter of regulatory imperative that annual EEO reports *must* be posted there, but *not* widespread enough to give the Commission assurance that any interested – and motivated – prospective job applicant would be able to find out about job vacancies posted there. That doesn't seem to make much sense – but it's not clear that sense is necessarily a factor here.

In any event, all broadcast licensees should be aware that the Commission's EEO enforcement mechanism is still primed to lunge at the capillaries of procedural minutiae, rather than the jugular of actual discriminatory activity.