

85. The EEO public file report will be filed for station employment units, rather than only for individual stations. A "station employment unit" will be defined, as it was under our former rule, as including a station or group of commonly owned stations in the same market that shared at least one employee. We will leave the definition of the "market" to each licensee's good faith discretion. In making this determination a licensee should assess the technical coverage of its station(s); its marketing, promotional, and advertising practices; the pertinent market definitions adopted by public agencies or commercial services, such as Nielsen and Arbitron; and requests for notices of job vacancies from locally-based community groups. We expect a licensee to be able to provide a reasonable explanation for its determination should it become an issue. Finally, stations in the same market should be considered part of the same employment unit even if the licenses are held by different business entities that are commonly owned or controlled. We would view licensees as commonly owned for the purpose of the EEO rule if 50 percent or more of the voting control of the licensees is held by the same persons or entities.

86. If a station is subject to a time brokerage agreement, the licensee's EEO public file report should include data concerning only its own recruitment efforts for full-time positions and not the efforts of the broker. If a licensee is a broker of another station or stations in the same market as an employment unit including a station or stations of which it is the licensee, the licensee's EEO public file report should include data concerning its EEO efforts at both the owned and brokered stations. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include information concerning its EEO efforts at the brokered station in the EEO public file report for its own station that is geographically closest to the brokered station. The same policy will apply to EEO forms filed at mid-term (where applicable) (Form 397) and at renewal (Form 396), discussed. Non-licensee brokers are not required to file EEO public file reports because they are not licensees. If a broker is controlled directly or indirectly by a licensee or licensees, it should be considered a licensee-broker.

87. We recognize that there may be some employment units that are located in markets that include stations located to communities in more than one state that are in different renewal groups. As a result, the date of the last renewal

application filing differs for some stations in the same employment unit, so that there could arguably be two dates governing the placing of the EEO public file report in the public file because that date is based on the anniversary of the filing of the last renewal application. The same problem arises with respect to the filing of mid-term reports (FCC Form 397), discussed. It is not our intent that employment units comply with these requirements more than once merely because they include stations in more than one renewal group. We will generally expect employment units in this situation to proceed in accordance with the schedule for only one of the renewal groups included in their unit. There may be rare instances involving television stations when it will be necessary for us to request a supplemental filing in order to comply with the statutory requirement that we conduct mid-term reviews of television licensees' EEO compliance.

88. An employment unit consisting of stations in more than one renewal group may select the renewal group that it will use for the purpose of determining the filing dates for its annual public file reports and its mid-term report, where applicable, in accordance with the following criteria. If the employment unit includes a television station, the dates for the television station should ordinarily govern, in order to accommodate the statutory requirement for mid-term review of television licensees' EEO compliance. Apart from this situation, the renewal group that will determine the employment unit's EEO filing schedule should be selected so as to minimize the time between the date for placing the EEO public file report in the public file and the date for the filing of renewal applications for stations located in renewal groups that have different renewal filing dates than the renewal group used to determine the employment unit's EEO filing schedule.

89. There may also be circumstances in which an employment unit consists of television and radio stations that are part of the same renewal group, except that the renewal schedule for radio is one year earlier than the schedule for television. In these circumstances, the filing schedule for television stations should be used for purposes of filing the mid-term report (FCC Form 397) for the employment unit, if it is subject to the requirement to file a mid-term report. This report would cover all stations in the employment unit. Thus, there would be no need to file a separate mid-term report for the radio station(s). Because the date for placing the annual public file report in the public file is the same

for both radio and television, the most recent public file report should be submitted with the renewal applications for both television and radio stations in the employment unit.

90. Renewal applications must still be filed separately for each station in accordance with the regular schedule for the station's renewal group. FCC Form 396, the EEO form submitted with the renewal application, discussed below, requires that the licensee attach the EEO public file report that is ordinarily placed in the public file simultaneously with the filing of the renewal application, as well as the report for the prior year. When a station is part of an employment unit that is using the EEO filing schedule for another renewal group, the station should submit with its FCC Form 396 the most recent EEO public file report prepared for the employment unit. If the licensee feels that the most recent EEO public file report does not accurately reflect the employment unit's EEO program as of the date of the filing of the renewal application, it should disclose any pertinent facts as part of the narrative statement also required by the FCC Form 396.

91. Low power television (LPTV) stations are subject to the broadcast EEO rule by virtue of a cross-reference contained in § 74.780 of the Commission's Rules. (Licensees of low power FM (LPFM) stations are subject to the Commission's prohibition against employment discrimination. *See* 47 CFR 73.881. LPFM licensees are not required to comply with any EEO program requirements. As we stated in the LPFM *R&O*, "[b]ecause we anticipate that the vast majority of this class of licensees will employ very few (if any) full-time, paid employees, we do not intend to require LPFM licensees to comply with any EEO program requirements we adopt in our rulemaking proceeding.") LPTV stations are not required to maintain a public file. As indicated in the *Recon*, we will not expect them to prepare an EEO public file report, although LPTV stations with five or more full-time employees must comply with the recordkeeping requirements. Class A television stations are subject to the requirement to maintain a public file and are fully subject to the EEO rule, including the requirement to prepare an EEO public file report.

92. *Enforcement.* We will adopt the enforcement process proposed in the *2NPRM*, which is similar to that adopted in the *R&O*, except that we are eliminating the requirement that broadcasters certify compliance with the EEO rule in the second and sixth years of their license term. We will conduct