

mid-term review of television stations with five or more full-time employees and radio stations with more than ten full-time employees, using FCC Form 397. We treat television stations differently from radio stations because of the requirements of section 334 of the Communications Act which does not permit us to exempt television stations with five to ten full-time employees from the mid-term requirement.

93. We will also monitor EEO compliance through random audits and targeted investigations resulting from information received as to possible violations. Each year we will select for audit approximately five percent of all licensees in the radio and television services, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Initially, the inquiry may request the contents of the station's public file. Further inquiry or inquiries may be conducted requesting additional documentation of recruitment efforts that is not in the public file. Based on the circumstances of the case, the inquiry could potentially include, but not be limited to, (1) A request for data covering any period of the license term; and (2) interviews of witnesses, including any complainant and present or former station employees.

94. Licensees will be subject to a variety of sanctions and remedies for EEO rule violations or deficiencies. Some examples of violations or deficiencies might include: engaging in employment discrimination in hiring or promotions; failure to file a mid-term review when due; failure to file an EEO public file report when due; failure to file Form 396 when due; misrepresentation of outreach efforts or other information; non-responsiveness or evasion in responding to a written Commission inquiry; failure to recruit for all vacancies absent exigent circumstances; failure to widely disseminate information concerning vacancies for full-time positions; failure to analyze routinely the adequacy of the various program elements in achieving broad outreach to all segments of the community; failure to undertake the required Prong 3 menu options; and failure to notify organizations that request vacancy notices. Also, it may constitute a violation of the EEO rule if, based on all of the evidence, we determine that a licensee has attempted to evade our requirements through token or sham efforts.

95. We take the EEO rules and obligations we establish here very seriously, and fully expect broadcasters

and MVPDs to do the same. We remind licensees that it is as true today as it was 20 years ago that a "documented pattern of intentional discrimination would put seriously into question a licensee's character qualification to remain a licensee." We intend to carefully monitor compliance with our EEO rules. Sanctions and remedies that may be issued by the Commission for deficiencies in licensees' EEO compliance include admonishments, reporting conditions, forfeitures, short term renewal of license, or designation for hearing for possible revocation of license or denial of renewal. The appropriate sanction or remedy will be determined on a case-by-case basis. Sanctions will be greater in cases involving recidivism, continuous EEO non-compliance, or intentional discrimination. In particular, if sufficiently egregious violations are found, we will not hesitate to designate for hearing.

96. We will also be taking steps to ensure that broadcasters, MVPDs, and the public are aware of and able to comply with the EEO rules and policies. First, we will continue to maintain an EEO page on the Commission's Web site. In addition, our Consumer & Governmental Affairs Bureau (CGB) will provide information to the public on the new rules adopted by the Commission. CGB will make a factsheet on the rules available to the public through our consumer centers and our Web site. Commission staff will continue to participate in conferences held throughout the country that deal with broadcast and MVPD EEO issues. Finally, as always, our EEO staff is available to answer more specific questions and provide informal guidance regarding the rules. We encourage the industry and the public to take advantage of these resources.

97. *Forms Relating to EEO Compliance.* We readopt the forms adopted in the *R&O*, incorporating the changes discussed above. Primarily, we eliminate the portion of the forms that provided for an election between Option A and Option B because our present rule does not provide for an election. We also will not reissue the Initial Election Statement, which required a licensee to choose between Option A and Option B. We are addressing here only forms relating to our EEO outreach requirements. As indicated, FCC Form 395-B, the Annual Employment Report, which is being deferred, is unrelated to the implementation and enforcement of our EEO program.

98. We readopt, with modifications, FCC Form 396, which is filed by broadcasters as part of their renewal

applications. We will delete the Option A/Option B election. The form as adopted by the *R&O* also required the broadcaster to certify that it complied with the EEO rule during the two-year period preceding the filing of the report; to attach a copy of its EEO public file for the preceding year; and to provide a narrative statement demonstrating how the station achieved broad outreach during the preceding two years. The licensee must still certify to the accuracy of the forms it submits to the Commission; it just need not draw a legal conclusion as to whether the facts it submits demonstrate compliance with our rules. We will modify the form to eliminate the certification requirement. We will require the submission of the EEO public file report due at the time of the filing of the Form 396 along with the form filed one year before that. This is because we allow two years for the performance of the Prong 3 menu options. We recognize that in some instances a station may have been sold during the prior two years. In that case, the licensee at the time of renewal need only submit EEO public file reports relating to its own operation of the station.

99. The version of Form 396 adopted by the *R&O* included the following question: "Have any complaints been filed before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)?" In the *2NPRM*, we stated that the form required the reporting of "pending" discrimination complaints. We did not clarify the period of time to which the word "pending" referred, *e.g.*, pending at any time during the most recent license term or pending at the time a renewal application is filed. We will require the reporting of all complaints filed during the most recent license term, consistent with our past practice. This will avoid unnecessary litigation and involves little additional burden. Form 396 requests information concerning the disposition or current status of the complaint, and the Commission will consider complaints only to the extent they are deemed relevant.

100. FCC Form 396-A is to be used for applications for the construction of a new broadcast station or for the sale of an existing broadcast station. We will readopt this form but delete references to the Option A/Option B election.

101. We adopted in the *R&O* FCC Form 397, "Broadcast Statement of Compliance," which was to be submitted in the second, fourth, and sixth years of the license term for the