

Federal Communications Commission.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 98-204 and 96-16, FCC 00-338]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification; petition for partial reconsideration.

SUMMARY: This document grants in part, and denies in part, both one petition for partial reconsideration and clarification and one petition for expedited clarification of the Commission's new broadcast and cable Equal Employment Opportunity (EEO) rules and policies. The document also considers certain issues pertaining to the EEO rules on the motion of the Commission, primarily as a result of informal inquiries from the public. In addition, the document amends the EEO rules to clarify that data concerning the gender, race and ethnicity of a broadcaster's or cable entity's workforce will not be used to assess its compliance with the rules. The intended effect is to clarify the Commission's EEO rules for the broadcasting and cable industries.

DATE: Effective January 8, 2001.

FOR FURTHER INFORMATION CONTACT: EEO Staff, (202) 418-1450.

SUPPLEMENTARY INFORMATION: 1. This is a synopsis of the Commission's Memorandum Opinion and Order (MO&O) in MM Docket Nos. 98-204 and 96-16, adopted September 11, 2000, and released November 22, 2000. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Information, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 202-857-3800, CY-B400, 445 12th St., SW., Washington, D.C.

Synopsis of Memorandum Opinion and Order

2. In this MO&O, the Commission addresses petitions for reconsideration and clarification of the Report and Order in this proceeding, 65 FR 7448,

February 15, 2000, in which it adopted new broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in *Lutheran Church—Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998), pet. for reh'g denied, 154 F.3d 487, pet. for reh'g en banc denied, 154 F.3d 494 (D.C. Cir. 1998). The EEO rules include broad and inclusive outreach requirements designed to ensure that all qualified applicants have the opportunity to compete for jobs in the broadcast and cable industries on an equal basis.

3. Under Option A of the Commission's EEO rules, broadcasters are required to implement two supplemental recruitment measures: (1) Notification of job vacancies to any recruitment organization that requests such notification; and (2) outreach activities such as job fairs, internship programs, training programs, scholarship programs, mentoring programs, and participation in educational and community activities relating to broadcast employment. Broadcasters with five to ten full-time employees must perform two activities every two years, while larger broadcasters must perform four activities every two years. The MO&O clarifies that broadcasters may implement half of two activities and combine the two halves to count as one of the four required activities (or two in the case of stations with five to ten employees), e.g., by combining attendance at two (rather than four) job fairs and sponsorship of one (rather than two) community events.

4. The MO&O reiterates that a broadcaster may use the internet as one of several recruitment tools, but not as its only recruitment source. It also retains the requirement that broadcasters with web sites post their public file report on those sites, and clarifies that there is no requirement that the public file report include the names of interviewees or applicants.

5. The MO&O clarifies the filing schedule for the initial statement of compliance (FCC Form 397) so that beginning in 2001, all radio and television stations will file a statement of compliance on the second, fourth or sixth anniversary of the filing of their last renewal application. Beginning February 1, 2001, low power television stations and Class A television stations with five or more full-time employees will file statements of compliance in accordance with the schedule for television stations.

6. The MO&O also clarifies that broadcasters and cable entities have the discretion of electing either Option A or B of the Commission's EEO rules, and

any state law interpreted as removing that discretion would be inconsistent with the rules. The MO&O further clarifies the extent to which broadcasters may engage in joint recruitment measures under Option A. In addition, the MO&O clarifies that broadcasters have good faith discretion in defining what constitutes an applicant and their market/community under the EEO rules. The MO&O also addresses how the Commission will monitor religious broadcasters' compliance with the EEO rules.

7. Finally, the MO&O retains the requirement that broadcasting and cable entities file annual employment reports which include data on the gender, race and ethnic status of the entity's workforce. The MO&O reiterates that the data will be used only for purposes of analyzing industry trends and reporting to Congress, and not for assessing an entity's compliance with the Commission's EEO rules. Accordingly, the MO&O amends the rules to reflect this fact.

Paperwork Reduction Act of 1995 Analysis

The actions contained in this Memorandum Opinion and Order have been duly analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified information collection requirements.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996), requires that a final regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." (Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business" "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration. In addition to stating various clarifications to the

Commission's EEO rules, this MO&O incorporates into the rules a policy announced in the Report and Order that data concerning the gender, race and ethnicity of a broadcaster's or cable entity's workforce will not be used to assess compliance with our EEO rules. This rule change merely retains the status quo, and for clarity restates the existing policy in a Note to the rules. Therefore, we certify that the rule change adopted in this MO&O will not have a significant economic impact on a substantial number of small business entities.

Report to Congress: The Commission will send a copy of the MO&O, including this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the MO&O, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A summary of the MO&O and certification will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 73

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Add Note to § 73.3612 to read as follows:

§ 73.3612 Annual employment report.

* * * * *

Note to § 73.3612: Data concerning the gender, race and ethnicity of a broadcast station's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual broadcast licensee's compliance with the equal employment opportunity requirements of § 73.2080.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

4. Section 76.77 is amended by:

(a) Adding a note to paragraph (a).

(b) Designating the note following paragraph (d)(1) as "Note to paragraph (d)(1)."

(c) Designating the note following paragraph (d)(6) as "Note to paragraph (d)(6)."

(d) Designating the note following paragraph (d)(13) as "Note to paragraph (d)(13)."

(e) Designating the note following paragraph (d)(15) as "Note to paragraph (d)(15)."

The addition reads as follows:

§ 76.77 Reporting requirements.

* * * * *

Note to paragraph (a): Data concerning the gender, race and ethnicity of a cable entity's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual cable entity's compliance with the equal employment opportunity requirements of §§ 76.73 and 76.75.

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