

January 16, 2001

**Statement of FCC Chairman William E. Kennard Regarding the D.C. Circuit's
Decision in MD/D.C./DE Broadcasters Association v. FCC.**

Today's decision is a defeat for diversity. At a time when many Americans are outraged at the lack of minorities in prime time and in the boardrooms of America, the broadcasters have once again used the courts to strike down even a modest outreach effort.

Our most recent report on the state of women and minority employment in the cable industry shows that, in this age of consolidation, women are losing ground and minorities are standing still. I urge this Commission to continue to promote a television industry that better reflects the rich diversity of the American people.

Background information:

Today the D. C. Circuit, in a decision by Judge Ginsburg, joined by Judges Sentelle and Henderson, held that the FCC's EEO rule "put[s] official pressure upon broadcasters to recruit minority candidates, thus creating a race-based classification that is not narrowly tailored to support a compelling governmental interest and is therefore unconstitutional." The court held that the unconstitutional portions of the rule could not be severed from the remainder and thus vacated the rule in its entirety.

On January 20, 1999 the FCC adopted new EEO rules which reaffirm the Commission's long-standing anti-discrimination rule and emphasize broad outreach to all qualified job candidates for positions at radio, television and cable companies. The Order prohibits discrimination on the basis of race, national origin, religion, color, or gender. It leaves the EEO docket open to facilitate the submission of information relevant to employment disparities in the broadcast and cable industries. The new rules require broadcast licensees to widely disseminate information about job openings to all segments of the community to ensure that all qualified applicants, including minorities and women, have sufficient opportunities to compete for jobs in the broadcast industry.

The new rules neither require broadcasters to hire any particular applicant nor apply pressure on such decisions. The Commission also amends its EEO rules applicable to cable entities, including multichannel video programming distributors, to conform them, as much as possible, to the broadcast EEO rules. The new EEO rules were challenged on appeal by state broadcasters as being unconstitutional.