

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS

In the Matter of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

In my six months on this Commission I have often stated my strong desire to see the Commission quickly put in place effective EEO rules in the wake of the D.C. Circuit decision striking down our EEO rules for the second time. I have just as often encouraged broadcasters and cable entities to continue their efforts to reach out into the community to seek new and diverse talent as they build their workforce, and to keep the Commission apprised of their efforts in this regard.

I have been encouraged by the responses of some broadcasters and cable companies that have continued their outreach efforts in the absence of EEO rules. I hope they will pursue these endeavors as the Commission considers new EEO rules. Their actions have translated into positive results in building a workforce with more resemblance to our nation's diversity.

I have also been encouraged by my Chairman's commitment to institute a proceeding to put new rules in place by the end of the year – a commitment he fulfills with the adoption of this item today.

For those reasons, I support the Second Notice of Proposed Rulemaking we adopt today. The NPRM makes clear – if there was any confusion – that the Commission's rules prohibiting discrimination will remain in effect. In addition, I hope that this NPRM will form the basis of an extensive record that will result in strong EEO rules that I will be able to support with enthusiasm and with pride.

While I support the NPRM before us today, I do not feel that it reflects the deep and passionate commitment to a diverse workplace that America must have if it is to fulfill its potential. Our country's strength *is* its diversity. Diversity is not a problem to be accommodated; it is an opportunity to be developed. We will succeed in the Twenty first century not in spite of our diversity, but because of our diversity.

Diversity should be America's song, and the FCC, standing at the forefront of the great transforming forces of our generation, should be leading the choir. But this notice does not sound the trumpet and, as it was written of old, if the sound of the trumpet be uncertain, then who shall respond to the call of the battle? I know my fellow Commissioners, and I believe each of us is dedicated to the advancement of equal opportunity, here at the Commission and across the industries with which we work. But I am afraid that the reversals by the D.C. Circuit have rendered us a bit timid and fearful of even approaching the borders of circumscription established by the Court.

I understand full well that the decisions of the D.C. Circuit have limited the scope of any EEO rules the Commission may adopt, and I am saddened by the retreat this particular Court's decisions represent in the area of equal employment opportunity and,

indeed, in civil rights generally. But when civil rights are at stake, the stakes are high for America. Our responsibility is to press the cause, to push the edge of the envelope and not to be deflected by a court decision that may not have gotten it right and that is, in fact, being vigorously contested at this very moment. Frankly, I have a difficult time believing such strictures could pass higher court muster.

We can do better. We can push the envelope farther than this and still be within the safe harbor of legal and judicial boundaries. The Constitution has brought us a long way in civil rights and equal opportunity in the past half century, and I don't think it's out of gas yet.

Here is our challenge. Let us take this proceeding as a port of embarkation and set sail to develop a record of breadth and depth that is in consonance with the breadth and depth of this great land. I ask all of our stakeholders to help us. Lend us your experience, your insight, your creativity to help us craft rules that are first of all effective and transforming, but that will also pass the muster of the courts. A tall order? Yes – but America was built on filling tall orders. So I believe it can be done. This is the time, this is the place, to do it.

As we move to rules in this proceeding, let us search out uncharted paths to achieve equal employment opportunity. Let us reach out to all of our stakeholders -- I trust the court will let us do *that* – and put America's genius to work in the cause of equal opportunity. And let's do so with a sense of urgency. We have been without rules here for far too long. We need to have this Commission on record with forthright equal employment opportunity rules -- and the sooner the better.

In furtherance of that cause, I hope that the Commission will give this issue the extra attention it deserves by convening an *en banc* hearing to address our broadcast and cable EEO rules. Such a hearing would create a forum for discussion among broadcasters, cable system operators, advocates, legal scholars and, most importantly of all, concerned citizens from every corner of the country. And it would make an eloquent statement about the importance the Commission attaches to the job at hand. This discussion, in addition to the comments we receive in response to this NPRM, would form a record on which we can base strong, effective and legally sustainable equal employment opportunity rules.

For my part, I look forward in the next few months to intensive engagement on a subject that goes to the core of our national being and upon which hinges our ability to open the doors of opportunity for our fellow citizens. This is something, my friends, that we need to do and do right.