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Federal Communications Commission
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FOR IMMEDIATE RELEASE:
November 7, 2002

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FCC ESTABLISHES NEW EEO RULES AND POLICIES FOR BROADCASTERS AND MVPDS

Washington, DC – Today in a Second Report and Order, the FCC established new equal employment opportunity (EEO) rules and policies for broadcasters and revised its EEO rules for multichannel video programming distributors (MVPDs), such as cable and satellite TV operators. The rules prohibit discrimination by broadcasters and MVPDs. They also require these entities to provide notice of job vacancies and to undertake additional outreach measures, such as job fairs and scholarship programs, while at the same time affording them enough flexibility to create the programs most effective for their communities.

Specifically, the Second Report and Order adopts the following three-pronged outreach recruitment requirements, as they relate to broadcasters:

- Prong 1: widely disseminate information concerning each full-time (30 hours or more) job vacancy, except for vacancies filled in exigent circumstances;
- Prong 2: provide notice of each full-time job vacancy to recruitment organizations that have requested such notice; and
- Prong 3: complete two (for broadcast employment units with five to ten full-time employees or that are located in smaller markets) or four (for employment units with more than ten full-time employees located in larger markets) longer-term recruitment initiatives within a two-year period. These include, for example, job fairs, scholarship and internship programs, and other community events designed to inform the public as to employment opportunities in broadcasting.

The Commission also adopted the following recordkeeping and reporting requirements:

- (a) collect, but not routinely submit to the Commission: (i) listings of all full-time job vacancies filled by the station employment unit, identified by job title; (ii) for each such vacancy, the recruitment sources used to fill the vacancy (including, if applicable, organizations entitled to notification, which should be separately identified), identified by name, address, contact person and telephone number; (iii) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies; and (iv) documentation necessary to demonstrate performance of the Prong 3 menu options, *e.g.*, job fairs, mentoring programs; (v) the total number of interviewees for each vacancy and the referral source for each

interviewee; and (vi) the date each job was filled and the recruitment source that referred the hiree.

- (b) place in the station public file annually a report including the following: (i) a list of all full-time vacancies filled during the preceding year, identified by job title; (ii) recruitment source(s) used to fill those vacancies (including organizations entitled to notification of vacancies pursuant to Prong 2), including the address, contact person, and telephone number of each source; (iii) a list of the recruitment sources that referred the people hired for each full-time vacancy; (iv) data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source; and (v) a list and brief description of Prong 3 menu options implemented during the preceding year.
- (c) submit the station's EEO public file report to the Commission as part of the renewal application and midway through the license term for the Commission's mid-term review for those stations subject to mid-term review (television stations with five or more full-time employees and radio stations with more than ten full-time employees). EEO public file reports for the preceding two year period will be required because broadcasters have two years in which to complete the Prong 3 menu options. Broadcasters must also post the current EEO public file report on their web site, if they have one.

Although the Commission declined to change the small business size exemption, the new rules provide limited relief for entities in smaller markets. Such entities will be required to implement fewer Prong 3 menu options than stations in larger markets, based on the fact that smaller markets might lack the resources to support some of the activities contemplated in Prong 3.

The EEO rules will be enforced through review at renewal time, at mid-term for larger broadcasters, and through random audits and targeted investigations resulting from information received as to possible violations.

The same outreach requirements will apply to MVPDs, except as necessary to comply with statutory requirements applicable to MVPDs. For example, Section 634 requires that MVPDs file reports on an annual basis containing information specified in the statute. The Commission is also required to certify that MVPD employment units are in compliance with the EEO requirements on an annual basis. Accordingly, to comply with the Prong 3 requirements, MVPD employment units with six to ten full-time employees or employment units located in smaller markets would be required to undertake one recruitment initiative each year and larger employment units located in larger markets two recruitment initiatives per year. MVPD employment units are also not subject to a renewal process at the Commission. The Commission is required to conduct a more thorough review of each MVPD employment unit's EEO compliance every five years. Thus, under the new rules, MVPDs with six or more full-time employees must submit copies of their EEO public inspection file to the Commission every five years.

The Commission noted that the broadcast and MVPD EEO rule and policies adopted today are consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit Court in *MD/DC/DE Broadcasters Association v. FCC* (2001). The court struck down the EEO program requirements for broadcasters adopted by the Commission in 2000. The court had found that Option B of the 2000 rule was subject to, and could not withstand, strict scrutiny because those broadcasters that elected to design their own programs under Option B were required to report the race and gender of each job applicant. The court found no constitutional defect in Option A of the 2000 rules. Finding that Option B could not be severed from the rest of the rule, however, the court vacated the entire rule. The new program requirements adopted today are substantially similar to the Option A requirements upheld by the D.C. Circuit.

The Commission deferred action on the collection of data concerning the race/ethnicity and gender of the workforce of broadcast and MVPD employment units. Such data would not be used to determine compliance with the EEO rules adopted today. The Commission said it expects to act on these forms before the next filing deadline, September 30, 2003.

The Commission also issued a Third Notice of Proposed Rulemaking seeking comment on whether and how to apply the EEO rule to part-time positions. The Commission said that the current record was insufficient to provide a basis for making that determination now.

If broadcasters, MVPDs, or members of the public have questions about the new rules and forms and how they will be implemented, they are encouraged to contact the Media Bureau for guidance at the numbers listed below, or the general number for the EEO staff, 202-418-1450.

Action by the Commission November 7, 2002, by Second Report and Order and Third Notice of Proposed Rulemaking (FCC 02-303). Chairman Powell, Abernathy, Copps and Martin with Chairman Powell, Commissioners Abernathy, Copps and Martin issuing separate statements.

MM Docket 98-204

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