

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS
CONCURRING**

Re: *Review of EEO Compliance and Enforcement in Broadcast and Multichannel Video Programming Industries*, MB Docket No. 19-177

I am pleased that we are proceeding with this Notice of Proposed Rulemaking to provide stakeholders with an opportunity to comment further on the state of the Commission's Equal Employment Opportunity (EEO) regime. Workforce diversity in the media is critical to ensuring that all stories are told and all communities are served, and I am always in favor of developing a better understanding of whether the efforts of this Commission and our staff are bearing fruit or in need of reform. However, I am forced to concur on this item because I continue to have serious concerns with whether the Commission is complying with our statute with respect to long-stalled EEO data collection efforts through FCC Form 395-B.¹

After receiving outreach from members of Congress² concerning this item, urging the Commission to use it as a vehicle to take up a 15-year-old further notice of proposed rulemaking, I once again requested that we take steps to come into compliance with our statute. I asked that we include language in this item to refresh the record on this languishing EEO data collection. Unfortunately, my request was denied. The Chairman has indicated that he believes there are "serious statutory and constitutional concerns" with the Form 395-B data collection.³

To that end, in requesting a Further Notice of Proposed Rulemaking on Form 395-B, I have specifically indicated that I would welcome comments on any statutory and constitutional concerns, and would like to solicit the expertise of stakeholders to develop a record for our review on those questions. First, I see no principled basis to refuse to seek further comment on this EEO data collection, including its constitutionality. Second, my colleagues approving today's item voted without reservation to seek comment on a number of constitutional questions in an item that the Commission adopted not two weeks ago concerning commercial leased access on cable.⁴ Why not do the same here? The inconsistency is glaring.

¹See *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2); Modernization of Media Regulation Initiative*, MB Docket Nos. 18-23 and 17-105, Report and Order, FCC 19-10, 2019 WL 696578, at *10 (Feb. 15, 2019) (Concurring Statement of Commissioner Geoffrey Starks).

² Letter from Senator Chris Van Hollen and Representative Yvette D. Clarke, to Ajit Pai, Chairman, FCC (May 10, 2019).

³ Letters from Ajit Pai, Chairman, FCC, to Senator Chris Van Hollen and Representative Yvette D. Clarke (May 28, 2019).

⁴ *Leased Commercial Access; Modernization of Media Regulation Initiative*, MB Docket Nos. 07-42 and 17-105, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-52, 2019 WL 2461906, at *15 (June 7, 2019) ("... [W]e seek comment on whether leased access requirements can withstand First Amendment scrutiny in light of video programming market changes. . . . Can the statutory leased access requirements or the Commission's other leased access rules continue to withstand First Amendment scrutiny in light of the market changes discussed in this order? If not, what discretion does the Commission have to reduce the burdens that those provisions impose on protected speech?"). The Commission also sought comment on constitutional issues in its *Children's Television Notice of Proposed Rulemaking. Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Notice of Proposed Rulemaking, 33 FCC Rcd 7041, 7060 (2018) ("We also seek comment on how the increase in other sources of children's programming, changes in relevant viewing patterns, and other developments since the enactment of the CTA in 1990 may affect the First Amendment considerations applicable to the Commission's prescription of broadcast television programming requirements in this manner.").

As I've stated in the past, I am hopeful that interested parties can utilize that forthcoming docket to raise their voices regarding any EEO shortcomings, including data collection, that need to be addressed. I will review the record with interest.