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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of) MM Docket No. 94-34 ✓
Commission's Equal)
Employment Opportunity Rules)

NOTICE OF INQUIRY

Adopted: April 20, 1994

Released: April 21, 1994

Comment Date: May 23, 1994

Reply Comment Date: June 7, 1994

By the Commission: Commissioner Barrett issuing a separate statement.

I. INTRODUCTION

1. In this Notice of Inquiry, we seek comment on the effectiveness of the Commission's rules, procedures, policies, standards and guidelines in promoting equality of employment opportunity and promotion opportunity in the cable and broadcast industries; on questions and proposals regarding possible changes to the Commission's EEO rules, policies and enforcement thereof; and on how to further, to the greatest extent possible, the goals of the Commission. The overriding goal underlying our EEO rules is to promote program diversity. In addition, our EEO rules enhance access by minorities and women to increased employment opportunities, which are the foundation for increasing opportunities for minorities and women in all facets of the communications industry, including participation in ownership. Thus, the rules also promote the further development of the broader communications infrastructure.

2. Pursuant to Section 22(g) of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (hereinafter "1992 Cable Act" or "Cable Act of 1992"):

Not later than 2 years after the date of enactment of this Act,¹ the Commission shall submit to the Congress a report

¹ The 1992 Cable Act was enacted on October 5, 1992.

pursuant to a proceeding to review and obtain public comment on the effect and operation of the amendments made by this section. In conducting such review, the Commission shall consider the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity, and particularly the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority.

3. The Commission implemented the changes mandated in the 1992 Cable Act in Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992 Equal Employment Opportunities, 8 FCC Rcd 5389 (1993) (hereinafter "Cable Report and Order") (petitions for reconsideration pending). The 1992 Cable Act also provided that the Commission should not revise:

- (1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. Section 73.2080) as such regulations apply to television broadcast station licensees and permittees; or
- (2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

Section 22(f) of the 1992 Cable Act.

The 1992 Cable Act required the Commission to forward to Congress such legislative recommendations to improve equal employment opportunity in the broadcast and cable industries as it deems necessary. Section 22(g) of the 1992 Cable Act. We note that some of the proposals contained herein might require statutory change so as not to violate the above-cited restriction.

II. BACKGROUND

EEO Enforcement

4. Broadcast. Pursuant to Section 73.2080 of the Commission's Rules, 47 C.F.R. Section 73.2080, broadcast licensees must establish and maintain an equal employment opportunity program designed to provide equal employment opportunity for minorities and women in all aspects of their employment policies and

practices.² As part of their renewal applications, broadcast stations with five or more full-time employees are required to file a "Broadcast Equal Employment Opportunity Program Report" (Form 396) which requests general information concerning the recruitment and hiring practices of the licensee during the renewal year, the 12-month period prior to the filing of the renewal application. The information requested includes: examples of recruitment sources contacted to attract minority and female applicants; the number of minority and female referrals received from these sources; and the number of overall and upper-level hires³ and promotions occurring at a station. Licensees also are required to file a Broadcast Station Annual Employment Report (Form 395-B) on a yearly basis.⁴ These reports request information concerning a station's workforce profile for a two week payroll period, broken down by full or part-time status, job category, gender and race or national origin.

5. When reviewing a broadcaster's EEO compliance at renewal time, the Commission's primary focus is on the licensee's overall efforts to "establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practices."⁵ The efforts evaluation is a two-step process. The first step involves an evaluation of a station's efforts based on a full range of information available concerning its EEO record. The staff reviews the composition of the station's workforce as reported in its Annual Employment Reports filed during the

² The EEO compliance of television stations is reviewed once every five years at renewal time and the EEO compliance of radio stations is reviewed once every seven years at renewal time.

³ Upper-level hires include hires for four of the nine job categories listed on Broadcast Annual Employment Reports: Officials and Managers; Professionals; Technicians and Sales Workers. We note that upper-level hires are the same as upper-four hires.

⁴ See 47 C.F.R. Section 73.3612.

⁵ 47 C.F.R. Section 73.2080; see Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987) petition for reconsideration pending; see also 4 FCC Rcd 1715 (1989) (hereinafter "NAB Report and Order") (request for clarification of the National Association of Broadcasters).

license term;⁶ the station's EEO program filed as part of the renewal application including the recruitment sources listed, the number of minority and female referrals received, the number of minorities and women hired during the renewal year and the licensee's analysis of the effectiveness of its EEO efforts; any final determinations of complaints filed with government agencies and/or courts established to enforce nondiscrimination laws; and any petitions to deny or informal objections filed. If the first step review indicates that the station's EEO efforts are satisfactory, the station is accepted as having fulfilled its EEO obligations. However, if the initial analysis indicates that a station's efforts may be less than satisfactory with regard to such areas as minority and/or female recruitment and hiring, it is subject to a second-step analysis.⁷ If a broadcast station is found to be in compliance with the Commission's broadcast EEO Rule, renewal is granted. If, however, it is not in compliance, the Commission may impose a variety of remedies and sanctions, such as admonishment, reporting conditions, renewal for less than a full term and/or forfeiture. Alternatively, if the facts so warrant, the Commission will designate the renewal application for hearing to determine whether renewal of license should be

⁶ This analysis involves a comparison of the composition of the station's employment profile, as reflected in its Annual Employment Reports, with the relevant labor force, and application of Commission processing guidelines, as follows: stations with five to ten full-time employees meet the guidelines if the proportion of minority and female representation on their overall staffs is at least 50% of that of the relevant labor force, and on their upper-level staffs at least 25% of that of the relevant labor force. Stations with 11 or more full-time employees meet the guidelines if the proportion of minority and female representation is at least 50% of that of the relevant labor force for both overall and upper-level job categories.

⁷ This analysis usually includes a request for additional information. Our request will typically ask for each job filled during the requested period (usually the last three years of the license term): the title and job classifications (based on classifications set forth in Form 395-B) of the position; the date the position was filled; the number, gender, race or national origin and referral source of applicants and interviewees; whether the job was part-time or full-time; the gender and race or national origin of the successful candidate; the recruitment sources contacted; and the number, race and sex of referrals received from each recruitment source. In addition, we request a list of all full-time employees, showing job title, job classification, gender and race ranked from highest to lowest paid.

granted or denied.⁸

6. Recently, the Commission issued an EEO Policy Statement, 9 FCC Rcd 929 (1994) (petitions for reconsideration and requests for clarification pending), which establishes non-binding guidelines for assessing forfeitures for violations of the Commission's broadcast EEO Rule. The Policy Statement indicates that the base forfeiture amount for violation of the broadcast EEO Rule is \$12,500. It provides guidance on what situations generally may lead to such a forfeiture, describes upward and downward adjustment criteria and the circumstances warranting a short-term renewal as well as circumstances that may require designation for hearing.

7. In the 1992 Cable Act, Congress adopted provisions requiring that the Commission conduct midterm reviews of broadcast television station licensees. The legislative history of the 1992 Cable Act indicates that Congress intended that the midterm evaluation of a licensee's employment practices should be based on an analysis of workforce data using our present processing guidelines.⁹ Therefore, we amended our rules to include the standard discussed in the Conference Report as the basis for examining employment practices.¹⁰ The midterm review is conducted by evaluating the first two Annual Employment Reports that are filed after a television station's license has been renewed. A deficiency letter is sent to those licensees that fail to meet the processing guidelines. However, the issuance of a midterm deficiency letter to a licensee will not be viewed as a sanction against it. Further, a station's compliance at midterm with the processing guidelines will not be evidence of overall EEO compliance efforts at renewal. Nevertheless, "at renewal time, we will take cognizance of all pertinent license term EEO data, including data relied upon for midterm review."¹¹

⁸ See Applications of The Lutheran Church/Missouri Synod For Renewal of Licenses of Stations KFUC/KFUC-FM Clayton, Missouri, 9 FCC 914 (1994); Applications of Dixie Broadcasting, Inc. For Renewal of Licenses of Stations WHOS(AM)/WDRM(FM) Decatur, Alabama, 7 FCC Rcd 5638 (1992); Application of WXBM, INC. For Renewal of License of Station WXBM-FM Milton, Florida, 6 FCC Rcd 4782 (1991).

⁹ See House Committee on Energy and Commerce, H.R. Rep. No. 102-862, 102d Cong., 2d Sess. (1992) reprinted at Cong. Rec. H8308, H8334 (daily ed. September 14, 1992) (hereinafter "Conference Report").

¹⁰ Cable Report and Order, supra.

¹¹ Id. at 5392.

8. Cable. Pursuant to Sections 76.71 and 76.73 of the Commission's Rules, 47 C.F.R. Sections 76.71 and 76.73, cable operators must establish and maintain an equal employment opportunity program designed to provide equal employment for minorities and women in all aspects of their employment policies and practices. The staff monitors the EEO performance of cable operators at three different levels. First, the staff analyzes the EEO programs of cable systems and headquarters units with more than five full-time employees on an annual basis by reviewing their Cable Television Annual Employment Reports (Form 395-A).¹² The Form 395-A requires answers to nine questions about the cable operator's EEO efforts: the number, race or national origin, gender and job classification of each full-time and part-time employee on the system's workforce; and the number, race or national origin and gender of all employees promoted and hired (both overall and upper-level¹³) during the same 12-month period. Second, the staff reviews responses to Supplemental Investigation Sheets (SIS) which are sent to cable operators every five years.¹⁴ The SIS requests additional specific information regarding recruitment efforts and job classifications. Finally, the Commission uses its authority to conduct on-site audits of cable facilities to verify EEO information reported by cable operators.

9. The Form 395-A, along with any additional information, is reviewed using a two-step process which involves statistical analysis of the cable system's workforce¹⁵ and a review of the system's responses to questions regarding its EEO efforts. In addition, the Commission examines any EEO complaints that may have been filed against the cable system. If a system appears to be in compliance with the Commission's EEO Rules, it is granted certification¹⁶ for that year. If the Commission finds that the system is not engaging in sufficient efforts, additional

¹² See 47 C.F.R. Section 76.77.

¹³ See n.3, supra.

¹⁴ 47 C.F.R. Section 76.77.

¹⁵ Generally, a cable system's work force is analyzed using the same processing guidelines as described in n.6, supra. However, the composition of a headquarters unit's upper-level staff is compared to national, not local, labor force statistics. See Amendment of Part 76 of the Commission's Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984, 102 FCC 2d 562 (1985).

¹⁶ A cable system receives a Certificate of Compliance if it is found to be in compliance with the Commission's EEO Rules. 47 C.F.R. Section 76.77(b).

inquiries are made. If, based on the Form 395-A report, any additional available information and responses to any Commission inquiries, it is determined that the system is not in compliance, certification is denied. The Commission also may impose a variety of remedies and sanctions, including monetary forfeiture and suspension of the system's cable auxiliary relay service (CARS) license until the Commission determines that the cable operator's failure to comply with the Commission's EEO Rules has been corrected.¹⁷ The Commission also could notify local franchising authorities of cable violations for their appropriate consideration in making franchise renewal decisions.¹⁸

10. In the 1992 Cable Act, Congress required that the Commission collect more specific employment data from cable entities, including specific information on the job titles of employees. In addition, the Act expanded the nine original cable job categories to 15.¹⁹

11. Multichannel Video Programming Distributors. The 1992 Cable Act also expanded the scope of the cable EEO provisions to include multichannel video programming distributors (MVPD), which the 1992 Cable Act defines as "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming."²⁰ We anticipate that MVPDs' EEO programs will be analyzed in the same manner as cable systems' EEO programs.²¹

¹⁷ See Section 634(f)(2) of the Communications Act of 1934, as amended, 47 U.S.C. Section 554(f)(2).

¹⁸ 47 U.S.C. Section 554(f)(4).

¹⁹ The nine original job categories include Officials and Managers, Professionals, Technicians, Sales Workers, Office and Clerical, Craft Workers (Skilled), Operatives (Semi-skilled), Laborers, and Service Workers. The six job categories added by the 1992 Cable Act include Corporate Officers, General Manager, Chief Technician, Comptroller, General Sales Manager and Production Manager.

²⁰ 47 U.S.C. Section 522(12).

²¹ However, we note that our analysis of the 1994 reporting year will not be exactly the same for cable systems and MVPD's because "in order to facilitate the transitional filing period for these entities, we will waive the requirement for the submission by these entities of 12-month hiring and promotion data as requested in Section V (subsections B and C) and Section

III. DISCUSSION

12. As noted supra, in this Notice of Inquiry, we seek comment on the effect and operation of the equal employment opportunity amendments made by the 1992 Cable Act and on the general effectiveness of the Commission's rules, procedures, policies, standards and guidelines in promoting equality of employment opportunity in the cable, broadcast and other industries in order to assist the Commission in complying with Section 22(g) of the 1992 Cable Act. We also invite comment on the proposals discussed herein.

Effectiveness of EEO Enforcement

13. Broadcast. Prior to 1987, EEO enforcement focused on whether licensees met our processing guidelines regarding women and minorities overall and in the upper-four job categories as reflected in the last Annual Employment Report filed before the license term expired. Licensees meeting the processing guidelines were presumed to be in compliance with the Commission's EEO requirements and, absent Petitions to Deny, their renewal applications were granted unconditionally without further review. Further, the Commission rarely scrutinized a licensee's hires outside the context of the most recent Annual Employment Report. However, after the Commission adopted an efforts-based approach in 1987, the Commission departed from its reliance on the processing guidelines as the principal means of assessing compliance. Since 1987, all renewal applications have received a more complete review, irrespective of whether stations meet or fail to meet our processing guidelines.

14. At the present time, we license more than 13,000 radio and television stations. Of that number, approximately two-thirds have five or more full-time employees and therefore are required to file their EEO programs with their renewal applications. Approximately 80% of these stations' renewals are granted after review of their Annual Employment Reports, renewal applications, complaints and any other pleadings filed concerning the stations' renewals. We send inquiry letters to the remaining 20%. As a result of our review of these stations, we sanction approximately one-fifth of the remaining 20%. Thus, 4% of all stations subject to EEO review receive reporting conditions and/or sanctions. The majority of stations in this 4% category receive reporting conditions and/or forfeiture sanctions. Ultimately, approximately 96% of the renewals reviewed are granted without reporting conditions and/or sanctions.

VII of the 1994 Annual Employment Report." Cable Report and Order at 5399 n.155.

15. From 1988 to 1992,²² there has been some improvement in the EEO profile of the broadcasting industry generally. In 1988, 16.8% of all positions and 10.9% of Officials and Managers positions in the broadcast industry were filled by minorities.²³ In 1992, 18.2% of all positions and 12.5% of Officials and Managers positions were filled by minorities. In 1988, 38.3% of all positions and 31.2% of Officials and Managers positions were filled by females. In 1992, 39.5% of all positions and 33.8% of Officials and Managers positions were filled by females.²⁴

16. The results of the first midterm review of television stations, located in Virginia, West Virginia, Maryland and the District of Columbia, indicate that the majority of these stations meet or exceed our processing guidelines. Pursuant to this new requirement, we have reviewed approximately 60 stations and found that nine stations require deficiency letters. Of these nine stations, three failed to meet our requirements for both years reviewed, three failed for only the first year, and three failed for only the second year.

17. Cable. There are approximately 2,300 cable employment units.²⁵ Of those units, approximately 95% receive EEO certifications based upon our review of their Annual Employment Reports and any other available information. Further, all units receive Supplemental Investigations Sheets (SIS) once every five years. Each year based upon our review of their Annual Employment Reports, SIS responses and any other available information, approximately 90% of these units receive certifications. Typically, the staff schedules audits of 25 cable companies a year and decertifies half of the units audited. Since the 1984 Act, the Commission has sanctioned two cable

²² Industry-wide data for 1993 has not yet been compiled.

²³ 1992 Broadcast and Cable Employment Report (July 6, 1993) (hereinafter "1992 Employment Report").

²⁴ Id.

²⁵ Pursuant to Section 76.5 of the Commission's Rules, 47 C.F.R. Section 76.5, a cable system is "[a] facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community..." A cable employment unit is a cable system or an amalgamation of several cable systems "that are under common ownership or control and are interrelated in their local management, operation, and utilization of employees..." 47 C.F.R. Section 76.71(b).

operators based upon information obtained during on-site reviews.²⁶

18. As with broadcast, the results of Commission EEO enforcement in the cable industry have shown some improvement during the period from 1988 to 1992. In 1988, 21% of total positions and 10.2% of Officials and Managers positions in the cable industry were filled by minorities.²⁷ In 1992, 25% of all positions and 12.5% of Officials and Managers positions in the cable industry were filled by minorities. In 1988, 40.7% of all positions and 34.5% of Officials and Managers positions in the cable industry were filled by females. In 1992, 41.7% of all positions and 36.3% of Officials and Managers positions in the cable industry were filled by females.²⁸

19. Currently, there is little information available on the effects of the 1992 Cable Act on the cable industry. The revised Cable Television Annual Employment Report and the new MVPD Annual Employment Report (Form 395-M) were mailed to cable operators and all other entities covered by the new Act in early April 1994. They are not due until May 31, 1994, and, as a result, the majority of the forms have neither been received nor evaluated. Thus, during the course of this proceeding, additional information may become available as the new rules are implemented.

Proposals For Changes in EEO Rules and Policies

Broadcast

20. We seek comment on the following questions and proposals regarding possible changes to the Commission's broadcast EEO rules, policies and enforcement thereof. We also invite any additional suggestions or proposals concerning the subject matter.

21. EEO Rule and Policies. First, we invite comment on ways the Commission can better enable broadcasters to meet their EEO obligations. In pleadings filed with the Commission, broadcasters sometimes state that they are located in small markets and that they have unique difficulties attracting and retaining minority employees because of their location. To what extent can the Commission's EEO policies reflect these concerns? In this regard, how should "small market broadcasters" be

²⁶ Adelphia Communications Corporation's Unit 305, Palm Beach County, Florida, 9 FCC Rcd 908 (1994); Prime Cable, 4 FCC Rcd 1696 (1989).

²⁷ 1992 Employment Report, supra.

²⁸ Id.

defined? What process should be implemented to identify such broadcasters?

22. The Commission's primary EEO enforcement policies focus on minorities and women employed on a full-time basis. Should the requirement for efforts documentation of part-time hires be eliminated for all broadcasters? Alternatively, what level of consideration should be given for part-time hires consistent with our primary EEO policy focus which is on full-time hires and employment? How many minimum hours would an employee have to work for a broadcaster to receive appropriate consideration?

23. We note that cable operators and MVPDs are already required to "encourage minority and female entrepreneurs to conduct business with all parts of [their] operation." 47 U.S.C. Section 554(d)(2)(E). Should broadcasters also be required to encourage minority and female entrepreneurs to conduct business with all parts of their operation?

24. Is the Commission's broadcast EEO enforcement adequate regarding the promotion and retention of minority and female employees and, if not, to what extent should changes be made?

25. We now give credit to broadcasters for using minority/female sources and/or obtaining minority/female referrals through individual and/or joint efforts with other licensees. What can the Commission do to encourage joint recruitment efforts by broadcasters?

26. Finally, is there a way to decrease any administrative burdens placed on broadcasters by the Commission without decreasing the effectiveness of our broadcast EEO enforcement? What are the costs and benefits of the suggestions mentioned above? Are there any other proposals or suggestions that should be considered that would make the Commission's EEO policies more effective?

27. Inquiry Procedures. We seek comment on proposed changes to the Commission's inquiry letters. Presently, standard inquiry letters request recruitment and hiring information²⁹ for the last three years of the license term. Should such letters be revised to request information for the entire license term or, in the alternative, for some other period of time? Should the Commission supplement its renewal inquiry procedures by conducting on-site audits in certain cases? If so, in what cases should broadcast stations be subject to audits?

28. Renewal Applications. We seek comment on the following

²⁹ See n.7, supra.

proposed changes to the Form 396.³⁰ At the present time, among other things, Form 396 asks for examples of recruitment sources contacted during the renewal year. The Form 396 also asks for the number of minority and female referrals received from recruitment sources, and the number of overall as well as upper-level hires occurring during the renewal year. The form does not request that broadcasters distinguish between full-time and part-time hires in their responses. Should the renewal application be revised to either request information only for full-time hires or to request that the information be divided by full-time and part-time hires? Should the Commission monitor efforts by broadcasters to promote part-time employees to full-time positions? Should the renewal application be revised to request more detailed recruitment and hiring information, such as for every vacancy filled during the renewal year: the title and job classification of the position; the date the position was filled; the number, referral source, gender and race or national origin of applicants and interviewees; the full-time and part-time status of the position; the gender and race or national origin of the successful candidate; the recruitment sources contacted; and the number, race or national origin and sex of referrals received from each recruitment source?³¹

29. Annual Employment Reports. We invite comment on the following proposed change to the filing process for Broadcast Station Annual Employment Reports. Should we require that employment information be collected for the same 15 job categories as is now required for cable operators and MVPDs pursuant to the 1992 Cable Act? What are the costs and benefits of the above-cited revisions?

³⁰ In Section 22(f) of the 1992 Cable Act, Congress stated that the Commission shall not revise "the forms used by [television] licensees and permittees to report pertinent employment data to the Commission." We propose to request that an exception to this prohibition be made and that the Commission be allowed to change the forms in the ways and for the reasons developed as a result of this proceeding.

³¹ As the Commission indicated in NAB Report and Order, supra, and subsequent cases, a broadcaster is expected to retain this data, especially in light of the requirement that it engage in ongoing self-assessment. Id. at 1716. See also Applications of Double L Broadcasting of Lansing Limited Partnership for Renewal of Licenses for Stations WJIM/WJIM-FM, Lansing, Michigan, 7 FCC Rcd 6435 (1992); Applications for Renewal of Licenses of Certain Broadcast Stations Serving Melbourne, Florida and Other Communities in the Florida Area, 5 FCC Rcd 6738 (1990); Application of Arkansas Television Commission for Renewal of License of Station KETS(TV), et al. Little Rock Arkansas, 5 FCC Rcd 2745 (1990).

Cable

30. Annual Employment Report. We seek comment on the following proposed changes to and questions regarding the Commission's cable EEO rules, policies and enforcement thereof. Pursuant to the 1992 Cable Act, the Commission modified its Form 395-A to require cable operators to provide the gender, race and national origin of each employee falling into one of the nine original and six new job categories. We seek suggestions on any additional information which should be collected.

31. We also seek comment on the job title information sought in Form 395-A. Pursuant to the 1992 Cable Act, the Commission amended its Form 395-A to require cable operators to provide the job title for each employee listed on the employee profile section of the Form 395-A. Congress' intent in requiring the collection of job title data was to afford the Commission an added means of ensuring that employees are categorized in an accurate and uniform manner. We note that, in verifying the accuracy of job categorizations, the Commission relies on the description of the type and level of responsibility of the position and not the position's title. Indeed, we have found that some cable systems use the position's title in order to present a better, yet illusory, picture of their EEO programs. Thus, we seek comment as to how the job title requirement can be used in a more meaningful manner.

32. Cable EEO Rules and Policies. Is the Commission's cable EEO enforcement adequate regarding the promotion and retention of minority and female employees and, if not, to what extent should changes be made?

33. Presently, we select audit locations by picking a certain region of the country based on such factors as the concentration of minorities in the available labor force and the number of cable employment units in the area. We then review Cable Television Annual Employment Reports of units in that area to determine units that fall below the processing guidelines and/or have employment discrepancies.³² Is there a more efficient and effective selection method? If so, describe it in detail.

34. In addition, we seek comment on whether the Commission should require cable operators to maintain certain types of records about their recruitment efforts for a specified period of time. While we expect broadcasters to keep records for an entire

³² An example of a such a discrepancy is when a unit reports employing five white male technicians in one Annual Employment Report, then reports employing ten white male technicians in its next report without listing any white male upper-level hires or promotions.

license term, cable operators have no such specific limits. Appropriate requirements for cable operators may help to ensure that cable operators are able to provide sufficient documentation of their EEO efforts upon request. It would also offer operators some guidance as to the appropriate retention periods for such records.

35. We seek comment on the remedies and sanctions available to redress violations of the cable EEO rules. Specifically, the Commission has a number of remedies and sanctions available including an admonishment, reporting conditions and forfeitures. The Commission also may suspend the cable antenna relay service license until the Commission determines that the cable operator's failure to comply with the cable EEO rules has been corrected. We seek comment on whether these remedies and sanctions are adequate and, if not, what other remedies and sanctions Congress might provide in order to enforce the cable EEO rules, particularly with respect to furthering the congressional goal of increased opportunities for minorities and women in managerial positions.

36. We seek comment on ways in which the Commission can better enable cable operators and MVPDs to meet their EEO goals. As noted above, the Commission made a number of changes to the cable EEO rules. More importantly, the 1992 Cable Act expanded the scope of these rules to include entities that had not been subject to EEO (or, in some cases, to Commission review) previously. Specifically, we seek suggestions as to how we might better inform cable operators, MVPDs and the public about the EEO requirements.

37. We now give credit to cable operators for using minority/female sources and/or obtaining minority/female referrals through individual and/or joint efforts with other cable operators. What can the Commission do to encourage joint recruitment efforts by cable operators?

38. Finally, is there a way to decrease any administrative burdens placed on the cable industry by the Commission without decreasing the effectiveness of the Commission's cable EEO enforcement? We seek comment on any aspect of the Commission's cable EEO rules including their implementation, costs and benefits.

General

39. There are a significant number of emerging technologies in the field of communications. There is also a convergence of existing communication technologies. Should our EEO policies be expanded with respect to entities other than broadcasters, cable operators and MVPDs? For example, should the EEO policies be expanded for common carrier technologies, particularly those that

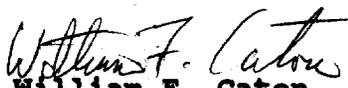
provide services that compete with broadcast and cable services (other than MVPDs already covered by the 1992 Cable Act)?

V. DUE DATES

40. Interested parties may file comments on or before May 23, 1994, and reply comments on or before June 7, 1994. An original and five copies of all comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Finally, we will treat this as a non-restricted proceeding subject to Section 1.1206(b)(2) of the Commission's Rules, 47 C.F.R. Section 1.1206(b)(2).

41. For additional information on this proceeding, contact Hope Cooper, Attorney/Advisor, EEO Branch, (202) 632-7069.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

**SEPARATE STATEMENT
OF
COMMISSIONER ANDREW C. BARRETT**

Title: In the Matter of Implementation of Commission's Equal Employment Opportunity Rule (NOI)

Pursuant to today's action, the Commission has released a Notice of Inquiry that seeks comment on the effectiveness of the Commission's rules, procedures, policies and guidelines in promoting the equality of employment and promotion opportunities in the cable and broadcast industries.

Congress intended that the Commission adopt policies which foster an increase in employment opportunities for women and minorities in positions of management authority.¹ In response, the Commission has developed policies, standards and guidelines that are consistent with Congress' mandate. It is imperative that this NOI, solicit comments on the effectiveness of the Commission's EEO policies, and what actions could be taken to enhance our EEO guidelines, in accordance with a congressional directive, in order to improve the effectiveness of our rules on employment profiles.

¹Section 22(g) of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460 (1992).