

Church State Council of Seventh-day Adventists  
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March 1, 1999

To: FCC  
From: Alan J. Reinach, Esq., President  
Re: MM Docket Nos. 98-204; 96-16

The Church State Council of Seventh-day Adventists serves the church in a five state western region, including California, Arizona, Nevada, Utah and Hawaii. Located within this region are the Adventist Media Center, home to most of our radio and television broadcast ministries, and several church owned and operated radio stations. The Church State Council is the religious liberty and public policy arm of the Adventist Church in this western region, and is responsible for reviewing legislation and regulations, such as the proposed rules governing religious broadcasters.

These comments will address only that part of the NPRM that deal with the rights of religious broadcasters to pursue their religious mission through religious-based hiring and employment decisions.

The Church State Council supports the new policy to the extent that it seeks to grant to religious broadcasters the right to make religious-based employment decisions. Adventist broadcasters believe that everyone on the staff is involved in religious mission, including receptionists, secretaries, bookkeepers, etc. We cannot properly fulfill our religious mission unless everyone on staff is fully and completely committed to the religious mission.

While we support the new policy, as reflected in the NPRM, we request clarification on two points.

1. The definition of "religious broadcaster." There are both Adventist and other religious broadcasters who may not meet the proposed definition, because they are not sufficiently under church control. It is unclear how direct the ownership or control must be by a church in order to qualify as a "religious broadcaster." The definition needs to be sufficiently broad that para-church broadcast ministries, independent of denominational control, are covered by the definition. It should suffice that they are incorporated as religious not-for-profits, or that their constitution and by-laws clearly designate their religious purpose.

2. The need for a b.f.o.q. Paragraph 70 of the NPRM seems to envision a two-step process. First, the licensee must comply with the definition, and qualify as a religious broadcaster. Second, the licensee must demonstrate a religious b.f.o.q. This is completely unnecessary. There should not be a two-step process. Under Title VII, there is a blanket exemption that permits religious organizations to base employment decisions on religion.

The U.S. Supreme Court upheld the constitutionality of this exemption, and gave it very broad interpretation in its Amos decision.

Once a licensee has qualified as a religious broadcaster, it should obtain the unqualified right to base employment decisions on religion. There should be no further requirement that the licensee demonstrate a b.f.o.q. This would entail producing further evidence of the need for a b.f.o.q., giving an independent fact-finder the opportunity to block the rights of the religious broadcaster.

Such a process is particularly problematic in light of the Establishment Clause prohibition against government becoming excessively entangled with religion. It is unclear how a religious broadcaster would go about demonstrating a b.f.o.q. On what basis would the FCC decide that one qualified religious broadcaster did not require the ability to discriminate on the basis of religion, while another did? Such a process suggests that the FCC would be in a position to determine how a religious ministry could carry on its religious activities. This is constitutionally impermissible, since it requires the FCC to interpret religious teachings, and does not permit the application of neutral principles of law.

It is not entirely clear that the NPRM will require a two-step process as described above, but it should be clarified that no such second step is required. It should suffice that a licensee qualifies as a religious broadcaster. If so, the licensee has the unqualified right to base employment decisions on religion.