

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Review of Media Bureau)	MB Docket No. 10-103
Data Practices)	

REPLY COMMENTS OF NATIONAL HISPANIC MEDIA COALITION (NHMC)

The National Hispanic Media Coalition (NHMC) is pleased that the Media Bureau has initiated this review to improve its data practices.¹ NHMC believes that there are a number of things that the Bureau could do to guarantee that it collects the data necessary to ensure that broadcast licensees meet their public interest responsibilities and to make this data more usable, reliable and accessible. However, in these reply comments, NHMC will focus on just one issue – the annual employment reports (Form 395).

Although the Bureau’s working inventory lists both Form 395-A (for multi-channel video providers, “MVPDs”) and Form 395-B (for broadcast stations), the Federal Communications Commission (“FCC” or “Commission”) has not collected this data for more than a decade. It suspended the filing of these reports after the D.C. Circuit court’s decision in *Lutheran Church-Missouri Synod v. FCC*,² and again after, *MD/DC/DE Broadcasters Association v. FCC*,³ which found that certain aspects of the FCC’s EEO rules were unconstitutional. Although the Commission decided to reinstitute this data collection in 2004, this decision has never been

¹ NHMC is a non-profit, civil rights media advocacy organization created to advance American Latino employment and programming equity throughout the entertainment industry and to advocate for telecommunications policies that benefit the American Latino community and other communities of color. NHMC has participated in FCC proceedings to promote viewpoint diversity, a greater role for citizens in FCC regulatory proceedings, and the inclusion of people of color in the electronic mass media industries.

² *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998).

³ *MD/DC/DE Broadcasters Ass’n v. FCC*, 236 F.3d 13 (D.C. Cir. 2001).

implemented.⁴ NHMC agrees with the Minority Media and Telecommunications Council (“MMTC”) that the FCC should act promptly to reinstate the collection of this important data.⁵

I. Background

Beginning in 1970, the FCC required broadcast stations to file annual equal employment opportunity (“EEO”) reports using FCC Form 395-B.⁶ Form 395-B required that each broadcast station report the number of employees in each of nine job categories by race and gender.⁷ Members of the public could gain access to this data by visiting the station and looking at the public file or by going to FCC headquarters. The FCC used Form 395-B data to compile annual “trend reports” tracking the aggregate percentage of people of color and women employed in each job category. In the 1992 Cable Act, Congress mandated that the FCC implement a similar data collection process for cable operators.⁸

In November 2002, the FCC revised its EEO rules in response to the court’s decision in *MD/DC/DE Broadcasters Association*.⁹ However, the Commission deferred its decision on whether to reinstate the requirement that broadcast stations file the workforce data that had previously been filed in Form 395-B.¹⁰ The Commission explained that there was no urgency to

⁴ *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, 3d R&O and 4th NPRM, 19 FCC Rcd 9973 (2004) (“3d R&O”).

⁵ *Comments of the Minority Media and Telecommunications Council* at 2, MB Dkt. No. 10-103 (filed Aug. 13, 2010) (stating that the FCC needs reliable, transparent data that FCC staff, other government agencies, researchers and advocates alike can use to shape policy to ensure greater opportunity for all).

⁶ *Petition for Rulemaking to Require Broadcast Licensees to show Non-Discrimination in their Employment Practices*, 18 F.C.C.2d 240 (1969).

⁷ The job categories are: officials and managers, professionals, technicians, sales workers, office/clerical, craftsmen, operatives, laborers and service. Employees of color were reported as follows: Black, Asian/Pacific Islander, American Indian/Alaskan, and Hispanic.

⁸ 47 U.S.C. §634(d)(3)(A) (2010).

⁹ *Review of the Commission’s Broadcast and Cable Equal Opportunity Rules and Policies*, 2d R&O and 3d NPRM, 17 FCC Rcd. 24018 (2002) (“2d R&O”).

¹⁰ 2d R&O at 24024.

decide this question because the next reports would not be due until September 2003.¹¹ In any event, the Commission emphasized that the data would be used only to compile trend reports and to report to Congress, not to determine compliance with the EEO rules.¹²

In June 2004, the Commission decided to reinstate the filing requirement that broadcast stations and MVPDs file annual employment reports.¹³ It noted that the “information provided by the annual employment reports is important in order to ascertain industry trends, report to Congress, and respond to inquiries from Congress.”¹⁴ The Commission concluded that it had broad statutory authority to require the filing of this information, and indeed, that the Communications Act required it to do so.¹⁵ The Commission also concluded that the collection of Form 395-B was not prohibited by either *Lutheran Church* or *MD/DC/DE Broadcasters Association*.¹⁶ The Commission properly rejected the arguments of some broadcasters that the Form 395-B data was unnecessarily duplicative of the EEOC’s filing requirements, that the collection of the data would pressure licensees to adopt race or gender-specific hiring policies in violation of *Lutheran Church*, and that the data should be filed anonymously.¹⁷

Although the Commission indicated that the revised Form 395-B would be available for filing in 2004,¹⁸ in fact, it was not. In the 4th Further Notice of Proposed Rulemaking (“FNPRM”) in this proceeding, which was attached to the 3rd Report and Order (“R&O”), the Commission explained that although the Form 395-B data had always been available to the public, a recent statute known as the Confidential Information Protection and Statistical

¹¹ *Id.* at 24025.

¹² *Id.*

¹³ 3d R&O at 9975.

¹⁴ *Id.* at 9974.

¹⁵ *Id.*

¹⁶ *Id.* at 9976.

¹⁷ *Id.* at 9975-9976.

¹⁸ *Id.* at 9975.

Efficiency Act of 2002 (CIPSEA) arguably could allow the FCC collect this data and keep it confidential. The Commission sought public comment on whether it should keep the data confidential and postponed the filing of the Form 395-B until it made a decision. Although comments were filed,¹⁹ the Commission never decided whether to make the data confidential.²⁰

II. The Commission Should Promptly Take Steps To Reinstate The Filing Of Annual Employment Reports And Should Make Those Reports Publicly Available

The Commission's six-year delay in effecting employment reporting is unconscionable. Annual EEO data serves important purposes for the FCC, communities of color and women, and the public at large. As the FCC recognized in 2004, annual employment data is needed for trend reports and reports to Congress.²¹ In addition, the information is imperative to assessing the effectiveness of the FCC's revised EEO rules. The Commission and the public have no other means to obtain complete and accurate employment data, and without this information the public and watchdog groups, such as NHMC, are unable to hold their local media fully accountable.

The limited surveys that have been undertaken suggest some troubling trends. For example, the 2009 RTNDA/Hofstra University Annual Survey of Newsroom Diversity, found that "the percentage of journalists of color working in local television news fell, led by a 10

¹⁹ NHMC joined the comments of *NOW et al.* to oppose – on both legal and policy grounds – keeping employment reports confidential. *See Comments of NOW et al.*, MM Dkt. No. 98-204 (filed Jul. 29, 2004); *Reply Comments of NOW et al.*, MM Dkt. No. 98-204 (filed Aug. 9, 2004).

²⁰ After the FCC decided to update the 395 forms to match the EEOC's new equivalent form, EEO-1, in 2008, the Commission submitted the new forms to Office of Management and Budget ("OMB") for approval. The FCC's supporting statement said the Commission would determine in a pending rulemaking whether the forms would be confidential. OMB approved the forms, but it prevented them from going into effect until the FCC decides the confidentiality issue and consults with OMB. To date, the Commission has not decided if the forms will be confidential. OMB's current approval is set to expire on Oct. 30, 2011. *See Terms of Clearance, available at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200808-3060-024.*

²¹ 3d R&O at 9974-9979.

percent drop in the number of Hispanic staff working for Hispanic television stations.”²² This survey also found that in the last nineteen years, the population of people of color rose 8.5% but the people of color in the TV news workforce only increased by 4%.²³ In 2009, people of color made up 34.4% of the population but only 21.8% of the TV news workforce and 8.9% of the radio news workforce.²⁴ The percentage of Latinos and African Americans each declined by half a percentage point in just the last year.²⁵

A recent census of newsroom managers conducted by the National Association of Black Journalists found that people of color accounted for 12.6% of newsroom managers, and that eighty-two of 151 stations had no diversity at all in their news management teams. Of the 816 managers at these stations, 7.8% were African American, 3% were Hispanic/Latino, 1.6% were Asian and only 1% Native American.²⁶ This data, although partial, suggests the importance of the FCC collecting employment data so that a more complete and nuanced picture can emerge.

The public as well as the FCC and Congress need access to Form 395-B data. For example, in the past NHMC used form 395-B data to create a detailed and informative report on Latino employment in New York City’s television industry.²⁷ The report found that Latino employment decreased despite an increase in New York’s Latino population. The report also analyzed seven major television stations and highlighted the stations with the greatest and least Latino employment. NHMC’s report received substantial press attention, and served as an

²² RTNDA/HOFSTRA SURVEY, MORE WOMEN LEADING IN LOCAL NEWS, JOURNALISTS OF COLOR IN LOCAL NEWS DOWN FROM 2008 1, (rel. July 28, 2009), *available at* www.rtna.org.

²³ *Id.* at 1-2.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ NATIONAL ASSOCIATION OF BLACK JOURNALISTS, 2010 NABJ TELEVISION NEWSROOM MANAGEMENT DIVERSITY CENSUS 1, (July 2010).

²⁷ ANGELO FALCÓN, NATIONAL HISPANIC MEDIA COALITION, STILL ON THE OUTSIDE LOOKING IN: LATINO EMPLOYMENT IN NYC BROADCAST TELEVISION 1997-2000 (June 2001), included as Attachment 1 to this filing.

impetus for greater diversity commitments from local NYC stations. But since the FCC stopped collecting employment data, NHMC has not been able to do this type of analysis.²⁸ If the FCC collected and made available the annual employment data, NHMC and other organizations, as well as academic researchers, could use the information to study the issues important to them. Organizations involved in promoting opportunities for people of color and females could also benefit. By studying employment patterns in individual stations, they could more effectively target their outreach and recruitment efforts to the positions in those stations where they perceive a lack of diversity.

III. Conclusion

Thus, NHMC urges that the FCC promptly act to reinstate the filing of Form 395-B and to make the data publicly available. NHMC also urges the Commission to require that stations file their employment reports electronically in a format that can be easily searched, aggregated and analyzed. This would be easier for broadcasters and MVPDs as well as more useful for the FCC and the public.

²⁸ Instead, NHMC issues “TV Network Report Cards” that evaluate the four major networks (ABC, NBC, CBS, and Fox) with letter grades for their national Latino employment statistics. These Report Cards can be accessed at <http://www.nhmc.org/tvnetworkreportcards>. The networks disclose how many people of color they employ in certain job categories to NHMC, but NHMC is restricted from releasing the raw data. Moreover, NHMC currently has access only to national data, leaving it to wonder about local diversity efforts across the country. Although the Report Cards give the public an idea of the networks’ diversity efforts, they cannot replace the detailed – and localized – analyses that NHMC was previously able to conduct with EEO data.

Respectfully Submitted,

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