

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
1998 Biennial Regulatory Review --)
Amendment of Sections 73.3612 and)
76.77 of the Commission's Rules Concerning)
Filing Dates for the Commission's)
Equal Employment Opportunity)
Annual Employment Reports)

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 1998

Released: March 16, 1998

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, the Commission amends Sections 73.3612 and 76.77(a) of the Commission's Rules, 47 C.F.R. §§ 73.3612 and 76.77, to require all annual employment reports ("Form 395") to be filed with the Commission by September 30 of each year. For the reasons discussed below, we amend the dates that annual employment reports are due to be filed with the Commission and, thus, enable licensees and permittees that also file similar data with the Equal Employment Opportunity Commission ("EEOC"), to use the same pay period record information. Although not required by statute, this initiative on this matter is taken in conjunction with the Commission's 1998 Biennial Regulatory Review pursuant to Section 11 of the Telecommunications Act of 1996 ("1996 Act") [47 U.S.C. § 161].

II. BACKGROUND

2. Section 73.2080 of the Commission's Rules, 47 C.F.R. § 73.2080, requires a broadcast licensee or permittee to refrain from employment discrimination on the basis of race, color, religion, national origin, or sex, and to establish, maintain, and carry out an Equal Employment Opportunity ("EEO") program reflecting positive and continuing efforts to assure equal employment opportunity in every aspect of station employment. The EEO Rule is not intended to replicate federal and state anti-discrimination laws but is meant to promote equal employment opportunity as a means of furthering program diversity.¹ When evaluating a licensee's EEO performance, the Commission focuses on the licensee's efforts to contact sources likely to refer qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. The objective of the Commission's efforts-based program is to increase the pool of eligible candidates from which the licensee can select the best qualified applicant.² Broadcast stations with five or more full-time employees are required to

¹ See Implementation of Commission's Equal Employment Opportunity Rules, 9 FCC Rcd 2047 (1994) ("Implementation of Commission's Equal Employment Opportunity Rules").

² Streamlining Broadcast EEO Rule and Policies, (Order and Notice of Proposed Rule Making), 11 FCC Rcd 5154, 5158-59 (1996) ("NPRM").

file a "Broadcast Station Annual Employment Report" (Form 395-B) on or before May 31 of each year.³ Our rules also require cable employment units with six or more full-time employees to file a "Cable Television Annual Employment Report" (Form 395-A), and multichannel video program distributors to file a "Multi-Channel Video-Program Distributor Annual Employment Report" (Form 395-M), on or before May 1 of each year.⁴ The employment data reported on the Forms 395 reflect information from any payroll period in January, February, or March of the year during which the report is filed.

3. The EEOC requires companies with at least 100 employees to file an "Employer Information Report EEO-1" ("EEO-1") no later than September 30 of each year. The data reported on the EEO-1 may reflect any payroll period in July through September. The EEO-1 requires the reporting of employment data similar to the information required for the Commission's Forms 395. Specifically, the EEO-1 requires companies to report the total number of employees by job category, indicating the gender, race/ethnic origin for each employee. Unlike the Commission's Forms 395, however, the EEOC's EEO-1 does not distinguish between full-time and part-time employees.

III. DISCUSSION

4. At the Mass Media Bureau's Biennial Review Public Forum on January 13, 1998, representatives of the National Association of Broadcasters ("NAB") recommended that the Commission permit broadcasters to file a copy of EEOC's EEO-1 with the Commission, instead of filing different forms with two separate agencies. The NAB expressed the concern that under the current rules, broadcasters are required to collect and report data to the Commission annually, and may also have to collect and report similar information to the EEOC each year. As a result, NAB asserts, larger broadcast entities file almost identical information on two separate dates, on different forms, with two separate governmental agencies. NAB maintains that broadcasters should be permitted to file the same form with the Commission and the EEOC. Representatives of the cable industry have similarly suggested that the Commission as part of the Biennial Review, coordinate the filing dates for cable companies.

5. We acknowledge that under the current filing rules, some licensees and permittees are required to collect and report similar data twice a year, and agree that this process should be changed. We believe we can address NAB's major concerns by amending Sections 73.3612 and 76.77 of the Commission's rules, 47 C.F.R. §§ 73.3612 and 76.77, to provide that FCC Forms 395-A, 395-B, and 395-M are due on or before September 30 of each year. In addition, we will allow licensees, permittees, and cable entities to use any payroll period in July, August, or September of the year during which the report is filed. Furthermore, we will also apply the new filing and payroll dates to cable units and multichannel video program distributors. We believe that these changes to our rules will benefit broadcasters, cable operators, and multichannel video programming distributors who also file with the EEOC to use the same pay period records, even if the data are reported differently. We note that Section 76.77 refers only to the Form 395-A, which is filed by cable operators. However, we intend that the new filing date that we adopt today apply also to the Form 395-M, which is filed by multichannel video programming distributors.⁵ Accordingly, we amend our rules to make

³ 47 C.F.R. § 73.3612.

⁴ 47 C.F.R. § 76.71 et seq.

⁵ Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992 Equal Employment Opportunities, (Report and Order), 8 FCC Rcd 5389 (1993) (implementing filing of 395-M for multichannel video program distributors).

these changes.⁶ Consistent with the new filing date, the 1998 annual employment reports are due to be filed on or before September 30, based on a pay period in July, August, or September 1998. Thereafter, reports are due September 30 of each year. No reports will be due in May 1998. The revised filing dates apply to all filers, not just those filers with one hundred or more employees.

6. We do not believe, however, that the Commission should allow stations to satisfy reporting obligations by filing the EEO-1 with the Commission. Reliance on the EEO-1 would prevent us from assessing a station's full-time employment because that form does not disaggregate full-time and part-time employment. Under our current practice, this is the focus of our assessment. Furthermore, although we have invited comment on whether the Commission should delete the part-time reporting requirement as part of a broad review of our EEO enforcement,⁷ we will not resolve this issue outside the context of that proceeding. Finally, until and unless we amend our rules with respect to the part-time reporting requirement, we will continue to require the disaggregated data as provided by the current Forms 395.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that this Memorandum Opinion and Order **IS ADOPTED**, to be effective upon release.

8. **IT IS FURTHER ORDERED** that pursuant to Sections 4(i), 4(j), 5(c), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155(c), 161, and 303(r), Part 47 of the Commission's Rules and Regulations **IS AMENDED** as set forth in the Appendix hereto, effective upon release of this Memorandum Opinion and Order.

9. These amendments concern rules of agency organization, practice or procedure. Compliance with the notice and comment and effective date provisions of the Administrative Procedure Act is therefore unnecessary. See 5 U.S.C. §§ 553(b)(A), 553(d).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁶ We are aware that Section 634(d)(4) of the Communications Act of 1934, as amended, provides that the Commission may amend "such rules" after "notice and opportunity for comment". However, we interpret this section to apply to substantive changes, not to purely procedural changes of a strictly technical nature, such as the amendments we adopt today. See 5 U.S.C. §§ 553(b)(A), 553(d). In addition, although Section 334(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 334(a), prohibits the Commission from changing its EEO regulations or forms to the extent that they apply to television licensees or permittees, we are permitted under Section 334(c) to make revisions of a technical nature.

⁷ NPRM, 11 FCC Rcd at 5174.

APPENDIX

47 C.F.R. Part 47 is amended by revising Sections 73.3612 and 76.77 to read as follows:

§ 73.3612 Annual employment report

Each licensee or permittee of a commercially or noncommercially operated AM, FM, TV or International broadcast station with five or more full-time employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395.

§ 76.77 Reporting Requirements.

(a) Annual employment report. Each employment unit with six or more full-time employees shall file an annual employment report (FCC Form 395-A) with the Commission on or before September 30 of each year. Employment data on the annual employment report shall reflect the figures from any one payroll period in July, August, or September of the year during which the report is filed. Unless instructed otherwise by the FCC, the same payroll period shall be used for each successive annual employment report.

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