



September 30, 2021

Acting Chairwoman Jessica Rosenworcel  
Commissioner Nathan Simington  
Commissioner Brendan Carr  
Commissioner Geoffrey Starks  
Federal Communications Commission  
45 L St. NE  
Washington, DC 20554

Re: Review of EEO Compliance and Enforcement in Broadcast and Multichannel Video Programming Industries, MB Docket 19-177; Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MB Docket 98-204

Dear Acting Chairwoman Rosenworcel and Commissioners:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the rights of all persons in the United States, we write to respond to the Federal Communication Commission's Further Notice of Proposed Rulemaking<sup>1</sup> and urge the commission to remedy the near 20-year failure to collect industry-wide equal opportunity employment (EEO) statistics as required by law. As The Leadership Conference has commented several times in this docket, we strongly support collection of EEO data and file today to reiterate that position.<sup>2</sup> Accordingly, we concur with statements by then-Commissioner Jessica Rosenworcel and Commissioner Geoffrey Starks explaining that data collection is an integral part of the commission's renewed focus on EEO policy.<sup>3</sup>

Data collection is essential to achieving a diverse workplace and is a vital part of any EEO program. Collecting employment data is central to the FCC's obligation to ensure nondiscriminatory employment practices and to track the success of its policies. Failure to collect data makes it difficult, if not impossible, for the FCC to evaluate industry trends that may shed light on the overall effectiveness of the FCC EEO rules protecting against unlawful discrimination. As discussed in more detail below, the commission should comply with its statutory obligation to collect EEO equal opportunity employment data. Neither

<sup>1</sup> Review of the commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, Further Notice of Proposed Rulemaking, MB Docket No. 98-204 (rel. July 16, 2021).

<sup>2</sup> Leadership Conference on Civil and Human Rights, MB Docket No. 19-177, MB Docket No. 98-204 at 1 (November 4, 2019)

<sup>3</sup> *Review of EEO Compliance and Enforcement in Broad. and Multichannel Video Programming Indus.*, MB Docket No. 19-177, FCC 19-54 at 13 (June 21, 2019) (Statement of Commissioner Rosenworcel); *Id.* at 14-15 (Statement of Commissioner Starks).

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Wade Henderson

constitutional nor statutory barriers prevent the commission from reinstating demographic employment reports (Form 395-B), as required by the Communications Act.

Many industries are now voluntarily holding themselves accountable by collecting and disseminating their employment data to ensure diversity in hiring.<sup>4</sup> The lack of broadcast industry employment data, given this trend toward greater transparency, is problematic. Accurate record collection is essential for an effective and efficient EEO program. Removing artificial barriers to entry across the industry increases diversity, allowing stations to better serve the public interest. However, employment data is necessary to understand whether the FCC's existing EEO rules are working.

As The Leadership Conference has previously explained, the commission is statutorily required to collect industry-wide broadcast television employment data under the Communications Act. In 1992, Congress added Section 334 to the Communications Act, which codified the commission's employment reports into the Act as a statutory obligation. The commission stated in 2004 that it is "directed by statute to require the submission of [employment reports] by broadcast television stations and MVPDs," and has the discretion to require such reports for all broadcasters and MVPDs.<sup>5</sup>

There are no constitutional barriers to the collection of these data. Indeed, enforcing constitutional rights often requires sound data. The commission has concluded, "Nothing in the Court's opinion ... suggests that the collection of the FCC Form 395-B data regarding the filer's employees for the purpose of compiling trend reports and reports to Congress is by itself subject to strict scrutiny or unconstitutional."<sup>6</sup> It concluded that filing annual employment reports would not "unconstitutionally pressure entities to adopt racial or gender preferences in hiring."<sup>7</sup>

Finally, The Leadership Conference supports an electronic, uniform database that is searchable and aggregated. The current public file reports are not uniform, as we have previously noted, and therefore it is burdensome for the FCC to compile nationwide data.<sup>8</sup> A database would allow licensees to update changes to pertinent information, such as an EEO contact point, while making the data continually available to the commission and the public. Furthermore, the database could automatically notify the FCC when a licensee's review is approaching, thereby ensuring more efficient compliance.

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<sup>4</sup> See, e.g., Jenifer Berman, How companies can make DEI more than just a buzzword and actually alter their company cultures for the better according to executives, Business Insider (December 14, 2020) <https://www.businessinsider.com/companies-diversity-equity-inclusion-embedding-into-culture-2020-12>, Inclusion & Diversity, Apple, <https://www.apple.com/diversity/>; Our Workplace, Google, <https://diversity.google/commitments/>; Facebook Diversity Update, <https://diversity.fb.com/read-report/>; Corporate Social Responsibility, Intel, <https://www.intel.com/content/www/us/en/diversity/diversity-at-intel.html>; Inclusion & Diversity, Netflix, <https://jobs.netflix.com/diversity>.

<sup>5</sup> Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, Third Report & Order and Fourth NPRM, 19 FCC Rcd 9973, 48611 (August 31, 2021).

<sup>6</sup> Id. at 9976.

<sup>7</sup> Id.

<sup>8</sup> The Leadership Conference on Civil and Human Rights, MB Docket No. 18-23, MB Docket No. 17-105 at 2 (June 21, 2018).



We urge the commission to immediately begin collecting aggregate industry employment data on Form 395-B. If you have any questions about this matter, please contact Media/Telecommunications Task Force Co-Chair Cheryl Leanza, United Church of Christ, Office of Communication, Inc., at [cleanza@alhmail.com](mailto:cleanza@alhmail.com); Kate Ruane, American Civil Liberties Union, at [kruane@aclu.org](mailto:kruane@aclu.org); or Bertram Lee, Jr., Leadership Conference media/tech counsel, at [lee@civilrights.org](mailto:lee@civilrights.org).

Sincerely,



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Jesselyn McCurdy  
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