



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 18-103]

Equal Employment Opportunity Audit and Enforcement Team Deployment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) moves the audit and enforcement responsibilities associated with our equal employment opportunity (EEO) rules from the Media Bureau to the Enforcement Bureau. As set forth below, we conclude that transferring enforcement of these rules to the Enforcement Bureau will better ensure that the communications companies subject to these rules give all qualified individuals an opportunity to apply and be considered as job candidates.

DATES: Effective March 15, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Holly Saurer, Holly.Saurer@fcc.gov, of the Media Bureau, (202) 418-7200. Direct press inquiries to Janice Wise at (202) 418-8165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order (Order), FCC 18-103, adopted and released on July 24, 2018. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) Web Site at http://fjallfoss.fcc.gov/edocs_public/ or via the FCC's Electronic Comment Filing System (ECFS) Web Site at <http://fjallfoss.fcc.gov/ecfs2/>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to

11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis:

1. In this Order, we conclude that it will serve the public interest and improve the Commission's operations to move the audit and enforcement responsibilities associated with our EEO rules from the Media Bureau to the Enforcement Bureau. We take this action in recognition of the important role our EEO rules play in encouraging a diverse and multi-talented workforce and at the request of MMTC and other civil rights organizations. By transferring enforcement of these rules to the Enforcement Bureau, we find that we can better ensure that the communications companies subject to these rules give all qualified individuals an opportunity to apply and be considered as job candidates. We therefore conclude that this organizational change is warranted and amend the Commission's rules accordingly.

2. Fifty years ago this month, the Commission observed that equal opportunity in employment was essential to the public interest and committed to ensuring that the national policy against discrimination in hiring applied to broadcast licensees.¹ This remains true today. Currently, a team comprised of attorneys and other professionals responsible for EEO audits and enforcement is part of the Commission's Media Bureau.² The EEO audit and enforcement team does essential work overseeing the EEO compliance of television and radio broadcast licensees, as well as multichannel video programming distributors (MVPDs), such as cable and DBS operators, and satellite radio. The team's work is primarily focused on periodic random audits of broadcast licensee and MVPD EEO programs, along with any

¹ *Petition for Rulemaking to Require Broadcast Licensees to Show Nondiscrimination in Their Employment Practices*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, Docket No. 18244, 33 FR 12854 (Sept. 11, 1968), 13 FCC 2d 766 (1968).

² 47 CFR 0.61(d).

necessary enforcement actions arising from those audits.³ In addition, the team reviews EEO filings that broadcasters must submit to the Commission at the same time as their license renewal applications,⁴ and for some broadcast licensees, the team assesses EEO compliance around the midpoint of their eight-year license terms.⁵ The EEO team also investigates complaints and takes enforcement action based on those investigations when necessary.

3. In the 2014 Quadrennial Review proceeding, the Multicultural Media, Telecom and Internet Council (MMTC), along with a large group of fellow self-identified “Diversity and Competition Supporters,” made an unopposed proposal to create a Civil Rights Branch of the Enforcement Bureau that would contain EEO enforcement.⁶ In the *Quadrennial Second Report and Order*, the Commission found that while there was no “need to denominate a separate branch,” moving EEO enforcement into the Enforcement Bureau “warrant[ed] further consideration.”⁷ It therefore directed “the Media Bureau, Enforcement Bureau, and Office of the Managing Director, to discuss the feasibility, implications, and logistics of shifting the enforcement of the Media Bureau Equal Employment Opportunity rules from the

³ Each year, the EEO team conducts a random audit of the EEO compliance of five percent of radio station employment units, as well as five percent of television station employment units. 47 CFR 73.2080(f)(4). The team also conducts random audits of the EEO compliance of MVPD employment units. 47 CFR 73.77(d). In addition, the team is responsible for ensuring that every MVPD employment unit is reviewed for compliance through a supplemental investigation at least once every five years (meaning that approximately 20 percent are investigated each year). 47 CFR 76.77(c).

⁴ Each broadcast licensee must file an FCC Form 396 (Broadcast Equal Opportunity Program Report) in conjunction with its license renewal application. 47 CFR 73.2080(f)(1); FCC Form 396, available at <https://transition.fcc.gov/Forms/Form396/396.pdf> (last visited May 22, 2018).

⁵ The EEO team reviews the EEO practices of all broadcast television stations in station employment units with five or more full-time employees, and all radio stations in employment units with eleven or more full-time employees, around the midpoint of broadcasters’ license terms. 47 CFR 73.2080(f)(2). The Commission is currently considering elimination of FCC Form 397, which is used as part of the mid-term review process. FCC Form 397, available at <https://transition.fcc.gov/Forms/Form397/397.pdf>. (last visited May 22, 2018); see *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2)*, Notice of Proposed Rulemaking, 83 FR 12313 (March 21, 2018), MB Docket No. 18-23 (2017). As discussed in that NPRM, even if Form 397 is eliminated, the mid-term review will still be conducted, as required by statute, and will be done by the EEO team. *Id.* at para. 7 (citing 47 U.S.C. 334(b)).

⁶ See *Diversity and Competition Supporters Supplemental NPRM Comments* at 80-81 (Proposal 40, Create a New Civil Rights Branch of the Enforcement Bureau), filed in MB Docket No. 09-182 (April 3, 2012).

⁷ *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, MB Docket No. 14-50, 81 FR 76220 (Nov. 1, 2016), 31 FCC Rcd 9864 at 10007, para 333 (2016) (*Quadrennial Second Report and Order*).

Media Bureau to the Enforcement Bureau.”⁸ Those internal discussion have now been completed.

Recently, MMTC and a large group of self-identified “EEO Supporters” filed comments in the Modernization of Media Regulation proceeding similarly proposing that, in order to “modernize [our] EEO enforcement program,” the Commission should “[l]ocate the EEO staff in the Enforcement Bureau.”⁹

4. As the Commission observed in the *Quadrennial Second Report and Order*, the EEO team in the Media Bureau has consistently been effective at overseeing compliance with and enforcing the EEO rules.¹⁰ Nonetheless, there are notable benefits to bringing the EEO team within a larger group of enforcement experts. The Enforcement Bureau’s staff has extensive experience conducting investigations and pursuing enforcement in a wide range of areas. They therefore are well positioned to provide assistance and guidance with EEO review, audit, and enforcement work. Further, the Enforcement Bureau has expertise in, and maintains tools and databases to aid with, the tracking of statutory deadlines, including those relevant to EEO audits and investigations, that the Media Bureau does not.

5. For these reasons, we believe that shifting the EEO team to the Enforcement Bureau will result in more effective enforcement of the Commission’s EEO rules. Accordingly, we find that the EEO team should be moved from the Media Bureau to the Enforcement Bureau. Specifically, the Policy Division staff in the Media Bureau who are currently responsible exclusively for EEO audit and enforcement will join the Enforcement Bureau’s Investigations and Hearings Division.¹¹

6. The key objectives of this organizational change are to more efficiently deploy

⁸ *Id.*

⁹ Comments of the EEO Supporters at 5-6 (Apr. 30, 2018), filed in MB Docket No. 17-105. *See also* EEO Supporters Ex Parte at 2 (June 1, 2018), filed in MB Docket No. 17-105.

¹⁰ *Quadrennial Second Report and Order* at 10007, para. 333.

¹¹ As relocated to the Enforcement Bureau, the EEO team will continue to perform its existing compliance reviews, as described above, including periodic random audits, review of filings that broadcasters must submit to the Commission at the same time as their license renewal applications, and mid-term reviews. Rulemaking proceedings pertaining to EEO issues will continue to be conducted by the Media Bureau. 47 CFR 0.61(b).

Commission audit and enforcement resources, enhance industry-wide oversight of compliance with EEO rules, improve cross-Commission consistency in audit-based enforcement, and rationalize and modernize our organizational structure. We agree with the EEO Supporters that we can best accomplish these objectives through organizational change. In order to effectuate this change, we modify our procedural rules. Specifically, we eliminate the express delegation to the Media Bureau of authority for administration and enforcement of EEO rules and add an express delegation to the Enforcement Bureau covering the EEO rules.¹²

7. The amendments adopted herein pertain to agency organization, procedure, and practice. Consequently, the notice and comment and effective date provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) and (d) do not apply.

8. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

9. The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules exclusively relate to agency management or personnel.

10. **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4, 5(b), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155(b), 155(c), 303(r), this Report and Order **IS HEREBY ADOPTED**.

11. **IT IS FURTHER ORDERED** that part 0 of the Commission rules **IS AMENDED** as set forth in the Final Rules.

¹² 47 CFR 0.111(a).

12. **IT IS FURTHER ORDERED** that, consistent with the Consolidated Appropriations Act of 2017,¹³ this Order **WILL BECOME EFFECTIVE** when the appropriate clearance has been obtained and the Commission thereafter publishes this Order in the Federal Register.

List of Subjects in 47 CFR Part 0

Classified information, Freedom of information, Government publications, Infants and children, Organization and functions (Government agencies), Postal Service, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,
Secretary.

¹³ See Consolidated Appropriations Act, 2018, Pub. L. 115-141, at Division E, Title VI, Section 608, 132 Stat. 348 (2018).

Final Rules

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 0 as set forth below:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

§ 0.61 [Amended]

2. Amend § 0.61 by removing and reserving paragraph (d).

3. Amend § 0.111 by revising paragraphs (a)(11) and (13) and adding paragraph (a)(26) to read as follows:

§ 0.111 Functions of the Bureau.

(a)***

(11) Resolves other complaints against Title III licensees and permittees (Title III of the Communications Act of 1934, as amended), including complaints under § 20.12(e) of this chapter, except that the Media Bureau has primary responsibility for complaints regarding children's television programming requirements, and for political and related programming matters involving broadcasters, cable operators and other multichannel video programming distributors. The relevant licensing Bureau has primary responsibility for complaints involving tower siting and the Commission's environmental rules. The Media Bureau has primary responsibility for complaints regarding compliance with conditions imposed on transfers of control and assignments of licenses of Cable Television Relay Service authorizations.

(13) Resolve complaints regarding multichannel video and cable television service under part 76 of this chapter, except that the Media Bureau has primary responsibility for complaints regarding the following:

subpart A (general), with the exception of §76.11; subpart B (Registration Statements); subpart C (Cable Franchise Applications); subpart D (carriage of television broadcast signals); subpart F (nonduplication protection and syndicated exclusivity); subpart G, §§76.205 and 76.206 (political broadcasting); subpart I ([Reserved]); subpart J (ownership); subpart L (cable television access); subpart N, §76.944 (basic cable rate appeals), and §§76.970, 76.971, and 76.977 (cable leased access rates); subpart O (competitive access to cable programming); subpart P (competitive availability of navigation devices); subpart Q (regulation of carriage agreements); subpart S (Open Video Systems); and subparts T, U, and V to the extent related to the matters listed in this paragraph (a)(13).

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(26) Conduct audits and investigations and resolve issues of compliance concerning equal employment opportunity requirements involving Title III licensees and permittees or multichannel video programming distributors, including cable service providers, under part 76 of this chapter.

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