

Cable Act"). Section 334 provides that "the Commission shall not revise:"

(1) The regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 CFR 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

(2) The forms used by such licensees and permittees to report pertinent employment data to the Commission, 47 U.S.C. 334(a).

The Conference Report accompanying this legislation indicates that section 334 "codifies the Commission's equal employment opportunity rules, 47 CFR 73.2080" for television licensees and permittees. Section 334 thus grants the Commission explicit authority to regulate the EEO practices of television broadcasters. Section 334 was enacted as part of section 22 of the 1992 Cable Act, which sets forth Congressional findings that, despite existing FCC EEO rules, there were few women and minorities in managerial positions in the MVPD and broadcast industries; that increased employment of women and minorities in managerial positions will advance the national policy favoring diversity of viewpoints in the electronic media; and that rigorous enforcement of EEO rules is required to effectively deter racial and gender discrimination.

a. Congressional Ratification

17. The Commission has maintained nondiscrimination and EEO program requirements for broadcasters for more than 30 years. In 1968, the Commission concluded that the national policy against discrimination and the fact that broadcasters are licensed under the Communications Act to operate in the public interest required the Commission to consider allegations of employment discrimination in licensing broadcast stations. In 1969, the Commission adopted rules prohibiting broadcast stations from discriminating against any person in employment on the basis of race, color, religion, or national origin, and requiring stations to maintain a program designed to ensure equal opportunity in every aspect of station employment. It reiterated its view that discriminatory employment practices are incompatible with a station's obligation to operate in the public interest, and relied on sections 4(i), 303, 307, 308, 309 and 310 in adopting the new rules. Relying on its authority to license and regulate broadcasters in the public interest, the Commission has revised and extended its rules on numerous occasions since 1969 to, *inter alia*, refine its EEO program requirements, require licensees to file information concerning these programs

and other statistical employment information with the Commission, and prohibit discrimination against, and require outreach to, women.

18. Over the last 30 years, the Commission has vigorously enforced its EEO requirements, sanctioning broadcast licensees in numerous cases for failing to comply fully with those requirements. Commission decisions enforcing the EEO requirements have been challenged both by licensees who have been sanctioned for noncompliance and by petitioners who believed that Commission enforcement was not vigorous enough. Indeed, the Court of Appeals for the DC Circuit held more than 20 years ago that the Commission must investigate broadcasters' employment practices and, in assessing the character qualifications of broadcast licensees, consider whether they have engaged in intentional employment discrimination. And the Supreme Court observed in the seminal case addressing the scope of an agency's authority to serve the "public interest" that FCC regulation of the employment practices of its licensees "can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934 * * * to ensure that its licensees' programming fairly reflects the tastes and viewpoints of minority groups."

19. During the three decades that the Commission has administered EEO program requirements and nondiscrimination rules, Congress has repeatedly expressed awareness of the rules and has not only acquiesced in them, but has also referred to them approvingly, confirming our view that the Commission has statutory authority to promulgate these rules. Congress has ratified the Commission's authority to adopt and enforce EEO requirements against broadcasters under its statutory mandate to license and regulate broadcasters in the public interest.

20. In 1984, Congress enacted section 634 of the Communications Act as part of the Cable Communications Policy Act of 1984, Pub. L. 98-549, 98 Stat. 2779 ("1984 Cable Act"). Although the Commission at that time already had rules in place regulating the EEO practices of cable operators as well as broadcasters, section 634 was intended to "codify and strengthen[] the Commission's existing equal employment opportunity regulations." Section 634 granted the Commission broad authority to adopt rules banning employment discrimination by cable operators and requiring cable operators to "establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal

opportunity in every aspect of its employment policies and practices * * *."

21. The legislative history of section 634 makes it unmistakably clear that Congress believed that the Commission already possessed authority to regulate the EEO practices of mass media entities—broadcast as well as cable. The House Commerce Committee Report on the bill proposing the provisions on which section 634 was based explicitly confirmed the Commission's authority to adopt EEO rules. The House Commerce Committee stated:

(1) *It is well established that the Commission has the authority to regulate employment practices in the communications industry.* Among the Commission's efforts in the equal employment opportunity (EEO) area over the last several years has been the enforcement of employment standards in the cable industry. Section 634 endorses and extends those standards.

(2) Because of the potentially large impact cable programming and other services provided by the cable industry has on the public, the employment practices of the industry have an importance greater than that suggested by the number of its employees. The committee strongly believes that equal employment requirements are particularly important in the mass media area where employment is a critical means of assuring that program service will be responsive to a public consisting of a diverse array of population groups.

22. In addition to the explicit recognition of the Commission's broad and "well established" authority to regulate employment practices in the communications industry, the legislative history of section 634 shows that Congress viewed the legislation as codifying, strengthening and building upon the Commission's pre-existing regulatory scheme, which it viewed as well within the Commission's statutory authority.

23. Additional evidence of congressional ratification can be found in the Cable Television Consumer Protection and Competition Act of 1992, which further strengthened the cable EEO requirements, extended those requirements to all MVPDs, and codified the Commission's EEO program and nondiscrimination requirements as applied to broadcast television licensees. Congress once again explicitly acknowledged the existence of the Commission's broadcast and cable EEO requirements and proclaimed that vigorous enforcement of those rules served the public interest. Congress made the following findings in section 22(a) of the 1992 Cable Act:

(1) Despite the existence of regulations governing equal employment opportunity,