

females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) Increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) Rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

By extending the cable EEO requirements to every entity that provides multiple channels of video programming, such as MMDS operators and DBS licensees, Congress was building upon and closing the gaps in the Commission's regulatory scheme, ensuring that every electronic mass media provider would be subject to EEO regulations enforced by the Commission.

24. The 1992 Cable Act not only strengthened and extended the cable EEO requirements, it also codified the Commission's EEO requirements for broadcast television stations in section 334 of the Act. Section 334 thus explicitly recognizes the existence of the Commission's broadcast EEO rule and requires the Commission to keep its EEO requirements in effect for television broadcasters.

25. Section 22(g) of the 1992 Cable Act required the Commission to report to Congress within two years on "the effectiveness of [the Commission's] procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority." The Commission was required to include in that report "such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary." Congress would not have directed the Commission to review the effectiveness of its broadcast and cable EEO policies and regulations then in effect, and recommend whether further legislative action was necessary, had Congress not believed that those policies and regulations were within the Commission's lawful authority. Section 22(g) is further evidence of Congress's affirmative approval of the Commission's authority to adopt equal employment opportunity requirements for broadcasters.

26. There is another compelling reason to find in the current statutory context that Congress has ratified our authority to regulate the EEO practices of broadcasters. The Supreme Court has

held on numerous occasions that courts should interpret a statute "as a symmetrical and coherent regulatory scheme" and "fit, if possible, all parts into an harmonious whole." In interpreting statutes granting administrative or judicial jurisdiction, the Supreme Court has held specifically that any interpretation of congressional intent that will result in a "bizarre jurisdictional patchwork" is to be disfavored absent legislative history or a persuasive functional argument to the contrary. In this case, Congress has explicitly granted the Commission authority to regulate the EEO practices of television broadcasters, cable operators, and all other MVPDs, including such relative newcomers as DBS and MMDS operators. Thus, rejecting the inference of congressional ratification would leave us in the anomalous situation of having jurisdiction to regulate the EEO practices of broadcast television and MVPDs, but not radio broadcasters. There is no indication in the legislative history that this was Congress's intent and none of the broadcasters commenting in this proceeding even attempts to explain why Congress would have intended such a result.

27. The Commission since 1969 has interpreted the Communications Act's grant of authority to license and regulate broadcasters as the public interest, convenience and necessity require as authorizing the Commission to regulate the equal employment practices of broadcasters. Specifically, it has interpreted the statute as granting it authority to prohibit broadcast stations from engaging in employment discrimination and to require them to maintain programs designed to ensure equal opportunity in all aspects of station employment, including recruitment. It is that interpretation of the scope of the Commission's statutory authority under the Communications Act that Congress has ratified over the course of many years.

#### *B. Broadcast and MVPD EEO Rules, Policies, and Forms*

##### *1. Anti-Discrimination Provisions*

28. In the 2NPRM we proposed to retain the nondiscrimination provisions of our broadcast and MVPD EEO rules. We noted that the anti-discrimination provision of the broadcast EEO rule, § 73.2080(a), was not challenged in *Association*. Nonetheless, in rejecting the contention that the unlawful Option B could be severed from the EEO rule, the court stated that the "entire rule" must be vacated. In order to avoid any confusion arising from the language in

the court's decision, we recodify the nondiscrimination requirement. Nondiscrimination is an essential component of every licensee's obligation as a trustee of a valuable public resource. In *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, the court stated that "[a] documented pattern of intentional discrimination would put seriously into question a licensee's character qualifications to remain a licensee: intentional discrimination almost invariably would disqualify a broadcaster from a position of public trusteeship." Finally, we are required by statute to prohibit discrimination by broadcast television licensees and MVPDs.

29. As proposed in the 2NPRM, we will retain our policy of generally deferring action on individual complaints of employment discrimination against broadcasters and MVPDs pending final action by the Equal Employment Opportunity Commission ("EEOC") or other government agencies and/or courts established to enforce nondiscrimination laws. We will also retain the discretion to take action, notwithstanding the absence of a final decision by the EEOC or other agency/court, where the facts of a particular case so warrant. As indicated in the *R&O*, our policy generally reflects the fact that Congress intended the EEOC to be primarily responsible for the resolution of discrimination complaints and our separate adjudication of such complaints could result in duplicative or inconsistent decisions.

30. The rule adopted by the *R&O* defined a "religious broadcaster" as "a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity, 47 CFR 73.2080(a)." In the *R&O*, we clarified that, in the event of a controversy, we would determine on a case-by-case basis whether a licensee was a religious broadcaster by considering such factors as whether it operates on a non-profit basis, whether it has a distinct religious history, whether the entity's articles of incorporation set forth a religious purpose, and whether it carried religious programming.

##### *2. Broadcast EEO Program Requirements*

###### *a. Rules and Policies*

###### *i. General Considerations*

31. Several broadcast commenters have challenged the basis for our adopting any EEO rule for broadcasters. Initially, they seek to characterize our proposals in the 2NPRM as constituting "re-regulation." In fact, we have never