

Federal Communications Commission

§ 76.75

positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

§ 76.75 EEO program requirements.

Under the terms of its program, an employment unit must:

(a) Disseminate its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business. For example, this requirement may be met by:

(1) Posting notices in the employment unit's office and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency, if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of the community of a cable television system of the relevant labor area are Hispanic, such notices should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(2) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of race, color, religion, national origin, age or sex is prohibited and that they may notify the Equal

Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against.

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a cable entity to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to using such recruitment sources, a cable employment unit shall provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the cable employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least two (if the unit has more than ten full-time employees) or one (if the unit has six to ten full-time employees) of the following initiatives during each twelve-month period preceding the filing of an annual employment report:

(i) Participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose

membership includes substantial participation of women and minorities;

(iv) Participation in at least two events sponsored by organizations representing groups present in the community interested in cable employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community in acquiring skills needed for cable employment;

(vi) Participation in job banks, internet programs, and other programs designed to promote outreach generally (i.e., that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in a scholarship program designed to assist students interested in pursuing a career in cable communications;

(viii) Establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for unit personnel;

(x) Participation in at least two events or programs sponsored by educational institutions relating to career opportunities in cable communications;

(xi) Sponsorship of at least one event in the community designed to inform and educate members of the public as to employment opportunities in cable communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; and

(xiii) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in cable communications to job candidates who might otherwise be unaware of such opportunities.

(c) Retain records sufficient to document that it has satisfied the requirements of paragraphs (b)(1) and (b)(2) of this section. Such records, which may be maintained in an electronic format, shall be retained for a period of seven years. Such records need not be sub-

mitted to the Commission unless specifically requested. The following records shall be maintained:

(1) Listings of all full-time job vacancies filled by the cable employment unit, identified by job title;

(2) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person, and telephone number;

(3) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing job vacancies;

(4) Documentation necessary to demonstrate performance of the initiatives required by paragraph (b)(2) of this section, if applicable, including information sufficient to fully disclose the nature of the initiative and the scope of the unit's participation, including the unit personnel involved;

(5) The total number of interviewees for each vacancy and the referral sources for each interviewee; and

(6) The date each vacancy was filled and the recruitment source that referred the hiree.

(d) Undertake to offer promotions of minorities and women in a non-discriminatory fashion to positions of greater responsibility. For example, this requirement may be met by:

(1) Instructing those who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(2) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(3) Providing opportunity to perform overtime work on a basis that does not

discriminate against qualified minority group or female employees.

(e) Encourage minority and female entrepreneurs to conduct business with all parts of its operation. For example, this requirement may be met by:

(1) Recruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests.

(f) A cable entity may elect not to utilize the provisions of paragraphs (b)(1)(ii) (notification to requesting community groups) and (b)(2) (menu options) hereof, provided that it complies with the following alternative recruitment requirements:

(1) The employment unit shall maintain records as required by paragraph (c)(1) through (c)(3) of this section, and shall maintain, in lieu of the records required by paragraph (c)(4) through (c)(6) of this section, data reflecting the recruitment source, gender, and racial and/or ethnic status of applicants for each full-time job vacancy filled by the employment unit;

(2) The employment unit shall place annually in its public file maintained pursuant to § 76.1702 the information specified in § 76.1702(b)(1) and (2) and, in lieu of the information required by § 76.1702(b)(3) through (5), data reflecting, for each recruitment source utilized for any full-time vacancy during the preceding year, the total number of applicants generated by that source, the number of applicants who were female, and the number of applicants who were minority, identified by the applicable racial and/or ethnic group with which each applicant is associated.

(3) Cable employment units electing to proceed under this paragraph shall otherwise comply with the requirements specified in paragraph (b) of this section.

(g) A cable entity shall analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(h) Within forty-five days of the effective date of this paragraph (h) each

cable employment unit with six or more fulltime employees shall elect whether it wishes to utilize the recruitment procedures specified in paragraph (b) of this section or the alternate recruitment procedures specified in paragraph (f) of this section and shall file with the Commission a statement indicating the election which shall also be placed in the public inspection file maintained pursuant to § 76.1702. An employment unit may change its election annually at the time of the filing of the FCC Form 395-A or FCC Form 395-M. If the employment unit wishes to change its election, it shall so state in its FCC Form 395-A or FCC Form 395-M. A cable employment unit may also change its election at the time of a substantial change in its ownership by placing a statement of its new election in the public inspection file.

(i) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to assure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Reviewing seniority practices to ensure that such practices are non-discriminatory;

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of

discriminating against qualified minority groups or women.

(j) Cable entities shall substantially comply with paragraph (b)(1)(i) of this section in connection with hires for part-time positions. The remaining provisions of this section are not otherwise applicable to hires for part-time positions but are applicable only to full-time positions, defined as requiring a regular work schedule of 30 or more hours per week.

(k) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), (f) and (g) of this section shall not apply to cable employment units that have fewer than six full-time employees.

[50 FR 40855, Oct. 7, 1985, as amended at 65 FR 7457, Feb. 15, 2000]

§ 76.77 Reporting requirements.

(a) *Annual employment reports.* Employment data on the annual employment report required by § 76.1802 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 Commission, the same payroll period shall be used for each successive annual employment report. Employment units shall also provide EEO recruitment information covering a 12-month period, as requested and explained on the form. If a cable entity acquires a unit during the twelve months covered by the annual employment report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's annual employment report to determine whether the unit is in compliance with the provisions of this subpart. Employment profile statistics provided about race, ethnicity, and gender of employees will not be used to determine compliance with the EEO rules. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment units are

required to submit supplemental investigation information with their regular annual employment reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

(d) *Job category definitions.* The following job category definitions are to be used when classifying employees for purposes of this section:

(1) *Corporate officers.* An employee who is responsible for setting broad policies for the overall operation of the company and who holds a corporate office as designated by the company's governing regulations (e.g., Articles of Incorporation, Articles of Partnership, By-Laws). Examples of positions which may fall within this category include, Chairman of the Board, President and Vice President.

NOTE: Employees who perform responsibilities falling within the "Corporate Officers" and another of the job categories in paragraphs (d) (2) through (6), should normally be classified in only one of the categories in paragraphs (d) (2) through (6). Specific job titles for categories in paragraphs (d) (1) through (6) are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities and not merely the employee's title. Employees who are appropriately classified into one of the categories in paragraphs (d) (1) through (6) also should fall within the category of paragraph (d)(7).

(2) *General manager.* An employee who exercises overall responsibility for a cable unit or system. Related title may include "systems manager."

(3) *Chief technician.* An employee who has overall responsibility for the system's technical operations. The incumbent ordinarily oversees technical budgets and expenditures, inventory control and fleet management. Individual ordinarily supervises technical personnel in the installation, service, maintenance and construction departments and/or studio. Category includes