

REMARKS BY
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I appreciate your invitation to speak with you today, and I'd like to share with you some of my ideas pertaining to the policies and proposed legislation regarding, as Mr. Hammond described it, the Telecommunications Evolution. We are living in an era of rapidly changing telecommunications technology but perhaps less rapidly changing telecommunication policy. Madison once described the inefficiencies in government as guaranteeing us our freedom. I would cautiously disagree with Madison and argue that inefficiency in policy development is thwarting the development of new telecommunication technologies. I believe that it is the Commission's role to provide the regulatory framework in which the growth and development of new technologies is strongly encouraged. As a former broadcaster and as a Commissioner with tenure of over ten years, I think I can provide a unique perspective on both telecommunication development and telecommunication policy. Certainly, I have seen many mistakes in regulatory policy, and I hope that I have learned something along the way.

Regarding telecommunication technology, I believe the Commission has made great progress in its marketplace approach, thereby enabling the rapid implementation of new technologies. By relying on the marketplace, we are not guaranteeing the success of these new technologies, only ensuring that they have their chance in the marketplace. As policies change to permit the implementation of new technologies, many people have hopes that such technologies would provide an outlet for minority voices in the community. I believe that the Commission and the broadcast industry have made great strides in their responsibility to promote additional outlets for the expression of minority voices. Nevertheless, more remains to be done by all parties to assure that minority viewpoints are heard.

With this in mind, I would like to focus my remarks on responsibility. Specifically, the responsibility associated with equal employment opportunities and minority ownership. The Commission, and I might add, Congress, have instilled through regulation and law a sense of responsibility pertaining to EEO and ownership. The broadcast industry is also nurturing its own sense of responsibility to improve employment opportunities and minority ownership. Nehru, the great Indian democrat once said: "Democracy does not mean shouting loudly and persistently, though that might occasionally have some value. Freedom and democracy require responsibility and certain standards of behavior and self-discipline." In my view these are qualities that must be stressed as we continue to pursue fair telecommunications policy making.

Historically speaking, the FCC became involved in two broad areas of policies that impact minority representation in the

telecommunication industries. The Commission has recognized that there is a direct nexus between broadcasters' employment practices and the fulfillment of their public interest duty to present diverse programming that meets the needs and desires of the entire public. The Commission prefers to encourage program diversity by showing that industry employment reflects the demographic composition of the audience served rather than involving itself more directly in program content.

In 1968, the Commission indicated that discriminatory hiring practices would raise serious questions about a licensee's capability to operate in the public interest. In 1969, the Commission adopted a rule requiring equal opportunities in employment and by 1970, the Commission required licensees to file annual employment reports and written EEO programs. Additionally, in 1970 gender was added as a category to the non-discrimination rules and reporting requirements. At this time the Commission also included networks in filing requirements for equal employment opportunity programs. Much happened in 1972, the Commission adopted rules requiring cable operators with five or more full-time employees to file an initial EEO program statement at the time of registration, as well as annual employment reports. Processing standards were authorized for broadcast stations with more than ten full-time employees (later, changed to five full-time employees) based on the absence or decline of women and/or minorities on the station's staff. The D.C. Circuit Court in Stone v. FCC determined that employment of minorities need not be proportional to their percentages in the population of the community, but must be within a "zone of reasonableness."

Court decisions and Commission actions throughout the 1970's created a more rigorous equal employment opportunity program for broadcast licensees and cable operators. Efforts were made to interpret what the court meant by the "zone of reasonableness" standard and in 1976 the Commission adopted a 10 point model EEO program. Toward the end of the decade the FCC signed a Memorandum of Understanding with the Equal Employment Opportunities Commission that delineates investigative jurisdictions and outlines methods of cooperation.

Starting out the decade of the 1980's, the Commission proposed amendments to the model EEO program to provide a more complete and accurate record of licensee EEO performance. The Commission also began utilizing statistical processing criteria to identify cable employment units having questionable EEO programs. Just last year, the Commission designated the renewal applications of two broadcast licensees for hearings on possible misrepresentation of EEO data and deficient EEO programs.

Now I would like to put on the hat of a former broadcaster and note that the industry itself has recognized its

responsibility regarding equal employment opportunities. Regulatory policies like cattle prods may be necessary to get licensees moving in a certain direction. However, after regulatory policies have become established, then licensees can live either by the letter of the law or by the spirit of the law. It is far more effective for all if the parties abide by the spirit of the law.

Significant efforts have been made by the broadcast industry to increase their awareness of equal employment opportunities. Broadcasters through their associations have published information that would facilitate effective EEO programs by broadcast licensees. Such publications include a "Broadcaster's Guide to Designing and Implementing an EEO Program" published in 1980 by the National Association of Broadcasters, "It's a Lot Easier Than You Think...Living With EEO," again a publication by the NAB in 1981, and several publications to licensees keeping them posted on changes in EEO requirements and also means of implementing effective EEO programs. As a former broadcaster, I know how important one's sense of responsibility is if change is to be implemented. I am proud of my record at WJR in Detroit in its hiring and advancement of minorities. I know first-hand how effective a responsible licensee can be in these matters.

The third major area where I note progress involves Congress. The Cable Act of 1984 marked a milestone in the telecommunications industry with the codification of equal employment opportunity requirements. Section 634(c) of the Act states that any entity specified in this Section shall establish, maintain, and execute a positive continuing program of specific practices designed to insure equal opportunity in every aspect of its employment policies and practices. The Commission is currently developing a Notice of Proposed Rule Making addressing the areas of responsibility regarding equal employment opportunities delegated to the Commission by the Cable Act. On January 3, 1985, Congressman Leland introduced a bill in the 99th Congress that would amend the Communications Act of 1934 to assure that equal employment opportunities are afforded to all by radio and television broadcast stations. Essentially Congressman Leland's bill parallels the EEO requirements found in the Cable Act. We will have to see what Congress does with this bill.

Briefly, I have outlined three major areas of equal employment opportunities: (1) the regulatory policies of the Federal Communications Commission; (2) industry self-regulatory measures that help develop a sense of responsibility in licensees regarding EEO requirements, and (3) actions by Congress to codify equal employment opportunities.

The second major area of responsibility I would like to discuss today is minority ownership opportunities. In April of

1977, the Commission sponsored the Conference on Minority Ownership, and in May 1978 it released a policy statement pertaining to minority ownership of broadcast facilities. The Commission adopted the use of tax certificates to promote minority ownership. Tax certificates enabled the holder of a license to defer capital gains tax upon the sale of a broadcast property to a minority entrepreneur.

The policy statement continued the distress sale policy to encourage sales to minorities. This policy provides that a licensee whose renewal application has been designated for hearing can sell the station to a minority buyer at a "distress sale" price limited to 75% of the fair market value of the station. This option permits the seller to avoid the expense of hearings and the possibility that a license will be revoked.

In 1981, the Commission convened the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to address the issue of underrepresentation by minorities in the ownership of broadcast stations. In 1982, the Commission adopted a second policy statement regarding the advancement of minority ownership of broadcasting stations and a policy statement on minority ownership of cable television facilities. Under the new policy statement, distress sale and tax certificate policies are now available to limited partnership situations in which the general partner is a minority and holds at least a 20% equity interest. Previously, distress sale and tax certificate policies were available only to entities in which minorities owned more than 50%. The Commission also extended the availability of tax certificates to transactions involving cable television. To expedite the handling of distress sales, the Commission now permits the Mass Media Bureau on delegated authority to process and grant routine distress sale petitions.

The Commission also signed a Memorandum of Understanding with the Minority Business Development Agency of the U.S. Department of Commerce. This formalizes a cooperative effort to use the resources of that Agency's nationwide network of Minority Business Development Centers to promote minority ownership in telecommunications.

To facilitate minority ownership of broadcast entities, the Commission provided for a minority preference in the lottery system used to award low-power TV licenses. The Commission also has included a preference for minority ownership in the lottery system that will be used to award multipoint distribution service licenses. Most recently, the Commission gave particular consideration to minority interests in allocating the new FM channels in Docket 80-90. These efforts demonstrate the Commission's strong sense of responsibility pertaining to encouraging the ownership of broadcast services by minorities.

Industry has also shouldered responsibility to further the cause of minority ownership of broadcast stations. In 1977, the National Association of Broadcasters' Board created Broadcap, the Broadcast Capital Investment Fund, to provide equity funding, guarantees and low-cost loans to minority entrepreneurs.

In summary, policies enacted by the Commission, along with industry efforts to establish working capital, have provided greater opportunities for minorities who wish to participate in ownership of telecommunication entities. While these efforts clearly mark a beginning, such actions demonstrate a strong sense of responsibility to the needs of minorities.

My thoughts today have focused on responsibility and particularly responsibility in the areas of equal employment opportunities and minority ownership. I have highlighted the efforts made by the Commission and the broadcasting industry. I referenced the quote by Nehru when he said "...freedom and democracy require responsibility and certain standards of behavior and self-discipline." As I close, I challenge you to reflect upon what your responsibilities are in these areas. My colleagues and I at the Commission have worked to establish equal employment opportunities for minorities and preferred minority ownership policies. I hope that you will continue to share with us practical views on minority participation so that working together we can assure full minority representation in the broadcast media.