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if it selects video programming channels or programs and determines how they are presented for sale to consumers. Notwithstanding the foregoing, the regulations in this subpart are not applicable to the owners or originators (of programs or channels of programming) that distribute six or fewer channels of commonly-owned video programming over a leased transport facility. For purposes of this subpart, programming services are "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

(b) *Employment units.* The provisions of this subpart shall apply to cable entities as employment units. Each cable entity may be considered a separate employment unit; however, where two or more cable entities are under common ownership or control and are interrelated in their local management, operation, and utilization of employees, they shall constitute a single employment unit.

(c) *Headquarters office.* A multiple cable operator shall treat as a separate employment unit each headquarters office to the extent the work of that office is primarily related to the operation of more than one employment unit as described in paragraph (b) of this section.

[50 FR 40855, Oct. 7, 1985, as amended at 58 FR 42250, Aug. 9, 1993; 69 FR 72045, Dec. 10, 2004]

§ 76.73 General EEO policy.

(a) Equal opportunity in employment shall be afforded by each cable entity to all qualified persons, and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age or sex.

(b) Each employment unit shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity to every aspect of cable system employment policy and practice. Under the terms of its program, an employment unit shall:

(1) Define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and

control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the 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 Specific 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 full-time 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 multichannel video programming distributor 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 multichannel video programming distributor employment unit shall provide notification of each full-time 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 multichannel video programming distributor 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 and is not located in a smaller market) or one (if the unit has six to ten full-time employees and/or is located, in

whole or in part, in a smaller market) of the following initiatives during each twelve-month period preceding the filing of an EEO program annual 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 multichannel video programming distributor 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 multichannel video programming distributor 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 multichannel video programming 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 multichannel video programming 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 multichannel video programming communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose

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membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for multichannel video programming employment and/or other career development assistance pertinent to multichannel video programming communications;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in multichannel video programming employment opportunities that would enable them to better refer job candidates for multichannel video programming positions;

(xvi) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in multichannel video programming 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 submitted 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 informa-

tion 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 multichannel video programming distributor 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.

(g) Analyze on an ongoing basis its efforts to recruit, hire, promote and

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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 ensure 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.

(h) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

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

(j) For the purposes of this rule, a smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

[50 FR 40855, Oct. 7, 1985, as amended at 65 FR 7457, Feb. 15, 2000; 68 FR 691, Jan. 7, 2003]

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§ 76.77 Reporting requirements and enforcement.

(a) *EEO program annual reports.* Information concerning a unit's compliance with the EEO recruitment requirements shall be filed by each employment unit with six or more full-time employees on FCC Form 396-C on or before September 30 of each year. If a multichannel video programming distributor acquires a unit during the twelve months covered by the EEO program annual 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 EEO program annual report to determine whether the unit is in compliance with the provisions of this subpart. 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 EEO program annual 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) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with § 76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their EEO program annual reports and the supplemental investigation responses required by § 76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of employment units at