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## Court Overturns Radio, TV Rules On Minority Hiring

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WASHINGTON -- A federal appeals court overturned requirements that radio and television broadcasters hire racial minorities, in a setback for efforts by the Federal Communications Commission to bring more diversity to the nation's airwaves.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia yesterday said the FCC failed to show how its equal employment opportunities rules serve the public interest.

The commission adopted the rules in 1968 to foster more diverse programming. Broadcasters must meet the minority-hiring requirements to receive or renew a TV or radio license. Violations can result in fines and, in severe cases, loss of licenses.

About 20% of all full-time employees in radio and television are minorities, FCC officials say. In 1971, about 9% were minorities.

William Kennard, the FCC's first African-American chairman, said the commission was reviewing the court's ruling and its options for appeal. "The unfortunate reality in our nation today is that race and gender still matter," he said. "We all benefit when broadcasting, our nation's most influential medium, reflects the rich cultural diversity of our country."

Broadcast attorneys said that if it is upheld, the ruling's impact wouldn't be felt immediately. But over time, as hiring practices change, fewer minorities could hold major posts in the industry.

"It means that the steady progress of minorities in broadcast employment may lessen," said Andrew Schwartzman, president of the Washington-based Media Access Project, a nonprofit public-interest law firm. "Most troublesome is the narrow, crimped understanding of what the FCC's diversity objectives are."

The case was filed by the Lutheran Church-Missouri Synod, which owns two noncommercial, religious radio stations in Clayton, Mo. The FCC had found the church violated its EEO rules by not doing enough to recruit minority employees.

In considering the church's suit, the appellate panel unanimously concluded that the FCC "never defines exactly what it means by 'diverse programming.'" The court added: "The government's formulation of the interest seems too abstract to be meaningful."

Barry Gottfried, the church's attorney in the case, said his clients feel vindicated by the decision. He said he didn't anticipate the church stations would alter their hiring practices because of the ruling.

A spokesman for the National Association of Broadcasters said the industry group is reviewing the ruling and had no immediate comment.

The FCC's minority-hiring rules have evolved over the years and impose a number of requirements on TV and radio-station owners. The rules require stations to employ minorities at levels that reflect the racial makeup of the community they serve and to set up programs to recruit and train minorities.

"We do not think it matters whether a government hiring program imposes hard quotas, soft quotas, or goals," U.S. Circuit Judge Laurence Silberman wrote for the panel. "Any one of these techniques induces an employer to hire with an eye toward meeting the numerical target. As such, they can and surely will result in individuals being granted a preference because of their race."

The FCC could appeal the decision to either the full Appeals Court or to the U.S. Supreme Court, broadcast attorneys said.

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