



**Before the
Federal Communications Commission
Washington DC, 20554**

In the Matter of)	
)	
Commission Launches Modernization of Media Regulation Initiative))	MB Docket No. 17-105

COMMENTS

Gleiser Communications, LLC, the licensee of KTBB(AM), KYZS(AM), and KRWR(FM), Tyler, Texas, and through an affiliate, KTBB-FM, Troup, Texas ("Gleiser") writes to provide its comments in the above proceeding, which seeks to "eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome." Gleiser submits that, as a rule second only to the Public File Rule in terms of the paperwork burden imposed on broadcast stations, the Commission's EEO Rule (47 CFR Section 73.2080) is certainly an excellent candidate for such a review.

The FCC recognized earlier this year that its application of the EEO Rule had become outdated, changing its interpretation of the Rule by stating for the first time that "Internet usage has become sufficiently widespread to permit broadcasters and multichannel video programming distributors (MVPDs) to use it as a sole recruitment source to meet the 'wide dissemination' requirement in our rules."¹ Gleiser commends the FCC on making this helpful change, but the fact that it took until 2017 for the EEO Rule to finally acknowledge the universality of the Internet demonstrates how slowly the Rule has adapted to a changing environment.

While the Internet, emails, and texting have fundamentally changed and streamlined the hiring process for U.S. businesses and job applicants, the amount of FCC-required EEO paperwork has remained constant. In fact, maintaining that paperwork is often a more substantial administrative task than the hiring process itself, providing a disincentive for stations to create new job openings.

¹ *Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, MB Docket No. 16-410 (April 21, 2017) (https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-47A1.pdf), p. 1.

This is particularly true for stations with less than five full-time employees, who are exempt from most of the EEO paperwork requirements. Many stations would like to hire a fifth full-time employee, but are rightly hesitant to do so unless they are also willing to then hire a sixth employee to handle the many EEO paperwork burdens and tasks that fifth hire will trigger. Instead, stations stretch their four employees as far as they can, filling in with part-time and temporary workers as necessary. Where a rule that seeks to encourage diverse hiring actually ends up discouraging *any* hiring, it is safe to say that it is counterproductive and overly burdensome—the precise type of rule targeted by this proceeding.

In asking the FCC to examine the burdens placed upon stations by the EEO Rule, Gleiser wishes to emphasize that the ultimate intent of the rule—encouraging diverse broadcast ownership (by first encouraging diverse broadcast employment)—is a laudable one. Counterbalancing the massive paperwork burden involved, however, is the fact that the EEO Rule has been in place in one form or another for nearly 50 years, and yet the FCC itself notes that minority ownership in broadcasting remains around 3%, despite five decades of burdensome EEO paperwork for every non-exempt station in the country.²

In contrast, published reports indicate that the Minority Tax Certificate program, in place for just 17 years, increased minority broadcast ownership by **720%**.³ So the question is not whether minority ownership of broadcast stations is a laudable goal, but whether the EEO Rule is an ineffective, or at least incredibly inefficient, approach to accomplishing that goal. Despite requiring stations to produce many millions of pages of station paperwork over nearly five decades, the EEO Rule has failed to produce, even by the FCC's own measure, a fraction of the minority broadcast ownership achieved by the Minority Tax Certificate program in a third the time and without a single page of broadcast station paperwork or diversion of station resources.

In that regard, it appears the EEO Rule has never been subjected to a cost-benefit analysis; not so much in the pure economic sense, but one which assesses whether reliance on the EEO Rule has merely diverted attention from more productive, less burdensome approaches. As a station owner and not a policy maker, Gleiser is not in a position to advise the FCC on what those options might be (other than perhaps to urge support of the *Expanding Broadcast Ownership Act*, H.R. 1883, which would reintroduce Minority Tax Certificates).

² *Third Report on Ownership of Commercial Broadcast Stations*, Industry Analysis Division, Media Bureau (May 2017) (https://apps.fcc.gov/edocs_public/attachmatch/DOC-344821A1.pdf), p.4.

³ *Revival May Be Coming for Minority-Ownership Tax Program*, Inside Radio (April 6, 2017) (http://www.insideradio.com/free/revival-may-be-coming-for-minority-ownership-tax-program/article_f4fefec4-1a90-11e7-ac3e-fb8028d4d3b2.html).

Instead, these comments focus on something most broadcasters have had to become experts on—the overwhelming administrative and paperwork burdens imposed by the EEO Rule.

Of the three “parts” of the EEO Rule, Nondiscrimination, Wide Dissemination, and obtaining EEO “Credits”, only the Nondiscrimination requirement lacks significant accompanying paperwork. While perhaps redundant with state and federal nondiscrimination laws, broadcasters hold themselves to a high standard in this regard, and to Gleiser’s knowledge, over 50 years have passed since a licensee was last found by the FCC to have actually engaged in discrimination. While some could reasonably argue that this requirement is therefore unnecessary and redundant with other nondiscrimination laws, at least the paperwork burden on stations hasn’t been excessive.

In contrast, the Wide Dissemination requirement is the very definition of paperwork, requiring extensive recordkeeping of each job opening, including keeping records of ads and solicitations for applicants, where each was sent/placed, organizations contacted, copies of that correspondence, what the overall results were, the referral source of each interviewee, and the referral source of the person hired. As part of this effort, stations are required for each job opening to notify (and keep records of all correspondence to) every organization that has ever requested to be informed of openings, even if that organization has never actually referred an applicant. In fact, the EEO Rule doesn’t seem to provide a mechanism for removing non-productive organizations from the list. Once an organization is added, it just goes on forever.

Nor is having a summary of all this information sufficient. The EEO Rule specifically requires “dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies.” A station missing any of this has arguably violated the EEO Rule, no matter how thorough its actual outreach has been. It is for this reason that the EEO Rule is viewed by many broadcasters as the most burdensome from a paperwork standpoint, with significant risk even for stations with stellar outreach but mediocre recordkeeping skills.

All of this paperwork for each individual job opening is then used to create an additional piece of paperwork each year, the Annual EEO Public File Report. After that, stations must expend further resources defending their recordkeeping skills in EEO Audits and Mid-Term Reviews. Of course, because of prior court decisions, the Annual EEO Public File Reports do not include the race or ethnicity of interviewees and hires. In fact, many states specifically prohibit the collection of such information. It is therefore unclear how this mountain of paperwork, which at its essence demonstrates that a station had a job opening, promoted it, interviewed applicants, and hired one of them, would actually lead to increased minority ownership in broadcasting. Presumably any business hiring an employee goes through this very same process (minus the added paperwork).

To those outside the broadcast industry, the amount and breadth of paperwork involved in tracking Wide Dissemination is nothing short of astonishing. As a result, from purely a *paperwork* perspective, the third requirement, obtaining a mandatory number of EEO

“Credits” every two years of an eight-year license term is less burdensome than the paperwork associated with Wide Dissemination. Still, stations must maintain detailed records to demonstrate as much as eight years later that they engaged in an appropriate number of EEO Credit initiatives during every two-year segment of their license term.

More burdensome are the *resources* diverted from other station activities to accomplish these Credit Initiatives, which are specifically *not* connected to any available job, making them even more remote from the EEO Rule’s ultimate goal of increasing minority ownership in broadcasting. In fact, from conversations with other broadcasters, the Credit requirement appears to be having just the opposite effect.

For example, the EEO Rule provides that a station qualifies for one Credit by sending management personnel to at least four job fairs during each two-year Credit reporting period. Setting aside that job fairs are increasingly rare in the Internet age, it will hardly surprise the FCC that the number of jobs in the broadcast industry is shrinking. The significant growth in competition from non-broadcast companies with lower operating costs and national footprints, as well as advances in broadcast technology, have eliminated many station job positions. As a result, broadcasters have had to do more with less, and entry-level jobs are far less common than they once were.

In this environment, participating in a job fair every six months extolling the benefits of a broadcast career while being forced to concede that your station hasn’t had an opening in several years is at best frustrating to station personnel. More importantly, it sours potential job applicants in a way that is absolutely counterproductive to drawing them into the industry. It is the hiring equivalent of extending your hand but then quickly withdrawing it when the job fair attendee reaches out to shake it.

Far from making potential applicants aware of “employment opportunities in broadcasting”, it makes them aware of how scarce those opportunities can be. Meanwhile, other businesses at those same job fairs are there not because of a regulatory mandate, but because they, not surprisingly, have jobs to fill. Perpetually being the only table at a job fair that has no job openings kills any enthusiasm for broadcasting among the attendees.

Nor is this an isolated example. Of the sixteen types of EEO Credit listed in the EEO Rule, three involve jobs fairs, seven involve variations of Career Day/Job Bank activities, and three involve training/mentoring existing station personnel. That leaves just three other types of Credit in the rule. The first two are internships and scholarships, which can also alienate potential applicants who invest their time learning about the industry only to potentially find no local jobs are available. And the last Credit provided by the Rule is the “other activities” catchall, which no station dares utilize since it would then run the risk that the FCC will disagree as to whether the activity merits a full credit (ie, is the subjective equivalent of four job fairs), placing the station retroactively in violation of the Rule.

Gleiser therefore urges the FCC to carefully consider the EEO Rule in assessing ways to reduce unnecessary burdens on broadcasters. While increasing the EEO exemption (eg, from

stations with less than five full-time employees to those with less than ten) would reduce the paperwork burden for some stations, as noted above, in many regards the Rule is undermining its own objectives for all broadcasters. An examination of ways to reduce those burdens is long overdue. Gleiser therefore asks the FCC to utilize this proceeding to commence that reexamination of the EEO Rule.

Sincerely,

A handwritten signature in dark ink, reading "Paul L. Gleiser". The signature is written in a cursive, flowing style.

Paul L. Gleiser
President

Gleiser Communications, LLC

July 5, 2017