

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Review of EEO Compliance and) MB Docket No. 19-177
Enforcement in Broadcast and Multichannel)
Video Programming Industries)
)
)
)
)
To: Office of the Secretary
Attn: The Commission

JOINT REPLY COMMENTS OF 82 BROADCAST STATION LICENSEES

November 4, 2019

SUMMARY

82 Broadcasters, a filer of Joint Comments in this EEO proceeding, submit their Reply Comments to the Comments of ACA Connects, the Comments of the National Association of Broadcasters, and the Comments of EEO Supporters.

The FCC's NPRM sought comment on the Commission's track record on EEO enforcement and whether the agency should make improvements to EEO compliance and enforcement. Each of the four commenters in this FCC proceeding supports the FCC's nondiscrimination and diversity in broadcast station employment goals. Where the four commenters differ, however, is how the FCC should achieve these goals. Notably, there is no evidence presented by any of the four commenters that the current FCC documentation and recordkeeping requirements have either reduced discrimination, or led to increased diversity, in the broadcast station workplace.

Accordingly, as advocated by the 82 Broadcasters, it is time that the FCC reassess its current documentation and paperwork approach to nondiscrimination and employment diversity. In the absence of evidence that the current FCC's paperwork and recordkeeping requirements prevent or reduce discrimination, or increase employment diversity, the FCC should generally direct its regulatory efforts to finding effective ways to achieve the important goals of nondiscrimination and employment diversity, and specifically move forward with the adoption of the rule changes advocated by the 82 Broadcasters.

TABLE OF CONTENTS

INTRODUCTION.....2

**THERE IS NO FACTUAL SUPPORT SUBMITTED IN THIS PROCEEDING
FOR THE FCC’S CURRENT DOCUMENTATION AND
PAPERWORK RULES.....3**

**THE 82 BROADCASTERS PROPOSAL IS MISCHARACTERIZED BY THE
EEO SUPPORTERS.....7**

**ABSENT EVIDENCE OF EFFECTIVENESS, THE FCC’S EEO PAPERWORK
AND RECORDKEEPING RULES NEED TO BE MODIFIED..... 11**

CONCLUSION 13

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The Notice of Proposed Rulemaking (the “NPRM”)¹ in this FCC proceeding to review its Equal Employment Opportunity (“EEO”) rules resulted in four substantive comments being filed by the September 20, 2019 comment deadline.² The four comments filed are:

- Joint Comments of 82 Broadcast Station Licensees and Petition for Further Notice of Proposed Rulemaking (“82 Broadcasters”), filed July 18, 2019;
- Comments of ACA Connects – America’s Communications Association on the Notice of Proposed Rulemaking (“ACA”), filed September 20, 2019;
- Comments of the National Association of Broadcasters (“NAB”) filed September 20, 2019; and
- Comments of the EEO Supporters (“EEO Supporters”), filed September 20, 2019.

¹ *Review of EEO Compliance and Enforcement in Broadcast and Multichannel Video Programming Industries*, Notice of Proposed Rulemaking, MM Docket No. 19-177, FCC 19-54, released June 21 2019.

² The date for filing comments in this proceeding was extended to September 20, 2019 by *Order Granting Extension of Time to File Comments and Reply Comments*, DA 19-721, released July 30, 2019.

The undersigned 82 Broadcasters (the “82 Broadcasters”) hereby submit their reply comments (these “Reply Comments”) in support of the proposals of the 82 Broadcasters contained in their July 18, 2019 Joint Comments, and offer the following observations on the comments of ACA, NAB and the EEO Supporters:

INTRODUCTION

1. The FCC’s NPRM sought “comment on the Commission’s track record on EEO enforcement and whether the agency should make improvements to EEO compliance and enforcement [asking specifically whether the FCC’s] EEO rules are an effective deterrent to discrimination in the broadcast and MVPD industries ...”.³ The FCC recounted in the NPRM “Background” section the current voluminous and extensive EEO program, outreach, recruitment, documentation and recordkeeping required of broadcasters that is further backed up with extensive reporting and audits. The FCC noted that a group of 34 organizations offered suggestions for improving the Commission’s EEO enforcement.⁴ The FCC advised that “commenters should ... supply any data or studies indicating that such proposals would be consistent with the U.S. Constitution and further the Commission goal of nondiscrimination in broadcaster and MVPD employment ...”.⁵

³ NPRM at paragraphs 5 and 9.

⁴ *Id* at paragraphs 7 – 8. These organizations are also identified in the NPRM as EEO Supporters.

⁵ *Id* at paragraph 9.

2. Each of the four commenters in this FCC proceeding supports the FCC's nondiscrimination and diversity in broadcast station employment goals. Where the four commenters differ is how the FCC should achieve these goals.

3. As described below, there is no evidence presented by any of the four commenters that the current FCC documentation and recordkeeping requirements have either reduced discrimination, or led to an increase in diversity, in the workplace. The FCC specifically requested such substantive data and studies in support of its EEO rules but none was submitted. Accordingly, as specifically advocated by the 82 Broadcasters, it is time that the FCC reassess its current documentation and paperwork approach to nondiscrimination and employment diversity, most particularly in connection with smaller broadcasters.

THERE IS NO FACTUAL SUPPORT SUBMITTED IN THIS PROCEEDING FOR THE FCC'S CURRENT DOCUMENTATION AND PAPERWORK RULES

4. The NPRM presented the opportunity for commenters to show the FCC and public that the current regimen of FCC EEO paperwork and recordkeeping is yielding either reduced discriminatory conduct, or increased employment diversity, in the broadcasting and MVPD industries. This proceeding failed to produce any evidence, however, that current paperwork and recordkeeping requirements are reducing discrimination or increasing diversity. Rather, the EEO Supporters themselves admit that "minority ownership has

stagnated [since 1995],”⁶ and submit no data whatsoever on reductions in employment discrimination or increases in employment diversity resulting from the current FCC EEO rules. Clearly, the FCC’s EEO paperwork and recordkeeping requirements are not achieving their intended laudable goals.

5. While the FCC may not have itself collected and compiled such data and may be constitutionally restrained from doing so⁷, there is nothing to have prevented outside parties with an interest in the continuation and augmentation of the FCC’s paperwork and recordkeeping requirements from commissioning studies to obtain data.⁸ Indeed, the FCC specifically asked for it in the NPRM.⁹

6. To be clear, all commenters support the FCC’s anti-discrimination and diversity-in-employment goals. But, commenters differ on the means to reach these goals. What the commenters do not universally support are the FCC’s paperwork and recordkeeping requirements that have proven over time to be nonproductive. Indeed, if the FCC’s paperwork and recordkeeping requirements do nothing toward reducing discrimination or enhancing diversity, they should and must be jettisoned. Without data, or even anecdotal evidence, that the FCC’s

⁶ EEO Supporters Comments at page 9.

⁷ *See e.g.* NAB Comments at pages 4-11

⁸ It strains credulity to surmise, as the EEO Supporters appear to suggest, that absent FCC-sponsored efforts through the FCC Form 395, such data is wholly unavailable. The EEO Supporters do not reference any attempt at their own data collection efforts whatsoever. Even if industry-wide data is not immediately available, there are credible sampling methods that may be used to assess changes in workforces over time. The EEO Supporters failure to provide such data can only lead to the conclusion that such data would not support the premise that the FCC’s paperwork and recordkeeping requirements have done anything to either prevent employment discrimination or enhance employment diversity.

⁹ *See* footnote 5.

paperwork and recordkeeping requirements reduce discrimination or increase diversity, the conclusion is that that there needs to be a different approach.

7. A review of the Comments from the EEO Supporters is instructive to show the commonality of goals with the 82 Broadcasters while highlighting the absence of data:

- The EEO Supporters extol the FCC’s rules that prevent and proscribe discrimination,¹⁰ citing to an FCC 1996 Notice of Proposed Rulemaking that an “underlying rationale” for the FCC’s EEO rules is the deterrence of unlawful discrimination.¹¹ There is no argument as to the rationale for the FCC’s EEO rules and goals – the issue is rather as to the regulatory methods to be employed.
- The EEO Supporters make claims that the FCC’s EEO anti-discrimination rules “promote competition”¹² and “help eliminate artificial restraints on the supply of labor”.¹³ Again, there is no argument over the FCC’s anti-discrimination rules -- all commenters agree that employment discrimination in protected classes is properly illegal.
- The EEO Supporters posit that the FCC’s “EEO rules improve the survivability and strength of competitive firms”¹⁴ noting that diversity in employment likely leads to more minority owned firms. Likewise, there is no quarrel with this –more minority owned firms is an essential needed goal but just saying it demonstrates nothing about whether the FCC’s paperwork and recordkeeping requirements actually accomplish diversity in employment and lead to this goal.
- The EEO Supporters argue that the FCC’s “EEO rules opened the doors of broadcasting to the two-thirds of our population who

¹⁰ EEO Supporters Comments at pages 2-3.

¹¹ *Id* at footnote 4.

¹² *Id* at page 3.

¹³ *Id*.

¹⁴ *Id*.

are not White men” without citing any evidence, data or support to buttress such an important claim. If, indeed, the FCC’s paperwork and recordkeeping requirements actually resulted in such a sea-change in broadcast station employment, certainly there must be some data or something to show this. But no such data has been tendered. Rather, the EEO Supporters “[make] the case for media diversity” with a long quote from a TV news director.¹⁵ Again, at the risk of being repetitive, there is no squabble over the goal of media diversity – the question is whether the FCC’s paperwork and recordkeeping requirements help in any manner to achieve such media diversity.

- The EEO Supporters theorize that the FCC’s “[EEO] rules inspire non-discrimination in all American industries”¹⁶ which is superb were it true. But again, there is no evidence presented that they do.

8. Finally, in what can only be characterized as an admission against the entire scheme of the FCC’s nonproductive paperwork and recordkeeping requirements, the EEO supporters claim that the EEO rules “help advance minority ownership” and are “overwhelmingly cost/benefit justified”.¹⁷ It is here that the EEO Supporters note the stagnation of minority ownership since 1995.¹⁸ If the FCC’s paperwork and recordkeeping requirements are not increasing minority ownership, and have not in the past 24 years, and the EEO Supporters offer no data or evidence that the FCC’s paperwork and recordkeeping requirements have any effect whatsoever on nondiscrimination and diversity in

¹⁵ *Id* at page 7.

¹⁶ Citing a letter from Stephen J. Pollak, Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, May 21, 1968

¹⁷ EEO Supporters Comments at pages 8-13.

¹⁸ *Id* at page 9.

employment, possibly it is time to reassess the FCC’s voluminous EEO paperwork and recordkeeping requirements.

THE 82 BROADCASTERS PROPOSAL IS MISCHARACTERIZED BY THE EEO SUPPORTERS

9. The EEO Supporters state that they “take no position” on two of the three proposals proffered by the 82 Broadcasters, and “strongly oppose” one of the three.¹⁹ In arguing their opposition, the EEO Supporters mischaracterize the 82 Broadcasters proposals.²⁰

10. The 82 Broadcasters advocated for FCC rule changes that would require a wide-outreach through a nationally or regionally recognized job-oriented website for every fulltime broadcast station employment opening no matter how few employees that employer may employ.²¹ The EEO Supporters inexplicably take no position on this proposal, calling it a “slight benefit” and claiming that “most stations smaller than five employees are family-operated and seldom look outside of the family when jobs are open²².”

11. The 82 Broadcasters firmly believe from their own personal and business experience that the doorway, indeed the pathway, to broadcasting careers runs directly through the smallest broadcast stations. Without a first-step in

¹⁹ *Id* at page 34.

²⁰ The full text of the FCC rule changes proposed by the 82 Broadcasters is attached at Appendix A to these Reply Comments.

²¹ 82 Broadcasters Joint Comments at pages 3-4. In the 82 Broadcasters Joint Comments, this is referred to as “Proposal One”.

²² EEO Supporters Comments at page 34, citing FCC reasoning from 1969. It is possible, of course, that the broadcasting industry employment picture has changed in the past fifty years.

broadcast industry employment, there is no second-step. Many of the 82 Broadcasters, their industry colleagues, their industry attorneys and indeed FCC commissioners, have commenced their broadcasting careers at a college radio station or the smallest of radio or television stations. So, for the EEO Supporters to denigrate and dismiss the worth of online job postings for all stations including even the smallest of stations is contrary to most broadcasters' experiences.

12. Hopefully, the EEO Supporters can at least agree that a posting of all broadcast station openings on a job-oriented website would not harm employment diversity. A simple internet search of the phrase "most effective job search websites for minorities" quickly demonstrates that the 82 Broadcasters are correct in their proposition that internet-based job search sites are, in today's environment, the most effective way to reach a diverse universe of job seekers.

13. The 82 Broadcasters further advocated for a rule change that would put an end to the consideration of market-based "employment units" given the abolition of the broadcast station main studio rule, in favor of an examination of a broadcaster as an entire entity.²³ The EEO Supporters likewise take no position on this proposal but somewhat mischaracterize it by positing that its only justification is a perceived abuse of the main studio rule repeal.

14. Rather, the 82 Broadcasters cogently explained that since the FCC eliminated its main studio rule, using local market-based employment units for

²³ 82 Broadcasters Joint Comments at pages 5-7. In the 82 Broadcasters Joint Comments, this is referred to as "Proposal Two".

EEO metrics is an anachronism as broadcast station employees may not now and in the future be physically located in a broadcast station's market.²⁴ Also, the use of market-based employment units multiplies the paperwork and documents that must be prepared to show FCC EEO rule compliance by multi-station entities without furthering the goals of the FCC's EEO programs or increasing the amount of, or specificity of, the information provided.²⁵ The 82 Broadcasters advocated that for both the purpose of the FCC's specific EEO program requirements in Section 73.2080(c) including documentation such as the FCC's Annual EEO Public File Report, and for the FCC's calculation of the minimum number of employees in the small broadcaster exemption in Section 73.2080(d) discussed below, the FCC should regard all employees in a broadcast station entity, including affiliates, subsidiaries and parents, as one employment unit.²⁶

15. Finally, the 82 Broadcasters advocated for a rule change that would, in conjunction with Proposals One and Two above, reset the FCC's small station exemption for EEO documentation and supplemental initiative requirements, including the Annual EEO Public File report, for a broadcasting entity (not the current employment unit) that has fewer than 50 employees, with 50 employees being the number of employees for which a human resource director is normally

²⁴ *Id* at pages 5-6.

²⁵ *Id.*

²⁶ *Id* at page 6.

regarded by the human resources profession as needed.²⁷ The EEO Supporters mistakenly assert that “[i]n several states, every radio and nearly every television station would be EEO-exempt”,²⁸ stating that this “exempting most of the industry from EEO compliance would be devastating”.²⁹

16. This assertion by the EEO Supporters that in several states every radio and nearly every television station would be exempt from FCC EEO requirements under the 82 Broadcasters proposal is factually wrong. It ignores that any broadcasting entity that has 50 or more employees would not be exempt from the FCC’s paperwork and recordkeeping requirements for all of its broadcast stations. There are numerous broadcasting entities that have 50 or greater employees entity-wide and those entities collectively have broadcast stations in every state.³⁰

17. In response to the 82 Broadcasters argument that FCC paperwork and recordkeeping requirements are a burden on small broadcasting entities, the EEO Supporters observe that:

ownership coupled with nondiscrimination is not a ‘burden’. Discrimination is a burden. ... Preventing discrimination is an interest of the ‘highest priority’.³¹

²⁷ *Id* at pages 7-10. In the 82 Broadcasters Joint Comments, this is referred to as “Proposal Three”.

²⁸ EEO Supporters Comments at page 35.

²⁹ *Id.*

³⁰For example, just a cursory review of the FCC ownership reports for iHeartMedia show attributable radio stations for that very large entity in 48 states and the District of Columbia.

³¹ EEO Supporters Comments at page 36,

There is absolutely no argument here on preventing discrimination. But as noted above, this proceeding has failed to produce any data or evidence that the FCC's paperwork and recordkeeping requirements prevent or reduce discrimination, or increase employment diversity.

ABSENT EVIDENCE OF EFFECTIVENESS, THE FCC'S EEO PAPERWORK AND RECORDKEEPING RULES NEED TO BE MODIFIED

18. The 82 Broadcasters have no desire to lessen or diminish the FCC's quest for diversity in employment, and full and transparent opportunities for all seekers of jobs in the broadcasting industry.³² To the contrary, the 82 Broadcasters believe that the Commission can do more to achieve its goal.³³

19. It is hoped that the 82 Broadcasters will inspire a discussion as to how the FCC's rules can be more effective. The NAB Comments echo this, stating that:

instead of taking the easy, familiar path of focusing on additional rules and regulations, the Commission should take pro-active, concrete steps that will actually increase employment diversity.³⁴

The NAB goes on to suggest several ways that the FCC could work with industry toward a goal of greater employment diversity, and points to the NAB's vigorous

³² 82 Broadcasters Joint Comments at page 10.

³³ *Id.*

³⁴ NAB Comments at page 3.

and expansive sponsorship and participation in programs to enhance employment diversity within our industry.³⁵

20. The NAB also advocates for a reduction in “unnecessary burdens on broadcasters, especially smaller stations”³⁶ which is appreciated by the 82 Broadcasters. ACA supports reducing the “regulatory burdens placed on smaller [cable companies]” noting that if the Commission should find it appropriate to adopt some form of the 82 Broadcasters proposals for broadcasters, cable entities should likewise be included.³⁷

21. The subject of excessive paperwork and recordkeeping is especially poignant for smaller broadcasting entities. As noted by the 82 Broadcasters in their Joint Comments, there is nothing more sapping to a small broadcasting entity than EEO paperwork and documentation that it is not staffed to handle, knowing that its larger competition has an HR department handling such recordkeeping.³⁸ When such documentation and recordkeeping is imposed upon a small broadcaster entity, it is a crippling resource burden that simply takes away from the important task of broadcasting.

³⁵ NAB Comments at pages 11-14.

³⁶ *Id* at page 4. Contrary to the assertion of the EEO Supporters, the word “burden” is not a “dog whistle” being used by the 82 Broadcasters and other commenters in the same way that busing opponents used the word “states rights” and anti-immigrant forces now use words like “flood” and “invade”. See EEO Supporters Comments at footnote 97. The 82 Broadcasters proposal in this proceeding is a good faith effort to address which FCC rules and regulations work, and which do not work, toward a common goal of nondiscrimination and employment diversity.

³⁷ ACA Comments at pages 8-9.

³⁸ 82 Broadcasters Joint Comments at page 11.

CONCLUSION

22. In conclusion, the 82 Broadcasters thank the NAB and ACA for their supporting comments which advocate for a reduction in required FCC EEO paperwork. The vigor of the EEO Supporters is appreciated and are asked, in the absence of evidence that the current FCC's paperwork and recordkeeping requirements reduce discrimination or increase employment diversity, that they commit to working with the FCC, the broadcasting industry and the cable industry to find truly effective ways to achieve our mutual goals of nondiscrimination and employment diversity. Further, the Commission is urged to move forward with the rule changes proposed by the 82 Broadcasters specifically delineated in their Joint Comments and in Appendix A below.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP³⁹

By: /s/ John F. Garziglia

John F. Garziglia

Gregg P. Skall

Counsel

Womble Bond Dickinson (US) LLP
1200 19th Street, N.W. Suite 500
Washington, DC 20036
(202) 857-4455

³⁹ Womble Bond Dickinson (US) LLP is counsel to those signatories below indicated with an asterisk.

**MILLER COMMUNICATIONS, INC.*
KASKASKIA BROADCASTING, INC.***

By: /s/ Randal J. Miller
Randal J. Miller
President

Miller Communications, Inc.: WRAN/WMKR/W241CF/W281BO
Kaskaskia Broadcasting, Inc.: WTIM/WSVZ/WHOW/WEZC/W243D/W298CD/
W299CP/W222BG/W298DJ
918 East Park, PO Box 169
Taylorville, IL 62568-0169
(217) 824-3395

**THE CROMWELL GROUP, INC. OF ILLINOIS*
HANCOCK COMMUNICATIONS, INC.*
WYCQ, INC.***

By: /s/ Bayard H Walters
Bayard H Walters
President

The Cromwell Group, Inc. of Illinois: WCRA/WMCI/WHQQ/WZNX/WYDS/
WCRA/WCRC/WCBH/WKRV/WPMB/WJLG/WEJT/WZUS/WWGO
Hancock Communications, Inc.: WKCM/WLME/WTCJ/WCJZ/WXCM/WVJS/
WBIO
WYCQ, Inc.: WBUZ/WQZQ/WPRT-FM
PO Box 150846
Nashville, TN 37215
(615) 361-7560

PRIORITY COMMUNICATIONS INC.*

By: /s/ Jay M. Philippone
Jay M. Philippone
President

Priority Communications Inc.
WDSN-FM/WCED-AM
12 West Long Avenue
DuBois, PA 15801
(814) 375-5260 ext. 700

BLAKENEY COMMUNICATIONS, INC.

By: /s/ Larry Blakeney
Larry Blakeney
President

Blakeney Communications, Inc.
WBBN-FM/WXRR-FM/WKZW-FM/WXHB-FM/WXRR-HD2/W249AO
P.O. Box 6408
Laurel, MS 39441
(601) 518-7715

RADIGAN BROADCASTING GROUP, LLC

By: /s/ David M. Radigan
David M. Radigan
President

Radigan Broadcasting Group, LLC
WEBO-AM/W253CH/W267BQ/W286CS/W300BV
60 North Avenue
Owego, NY 13827
(607) 687-9933

EUREKA BROADCASTING CO., INC.*

By: /s/ Brian Papstein
 Brian Papstein
 President

Eureka Broadcasting Co., Inc.
Mover of Mountains
KURY/KURY-FM/KWSW/KEJY/KEKA-FM/KINS-FM/K265BT/K287CF
1101 Marsh Road
Eureka, CA 95501
(707) 442-5744

FENTY FUSS

By: /s/ Fenty Fuss
 Fenty Fuss
 Licensee

Fenty Fuss
WZYQ/WNOU
9408 Grand Gate Street
Las Vegas NV 89143
(662) 843-3392

NODAWAY BROADCASTING CORP.*

By: /s/ Jim Cronin
 Jim Cronin
 President

Nodaway Broadcasting Corp.
KVVL/KNIM
PO Box 278
1618 South Main
Maryville, MO 64468
(660) 582-2151

**DELTA RADIO, LLC
DELTA RADIO NETWORK, LLC
SOUTH SEAS BROADCASTING, INC.
CONTEMPORARY COMMUNICATIONS, LLC
KAUAI BROADCAST PARTNERS, LLC**

By: /s/ Larry Fuss
Larry Fuss
President

Delta Radio, LLC: WKXY
Delta Radio Network, LLC: WDTL/WIBT/WIQQ/WNIX/WNLA)
South Seas Broadcasting, Inc.: KKHJ/WVUV
Contemporary Communications, LLC: KZYQ/KKBT/WMYQ
Kauai Broadcast Partners, LLC: KHKU
9408 Grand Gate Street
Las Vegas, NV 89143
(702) 328-4669

JOHN H. & LYNN C. ALLEN

By: /s/ John H. & Lynn C. Allen
John H. & Lynn C. Allen
Licensee

John H. & Lynn C. Allen
WBYB
62 Semmes Road
Grenada MS 38901
(662) 392-0460

**PARADIS BROADCASTING OF ALEXANDRIA,
INC.**

By: /s/ Brett Paradis
Brett Paradis
President/CEO

Paradis Broadcasting of Alexandria, Inc.
KXRA-AM/KXRA-FM/KXRZ-FM
1312 Broadway Street
Alexandria MN 56308
(320) 760-5141

MEREDITH COMMUNICATIONS LC

By: /s/ William J Saluk
William J Saluk
Vice President

Meredith Communications LC
KSOM-FM/KSWI-FM
413 Chestnut Street
Atlantic, IA 50022
(712) 243-6885

**EASTERN UTAH BROADCASTING
COMPANY***

By: /s/ Paul Anderson
Paul Anderson
President

Eastern Utah Broadcasting Company
KOAL/KARB/KRPX
P.O. Box 875
Price, UT 84501
(435) 637-1167

**MWB BROADCASTING II LLC
MID NEBRASKA BROADCASTING, LLC**

By: /s/ Mark G. Jensen
Mark G. Jensen

MWB Broadcasting II LLC
Mid Nebraska Broadcasting, LLC
KNLV-AM/KNLV-FM/KBRY-FM
7801 W Gerlach Drive
Lincoln, NE 68532
(402) 362-4433

METROPLEX COMMUNICATIONS, INC.*

By: /s/ Samuel M. Stemm
Samuel M. Stemm
President

Metroplex Communications, Inc.
WBGZ/W232CR/The Big Z
227 Market Street
P.O. Box 615
Alton, IL 602
(618) 465-3535

BARRY BROADCASTING CO.*

By: /s/ Steven K. Radant
Steven K. Radant
President

Barry Broadcasting Co.
WBCH/WBCH-FM
119 W. State Street
Hastings, MI 49058
(269) 945-3414

**DAKOTA BROADCASTING, LLC
COMMUNITY FIRST BROADCASTING, LLC**

By: /s/ Neil Lipetzky
Neil Lipetzky
Managing Partner

Dakota Broadcasting, LLC: KABD-FM/KMOM-FM
Community First Broadcasting, LLC: KUYF-FM/KUQQ-FM/KUOO-FM,
KUXX-FM/KKOJ-AM/KAYL-AM/KAYL-FM/KKIA-FM/KSOU-AM/KSOU-
FM/KIHK-FM
5809 S. Remington Place, Suite 106
Sioux Falls, SD 57108
(605) 274-3373

**RESULTS BROADCASTING, INC.*
RESULTS BROADCASTING OF IRON
MOUNTAIN, INC.***

By: /s/ Donald W. Grassman
Donald W. Grassman
President

Results Broadcasting, Inc.: WTCH-AM/WOWN-FM/WOTE-AM/WJMQ-FM/
WACD-FM/WATK-AM/W235CQ/W243CM/W254AX
Results Broadcasting of Iron Mountain, Inc.: WJNR-FM/WHTO-FM/WOBE-FM/
W241CJ
PO Box 456
Shawano, WI 54166
(715) 524-2194

PAYNE 5 COMMUNICATIONS, LLC

By: /s/ Gail C. Payne
Gail C. Payne
Minority Owner

Payne 5 Communications, LLC
KEOK/KLTQ/K227DG
3405 E Louisville Street
Broken Arrow, OK 74014
(918) 457-3512

SHELDON BROADCASTING CO., INC.*

By: /s/ Walt Pruiksmma
Walt Pruiksmma
President / General Manager

Sheldon Broadcasting Co., Inc.
KIWA AM 1550 / 100.7 All Talk All the Time
KIWA FM 105.3 Classic Hits
411 9th Street
Sheldon, IA 51201
(712) 324-2597

DOUGLAS BROADCASTING, INC.*

By: /s/Dennis Switzer
Dennis Switzer
President

Douglas Broadcasting, Inc.
KKTS-AM/KKTS-FM/KKTY-AM/KKTY-FM
247 Russell Avenue
Douglas, WY 82633
(307) 358-3636

**BRISTOL COUNTY BROADCASTING, INC.*
SNE BROADCASTING, LTD.***

By: /s/ Robert Karam _____
 Robert Karam
 President

Bristol County Broadcasting, Inc.: WSAR
SNE Broadcasting, Ltd.: WHTB
456 Rock Street
Fall River, MA 02722
(508) 679-2704

MURPHYS LAW MEDIA GROUP LLC

By: /s/Jim Murphy _____
 Jim Murphy
 Owner/GM

Murphys Law Media Group LLC: WRJC/W225BF - SMASH Country
92.9FM/AM1270 WRJC-FM - NOW 92one FM
N5240 Fairway Lane
Mauston, WI 53948
(608) 847-6565

**EAST ARKANSAS BROADCASTERS, INC.*
ARKANSAS COUNTY BROADCASTERS, INC.*
COMBINED MEDIA GROUP, INC.*
EAST ARKANSAS BROADCASTERS OF
JONESBORO, LLC*
EAB OF RUSSELLVILLE, LLC*
EAB OF MORRILTON, LLC*
EAB OF CLARKSVILLE, LLC***

By: /s/Bobby Caldwell
Bobby Caldwell
President

East Arkansas Broadcasters, Inc.: KWYN AM-FM/KBRI/KTRQ/KIYS
Arkansas County Broadcasters, Inc.: KWAK AM-FM/KDEW-FM/KOTN/
KXFE/KBRI/KVLO
Combined Media Group, Inc.: KRLW AM-FM/KPOC AM-FM
East Arkansas Broadcasters of Jonesboro, LLC: KFIN/KBTM/KNEA/KWHF
EAB of Russellville, LLC: KCAB/KWKK/KARV AM-FM/KYEL/KXIO/KCJC
EAB of Morrilton, LLC: KVOM AM-FM
EAB of Clarksville, LLC: KXIO
P.O. Box 789 - Highway 64 West
Wynne, AR 72396
(870) 238-8141

**CHESTERMAN COMMUNICATIONS
JAMESTOWN, INC.**

By: /s/ Patrick R. Pfeiffer
Patrick R. Pfeiffer
Vice President/GM

Chesterman Communications Jamestown, Inc.
KSJB-AM/KSJZ-FM
2400 8th Ave SW, D1
Jamestown, ND 58401
(701) 252-3570

**GEORGIA-CAROLINA RADIOCASTING
COMPANY, LLC*
SUTTON RADIOCASTING CORPORATION*
TUGART PROPERTIES, LLC*
LAKE HARTWELL RADIO, INC.*
APPALACHIAN BROADCASTING COMPANY,
INC.***

By: /s/ Douglas M. "Art" Sutton, Jr.
Douglas M. "Art" Sutton, Jr.
President/CEO

Georgia-Carolina Radiocasting Company, LLC: WNEG(AM)/W226BY/
WHTD(AM)/W259DH/WSGC-FM/ WVGC(FM)
Sutton Radiocasting Corporation: WFSC(AM)/WNCC(FM)/W267AD/W285FD/
WRBN(FM)/W262CE
Tugart Properties, LLC: WSNW(AM)/W231BX/W278CG
Lake Hartwell Radio, Inc.: WLHR-FM
Appalachian Broadcasting Company, Inc.: WGOG(FM)
P O Drawer E
233 Big A Road
Toccoa, GA 30577
(706) 297-7264

CHARISMA RADIO CORP *

By: /s/ Charles B. Cooper
Charles B. Cooper
President/Owner

Charisma Radio Corp.
W H L C Radio
P. O. Box 1889
Highlands, NC 28741
(828) 526-1045

PAYNE MEDIA GROUP LLC

By: /s/ Will Payne
Will Payne
Owner

Payne Media Group LLC
KITX/KDOE/KMMY/KZDV/KYHD/KQIK-FM
1600 W. Jackson
Hugo, OK 74743
(580) 326-2555

**THE ORIGINAL COMPANY, INC.
OLD NORTHWEST BROADCASTING, INC.
THE INNOVATION CENTER, INC.**

By: /s/ Mark R. Lange
Mark R. Lange
President

The Original Company, Inc.: WREB-FM/WQTY-FM/WUZR-FM/WZDM-FM/
WBTO-FM/WJPS-FM/WRCY-AM/WYFX-FM/WROY-AM/WRUL-FM/
WFIW-AM/WOKZ-FM/WFIW-FM/WTAY-AM/WTYE-FM
Old Northwest Broadcasting, Inc.: WWBL-FM/WAOV-AM
The Innovation Center, Inc.: WSDM-FM
1309 Old Orchard Road
Vincennes, IN 47591
(812) 882-6060

**S-R BROADCASTING INC.
CAAM PARTNERS LLC**

By: /s/ Chuck Maylin
Chuck Maylin
General Manager

S-R Broadcasting Inc.
CAAM Partners LLC
KRKO/Everett's Greatest Hits & KKXA/Classic Country KXA
2707 Colby Avenue, Suite 1380
Everett WA 98201
(425) 304-1381

**HEARTLAND COMMUNICATIONS GROUP
LLC**

By: /s/ Jim Coursolle
Jim Coursolle
President & CEO

Heartland Communications Group LLC
WBSZ/WJJH/WN XR/WATW/WRJO/WCYE/WNWX/WERL
909 North Railroad Street
POB 309
Eagle River, WI 545621
(715) 479-4451

TMRG BROADCASTING, LLC

By: /s/ Robert Faehn
Robert Faehn
Managing Partner

TMRG Broadcasting, LLC
KXLG Radio
P.O. Box 850
Watertown, SD 57201
(605) 753-9910

E-COMMUNICATIONS, LLC

By: /s/ Bob Eckman
Bob Eckman
President/CEO/Owner

E-Communications, LLC
Thayer/West Plains, MO
(417) 264-7211

CONNER MEDIA CORPORATION*
MEDIA EAST, LLC*
HERITAGE BROADCASTING LLC*

By: /s/Ronald Benfield
Ronald Benfield
President

Conner Media Corporation
Media East, LLC
Heritage Broadcasting LLC
3208 Banbery Drive
Statesville, NC 28625
(704) 878-9004

ADAMS RADIO OF FORT WAYNE, LLC*
ADAMS RADIO OF TALLAHASSEE, LLC *
ADAMS RADIO OF DELMARVA PENINSULA,
LLC*
ADAMS RADIO OF NORTHERN INDIANA,
LLC*

By: /s/ Ron Stone
Ron Stone
President & CEO

Adams Radio of Fort Wayne, LLC
Adams Radio of Tallahassee, LLC
Adams Radio of Delmarva Peninsula, LLC
Adams Radio of Northern Indiana, LLC
16233 Kenyon Avenue South, Suite 220
Lakeville, MN 55044
(952) 232-0876

STARCOM LLC*

By: /s/ Dennis Carpenter
Dennis Carpenter
President

Starcom LLC
14443 Armstrong Blvd NW
Ramsey MN 55303
(763) 420-3598

HARBIT COMMUNICATIONS, INC.*

By: /s/ Mike Harbit
Mike Harbit
President/General Manager

Harbit Communications, Inc.
KNEM/KNMO-FM Radio
Nevada, MO
(417) 667-3113

ROLAND L. BUSHLAND*

 /s/ Roland L. Bushland
Roland L. Bushland

Roland L. Bushland
WCFW/W256AE
P.O. Box 16
Eau Clair, WI 54702
(715) 723-2257

ELKO BROADCASTING COMPANY, INC.

By: /s/ Paul G. Gardner
Paul G. Gardner
President

Elko Broadcasting Company, Inc
KELK-AM/KLKO-FM/KEAU-FM/KRJC-FM/KWNA-FM
1800 Idaho Street
Elko, NV 89801
(775) 738-1240

**MTN BROADCASTING, INC.
ELDORA BROADCASTING, INC.
MARSHALLTOWN EDUCATION PLUS, INC.**

By: /s/ Mark Osmundson
Mark Osmundson
President

MTN Broadcasting, Inc.: KDAO-AM/KDAO-CD
Eldora Broadcasting, Inc.: KDAO-FM
Marshalltown Education Plus, Inc.: KTDV-FM/KRFH-FM
1930 North Center Street
Marshalltown, IA 50158
(641) 752-4122

STONECOM COOKEVILLE, LLC

By: /s/ Larry Stone
Larry Stone
President

Stonecom Cookeville, LLC
WLQK/WBXE/WUCT/WKXD
1 Stonecom Way
Cookeville, TN 38506
(931) 528-6064

HAM BROADCASTING COMPANY, INC.

By: /s/ Beth Mann
Beth Mann
President/CEO

Ham Broadcasting Company, Inc.
The EDGE Media Group - WKDZ/WHVO
P.O. Box 1900
19 D.J. Everett Drive
Cadiz, KY 42211
(270) 522-3232

BIG BROADCASTING, INC.*

By: /s/ Dale Berger
Dale Berger
General Manager

Big Broadcasting, Inc.
1805 E. Dessert Park Avenue
Palm Springs, CA 92262
(760) 699-2294

V-TECK COMMUNICATIONS, INC.*

By: /s/ Lou Vito
Lou Vito
President

V-Teck Communications, Inc.
WBLL/WPKO-FM/W295CI/W297BO
1501 Road 235
Bellefontaine, OH 4311
(937) 592-1045

**SIMMONS BROADCASTING, INC.*
KNDK INC.***

By: /s/ Ernest N. (Bob) Simmons
Ernest N. (Bob) Simmons
President

Simmons Broadcasting, Inc.
KNDK Inc.
KNDK(AM)/KNDK-FM/KXPO(AM)/ KAUI(FM)/KAOC(FM)/KYTZ(FM)
PO Box 30
Langdon, ND 58249
(701) 256-1080

EASTERN SHORE RADIO, INC.

By: /s/ Charles F. Russell
Charles F. Russell
President

Eastern Shore Radio, Inc.
WESR AM/FM
Box 460
Onley, VA 23418
(757) 787-3200

CAPITAL BROADCASTING VA, LLC *

By: /s/ Alfred L. Hammond
Alfred L. Hammond
President

Capital Broadcasting VA, LLC
WURA
P.O. Box 123
Crownsville MD 21032-0123
(410) 923-2870

GEOS COMMUNICATIONS

By: /s/ Benjamin P. Smith
Benjamin P. Smith
General Manager

GEOS Communications
WGMF-AM/WGMF-FM/WZMF-AM
PO Box 701
Tunkhannock, PA 18657
(570) 750-1460

BUTLER RADIO NETWORK, INC.

By: /s/ Victoria A. Hinterberger
Victoria A. Hinterberger
President

Butler Radio Network, Inc.
WISR 680, WBUT 1050 and the Rock Station 97.7 (WLER)
252 Pillow Street
Butler, PA 16001
(724) 283-1500

PINE TO PRAIRIE BROADCASTING, INC.*

By: /s/ Phil Curtis Ehlke
Phil Curtis Ehlke
General Manager

Pine to Prairie Broadcasting, Inc.
Suite 101
206 5th St. NW
Bemidji MN 56601
(218) 444-1071

EAST TEXAS BROADCASTING, INC.*

By: /s/ James R. Kitchens Jr.
James R. Kitchens Jr.
Vice President/General Manager

East Texas Broadcasting, Inc.
P.O. Box 990
1798 US Highway 67 West
Mt. Pleasant, TX 75456
(903) 572-8726

November 4, 2019

APPENDIX A

Text of Proposed Rule Changes to 47 CFR § 73.2080 (Proposed changes indicated with double-underlines and strikeouts)

§ 73.2080 Equal employment opportunities (EEO).

...

(c) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

(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. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy by, at a minimum, posting the vacancy on at least one regionally-known or nationally-known employment vacancy internet website.

(ii) In addition to such recruitment sources, a station 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 station 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) ~~For each market, engage in at least four (if the stations are employment unit has more than ten full-time employees and is not located in a smaller market) or two (if the stations are it has five to ten full-time employees and/or is located entirely in a smaller market)-of the following initiatives during each two-year period beginning with the date stations in the station employment unit are required to file renewal applications, or the second, fourth or sixth anniversaries of that date.~~

(i) Participation in at least four job fairs by station 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 four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

- (v) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast 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 scholarship programs designed to assist students interested in pursuing a career in broadcasting;
 - (viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;
 - (ix) Establishment of a mentoring program for station personnel;
 - (x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;
 - (xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;
 - (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;
 - (xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;
 - (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 broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;
 - (xvi) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.
- (3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.
- (4) Periodically analyze measures taken to:
- (i) Disseminate the station's equal employment opportunity program to job applicants and employees;
 - (ii) Review seniority practices to ensure that such practices are nondiscriminatory;
 - (iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize 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 or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c)(1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

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

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

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

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

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

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

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

(i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

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

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year in each market where the stations are in separate markets.

(d) *Small station exemption.* The provisions of paragraphs (b) and (c)(1)(ii) and (c)(2)-(6) of this section shall not apply to station employment units that have fewer than ~~five~~ fifty full-time employees.

(e) *Definitions.* For the purposes of this rule:

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

(2) A *station employment unit* is a station or a group of commonly owned stations ~~in the same market that share at least one employee wherever located including stations owned by an affiliate, subsidiary or parent.~~

(3) 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.

(f) *Enforcement.* The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing ~~five~~ fifty or more persons in full-time positions, except where noted.

(1) All broadcast stations, including those that are part of an employment unit with fewer than ~~five~~ fifty full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 396, information provided on its Form 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast ~~television~~ station that is part of an employment unit of ~~five~~ fifty or more full-time employees ~~and each radio station that is part of an employment unit of eleven or more full-time employees~~, four years following the station's most recent license expiration date as specified in § 73.1020. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the mid-term review, that review will cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

(3) ...

CERTIFICATE OF SERVICE

I, John F. Garziglia, an attorney at the law firm of Womble Bond Dickinson (US) LLP, do hereby certify that a true copy of the foregoing “Joint Reply Comments of Broadcast Station Licensees” was sent the 4th day of November, 2019 via USPS mail, postage prepaid, to the following:

Thomas Cohen
J. Bradford Currier
Kelley Dry & Warren LLP
3050 K Street, N.W.
Washington, DC 20007
(Counsel to ACA Connects)

Rick Kaplan
Jerianne Timmerman
Larry Walke
National Association of Broadcasters
1771 N Street, N.W.
Washington, DC 20036

Marita Coley
David Honig
Danielle Davis
Multicultural Media, Telecom and Internet Council
1919 Pennsylvania Avenue, N.W. Suite 725
Washington, DC 20006



John F. Garziglia