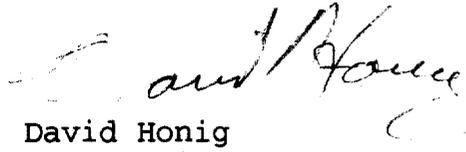


Respectfully submitted, 14/



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April 11, 1996

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14/ We are deeply grateful to Rosalyn Parker, Esq. of Sidley and Austin for her many helpful substantive comments and her editorial assistance, and to Stephen Maleson, a third year student at Georgetown University Law Center, for his incisive legal research and analysis.

**EXHIBIT 1**

## DECLARATION OF JAMES L. WINSTON

I, James L. Winston, respectfully state as follows:

I am the Executive Director and General Counsel of the National Association of Black Owned Broadcasters ("NABOB"). NABOB represents the interests of African American owned radio and television stations.

Black owned broadcasting stations are proud to be the very best EEO "supercompliers" in the industry. To the best of my knowledge, not one of the approximately 200 Black owned broadcasting stations has ever received any kind of EEO sanction. Also, to the best of my knowledge, none has ever been the subject of an FCC EEO Branch staff investigation pursuant to Bilingual Bicultural Coalition on the Mass Media v. FCC, 595 F.2d 621 (D.C. Cir. 1978). In no segment of the industry do minorities have a better chance for career development than in Black owned broadcasting stations.

The FCC's NPRM on "EEO Streamlining" identifies the parties in need of relief from "regulatory burdens" as "broadcasters." The NPRM would have been more accurate had it more specifically referred to "certain nonminority broadcasters." Since becoming Executive Director of NABOB in 1982, I have heard Black station owners identify numerous critical concerns: lack of access to capital, discrimination by financial institutions, discriminatory audience measurement methods by ratings services, discrimination by advertisers, the loss of the FCC's tax certificate policy, the continuing erosion of the Commission's multiple ownership rules, and many others. I have never heard a Black station owner identify EEO compliance or recordkeeping responsibilities as a burden which requires Commission "streamlining."

EEO compliance is not a burden for Black station owners, because we are usually sought out by young minority persons seeking to enter the business. Black owned stations are very frequently the first point of entry for African Americans and other minority persons seeking to break into broadcasting, but we cannot hire and train all of the minorities seeking to enter this business. Black station owners see effective EEO enforcement as an important impetus for creating the trained African American talent for the growth of African American ownership. If the Commission does not continue to require nonminority owned stations to hire, train and promote minorities, there will be an inadequate pool of experienced media professionals to move up into key management positions at our stations or to become owners themselves.

That is why NABOB was delighted to see that the NPRM recognized that "employment discrimination in the broadcast industry inhibits our efforts to diversity media ownership by impeding opportunities for minorities and women to learn the operating and management skills necessary to become media owners and entrepreneurs." NPRM, FCC 96-49 (released February 16, 1996) at 3 ¶3.

Intense competitive pressure has been placed on Black station owners by last year's loss of the tax certificate policy and by the multiple ownership provisions in the Telecommunications Act. These developments have created a substantial risk that we may lose many of our stations.

Thus, NABOB is quite dismayed that the FCC would even consider any material cutbacks in EEO enforcement. We recognize that the FCC has framed the issue as whether "burdens" on

broadcasters can be eased while "maintaining effective industry EEO oversight." NPRM at 10 ¶17. But it is not enough merely to "maintain" EEO oversight, given the high level of discrimination which continues to infect the industry we love. Instead, the FCC should be soliciting proposals to make EEO enforcement much more effective than it is now.

The Regulatory Flexibility Act requires the FCC to identify any "burdens" on any "party" as part of any notice of proposed rulemaking. The EEO Streamlining NPRM is incomplete at best, since Black owned broadcasters will be profoundly burdened by any cutback in EEO enforcement:

- Nonminority broadcasters will have even less of an incentive to train African Americans and other minorities for broadcast careers. This responsibility -- and the attendant costs -- will fall even more heavily on Black owned broadcasters, who will always do more than our share of this training.
- The pool of African American professionals available to us when we wish to hire experienced African American managers of our stations will become even smaller than it is now.
- The number of African Americans with top management experience transferable to entrepreneurship will decline over time, yielding an even smaller pool of future African American station owners.

Each of these burdens will translate into comparatively lower profit ratios for our stations than similarly situated White owned stations -- thereby increasing the already intense pressure exerted by investors and financial institutions who wish to have our members sell their properties. By omitting any mention of these burdens on Black owned broadcasters, the NPRM almost surely violates the Regulatory Flexibility Act.

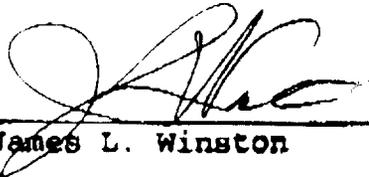
Worse still, the "small" and "small market" stations targeted by the NPRM are precisely the stations which many Black owners view as their primary competitors. Most Black owned stations are themselves small stations, and a disproportionate number are situated in small markets. By excusing our direct competitors from EEO responsibilities, the FCC will comparatively disadvantage Black owned broadcasters.

Finally, I am troubled by the NPRM's failure to seek proposals on how to reward truly outstanding EEO compliance. Ministerial EEO compliance may be "good business" but the kind of truly exceptional EEO performance typical of Black owned stations is seldom justifiable purely on financial grounds; indeed, it has generally been its own reward. After the loss of the tax certificate policy, Black station owners are in desperate need of a regulatory initiative which will attract investment dollars to them, attract new station purchase opportunities to them, and attract the best qualified industry professionals to them. While the NPRM does propose some kind of exemption of stations with "good numbers" from some reporting requirements, that is not what Black broadcasters really want at all. We don't have any distaste for EEO procedures. What we need is a reward, with real economic value, for EEO performance above and beyond the call of duty.

The National Association of Black Owned Broadcasters speaks in harmony with this nation's leading civil rights organizations in calling for the FCC to revise its NPRM to take into account the genuine and profound harm to the public interest which will attend any cutbacks in EEO enforcement.

This statement is true to the best of my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed 4/10/96.

  
James L. Winston

**EXHIBIT 2**

DECLARATION OF MATEO R. CAMARILLO

I, Mateo R. Camarillo, respectfully state as follows:

Since 1981, I have been a media investor. I currently have ownership interests in six FCC licensed radio stations in California.

with the death of the tax certificate policy, it has become infinitely more difficult for Hispanic media entrepreneurs to receive startup or acquisition financing. Before 1995, most minority station deals were predicated on the existence of the tax certificate policy, which I have utilized in the past. Now it's all we can do to hold onto what we've already acquired.

On top of this, the FCC's proposal to cut back on EEO enforcement is especially hard to swallow. We're being kicked when we're down.

As a media investor, I have dealt regularly with broadcast station brokers. Some of them are excellent and their contributions to the industry are surely considerable. But I never cease to be amazed at how some of them stereotype Hispanics as being interested only in owning Spanish format stations.

Brokers' perspective on Hispanic entrepreneurs is limited because they've had no exposure to the views of Hispanic employees. It should trouble the FCC that to this day there is only one minority broadcast station broker, and he's an independent. Not one white broker has ever trained even one minority broker.

In personality, social commitment and operating philosophy, broadcast brokers are very similar to most station owners. Broadcast brokering requires no college degree or any great genius.

Thus, if broadcast EEO enforcement is reduced or terminated, we can expect the broadcast industry's workforce -- especially radio stations' workforce -- to come to resemble the broadcast station brokerage business.

Hispanic broadcast station owners depend on a pool of well trained minority talent, including especially Hispanic talent, to share their cultural perspectives and diversity the broadcast content of their stations. If Anglo station owners need not hire and train Hispanics, Hispanic station owners will have to do all of the management development for Hispanics in-house on our limited budgets. On top of that, we will still find ourselves bearing the costs of training Hispanics who are then hired away by our Anglo competitors. Why should Anglo stations train Hispanics if (1) broadcasters are no longer required to do training for EEO purposes and (2) Anglo broadcasters can easily steal good Hispanic employees from Hispanic owned stations, and let the Hispanic owners bear the costs of training?

Thus, Hispanic station owners should have been identified in the FCC's Notice of Proposed Rulemaking as an additional party "burdened" by any reduction in EEO enforcement.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed April 11, 1996

Mateo Camarillo  
Mateo Camarillo

**EXHIBIT 3**

## DECLARATION OF DOROTHY BRUNSON

I, Dorothy Brunson, respectfully state as follows:

I am the Chairperson of the Association of Black Owned Television Stations. I also serve as Chair and CEO of Brunson Communications, licensee of WGTW-TV, Philadelphia, Pennsylvania, and I am the General Manager of WGTW-TV. WGTW-TV, an independent in the nation's fourth television market, is one of the few large Black owned television stations in the United States.

The nation's 31 minority owned television stations have never had the slightest quarrel with the FCC's EEO Rule. It doesn't "burden" us in the least; indeed, it help us by making available to us a wide range of trained talent who we'd otherwise have had to train ourselves.

Thus, I cannot understand why the FCC considers those "burdened" by EEO to be all broadcasters; apparently, it wasn't thinking of us. I cannot understand why the FCC would consider reducing EEO responsibilities for the stations at which most people in our industry begin their careers. I cannot understand why the FCC, which professes to be concerned with the maintenance of its minority ownership policies and with diversity, is so eager to cut back on the only remaining pro-diversity protection found anywhere in its rules and policies. After nearly 40 years in this business, I simply do not understand it at all. I certainly never expected this from President Clinton's FCC.

I doubt I'll ever truly retire. But when and if I ever do, I would like to be able to sell my station to another African American and thus "keep it in the family." I have worked far too hard to make WGTW-TV a success to sit back and watch as the Black

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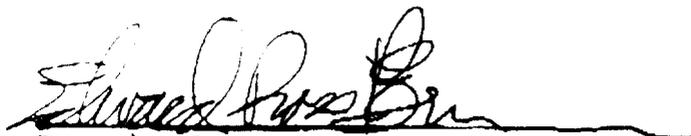
community loses it. But if the FCC makes it more difficult for Black people to develop careers in this business, how in the world am I going to find someone Black and experienced to buy my station?

The civil rights organizations seeking reconsideration and clarification of the "EEO Streamlining" order are right on target. If a broadcast license means anything at all, it means that the owner is committed to taking aggressive and pro-active steps to bring all Americans into the mainstream of communications. The FCC would be well advised not to cheapen a broadcast license by eviscerating EEO enforcement in the name of "reducing burdens" on a few insensitive and anti-social licensees.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed

4/6/96

  
Dorothy Brunson

[Executed by Edward Brunson, son of Dorothy Brunson and holder of her Power of Attorney while Ms. Brunson is out of the country. Ms. Brunson will return from Ghana on May 1, 1996.]

**EXHIBIT 4**

## DECLARATION OF DR. JAMES HAWKINS

I, Dr. James Hawkins, respectfully state as follows:

I am the Chair of the Division of Journalism at Florida A&M University, Tallahassee, Florida. I am providing this Declaration on behalf of the Black College Communications Association ("BCCA"), which I serve as Chair. BCCA is composed of administrators and faculty in mass media programs at historically Black institutions of higher education.

I note that the FCC's Notice of Proposed Rulemaking on "EEO Streamlining" speaks of "broadcasters" as the group which suffers "burdens" in need of regulatory relief. I am disturbed, though, that the Notice of Proposed Rulemaking says not one word about the burdens an EEO enforcement cutback would impose on other parties besides White broadcasters -- including Black colleges and universities, Black students seeking to make good on their years of work in obtaining a broadcasting education, and Black broadcasting professionals who will suffer a heightened level of job discrimination.

Most of the Black college broadcasting programs came into existence after -- and large part because -- the FCC adopted its EEO Rule in 1971. The first such program, at Howard University, was created that year. No such program existed before 1971, because unchecked discrimination in the industry was so extensive before that time that it would have been absurd for Black college administrators to assure Black college broadcasting graduates that broadcasting careers awaited them.

One of our primary objectives as educators is "mainstreaming" our students. "Mainstreaming" means insuring that the students have access to state of the art equipment and broadcasting techniques, and insuring that the students do not artificially restrict themselves to working only at Black-formatted stations. In order to fulfill this mainstreaming objective, each Black college broadcasting program relies very heavily on internship programs at FCC-licensed facilities. Thus, any cutback in EEO responsibility will result in the disappearance of many of the best training opportunities presently open to Black broadcasting students. Inevitably, a cutback in internship opportunities will impose on the Black colleges considerable new burdens and costs attendant to providing in-house practicum experiences for their students.

Equal opportunity in broadcasting is still a fairly new concept. Most of those who entered the industry in the 1970's (the first decade of FCC EEO enforcement) have yet to attain ownership and senior management positions in broadcasting companies. Therefore, this year's class of Black college graduates still lacks access to any significant networking and alumni support from Black broadcasting managers with hiring authority. It will probably take another generation of strong FCC EEO enforcement before the networking opportunities typically enjoyed by White students are available to our students.

Even today, after a generation of FCC EEO enforcement, roughly two thirds of the graduates of Black college broadcasting programs are still unable to find jobs in their chosen field. It is difficult to overstate the burdens on our graduates from a

reduction in the already crabbed career opportunities available to them. Having devoted four years of hard work to securing a broadcasting degree, Black broadcasting students have foreclosed to themselves the opportunity to enter a more traditional and "safe" field such as teaching. This career choice is not made lightly by our students: it is made in reliance on the FCC's promise that the broadcasting industry -- although virtually foreclosed to Black people from 1920 to 1971 -- would open its doors and welcome us.

If Black colleges cannot promise their students that jobs might be available to them upon graduation, the very premise for the existence of Black college broadcasting programs will have evaporated. Even a slight reduction of opportunity for our graduates would threaten the very existence of many Black college broadcasting programs and would significantly burden all of them. Even the surviving programs would have to commit far greater resources to recruitment and placement, thereby further straining the budgets of the colleges' academic programs.

We are particularly troubled by the FCC's proposal to exempt "small" and "small market" stations from meaningful EEO obligations. These "small" and "small market" stations are the very stations at which most Black college graduates begin their professional careers. Although our entering freshmen typically aspire to careers at large stations in large markets, every broadcasting teacher at a Black college must repeatedly stress to students that large stations, and stations in large markets, seldom hire college graduates without fulltime industry experience unless the students are related to the owner or manager.

-4-

Black colleges' placement and alumni programs are specifically tailored to opportunities at "small" stations and stations in "small" markets. Indeed, our advice to students is that they must be willing to sacrifice their social lives and be ready to go to Montana to work after graduation -- if that's where the jobs are. We repeatedly emphasize to our students that they must start "small" and work their way up.

The FCC's EEO rules and policies have been the single most critical factor in promoting equal employment opportunity for people of color in the broadcasting industry. Opportunities for Black students seeking to enter this business continue to be far too scarce, compared to opportunities for similarly situated and similarly educated White students. Consequently, the FCC should dramatically strengthen its EEO enforcement effort, and set a goal of eliminating discrimination from broadcasting, root and branch, in the near and foreseeable future.

The Black College Communications Association is shocked and dismayed that the FCC would even think of cutting back on EEO enforcement at this time.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed April 11, 1996.

  
\_\_\_\_\_  
Dr. James Hawkins

**EXHIBIT 5**

## DECLARATION OF EDUARDO PENA

I, Eduardo Peña, respectfully state as follows:

I am the Communications Counsel for the League of United Latin American Citizens (LULAC), a member of LULAC's National Board of Directors, and LULAC's Past National President (1979-1980). With 100,000 members in 44 states, LULAC is by far the largest organization of Hispanic Americans in the United States.

LULAC has long considered access to the electronic media to be a matter of the highest priority for Hispanic Americans. A stranger to our country, watching the evening news on television or scanning the radio dial, would scarcely realize that one out of eleven Americans is Hispanic. Most non-Hispanic Americans know very little about the history, culture and aspirations of Hispanic Americans. Too often, that is because the mass media has promoted stereotypes of Hispanics as a "tide" of "illegal immigrants" who will "overrun" American borders and "steal" jobs which are supposedly the birthright of White Americans.

Consequently, LULAC has undertaken a national effort to bring about the full participation of Hispanic Americans in the broadcasting business. Our effort has three components. First, LULAC files petitions to deny the license renewal applications of broadcasters which appear to be the most serious violators of the FCC's EEO Rule; I am the principal counsel of record in these challenges. Second, LULAC provides counselling and lawyer referral services to individuals who believe that they are individual victims of discrimination. Third, LULAC's local councils also engage in dialogue with local broadcasters, provide counselling to Hispanics seeking to enter the industry, and provide job referral services to broadcasters -- all at no cost to the industry or

broadcast professionals. LULAC's activities are performed entirely by volunteers.

The FCC's Notice of Proposed Rulemaking on "EEO Streamlining" contains a Regulatory Flexibility Analysis which identifies "broadcasters" as the group which suffers "burdens" in need of regulatory relief.<sup>1/</sup> "Broadcasters" (a term I assume does not include Hispanic broadcast owners, who are proud to comply with the EEO Rule) are hardly the only party whose "burdens" are worthy of consideration. Among the other parties burdened by any potential cutback in EEO enforcement are (1) discrimination victims; (2) job referral sources, including particularly community groups which assist minorities to gain secure employment in broadcasting; (3) job applicants; (4) petitioners to deny; (5) broadcasters innocent of discrimination; and (6) broadcast listeners and viewers. I will discuss these affected groups seriatim.

#### 1. Discrimination Victims

As the EEOC's past Director of Compliance (1970-1979), I know that the absence of any meaningful EEO compliance data renders it virtually impossible for a civil rights enforcement body to identify likely discriminators and hold them accountable. Discrimination victims are usually unaware that they are discrimination victims. Employers hardly advertise this fact.

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<sup>1/</sup> The notion that the current FCC EEO Rules materially "burden" broadcasters is so absurd it's insulting. The "recordkeeping" required of broadcasters on applicant flow data must be done anyway in the course of any business. Once developed, the cost of storage is minimal. Furthermore, the very same information must be retained anyway in order to defend against an EEOC charge; thus, there's no incremental burden associated with maintaining this same data for FCC purposes.

Thus -- quite apart from the fear of retaliation infecting the labor force in a relatively tight-knit industry -- it's not surprising that there are few individual complaints of discrimination against broadcasters. But today, if someone suspects that she has been discriminated against by a broadcaster, she can at least examine the station's public file and review Form 395 and Form 396. From these documents, a person suspecting that she might be a discrimination victim can at least get a sense for whether the EEO activity the licensee says it undertakes is realistically tailored to the job market and to the station's labor requirements. If referral sources are identified in Form 396, the person suspecting discrimination can call those organizations as references to determine whether the licensee has been genuine and consistent in its dealings with the referral source. This research will often enable a person suspecting discrimination to either realize that her suspicions are justified or, on the other hand, realize that her suspicions are unwarranted and that any adverse employment actions she has experienced are likely due to nondiscriminatory factors. In this way, the existence of Form 396 helps discrimination victims decide whether to proceed, and helps innocent broadcasters avoid needless and unfortunate EEOC charges or FCC complaints.

Without any meaningful information on Form 396, no person suspecting that she is a discrimination victim will have any independent basis for evaluating whether she is in fact a discrimination victim. Moreover, a genuine discrimination victim complaining to the EEOC or the FCC will have little evidence with

which to make out a case,<sup>2/</sup> and the EEOC or FCC will have little basis for determining whether the licensee is discriminating. Thus, the evisceration of Form 396 will profoundly burden discrimination victims.

## **2. Job Referral Sources**

Every FCC order imposing a conditional renewal on a broadcaster contains a footnote suggesting that the broadcaster contact local units of minority and women's organizations to obtain their assistance in identifying qualified candidates for employment. See, e.g., Newport Broadcasting, Inc. (WADK/WOTB, Newport, Rhode Island), FCC 96-96 (released March 29, 1996) at 4 n. 12 (naming the National Hispanic Media Coalition, American Women in Radio and Television and the National Urban League). These organizations are truly the FCC's and EEO-sensitive broadcasters' silent partners in EEO compliance.

Regrettably, it's inevitable that a cutback in EEO enforcement by government agencies leads to an increase in discrimination. No amount of jawboning will convince someone with a propensity to discriminate that the government's intentional action removing a protection against discrimination is not a signal that the government considers discrimination to be a low priority. Anyone doubting this need only study the history of the EEOC under the leadership of Eleanor Holmes Norton and J. Clay Smith, and compare it with the history of the EEOC under Clarence Thomas.

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<sup>2/</sup> It is well established that an employer's failure to abide by an affirmative action plan, where compliance would be simple, can be good evidence of discriminatory intent. See, e.g., Craik v. Minnesota State University Board, 731 F.2d 465, 472 (8th Cir. 1984).

Thus, an increase in discrimination will lead to a reduction in demand for Hispanics in broadcasting, and a reduction in invitations, sent by broadcasters to Hispanic organizations, for referrals of applicants for specific job openings. Organizations such as local LULAC councils will thus be at a severe disadvantage when a qualified person comes to them for assistance in securing broadcast employment. Instead of being able to refer to routine postings of specific jobs, LULAC councils will have to telephone the placement directors of each station to ask them, one by one, if they have a job open. This is profoundly inefficient and expensive. It's patently unfair to expect volunteers to do this.

Furthermore, the absence of meaningful Form 396 information will make it impossible for a local community organization to make an informed judgment as to which broadcasters are making a genuine effort to seek out and employ minorities. Presently, local organizations benefit enormously by knowing which broadcasters are, and which are not, equal opportunity employers. Local organizations do not waste time sending minority job seekers on a fool's errand to visit employers uninterested in hiring minorities. Without Form 396 data, how is a community group to know which broadcasters are, and which are not, promising sources of jobs for minority candidates?

Consequently, the increase in discrimination likely to result from a cutback in EEO enforcement, and the elimination of Form 396 data, will each impose very significant burdens on job referral organizations.

### **3. Individual Job Applicants**

Individuals seeking employment through community organizations are likely to waste considerably more time in job searches if EEO enforcement is reduced. Owing to greater discrimination, minorities will spend more time and effort filing useless job applications. And when minorities use the resources of a community group to sharpen their search for a job, they will find those community groups less aware of which specific jobs are open at which stations, and of which stations are generally uninterested in hiring minorities. By making the process of seeking a job in broadcasting more difficult, expensive and time consuming for minorities, and by reducing the number of jobs available to minorities, the Streamlining NPRM will discourage minorities from seeking employment in broadcasting and will profoundly increase the time and cost burdens on those minorities who do wish to continue to seek employment in broadcasting.

### **4. Petitioners to Deny**

The FCC relies almost entirely on petitioners to deny as its early warning system -- indeed, its only warning system -- that a broadcast licensee might be violating Commission rules. The number of FCC EEO investigations conducted on its own motion in the past decade which led to sanctions against a licensee can be counted on the fingers of two hands. However, dozens of broadcasters have been admonished or sanctioned as a result of petitions to deny. Every one of the ten hearings designated by the FCC since 1971 in EEO cases resulted from a petition to deny.

Thus, Petitioners to deny truly stand in the role of good samaritan witnesses whose role is essential to the Commission's

exercise of its responsibility, under Section 309 of the Communications Act, to make an informed and affirmative determination that a grant of an application would serve the public interest.

Petitioners to deny are already at a profound disadvantage in attempting to prove discrimination. Broadcasters seldom admit that they discriminate, although obviously many of them do it routinely. But at license renewal time, the only information available to members of the public who might wish to draw inferences about who may be, and who probably is not discriminating are the raw employment data on Form 395 and the EEO programs on Form 396.

In reviewing this information, petitioners to deny usually guess right: the vast majority of petitions to deny are granted at least in part. But it is a rare case which is designated for hearing. That is because petitioners to deny lack any opportunity for meaningful discovery, and are faced with the extraordinary requirement that petitioners essentially prove intentional discrimination just to get a hearing -- a virtual impossibility without access to the testimony of witnesses.

The elimination of Form 396 for many broadcasters -- or the reduction in the already sparse information to be contained in Form 396 -- will leave petitioners to deny unable to guess, with any degree of accuracy, which broadcasters might be EEO violators. For example, if a petitioner to deny does not know whether a renewal applicant interviewed or hired minorities, how in the world will the petitioner know whether the applicant might be discriminating?