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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Streamlining Broadcast EEO Rule and Policies,	)	
Vacating the EEO Forfeiture Statement	)	MM Docket No. 96-16
and Amending Section 1.80 of the Commission's	)	
Rules To Include EEO Forfeiture Guidelines	)	
	)	

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COMMENTS OF AMERICAN WOMEN IN RADIO & TELEVISION, INC.

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Summary

Cooperation and collaboration between broadcasters, women's groups, minority groups and other interested parties is essential to a thoughtful consideration of the approaches to and implications of streamlining the FCC's EEO rules. The traditional rulemaking process -- in which parties file documents at the Commission and each other -- is a rigid, formalistic and isolated approach that will not engender the appropriately rich level of communication that is required by this issue, nor will it promote the cooperation, collaboration or consensus needed for effective EEO compliance.

AWRT strongly encourages the Commission to change the process for revising its EEO rules from a traditional rulemaking to the collaborative, cooperative process of a negotiated rulemaking. This process will challenge the industry and women's and minority groups to work together to develop innovative approaches to EEO compliance in the 21st Century. A negotiated rulemaking will have at least six specific benefits:

(1) it will permit all the interested parties to collectively identify, discuss and explore the perceived burden of compliance with the EEO rules;

(2) it will permit the interested parties to share with each other their methods of recruitment and provide feedback to recruitment sources;

(3) it will provide a forum to develop and assess proposals for co-sponsored job fairs and other recruiting forums that utilize the strength of existing resources such as those of AWRT and state broadcast associations;

(4) it is more likely to produce rules that both the broadcasters and advocates for women and minorities will endorse;

(5) it will provide the necessary groundwork for successful future recruitment efforts; and

(6) it will identify solutions beyond recruitment that also foster a rich, productive and diverse workforce.

If the Commission chooses not to use a negotiated rulemaking to streamline its EEO rules, it must develop a persuasive and comprehensive record that quantifies the nature and severity of the burden of EEO compliance on broadcasters. The Notice itself does not contain any evidence identifying the specific burden broadcasters face in EEO compliance nor does it demonstrate how the streamlining proposals will alleviate the alleged burdened. Without such evidence, streamlining of the EEO rules is inappropriate.

Streamlining the EEO rules on unfounded premises may militate against the overall objectives of the EEO program, namely: (1) to promote programming that reflects the interests of minorities and women in the local community in addition to those of the community at large; and (2) to deter discriminatory employment practices. These objectives are important and compelling government interests that continue to be served by the Commission's EEO rules and are uneffected by the U.S. Supreme Court's decision in *Adarand Constructors, Inc. v. Pena*.

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COMMENTS OF AMERICAN WOMEN IN RADIO & TELEVISION, INC.

American Women in Radio & Television, Inc. ("AWRT") hereby submits its comments regarding the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding. The Notice contains a series of alternative proposals to streamline the Commission's equal employment opportunity rules ("EEO rules") for radio and television broadcasters. The recited goals of the proposals are: (1) to reduce the burden on broadcasters, especially small broadcasters; and (2) to maintain effective EEO rules and policies. AWRT supports both of these goals but believes that the process selected by the Commission to accomplish this streamlining -- a traditional rulemaking -- will not produce effective streamlining of the rules and will reduce important efforts by broadcasters to recruit qualified women and minority candidates. Further, AWRT believes that streamlining the EEO rules on unfounded premises may militate against the overall objectives of the EEO rules, namely: (1) to promote programming that reflects the interests of minorities and women in the local community in addition to those of the community at-large; and (2) to deter discriminatory employment practices.

AWRT strongly encourages the Commission to change the process for revising its EEO rules from a traditional rulemaking to the collaborative, cooperative process of a negotiated rulemaking. This process will challenge the industry and women's and minority groups to work together to develop innovative approaches to EEO compliance in the 21st Century.[1] Without such a process and without more information on the alleged burden of the rules, AWRT cannot endorse the proposals in the Notice.

I. INTRODUCTION -- AWRT

AWRT is a non-profit, national organization of professional women and men who work in radio, television, cable, advertising -- essentially the electronic media -- and closely allied fields. The mission of AWRT is to enhance the impact of women in the electronic media and allied fields by educating, advocating, and acting as a resource to its members and the industry. Besides conducting its own educational and professional development activities to promote and facilitate ownership and management of communications media by women, AWRT co-sponsored with the Commission the two highly successful symposia: "Women in the Telecommunications Marketplace" and "The Women Entrepreneur".

Since 1951, AWRT has worked to promote the entry and advancement of women in the management and ownership of broadcast, cable and other communications networks. As the leading organization for women in broadcasting, AWRT has extensive experience with the problems and discrimination encountered by women in broadcasting and a unique ability to

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[1] "[L]et us remember always that finding common ground as we move forward to the 21st Century depends fundamentally on our shared commitment to equal opportunity for all Americans. It is a moral imperative, a constitutional mandate, and a practical necessity." President William J. Clinton, Affirmative Action Address (July 19, 1995).

present the views of women directly affected by the issues in the Notice. AWRT is deeply committed to working with the Commission and the broadcast industry to promote employment and ownership opportunities for women in radio and television and to develop effective and efficient EEO rules for the 21st Century.

II. A NEGOTIATED RULEMAKING WOULD BEST DEVELOP EEO RULES FOR THE 21ST CENTURY

Cooperation and collaboration between broadcasters, women's groups, minority groups and other interested parties is essential to a thoughtful consideration of the approaches to and implications of streamlining the EEO rules. The traditional rulemaking process -- in which parties file documents at the Commission and each other -- is a rigid, formalistic and isolated approach that will not engender the appropriately rich level of communication that is required by this issue, nor will it promote the cooperation, collaboration or consensus needed for effective EEO compliance. Accordingly, AWRT recommends that the Commission transform this rulemaking into a ***negotiated rulemaking*** in which the FCC, broadcasters, women's groups, minority groups and other interested parties collectively address the Commission's EEO rules.

A negotiated rulemaking will have at least six specific benefits:

(1) it will permit all the interested parties to collectively identify, discuss and explore the perceived burden of compliance with the EEO rules;

(2) it will permit the interested parties to share with each other their methods of recruitment and provide feedback to recruitment sources;

(3) it will provide a forum to develop and assess proposals for co-sponsored job fairs and other recruiting forums that utilize the strength of existing resources such as those of AWRT and state broadcast associations[2]

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[2] AWRT supports the increased use of job fairs and centralized recruitment sources as a means to recruit qualified women and minority candidates. Such efforts will only be

(4) it is more likely to produce rules that both the broadcasters and advocates for women and minorities will endorse;

(5) it will provide the necessary groundwork for successful future recruitment efforts; and

(6) it will identify solutions beyond recruitment that also foster a rich, productive and diverse workforce.

The Commission previously has used negotiated rulemakings to address difficult issues like spectrum allocation where industry consensus and input are important. Analysis of the burden of the EEO rules and streamlining efforts would benefit from a similar collaborative process. Accordingly, AWRT strongly encourages the Commission to adopt such an approach.

II. STREAMLINING WILL ONLY BE EFFECTIVE IF THE BURDEN OF EEO COMPLIANCE IS QUANTIFIED AND INNOVATIVE SOLUTIONS ARE TESTED

A. A Strong Evidentiary Basis is Needed to Streamline the Rules

The stated premise for streamlining the EEO rules is that compliance with the EEO rules is burdensome for certain broadcasters. Missing from the Notice, however, is any evidence or analysis of the nature of this "burden" or its severity. The Notice neither specifies nor quantifies the elements of EEO compliance that broadcasters find burdensome. Is it the retention of records? The completion of reports filed at the FCC? The development of an EEO policy? The recruitment process? The frustration that may result when recruitment efforts do not produce

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successful, however, if they have the support of both the broadcasters and the sponsoring organizations. This is difficult to assess without direct communication between the participants. In addition, the reasonableness of the Commission's proposal to permit increased reliance on centralized resources (Notice at ¶ 32) can only be evaluated after an examination of the existing capabilities of the sponsoring organizations. Proposals to impose additional obligations on centralized resources, such as updating applicant files, may not be feasible without coordination and support by the broadcasters that would benefit from these obligations.

results? Exactly, or approximately, how much time and effort is required by broadcasters to achieve EEO compliance?

Without persuasive evidence that compliance with the EEO rules is burdensome for the broadcasters that stand to benefit from the streamlining proposals, there is no evidentiary basis to support streamlining of the EEO rules. The Commission's prior attempt to streamline the EEO rules based on alleged but unquantified burdens of EEO compliance was soundly rejected by the Second Circuit Court of Appeals in *Office of Communication of The United Church of Christ v. FCC*, 560 F.2d 529, 534-35 (2nd Cir. 1977). Significantly, one of the former streamlining proposals adopted by the Commission and rejected by the Second Circuit -- the proposal to exempt broadcasters with ten or fewer employees -- is again proposed by the Commission in the Notice.

The Notice does not include any specific evidence that streamlining of the EEO rules is now necessary or that compliance with the rules is any more burdensome than it was when the Commission's streamlining efforts were reversed by the Second Circuit. If anything, as discussed below, developments in technology that provide new methods of recruitment and regulatory compliance should be able to reduce the burden of EEO compliance on all broadcasters without resorting to size standards that could exempt more than half of the broadcast stations from full EEO requirements.

B. The Alleged Burden of EEO Compliance Can Be Quantified In a Negotiated Rulemaking

The best way to quantify the burden of EEO compliance on broadcasters is for them to work together with the FCC and recruitment sources -- like AWRT and the minority media

groups -- to identify the alleged burdens and develop proposed solutions. Such an approach would bring together the groups seeking a representative workforce (with the appropriate level of regulation) and those best able to provide solutions. Through a negotiated rulemaking, AWRT and other recruitment sources could identify the resources they can offer broadcasters to meet their obligations and broadcasters could identify their recruiting needs. This rulemaking environment would permit parties to discuss new approaches to recruit qualified women and minorities for job openings. This approach also holds the most promise for offering a long term solution by establishing procedures that the broadcasters and recruitment sources support as efficient and effective.

C. The Burden Can Be Reduced By Putting the Rules on the Superhighway

Advances in technology provide new solutions to reducing regulatory compliance as amply demonstrated by the FCC in its own streamlining efforts. Sophisticated communications networks, advanced computer software and the Internet provide novel ways to reduce administrative burdens without minimizing or eliminating the effect of the EEO rules.

The Commission has readily embraced technological fixes to reduce the burden of regulation in other areas. Last year, the FCC's Wireless Bureau successfully implemented an electronic filing system to administer and conduct spectrum auctions. Electronic filing options are now available for routine applications. Similar innovative approaches to the Commission's EEO requirements could reduce significantly the administrative burden of EEO compliance for smaller broadcasters. For example, through the FCC's Home Page on the World Wide Web, readily accessible electronic forms could be downloaded by broadcasters. Completed forms could be submitted to the FCC electronically offering a solution that even small broadcasters could utilize.

In addition, the Internet provides broadcasters (even small stations in remote locations), the ability to recruit for employees nationwide with the click of a mouse. When AWRT surfed "the Net", it quickly located a radio station's home page -- 102.7 FM WNEW -- that included a listing of job opportunities. *See* Exhibit 1.

A negotiated rulemaking would enable broadcasters and interested parties to develop creative new approaches to recruitment never envisioned before through the use of new, expansive technologies and resources. Technology has revolutionized the way AWRT does business. For example, AWRT provides a career line that lists national job openings in the industry and allows broadcasters to target a nationwide pool of qualified women and men in broadcasting. Career line is available to AWRT members nationwide, 24 hours a day by fax on demand. In addition, AWRT routinely identifies job listings in its bi-weekly newsletter distributed to all AWRT members by fax. AWRT expects to have its Home Page on line by its annual convention in June, 1996 offering a direct and immediate resource to women and men in the broadcast industry.

Broadcasters also are quickly embracing technology. For minimal cost, broadcasters can develop their own Web sites and, like 102.7 FM WNEW, use them as a means to recruit qualified candidates for job openings in their communities and nationwide. Technology tears down barriers previously faced by small businesses and provides innovative solutions for streamlining that should be considered as an alternative to the proposals in the Notice. It would be imprudent not to address these and other new developments in this proceeding.

III. THE STREAMLINING PROPOSALS IN THE NOTICE WOULD ELIMINATE VALUABLE DATA AND EXEMPT 50% OF THE STATIONS

A. Continued Collection of Data is The Only Way to Monitor EEO Compliance

The Commission offers several proposals in the Notice that would exempt broadcasters from specific EEO reporting and recording keeping requirements.[3] AWRT opposes any exemptions from reporting and record keeping requirements that would reduce the employment data submitted to the Commission. Broad exemptions from the record keeping and reporting requirements would render broadcasters' EEO obligations hollow and unenforceable. The continued collection of data is essential to monitor the progress of women and minorities in broadcasting. Without this data it will be impossible for the FCC to determine whether broadcasters are indeed abiding by their obligations under the EEO rules.

Employment data on women and minorities in broadcasting will not be collected unless required by the Commission. As the Federal Glass Ceiling Commission recognized, only the public sector has the resources to gather national, regional and state data on education, status in the workforce and compensation.[4] That this data will not be readily available is painfully evident from AWRT's own efforts to collect data on female ownership of licensed communications companies. AWRT repeatedly has researched the available data on licensed communications companies owned by women. This data is not collected by the FCC or the National

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[3] The void created by exemption from data reporting requirements is evident by the lack of employment information available from stations with 5 or fewer employees. As the Commission indicates in footnote 34 of the Notice, the Commission is unable to identify the number of employees at 4,239 (roughly 1/3) of the stations because these stations are not required to submit employment data to the Commission.

[4] The Federal Glass Ceiling Commission, *Good for Business: Making Full Use of the Nation's Human Capital*, Washington, D.C. (March 1995) at 29.

Telecommunications and Information Administration ("NTIA") but only by the Bureau of the Census. It is unfortunate that there is no systematic collection of ownership data for women in the communications industry despite reporting and licensing requirements administered by the FCC and ongoing efforts at data collection on minority ownership by NTIA.

Exemptions from EEO record keeping and reporting requirements will make data on female and minority employment just as scarce as ownership data. AWRT has encouraged the Commission since 1991 to conduct a study on the level of female ownership of communications companies. As the licensing and regulatory agency, the Commission is the logical agency to collect this information. In addition, ownership data can easily be collected through amendment of the Annual Ownership Report Form 323. AWRT and other commentors encouraged the Commission to amend the Annual Ownership Report Form 323 to include designation of female and minority-owned stations almost one year ago in MM Docket Nos. 94-149, 91-140. AWRT is discouraged that the Commission has not yet undertaken a study on female ownership and that the census data remain the only source of data on women-owned businesses in the industry. [5] If employment data is not reported due to streamlining of the EEO rules, the Commission will loose the ability to fairly assess employment of women and minorities in broadcasting.

B. Exempting Stations with Ten Employees or Less is Premature

Exempting broadcast stations with ten employees or less from specific EEO reporting and record keeping requirements would exempt over 50% of the broadcast stations. According to the Commission's 1994 statistics, 6,684 (or ½) of the 13,230 broadcast stations have ten employees

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[5] The most recently released Census data on women-owned businesses is wholly inadequate since it does not include a breakdown of ownership of television or radio stations.

or less.[6] Without a strong showing of the burden on these broadcasters a exemption of this magnitude is not warranted. Certainly, the employment of women and minorities in the broadcast industry today does not justify such an expansive exemption.

Similarly, exemption of stations from certain reporting and record keeping requirements based on market size ignores the role that small stations and stations in small markets play in providing entry opportunities for women and minorities. These stations, which may not be able to offer high salaries or prime market access, can offer experience and training essential to women and minorities seeking to enter the industry. As former Commissioner Barrett aptly noted in his separate statement, the FCC "cannot underestimate the importance of 'small' stations for minority and female applicants' initial entry into the communications industry. . . applicants, no matter their sex, race or ethnicity, often turn to smaller stations to acquire experience they need to compete for employment at larger stations." In addition, statistically, small businesses have been shown to be the source of new job growth in the United States.[7] Exempting these stations from recruitment-based EEO efforts based on size would eliminate valuable efforts to make women and minorities aware of entry opportunities in broadcasting.

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[6] *See* Notice at n. 34.

[7] As Michele C. Farquhar, Chief of the Wireless Bureau, noted in her speech at the Auctions '96 Conference sponsored by the Commission's Office of Communications Business Opportunities, small businesses accounted for 90% of all new jobs created in 1990 as reported by the Small Business Administration. Opening Remarks of Michele C. Farquhar, Acting Chief of the Wireless Telecommunications Bureau at FCC March 15, 1996 "Auctions '96" Conference sponsored by the Office of Communications Business Opportunities.

C. The Work Force is National and Global

The increased mobility of employees and the ability to recruit nationally through new mediums such as the Internet, decreases the burden of recruiting qualified employees on small stations. The unwillingness of female or minority candidates to accept a position with a station or to remain with a station is not a basis for reducing recruitment efforts. As the Commission repeatedly points out in the Notice, the EEO rules are efforts-based. The sole goal of the rules is to diversify the applicant pool. The ultimate selection of a qualified candidate is the station's decision. Accordingly, lack of success in recruiting women or minority employees does not pose a compliance risk for stations. A small station or a station in a smaller market that makes the effort to recruit women and minority applicants, even if that does not produce female or minority employees, will be in full compliance with the FCC's EEO rules. Unsuccessful recruitment efforts should not be a ground for relaxation of the rules. [8]

D. Now is Not the Time to Streamline

The current wave of consolidation in the radio and television industry also makes this a treacherous time for the FCC to refine its thresholds (based on employment or market size) for exemptions from EEO requirements. With passage of the Telecommunications Act of 1996, national limits on radio ownership have been eliminated. This relaxation of the national ownership limits predictably has created a wave of acquisitions and consolidation within the radio industry. The television industry also has experienced a flurry of ownership changes witnessed most significantly by the acquisitions of Cap Cities\ABC by Disney and CBS by Westinghouse.

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[8] AWRT opposes creation of an employment benchmark as a ground for exemption because such an incentive could result in stagnation in recruitment efforts.

The explosive change in the industry makes it difficult to determine with any degree of certainty how companies will staff their stations. Companies with multiple stations could well chose to achieve economies of scale by centralizing station responsibilities at corporate headquarters and reducing station staff. This would further reduce station-level employment and could increase the number of stations that would be exempt from EEO reporting and record keeping requirements beyond even the 50% that would be exempt under the 10 person exemption threshold. Until the industry settles, any attempt to establish an appropriate employment benchmark for exemption from the EEO rules could easily miss the mark.

IV. ADARAND DOES NOT REQUIRE ELIMINATION OR RESTRICTION OF THE COMMISSION'S EEO RULES

The U.S. Supreme Court's decision in *Adarand Constructors, Inc. v. Pena*[9] does not require the Commission to modify or eliminate the EEO rules as the Commission correctly concludes in the Notice. The EEO rules are efforts-based and reward the process of expanding the recruitment process regardless of the outcome. By contrast, the Department of Transportation's contracting regulations at issue in *Adarand*, rewarded the outcome of the selection process not the process itself. [10] As the Commission recognizes in the Notice and the Department of Justice has advised Federal agencies, *Adarand* does not apply when the objective of using the race-conscious action is to expand the pool of applicants or bidders but race or ethnicity is not used in the actual decision.[11]

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[9] 115 S. Ct. 2097 (1995).

[10] The Supreme Court did not invalidate the regulations at issue in *Adarand* it merely changed the level of scrutiny of the regulations from intermediate to strict scrutiny.

[11] Notice at ¶15.

A. Gender-Based Policies Are Not Subject to Adarand

The Supreme Court's decision in *Adarand* does not apply to Federal government policies for women. Gender-based policies, even after *Adarand*, remain subject to intermediate not strict scrutiny. In his dissent in *Adarand*, Justice Stevens noted that under the Court's decision in *Adarand*, "the Court will apply 'intermediate scrutiny' to cases of invidious gender discrimination and 'strict scrutiny' to cases of invidious race discrimination while applying the same standard for benign classifications as for invidious ones."[12] Appellate courts have routinely applied intermediate scrutiny when reviewing gender-based policies of Federal agencies including the FCC. *See Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992). In a memorandum analyzing the *Adarand* case and its implications for Federal agencies, the Department of Justice advised Federal agencies that:

> *Adarand* did not address the appropriate constitutional standard of review for affirmative action programs that use gender classifications as a basis for decision making. However, both before and after *Croson*, nearly all circuit court decisions have applied intermediate scrutiny to affirmative action measures that benefit women.[13]

The Commission should remain vigilant against attempts to eliminate all gender and race-based policies as an over-reaction to *Adarand*. As Justice O'Connor noted in her opinion for the Court, strict scrutiny is not strict in theory and fatal in fact.[14]

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[12] *Adarand*, 115 S. Ct. at 2122.

[13] Memorandum to All Agency General Counsels from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, United States Department of Justice, at 8 (June 28, 1995).

[14] *Adarand*, 115 S. Ct. at 2117.

B. A Significant and Compelling Government Interest Exists in Compliance with the Commission's EEO Rules

A significant and compelling government interest exists in continued enforcement of the Commission's EEO rules. As the Commission states in the Notice, the EEO rules fulfill two important objectives: (1) they promote diversity in programming; and (2) they combat unlawful employment discrimination against women and minorities. Both of these goals are important and serve compelling government interests.

1. Congress Has Recognized the Important and Compelling Interest of the Commission's EEO Rules

Congress recognized the important role of the Commission's EEO rules in promoting programming diversity in enacting the Cable Television Consumer Protection and Competition Act of 1992. In the House Report on the 1992 Cable Act, the Energy and Commerce Committee noted:

> The Courts and the Commission have consistently recognized the increasing amount of programming designed to address the needs and interests of minorities and women is fundamentally related to the number of minority and women employees in the upper level positions within media companies. In addition, the Committee recognizes that a strong EEO policy is necessary to assure sufficient numbers of minorities and women gain professional and management level experience within the television industry, and thus that significant numbers of minorities and women obtain the background and training to take advantage of existing and future television broadcasting ownership opportunities . . . The Committee notes that women and minorities are still significantly under-represented as employees and owners in the industry.[15]

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[15] H.R. Report No. 102-628, 102d Cong., 2d Sess., at 144 (1992). Additional case law supports the conclusion that promoting economic opportunity for women is an important governmental interest. *See Califano v. Webster,* 430 U.S. 313, 317 (1977); *Associated General Contractors vs. City and County of San Francisco,* 813 F.2d 922 (9th Cir. 1987); *Coral Construction Co. v. King County,* 941 F.2d 910, 932 (9th Cir. 1991).

In November 1995, the Federal Glass Ceiling Commission noted the limited diversity in television and newspaper newsrooms:

> Efforts to diversify television and newspaper newsrooms with minorities and women has yielded limited progress according to several recent surveys by the American Society of Newspaper Editors, the Radio and Television News Directors Foundation and Vernon Stone at the Missouri School of Journalism. Progress toward promoting minorities and women into decisionmaking positions was even less evident. *The Commission recommends the industry recognize the urgency of getting women and minorities into decisionmaking positions, especially in television, and notes that the lack of minority and women ownership in media outlets has a long-term negative impact on news reporting.*[16]

Congress, in its sweeping overhaul of the Communications Act in the Telecommunications Act of 1996 (the "Telecom Act"), chose not to modify Section 334 of the Communications Act which prohibits the FCC from revising its EEO rules for television broadcast stations.[17] Indeed, in the Telecom Act, Congress strengthened its commitment to combating racial and gender discrimination by adding an anti-discrimination provision to Section 151. As amended, Section 151 of the Communications Act now incorporates into the FCC's statutory authority:

> regulation of communications by wire and radio so as to make available, so far as possible, to all the people of the United States, *without discrimination on the basis of race, color, religion, national origin or sex . . .*[18]

Congress decision to strengthen the anti-discrimination provisions of the Communications Act and its decision not to rescind the prohibition against Commission change to the EEO

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[16] *A Solid Investment: Making Full Use of the Nation's Human Capital, Recommendations of the Federal Glass Ceiling Commission,* November 1995 at 47 (emphasis added). An excerpt from the report is attached as Exhibit 2.

[17] As the Commission appropriately states in the Notice, a statutory amendment would be necessary to amend the EEO rules for television broadcasters. Notice at ¶27.

[18] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 at § 104.

requirements for television broadcasters, reaffirms the important and compelling government interest served by the EEO rules.

2. Women Employees Offer Diverse Viewpoints

The Commendation Awards presented by AWRT's Foundation document that employment of women by broadcasters does indeed promote the important and compelling government interest in diversity in programming. For 21 years, AWRT's Commendations Awards have recognized television, radio and cable programming that is for, about and by women. Of the 82 winners of this year's awards, more than 82% of the award winning programming had a woman producer or executive producer. This striking statistic provides powerful evidence of the nexus that exists between employment of women in the broadcast industry and programming by, for and about women

The results of AWRT's annual Commendation Awards are consistent with the evidence submitted in MM Dockets No. 94-149, 94-140. In those dockets, the Citizens Communications Center Project presented research and analysis on the differing choices that women make on issues and the diversity they offer in viewpoint. Specifically, the comments demonstrate that a diverse workforce produces diverse programming. This overwhelming evidence provides a sound basis for continued stringent application of the EEO rules to radio and television broadcasters.

V. CONCLUSION

AWRT encourages the Commission to use a negotiated rulemaking to address the important issue of streamlining the EEO rules. A negotiated rulemaking will provide all of the interested parties the opportunity to collectively and collaboratively address the EEO rules and

develop innovative solutions to reducing the perceived burden of EEO compliance without reducing efforts to recruit qualified women and minority candidates.

If the Commission chooses not to use a negotiated rulemaking to streamline its EEO rules, it must develop a persuasive and comprehensive record that quantifies the nature and severity of the burden of EEO compliance on broadcasters. Without such evidence, streamlining of the EEO rules is inappropriate. The Notice itself does not contain any evidence identifying the specific burden broadcasters face in EEO compliance nor does it demonstrate how the streamlining proposals will alleviate the alleged burdened. Furthermore, several of the proposals including increasing the threshold of exempt stations from 5 to 10 employees, would exempt over 50% of the broadcast stations and eliminate important reporting and record keeping requirements. In this time of tremendous change in the broadcast industry these proposals are premature.

Respectfully submitted,
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Exhibit 1

US OFFICE PRODUCTS

102.7 FM WNEW

Welcome to 102 7 N-E-W, New York!

102.7 FM WNEW

- New!VR-Walkthroughs of our studio!
- Build Your Own BMW Z3 Roadster!
- The Interactive Tower Top Ten is now online!
- Check out the games we play under Our Programming and Your Programming.
- Vin Scelsa is back home at N-E-W.
- WNEW has some job opportunities available.
- What do you think of this site, or WNEW? Drop us a note.

| What's NEW! | Artist of the Week | Airstaff | Our Programming | Your Programming | Concert Calendar | Feedback | Internet Archives | NEW Classifieds | Wall of Fame! |

Exhibit 2

Glass ceilings in the business world are not an isolated feature of corporate architecture; rather, they are held in place by the attitudes of society at large. The Commission recognizes that attitudinal changes cannot be dictated, mandated or legislated. However, the Commission's fact finding report, **Good for Business: Making Full Use of the Nation's Human Capital**, identified two types of societal barriers that engender and reinforce a glass ceiling for minorities and women. These are:

- *The Difference Barrier:* Essentially, prejudice, or prejudging that someone is different and therefore less able to do the job. The major differences that lead to discomfort are cultural, gender-based and color-based differences.

- *The Supply Barrier:* The lack of qualified, capable minorities and women, due to lack of education, for instance. The supply barrier doesn't just keep qualified applicants from walking through the door to the executive suite, it keeps them from even entering the building.

THE DIFFERENCE BARRIER: STEREOTYPE, PREJUDICE AND BIAS

Stereotypes generally result from wide publicity given the negative actions of a few members within a particular group, or from fantasies created by the entertainment industry to fulfill a plot line. The bottom line is, however, that stereotypes can be absorbed and become the beliefs upon which we act. These misconceptions about groups of people become embedded in our minds and prompt us to think differently about each other. Attitudinal change brings behavioral change, and so accordingly, the Commission has identified the following initiatives that can help to overcome the Difference Barrier:

Recognize the Role of the Media

The media do not reflect America so much as shape America. The media play a critical role in developing and eliminating stereotypes and biases that affect the way minorities and women are viewed in society at large and in the workplace. The Commission recommends that (1) media organizations examine closely their diversity