it stated that its purpose in doing so was enforcement of the *Civil Rights Act* -- not program diversity.

The assertion that program diversity is the result of hiring of racial minorities by broadcasters places the FCC in the position of influencing program content. This is very different from requiring broadcasters to serve the needs of their listeners. Thus, the FCC's EEO policy raises a First Amendment question.

The use of comparisons between the ratio of minorities employed by a broadcaster and work force availability apparently is in apparent violation of Section 703 of the *Civil Rights Act*.

S&B therefore, respectfully submits that: (1) in light of *Adarand's* analysis of the applicability of the Fifth Amendment to the Constitution; (2) the First Amendment's preclusion against the FCC's involvement in program content; and (3) Section 703 of the *Civil Rights Act's* preclusion against the use of work force

statistics, the proper method of reforming 47 C.F.R. §73.2080 is to strike all but part (a) of that section, as well as the reporting requirements.

Respectfully submitted,

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