

BIENSTOCK & CLARK

A Partnership Including Professional Associations
311 SOUTH WACKER DRIVE, STE. 4550
CHICAGO, ILLINOIS 60608
TELEPHONE 312-697-4965
FACSIMILE 312-697-4966

Lisa M. Chandler

March 1, 1999

RECEIVED

MAR 1 1999

VIA COURIER

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

**Re: Comments of the Small Cable Business Association ("Comments"); MM
Docket Nos. 98-204 and 96-16**

Dear Ms. Salas:

On behalf of the Small Cable Business Association ("SCBA"), we enclose twelve (12) copies of the above-referenced Comments. We request that each Commissioner receive a copy of SCBA's Comments.

In addition, we provide a "FILE COPY." We ask that you date-stamp and return it to the courier.

If you have any questions, please call us.

Very truly yours,

Lisa M. Chandler

Lisa M. Chandler

Enclosures

cc: Small Cable Business Association

imc SCBA A:\EEO\comments tra wpc

3250 Ocean Park Boulevard, Suite 350
Santa Monica, California 90405
Telephone 310-314-8660
Facsimile 310-314-8662

200 South Biscayne, Suite 3160
Miami, Florida 33131
Telephone 305-373-1100
Facsimile 305-358-1226

5360 Holiday Terrace
Kalamazoo, Michigan 49005
Telephone 616-353-3900
Facsimile 616-353-3906

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
MAR 1 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Review of the Commission's)	
Broadcast and Cable)	MM Docket No. 98-204
Equal Employment Opportunity)	
Rules and Policies)	
and Termination of the)	MM Docket No. 96-16
EEO Streamlining Proceeding)	

To: The Commission

**Comments of the
Small Cable Business Association**

Of Counsel:
Matthew M. Polka
President
Small Cable Business Association
One Parkway Center
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Eric E. Breisach
Christopher C. Cinnamon
Lisa M. Chandler¹

Bienstock & Clark
5360 Holiday Terrace
Kalamazoo, Michigan 49009
(616) 353-3900

March 1, 1999

Attorneys for the
Small Cable Business Association

¹ Resident in Chicago office only

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
MAR 1 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's)
Broadcast and Cable) MM Docket No. 98-204
Equal Employment Opportunity)
Rules and Policies)
and Termination of the) MM Docket No. 96-16
EEO Streamlining Proceeding)

To: The Commission

Comments of the
Small Cable Business Association

I. INTRODUCTION AND SUMMARY

The Small Cable Business Association ("SCBA") submits its comments in the above-captioned proceeding to address small cable business issues raised by the Commission's *Notice of Proposed Rule Making*.² SCBA's comments will address three issues: (1) the need for small cable relief; (2) recordkeeping and reporting issues; and (3) recruitment efforts.

SCBA files these comments on behalf of its nearly 300 member smaller cable businesses and their small cable systems (collectively "small cable"). The majority of SCBA's members have fewer than 1,000 subscribers total. SCBA was formed in 1993 by

² See *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding*, Notice of Proposed Rule Making in MM Docket Nos. 98-204, 96-16, FCC 98-305 (released November 20, 1998) ("NPRM"). The Commission extended the filing deadline for comments until March 1, 1999. See Order in MM Docket Nos. 98-204 and 96-16, DA 99-326 (adopted February 11, 1999).

smaller, independent cable businesses to represent the collective interests of its members and to speak with a unified voice regarding issues affecting their economic interests. SCBA regularly represents its members' interests in Commission proceedings to promote the unique concerns of smaller and independently owned cable businesses and to ensure that Commission decisions do not unfairly and adversely impact its members' economic interests.

To address the unique needs of small cable, SCBA proposes that the Commission (1) seek authorization from Congress to increase the reporting threshold for annual employment reports to more than 10 full-time employees; and (2) leave recruitment efforts to small cable businesses' discretion

II. THE COMMISSION SHOULD PROVIDE SMALL CABLE RELIEF

A. Small System Reporting and Recordkeeping Exemption

Despite recognition of the need for modified small broadcaster relief from certain EEO obligations,³ the *NPRM* overlooks the need for modified small cable relief. Congress codified many of the specific EEO requirements for cable television.⁴ This may explain why

³ See *NPRM* at ¶¶ 84-85 ("The assumption for making [stations with small staff, e.g., 10 or fewer full-time employees] a qualifying factor for administrative relief [i]s that stations with small staffs . . . have fewer hiring opportunities and limited financial, personnel and time resources available for recruiting."). The Commission seeks comment on exempting stations with small staffs, e.g., 10 or fewer full-time employees, or stations serving small markets from EEO reporting and recordkeeping requirements

⁴ See 47 U.S.C.S. § 554. Congress specified that cable entities with more than five full-time employees must file an annual report identifying statistical information about their employees. See 47 U.S.C.S. § 554(d)(3)(A). Similarly, Congress specified that the Commission must conduct its periodic assessment of cable entities' compliance with the EEO rules at least every five years. 47 U.S.C.S. § 554(e)(2).

the Commission does not seek to offer small cable relief similar to that it suggests may benefit small broadcasters. Small cable, however, like small broadcast, faces significant financial and administrative obstacles unique to smaller businesses. Therefore, both small cable and small broadcasters should share relief from certain EEO obligations.

The unique concerns of small cable justify granting it relief from certain EEO obligations. Small systems often serve rural communities and smaller markets. Small systems also have limited financial and administrative resources.⁵

Small systems face many challenges. As the Commission has recognized, "a large number of small cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition."⁶ The costs related to EEO recruiting, recordkeeping and reporting further strain small systems' limited financial and administrative resources.

The Commission has exempted small cable, or provided it with special treatment, in other contexts, including rate regulation⁷ and EAS requirements.⁸ Extending such relief to small systems in this context therefore would comport with the Commission's policy of

⁵ See *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92-266 and 93-215, 10 FCC Rcd 7393 at ¶ 26. (1995) ("*Small System Order*") (discussing the need for small system administrative relief).

⁶ See *Small System Order*, 10 FCC Rcd 7393 at ¶ 25.

⁷ See *Small System Order*, 10 FCC Rcd 7393.

⁸ See *In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Second Report and Order in FO Docket Nos. 91-301 and 91-171, 12 FCC Rcd 15503 at ¶ 1, 24 (1997).

relieving small cable from unduly burdensome administrative and regulatory requirements

The Commission, however, cannot provide all necessary small cable relief without seeking congressional authorization. SCBA urges the Commission to seek congressional authorization to offer small cable provisions comparable to those provided small broadcasters. SCBA outlines the elements of small system relief below

B. Lessened Recordkeeping and Reporting Requirements

Once the Commission receives congressional authorization, it should adopt a two-tiered approach to establish small cable EEO reporting and recordkeeping obligations. Specifically, SCBA recommends the following:

- **Systems⁹ with 10 or fewer full-time employees.** The Commission should expand its rules to exempt these systems from certain EEO recordkeeping and reporting requirements. Systems that currently report to the Commission but have 10 or fewer full-time employees would need to certify to the Commission, within 120 days of the effective date of the revised rules, that the system has 10 or fewer full-time employees. Upon such certification, these systems would no longer need to file annual employment reports. They would, however, need to provide the Commission with a periodic

⁹ The Commission applies its EEO rules to "cable entities as employment units. Each cable entity may be considered a separate employment unit; however, where two or more cable entities are under common ownership or control and are interrelated in their local management, operation and utilization of employees, they shall constitute a single employment unit." 47 C.F.R. § 76.71(b). In other words, a "cable employment unit is a cable system or an amalgamation of several cable systems that are under common ownership or control and are interrelated in their local management, operation, and utilization of employees" See *In the Matter of Implementation of Commission's Equal Employment Opportunity Rules*, Notice of Inquiry in MM Docket No. 94-34, 9 FCC Rcd 2047 at note 25 (1994). For purposes of these comments, SCBA therefore considers a cable system served by a single headend or multiple interconnected systems as a single cable entity.

assessment of their EEO policies and programs.¹⁰

- **Systems with 10 to 15 full-time employees.** These systems could apply to the Commission, on grounds of financial or administrative hardship, to request a waiver from EEO recordkeeping and reporting requirements. To ensure the continued need for relief, the Commission could require systems to renew their waiver requests every five (5) years. As with other small systems, these systems would need to provide the Commission with a periodic assessment of their EEO policies and programs.

This two-tiered approach addresses the unique concerns of small cable without sacrificing Congress' or the Commission's EEO objectives of promoting program diversity and deterring discriminatory employment practices.¹¹ These objectives would remain secure because small system operators would remain subject to the Commission's general EEO policy under 47 C.F.R. § 76.73 (preventing discriminatory hiring practices and requiring continuing efforts towards assuring equal employment opportunities) and the periodic assessment would provide added assurance of compliance. Small systems, however, would greatly benefit from the financial and administrative savings that would result.

¹⁰ The Commission presently must review cable systems' compliance every five years. See 47 U.S.C. § 554(e)(2). To the extent the Commission aligns its renewal broadcast EEO requirements to the extended license terms for broadcast stations, *i.e.*, eight years, the Commission should recommend to Congress similar changes regarding the periodic review for cable systems.

¹¹ See *In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, Order and Notice of Proposed Rulemaking in MM Docket No. 96-16, 11 FCC Rcd 5154 at ¶ 3 (1996).

C. Seeking Authority to Provide Expanded Small Cable Relief Would Not Contravene Congressional Intent

Expanding small cable relief to include systems with 10 or fewer full-time employees would not contravene congressional intent regarding cable EEO. Congress' concern regarding cable EEO focuses on females and minorities in "positions of management authority" and its belief that "increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media."¹² The reporting threshold, however, equals six full-time employees, regardless of whether those employees serve in positions of management authority. Because employment of six or more full-time employees triggers a cable system's annual reporting obligations without regard for the management authority of those employees, no correlation exists between the reporting threshold and Congress' objectives. Increasing the annual reporting threshold to 10 or more full-time employees therefore would lessen the burden on small cable without compromising Congress' objectives.

Recommending congressional changes to the cable EEO provisions would also create regulatory parity. The Commission proposes expanding small broadcast relief to small stations that have 10 or fewer full-time employees.¹³ For cable, however, statutory mandate requires cable entities with more than 5 full-time employees to file annual

¹² See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §22(a), 106 Stat. 1498 (1992).

¹³ See *NPRM* at ¶ 84.

employment reports.¹⁴ Regulatory parity among cable systems and broadcast stations therefore dictates that the Commission request changes to the statute to permit alignment.

D. The Small Business Administration Should Approve a Higher Reporting Threshold

The Commission may not ordinarily define a small business other than as established by the Small Business Administration.¹⁵ SBA, however, defines of a "small cable company" in terms of its gross revenues.¹⁶ Where the Commission has given special treatment to small cable, it too has defined the relevant entities in terms of revenue or the number of subscribers.¹⁷ Because the focus of the Commission's EEO rules relate to employment of a broad cross-section of people, they necessarily relate to the number of employees. The number of subscribers served by a system or the system's gross revenues, while indicative of the limited resources available, do not correspond well to the Commission's EEO rules. Neither is indicative of a cable system's efforts (or accomplishments) regarding EEO. The more logical estimate of a small system for

¹⁴ See 47 U.S.C.S. § 554(d)(3)(A).

¹⁵ See Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). Where the Commission seeks to use a definition of small businesses that differs from that used by the Small Business Administration ("SBA"), it generally must seek comment regarding the proposed definition and SBA's approval of the proposed change. See 15 U.S.C. § 632(a).

¹⁶ See *Small System Order*, 10 FCC Rcd 7393 at ¶ 14.

¹⁷ See *Small System Order*, 10 FCC Rcd 7393 at ¶¶ 3, 25; See *EAS Second Report*, 12 FCC Rcd 15503 at ¶¶ 1, 24.

purposes of EEO is the system's number of employees. For this reason, SCBA defines "small system" in terms of the number of employees, not gross revenue or the number of subscribers.

III. ADOPT A DISCRETIONARY APPROACH TO RECRUITING

The Commission should give small systems wide latitude in determining how best to implement the Commission's EEO policies. In the *NPRM*, the Commission suggests imposing specific requirements to ensure compliance, e.g., specifying the number or type of resources that a cable operator must contact for each position.¹⁸ SCBA recommends a more discretionary approach for small cable.

The Commission should leave development of recruitment policy to small systems' discretion. Small systems often serve rural communities and small markets, and frequently have limited financial and administrative resources.¹⁹ The number and types of resources available to these systems for recruiting vary greatly. To dictate the quantity and types of recruitment resources needed to ensure compliance ignores the realities for many small system operators. The Commission, therefore, should allow small systems (systems with 10 or fewer full-time employees) to determine how many or what types of recruitment sources to use as part of their recruitment efforts. This will provide small systems with the flexibility needed to comply with their ongoing EEO obligations without establishing unreasonable Commission expectations or unnecessary burdens for those systems.

¹⁸ *NPRM* at ¶¶ 61-69.

¹⁹ See *Small System Order*, 10 FCC Rcd 7393 at ¶ 26.

IV. CONCLUSION

Given the limited financial and administrative resources available to small cable and the realities of the availability of recruiting sources in smaller towns and rural America, the Commission should attempt to relieve those systems from certain Commission EEO requirements. Specifically, the Commission should request authority from Congress to make changes to certain cable EEO obligations — the reporting threshold and the timing of the periodic review. Once authorized, the Commission should implement a two-tiered approach for cable EEO. The Commission should also leave to small cable's discretion the number and types of recruitment sources contacted for each job opening. These accommodations would benefit small cable without sacrificing congressional or Commission EEO policies.

Respectfully submitted,

SMALL CABLE BUSINESS ASSOCIATION

By: Lisa M. Chandler

Of Counsel:
Matthew M. Polka
President
Small Cable Business Association
One Parkway Center
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Eric E. Breisach
Christopher C. Cinnamon
Lisa M. Chandler²⁰

Bienstock & Clark
5360 Holiday Terrace
Kalamazoo, Michigan 49009
(616) 353-3900

March 1, 1999

Attorneys for the
Small Cable Business Association

²⁰ Resident in Chicago office only.