BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

REPLY COMMENTS OF 46 NAMED STAT BROADCASTERS ASSOCIATIONS

By: Richard R. Zaragoza
David D. Oxenford
Barry H. Gottfried
David K. McGraw

Its Attorney

Dated April 15, 1999

SUMMARY

The Associations, comprising the broadcast associations in 46 states, the District of Columbia and Puerto Rico, fully support the FCC's twin goals of prohibiting unlawful employment discrimination and of promoting programming that reflects the interests of all members of local communities, including importantly minorities and women, as well as the Commission's effort to ensure that broadcasters do not rely solely, or even primarily, on word-of-mouth recruitment for vacant positions at their stations. The record in this proceeding already demonstrates strong support for the use of the Internet as an effective mechanism in the hiring process, as proposed by the Associations in their initial Comments. Accordingly, the Associations once again urge the Commission to make hiring through the Internet the centerpiece of any new equal employment rules and policies.

The Associations remain concerned that the regulations proposed by the Commission and by some commenters in this proceeding are unconstitutional. In the Associations' opinion, neither the Commission's proposed new rules nor the separate, and in many instances more regulatory, proposals of the Minority Media and Telecommunications Council and the organizations filing with it (collectively, "MMTC") meet the test as described in *Lutheran Church.* In fact, the position of MMTC proves that, in purpose and effect, the Commission's proposed new rules are just as deficient, if not more so, than the FCC's former rules which were found to be unconstitutional under *Lutheran Church.* To adopt those new rules, and especially those advanced by MMTC, is to risk reversal once again, placing in jeopardy the Commission's jurisdiction to promulgate its own set of EEO rules. A clearly lawful and effective approach, one that well serves the public interest, is to adopt the proposals proffered by the Associations and the NAB.

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 2

II. DISCUSSION 4

A. COMMENTS FILED IN THIS PROCEEDING SHOW BROAD SUPPORT FOR THE ASSOCIATIONS' INTERNET BASED RACE-NEUTRAL OUTREACH PROPOSAL 4

B. COMMENTS FILED IN THIS PROCEEDING DEMONSTRATE THAT THE EEO RULE PROPOSED IN THE *NPRM* WOULD BE UNCONSTITUTIONAL 6

1. The Proposed Rules Require Broadcasters to Engage in Race-based Decisionmaking 7

a. Fatal Flaw: Requirement to Contact Targeted Sources 7

b. Fatal Flaw: Requirement that Hiring Pools be Proportional to the Minority Population 9

c. Fatal Flaw: Requirement that All Minority and Female Applicants be Interviewed 10

d. Fatal Flaw: Requirement for Filing FCC Form 395-B Identifying Each Station 11

2. Comments Filed in This Proceeding Have Failed to Document a Nexus Between Diversity in Employment And Diversity in Programming . . . 12

3. The Proposed Eeo Regulations Are Not Narrowly Tailored in Any Event 14

CONCLUSION 19

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To: The Commission

JOINT REPLY COMMENTS OF 46 NAMED STATE BROADCASTERS ASSOCIATIONS

The Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, Maryland/District of Columbia/Delaware Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana

Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the "Associations"), by their attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, hereby submit their joint reply comments in response to the comments filed in the above-captioned *Notice of Proposed Rule Making* (the "*NPRM*"), 63 Fed. Reg. 66104 (1998).

I. INTRODUCTION AND SUMMARY

1. The Associations, comprising the broadcast associations in 46 states, the District of Columbia and Puerto Rico, appreciate the opportunity to respond to some of the positions advanced by certain of the individuals and organizations filing initial comments in this proceeding.[1] As made clear in their initial Comments in this proceeding, the Associations fully

[1]That the Associations may not respond to a particular position should not be construed as an acceptance of that position.

support the FCC's twin goals of prohibiting unlawful employment discrimination and of promoting programming that reflects the interests of all members of local communities, including importantly minorities and women. The Associations also support the Commission's effort to ensure that broadcasters do not rely solely, or even primarily, on word-of-mouth recruitment for vacant positions at their stations. Indeed, in their comments, the Associations proposed a race-neutral outreach program based on the innovative use of the Internet to promote a speedy, universally available, convenient and interactive hiring process that will effectively end sole reliance on word-of-mouth recruiting. The record in this proceeding already demonstrates strong support for the use of the Internet as an effective mechanism in the hiring process. Accordingly, the Associations once again urge the Commission to make hiring through the Internet the centerpiece of any new equal employment rules and policies.

2. The comments filed in this proceeding demonstrate broad agreement on two key principles: one, that unlawful discrimination is wrong and should not be tolerated; and, two, that stations should engage in broad recruitment to insure that all persons, men and women, minorities and nonminorities who are interested in a career in broadcasting, have a convenient way to learn of and apply for job openings at radio and television stations throughout the United States. (The Internet based Broadcast Careers Program developed by the Broadcast Executive Directors' Association ("BEDA") with the support of the Associations fully achieves those goals.) Where there is disagreement among the parties in this proceeding, it is over the type of Commission regulatory scheme, if any, that may lawfully be instituted to promote these principles. The Associations submit that in resolving this issue, the Commission must be guided by the Court's holding in *Lutheran Church- Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir.),

reh. denied, 154 F.3d 487 (D.C. Cir.), *reh. en banc denied* 154 F.3d 494 (D.C. Cir. 1998) ("*Lutheran Church*"). In that decision, the Court held that the Commission may not lawfully pressure broadcast stations to make race-based hiring decisions unless the goal represents a "compelling state interest" and the means used is "narrowly tailored" to meet that goal. In the Associations' opinion, neither the Commission's proposed new rules nor the separate, and in many instances more regulatory, proposals of the Minority Media and Telecommunications Council and the organizations filing with it (collectively, "MMTC") meet this test. In fact, the position of MMTC proves that, in purpose and effect, the Commission's proposed new rules are just as deficient, if not more so, than the FCC's former rules which were found to be unconstitutional under *Lutheran Church*. To adopt those new rules, and especially those advanced by MMTC, is to risk reversal once again, placing in jeopardy the Commission's jurisdiction] to promulgate its own set of EEO rules. A clearly lawful and effective approach, one that well serves the public interest, is to adopt the proposals proffered by the Associations and the NAB.

II. DISCUSSION

A. COMMENTS FILED IN THIS PROCEEDING SHOW BROAD SUPPORT FOR THE ASSOCIATIONS' INTERNET BASED RACE-NEUTRAL OUTREACH PROPOSAL

3. In their initial Comments, the Associations described their "Model Broadcast Careers Program Road Map," ("Model Program ") to enlarge employment opportunities for minorities and women at broadcast stations nationwide. The Model Program, and in particular its broad, race-neutral, Internet based outreach to men and women of all races and ethnicities,

who might not learn of job positions at broadcast stations through word-of-mouth, represent the sort of program that the Court of Appeals held would not implicate the guarantee of the Equal Protection Clause of the Fifth Amendment. *Lutheran Church*, 141 F.3d at 351. The Model Program includes mechanisms for: educating the public concerning broadcasting careers; expanding educational and experience opportunities, including through scholarships and paid internships; maximizing the pools of qualified applicants, including those from culturally and racially diverse backgrounds; increasing the awareness of job openings through new media such as Internet web sites and job fairs; training employees for increased responsibilities in the broadcast industry; and educating broadcast stations about their EEO responsibilities.

4. The record shows that many commenters support the Associations' proposal for race-neutral outreach. For example, the NAB incorporates the use of the Model Program as part of its proposed EEO rule. (NAB Comments at 7). American Women in Radio & Television, Inc ("AWRT") supports the idea of using the Internet in the hiring process, and states that it "supports the educational and outreach approach" outlined in the Model Program. (AWRT Comments at 3). The NOW Foundation and those joining in its comments (collectively, "NOW") propose that the Commission offer broadcasters a menu of choices to be used in designing an outreach program (NOW Comments at 36-40), including the use of the Internet in the hiring process. (*Id.* at p. 39). MMTC itself expresses support for the use of "creative" efforts such as job fairs and Internet web pages. (MMTC Comments at 230-232).

5. Given the broad base of support that exists among the commenters in this proceeding for the use of innovative hiring outreach methods such as those outlined in the Model Program, the Commission should give the Associations' proposal an opportunity to prove itself

as the basis of any new EEO regulations. Indeed, it should be noted that MMTC has argued that the Commission's previous EEO rule was ineffective. MMTC argues that, under the previous EEO rule, the FCC was guilty of discrimination, and that the FCC ratified, validated, and fortified the discriminatory practices of licensees. (MMTC Comments at 114, fn. 189). MMTC argues that the FCC's "moderate approach" to EEO enforcement was insufficient to prevent discrimination, (MMTC Comments at 193) and blames the FCC for what it perceives as insufficient outreach by broadcasters. (MMTC Comments at 215). Thus there is surely no reason for the Commission return to largely the same regulatory mechanisms that MMTC believes have failed, and were struck down by the court, when new and innovative race-neutral outreach methods have not only garnered widespread support but are manifestly effective and lawful.

B. COMMENTS FILED IN THIS PROCEEDING DEMONSTRATE THAT THE EEO RULE PROPOSED IN THE *NPRM* WOULD BE UNCONSTITUTIONAL

6. In its comments, MMTC has sought to demonstrate that the Commission's proposed EEO regulations are constitutional. (MMTC Comments at 338). But rather than demonstrating the constitutionality of those regulations, MMTC has unwittingly shown why the proposed rules would violate the Fifth Amendment of the United States Constitution. The issues are: do the proposed rules require or encourage broadcasters to engage in race-based decision making in the hiring process and, if so, are those rules nonetheless narrowly tailored to meet a compelling governmental interest. The pressure to make race-based decisions throughout the hiring process is evident.

1. The Proposed Rules Require Broadcasters to Engage in Race-based Decisionmaking

a. Fatal Flaw: Requirement to Contact Targeted Sources

7. Among the Commission's proposals is that broadcasters would be required to announce job vacancies to a specified number of minority and female targeted recruiting sources. (*NPRM* at ¶ 65). Several commentors, including MMTC, support this new requirement. For example, the National Hispanic Foundation for the Arts ("NHFA") suggests that the Commission require "that a specific number of recruiting sources be contacted, and that a certain percentage of those be Latino sources." (NHFA Comments at 17). MMTC supports the requirement that broadcasters be required to announce its job openings in a specified number of minority or female specific sources, but would not require announcing the vacancy in any other sources. (MMTC Comments at p. 222). Further, MMTC suggests that the number of these female and minority specific sources could be as high as 50. (MMTC Comments at 223).

8. By requiring broadcasters to identify recruiting sources which specifically target a minority group and then to advertise in those sources and no others, solely because of their appeal to a specific racial or ethnic group, the Commission would be requiring the broadcaster to engage in race-based decision making in the hiring process. MMTC attempts to counter this conclusion by stating that the requirement would not be race-conscious because "recruitment and interviewing are not hiring." (MMTC at p. 224). However, MMTC posits a distinction without a difference. The decision to offer a particular person a position is inextricably intertwined with the decisions of who to interview and how to attract applicants/interviewees. MMTC offers no support for its notion that the constitutional guarantee of Equal Protection applies only to the last decision in a chain of inter-related hiring decisions. This issue was addressed explicitly by the

Lutheran Church Court, where the government raised the argument that "*Adarand* reaches only race-conscious 'hiring decisions.'" (*Lutheran Church* at 351). The court indicated its doubts that this was so, and concluded that even if some might view recruitment steps as unimportant -- which is certainly far from clear -- "the Equal Protection Clause would not seem to admit a de minimis exception." *Id.* The suggestion that the Equal Protection Clause applies only to the final selection decision in the overall hiring process also misses the broader principle articulated by the Supreme Court that "[a]ll governmental action based on race . . . should be subjected to detailed judicial inquiry." *Adarand* at 226. The Court's use of the word "all" in this context is clearly not accidental, as it is stressed repeatedly in the majority opinion. (*id.* at 227 ("we hold today that all racial classifications . . . must be analyzed by a reviewing court under strict scrutiny"); *id.* at 220 ("racial classifications of any sort must be subjected to strict scrutiny"); *id.* at 222 ("with *Croson*, the Court finally agreed that the Fourteenth Amendment requires strict scrutiny of all race-based action by state and local governments"); *id* at 240 (Justice Thomas, concurring) ("I agree with the majority's conclusion that strict scrutiny applies to all government classifications based on race")). The "central mandate" of the Fifth Amendment's Equal Protection Clause is "racial neutrality in governmental decision making" and "[l]aws classifying citizens on the basis of race cannot be upheld unless they are narrowly tailored to achieving a compelling state interest." *Miller v. Johnson*, 515 U.S. 900, 904 (1995). Accordingly, under this analysis the FCC's proposed rules must meet the "compelling interest/narrowly tailored" test.

b. Fatal Flaw: Requirement that Hiring Pools be Proportional to the Minority Population

9. Another aspect of the FCC's proposal supports this conclusion that race-based hiring decisionmaking is mandated for broadcasters. Under its proposal that stations use numerous, specific minority and female targeted sources for recruitment, the Commission would also require stations "to assess the productivity of recruiting sources." (*NPRM* at ¶ 72). MMTC supports the Commission's statement that "that the only way a broadcaster can know that minorities and women have received adequate notice of a job vacancy is to review the diversity of applicant pools." (MMTC at 227). MMTC further states that these pools must be "representative of the population" (MMTC at 200, 227), and that no explanation why a particular applicant pool did not reflect the racial composition of the market should be "dignified." (MMTC at 227).

10. The Associations believe that if the Commission requires such an "analysis" of the representativeness of these hiring pools, this will effectively create a quota system for hiring. Stations will be required to compare the racial and gender makeup of their hiring pools with the local population, and will be pressured to ensure that the numbers in that pool correspond with the percentages in the local community. Such a requirement, once again, would force stations to make race-conscious decisions in order to reach a quota of minorities and women, corresponding to indicated the makeup of the local community. The Associations submit that this applicant quota system will send to the broadcaster precisely the same signal that the hiring quota system sent to the broadcaster in *Lutheran Church*, namely that the broadcaster should make race conscious decisions in its overall hiring process including selection, etc. As Congressmembers Oxley and Hall noted in a Letter to Chairman Kennard, "So, firms are to believe that they will be

punished for not adequately documenting minority employment, and for not doing adequate self-analysis of their EEO efforts, but that the FCC has no interest in whether they actually hire adequate numbers of members of minority groups. With all due respect, this stretches credulity." (Letter to William E. Kennard from Michael G. Oxley and Ralph M. Hall dated March 23, 1999). There could not be a more clear case of the Commission requiring broadcasters to engage in race-based decision making. *Lutheran Church* at 354. Once again, the Commission, as does MMTC, rests its case on a distinction without a legal difference under *Lutheran Church.* Accordingly, any requirement that a broadcast station engage in an analysis of hiring pools would violate the Fifth Amendment. *Lutheran Church* at 354.

c. Fatal Flaw: Requirement that All Minority and Female Applicants be Interviewed

11. There is another factor evidencing mandatory race-based decisionmaking in the hiring process. MMTC interprets the Commission's proposal that stations be required to interview minorities and women for each job vacancy as also requiring broadcasters to interview all minorities and women "whose written materials disclose no obvious non-qualification." (MMTC at 228). In other words, if a minority or female applicant sends written application materials to a station, the broadcaster must interview the applicant unless the broadcaster can demonstrate "that applicant's clear lack of qualifications as evidenced from his or her written application." (MMTC at 228). (There is no corresponding requirement to interview non-minority male applicants.) This proposal further in effect requires the broadcaster to engage in race-conscious decisionmaking in violation of the Constitution.

12. Under MMTC's interpretation, if a station advertised for a position and received 100 resumes, the station would not be permitted to merely select the five most qualified applicants to interview. Rather, the station would be forced to determine (if it can) the gender and minority status of each applicant, and extend an invitation for a personal interview to all females or minorities, solely because of their race or gender, unless the station could demonstrate that a particular minority or female candidate was "clearly" unqualified. If 100 of the applicants were women and minorities, the station would be required to interview all 100, regardless of the resources available to the broadcaster. Such a requirement not only forces the station to inquire as to the racial and gender status of each applicant, it also forces the station to act differently than it would normally, based on the race and gender of the applicant. Ironically, MMTC's interpretative proposal serves to further highlight the constitutional infirmity of the Commission's own proposal.

d. Fatal Flaw: Requirement for Filing FCC Form 395-B Identifying Each Station

13. As a further evidence of the Commission's legally flawed approach, MMTC supports the FCC's proposal to require the filing of the Annual Equal Employment Opportunity Report again so that it can review the hiring records of individual stations. MMTC states that it will "liberally draw inferences from statistics" in investigating whether broadcasters have discriminated, thereby suggesting that the FCC should do also. (MMTC at 315). In performing statistical comparisons of the broadcasters' employees with the local workforce, MMTC holds that a difference of two standard deviations from the makeup of the local market will be enough

to create a "presumption of discrimination." (MMTC Comments at 315, fn. 459).[2] According to MMTC, further, broadcasters will not be permitted to rebut the allegation of discrimination with supposedly "irrational excuses," which include that minorities chose not to apply for positions with a station of that format or in that geographic location. (MMTC at 292).[3]

14. The threat of any such statistical analysis, whether from the FCC or third parties such as MMTC, simply adds to the pressure on broadcasters to make race-conscious hiring decisions. MMTC's own position well illustrates the purpose and effect of the FCC proposed rules, and that is to persuade broadcasters to hire based on race and gender. Indeed, it is difficult to draw any meaningful distinction between this proposal and the requirements rejected in *Lutheran Church*. MMTC has revived the same unconstitutional comparison between the stations' employees and the labor market, but with an even stricter statistical test than that which was struck down. There is no question that a rule allowing such comparisons would be held unconstitutional once again.

2. Comments Filed in This Proceeding Have Failed to Document a Nexus Between Diversity in Employment And Diversity in Programming

15. Compounding the constitutional problems with the FCC's and MMTC's approach is the lack of probative evidence of "nexus" between race and gender diversity in employment and programming diversity. In *Lutheran Church*, the court looked with disfavor on the

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[2]It would appear that MMTC is attempting to create the basis for a new type of FCC crime, "statistical discrimination," in order to advance its goals, even where no evidence of intentional discrimination exists.

[3]The suggestion that a station could be found guilty depending on the legal ground advanced by counsel overlooks the counterproductivity of that approach as illustrated by *Lutheran Church*.

Commission's position that its then-existing EEO regulations "rest solely on its desire to foster 'diverse' programming." The Court noted that the Commission has not clearly defined the term "diverse programming," and said that the asserted interest "seems too abstract to be meaningful." The Court went on to disparage the alleged link between diversity in employment and diversity in programming, and noted that its decision "undermined the proposition that there is any link between broad employment regulation and the Commission's avowed interest in broadcast diversity." *Lutheran Church*, 141 F. 3d at 356.

16. The Commission has not clarified the meaning of the term "diverse programming," nor does it provide concrete evidence that diversity in employment leads to diverse programming. Indeed, the Commission asks commenters to provide evidence that there is a nexus between diversity in employment and diversity in programming. But none of the comments provide the Commission with any material, credible, empirical evidence to substantiate such a nexus. The purported evidence supplied consists of a few collected anecdotes which are immaterial in any event. Nothing has been presented to bolster the "diversity of programming" rationale for the regulation of all employees in the industry.

17. A number of the empirical studies that have been offered to suggest a nexus are immaterial. For example, AWRT presents a study that compares the representation of women in the production of television programs to the on-screen portrayals of female characters, based on the author's analysis of one episode of one program. The only job positions included in this study were creators, producers, executive producers, directors, writers, editors, and directors of photography. The authors compared the number of women in these positions to factors such as how many female characters were on each program, and whether the author of the study

considered these characters to be "powerful." Although the AWRT suggests that this study supports their proposition that "employment of women positively influences programming," the Associations question the implicit assumptions of this study that viewing a single episode of a television program proves a causal link between employment diversity and diversity of programming.

18. Other commenters have pointed to studies that they suggest show a link between broadcast ownership and diversity of programming. (NHFA comments at 11, NOW comments at 11-15, United Church of Christ, et al. comments at 13-14). Such studies are also not material, as the court's challenge to the Commission was to establish a nexus between employees, particularly lower-level employees, and diversity of programming. To date no commenters have offered any such empirical evidence.

3. The Proposed Eeo Regulations Are Not Narrowly Tailored in Any Event

19. In its comments, MMTC suggests that the proposed EEO regulations pose only an insignificant burden on broadcasters, and that even the mere mention of the term "burden" is "offensive." With all due respect, MMTC's analysis of the issue is superficial and just wrong. While the Associations have clearly stated their agreement with the objectives of ending employment discrimination and promoting workplace diversity, the EEO regulations proposed by the Commission are obviously not narrowly tailored, particularly when they are compared to the Internet proposal of the Associations.

20. It is beyond question the proposed EEO Regulations will add numerous, time-consuming tasks, and that these tasks will be at a substantial cost to broadcast licensees, particularly in terms of personnel time. Regardless of whether a licensee is already employing

minorities and women at a level equal to their presence in the labor force, and without any showing that a licensee's hiring pools have been artificially limited in the past[4], under the FCC's proposals a licensee could be required to:

(a) Determine the types of targeted referral sources for recruiting women and minorities;

(b) Develop a list of such sources;

(c) Develop an initial working relationship with each source;

(d) Draft and send a letter to each referral source every time that there is a job opening at the station, informing the source of the necessary qualifications for the position;

(e) Document how many referral sources were contacted for each job opening during the license term;

(f) Draft a questionnaire, and appropriate cover letter, to be sent or given to applicants to determine their race/national origin, gender and referral source;

(g) Contact each applicant submitting information to the broadcaster to determine which referral source, if any, led to the applicant to the station;

(h) Follow-up, with either a second letter or a telephone call, to any applicants that have failed to return the questionnaire;

(i) Document, for every job opening during the license term, whether each referral source produced any referrals;

(j) Document the name, race/national origin and gender of every referral generated by each recruiting source for every job opening;

---

[4]By contrast, the EEOC's regulations encourage voluntary affirmative action where because of historic restrictions by the employer, the available pool of qualified minorities and women has been artificially limited. 29 C.F.R. § 1608.3(c).

(k) Evaluate the recruitment results of each referral source to determine the effectiveness of each source in generating minority and female applicants, and document such self-evaluation efforts;

(n) Document whether and how often the licensee contacted each referral source to enhance the relationship and to generate further referrals from the source;

(o) Locate and develop relationships with new referral sources to enhance minority and female referrals;

(p) Document all efforts to generate new recruitment sources;

(q) Document the exact number of applicants and interviewees for each job vacancy during the license term and keep sufficient records to document the information;

(r) Determine the percentage of minority and female applicants and interviewees for each job vacancy during the license term, and keep sufficient records to document the information;

(s) Keep notes explaining why certain applicants were selected for interviews in case there is a question concerning why not enough minorities or females were interviewed;

(t) Interview all applicants that indicate their status as either minorities or women unless the station can demonstrate that the applicant is "clearly" unqualified for the position, regardless of the number of minority or female applicants;

(u) Keep track of every promotion that occurred during the license term, indicating whether the promotion went to a minority or a woman;

(v) Be able to justify cases where promotions went to non-minorities and males; and

(w) Continually self-assess the effectiveness of the recruiting efforts, and be able to document such self-assessment, including every effort made to enhance minority and female recruiting throughout the license term.

The flaw in the FCC's and MMTC's process is that the more aggressive a station becomes in widening its outreach efforts, the more unmanageable the process becomes. The use of the Internet, to supplement a station's other recruitment efforts, for example, can result in the receipt of hundreds of responses thereby tying up staff for days and weeks in performing the multiplicity of tasks mandated by the Commission. In effect, the diligent broadcaster is penalized for its efforts. What better way to discourage the use of high technology to expand employment opportunities! The Associations' Internet based Broadcast Careers Program is simple and efficient. In contrast to the scheme advanced by the FCC and MMTC, broadcasters merely need advertise their job openings on the websites of their state broadcasters association, and evaluate the resumes of interested applicants in a nondiscriminatory fashion.

21. It is self-evident that compliance with the multiple tasks described in paragraph 20 above will place a heavy staff time and paperwork burden on broadcasters, particularly on smaller broadcasters. It is important to note that these costs will be imposed on all broadcasters, regardless of the efforts they have taken in the past to attract a diverse workforce. Moreover, heavy fines likely to be imposed by the FCC for television stations (as the past has proven) will end up draining stations of the very resources they need to focus on their recruitment of women and minorities.

22. The impact of these burdens will be felt most heavily by smaller stations, which are most often found in rural areas. Smaller stations cannot afford to hire additional employees to work primarily on managing the station's EEO programs, and yet will be required to shoulder the heavy burden of a heavy handed EEO regime. Many of these smaller stations are already operating at or below the break-even point. The cost of additional regulations could force them

to sell to large, corporate owners, thus reducing the diversity of ownership in the broadcast area, or could put the stations out of business, thus eliminating service to rural, underserved areas.

24. Sadly, once again, at the urging of MMTC and others, the Commission is moving in precisely the wrong direction - toward heightened bureaucracy rather than toward innovation and simplicity. All the Commission needs to do is: (1) provide regulatory encouragement for broadcasters to regularly use the Internet for hiring along the lines proposed by the Associations; and (2) issue a Federal declaration to the effect that all broadcasters, including their state associations and the NAB, may lawfully explicitly encourage applicants voluntarily to provide their race and gender on their resumes and job applications to simplify and speed the process by which broadcasters select among qualified applicants for follow-up consideration. If the Commission is hesitant to give this Federal "green light," surely the Commission should itself question the legality of its own proposals.

CONCLUSION

Based on the foregoing, and the Associations' initial Comments, if the Commission is persuaded to adopt a new set of EEO regulations, the 46 named State Broadcasters Associations respectfully request the Commission to adopt racially-neutral outreach regulations consistent with their initial Comments and these Reply Comments.

Respectfully submitted,

Alabama Broadcasters Association
Alaska Broadcasters Association
Arizona Broadcasters Association
Arkansas Broadcasters Association
California Broadcasters Association
Colorado Broadcasters Association
Connecticut Broadcasters Association
Florida Association of Broadcasters
Georgia Association of Broadcasters
Hawaii Association of Broadcasters
Illinois Broadcasters Association
Indiana Broadcasters Association
Iowa Broadcasters Association
Kansas Association of Broadcasters
Kentucky Broadcasters Association
Louisiana Association of Broadcasters
Maine Association of Broadcasters
Maryland/District of Columbia/Delaware
Broadcasters Association
Massachusetts Broadcasters Association
Michigan Association of Broadcasters
Minnesota Broadcasters Association
Mississippi Association of Broadcasters
Missouri Broadcasters Association
Montana Broadcasters Association
Nebraska Broadcasters Association
Nevada Broadcasters Association
New Hampshire Association of Broadcasters
New Mexico Broadcasters Association
The New York State Broadcasters Association, Inc.
North Dakota Broadcasters Association
Ohio Association of Broadcasters

Oklahoma Association of Broadcasters
Oregon Association of Broadcasters
Pennsylvania Association of Broadcasters
Radio Broadcasters Association of Puerto Rico
Rhode Island Broadcasters Association
South Carolina Broadcasters Association
South Dakota Broadcasters Association
Tennessee Association of Broadcasters
Texas Association of Broadcasters
Utah Broadcasters Association
Vermont Association of Broadcasters
Washington State Association of Broadcasters
West Virginia Broadcasters Association
Wisconsin Broadcasters Association
Wyoming Association of Broadcasters

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Dated: April 15, 1999

CERTIFICATE OF SERVICE

I, Angela Dortch, hereby certify that copies of the foregoing **"JOINT REPLY COMMENTS OF 46 NAMED STATE BROADCASTERS ASSOCIATIONS"** were served via hand-delivery on this 15th day of April, 1999, to the following:

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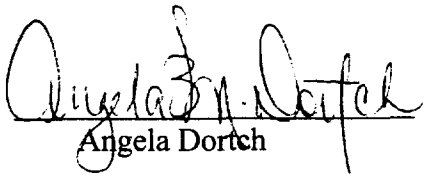

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