

**MINORITY MEDIA AND
TELECOMMUNICATIONS COUNCIL**

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3636 16th Street N.W., Suite BG-54
Washington, D.C. 20010

David Earl Honig, Executive Director
Phone: (202) 332-7005 Fax: (202) 332-7511
e-mail: dhonig@crosslink.net

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August 23, 2001

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AUG 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Ms. Roman Salas:

RE: MM Dockets 98-204 and 96-16
(Broadcast and Cable EEO)

Transmitted herewith are fourteen copies of a letter from the presidents of the League of United Latin American Citizens, the National Association for the Advancement of Colored People, the National Council of La Raza and the National Urban League. Authorizations are on file with the undersigned.

This letter is being supplied for inclusion in MM Dockets No. 98-204 and 96-16 (Broadcast and Cable EEO). See Report and Order, 15 FCC Rcd 2329, 2419 ¶229 (2000) (keeping docket open).

Sincerely,



David Honig
Executive Director

Counsel of Record for the League of United Latin American Citizens, the National Association for the Advancement of Colored People, the National Council of La Raza and the National Urban League

Attachment

/dh

August 21, 2001

Hon. John Ashcroft
Attorney General of the United States
United States Department of Justice
10th & Constitution Ave. N.W.
Washington, D.C. 20230

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AUG 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hon. Michael Powell
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Gentlemen:

RE: MD/DC/DE Broadcasters Association v. FCC and USA, 236 F.3d 13,
rehearing and rehearing en banc denied ___ F.3d ___ (Slip Op.,
released June 19, 2001)

As the CEOs of the largest African American and Hispanic organizations in the nation, we write with great urgency to encourage you to seek certiorari in MD/DC/DE Broadcasters Association v. FCC and USA. In that case, as you know, the D.C. Circuit struck down as unconstitutional the FCC's revised EEO rule, which required broadcasters to take steps to ensure that their employment recruiting practices were non-discriminatory and all-inclusive.

The government's decision on whether to seek certiorari carries considerable weight with the Court. Thus, your decision could well have the practical effect of determining whether the FCC, with legislative direction, may undertake any significant efforts to prevent, proscribe and remedy the effects of discrimination.

In a July 2 editorial, the Washington Post described the FCC's EEO rule as "the most inoffensive corner of affirmative action", noting that it

didn't require broadcasters to set quotas or hiring goals or to give any kind of preferences in hiring. It required only that they try to get minorities and women into their applicant pools. This is precisely the type of outreach that many conservatives say they support in place of racial preferences. But even such minimal requirements, the D.C. Circuit now says, can violate the Constitution.

The D.C. Circuit's decision may prohibit government from using the least aggressive remedy to cure discrimination in one of the most important industries -- an industry from which minorities were excluded in large measure for many years because of government complicity in licensing and relicensing segregationists. Government should not be prevented from remedying the consequences of its own involvement in discrimination, and from preventing additional discrimination. No one should remain silent in the face of such a grave injustice.

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The FCC's long-standing policy of ensuring equal employment opportunity in the broadcast industry has helped ensure that all Americans would have access to the tools of mass communication -- the most powerful force for democracy in the nation. In this way, the FCC has helped ensure that the public has available the widest possible range of ideas and expression.

In their operation, the FCC's EEO rules directly targeted the practice of word-of-mouth recruitment, by which primarily friends and social associates of current employees learn of job vacancies. This practice, common in close knit industries like broadcasting, allows homogeneous groups to replicate themselves across generations, to the exclusion of everyone else.

Outreach-based FCC EEO enforcement has been effective and fair. The FCC's EEO regulations have always required broadcasters to hire only the best qualified persons. No one can possibly be harmed when a broadcaster has to recruit broadly enough to allow well qualified minorities and women to learn of the existence of job openings.

Moreover, outreach-based EEO enforcement imposes no significant burdens on broadcasters. Under Option B of the FCC's 2000 regulations, each broadcaster could design its own broad and inclusive outreach program, subject only to the Commission's review of whether the program constituted broad outreach. An e-mail list could have satisfied this requirement; taking steps to ensure that such an e-mail list is all-inclusive and that information about job openings will be disseminated broadly and reach well-qualified men, women, and racial and ethnic minorities, costs virtually nothing.

On the other hand, the absence of EEO enforcement would be enormously harmful to minority and female job applicants, since denial of opportunity continues to lock them out of broadcasting. A study by the Minority Media and Telecommunications Council (MMTC) disclosed that there was little significant FCC EEO enforcement from 1994 to 1997. MMTC, FCC EEO Enforcement, 1994-1997 (1999). In 1998, the FCC's EEO rules were suspended entirely in the wake of the Lutheran Church case. Thus, it is unsurprising, but profoundly disturbing, that between 1994 and 2001, the percentage of minorities among radio journalists declined from 14.7% to 10.7%, and the percentage of minorities among radio news directors declined from 8.6% to 4.4%. 2001 RTNDA/Ball State University Survey of Women & Minorities in Radio & Television News (2001).

No more critical task faces the FCC today than that of ensuring that all Americans have access to the nation's airwaves. Inasmuch as broadcast licensees are privileged to use valuable public property, the least the FCC can expect is that they help grow the next generation of broadcasters by providing an employment marketplace free from discrimination.

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For over thirty years, the federal government has been unswerving in its defense of meaningful EEO regulation in the broadcasting and other critically important industries. A sudden reversal of this policy would be interpreted as a signal that the federal government no longer has the heart to fight the difficult fight for fair play.

With the greatest respect, we urge you to file a petition for certiorari. The FCC's broad recruitment-based EEO program is a civil rights initiative that the federal government should be proud to defend in the Supreme Court.

Sincerely,

Enrique Dovalina
President and CEO
League of United Latin American Citizens

Kweisi Mfume
President and CEO
National Association for the Advancement of Colored People

Raul Yzaguirre
President and CEO
National Council of La Raza

Hugh Price
President and CEO
National Urban League