

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF THE NATIONAL CABLE &  
TELECOMMUNICATIONS ASSOCIATION**

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The National Cable & Telecommunications Association (“NCTA”), by its attorneys, submits the following comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”)<sup>1</sup> in the above-captioned proceeding.

NCTA is the principal trade association of the cable television industry. Its members provide cable television services throughout the United States. NCTA also represents the cable programmers that offer video programming and other services delivered over cable systems, and the suppliers of equipment to the cable television industry.

**INTRODUCTION AND SUMMARY**

The cable television industry fully supports equal opportunity in cable system employment in principle and in practice. The cable industry has a long record of supporting equal opportunity in employment as the fair policy for our employees and the right policy for our businesses.

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<sup>1</sup> *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies, Second Notice of Proposed Rulemaking, FCC 01-363, rel. Dec.21, 2001 (“NPRM”).*

The Commission proposes to reinstate portions of EEO rules that were in effect prior to a partially successful court challenge by state broadcasters. In *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13, rehearing den. 253 F.3d 732 (D.C. Cir. 2001), cert. denied sub nom., *MMTC v. MD/DC/DE Broadcasters Association*, 122 S. Ct. 920 (2002) (“*MD/DC/DE Broadcasters Ass'n*”), the Court of Appeals held unconstitutional one of the two options for satisfying the “outreach” requirements, adopted in *Report and Order in MM Docket Nos. 98-204*, 15 FCC Rcd 2329 (2000) (“*Report and Order*”), recon. denied, 15 FCC Rcd 22548 (2000). It was through these outreach requirements that broadcasters were required to reach out to all of the residents of their communities, and thereby to ensure that information concerning job vacancies is widely disseminated.

In our comments to the Commission’s Notice of Proposed Rulemaking in MM Docket Nos. 98-204, NCTA made clear its commitment to the EEO statute and the Commission’s implementation process.<sup>2</sup> In response to the broadcasters’ appeal of the Commission’s decision, NCTA joined in an *amicus* brief supporting the Commission’s ruling.<sup>3</sup>

When the D.C. Circuit court ruling was issued, the Commission suspended enforcement of the cable EEO rules pending further agency action. The cable industry responded by reaffirming its commitment to the principles of the Commission’s EEO process. The NCTA Board of Directors, on April 11, 2001, unanimously approved a resolution committing the cable industry to a program of voluntary EEO guidelines.

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<sup>2</sup> *Comments of the National Cable Television Association, Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, MM Docket No. 98-204, Mar. 1, 1999.*

<sup>3</sup> *Brief Amicus Curiae of Radio One et al., National Cable Television Association, American Federation of Television and Radio Artists, NAMIC Inc., and Women in Cable and Telecommunications, Inc. in Support of the Equal Employment Opportunity Rules Adopted by the Federal Communications Commission, MD/DC/DE Broadcasters Ass’n, et al. v. Federal Communications Commission, 236 F. 3d 13 (D.C. Cir. 2001) (No. 00-1094).*

In the following comments, the cable industry generally endorses the Commission’s proposals for reinstating its cable EEO rules. We support the adoption of EEO rules that deter racial and gender discrimination in hiring and promote broad outreach. There must be no doubt that cable systems “... reach out in recruiting new employees to all sectors of their communities to assure that all qualified individuals have an opportunity to apply for and be considered as job candidates.”<sup>4</sup> We expressly endorse the Commission’s proposals to implement the “no discrimination” policy.

Moreover:

- We support recruitment for each full-time vacancy.
- We endorse the wide dissemination of information concerning each full-time job vacancy.
- We further endorse the proposed menu of recruitment activity options from which cable systems will choose two each year (one for systems with six to ten employees).

We believe that the Commission’s program of deterring discrimination and achieving broad outreach should be supplemented by the proposed record-keeping and reporting requirements. These not unduly burdensome provisions effectively balance the Commission’s and the public’s information needs with the costs of providing it. Finally, we support sanctions that apply in those limited situations where a party willfully and deliberately declines to abide by the Commission’s rules and policies.

**I. CABLE SYSTEMS SHOULD RECRUIT FOR ALL FULL-TIME VACANCIES**

NCTA supports the retention of the requirement that cable systems recruit for all full-time vacancies. The “recruitment for all full-time vacancies” requirement is fundamental to the

Commission's EEO program. It establishes the general principle that whenever a full-time vacancy becomes available, a cable operator will engage in a process that will offer all prospective employees, including minorities and women, an equal opportunity to be considered for the position.

**A. The Resignation of a Full-Time Employee, or the Creation of a New Position, Should Generally Trigger the Recruitment Process**

By implementing a program of "outreach," cable operators intend the resignation of a full-time employee from a position that a cable company plans to fill, or the creation of a new position, to trigger a recruitment process that is consistent with the spirit and the letter of Section 634 of the Cable Act, the EEO provision.

This process aims to offer potential applicants the opportunity to seek employment in newly available positions without regard to their race or gender. At the same time, it is not intended to favor applicants because of their race or gender.

**1. Cable Employment Units Should Retain Flexibility to Decide the Number and Type of Recruitment Sources**

The Commission's enforcement of the recruitment provision should take account of related elements of the recruitment scheme necessary to make the process effective. The NPRM proposes that individual cable employment units retain the flexibility to decide the number and type of recruitment sources. This approach affords cable operators in different venues, with differing characteristics, the ability to adopt recruitment strategies likeliest to attract a qualified but at the same time diverse applicant pool. A more rigid approach would unnecessarily limit the flexibility of cable operators to hire a diverse work force from the available pool of applicants.

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<sup>4</sup> *NPRM* at ¶6.

**2. An Employment Unit Should Be Calculated to Reach the Entire Community**

The Commission should adopt its proposal that an employment unit, for purposes of the recruitment process, “... must be, taken as a whole, reasonably calculated to reach the entire community.”<sup>5</sup> Were a cable employment unit to design its process to recruit in selective portions of its service area, job applicants located in the excluded portions of the service area would be less likely to become aware of job opportunities. While the Internet and newspaper advertising are important vehicles for publicizing job opportunities, these mechanisms may not succeed in doing a sufficiently effective job throughout the cable service area. The necessary result is that potential applicants located in the excluded areas would not be participating in the cable operator’s recruitment processes on the same basis as those within the recruited areas. This result would be antithetical to the fundamental requirement that recruitment sources must be calculated to reach the entire community.

**3. Cable Operators Should Be Permitted to Define “Community” in Terms of Franchise Boundaries**

The Commission asks how “community” should be defined for purposes of EEO recruitment, and proposes “... to define ‘community’ as, at a minimum, the county where ... cable employees are primarily located, or Metropolitan Statistical Area (‘MSA’) if the county is part of an MSA.”<sup>6</sup> This is the same approach to the definition of community that the Commission proposes for broadcasters.

While some cable operators may view the primary county or primary MSA definitions as workable, others may prefer an approach that takes account of the cable franchise boundaries

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<sup>5</sup> *Id.* at ¶23.

<sup>6</sup> *Id.*

that result from the geo-political lines established by the franchise process. Cable service, unlike broadcast television, is transmitted by wire, and the franchise boundaries of the cable system, more than county or MSA boundaries, define where a cable system provides service to customers. While county or MSA boundaries may be a good surrogate for the Commission's television frequency allocations, cable systems have more precise politically determined limits. Cable operators should have the option of defining "community" contiguously with these precise limits.

**B. The Proposed Exceptions to the Requirement to "Recruit for All Vacancies" Should Be Adopted**

In recognition of cable operators' need for flexibility in business operations, the Commission proposes several exceptions to the general requirement to recruit for all vacancies. The NPRM proposes that internal promotions, and temporary and part-time hires, not be subjected to the recruitment process applicable to full-time positions. It also proposes that cable systems, in limited circumstances, be permitted to hire employees for full-time positions without engaging in the generally required recruitment process. These proposals should be adopted.

**1. Internal Promotions**

Consistent with existing policy, the NPRM proposes to exclude full-time positions filled by internal promotion from the recruitment process. In the *First Notice of Proposed Rulemaking*, the Commission proposed "... not to consider jobs filled by internal promotion as a vacancy for

which recruitment would be necessary.”<sup>7</sup> This position was adopted in the *First Report and Order*.<sup>8</sup>

The rationale for excluding internal promotions from the recruitment process continues to make sense. Full-time cable employee positions are, generally, filled through the recruitment process. If an existing full-time employee is promoted, that employee, while new to the position, is not new to the company. If the promoted employee’s full-time position is subsequently filled, it will be filled through the recruitment process, assuming it is not the subject of a promotion. Thus, even though positions obtained through internal promotions will not be part of the EEO proposal, any new employee slots will generally trigger the recruitment process.

## **2. Temporary and Part-Time Hires**

The policy of excluding temporary and part-time hires from the full-time recruitment process is also sound policy. The Commission has previously observed that temporary employees are typically “those hired as emergency replacements for absent regular employees or those hired to perform a particular job for a limited period of time.”<sup>9</sup> Part-time positions frequently bear similar characteristics. The transient, short-term nature of these types of functions contrast markedly with full-time positions in which an employee, once hired, may remain in a position indefinitely.

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<sup>7</sup> *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of EEO Streamlining Proceeding, Notice of Proposed Rulemaking*, 13 FCC Rcd 23004, 23028 (1999).

<sup>8</sup> *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of EEO Streamlining Proceeding, First Report and Order*, 15 FCC Rcd 2329, 2375 (2000).

<sup>9</sup> *Id.* at 2375.

There may be cases in which an employee is hired for a temporary or part-time position after undergoing the recruitment process for full-time positions. Subsequently, the cable system may decide to offer the temporary or part-time employee a full-time post. The Commission proposes, in such circumstances, that the employee not be required to go through the recruitment process a second time.

This approach is completely consistent with the Commission's proposal for recruiting full-time positions. So long as the potential employee goes through the full-time recruitment process, even if that process initially results in only a temporary or part-time position, it is not necessary for the employee to undergo the recruitment process a second time. By engaging in the process the first time, the Commission and competing potential candidates for full-time positions are assured of the cable system's compliance with EEO requirements.

### **3. Instances in Which Recruitment is Not Feasible**

The Commission has previously concluded that there are limited circumstances in which recruitment is not feasible.<sup>10</sup> For example, the situation may arise in which there is a legitimate need to replace immediately an employee who departs without notice and whose duties cannot be "filled, even briefly, by other ... cable ... employees."<sup>11</sup> While these circumstances are expected to be rare, the Commission acknowledged that in this exceptional case it would be appropriate for a cable operator to hire a full-time employee on a permanent basis without fully complying with the strictures of the recruitment process.

There will be exceptional circumstances in which a cable operator needs to hire a permanent full-time employee outside of the regular process. The unexpected death or

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<sup>10</sup> *Id.* at 2369.

<sup>11</sup> *NPRM* at ¶25.

resignation of a key employee, for example, may force a system operator to immediately fill a full-time permanent position in order to continue essential services to customers. It is important, in these instances, for the cable operator to have the flexibility to fill the critical position on a timely basis.

## **II. THE CABLE INDUSTRY SUPPORTS THE WIDE DISSEMINATION OF INFORMATION CONCERNING EACH FULL-TIME JOB VACANCY**

The widespread dissemination of information concerning each full-time job vacancy is an essential component of a successful recruitment process. If employment positions become open, but potential applicants are not in a position to learn of and about the positions, consider their interest, and make application, the objectives of Section 634 and the Commission's EEO process, will be jeopardized. For that reason, the Commission should adopt practices that facilitate the widespread availability of information about job openings in the cable industry.

The Commission previously adopted the practice of requiring cable systems to notify interested organizations regarding the availability of job openings in the cable industry as "... a 'safety valve' to ensure that no segment of the community is inadvertently omitted from recruitment efforts."<sup>12</sup>

The widespread dissemination of information regarding the availability of new employment opportunities is in the best interest of the cable industry. When new positions open, cable companies generally undertake an advertising process, seeking out potential applicants, with the intent of attracting the best potential candidates for a job.

Cable companies regularly undertake specialized activities to seek out employees with the specialized skills required in a cable system operation. Office managers, for example, may be sought through advertisement in the local consumer press. Cable technicians may also be

sought through the local consumer press. But in recognition of the specialized skills that are needed to perform the required tasks, operators may also look to schools that train potential employees for the necessary functions. System managers and engineers require different skills. For these positions, companies may attempt to expand the potential pools of prospective applicants by looking beyond the local consumer press to specialized industry publications marketed outside of a cable system's immediate area.

If adopted, the Commission's proposed rules will require cable systems to supplement these processes by providing notice of job openings to independent organizations that will then make the employment information available to their members and others. Since some applicants and the organizations that represent them may not become aware of potential job openings through advertising and other conventional processes initiated by the cable operator, this supplementary process to organizations will inform additional applicants of the new opportunities. It is also anticipated that awareness of job openings will increase the number of applicants for available positions.

Moreover, the cable industry already uses the programs of a number of diversity-related organizations to disseminate information about job opportunities, as well as to recruit, maintain and promote minority and women employees.

The Walter Kaitz Foundation ([www.walterkaitz.org](http://www.walterkaitz.org)) administers the cable industry's diversity-focused website, which includes a job and resume bank for all levels of open positions, from executive to administrative. The website provides matching functions that enable employers and job candidates to optimize their respective searches.

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<sup>12</sup> *Id.* at ¶27.

The National Association of Minorities in Communications (NAMIC) ([www.namic.com](http://www.namic.com)), a trade association which engages in education and advocacy in support of diversity through fourteen chapters, was founded in 1980 as the National Association of Minorities in Cable. NAMIC members include cable operators, programmers, hardware suppliers, new media professionals and others.

NAMIC programs include:

- An annual Urban Markets Conference, which focuses on marketing, technology developments, programming trends, policy issues and professional development, as well as issues of concern to communities of color. Regional conferences supplement the national conference;
- An On-Line Job Bank, which provides members with access to available listings of industry jobs, and enables members to post their resumes for review by prospective employers; and
- An Executive Leadership development program, undertaken in conjunction with UCLA's Anderson School of Management, which is targeted to people of color at the director level and above. The program's goals include retention of managers of color, increasing the diversity of managers at the executive level, and managing workforce diversity.

NAMIC also oversees the L. Patrick Mellon Mentorship Program. The program was initially established in 1993, and renamed in 1997 in honor of the late L. Patrick Mellon, one of NAMIC's founding members. The program facilitates increased diversity in the cable industry by making mentors available to NAMIC members, to assist them with career placement strategies. Top-level cable industry professionals are recruited to serve as mentors for a nine-month period, during which time they provide mentoring in the form of support, guidance and career advice at regular one-on-one meetings.

Women in Cable and Telecommunications (WICT) ([www.wict.org](http://www.wict.org)) administers the Betsy Magness Leadership Institute (“Institute”), which assists women in the cable industry in the development of professional skills. The Institute focuses on development of creative problem-solving and leadership capabilities. The Institute selects 25 fellows annually who participate in a year-long program designed to facilitate professional development. The WICT forum, held annually, is a three-day conference that includes discussion of gender issues, mentoring and networking events. The WICT Foundation, established in 1985, sponsors initiatives on work/life productivity, pay equity and diversity.

The Emma Bowen Foundation ([www.emmabowenfoundation.com](http://www.emmabowenfoundation.com)) was established by the cable and broadcast industries to increase the access of minority students to permanent job opportunities. Students work for a participating media company from their junior year of high school until they graduate from college, learning aspects of corporate operations and developing company-specific skills. Students receive an hourly wage, as well as matching compensation, to help pay for college tuition and expenses. Mentoring from key staff in the participating company is an essential element of the program.

**III. CABLE OPERATORS, EXCEPT FOR SMALL SYSTEMS, SHOULD UNDERTAKE TWO “MENU OPTIONS” ANNUALLY TO INCREASE THE AWARENESS OF CABLE INDUSTRY JOB OPPORTUNITIES IN LOCAL COMMUNITIES**

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The Commission proposes to reinstate the requirement in the *Report and Order* under which cable systems with eleven or more full-time employees engage in at least two activities from a menu including a dozen specific choices and a general option. Cable systems with from six to ten employees must undertake one menu option.

The Commission continues to believe that the existing processes by which cable operators publicize job openings, even if coupled with employment announcements to interested independent organizations, will not necessarily be effective in making members of the local community aware of employment opportunities. The “menu option” process is intended, in particular, to assist community members who have not become aware of job opportunities in cable in the past by providing information on specific vacancies, and by encouraging these potential applicants to develop the knowledge and skills to successfully pursue the positions.

Under the EEO rules that the Commission proposes to reinstate, most cable systems will be required to engage in two activities each year from a wide variety of menu options. The choices presented to cable operators include hosting or co-hosting a job fair; creation of an internship program intended to develop skills needed for cable employment; involvement in scholarship programs intended to aid students interested in a career in cable; and institution of a mentoring program. These and other specifically enumerated menu options provide cable systems with a variety of choices from which to select. In addition to these options, a cable operator may satisfy the menu option requirements by participating “... in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in cable communications to job candidates who might otherwise be unaware of such opportunities.”<sup>13</sup> These approaches provide an effective supplementary mechanism to the recruitment process, and NCTA supports this addition to the program.

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<sup>13</sup> See 47 C.F.R. Sec. 76.75 (b)(2)(xiii).

By requiring cable systems to select two menu options from the list of alternatives, the menu option process provides a further safeguard against situations in which particular groups do not become familiar, on a regular basis, with employment opportunities. The list of proposed menu options, including the “design your own” choice,” seems comprehensive. It provides a wide variety of supplementary means by which cable operators may inform potential applicants of job opportunities.

The Commission should also adopt its proposal to reinstate its EEO rules that relate to smaller systems. Under the proposal, systems with from six to ten employees will undertake one menu option annually. Systems with fewer employees would be exempt from the menu option requirement.

Drawing a precise line at which obligations attach to particular cable systems due to their size necessarily requires judgment. The Commission’s judgment to set the exemption point at five employees, and the requirement of one menu option annually at from six to ten employees, appears reasonable.

#### **IV. CABLE SYSTEMS SHOULD BE REQUIRED TO MAINTAIN RECORDS THAT DOCUMENT RECRUITMENT EFFORTS AND COMPLIANCE WITH SUPPLEMENTAL RECRUITMENT MEASURES**

Under the Commission’s proposal, employment units will be required, consistent with Section 634 of the Cable Act, to demonstrate that they undertake broad outreach. Maintenance of records showing whether cable systems engage in broad outreach assists the Commission and the public in determining the success of outreach efforts, and enables cable systems to “self-assess” outreach plans.

In furtherance of this process, cable employment units will be required to keep records of their recruitment efforts. Specifically, as part of the process in which cable systems “recruit for

all vacancies,” employment units will record the total number of interviewees for each vacancy and the referral sources for each interviewee. Cable systems will also record the date each vacancy was filled and the recruitment source that referred the person hired.

These steps should enable the Commission to assess whether a cable system is satisfactorily engaging in broad outreach. Requiring cable systems to take the additional step of reporting recruitment sources associated with each interviewee and hire is simply not needed to demonstrate that broad outreach is being achieved.

**V. THE CABLE INDUSTRY DOES NOT OPPOSE CONTINUED FILING OF REPORTS AS REQUIRED BY EXISTING PROCEDURES**

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**A. Annual Reports**

In the past, cable entities have regularly provided, on FCC Form 395-A, detailed information to the Commission each year on the state of minority and female employment. Data are broken down into nine job categories. In addition to the data covering all job categories, cable systems also report annually employment results broken down into six upper-level categories. This detailed information enables the Commission to prepare industry trend reports in a standardized manner and on a recurring basis.

As part of the annual report, cable systems respond to a series of “Yes/No” questions. These questions relate to outreach to minorities and women, the dissemination of EEO program information, and related matters. By reviewing the responses submitted to the questions, the Commission has been able to determine whether a cable system was complying with the requirements of the rules.

The Commission should reinstate the reporting requirement, except for the provision related to Option B, which was explicitly declared unconstitutional in *MD/DC/DE Broadcasters*

*Association.* The reporting procedure is a straight-forward implementation of the Act's requirements.

**B. Supplementary Investigations**

The Commission also proposes to reinstate the Supplemental Investigation process. This process requires cable systems subject to the EEO rules, at least once every five years, to submit more detailed information on their EEO program.

The Supplemental Investigation process requires the submission of narrative responses to the "Yes/No" questions called for in the annual reports, and more specific information on company practices. NCTA does not oppose the reinstatement of this process.

**VI. THE COMMISSION SHOULD NOT IMPOSE SANCTIONS ON CABLE SYSTEMS SO LONG AS THEY ENGAGE IN CREDIBLE EFFORTS TO COMPLY WITH THE AGENCY'S EEO POLICIES AND PROCEDURES**

Sanctions are appropriate if a cable system knowingly and willfully violates the Commission's EEO rules. But sanctions should not be imposed if a cable system engages in credible efforts to comply with EEO requirements, submits necessary filings in a timely manner, and does not engage in unlawful discrimination.

Sanctions should be limited to situations in which cable systems, despite the clear requirements of the rules, do not recruit for all full-time vacancies in a nondiscriminatory manner, decline to provide notification of vacancies to interested organizations, or neglect to engage in the menu option activities. Sanctions are appropriate if a cable system deliberately refuses to carry out these functions.

Sanctions would be warranted if a cable system failed to submit required information to the Commission, intentionally failed to file annual reports or failed to participate in the supplementary investigation when required, or intentionally failed to maintain necessary records.

Sanctions would also be appropriate if a cable system willfully made false statements to the Commission.

Finally, if a cable system engaged in unlawful discrimination in violation of the Communications Act or the Commission's rules, sanctions would be proper. If such a situation arose, the Commission could investigate and take appropriate action.

### **CONCLUSION**

For the foregoing reasons, the Commission should adopt EEO rules and procedures consistent with these comments.

Respectfully submitted,

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