

**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 ASSOCIATION OF BROADCASTERS**

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EXECUTIVE SUMMARY

The National Association of Broadcasters (“NAB”) appreciates and endorses the Commission’s goals for equal employment opportunity (“EEO”), including preventing discrimination and enhancing workplace diversity in the broadcasting industry. In fact, NAB and the broadcasting industry have a long-standing, dynamic commitment to EEO, as evidenced by the vigorous efforts of NAB and the industry to reach out to all segments of society to attract and identify potential job candidates for positions at all levels in the industry. Nevertheless, NAB believes that the Commission’s proposed EEO rules, although well-intentioned, will subject broadcast licensees to unduly burdensome recruitment and paperwork requirements.

NAB thus offers a realistic, alternative EEO plan that will more than fulfill the Commission’s goals for EEO while taking into account the many demands on licensees’ often limited financial and personnel resources. NAB’s proposal is grounded in a broadcast station’s performance of a continuous pattern of broad, general outreach, instead of an obligation to conduct often fruitless recruitment campaigns for each and every specific job vacancy. NAB’s plan also fulfills the Commission’s aims for information analysis, but through less intrusive, onerous means. The effective and meaningful outreach resulting from the efforts required under NAB’s plan will render the Commission’s notion of recruitment unnecessary.

NAB proposes a multi-tiered, multi-dimensional approach to EEO that will ensure broad outreach to a station’s entire community and beyond, while also providing a station with maximum flexibility to use its resources efficiently. Stations thus will be able to exploit the outreach endeavors they undertake to their fullest potential, and in turn, benefit potential job candidates to the extent possible with enhanced information on, and access to, individual broadcast stations as well as the industry in general.

Specifically, in order to comply with NAB's proposed rule, stations with ten or more full-time employees must certify every four years that they have either: (1) complied with the Office of Federal Contract Compliance Program ("OFCCP") EEO regulations as a covered federal contractor; (2) completed their state broadcaster association's "Broadcast Careers" program, modeled after the program of the National Alliance of States Broadcasters Associations ("NASBA"); or (3) completed the required mix of NAB's General and/or Specific Outreach Initiatives.

Compliance with any of these three options will provide the requisite EEO outreach. First, if a station is in compliance with OFCCP regulations, it should not have the additional burden of complying with FCC regulations, especially since the obligations under the OFCCP regulations far exceed those contemplated in the *Second Notice*. Similarly, implementation of a NASBA-modeled EEO program will ensure that helpful information regarding opportunities in the broadcasting industry will reach a wide audience of potential job candidates, primarily through the use of the Internet. Finally, the NAB's proposed menu of outreach endeavors are available for stations that are not federal contractors or participants in their state association program.

Under NAB's outreach plan, a broadcast station must complete at least two (2) General Initiatives, or at least one (1) General and at least two (2) Specific Initiatives, or at least four (4) Specific Initiatives. NAB's General outreach initiatives score additional regulatory credit because of the substantial financial or personnel resources necessary to execute these ventures. The General Initiatives include: sponsoring a job fair; offering or administering a scholarship, internship or mentoring program; or participating in the NAB Foundation's Broadcast

Leadership Training program, the Emma L. Bowen Foundation for Minority Interests in Media internship program, or the Howard University Media Sales Institute, among others.

NAB's Specific Initiatives are more narrowly focused and more closely approximate the steps a station might take to fill a particular job vacancy. These initiatives include: posting job openings on web pages and in hard-copy publications; regularly announcing job openings on the air; contacting minority, community or other organizations with information on job vacancies; or furnishing station personnel to speak at schools on a career in broadcasting.

NAB proposes to require that stations certify compliance with the Commission every four years. Certification would consist of a simple form on which a station would indicate whether it is in compliance with the OFCCP rules, or has completed the obligations under its state association's career program or NAB's EEO plan, together with an exhibit that lists and describes the EEO outreach initiatives performed by the station. During the interim between submissions to the Commission, this documentation will be available to the Commission upon request. However, NAB believes that no justification exists to support a requirement that stations retain EEO information in their public inspection files or post such information on their Internet websites. In addition, stations would not be required to file the Annual Employment Report (FCC Form 395-B) with the FCC.

In the event, however, that the Commission does not adopt NAB's proposal, NAB suggests several improvements to the Commission's proposal. First, with respect to recruitment, as envisioned by the Commission, NAB urges the Commission to clarify what it means in requiring a broadcast station to "widely disseminate" information concerning every job vacancy to the "entire community." In particular, the Commission should approve use of the Internet, by itself, as a sufficient method of recruitment. Also, the Commission should consider expanding

the definition of “community” to enable a station to promote a specific job vacancy to the universe of potential candidates that is relevant to the specific vacancy; thus, a station could publicize an opening for a new Chief Financial Officer in a financial trade journal instead of a large distribution local newspaper.

NAB also believes that the Commission must clarify the circumstances under which a station would be exempt from the EEO rules due to “exigent circumstances.” In addition, the Commission should allow an exemption from the EEO requirements for stations seeking to replace an existing employee whose skills or position are unique, such as on-air talent or a General Manager, and create, expand or restore exemptions, as appropriate, to cover: (1) stations with fewer than ten full time employees; (2) stations in small markets; and (3) stations in areas with low minority populations.

Finally, notwithstanding NAB’s offer of an alternative plan for governing EEO, and its suggested improvements to the Commission’s proposal, NAB does not believe that the Commission’s authority to re-regulate EEO is indisputable. First, the Commission has demonstrated a lack of consistency and conviction in legally supporting those rules. Prior to the *EEO Report and Order*, the Commission relied on a goal of fostering program diversity; with the current proposal, the Commission aims to prevent discrimination in the broadcasting industry through, for example, “word-of-mouth” recruitment. Second, the court in *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2000) (“*Association*”) did not actually endorse anti-discrimination as a sufficient legal aim for the Commission’s actions, nor did the court endorse former Option A, by itself, as a sufficient means to achieve that aim. Prior to the *Second Notice*, the Commission offered former Option A only in combination with former Option B, which the court rejected as unconstitutional. However, nowhere in the *Second Notice*

does the Commission point to any particular change of circumstances since the *Association* decision that somehow empowered former Option A such that it is now sufficient, by itself, to fulfill the Commission's goals for equal employment opportunity.

Certainly the Commission cannot point to any changes in the relevant factual circumstances. In the *Second Notice*, the Commission quite conspicuously does not question the industry's EEO efforts, or its success in enhancing workplace diversity in the absence of federal rules. NAB believes that the Commission's latest attempt at crafting EEO rules may be arbitrary and capricious. It is long-standing precedent that, in crafting regulations, the Commission must examine the relevant data and articulate a satisfactory explanation for its action, including a "rational connection between the facts found and the choice made." *Time Warner Entertainment Co., L.P. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001). NAB contends that, in the present case, the Commission can do no such thing. It cannot identify a pattern of discrimination, which presumably is the ill to be addressed by the Commission's EEO proposal, nor can it prove exactly how its proposal will actually enhance workplace diversity in the broadcasting industry, especially given the on-going efforts the industry is already undertaking.

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I. INTRODUCTION & BACKGROUND

The National Association of Broadcasters (“NAB”)¹ submits its comments in response to the above-captioned *Second Notice of Proposed Rule Making* (“*Second Notice*”).² The Commission proposes new regulations for governing equal employment opportunity (“EEO”) in response to the U.S. Court of Appeals for the District of Columbia Circuit’s rejection of the Commission’s previous EEO rules in *MD/DC/DE Broadcasters Association v. FCC*.³

The Commission’s prior rules concluded that nondiscriminatory hiring practices alone were insufficient to achieve equal employment opportunity in the broadcasting industry. Instead, the rules required that broadcast licensees also reach out beyond their own circle of business and social contacts to the entire community when seeking to identify and attract potential job

¹ NAB is a nonprofit, incorporated association of television and radio stations and broadcasting networks which serves and represents the American broadcast industry.

² *Second Notice of Proposed Rule Making* in MM Docket No. 98-204, FCC 01-363, ___ FCC Rcd ___ (2001).

³ 236 F.3d 13 (D.C. Cir. 2000), *rehearing den.* 253 F.3d 732 (D.C. Cir. 2001), *pet. for cert. filed*, *MMTC v. MD/DC/DE Broadcasters Association*. No. 01-639 (October 17, 2001) (“*Association*”).

candidates.⁴ The Commission explained that stations were to fulfill this recruitment obligation through the “wide dissemination” of information concerning individual job vacancies to the “entire community.”⁵ The Commission also set forth two options for mandatory supplemental recruitment measures. Under “Option A,” stations were required to: (1) provide notification of job vacancies to any community or other organizations that requested such notice from the broadcast station; and (2) perform a certain number of general, non-job-specific recruitment activities, selected from a menu of activities including: job fairs, scholarship, mentorship and internship programs, in-house training programs, and the like.⁶ Broadcasters choosing Option A were not required to collect information concerning the race, ethnicity or gender of applicants or individuals they hired.⁷

Under “Option B” of the Commission’s prior rules, broadcast stations were permitted to forego the supplemental recruitment activities under Option A, and design their own EEO outreach programs based on their resources and needs, so long as they could demonstrate that their program was inclusive, as evidenced by the wide dissemination of job information to the entire community.⁸ Broadcasters selecting this option, however, were required to maintain data on the sources, gender, race and ethnicity of their application pools to permit the Commission to assess the program’s effectiveness.⁹

⁴ *Report and Order* in MM Docket Nos. 98-204 and 96-16, 15 FCC Rcd 2329, 2331 (2000) (“*EEO Report and Order*”).

⁵ *Id.* at 2368.

⁶ *Id.* at 2372-73.

⁷ *Id.* at 2376-78.

⁸ *Id.* at 2374.

⁹ *Id.*

The court in *Association*, however, found Option B unconstitutional because it pressured broadcasters to focus their recruitment efforts on women and minorities, in order to avoid a potential Commission investigation based on an allegedly insufficient proportion of women and minority job applicants or hires. As a result, non-minority candidates would be placed at an impermissible disadvantage.¹⁰ The court noted that the Commission intended to provide flexibility by offering two alternative options for EEO compliance, and therefore Option B could not be severed from Option A. The court therefore vacated the entire rule.¹¹

In the *Second Notice*, the Commission proposes new EEO regulations that essentially replicate the obligations under former Option A, without making any concession for the flexibility lost with the elimination of former Option B. NAB contends that the Commission's entire approach to equal employment opportunity is flawed, and proposes an alternative, realistic plan designed to fulfill the Commission's goals for EEO, without subjecting broadcast licensees to unduly burdensome recruitment and paperwork requirements.

NAB's proposed EEO plan is grounded in licensees' performance of a continuous pattern of broad, meaningful outreach intended to inform the general public on the benefits of a career at their opportunities at their respective broadcast stations, as well as in the broadcasting industry generally. While the Commission's EEO proposal will require broadcast stations to undertake often fruitless campaigns to fill specific job vacancies and comply with unduly burdensome paperwork obligations, NAB's plan will more than achieve the Commission's goals for equal employment opportunity by providing broadcast licensees the flexibility and discretion to continue and expand their outreach efforts that have proved successful over many years. NAB's

¹⁰ *Association*, 236 F.3d at 21-22.

¹¹ *Id.* at 23.

plan takes account of the many demands on broadcasters' limited resources and, to the extent possible, enables broadcasting executives to exercise sound business judgment in addressing their hiring needs. In turn, stations will be able to perform the most outreach activities possible, and to use each activity to its fullest potential, which will benefit potential job applicants with expanded and enhanced information about the broadcasting industry and its career opportunities.

However, although NAB offers a comprehensive alternative to the Commission's EEO proposal, as well as suggests improvements to the Commission's proposal, NAB believes that the Commission's legal and factual justification for re-regulating equal employment opportunity is far from certain. NAB thus urges the Commission to take great care in creating new EEO rules, or else risk yet another rejection of its efforts by the U.S. Court of Appeals for the D.C. Circuit.

II. THE BROADCASTING INDUSTRY'S COMMITMENT TO EEO

NAB and its member radio and television stations have a long-standing, vigorous commitment to equal employment opportunity. For example, NAB established the NAB Career Center over 25 years ago specifically to help broadcasters foster non-discrimination and diversity in the broadcasting industry, and during this period, the Center has undertaken a wide variety of innovative, dynamic, and on-going endeavors designed to achieve these goals.

For many years, the Career Center has conducted a major broadcast career fair in cooperation with the Broadcast Education Association during the annual NAB convention in Las Vegas. Beginning this year, the job fair further expanded, as the Radio Television News Directors Association became a co-sponsor. Traditionally, numerous exhibitors, including radio and television stations and groups, state broadcasting associations, and other industry-related

companies and organizations appear at the career fair to promote job opportunities to students and professionals from across the nation. The Career Fair provides an invaluable opportunity for one-stop career networking and job information exchange. The Career Center also conducts similar job fairs in conjunction with the NAB's annual Radio Show, and assists state broadcasting associations in regional broadcasting career fairs.¹²

NAB also operates a comprehensive Internet website that serves as a clearinghouse for information on all current job openings at member stations and offers helpful career advice to job seekers. The website is easily located as a link on NAB's homepage. The job bank enables all 7,250 member stations to post job vacancy information,¹³ and interested applicants can post and submit their resumes free of charge. At any given time, there may be hundreds of job vacancies and resumes posted on the website. Prospective employees are free to review the job postings while employers frequently check the resume database of job candidates. Every month, the website receives thousands of individual visits from job seekers,¹⁴ a figure which has increased steadily over the years, from about 10,000 visits per month in 1999, to 12,000 in 2000, to 16,000 in 2001, to approximately 20,000 per month in 2002. For the convenience of job seekers, NAB's Internet job bank is linked to the Internet homepages of a variety of other relevant organizations, most of whom operate similar job boards, internship programs and the like, including individual stations and station groups, state broadcasters associations, the National Alliance of State Broadcasters Associations ("NASBA"), and many associations representing minorities and women in broadcasting and journalism.

¹² See Exhibit 1 – NAB EEO Information.

¹³ As of February 28, 2002, NAB had approximately 6150 member radio stations, and 1100 member television stations.

¹⁴ This figure refers to separate and distinct visits to the site, not mere "page views."

In addition, NAB offers personalized career counseling to prospective broadcast employees. Over the last 20 years, between NAB's Internet job bank and individualized attention, NAB has helped place over 1,000 applicants in positions in the broadcasting industry, and assisted many others already employed in the industry to enhance or advance their careers.

NAB also works to steer women and minorities interested in broadcasting towards programs and organizations that offer education, training or experience that can be vital to pursuing or advancing a career in the industry. For example, NAB assists individuals in accessing information on scholarships, internships and fellowships offered by groups such as the American Women in Radio and Television, California Chicano News Media Association, National Association of Black Journalists, Native American Journalists Association, as well as by television or radio groups and individual stations, and state broadcasting associations.

NAB also provides personalized services to broadcasters seeking to recruit women and minority employees. For instance, NAB staff often will advise general managers and others with hiring authority on how to organize or participate in a successful job fair, or will provide these managers with introductions and contacts at women and minority organizations who may assist stations in identifying potential employees, such as the National Organization for Women and the National Urban League.

Moreover, NAB's efforts do not stop once a job candidate succeeds in obtaining a job in broadcasting, or once a station or company has staffed a diverse workforce. For example, NAB will provide guidance to companies on how to maintain a work environment that is conducive to the productivity and advancement of women and minority employees. And on the other hand, NAB will provide career planning advice to current employees.

The NAB Education Foundation (“NABEF”) is another NAB organization that focuses on promoting diversity in the broadcasting industry. NABEF administers or supports fellowships for various programs that provide education, experience or training, as appropriate, to students and other entry-level potential employees. For example, NABEF is a major contributor to the Emma L. Bowen Foundation for Minority Interests in Media, which provides minority students with internships in the broadcasting industry. Individual broadcasting companies -- both NAB members and others -- also participate in this program, which requires a substantial financial commitment.

NABEF also is a major contributor to the Howard University Media Sales Institute, which is an intensive ten-day training program designed to provide recent graduates from universities with large minority enrollments an introduction to the workings of sales departments, advertising agencies, the Federal Communications Commission, and related jobs and organizations. The faculty is made up of broadcasters and other media professionals from NAB, the Television Bureau of Advertising, the Radio Advertising Bureau, the National Association of Black-Owned Broadcasters, and multiple radio and television stations and station groups. Recruitment opportunities are made available to students who complete the program, and soon after the inaugural program last year, a majority of graduates had received formal interviews or actual internships or positions in the broadcasting industry.

In addition, NABEF supports two practical, hands-on programs specifically designed to promote careers in broadcasting to people from all segments of society. First, the NABEF Gateway Fund for Diversity in Broadcasting provides training opportunities for entry-level female and minority employees to help them develop the skills needed to advance in their careers. The Gateway Fund underwrites one-half of the registration fees and related travel

expenses for recipients to attend training programs and seminars in their fields. In consultation with broadcasting professionals, NABEF has worked to identify and administer the programs that are eligible for funding, which include sales seminars, journalism courses, engineering training, and other instructional programs that increase the skills of participants and help them succeed. NABEF also evaluates the programs on an ongoing basis to ensure that funds are being allocated effectively.¹⁵

Second, the NABEF Gateway Fund Faculty Fellowship Program underwrites participation in a program that provides in-depth information on sales practices in the broadcasting industry to educators so that they can impart this knowledge to their students. This extensive, three-week long program is targeted to college and university faculty who teach a significant number of minority students. The program is designed and run by industry professionals, and offers a wealth of information on real-world sales skills including developing new business, working with advertisers, and using qualitative research.

NABEF also helps fund and operate programs designed to increase diversity at the mid-management, upper management levels, and ownership levels. NAB provides fellowships for professional managers to attend NAB's management development programs, which play an important role in preparing minorities and women for advancement into upper management positions. NAB also provides scholarships to women, minorities and members of other groups to its Broadcast Leadership Training Program, which is patterned after part-time MBA programs and is designed to teach broadcasting executives how to purchase and operate stations. The program is targeted to senior level broadcast managers of proven ability who aspire to advance as group executives or station owners. It can also help successful entrepreneurs in other

¹⁵ See Exhibit 1.

industries who wish to make the transition to broadcasting. Class size is limited to thirty, with half of those slots reserved for NABEF's scholarship program to promote diversity in broadcasting. The program teaches the specific knowledge and skills relevant to owning and operating radio and television stations and group management. It provides a blueprint for talented businesspeople to become a greater part of the industry and increase the diversity of voices available to the public. Faculty is drawn from the ranks of those working professionals most qualified to address individual topics, including Commission staff and leading communications attorneys who discuss regulatory and legal issues; members of the Wall Street and banking community who provide insight into financing arrangements, and leading broadcast executives who offer their first-hand perspective on the industry. This unique combination of professionals acting as instructors not only imparts a real-world perspective to the program, it also allows participants to build the network of contacts they will need to succeed.

State broadcasting associations and individual radio and television groups and stations also work to promote diversity in the broadcasting industry. For example, the Texas Association of Broadcasters ("TAB") described in previous comments in this proceeding the efforts it undertakes to foster equal employment opportunity. TAB stated that it publishes job vacancies, presents at approximately ten job fairs each year held by organizations representing various minority groups, and maintains an Internet job bank which, as of early 1999, received nearly 2,500 visits every day.¹⁶

Similarly, Disney/ABC's owned television and radio stations engage in a wide variety of outreach and recruitment programs that include various combinations of the following: organization of and/or participation in job fairs, internship and mentoring programs, broadcasting

¹⁶ Comments of the Texas Association of Broadcasters in MM Docket No. 98-204, *et al.*, filed March 1, 1999, at 2-3 ("TAB Comments").

of on-air announcements in varying day-parts about how organizations can get on a mailing list for job openings, announcement of job openings to an extensive mailing list of schools, trade groups and special interest organizations, and advertisement of job openings in a variety of on-line, print and broadcast media. ABC's stations also work closely with various community groups to assure that they are being responsive to the community in terms of their hiring and promotional practices as well as their programming. For example, as part of its multi-faceted outreach, WABC broadcasts a series of 30-second on-air announcements in rotating day parts announcing job openings and also sponsors an internship program aimed at third and fourth year college students in the tri-state area.

The ABC Television Network runs a variety of programs, including the ABC Entertainment Writers Fellowship, the ABC Entertainment New Talent Development Program (grants to discover and support new writing, filmmaking, and directing talent), the ABC Entertainment Freelance Writers Program (money earmarked for the hiring of minority freelance scriptwriters), the ABC Daytime Writers Development, Script Sampling, and Current Writer Skill Development Programs (to mentor current and develop future daytime writers). Of course, other broadcasting companies also maintain efforts to promote diversity in the broadcasting industry.

All of these endeavors by NAB and the broadcasting industry serve to demonstrate the industry's dynamic commitment to increasing the diversity of the broadcasting industry. These efforts have continued unabated even in the absence of federal regulations, and will continue to increase and expand in the coming years regardless of the outcome of this rulemaking proceeding. Nevertheless, in the event of a determination that the Commission possesses the factual and legal justification to create EEO policies, NAB believes that these EEO efforts have

invested it with the experience and perspective to offer a realistic, comprehensive alternative to the Commission's proposed EEO plan.

III. NAB'S PROPOSED EEO PLAN

NAB believes that the Commission's EEO proposal will require broadcast stations to undertake fruitless campaigns to fill specific job vacancies, undertake unduly burdensome and numerous outreach activities, and comply with unduly burdensome paperwork obligations. Accordingly, NAB presents an alternative plan that will achieve the Commission's goals for equal employment opportunity while maximizing stations' flexibility to continue and expand their outreach efforts that have proved successful over many years, and minimizing their reporting requirements. NAB's plan takes account of the many demands on broadcasters' limited resources, and to the extent possible, enables broadcasting executives to exercise their sound business judgment in seeking out potential job candidates.

A. A Continuous Pattern of Broad, Meaningful Outreach Makes Job-Specific Recruitment Unnecessary

Under the Commission's proposal, broadcasters would be required to recruit for each and every job vacancy through the "wide dissemination" of vacancy information to the "entire community," and through providing notification of vacancies to requesting organizations involved in assisting job seekers.¹⁷ The Commission believes that these recruitment actions are necessary to equal employment opportunity in the broadcast industry because they will help

¹⁷ *Second Notice* at ¶¶ 23 and 27.

prevent a homogenous workforce from simply replicating itself through an insular recruitment and hiring process.¹⁸ NAB believes that this premise is flawed.¹⁹

First, the Commission fails to recognize the long-standing, vigorous efforts of broadcasters to reach out to attract and identify potential job candidates of all backgrounds, as described above, and the broad success of such efforts. Federal regulations governing non-discrimination and equal employment opportunity have been in effect for more than 30 years, and barring any clear and convincing evidence to the contrary, the Commission must presume that its rules have been effective. As a result, the Commission's concern that the broadcasting industry will simply replicate itself through "word-of-mouth" recruitment may no longer be valid.²⁰ Given that so many minorities and women are now employed in the broadcasting industry, it follows that minorities and women are now quite likely to hear about opportunities, even if it is by "word-of-mouth."

A broadcaster, like any rational businessperson, needs the discretion to identify and attract job candidates in a manner that is appropriate given a variety of factors, including the station's financial and personnel resources, market size and location, and the nature of a particular vacancy. For example, many stations are almost perpetually searching for qualified advertising salespersons because of the relatively high churn rate of this position. Some stations, such as those in larger cities, may maintain almost a standing newspaper classified ad to attract candidates for a particular opening, as well as for inevitable future vacancies. On the other hand,

¹⁸ *EEO Report & Order*, 15 FCC Rcd at 2331.

¹⁹ *See* Section IV.A, *infra* in which NAB discusses improvements and clarifications to the recruitment process proposed by the Commission, in the event that the Commission continues to insist on requiring recruitment for each and every job vacancy.

²⁰ *EEO Report and Order*, 15 FCC Rcd at 2345.

other stations in smaller markets often find newspaper classifieds unproductive for these types of positions and instead would rather refer to a collection of resumes the station has collected at job fairs and other outreach functions. For more unique positions, such as General Manager or on-air talent, additional effort and expense may be required because of the skills and experience required for the position, and because the station's hiring manager knows from experience that there are no qualified candidates in the local market. Finally, a newspaper ad may yield qualified candidates for a vacant entry-level position at stations in certain regions, but in other areas such a vacancy will not warrant the expense of a classified ad because the station manager knows from experience that such an ad usually results in a flood of resumes from candidates who pale in comparison to job seekers the stations already has encountered through job fairs, references from minority and female organizations, and other outreach avenues. The key point is that stations must be allowed the flexibility to design a job search process most appropriate for a particular vacancy given the characteristics of the particular station.²¹

The economy is another important factor the Commission seemingly ignores. Three years ago, when unemployment in the United States was relatively low, broadcasters were forced to great lengths to identify and attract potential employees.²² More recently, however, following the boom and bust of many high-tech and telecommunications companies, it has been far easier for broadcasters and other employers to attract qualified job candidates.²³ NAB believes that it makes little business sense for the Commission to prescribe specific recruitment measures

²¹ See Affidavit of Julie A. Lichty, Vice President Administration, Susquehanna Radio Corp., attached hereto as Exhibit 2.

²² See, e.g., *Media's Pink Slips*, Broadcasting & Cable, January 28, 2002.

²³ *Id.*

without regard to the supply and demand of jobs during various periods of time. Dictating a one-size fits-all approach to filling hiring needs is simply inefficient and unrealistic.

The Commission itself uses a variety of methods for hiring employees. It is a commonly observed practice for the Commission to accept applications for certain vacancies only from candidates already employed in other capacities at the Commission.²⁴ Other times, the Commission will expand the pool of potential candidates to include all persons already employed by the entire federal government. And in certain situations, the Commission will invoke its “outside hiring authority” to solicit applications from anyone.²⁵ Although NAB is unaware of any written policy on these options, presumably the Commission, Chairman or relevant Bureau Chief determines the universe of potential job applicants depending on a variety of factors, including the Commission’s budget, the number or types of available openings, whether the vacancy requires unique experience or skills, and the Commission’s expected yield of qualified applicants from the various pools of potential candidates. These factors all parallel those broadcast stations also must consider in filling their hiring needs. NAB merely asks that broadcasters be afforded a measure of flexibility to design their hiring procedures that approaches the level enjoyed by the Commission.

The Commission also seems to believe that the second half its brand of recruitment mandate -- sending vacancy announcements to organizations -- will be successful in terms of yielding worthwhile job candidates. In the experience of many NAB members, this simply is not the case. In fact, numerous member stations have informed NAB that, as a matter of course for

²⁴ See Exhibit 3 – copies of Commission vacancy postings in which “FCC-Wide” is the indicated “Sources” for potential applicants for certain positions, and “All” is the indicated “Sources” for potential applicants for other positions.

²⁵ *Id.*

many years, they have sent copies of job vacancies to requesting local minority and female organizations. Yet, despite the good intentions of all involved, the stations have rarely received any candidate referrals from these organizations.²⁶

The Commission also must consider the impact that its proposed recruitment procedures will have on the broadcasting industry, and on the quality of the outreach. Forcing stations to devote resources to expensive newspaper advertisements and sending out job vacancies to typically non-responsive organizations, all in an unnecessary effort to create a pool of job-specific candidates, will only serve to redirect a station's resources from more efficient, successful methods for identifying job candidates, such as on-going participation in job fairs, internship programs, and the like. The Commission's proposed recruitment procedures make little sense for high-level vacancies, even less for less unique positions like board operators and salespersons, and almost none with respect to entry-level positions.

On the other hand, NAB's plan will require that broadcasters perform a continuous pattern of broad, general outreach. As described below in Section III.B.3, requiring this kind of outreach, without job-specific recruitment, does not mean that stations will be able to cut corners when filling their hiring needs. On the contrary, many of NAB's proposed outreach initiatives require significant effort and substantial expense, as stations must undertake a variety of proactive actions to establish and maintain both a breadth and depth of community involvement. For example, participation in certain of the scholarship and fellowship initiatives can cost a broadcast station tens of thousands of dollars, while other initiatives may require similar expense

²⁶ See, e.g., Comments of Golden Orange Broadcasting in MM Docket No. 98-204, filed Feb. 24, 1999 at 2 ("In the KDOC 1997 license renewal application, the overwhelming number of minority job applicants for the 12-month period preceding the filing of the renewal application came from general recruitment sources. Indeed, none of the 39 minority job applicants came from the numerous (but unproductive) minority sources.")

in terms of employee time. NAB's list of outreach options consist of the industry's best practices for identifying and attracting potential job candidates, and will allow stations to select the options that best suit their needs and resources, as well as the nature of their job vacancies.

The Commission states in the *Second Notice* that it will “not modify the rules in a way that would compromise our goal of ensuring broad and inclusive outreach in the community for virtually all full-time job vacancies.”²⁷ NAB's approach to EEO will do no such thing. A station that performs an on-going pattern of broad, general outreach is continuously engaging and maintaining relationships with minority, female and community organizations, accumulating information on potential job candidates, and educating the public about itself and its opportunities. NAB believes that these efforts, taken together, render job-specific recruitment a redundant, unnecessary waste of resources.

B. NAB's EEO Outreach Plan

NAB proposes a multi-tiered, multi-dimensional approach to equal employment opportunity that will ensure broad outreach to stations' entire communities and beyond, while also providing stations with maximum flexibility to use their resources efficiently. NAB's options for outreach will enable broadcasters to design an outreach scheme that best suits a station's resources and requirements.

Specifically, NAB proposes three options for employers to effect EEO outreach. Station employment units with fewer than ten (10) full-time employees would be exempt from EEO outreach requirements.²⁸ All other employment units would be required to certify compliance

²⁷ *Second Notice* at ¶ 21.

²⁸ See Section IV.C.1, below, where NAB urges the Commission to increase the threshold for a station employment unit's exemption from the EEO rules from fewer than five (5) full-time employees, to fewer than ten (10) full-time employees.

with the Commission every four years that: (1) the station is in compliance with the affirmative action obligations of a federal contractor under the Department of Labor’s Office of Federal Contract Compliance Program (“OFCCP”) EEO regulations; (2) the station has completed the obligations under its state broadcasting association’s NASBA-based EEO program;²⁹ or (3) the station has executed the required combination of NAB’s General and/or Specific Outreach Initiatives. NAB asserts that fulfillment of any one of these options will more than satisfy the Commission’s goals for equal employment opportunity.

1. OFCCP Regulations

Pursuant to Executive Order 11246, as amended, the Office Federal Contract Compliance Programs (“OFCCP”) administers extensive anti-discrimination and affirmative action regulations for all covered federal contractors. Under these regulations, federal contractors are prohibited from engaging in employment discrimination on the basis of race, sex, religion or national origin.³⁰ Certain contractors also must undertake affirmative action efforts for minorities and women.³¹ Additionally, covered contractors must engage in affirmative action

²⁹ The requirements for compliance with a state association “Broadcast Career Program” are set forth in the Joint Comments of the Named State Broadcasters Associations in MM Docket 98-204, filed today.

³⁰ 41 C.F.R. § 60-1.4 (1998).

³¹ *Id.* at § 60-2.1 – 2.32.

efforts to employ qualified special disabled veterans and Vietnam veterans,³² as well as individuals with disabilities.³³

The dollar amount of a covered contractor's federal contract determines the extent of the affirmative action requirements. For example, firms with federal contracts of at least \$10,000 during any twelve-month period are subject to the general anti-discrimination provision of the regulations and must engage in affirmative action of a type and quality dependant on the dollar volume of its contract.³⁴ Contractors with over 50 employees and with contracts above \$50,000 are required to develop a written Affirmative Action Program ("AAP").³⁵

An AAP program is two-fold. First, it consists of action-oriented efforts, such as the appointment of EEO officers, identification of problem areas, and the execution of programs designed to remove identified equal employment barriers, expand employment opportunities, and produce measurable results.³⁶ Second, AAP programs contain a diagnostic component which includes multiple quantitative analyses designed to evaluate the composition of the contractor's workforce and compare it to the composition of the relevant labor pools.³⁷ For example, covered

³² Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era, 41 C.F.R. § 60-250 *et seq.* (1998).

³³ Affirmative Action and Non-Discrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities, 41 C.F.R. § 60-741 *et seq.* (1998).

³⁴ 41 C.F.R. §§ 60-1.4, 60-250.1 and 60-741.1.

³⁵ *Id.* at §§ 60-2.1, 60-250.5 and 60-741.40.

³⁶ *Id.* at § 60-2.17(a) - (c).

³⁷ *Id.* at § 60-2.10(a)(1).

firms must create an organization profile, workforce analysis, job group analysis, and examine the availability of qualified minorities and women for employment in various job groups.³⁸

The OFCCP rules go far beyond the elements of the Commission's EEO proposal. NAB believes that it would be pointless for the Commission to impose additional EEO obligations on broadcasters that are already subject to the OFCCP regulations. It should be apparent that compliance with the OFCCP regulations would fulfill all of the Commission's objectives for EEO, and more. Thus, under NAB's proposed EEO outreach rule, broadcasters can satisfy their EEO requirements if they certify to the Commission that they qualify as a covered federal contractor and are in compliance with the OFCCP regulations.

2. NASBA Program

The National Alliance of State Broadcasters Associations ("NASBA") consists of the managers and chief executives of state broadcast trade associations throughout the United States and Puerto Rico. In 1999, NASBA created a comprehensive "Model Broadcast Careers Program Road Map" for state broadcasting associations.³⁹ The NASBA program was designed to:

- (1) promote non-discrimination and workplace diversity;
- (2) maximize the pool of qualified applicants, including those from culturally and racially diverse backgrounds, for all job vacancies at participating stations;
- (3) expand the availability of educational and experience opportunities helpful to a career in broadcasting;
- (4) provide user friendly, current information on job openings;

³⁸ *Id.* at §§ 60-2.11, 60-2.12, 60-2.14.

³⁹ The program is described in full in the attachment to the Joint Comments of 46 Named State Broadcasters Associations in MM Docket No. 98-204, *et al.*, filed March 1, 1999, and in the State Broadcasters Associations Comments in MM Docket No. 98-204, filed today.

(5) ensure that all interested applicants have a convenient and inexpensive way to alert stations of their interest in a particular job opening; and

(6) educate stations on non-discrimination and outreach.

NASBA's model program suggested several provisions that provide numerous, concrete examples on actions that state associations and individual stations can undertake to fulfill the program's goals. For example, the provision concerning expanding educational and experience opportunities recommends that stations, among other things, develop active partnerships with educational institutions to evaluate their communications-related curriculum, provide speakers and classroom instructors, and sponsor workshops, internships and training programs. The provision for educating stations on non-discrimination and outreach advises state associations to regularly conduct seminars on these subjects, compile and distribute local area referral sources to all area stations, and to work with minority and female targeted organizations to help stations expand their outreach and to inform the membership of these organizations about career opportunities in the broadcast industry. The model program also suggests numerous ways that the state association will promote the program to ensure that the general public, as well as the broadcasting industry at large, is aware of its existence and its benefits.

These elements make up NASBA's model program, as offered in its 1999 comments in this proceeding. For present purposes, NASBA has narrowed its proposed program to focus on:

(1) Internet recruitment; and (2) the sending of job vacancy announcements to requesting community, minority and other organizations involved in assisting job seekers. The central feature of NASBA's current program is a comprehensive Internet website that links to all of the state associations (<http://www.careerpage.org>), as well as to NAB's Internet job bank and numerous other useful resources helpful to job seekers. Participating radio and television stations post job vacancies on the web page and/or on their state association's web page. Job

seekers are able to search the site's job bank for career opportunities. The website also includes descriptions of various broadcasting careers and advice on how to go about securing one's first job in broadcasting.

To date, NASBA's program has been an unqualified success. Almost all of the state associations have adopted a form of the model program, and use many of NASBA's suggested outreach initiatives. More importantly, NASBA's Internet career page is currently visited by potential job candidates approximately 25,000 times a month, a figure that has grown quickly over recent years.⁴⁰

As the Commission is well aware, many stations, particularly radio stations, have limited resources and few employees. Fulfilling even the most flexible EEO requirements will be a struggle for these stations. Participation in a state association's implementation of the NASBA program would offer many stations an opportunity to perform much more outreach than they could possibly perform individually. Given the breadth of the NASBA program, NAB believes that a station's participation should more than satisfy the Commission's goals for equal employment opportunity outreach. By sanctioning the NASBA program as an option for EEO compliance, the Commission would greatly enhance its value, and in turn, participation by both applicants and employers. Accordingly, under NAB's proposed plan, a broadcast station would be required to certify with the Commission that it has executed the obligations of its state association's NASBA-based broadcast career program, together with a detailed list or description of the station's EEO outreach efforts.

⁴⁰ State Broadcasters Associations Comments at ____.

3. NAB Outreach Initiatives

Under NAB's plan, a station that is neither a covered federal contractor nor a participant in a state association broadcast career program may fulfill its EEO obligations by certifying to the Commission that it has performed the required mix of outreach initiatives described in this section. NAB has separated its outreach options into two categories -- General and Specific Outreach Initiatives -- because NAB believes that certain types of outreach activities warrant additional weight in measuring EEO compliance due to the nature of the effort or expense involved. NAB thus proposes that station employment units must certify to the Commission the completion of: (a) at least two (2) of the General Outreach Initiatives; or (b) at least one (1) of the General Outreach Initiatives and at least two (2) of the Specific Outreach Initiatives, or (c) at least four (4) of the Specific Outreach Initiatives.

As a preliminary matter, NAB recognizes that the flexibility provided under its proposal may allow an individual broadcast station to fulfill its outreach obligations largely through activities that do not directly involve the local community, or through reliance on the monetary and personnel resources of the headquarters or management of the group of which the station is a member. However, NAB believes that an active, visible presence in the local community is vital to a broadcast station's ability to serve the needs and interests of its community of license.⁴¹ Accordingly, under NAB's proposal, licensees will be expected to partake in at least one outreach initiative that requires local action, such as sponsoring a job fair in the community, administering a mentorship or internship program on-site, or speeches or lectures by management personnel at local schools or community organizations.

⁴¹ See, e.g., *Report and Order* in MM Docket No. 97-138, 13 FCC Rcd 15691, 15693 (1998)

Below, NAB lists the proposed General and Specific Outreach Initiatives. The lists should not be considered exhaustive. These options are grounded in the best practices of NAB members with long-standing, vigorous commitments to equal employment opportunity. NAB also has attempted to identify those outreach projects that provide both employers and prospective employees stations with the most “bang for the buck.” That is, flexibility and the efficient use of a station’s resources will enable a station to perform the most outreach activities possible, and to use each activity to its fullest potential, thereby benefiting potential applicants as much as possible. NAB’s proposed General Outreach Initiatives include:

- (1) Sponsor or co-sponsor a job fair (organizational or financial involvement must be meaningful to relevant station employment unit);
- (2) Regular attendance at both general and group-oriented job fairs (*e.g.*, fairs and conferences organized by the National Association of Hispanic Journalists, National Association of Black Journalists, the Asian American Journalists Association, American Women in Radio and Television, and state broadcasters associations);
- (3) Offer scholarships, or participate in programs offering scholarships to high school and college students interested in a broadcasting career (participation must be meaningful to relevant station employment unit);
- (4) Establish and administer an on-going mentorship program between students and station personnel (*e.g.*, students “shadow” employees);
- (5) Establish and administer on-going training programs for current employees interested in expanding their skills and/or career advancement;
- (6) Establish and administer an on-going internship program for students interested in a broadcasting career; and
- (7) Participate in the NAB Foundation’s Broadcast Leadership Training program,⁴² the Emma Bowen Foundation for Minority Interests in Media internship program, the Howard University Media Sales Institute, or other similar industry-wide effort designed to train minority students for media

⁴² These programs require a substantial commitment from participants in terms of monetary investment or personnel time. For example, participation in the Emma Bowen Foundation program can cost approximately \$25,000 over a three-year period.

careers, and which requires substantial monetary or personnel investment;⁴³ and

- (8) Sponsor or regularly participate in programs designed to address a broad range of life issues important to an identifiable group; for example, a station would purchase a booth at a conference aimed at recent immigrants, and equip the booth with written information and management personnel to inform the attendees about the benefits of working at the station and in the broadcasting industry generally.

This list of options is designed to form the basis of a continuous pattern of broad, general outreach. Implementation of these endeavors will establish and foster a station's presence and profile in the community. Potential job candidates, including minorities and females, already will have participating stations in mind when the time comes to seek new employment. At the same time, employers will be able to devote their resources to doing the best job possible at expanding their pool of job candidates and collecting the resumes of candidates suitable for particular positions as they inevitably become available, instead of focusing on reaching out for candidates on a job-specific basis. Continuous outreach also works to the benefit of job applicants, since frequently the winner of a process of recruitment for a specific vacancy must depend in part on timing, luck and other factors out of a person's control. On the other hand, focused reliance on participating in outreach programs will give certain applicants a well-deserved advantage, as employers will recognize and appreciate the effort and interest demonstrated by such participation.⁴⁴

All of the General Outreach Initiatives require stations to take an active role in outreach, and stations that choose to expend the additional resources on these initiatives should be given

⁴³ These programs require a substantial commitment from participants in terms of monetary investment or personnel time. For example, participation in the Emma Bowen Foundation program can cost approximately \$25,000 over a three-year period.

⁴⁴ *See, e.g.*, Exhibit 2.

credit. Each has obvious benefits for both parties on both sides of the equation. For example, stations with internship programs not only will provide valuable experience for students, but also enable the stations to develop initial contacts with potential job candidates. Job fairs allow stations to cast a wide net in promoting themselves, while offering job seekers the convenience of one-stop shopping for multiple employers. The various options also work well together. For example, a station most certainly would advertise its internship and scholarship programs at job fairs. Similarly, high school students most interested in a career in broadcasting, as demonstrated by their participation in a broadcast station's mentorship program, would be attractive candidates for receiving scholarships to study broadcasting.

In response to the Commission's desire for flexibility in fulfilling the EEO requirements,⁴⁵ NAB also proposes a list of Specific Outreach Initiatives for stations to use. The Specific Outreach Initiatives include:

- (1) Regularly post job openings on a variety of webpages (*e.g.*, station's website, state association site, industry association site, minority and female organizations Internet job boards, NAB career site);
- (2) Regularly place advertisements in magazines and/or newspapers (*e.g.*, publications of general circulation, trade publications, publications targeted towards minorities or females);
- (3) Regularly announce job openings on the air;
- (4) Regularly post job vacancies at the station;
- (5) Regularly contact minority and female organizations to provide job vacancy information and establish on-going relationships to create additional networking opportunities for minorities and females;
- (6) Furnish station personnel to speak at schools on careers in broadcasting;
- (7) Host a "broadcast career night" where the public is invited to learn about the broadcasting industry and meet with key station personnel; and

⁴⁵ *Second Notice* at ¶ 20.

- (8) Participate in outside minority job training and recruitment programs (*e.g.*, programs sponsored by broadcast networks, national minority journalist organizations).

These initiatives are more narrowly focused in that they often contribute to EEO Outreach on a job-by-job basis. Performance of many of the listed options may turn on the availability of a vacancy, the type of vacant position, and the history of success of a particular option. Yet, all of these Specific Outreach Initiatives have the potential to reach a wide range of applicants or interested people. Moreover, most of these endeavors require regular, on-going action. If stations choose to use the Specific Outreach Initiatives, the requirement that a greater number be completed will ensure that the outreach efforts will reach a broad audience, and thereby fulfill the Commission's goals for equal employment opportunity.

The end result of NAB's approach is to provide stations with the discretion to select and implement an outreach avenue that best suits the station's on-going and specific hiring needs, whether that avenue is the OFCCP rules, a state association broadcast career program, or NAB's menu of outreach initiatives. Stations will be able to select the avenue for EEO compliance most appropriate to the particular station, and maximize fulfillment of their chosen path. Moreover, the discretion allowed under NAB's proposal will provide more certainty to stations regarding their compliance with the EEO rules. A station employment unit would no longer be required to guess whether its method for disseminating information about a specific vacancy has reached the right audience, or whether its message has reached the "entire community." NAB's plan clearly defines what is expected of broadcasters in terms of broad, on-going outreach, while allowing more creativity and flexibility in the process.

As a result, outreach will improve and expand, which will benefit potential job applicants with a better understanding of the benefits of working in the broadcasting industry, or at a

particular station, and enhanced information on the various opportunities for internships, training, scholarships and other programs that can lead to one's first job in the industry.

C. Recordkeeping, Reporting and Enforcement Policies

In the *Second Notice*, the Commission proposes recordkeeping, reporting and enforcement obligations that are largely identical to the taxing requirements adopted in the *EEO Report and Order*, except for slight modifications in response to the court's decision in *Association*.⁴⁶ To its credit, however, the Commission expresses an interest in less onerous alternatives, at least with respect to its proposed recordkeeping and enforcement policies.⁴⁷ NAB believes that the Commission's proposed rules in this area remain unrealistic and unduly burdensome,⁴⁸ and below offers a sensible alternative that will enable licensees to use their resources wisely while achieving the Commission's goals for equal employment opportunity.

1. NAB's Proposed Recordkeeping and Reporting Requirements

Under NAB's plan, a broadcast station would certify compliance with the EEO rules every four years, on the anniversary of the filing date of its license renewal application.⁴⁹ NAB's proposed certification consists of two-parts: (1) a simple form on which a broadcast licensee would certify that it: (a) is subject to the OFCCP regulations and is in full compliance with those

⁴⁶ *Id.* at ¶¶ 32-47.

⁴⁷ *Id.* at ¶¶ 32 and 46.

⁴⁸ See Section IV.D, below, in which NAB more fully describes its particular objections the Commission's proposed recordkeeping and reporting policies.

⁴⁹ NAB previously proposed certification every two years, but has reduced this frequency to every four years in light of the Commission's proposal to decrease the frequency of filing FCC Form 397 from every two years to every four years. *Second Notice* at ¶ 42.

rules; (b) has completed all the requirements of its state broadcast association’s “Broadcast Career Program,” modeled after NASBA’s program; or (c) has completed all requirements of NAB’s EEO plan; and (2) an exhibit that lists and describes in detail the EEO outreach initiatives performed by the station employment unit during the previous four years. NAB notes that its EEO plan relies on a station’s good faith execution of a continuous pattern of broad, meaningful outreach. Therefore, it is incumbent upon stations to provide the Commission with a complete account of its outreach activities. Under NAB’s plan, stations must submit to the Commission a comprehensive list, with narrative descriptions, of all outreach activities, such as sponsorships or participation in job fairs and other community-oriented programs, participation in scholarship, mentorship or internship programs, and a list of all job vacancies filled.

Stations would retain all relevant documentation in between submissions to the Commission, and make it available to the Commission upon request during that time period. However, NAB fails to see any benefit of requiring that stations prepare and place an annual EEO report in their public inspection files. The Commission states that the purpose of this rule would be to “ensure that EEO programs are meaningfully implemented on a continuing basis.”⁵⁰ Under NAB’s plan, however, broadcasters are required to perform a continuing pattern of broad, general outreach; therefore, interruptions will not be permitted. In addition, the required certification will allow the Commission to easily review the timing of a station’s compliance activities, and possibly audit or sanction a station if a continuous pattern of activities is not apparent. Finally, and aside from the defined legal requirements, the Commission must understand that broadcasters have limited resources, and therefore strive to use these resources most efficiently, including when addressing their hiring needs. For many years, broadcasters

⁵⁰ *Id.* at ¶ 37.

have coped with the inevitable turnover of staff, and have come to realize that performing broad, on-going outreach is the most economic and successful way to attract quality candidates, even in the absence of federal regulations. Performing outreach in a rushed or haphazard manner, based on the timing of job vacancies or the due date for one's certification, simply is not useful to stations and makes little business sense. No station is going to jeopardize its license for the convenience of delaying its EEO outreach obligations to the last minute. As a result, under NAB's plan, which takes account of these real-world practices, broadcasters already will be conducting outreach on a continuous basis. Any concerns by the Commission that stations will attempt to squeeze four-year's worth of outreach into the six or 12 month period prior to the certification deadline are unfounded.

The Commission also seeks comment on whether to retain a requirement that companies place their EEO public file reports on their web sites, if they maintain such a site.⁵¹ On reconsideration, the Commission rejected NAB's request that it revisit this decision, finding that NAB had failed to provide sufficient evidence of the difficulties that stations would face in trying to situate their EEO public file reports on their web sites.⁵²

In a separate proceeding launched in 2000, the Commission sought comment on proposals to enhance public interest disclosure requirements for television broadcasters. Among the Commission's proposals was a requirement that licensees make the contents of their public inspection files available on their website or on a state broadcasters association's Internet

⁵¹ *EEO Report and Order*, 15 FCC Rcd at 2380. The Commission adopted this requirement, for the first time, in the *EEO Report and Order*, although the Commission did not mention nor solicit comment on this matter in the Notice of Proposed Rulemaking or any other document leading to that order. *Notice of Proposed Rulemaking* in MM Docket Nos. 98-204 and 96-16, 13 FCC Rcd 23004 (1998)

⁵² *Memorandum Opinion and Order* in MM Docket Nos. 98-204 and 96-16, 15 FCC Rcd 22548, 22558 (2000) ("*EEO Recon Order*").

website.⁵³ The large majority of commenters objected to this proposal and offered concrete data setting forth the resulting burden. Based on NAB's research and the work of an independent consultant, NAB determined that the Commission's proposal would entail significant burdens, particularly for stations that did not currently have websites and on stations with limited personnel resources.⁵⁴

Specifically, NAB conducted a survey of its members designed to estimate the number of stations that maintain web sites. This research revealed that, at the time, almost 15% of responding television stations did not have a website. Of the stations that did have websites, only about 26% actually developed, hosted and/or maintained their own sites. Most stations contracted out these operations to an independent applications service provider or an Internet Service Provider. In addition, responding television stations that did maintain their own websites indicated that they had an average of little over one person dedicated to the operation of those sites. Significantly, of those stations with websites, over one-fifth reported that they had *no* personnel dedicated to working on their websites.

NAB also ascertained that the average size of the public files of the commercial television stations located in one large market approximated 14,000 pages of paper,⁵⁵ and that

⁵³ *Notice of Proposed Rulemaking* in MM Docket No. 00-168, 15 FCC Rcd 19816 (2000) ("*Disclosure NPRM*").

⁵⁴ *See* Comments of National Association of Broadcasters in MM Docket No. 00-168, filed December 18, 2000.

⁵⁵ These included stations owned and operated by major networks, major network affiliates owned by other groups, and emerging network affiliates.

given this figure, the costs to convert such a file to HyperText Mark-Up Language (“HTML”)⁵⁶ and to provide a search mechanism that allowed for full text searching, approximated \$292,000.

Of course, this data concerns only reflects television stations. The Commission’s requirement that broadcast licensees post their EEO information on the Internet also would cover radio stations. Given the fact that far more radio stations operate with small staffs and limited resources,⁵⁷ NAB believes that a far higher percentage of radio stations do not maintain their own websites, and of those that do have websites, a much smaller percentage operate the sites in-house.

As a result, if the Commission required that all broadcasters with websites post their EEO information on their web sites, many radio stations and other small broadcasters would face the Hobson’s choice of either hiring an additional employee just to deal with website issues, or paying higher charges to their outside website service providers. These expenses, of course, would be on-going as stations would continuously need to update their Internet public files. NAB recognizes that a station’s EEO public file would be much smaller in size than one’s entire public file report. Nevertheless, the costs and man-hours required to convert EEO documents to HTML (*e.g.*, scanning) and posting such information on a website still would be significant to many radio stations and other small broadcasters.

Compliance costs would be even less tolerable for the many radio stations and small broadcasters that do not yet have a website but would like to launch one. For example, a

⁵⁶ HTML is the standard of the World Wide Web. The conversion process would include scanning all documents and running them through an OCR (Optical Character Recognition) program.

⁵⁷ According to the Census Bureau, the average television broadcast station has approximately 3.5 times the number of employees as the average radio broadcast station. U.S. Census Bureau, County Business Patterns 1999, United States, Washington, D.C. 2000.

broadcaster may wish to develop a website that is static or not interactive because the station intends it to be used primarily for listening to its programming, or for describing the basic information about the station's location and format. However, under the Commission's proposal, stations in these circumstances would have to incur the additional expense of developing and maintaining web sites that allow for the addition and deletion of information, and perhaps interactive searching by the public. NAB thus believes that it is quite possible that a rule requiring stations to place EEO information on their websites may deter some stations from launching a website in the first place. NAB urges the Commission to take a close look at the costs and benefits of imposing this requirement before taking final action.⁵⁸

Separate and distinct from the costs and burdens of compliance, requiring Internet posting of EEO information would contravene the Commission's long-held policy that the contents of a broadcaster's public inspection file is intended to be available to members of the local community that the station serves, as opposed to the public-at-large.⁵⁹ Location of the public file in the main studio serves the public interest by facilitating citizen monitoring of a station's operations and public interest performance and fostering community involvement with local stations.⁶⁰ The Commission reiterated this reasoning as recently as 1999 when it rejected

⁵⁸ See, e.g., *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 54 (1983) ("*State Farm*") (agency needs "to look at the costs as well as the benefits" of a regulatory standard); *People of the State of California v. FCC*, 905 F.2d 1217, 1231 (9th Cir. 1990) (reviewing court "must be satisfied that the Commission's assessment of the various costs and benefits is reasonable in light of the administrative record," and "if the FCC's evaluation of any significant element in the cost/benefit analysis lacks record support," then the court "cannot uphold the agency action" under the Administrative Procedure Act).

⁵⁹ 47 C.F.R. § 73.3526(b).

⁶⁰ See, e.g., *Report and Order* in MM Docket No. 97-138, *et al.*, 13 FCC Rcd 15691 at ¶ 18 (1998).

arguments that the public file information should be accessible to parties outside of the service area through telephone requests.⁶¹

This also holds true for the Commission's proposed EEO public file report. In the *Second Notice*, the Commission proposes to require that broadcasters reach out to the "community" in filling job vacancies,⁶² and in the *EEO Report and Order*, the Commission has noted that the "community" should have a role in monitoring the industry.⁶³ Given these pronouncements on the need and use of the contents of an EEO public file report, NAB can discern no purpose for making such information accessible outside the service area of the station. Nor has the Commission ever expressed any particular reason for making such a report accessible outside the service area.⁶⁴ NAB appreciates the importance of equal employment opportunity, but does not believe that a report on these efforts, as compared to a station's compliance with all of the Commission's other regulations, warrant a special rule that will require stations to undertake the additional, expensive actions necessary to make such information available outside the station's community.

NAB believes that the EEO certification process under its proposed plan will provide the Commission and the public with all of the notification and information on of a broadcast station's EEO outreach efforts necessary.

⁶¹ *Memorandum Opinion and Order* in MM Docket No. 97-138, *et al.*, 14 FCC Rcd 11113, 11119 (1999).

⁶² *Second Notice* at ¶ 15.

⁶³ *EEO Report and Order*, 15 FCC Rcd at 2379.

⁶⁴ As noted above, the Commission first adopted this rule in the *EEO Report and Order* without the benefit of notice and comment. Nor did the Commission offer any legal or other justification support for imposing the rule. *Id.* at 2379-80. The Commission also failed to take the opportunity in the *EEO Recon Order* to provide such justification. *EEO Recon Order*, 15 FCC Rcd at 22558.

2. Enforcement

Chairman Powell has stated that his primary goal is to turn the Commission into a credible enforcement agency, rather than simply increase regulatory burdens on companies.⁶⁵ NAB endorses this objective, and has attempted to keep this in mind in its proposed EEO plan. NAB's plan attempts to minimize regulatory obligations on broadcasters without compromising achievement of the Commission's goals for equal employment opportunity. Therefore, under NAB's plan, the Commission could conduct random audits of stations to verify compliance with the EEO Outreach rules, or based on a review of a station's certification filing and exhibits. As in the past, the Commission could impose appropriate sanctions if a station, through an audit, is found not in compliance or has falsely certified its efforts.

However, as under the previous rules, the Commission should defer action on complaints of discrimination against broadcasters pending final action by the Equal Employment Opportunity Commission ("EEOC") or a court. These are the appropriate venues for such disputes, because, unlike the Commission, each possesses experience and expertise in discrimination cases, and is able to provide complete relief to aggrieved parties. This has been the Commission's long-standing practice, and without clear evidence to the contrary, there is no reason to change at this point in time.

As the court in *Lutheran* stated, the Commission is not the Equal Employment Opportunity Commission. . . .⁶⁶ In comments filed today, the Named State Broadcasters

⁶⁵ See, e.g., Michael Powell's Call, *The Industry Standard*, June 4, 2001.

⁶⁶ *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 354 (D.C. Cir. 1998) citing *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 628 (D.C. Cir. 1978) (en banc).

Associations explains that it would be contrary to the public interest for the Commission to adjudicated discrimination complaints when it lacks the required expertise, and such expertise resides at other agencies whose specific missions are to enforce non-discrimination laws.⁶⁷ The EEOC administers Title VII of the Civil Rights Act of 1964 and Title I of the Americans with Disabilities Act of 1990, among others, and resolves thousands of discrimination claims each year, including complex charges of “patterns and practices” of discrimination.⁶⁸ The Commission should extend its long-standing policy of standing aside when another agency has the primary responsibility for regulating certain conduct (*e.g.*, deferring to the U.S. Department of Justice regarding anti-competitive conduct).⁶⁹ As former Commissioner Furchtgott-Roth has stated, the determination of discrimination should be left up to the entities “best equipped to make that finding, the courts and the Equal Employment Opportunity Commission.”⁷⁰

The Commission simply is not in a position to enjoin particular behavior or award damages for past misconduct, especially since the Commission’s historical enforcement of its EEO rules has involved little more than comparisons of population or workforce statistics with the employment statistics of an individual station.⁷¹ Moreover, in many case cases, a targeted station has been singled out not by a former employee or actual victim of alleged discrimination,

⁶⁷ See State Broadcasters Associations Comments at ____.

⁶⁸ *Id.*

⁶⁹ *Id. citing Character Qualifications*, 102 FCC 2d 1179, 1202-03 (1986).

⁷⁰ Statement of Commissioner Harold Furchtgott-Roth, *Memorandum Opinion and Order & Notices of Apparent Liability In re Application of Radio Sun Group of Texas, Inc. For Renewal of Licenses*, File No. BRH-970407WB, *et al.*, 13 FCC Rcd 15268 at n.5 (1998).

⁷¹ TAB Comments at 5.

but by a third-party group.⁷² All of these factors should lead to the Commission's continued restraint from involving itself in claims of discrimination before they are adjudicated.

NAB also urges the Commission to make a clear finding that review of a station's EEO outreach will not be conducted in direct conjunction with review of a license renewal application.⁷³ Like other federal regulations, a station's efforts to fulfill the EEO outreach obligations sometimes can be open to interpretation. This possibility may be even more likely given the discretion provided to stations under either the Commission's or NAB's proposals to select from a menu of EEO outreach ventures. For example, a licensee might expend considerable resources to sponsor, organize and promote a job fair, yet the job fair fails to attract a significant number of job seekers. From the station's perspective, the job fair certainly should qualify as one of its required EEO outreach initiatives, despite the unfortunate results. The Minority Media & Telecommunications Council or similar group, however, may argue that such a job fair should not count as a completed EEO outreach initiative because it failed to expand the station's pool of potential minority or female job candidates.

Therefore, although the Commission would be free to consider any final determinations of EEO violations as part of its overall review of a license renewal applicant's compliance with the Commission's rules, NAB believes that any prescribed linkage between a station's completion of its EEO outreach requirements and license renewal could leave a station vulnerable to mistaken or gratuitous charges of discrimination contained in a petition to deny a renewal application. NAB urges the Commission to raise a guard against petitions to deny renewal applications that are unwarranted or frivolous.

⁷² *Id.*

⁷³ Thus, under the NAB's proposed rule, stations would not be required to file Form 396 together with their license renewal applications.

In summary, NAB's proposed plan is grounded in a broadcast station's performance of a continuous pattern of broad, general outreach. Given such meaningful outreach, neither vacancy-specific recruitment nor notices to requesting organizations is necessary or an efficient use of a licensee's limited resources. Under NAB's plan, broadcast stations with ten or more full-time employees would certify to the Commission: (1) compliance with the affirmative action obligations under the OFCCP regulations; (2) completion of the obligations under their state broadcasting association's "Broadcast Career Program;" or (3) completion of the menu of outreach initiatives under NAB's plan. Certification would consist of (1) a simple form on which a licensee would certify compliance, and (2) an attached list and narrative describing the licensee's outreach efforts. Stations would not be required to place an EEO public report in their public inspection files or on their Internet websites, but would be subject to audits at the Commission's reasonable discretion. NAB asserts that its proposed plan is superior to the Commission's proposal because it takes account of the outreach efforts stations already find valuable, does not mandate often fruitless job-specific recruitment, and allows stations the maximum flexibility to ration their resources while achieving the Commission's goals for equal employment opportunity.

IV. ANALYSIS OF THE COMMISSION'S EEO PROPOSAL

In the event that the Commission nonetheless determines that stations must recruit for each and every job vacancy, NAB believes that certain aspects of the Commission's EEO proposal can be improved, clarified or streamlined to reduce the burdens on companies subject to the rules, without undermining fulfillment of the Commission's goals for equal employment opportunity.

A. The Commission’s Prong 1 – Recruitment for All Full-Time Vacancies

1. Clarification of “Wide Dissemination” of Vacancy Information

The Commission proposes to retain the requirement that broadcasters recruit for each and every job vacancy. The Commission does not specify the number or type of recruitment sources an employment unit must utilize. Rather, it would mandate that companies “widely disseminate” information concerning each job vacancy using recruitment sources that are “reasonably calculated to reach the entire community.”⁷⁴

Although NAB appreciates the Commission’s aim to provide companies with flexibility in complying with the recruitment obligations, NAB believes that an inevitable defect of such flexibility is the uncertainty over what will constitute sufficient recruitment. For example, under the Commission’s recruitment proposal, parties are left to speculate on the adequacy of placing advertisements in the major daily newspaper as compared to making periodic or regularly-scheduled on-air announcements of job vacancies, and how long such announcements must run. More clarity is needed on whether any one of these efforts will suffice, or whether some combination is required.

NAB’s members have no interest in cutting corners of the Commission’s mandated recruitment obligations. However, the ambiguity of the Commission’s recruitment rules will leave broadcasters’ recruitment efforts open to competing interpretations. A broadcaster of course has no control over who applies for job openings, yet the Commission’s proposal requires that a station maintain and submit documentation of its recruiting efforts, for purposes of the Commission’s assessment of the station’s EEO recruitment efforts. The Commission expects

⁷⁴ *Second Notice* at ¶ 23; *see also EEO Report and Order*, 15 FCC Rcd at 2368.

that, regardless of the chosen recruitment method, a station's efforts must achieve broad outreach to all segments of its community, including minorities and females.

In theory, it might be sufficient for a broadcaster to announce job vacancies on the air, or place an advertisement in the major daily newspaper, to reach all segments of the community. In practice, however, that may not be adequate protection from a third-party's claim that such actions were unsuccessful because the station employs a low proportion of minorities. NAB believes that, notwithstanding the Commission's efforts to reduce a licensee's paperwork burdens by eliminating the obligation to submit the recruitment sources used for each vacancy,⁷⁵ a broadcaster still must show that its job vacancy information reached minorities and females. Otherwise, a station is inescapably vulnerable to unwarranted license renewal oppositions grounded in a Commission mandate to "widely disseminate" vacancy information that is practically impossible to discharge with any certainty. Stations in areas with low minority populations are particularly vulnerable, since it is often impossible for these broadcasters to identify and attract minority job candidates or to certify groups within the community to which job announcements could be directed.⁷⁶

In this context, NAB urges the Commission to approve on-air announcements of job vacancies as an option for fulfilling the recruitment obligation. No method of publicizing job vacancies could be more accurate, since, by definition, a broadcast station's "community" consists of its audience. In addition, allowing a station to fulfill the Commission's recruitment obligation in this manner would enable a station to use its resources in the most economic,

⁷⁵ *Second Notice* at ¶ 33-36.

⁷⁶ *See* Section IV.C.3, below, where NAB urges the Commission restore the EEO exemption for stations serving areas with populations consisting of less than five percent minorities.

effective means, as the station could produce and distribute the notification using in-house resources.

Moreover, NAB believes that the Commission should deem the Internet a sufficient tool for satisfying this portion of the Commission's EEO proposal. In the *Second Notice*, the Commission notes its prior decision that use of the Internet as a recruiting method was promising but, as of the *EEO Report and Order*, could not be relied upon by itself to widely disseminate job information.⁷⁷ The Commission now seeks comment on whether use of the Internet has expanded to a level for it to change this previous decision.

As described above in Section II, NAB operates an Internet job bank that receives approximately 20,000 individual visits each month from job seekers. The website posts job openings at radio and television stations nationwide. The vacancies cover the gamut of positions, including engineers, on-air anchors and reporters, producers, general managers, salespersons and sales managers, and editors. NAB's website also offers advice on obtaining one's first job in the broadcasting industry, allows job seekers to post their resumes, and points job seekers towards other helpful resources. In addition, NASBA, individual state broadcasting associations, and individual television and radio groups and stations also maintain comprehensive Internet job banks.

Internet usage has grown significantly in recent years, to the point where the Commission's EEO recruitment goals could be achieved through broadcasters' sole use of the Internet. A recent report of the National Telecommunications and Information Administration ("NTIA") contains various statistics that support this conclusion. For example, the NTIA Report found that, as of September 2001, the rate of growth of Internet usage in the United States is

⁷⁷ *Second Notice* at ¶ 26.

approximately two million new users per month.⁷⁸ The NTIA Report also determined that, between December 1998 and September 2001, Internet use by individuals in households earning less than \$15,000 per year increased at a 25% annual growth rate, and at 11% rate for individuals in households earning over \$75,000 per year.⁷⁹ The NTIA Report also states that, between August 2000 and September 2001, Internet usage among African Americans and Hispanics grew by 33% and 30%, respectively, with 20% growth for whites and Asian Americans.⁸⁰

With respect to workplace diversity, the report reveals that Americans with lower incomes use the Internet to search for employment at a higher rate than others with higher incomes. Specifically, 23% of Internet usage by people in households earning less than \$15,000 per year is for job search activities, versus only 16% for those earning between \$50,000 and \$75,000, and 14.6% for those earning more than \$75,000.⁸¹ The NTIA study also found that, although minorities access the Internet from home at a lower rate than non-minorities, minorities are almost twice as likely to access the Internet at public libraries, or at work or school.⁸²

NAB's experience, as well as the above data, supports a determination that the Commission's proposed mandate to "widely disseminate" job vacancy information may be accomplished solely through use of the Internet. Simply put, since release of the *EEO Report*

⁷⁸ *A Nation Online: How Americans are Expanding Their Use of the Internet*, National Telecommunications and Information Administration/U.S. Department of Commerce, February 2001, at 1 (hereinafter "2001 NTIA Report"). The report is based on the September 2001 U.S. Census Bureau's Current Population Survey - a survey of approximately 57,000 households and more than 137,000 individuals across the U.S.

⁷⁹ *Id.*

⁸⁰ *Id.* at 2.

⁸¹ The NTIA report does not specifically break out usage of the Internet for job searches by minorities.

⁸² *Id.* at 39-41.

and Order, Internet usage in general, and for purposes of job searches, has significantly grown. As shown above, potential job applicants can access the Internet from any number of locations, including home, work, school, or a library. NAB has difficulty envisioning a situation where any individual conducting an earnest search for employment would not make the Internet one of his or her first steps. Furthermore, the ability to use the Internet is incumbent in almost any position in broadcasting, and NAB believes that it is reasonable to expect that job applicants possess at least a minimum level of understanding and familiarity with computers and the Internet, regardless of the nature of the vacant position.

Presumably, the Commission feels likewise. For example, the Commission's primary method of publicizing its own job vacancies is via the Internet.⁸³ Based on NAB's experience and involvement in the communications community, it is relatively rare for the Commission to post a full-time job vacancy in the *Washington Post*, *Washington Times*, or in a nationwide communications trade newspaper or magazine.

Similarly, in recent years the Commission has mandated that certain forms and applications only may be filed electronically. For example, the Commission permits the filing of the following documents *only* via the Internet, and will not accept hard-copy filings by U.S. Mail or facsimile: FCC Form 301 (Application for Construction Permit for Commercial Broadcast Station); FCC Form 302 (Application for New FM Broadcast Station License); FCC Form 397 (Broadcast Statement of Compliance); and FCC Form 398 (Children's Television Programming Report).

In fact, in the same *EEO Report and Order* in which the Commission refused to permit Internet recruitment to fulfill the Commission's recruitment obligations, the Commission ruled

⁸³ The Commission also posts vacancies at its headquarters and on a telephone job line. Interestingly, the Commission's telephone job line is not even a toll-free number.

that it would only accept electronic filings of the primary EEO form -- FCC Form 396 (Broadcast Equal Employment Opportunity Program Report). Certainly, if Internet recruitment and acceptance of EEO forms only over the Internet is good enough for the Commission, then it should be good enough for those companies subject to the Commission's regulations.

2. Clarification of "Entire Community"

The Commission proposes to retain the requirement that stations distribute job vacancy information using recruitment sources designed to reach the "entire community,"⁸⁴ and proposes to define "community" as, "at a minimum, the county where a station is licensed . . . or Metropolitan Statistical Area ('MSA') if the county is part of an MSA."⁸⁵ The Commission also requests comment on alternative definitions of "community."⁸⁶

Designating the county or MSA as the relevant community for EEO recruitment purposes raises problems concerning equitable treatment of licensees. Counties and MSAs and counties come in a wide variety of sizes. Certain MSAs, such as Chicago, Illinois, encompass millions of people, while others, such as Joliet, Illinois cover far fewer people. NAB believes that requiring all stations to publicize their job vacancies throughout their MSA, regardless of size or location, is far too constraining. For example, it is not evenhanded to mandate a small station located in Cook County, Illinois to incur the substantial expense of a classified ad in a newspaper with distribution throughout the entire Chicago MSA, while a similarly-sized station located in Grundy County, Illinois could fulfill its recruitment obligations while spending far less money.

⁸⁴ *Second Notice* at ¶ 23; *see also EEO Report and Order*, 15 FCC Rcd at 2368.

⁸⁵ *Second Notice* at ¶ 23.

⁸⁶ *Id.*

Moreover, certain MSA's cross state boundaries, which further complicates compliance. The Commission should clarify whether a licensee in these circumstances must purchase a classified ad in multiple newspapers so as to cover all parts of such an MSA. Defining "community" for purposes of the EEO rules based on a station's county or MSA therefore will cause inevitable confusion as well as inequitable treatment of licensees.

Thus, NAB urges the Commission to base a station's compliance with the recruitment prong of the Commission's proposal not on geography, but instead on the method used to disseminate information. "Community" is an inherently vague term, subject to multiple interpretations. As a result, the Commission's proposed rule would leave licensees at a loss to determine whether they have done enough to promote a job vacancy, particularly since the Commission fails to specify the audience to be targeted by a station. As the Named State Broadcasters Associations describe, such vagueness in a Commission requirement can lead to a discovery battle similar to the now-abandoned "ascertainment" process.⁸⁷ Presumably, the Commission would seek to avoid restoring this ordeal.

One reasonable alternative, as suggested above, is to permit broadcasters to fulfill the Commission's recruitment obligations solely through use of the Internet. Use of this method would enable all stations to be treated fairly, regardless of size, resources and geographic location. In any case, NAB believes that it is imperative for the Commission to further clarify exactly what will be expected of companies attempting to comply with the recruitment rules.

Another alternative is to ground the definition of "community" not in geographic terms, but instead in the nature of the available position. The relevant "community" for a station seeking a new Chief Financial Officer will vary from one seeking a new Audio Engineer. Both

⁸⁷ State Broadcasters Associations Comments at ____.

stations may find it more productive to publicize their openings in a financial journal or journal catering to engineers, respectively, rather than the local newspaper. However, under the Commission's proposed rules, this type of recruitment, by itself, would be insufficient. Such an option would enable broadcasters to focus their advertisement of job vacancies according to their experience and priorities, and not pursuant to a federal government mandate that has no relation whatsoever to the resources, size, location or hiring needs of individual companies. NAB thus urges the Commission to consider permitting licensees to define their community, for purposes of these rules, grounded in the type of position to be filled rather than the contours of the local county or MSA.

3. Exemptions

The Commission proposes the following exceptions to the general requirement that broadcasters recruit for each and every job vacancy:

- Promotions of internal staff.⁸⁸
- Promotions of a temporary employee to full-time status in the same or substantially same position, when such an employee was initially hired after full recruitment.⁸⁹
- Only substantial compliance with the recruitment obligation is necessary for part-time vacancies.⁹⁰
- Promotions of part-time employees to full-time status, when such an employee was initially hired after full recruitment.⁹¹

⁸⁸ *Second Notice* at ¶ 24.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

- In exigent circumstances where recruitment is not feasible. The Commission does not list other situations to which this exception would apply, but instead intends to rely on the good faith of broadcasters in electing to hire employees without full recruitment.⁹²

These exceptions are both confusing and contradictory. On the one hand, the Commission attempts to address every conceivable situation, which is wholly unworkable. On the other, the Commission is unclear as to when application of the exemptions is suitable, particularly with respect to the last exception listed above, which leaves broadcasters vulnerable to frivolous accusations of, at best, violating the EEO rules, or at worst, discrimination against an employee or job applicant. NAB therefore urges the Commission to take one of two actions.

The Commission should refrain from setting out specific exemptions to the recruitment obligation, and instead rely on the good faith discretion of industry to conduct full recruitment in those situations when a company deems it valuable given the station's hiring needs, resources and production from its continuous pattern of general, broad outreach.⁹³ If the Commission is open to granting such discretion to stations under the last exception listed above, NAB sees no reason why stations should be denied similar discretion in the situations addressed by the other proposed exceptions.

Alternatively, the Commission should substantially clarify and expound upon the proposed exceptions to provide stations with some level of certainty regarding exactly what is required, and when, in terms of recruitment for employees. In particular, regarding the last exception listed above, it would be helpful if the Commission suggested additional, specific

⁹² *Id.* at ¶ 25.

⁹³ For example, if a station already has a large collection of resumes from qualified salespersons, accumulated at various recent job fairs, NAB believes it makes no business sense to force the station to recruit for a month to six weeks to fill a vacant salesperson position.

examples when this exception would apply. The Commission states that one situation would involve the departure of an employee, without notice, and whose duties cannot be performed by other station employees.⁹⁴ However, this raises more questions than it answers. For example, would the exception apply if the employee departed but gave two weeks notice? What if the employee's duties could be performed by other employees, but doing so would not allow the other employees to perform their primary responsibilities? While NAB recognizes that the Commission wants to avoid regulating every conceivable situation and would prefer to rely on a broadcaster's good faith in choosing when not to recruit, the Commission should understand that the uncertainty of its proposed scheme will inevitably open broadcasters to unfounded charges of discrimination or favoritism that, in the context of a license renewal application, are expensive and time-consuming to refute.

a. Exemption for Unique Jobs

Most importantly, NAB urges the Commission to carve out an additional exemption from the recruitment requirement in the case where a station seeks to replace an existing employee whose skills or position are unique. For example, NAB has received input from numerous members that it was difficult to comply with the prior rules when seeking to replace certain unique employees, such as on-air talent or a General Manager. These positions do not lend themselves to recruitment as envisioned by the Commission. Publicizing such a vacancy in any way can cause friction and undermine a station's efficiency if, as in many such cases, the existing employee is unaware of his or her imminent departure. In many situations, station management only may want to privately inquire whether an employee of another station could

⁹⁴ *Second Notice* at ¶ 25.

become available given the right arrangement. The impact of recruitment also varies according to a station's geographic location, if that would make it more transparent to the public and the existing employee that the station is interested in replacing that employee. Finally, often recruitment for such unique positions is a longer, more arduous process that requires confidentiality of all those involved.

It is imperative that the Commission set forth a clear, unequivocal exemption to its recruitment rule to address these circumstances. It is incumbent upon the Commission to recognize and account for the typical manner in which broadcasters often must conduct their business, and enable broadcasters to make prudent business decisions. For example, it would not be logical to require that an employer take weeks to conduct a broad and public recruitment campaign for other talent to fill the job when the preferred person for the job is currently available, quite possibly for only a limited time. Moreover, such negotiations for personal services contracts are confidential, yet another reason not to be public about a "vacancy."

A broadcaster's ability to secure management and talent is fundamental to its operations and ability to compete for viewers, advertisers, and personnel in an ever-changing and highly competitive media and content distribution industry. The station should have the ability to operate its facilities and manage its executives according to its individual needs and circumstances. Such discretion certainly includes the ability to hire and fire, as long as such action is in compliance with other federal and state laws. A limited exception to the general rule for broad recruitment based on such practical and business considerations is reasonable and necessary.

Stations also require certainty that they will remain in compliance with the Commission's rules even if they do not conduct full recruitment in these kind of situations. Thus, unless the

Commission decides to rely on the good faith discretion of companies in all decisions on whether recruitment is appropriate, NAB strongly urges the Commission at least to substantially improve its recruitment exceptions by taking account of broadcasters' important need to identify and attract candidates for certain unique jobs, or jobs requiring unique skills, with the ability to control the circulation of information about the potential vacancy.

b. Exemption Based on Business Futility

The Commission should adopt one additional exception to the general recruitment obligation, based on the futility of recruitment for certain broadcast licensee. Specifically, many NAB members located in less urban areas have found that it is typically a waste of time and money to follow the Commission's required recruitment methods for certain positions. For example, it is often a useless exercise for the General Manager of a radio station in Ames, Iowa to place a classified advertisement in the local newspaper when seeking a new Chief Engineer. Here and in similar situations, it is inevitable that the General Manager already will be familiar with every potential Chief Engineer in the entire state, never mind the county or MSA. Likewise, although the Personnel Director of a television station in Anchorage, Alaska who seeks to hire a new Meteorologist may find it productive to post a vacancy announcement on NAB's Internet job bank, she knows from experience that a classified ad in a newspaper with distribution throughout the region will not attract any qualified candidates of whom she is not already aware. These are just a few examples where the station's attempt to squeeze the many varied broadcast stations under one rule makes little sense.

Additionally, as discussed above in Section III.A, NAB believes that a station's faithful performance of a continuous pattern of broad, general outreach will render recruitment, as

envisioned by the Commission, unnecessary. This is particularly true with respect to certain types of positions. For instance, it is not uncommon for a radio station to accumulate a tremendous collection of resumes from highly qualified advertising salespeople at job fairs and other outreach events. Under these circumstances, NAB contends that it is a needless redirection of resources to force a station to conduct a full, month-long recruitment when a salesperson position becomes available. In fact, in this and similar situations, if the station is required to conduct a full recruitment once a vacancy becomes available, what exactly is the purpose of attending job fairs? Recruitment in this situation simply is not going to identify any superior candidates, minority or otherwise. The same often holds true for other types of positions, including news reporters. Accordingly, NAB urges the Commission to consider an exemption or clarification that covers these and similar scenarios, in light of its expressed commitment to providing as much flexibility and discretion as possible to companies.

B. The Commission's Prong 3 – Menu of Outreach Options

In the *Second Notice*, the Commission essentially proposes to adopt what is left of its rules following the court's decision in *Association*.⁹⁵ Broadcasters under the Commission's proposal would be required to engage in a number of outreach activities selected from a menu of options, designed to promote and facilitate employment in the industry to the general public. Although the Commission's proposed outreach prong is similar to NAB's plan, NAB believes that the Commission's proposed scheme of outreach can be improved or clarified in several respects.

⁹⁵ *Id.* at ¶ 28.

1. Certain of the Commission's Proposed Menu Options are Overly Burdensome

As under the prior rules, the Commission proposes a list of 12 options for outreach initiatives. Station employment units employing more than ten full-time employees must perform at least four outreach options over a two-year period, and units with five to ten employees must perform at least two outreach options over a two-year period.⁹⁶ Although the Commission attempts to provide stations with flexibility by offering 12 options to fulfill these obligations, the burden of compliance will be far too great for many stations. For instance, if a station chooses the option of participating in job fairs as one way to meet its outreach requirements, the Commission's rules would require the station to attend four job fairs in a two-year period to fulfill only one of its required outreach options. For many stations, including those with very few employees, the resources needed to complete just this one outreach option will significantly undermine their ability to complete another three options during a two-year period. The same can be said for the Commission's proposed fourth and tenth options, which call for participation in at least four activities sponsored by community groups active in broadcast employment issues, and participation in at least four events or programs relating to career opportunities in broadcasting sponsored by educational institutions, respectively. Assuming a station could even identify four such local events in either category, the required effort and expense surely will diminish the effectiveness of certain stations' capability to implement the other three required outreach activities.

NAB believes that the required number and menu of outreach initiatives under its proposed plan is more realistic and responsive to the real-world resources and needs of broadcasters. For example, under NAB's plan, certain outreach activities are worth more in

⁹⁶ *Id.* at ¶ 30.

terms of regulatory credit because of the effort and expense involved, thereby reducing the required number of other activities. These types of activities include sponsoring or co-sponsoring a job fair, offering scholarships or meaningfully participating in a scholarship program, and administering an on-going mentorship or internship program. NAB also offers other outreach options that entail fewer resources, and therefore score less regulatory credit, such as regularly posting job vacancy announcements on relevant Internet job banks, and regularly announcing job vacancies on-the-air.

Under the Commission's proposal, all outreach initiatives are weighed equally, even though some require much more effort or expense than others. As a result, all of the thousands of stations nationwide are treated exactly the same under the Commission's EEO rules, even though their respective markets, resources, hiring needs and number of employees will vary widely. The Commission does not seem cognizant of the fact that thousands of stations nationwide that would be subject to the EEO rules do not have a Human Resources or Personnel Director; instead, the General Managers or some other senior level employee must handle these duties in addition to his or her primary responsibilities. NAB simply urges the Commission to go further in attempting to provide broadcasters discretion, or at a minimum, reduce the amount of resources necessary to execute certain of its outreach menu options.

2. The Commission Should Facilitate Joint Recruitment

The Commission also proposes to continue its policy of allowing the completion of its outreach menu options on a joint basis, "where appropriate."⁹⁷ Thus, for example, multiple

⁹⁷ *Id.* at ¶ 31.

employment units owned by a single broadcaster together could co-sponsor a job fair, so long as each employment unit participated in a meaningful way.⁹⁸

Although NAB wholly endorses this policy, one minor clarification is required. NAB believes that it is entirely reasonable for the same rule to apply to outreach activities implemented at the corporate or regional headquarters level. In practice, it is often the case that a company with multiple broadcasting stations will administer a very extensive, on-going program of broad, general outreach, such as a large scholarship program, company-wide job fairs, or corporate-wide internship and mentorship programs. These kinds of activities are typically much more effective and far-reaching than anything an individual station or small group of stations could administer, and this holds true even on a proportional basis among the participating stations. Accordingly, NAB strongly believes that a clarification by the Commission that extensive outreach programs implemented at the corporate or regional headquarters level will satisfy its outreach obligations will serve to foster and expand these types of worthwhile EEO endeavors. For example, as described above in Section II, the ABC Television Network runs a variety of programs, including the ABC Entertainment Writers Fellowship, the ABC Entertainment New Talent Development Program (grants to discover and support new writing, filmmaking, and directing talent), and the ABC Entertainment Freelance Writers Program (money earmarked for the hiring of minority freelance scriptwriters), all of which foster real-world opportunity and training for female and minority potential job candidates.

⁹⁸ *Id.*

This is just another context in which the Commission could enhance the flexibility of stations attempting to comply with the Commission's EEO rules, given the individual resources and hiring needs of various stations.

C. The Commission Should Expand or Increase the Grounds for Exemption from the EEO Rules

1. The Commission Should Increase the Numerical Threshold for Exemption from the EEO Rules

As under its prior rules, the Commission again proposes that station employment units with more than ten full-time employees must perform at least four outreach options over a two-year period, and those units with five to ten employees must perform at least two outreach options over a two-year period. The Commission seeks comment on whether to continue to exempt from the EEO regulations those broadcast station employment units with fewer than five full-time employees.⁹⁹ At a minimum, NAB endorses maintaining this exemption, and would urge the Commission to increase the threshold for exemption to fewer than ten full-time employees.

As discussed above in Section III.A, NAB believes that a station's good faith performance of a continuous pattern of broad, general outreach will render recruitment, as envisioned by the Commission, an unnecessary and redundant waste of a broadcaster's typically limited resources. This is particularly true for small stations that typically have very few vacancies, and no full-time human resources person.

NAB believes that small stations should be granted relief from the EEO obligations because such stations face unique obstacles to identifying and attracting potential employees,

⁹⁹ *Id.* at ¶ 29.

especially as compared to stations in larger markets. First, stations with fewer than ten employees simply have too few job vacancies and scarce resources and personnel to execute the type of recruitment and outreach program envisioned by the Commission. Also, employees at small stations typically perform multiple functions, including on-air reporting or announcing, marketing, management and sales. Each “department” will have very few people, and even fewer employees who devote all of their time to that particular department. As a result, small stations need a good measure of discretion to fill vacancies quickly.¹⁰⁰ Stations with only five to nine employees do not have the luxury to take one away from his or her primary duties to fill-in for a departed employee for a month, or two months, or however long is required to complete the Commission’s version of recruitment.

Second, small stations face special hurdles in competing with larger stations for employees. For example, some potential job candidates may believe that employment at a small station is less desirable because such stations typically have a smaller audience, which can mean less prestige in the broadcasting community.

Third, small stations may face certain other obstacles to completing a full complement of the Commission’s outreach options on Commission’s proposed menu of outreach activities. It is possible that small stations may have less access to opportunities to participate in job fairs. Similarly, small stations may not have the same breadth of opportunities to co-sponsor a job fair with an organization whose “membership includes substantial participation of women and minorities,”¹⁰¹ because there may be fewer such organizations in the vicinity. A small station

¹⁰⁰ See Joint Comments of the Virginia Association of Broadcasters and North Carolina Association of Broadcasters in MM Docket No. 98-204, *et al.*, filed March 1, 1999, at 15 (“VAB Comments”).

¹⁰¹ *Second Notice* at ¶ 30.

may find it extremely difficult to find “four events sponsored by organizations representing groups present in the community interested in broadcast employment issues”¹⁰² in which to participate.

Moreover, stations with five to nine employees no longer have the option of designing their own EEO outreach system under Option B of the Commission’s vacated prior rules. Without this option, small stations that find it overwhelming to fulfill the Commission’s outreach program will have nowhere to turn. Executing the full complement of the Commission’s outreach options may not be viable for certain stations. NAB believes that this development, if nothing else, warrants exemption from the EEO rules for stations with five to nine employees.

NAB recognizes that the Commission in the *EEO Report and Order* considered expanding the exemption to include stations with fewer than ten employees,¹⁰³ but rejected this tactic in part because it agreed with certain commenters that small stations have an important role in providing entry-level opportunities into the broadcasting industry.¹⁰⁴ However, to support these assertions, both of these commenters relied on a study that is at least 25 years old.¹⁰⁵ It is undeniable that the broadcasting industry has changed substantially over that period of time, including tremendous consolidation and other transformations. Given these changes and the passage of time since the study on which the Commission based its conclusion, NAB believes

¹⁰² *Id.*

¹⁰³ *EEO Report and Order*, 15 FCC Rcd at 2380-81.

¹⁰⁴ *Id.* citing AFTRA Comments at 4-5 of Attachment and NOW Reply Comments at 35.

¹⁰⁵ NOW Reply Comments at 35 (citing a study in Michigan submitted by the petitioners in *Office of Communications of the United Church of Christ, et al. v. FCC, et al.*, 560 F. 2d 529 (1977), which found that, at the time, stations with fewer than ten employees had 15.1% of the jobs in the industry but 41.7% of the entry-level job opportunities); AFTRA Comments at 5 of Attachment (same).

that the time has arrived when increasing the threshold for extending the exemption from the EEO rules to stations with five to nine employees is appropriate. Small stations, in particular, run on extremely tight, inflexible budgets. Such stations are even more vulnerable to the vagaries of the advertising market and competition from larger stations, including the developing nationwide satellite radio services. Accordingly, NAB urges the Commission to invest small stations with the ability to perform outreach activities on a scale appropriate to their resources and nature of job vacancies. Such a result would be in full alignment with Chairman Powell's preference for market forces over regulation.

2. The Commission Should Exempt Stations in Small Markets

The Commission seeks comment on whether it would be appropriate to raise the threshold for broadcasters' required compliance with the EEO rules in smaller markets where the "community resources to perform the full complement of options may not be readily available."¹⁰⁶

Similar to stations with only five to nine employees, small market stations face great obstacles in executing the Commission's EEO obligations. These include severe resource limitations, competing against larger and more prestigious stations for employees, and a lack of local minority or women's organizations or educational institutions with which to join in conducting certain of the Commission's outreach options. NAB believes that any or all of these factors support relief for stations in small markets.

The key development in this context, however, is the *Association* court's deletion of the "Alternative Recruitment Program" contained in previous Option B, which permitted stations to

¹⁰⁶ *Second Notice* at ¶ 29.

design their own EEO program. In the *EEO Report and Order*, the Commission expressed its belief that small market stations warranted some relief from the EEO obligations because of the difficulty of competing for employees with stations in larger markets. However, the Commission declined to take specific action because it decided that such relief “is already built into the new broadcast EEO Rule,” largely because stations could elect to use the Alternative Recruitment Program.¹⁰⁷ However, the *Association* court eliminated this option, and with it, the Commission’s basis for denying additional relief, or exemption from the EEO rules, for stations in small markets.

NAB thus urges the Commission either to exempt small market stations from the EEO rules, or at least minimize the type or number of outreach initiatives such stations are required to perform under the EEO regulations.

3. The Commission Should Restore the Exemption for Broadcast Stations in Areas with Low Minority Population

In the *EEO Report and Order*, the Commission discontinued its long-standing policy of not requiring the submission of information on a station’s EEO efforts to recruit minorities from those stations in markets with a minority labor force of less than five percent.¹⁰⁸ Subsequently, NAB asked the Commission to reconsider this decision in part because such stations may be “unduly targeted for inquiries or sanctions through removal of the exemption.”¹⁰⁹ NAB stated

¹⁰⁷ *EEO Report and Order*, 15 FCC Rcd at 2380-81.

¹⁰⁸ *Id.* at 2382-83.

¹⁰⁹ Petition for Partial Reconsideration and Clarification of the National Association of Broadcasters in MM Docket No. 98-204, filed March 16, 2000 at 6 (“*NAB Recon Petition*”).

that removal of the exemption essentially forces “stations to find minorities where none live.”¹¹⁰ However, the Commission rejected NAB’s assertions, stating that, because the new EEO rules did not require the filing of information on a station’s EEO efforts targeting minorities, the exemption was no longer “pertinent.”¹¹¹

NAB again urges the Commission to restore this exemption. The Commission seems to discount the practical reality that recruitment, as envisioned by the Commission, is entirely futile in areas with low minority populations. As noted above, the Commission’s historical review of discrimination claims has involved little more than a comparison between the population statistics of a station’s service area and the employment statistics of the station in question.¹¹² Therefore, recruitment and outreach would not be justified since the broadcast station’s workforce would already reflect the population of the community. Also, there is no reason to believe that requiring a station to place classified advertisements, send notifications of job vacancies and perform outreach, all in an effort to expand equal employment opportunity, would be useful or fruitful. The Commission must be able to demonstrate the positive benefits of a particular rule, or application of a rule.¹¹³ In this case, NAB believes that application of the proposed EEO rules to stations located in areas with low minority populations will not have any effects whatsoever, and as such, the Commission may not impose the rule in this situation.

¹¹⁰ *Id.*

¹¹¹ *EEO Recon Order*, 15 FCC Rcd at 22553.

¹¹² TAB Comments at 5.

¹¹³ *State Farm*, 463 U.S. at 43.

D. The Commission Should Eliminate FCC Form 395-B

In the *Second Notice*, the Commission proposes recordkeeping and reporting requirements that are largely identical to the taxing obligations contained in the prior EEO rule.¹¹⁴ In Section III.C, above, NAB offers a sensible, realistic alternative system for the collection and submission of information relevant to a station's compliance with the EEO rules. Important aspects of NAB's plan include: (1) certification every four years of a station's compliance with the OFCCP obligations or completion of its state association's broadcast career program or the NAB's menu of outreach initiatives, together with a detailed description of the station's outreach efforts; (2) elimination of the obligation to retain EEO information in a station's public inspection files on its Internet web site; and (3) a clear finding that no direct connection will exist between a station's compliance with the EEO rules and review of a station's application for license renewal. NAB believes that the Commission's reporting obligations can be further improved in one additional respect.

In the *Second Notice*, the Commission proposes to continue the required filing of Form 395-B, the Annual Employment Form., which consists of data on the race and gender of the reporting station's workforce. In doing so, the Commission highlighted its promise in the *EEO Report and Order* only to use this data for analyzing industry employment trends, and not, as most broadcasters fear, for purposes of assessing an individual entity's compliance with the EEO rules.¹¹⁵ NAB believes that the continued filing of Form 395-B is both unnecessary and contradictory to the court's decision in *Association*.

¹¹⁴ *Second Notice* at ¶¶ 41-46.

¹¹⁵ *Id.* at ¶¶ 50-52, citing *EEO Report and Order*, 15 FCC Rcd at 2394-95.

Stations with 100 or more employees already must file the EEO-1 Report annually with the Equal Employment Opportunity Commission (“EEOC”).¹¹⁶ The information concerning the race and gender of an entity’s employees required on the EEO-1 Report is identical to that on the Form 395-B. It seems apparent that the Commission could work with the EEOC to collect and scrutinize the information on EEO-1 Reports as necessary, without wasting the resources of both licensees and the Commission in duplicating these efforts.¹¹⁷ In the *EEO Report and Order*, the Commission rejected this suggested course of action because unlike the EEO-1, the Form 395-B distinguishes between full and part-time employees, while the Commission’s broadcast trend reports only report data on full-time employees. The Commission stated that the data collected therefore “could not be compared to the employment data gathered for past Commission reports.”¹¹⁸

The Commission’s reasoning is unpersuasive. NAB finds it hard to believe that, if the Commission began relying on EEO-1 Reports, it could not figure out a way to account for newly included part-time workers. It would seem to be a simple task for the Commission to ascertain the numbers of employees indicated on past EEO-1 Reports (or summaries thereof), compare those figures to the numbers indicated on past Commission trend reports of Form 395-B’s, and calculate a simple comparison between the two forms. Certainly the effort would be worthwhile given the cost and man-hour savings for both industry and the Commission. Broadcasters no longer would have to file the same data with two government agencies, and the Commission could rescue the resources it devotes to creating, updating and maintaining the database of Form

¹¹⁶ See 29 C.F.R. § 1602.7 (1998).

¹¹⁷ See, e.g., *Notice of Proposed Rulemaking* in WT Docket No. 98-20, 13 FCC Rcd 9672, (1998).

¹¹⁸ *EEO Report and Order*, 15 FCC Rcd at 2394-95..

395-B data. The Commission states that it intends to use the data on Form 395-B only to examine industry hiring trends, and NAB asserts that the Commission could easily achieve this aim using the information collected on EEO-1 Reports.

Requiring the continued filing of Form 395-B would also contravene the holding in *Lutheran Church* by pressuring licensees to use racial and gender classifications in hiring.¹¹⁹ As the Named State Broadcasters Associations explain in their comments filed today, this pressure is inevitable despite the Commission’s “guarantee” that *it* will not use the Form 395-B data in assessing an entity’s compliance with the EEO rules,¹²⁰ because *third parties* will use the information in a way that leads to the same result.¹²¹ For example, in comments on the earlier Notice of Proposed Rulemaking in this proceeding, the Minority Media & Telecommunications Council (“MMTC”) stated that it would review the information on Form 395-B’s and “liberally draw inferences from statistics” in exploring whether stations had discriminated.¹²² NAB appreciates the Commission’s intentions not to rely on Form 395-B data in assessing a station’s EEO compliance, but there is only so much the Commission can do. If a third party wants to rely on Form 395-B data in objecting to a broadcaster’s license renewal application on EEO-related grounds, it surely will be a simple matter to do so in a way that conceals such reliance. The fact remains that unless the Commission eliminates the Annual Employment Form going-

¹¹⁹ *Lutheran Church*, 141 F.3d at 353.

¹²⁰ *EEO Report and Order*, 15 FCC Rcd at 2418. The Commission last collected Form 395-B’s in 1999, but halted production of a tend report analyzing that data soon after the court remanded the EEO rules in *Association*. If the report is intended not to be part of the Commission’s EEO program requirement, one is compelled to speculate as to why the Commission has not yet examined the 1999 data.

¹²¹ See State Broadcasters Associations Comments at ____.

¹²² *Id. citing* Comments of MMTC in MM Docket Nos. 98-204 and 96-16, at 315 n.459.

forward, it will leave broadcasts licensees vulnerable to allegations of discrimination and force them to adapt their hiring patterns, in direct violation of *Lutheran Church*.

V. THE COMMISSION MUST TAKE CARE NOT TO OVERSTEP ITS SUSPECT LEGAL AUTHORITY FOR ADOPTING EEO RULES

Notwithstanding NAB's offer of a comprehensive alternative to the Commission's EEO proposal, and suggested improvements to the Commission's plan, NAB does not believe that the Commission's authority to re-regulate in this area is indisputable. Indeed, given the Commission's penchant for lurching between supposed rationales for regulating EEO, and its conspicuous failure in the *Second Notice* to cite any evidence of discrimination in the broadcasting industry, the Commission's legal and factual justifications for its latest attempt to craft EEO rules are far from certain. Thus, the Commission would be wise to tread very lightly in creating new EEO regulations lest the D.C. Circuit once again reject the Commission's efforts.

The Commission has demonstrated a lack of consistency and conviction in grounding its EEO rules in law. Prior to the *EEO Report and Order*, the Commission's EEO rules relied not on a goal of preventing discrimination, but rather on a "desire to foster 'diverse' programming content" through the expansion of workplace diversity.¹²³ However, this strategy failed to withstand the D.C. Circuit Court's scrutiny in *Lutheran Church*. As a preliminary matter, the *Lutheran* noted first that the Commission never defined exactly what it meant by "diverse programming," finding that the Commission's attempts to formulate a public interest in diverse programming "seems too abstract to be meaningful."¹²⁴ More importantly, although the *Lutheran* court recognized that the Supreme Court in *Metro Broadcasting, Inc. v. FCC* deemed

¹²³ *Lutheran Church*, 141 F.3d at 354. As the *Lutheran* court speculated, the Commission probably chose this motivation because it doubted its own authority to adopt rules based on an anti-discrimination rationale. *Id.*

¹²⁴ *Id.*

the government's interest in program diversity "important" and therefore upheld a Commission effort to enhance broadcast ownership diversity pursuant to intermediate scrutiny,¹²⁵ the court rejected the Commission's entreaties to elevate program diversity to a "compelling" interest.¹²⁶

The *Lutheran* court would not rely on the Supreme Court's finding in *Metro Broadcasting* of a link between ownership diversity and program diversity because it could find no explanation by the Court of why it was in the government's interest to accommodate "the notion that minorities have racially based views."¹²⁷ That is, the *Lutheran* court could not find support in the Constitution for allowing the Commission to take account of racially-based differences in viewpoints when crafting rules designed to enhance ownership diversity.¹²⁸ In fact, the *Lutheran* court expressed concern that such an approach could be "antithetical to our democracy."¹²⁹ In addition, the court cited Justice O'Connor's dissent in *Metro Broadcasting*:

"[A] claim of insufficiently diverse broadcasting viewpoints might be used to justify equally unconstrained racial preferences, linked to nothing other than proportional representation of various races. And the interest would support indefinite use of racial classifications, employed first to obtain the appropriate mixture of racial views and then to ensure that the broadcasting spectrum continues to reflect that mixture. . . . [T]he interest in diversity of viewpoints provides no legitimate, much less important, reason to employ race classifications. . . ."¹³⁰

¹²⁵ *Id. citing Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 567-68 (1990) (O'Connor dissenting), *overruled on other grounds, Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

¹²⁶ *Lutheran*, 141 F.3d at 354 *citing Metro Broadcasting*, 497 U.S. at 567-68.

¹²⁷ *Id.* at 355 *citing Metro Broadcasting*, 497 U.S. at 579.

¹²⁸ *Id.*

¹²⁹ *Id. citing J.E.B. v. Alabama*, 511 U.S. 127, 135-43 (1994).

¹³⁰ *Lutheran Church*, 141 F.3d at 355 *citing Metro Broadcasting*, 497 U.S. at 615.

Justice O'Connor apparently believed that approving racially-based differences as grounds for Commission action constituted a slippery slope. *Metro Broadcasting* dealt with the Commission's efforts to expand broadcast ownership diversity, but clearly Justice O'Connor would have similar reservations concerning a Commission rule designed to expand workplace diversity in the broadcast industry in the name of expanding programming diversity. Therefore, in light of Justice O'Connor's statements, as well as the seemingly inevitable demise of the logic underpinning the *Metro Broadcasting* decision, the *Lutheran* court determined that the Commission could not rely on the differences among racial viewpoints as a basis for expanding program diversity. And this finding, in turn, eliminated the Commission's interest in expanding program diversity as a basis for enhancing workplace diversity in the broadcasting industry.¹³¹

As a result, the Commission in the *EEO Report and Order* and the *Second Notice* changed course and decided to base this version of its EEO rules in a desire to prevent discrimination. Specifically, the Commission expressed a need to restrain the broadcasting industry's allegedly homogeneous workforce from replicating itself through "an insular recruitment and hiring process,"¹³² such as through "word-of-mouth" recruitment practices.¹³³

In fact, the Commission in the *Second Notice* presents anti-discrimination as a basis for its EEO proposal as almost a foregone legal conclusion. The Commission states that the "court

¹³¹ The *Lutheran* court ultimately rejected the Commission's prior EEO rules because, even if the Commission's interest was compelling, the Commission's rules were not narrowly tailored because they required a nexus between program diversity and expanded diversity of even low-level employees. The court found no evidence that secretaries and other low-level employees could influence the programming on a broadcast station. *Id.* at 356.

¹³² *Second Notice* at ¶ 5.

¹³³ *EEO Report and Order*, 15 FCC Rcd at 2345.

found no constitutional defect in recruitment Option A of the EEO rule” because,¹³⁴ in the court’s words, broadcasters were not “meaningfully pressured under Option A to recruit women and minorities.”¹³⁵ However, this only demonstrates the *Association* court’s view that former Option A could survive the analysis used by the court with respect to former Option B. It does nothing to support the notions that anti-discrimination is a sufficient basis for the EEO rules, or that former Option A -- on which the Commission’s current EEO proposal is based -- would actually fulfill the Commission’s anti-discrimination purpose.

In *Association*, the petitioners had claimed that the Commission actually intended the EEO rules to promote program diversity, rather than prevent discrimination, and therefore the rules could not stand given the *Lutheran Church* decision as well as Justice O’Connor’s statements in *Metro Broadcasting*. All the *Association* court decided was that the Commission in fact had made it sufficiently clear that its primary goal for the prior EEO rules was preventing discrimination, thus rendering the petitioners’ arguments beside the point.¹³⁶

Moreover, it is important to highlight that the Commission previously offered its current EEO proposal as only half of its prior EEO rule, namely, former Option A.¹³⁷ In *Association*, the court determined that former Option B impermissibly pressured broadcasters to devote their hiring resources to women and minorities, at the expense of non-minorities, and therefore could not withstand strict scrutiny.¹³⁸ The court then considered whether Option B could be severed

¹³⁴ *Second Notice* at ¶ 12.

¹³⁵ *Id. citing Association*, 236 F.3d at 19.

¹³⁶ *Association*, 236 F.3d at 18.

¹³⁷ *Second Notice* at ¶ 16.

¹³⁸ *Association*, 236 F.3d at 21.

from former Option A so that Option A could remain law. The court held that the two options were not severable, stating that “[p]resumably . . . the Commission would not have created Option B if it had believed that Option A by itself was sufficient to achieve the Commission’s goals.”¹³⁹ Thus, even if one concedes that the Commission intends its current EEO proposal to prevent discrimination, it is impossible under the *Association* court’s view to conclude that the new proposal is sufficient to achieve this goal by itself. Apparently, the Commission during its last EEO review did not believe that former Option A alone would be adequate. Nor can the Commission find additional legal support for Option A in the *Association* decision. Thus, NAB must question exactly what has changed since the *EEO Report and Order* that has further empowered former Option A so that it is now enough to fulfill the Commission’s goals of preventing discrimination in the broadcasting industry.

Certainly the Commission cannot point to any changes in the relevant factual circumstances, or presumably it would have done so in the *Second Notice*. Indeed, the Commission in the *Second Notice* quite conspicuously does not question the industry’s EEO efforts. Nor does it point to any evidence of discrimination or unacceptable pattern of hiring in the broadcasting industry. In fact, the Commission essentially has admitted that no pattern of discrimination in the broadcasting industry.¹⁴⁰

¹³⁹ *Id.* at 25.

¹⁴⁰ For example, the Telecommunications Act of 1996 amended the Communications Act to direct the Commission to grant a broadcast renewal application if it finds that the applicant, in addition to serving the public interest, convenience and necessity, has not committed any serious violations of the Act or the Commission’s rules, or committed a series of violations of the Act or rules that constitute a pattern of abuse, including a pattern of discriminatory hiring. 47 U.S.C. § 309(k). Given the extremely rare instances when the Commission has been forced to address even alleged patterns of abuse, it is apparent that the Commission presumably agrees that no pattern of discrimination exists in the broadcasting industry.

In addition, as described above in Section II, NAB and the broadcasting industry have a long-held, dynamic commitment to workplace diversity. This commitment takes the form of numerous far-reaching endeavors designed to inform the public of the benefits of a career in the broadcasting industry, and to identify and attract female and minority candidates for positions at all levels of the industry. NAB and individual broadcast stations sponsor, administer, and participate in a wide variety of such programs, including: job fairs; internships, mentorships; scholarships; Internet job banks; and training programs for employees at all levels, as well as prospective station owners. NAB and individual stations also cooperate extensively with organizations that represent the interests of females and minorities in order to identify potential job candidates. These efforts have enabled the industry to make great strides in expanding diversity at all levels.

Moreover, none of these ventures have been forced upon industry by government, since it has been almost three years since the *Lutheran Church* decision caused the Commission to vacate its prior EEO rules. For a broadcaster, like any businessperson, conducting a continuous pattern of broad, meaningful outreach simply makes good business sense. The outcome of such outreach, namely, a highly qualified, diverse workforce, causes the best possible product for radio and television stations, which results in higher consumption of a station's services, and in turn, higher profits for the corporation and higher compensation for the corporation's personnel.

Given the lack of evidence of discrimination in the broadcasting industry, as well as the industry's record of vigorous efforts to expand workplace diversity, any Commission rule designed to correct this alleged situation could be deemed arbitrary and capricious.

It is long-standing precedent that, in crafting policy, the Commission must "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational

connection between the facts found and the choice made.”¹⁴¹ This principle was critical to the D.C. Circuit’s recent decision in *Time Warner Entertainment Co., L.P. v. FCC, et al.*,¹⁴² in which the court reversed and remanded the Commission’s cable television horizontal and vertical ownership limits. With respect to the former, the Commission asserted that its 30% maximum on the number of subscribers nationwide that one multiple cable system operator could serve was necessary to prevent an operator or group of cable operators from impeding the flow of cable video programming to consumers.¹⁴³ In setting this limit, the Commission presumed a risk that cable operators would collude to preclude the entry of a new competitive cable programmer.¹⁴⁴ The court, however, admonished the Commission for failing to present the “substantial evidence” required pursuant to its previous decisions that “such collusion has in fact occurred or is likely to occur; so its assumptions are mere conjecture.”¹⁴⁵

The Commission faces similar obstacles in justifying its new EEO proposal. The Commission in the *Second Notice* does not point to any evidence of discrimination in the broadcasting industry. Nor has the Commission ever challenged the breadth of industry’s outreach efforts. To the contrary, as recounted above, NAB and the broadcasting industry have implemented a variety of successful outreach endeavors, ranging from posting specific job vacancies on Internet job banks to very expensive contributions of time and/or personnel to

¹⁴¹ *State Farm*, 463 U.S. at 43 quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 158 (1962).

¹⁴² 240 F.3d 1126 (D.C. Cir. 2001) (“*Time Warner II*”).

¹⁴³ *Time Warner*, 240 F.3d at 1130 citing 47 U.S.C. § 533(f)(2)(A).

¹⁴⁴ *Id.* citing *Third Report and Order* in MM Docket No. 92-264, 14 FCC Rcd 19098, 19116 (1999)

¹⁴⁵ *Id.*; see also *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 195 (1997) (“*Turner II*”) citing *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 666 (1994) (“*Turner I*”).

training programs aimed at women and minorities. Unfortunately, the Commission in the *Second Notice* does little more than “posit the existence of the disease sought to be cured,”¹⁴⁶ which, at least during this EEO go-around, is alleged discrimination in the broadcasting industry.

As stated above, the Commission’s task is two-fold. First, it must possess sufficient evidence of an alleged ill, and second, it must establish a nexus between that evidence and the regulatory scheme fashioned to address that ill. Here, the Commission has not cited to any proof of a pattern of discriminatory hiring in the broadcasting industry. In addition, lacking this first half of the equation, it does not seem possible for the Commission to demonstrate any such nexus. Nevertheless, even assuming the Commission is able to “fill the evidentiary gap,”¹⁴⁷ it still must describe how its chosen path will repair the alleged problem.¹⁴⁸ In other words, the Commission must explain how its proposed EEO rules will actually enhance workplace diversity in the industry. More than mere speculation is required. The Commission must state exactly how the EEO proposal in the *Second Notice* will improve conditions, especially in light of all the on-going outreach and affirmative actions the industry is already performing. NAB would assert that the broadcasting industry is already implementing the best practices with respect to identifying and attracting a highly qualified, diverse workforce. In fact, it is quite possible that any federal mandate that serves to micromanage a broadcast station’s deployment of its hiring resources will actually undermine the station’s efforts to produce a superior staff.

¹⁴⁶ *Id.*

¹⁴⁷ *Sinclair Broadcasting Group, Inc. v. FCC, et al.*, 2002 U.S. App. LEXIS 5965 (D.C. Cir. 2002) at p. 9 (rejecting the Commission’s evidence in support of its exclusion of non-broadcast media from its eight voices exception to the national television ownership caps).

¹⁴⁸ *See, e.g., Sinclair Broadcasting* at p. 6.

Indeed, the Commission has required equal employment opportunity outreach for more than 30 years.¹⁴⁹ As a result, lacking any evidence to the contrary, it should be presumed that these policies have been effective, such that the broadcasting industry's long-standing practices of non-discrimination and affirmative action have produced a workforce that reflects the gender and racial make-up of broadcasters' communities. Therefore, even if the industry were to replicate itself through, for example, word-of-mouth recruitment practices, no discrimination or deficient representation of any particular group will result,¹⁵⁰ assuming *arguendo* that those are legitimate goals for the Commission's EEO proposal.¹⁵¹

Finally, the Commission's assumption that there is a need for a regulation requiring broadcasters to reach out to the entire community to identify and attract potential job candidates, in order to enhance the industry's workforce diversity, logically must rely on a determination

¹⁴⁹ *Second Notice* at ¶ 2 citing *Nondiscrimination in Employment Practices*, 18 FCC 2d 240 (1969).

¹⁵⁰ As discussed more fully in comments filed today by the Named State Broadcasters Associations, such word-of-mouth recruitment is not necessarily unlawful, State Broadcasters Associations Comments at____, citing *Washington v. Davis*, 426 U.S. 229 (1976) (only intentional discrimination violates the Constitution), and in fact, has been endorsed by some courts as a possibly efficient method of hiring. *Id.* citing *EEOC v. Consolidated Service Systems*, 989 F.2d 233 (7th Cir. 1993).

¹⁵¹ In 1976, the Supreme Court approved the Commission's initial rationale for its EEO efforts, stating that the Commission's rules could be justified as necessary to enable the Commission to satisfy its obligation under the Communications Act to ensure that its licensees' programming fairly reflects the tastes and viewpoints of minority groups. *National Association for the Advancement of Colored People, et al. v. Federal Power Commission*, 425 U.S. 662, 670 n.7 (1976) citing 47 C.F.R. §§ 73.125, 73.301, 73.599, 73.680, 72.793 (1975). However, following the recent demise of that rationale under *Metro Broadcasting* and *Lutheran Church*, the Commission seemingly lacks any court-sanctioned, legally sufficient basis for adopting new EEO rules. Although the Commission attempts to ground its latest effort in a desire to prevent discrimination, it is important to note that the courts have not yet approved this strategy, nor for that matter, approved the Commission's former Option A as a means to achieving this goal. Accordingly, whether non-discrimination is a legally sufficient objective for EEO regulations remains an open question.

that the current workforce does not sufficiently represent broadcasters' communities. However, as noted above, the Commission in the *Second Notice* quite noticeably fails to cite to any evidence demonstrating that the industry's workforce does not already reflect the general public. Therefore, the exact harm feared by the Commission -- replication of the existing workforce through insular recruitment -- would not appear to undermine the public interest in any identifiable way.

VI. CONCLUSION

NAB always has supported the notion of diversity in the workplace. Throughout the past few decades, the evidence shows that the broadcasting industry has been doing a good job at increasing the number of minority and female employees in the industry. The EEO Outreach rule proposed by NAB in these comments seeks to continue that outreach consistent with the Commission's goals. The Commission's proposed rule, while having the same goal, seeks to

achieve it through less effective and more burdensome means. NAB respectfully requests that the Commission adopt an EEO rule as proposed in these comments, or in the alternative, adopt NAB's suggested improvements to the Commission's proposed rule.

Respectfully Submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036
Tel: (202) 429-5430

A handwritten signature in black ink, appearing to read "Lawrence A. Walke".

Henry L. Baumann
Jack N. Goodman
Lawrence A. Walke

April 15, 2002

EXHIBIT 1

NAB EEO Information

A woman with curly hair is shown in profile, smelling a small green flower held in her hand. The image is overlaid with a semi-transparent yellow-green filter.

*The NABEF
Gateway Fund*

A woman is shown from the chest up, sitting and reading a book. The image is overlaid with a semi-transparent yellow-green filter.

**Faculty
Fellowship
Program**

The logo for NABEF, featuring the letters 'NABEF' in a bold, white, sans-serif font with a stylized vertical bar to the left of the 'N'.

NABEF

The logo for the National Association of Broadcasters, featuring the text 'National Association of' above 'NAB' in a large, bold, white, sans-serif font, with 'BROADCASTERS' in a smaller font below it.

National Association of
NAB
BROADCASTERS®



The NABEF Gateway



As part of the broadcasting industry's commitment to increasing the number of women and minorities in the workforce, the National Association of Broadcasters Education Foundation (NABEF) has created the Gateway Fund for Diversity in Broadcasting. The goal of this fund is to prepare entry-level broadcast employees for a successful career in the industry. A key element is the Faculty Fellowship, designed to expose educators to the world of broadcast sales so that they can impart this knowledge to their students.

Underwritten by the National Association of Broadcasters, the Gateway Fund Faculty Fellowship will pay tuition, airfare, and a stipend for up to three faculty members to attend the Broadcast Sales Academy, a program presented jointly by Belo Corporation, Hearst-Argyle Television, and LIN Television. The Broadcast Sales Academy is a unique program designed and run by industry professionals. Its primary mission is to train actual sales executives; however, the courses and speakers offer a wealth of information to academics seeking to better educate their students about broadcasting. This year's program will run from June 2-28 and will take place in Dallas, Texas. (Please refer to the sidebar for more information on the curriculum.)

This program is specifically targeted to college and university faculty who teach a significant number of minority students, including but not limited to African Americans, American Indians, Asian Americans, and Latino or Hispanic Americans.

About NABEF:

The National Association of Broadcasters Education Foundation exists to conduct long-range research and educational projects related to the future of the broadcasting industry. The Foundation's areas of interest include economic, social, and technological research; educational and training programs, with an emphasis on increasing diversity; and First Amendment issues. NABEF is a 501(c)(3) organization. Contributions to NABEF are deductible to the fullest extent allowed by law. For additional information, please call (202) 775-2550, e-mail nabef@nab.org, or visit www.nabef.org/.

If you have any questions or need additional information, call

Gateway Fund Faculty Fellowship Program

Here's How it Works:

1. Applicants must be full-time faculty members teaching in the area of broadcast management, sales and/or marketing.
2. Applications must include the form that follows, as well as a résumé and a letter of recommendation from the applicant's dean or department chair.
3. The application deadline is April 26, 2002. Applicants will be notified of the outcome of the selection process by the beginning of May.
4. Air travel for fellowship recipients will be booked through NABEF's designated travel agency and billed directly to NABEF. Hotel accommodations are provided by the Broadcast Sales Academy.
5. Fellowship recipients will receive one half of their stipends (\$1,500 of \$3,000) prior to program.
6. The remainder of the stipends will be paid at the conclusion of the program.

About the Broadcast Sales Academy — June 2-28, 2002



Presented jointly by Belo Corporation, Hearst-Argyle Television, and LIN Television, the Broadcast Sales Academy provides in-depth training on the business of television sales.

A faculty composed of working broadcasters will lead the class through a range of topics, using lecture, discussion, and case studies to sharpen students' skills.

Week one begins with an overview of the industry and a look at how TV stations are structured, as well as a discussion of FCC regulations and business ethics.

Week two focuses on prospecting for clients, developing new business, sales promotions, working with advertisers and agencies, and using qualitative research.

During **week three**, participants will learn to read a rating book, improve sales techniques, and understand key advertiser categories.

In **week four**, the program looks outward to assess the competition, including newspapers, yellow pages, radio, cable, and the Internet.

The **final week** includes review sessions, coaching, and final presentations.

Created for new station sales staff, this program is an excellent opportunity for academics to interact and share insights with working broadcasters.



"I would like to thank the National Association of Broadcasters Education Foundation for sponsoring me in the Broadcast Sales Academy. Your sponsorship allowed me to experience an

exceptional education from media professionals of the highest caliber. The faculty members in the radio, television, and film department at Howard University are presently working on ways to integrate the information and knowledge I acquired at the Academy into our new curriculum. We feel that the students as well as the faculty will benefit greatly. The Broadcast Sales Academy will help us to increase the level of professionalism and industry knowledge of our students. It is my strong belief that this increase in knowledge will ultimately enhance the value of their contributions to the industry."

Vickey Saunders
Howard University
School of Communications
Former Gateway Fellow



National Association of Broadcasters
Education Foundation
1771 N Street, NW
Washington, DC 20036-2800

Application Checklist



2001 Broadcast Sales Academy Class.

1. Be sure you have thoroughly completed the application form.
2. Include your résumé.
3. Include at least one letter of recommendation from your dean or department chair.
4. Submit materials by April 26, 2002.

The NABEF Gateway Fund



for Diversity in Broadcasting



The NABEF Gateway Fund



As part of the broadcasting industry's commitment to increasing the number of women and minorities in the workforce, the National Association of Broadcasters Education Foundation (NABEF) is proud to announce the creation of the Gateway Fund for Diversity in Broadcasting. This program will help provide training opportunities for entry-level employees to help them advance their careers.

Underwritten by the National Association of Broadcasters, the Gateway Fund will pay one half of the registration fees and related travel expenses for recipients to attend training programs and seminars in their fields. Their employers will be asked to provide the other half of expenses.

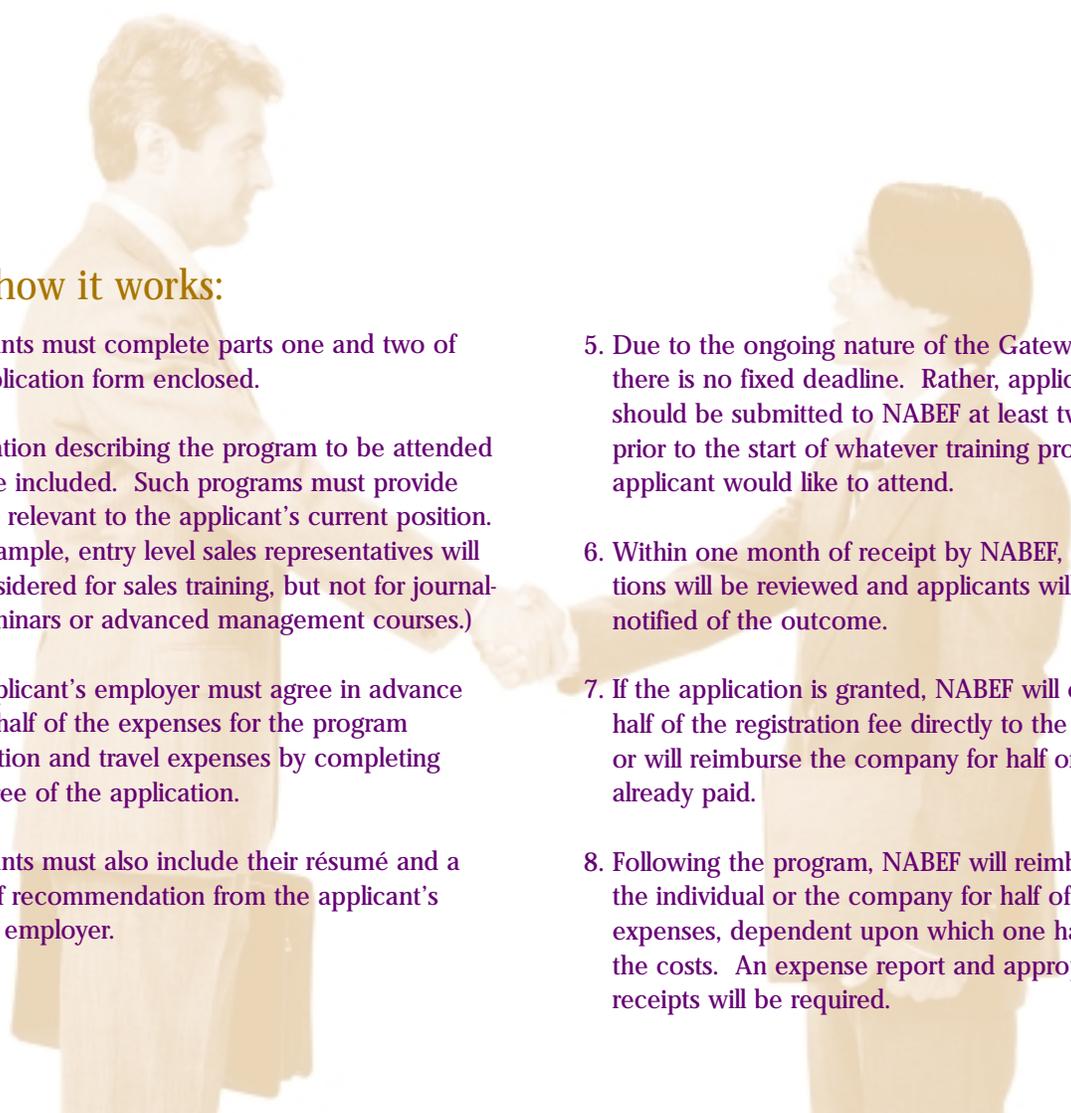
The Gateway Fund may have special value to people under-represented in the broadcasting industry. Therefore, this program encourages applications from women and minorities including but not limited to African Americans, American Indians, Asian Americans, and Latino or Hispanic Americans.



for Diversity in Broadcasting

About NABEF:

The National Association of Broadcasters Education Foundation exists to conduct long-range research and educational projects related to the future of the broadcasting industry. The Foundation's areas of interest include economic, social, and technological research; educational and training programs, with an emphasis on increasing diversity; and First Amendment issues. NABEF is a 501(c)(3) organization. Contributions to NABEF are deductible to the fullest extent allowed by law. For additional information, please call (202) 775-2559, e-mail nabef@nab.org, or visit www.nabef.org.



Here's how it works:

1. Applicants must complete parts one and two of the application form enclosed.
2. Information describing the program to be attended must be included. Such programs must provide training relevant to the applicant's current position. (For example, entry level sales representatives will be considered for sales training, but not for journalism seminars or advanced management courses.)
3. The applicant's employer must agree in advance to pay half of the expenses for the program registration and travel expenses by completing part three of the application.
4. Applicants must also include their résumé and a letter of recommendation from the applicant's current employer.
5. Due to the ongoing nature of the Gateway Fund, there is no fixed deadline. Rather, applications should be submitted to NABEF at least two months prior to the start of whatever training program the applicant would like to attend.
6. Within one month of receipt by NABEF, applications will be reviewed and applicants will be notified of the outcome.
7. If the application is granted, NABEF will either pay half of the registration fee directly to the program, or will reimburse the company for half of the fee already paid.
8. Following the program, NABEF will reimburse either the individual or the company for half of the travel expenses, dependent upon which one has incurred the costs. An expense report and appropriate receipts will be required.



Application Form

Please Type or Word Process Your Responses

Part One: Tell Us About Yourself

Name: _____

Title: _____

Station/Group/Company: _____

Telephone: _____ Fax: _____ E-mail: _____

Mailing Address: _____

City, State, Zip: _____

The following is for statistical uses only. Your answer is voluntary and you will not be penalized for failing to provide this information.

Which of the following best describes you (you may select more than one answer):

- African American/Black/Negro
- Alaska Native or American Indian
- Asian American
- Caucasian/White
- Hispanic/Latino/Spanish
- Pacific Islander
- Other: _____

List below any other broadcast industry training programs you have attended:

List below any professional organizations to which you belong:

Please describe how your participation in this program will help increase diversity in the broadcasting industry:



Part Two: Tell Us About The Program You Wish To Attend

Name of Program: _____

Organization/Company Presenting Program: _____

How much is the registration fee for this program? _____

Please estimate your travel expenses:

Airfare/train/mileage: \$ _____

Hotel: \$ _____

Food: \$ _____

Other (please describe): \$ _____

Total estimated travel expenses: \$ _____

Briefly describe the program, or attach a brochure:

How will this program help you in your current position?

Part Three: Show Us Your Company's Commitment

To be completed by an authorized executive:

Our company agrees to pay half of the expenses for this employee to attend the above-referenced program, with the understanding that the NAB Education Foundation will pay the other half.

Authorized signature _____

Title _____

Company _____

Submit your completed application package to:

NABEF Gateway Fund
1771 N Street, NW
Washington, DC 20036
Fax: (202) 775-3516



The NABEF Gateway Fund for Diversity in Broadcasting

**National Association of Broadcasters
Education Foundation**
1771 N Street, NW
Washington, DC 20036
Please report address corrections to
NAB Information Management at
(800) 214-1328



APPLICATION CHECKLIST

1. Be sure you have thoroughly completed parts one and two of the application form.
2. Have your employer sign off on part three of the form.
3. Include your résumé.
4. Include at least one letter of recommendation from your current employer.
5. Submit all of the above materials two months prior to the start of the program you wish to attend.



PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
Washington, DC
PERMIT NO. 1408



Programs to Promote Diversity in Broadcasting

Student and Entry Level Programs

The Emma L. Bowen Foundation for Minority Interests in Media works with leading communications companies to provide internships for minority students. NABEF is a major contributor and holds a seat on the Bowen Foundation Board.

The NABEF Summer Fellowship Program brings a college or university student to Washington, DC, to work with NAB staff as a legal intern.

The Gateway Fund for Diversity in Broadcasting helps entry-level female and minority employees develop the skills they will need to succeed in the industry. NABEF provides half of the costs for individuals to attend various industry-specific training programs; their employers are asked to pay the other half.

The Gateway Faculty Fellowship Program introduces educators to broadcast sales so they can impart this knowledge to their students. The program provides tuition, airfare and a stipend for up to three faculty members to attend the Broadcast Sales Academy, a program presented jointly by Belo Corporation, Hearst-Argyle Television and Lin Television.

Howard University Media Sales Institute is an intensive ten-day training program designed for recent graduates from colleges and universities with large minority enrollments. The program provides an introduction to the workings of sales departments, advertising agencies and industry associations, as well as sales positions, Nielsen and Arbitron ratings, the Internet and the Federal Communications Commission. A job fair for students participating in the Institute immediately follows the workshop, which is scheduled for June 3-12, 2002. NABEF is a major contributor to the program.

Management Level Programs

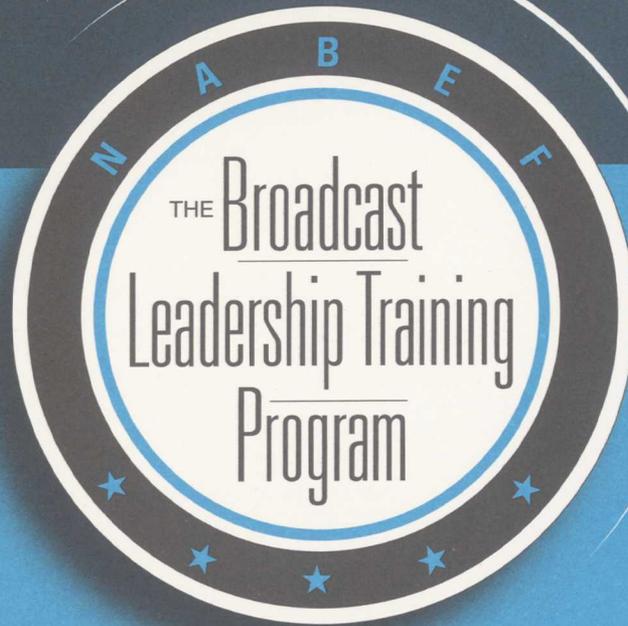
The NABEF Professional Fellowship Program, established in 1998 to increase diversity at NAB's Management Development Seminar for Television Executives and Executive Development Program for Radio Broadcasters, plays a vital role in preparing minorities and women for advancement into upper management positions. There will be five available fellowships in 2002; the application deadline will be in April.

The McCormick Fellowship Program, which is funded by the Robert R. McCormick Tribune Foundation, recently selected three minority broadcasters to take part in NAB's Management Development Seminar for Television Executives. In addition, the McCormick Foundation is underwriting two fellowships for minority broadcasters to attend the Executive Development Program for Radio Broadcasters.

Upper Management and Ownership Level Program

The Broadcast Leadership Training Program, patterned after part-time MBA programs, this course is designed to teach broadcasters how to purchase and operate stations. The class meets at NAB Headquarters one weekend a month for ten months to take part in an intensive examination of issues related to station ownership. Speakers include representatives from the FCC, the financial sector, the industry, and academia. This program includes scholarships targeted to women, minorities, and members of other groups that may be under-represented in broadcast ownership.

*For more information on the NAB Education Foundation and its projects,
please visit www.nabef.org*



For Aspiring Broadcast Owners and CEOs

September 2001 through June 2002

presented by the National Association of
Broadcasters Education Foundation



The curriculum is tightly focused on broadcasting operational issues; specifically, those issues that affect and are affected by senior executives and owners. Topics will include:

Where Do You Start?

This unit will provide an overview of the various legal and organizational structures that broadcasters may use in setting up or revitalizing their businesses. Learn to take stock of your resources and personal strengths; create a mission statement that provides a dynamic vision for your company; and select advisors to assist you with legal, financial, and technical issues.

Developing a Business Plan for Your Company

Learn the key elements to include in your company's business plan, pick up some pointers on writing and producing the final plan, and—above all—find out what to do with your business plan when it's done.

Securing Funding

Financial experts will explain in lay terms the various forms of public and private funding that may be available to your company. You'll get a better sense of which option is the best fit for your situation, and how to go about picking your partners and negotiating your equity. Not only will this session introduce you to the kinds of people who can help you obtain financing, it will also show you how to make the necessary contacts before you need the money.

Identifying Stations

If your company is looking to acquire new stations, you'll need to first look at the resources you have available. How will you prospect for new stations—can a broker help you? Finally, what sort of technical background and analysis will you need?

Evaluating Stations

To buy or not to buy? Before you can answer that question, there are a few things you'll need to look at:

- ▶ Creating A Due Diligence List
- ▶ What the Seller Doesn't Want You To Know and How To Find It
- ▶ Preparing a 5-Year Model/Pro Forma Software
- ▶ How To Evaluate a P/L, Balance Sheet, Amortization Schedule and Other Financial Reports
- ▶ Understanding Generally Accepted Accounting Procedures
- ▶ Leasing vs. Purchase of Capital Items
- ▶ Assessing the Upside/Downside
- ▶ Determining Internal Rates of Return
- ▶ Technical Evaluation
- ▶ FCC Evaluation
- ▶ Determining Your Research Needs
- ▶ Defining Your Program Needs

Developing A Business Plan for Your Station(s)

As noted above, you've already got a business plan for your company, but what about for the individual station(s)? This unit will help you determine your strategy and plan for capital and cash flow needs. A major focus of this section will be personnel matters—both in deciding who stays and who goes, establishing policies and procedures, and in handling the concomitant legal issues. In the current regulatory and litigious environment, this information is crucial to executives everywhere.

Negotiating the Deal

Whether you're part of the acquisition team at an established group or an entrepreneur just buying your first station, you'll need to understand not just what's important to your company and your partners, but also what's important to the seller. Learn creative ways to structure the deal. When negotiating the purchase and sale agreement, you'll need to know what to include, what not to include, and how to know the difference. Finally, you'll need to think about whether and how to publicize the deal and how to inform staff.

Between the Purchase Agreement and the License Grant

This is no time to catch your breath. Rather, you'll need to deal with a number of issues, including:

- ▶ Timing on Filing—Public Notice, Reconsideration
- ▶ Setting up Health Plans, Securing Insurance
- ▶ Employee Handbook—Do's and Don'ts
- ▶ Visits to the Station
- ▶ Prior Control—What Is It?
- ▶ To LMA or Not?
- ▶ Developing a Plan for Takeover

Closing/Takeover

Congratulations! You've bought a station. Now what do you do? Find out what happens at closing and what to expect. Get step-by-step advice on implementing your transition plan.

Operating For Success

This unit will address important issues you'll face in running your stations, whether they are long-held properties or new acquisitions. Learn how to install and monitor new systems, set up effective reporting structures, develop a new culture or invigorate an existing one, and deal with problems before they get out of hand. Find out how to stay on top of your cash flow needs, maintain ongoing communication with your investors and lenders, and evaluate your progress. Get the ins and outs of maintaining your public file and complying with children's programming and political advertising rules, as well as other FCC requirements. Finally, you'll get sound advice on how to stay focused on your current responsibilities while looking for additional acquisitions

When

WHEN will classes meet?

Following the model of weekend MBA courses, the Broadcast Leadership Training Program will meet one weekend a month for ten months. This minimizes the amount of time that students are away from their homes and offices, while still allowing for an intensive and coherent educational experience.

Participants should plan to arrive on Friday evening and be prepared to begin class first thing Saturday morning. Class will end mid afternoon on Sunday to allow for flights home that day.

SESSION DATES ARE AS FOLLOWS:

September 21-23, 2001	February 15-17, 2002
October 12-14, 2001	March 15-17, 2002
November 2-4, 2001	April 19-21, 2002
November 30-December 2, 2001	May 17-19, 2002
January 18-20, 2002	June 7-9, 2002

(Dates are subject to change)

Where

WHERE will the program take place?

The Broadcast Leadership Training Program will be held in the state-of-the-art conference center at the headquarters of the National Association of Broadcasters in Washington, DC. NAB is conveniently located at 1771 N Street, NW, just off Connecticut Avenue. The building is approximately one and a half blocks from Metro's Red Line station at Dupont Circle, or four blocks from the Blue/Orange Line station at Farragut West. Program participants can stay at the Courtyard Marriott at the NAB rate of \$129. The Marriott is at 1600 Rhode Island Ave., NW, just one block from NAB. The number for reservations is (800) 321-2211; the hotel's main line is (202) 293-8000; fax is (202) 293-0085.

(Hotel information is subject to change)

How

HOW do I apply for this program?

- 1 Complete the application form below.
- 2 If you are interested in the NABEF scholarship program to promote diversity in the industry, you must also complete the form on page 4.
- 3 Include a copy of your résumé.
- 4 Include at least one letter of recommendation from a current or past employer. If you are self-employed, write a letter describing your business venture and its success.
- 5 Submit all of the above materials by June 15, 2001 to: NABEF Broadcast Leadership Training Program, 1771 N Street, NW, Washington, DC 20036. Fax: (202) 775-3516

ALL MATERIALS MUST BE RECEIVED BY JUNE 15, 2001. Participants and scholarship recipients will be selected and notified in July.

**National Association of Broadcasters
&
Broadcast Education Association
&
Radio Television News Director Association**

FREE!

FREE!

Radio & Television
CAREER FAIR

*Sunday, April 7, 2002
Las Vegas Convention Center
Las Vegas, Nevada*

SCHEDULE OF EVENTS

**NAB-BEA-RTNDA Career Fair
Seminar**

**10:30 AM -- 11:45 AM
LVCC, Room 232**

NAB-BEA-RTNDA Career Fair

**12Noon -- 5:00 PM
LVCC, Room 245/246**

NAB
The
Convergence
Marketplace
2002

April 6-11, 2002
Las Vegas, Nevada USA
www.nab.org

Register Now!!! --- Space Limited!!!
www.nab.org/bcc/events
(202) 429-5498
(Broadcast deadline: March 18, 2002)

khunter@nab.org

RTNDA

April 8 - 11, 2002
Las Vegas, Nevada USA
www.rtna.org

BEA2002

The Future is Now
April 5-8, 2002 Las Vegas, NV USA

www.beaweb.org

EXHIBIT 2

**Affidavit of Julie A. Lichy
Vice President Administration
Susquehanna Radio Corp.**

DECLARATION OF JULIE A. LICHTY, VICE PRESIDENT, ADMINISTRATION
SUSQUEHANNA RADIO CORP.

I, Julie Lichty, hereby declare under penalty of perjury that the following is true and correct:

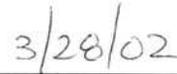
1. My name is Julie Lichty and I am Vice President, Administration of Susquehanna Radio Corp., located at 140 E. Market Street, York, Pennsylvania, 17401. I have been a Human Resource professional for over 20 years. I currently am responsible for overseeing the Human Resource function for our group of 32 radio stations operating in 8 states.
2. Susquehanna Radio Corp. employs approximately 1000 employees in total throughout our operations of which 700 are full-time and 300 are part-time.
3. This declaration sets forth my views on the FCC EEO proposal with regard to recruitment and outreach efforts by broadcasters, specifically the FCC's three-point approach:
(1) to provide wide dissemination of information on every vacancy to the entire community; (2) to provide notice of every vacancy to requesting community organizations; and (3) to undertake supplemental outreach initiatives.
4. Susquehanna Radio Corp. has always focused on building a talented and diverse workforce as a means of establishing a strong business. We continually conduct broad outreach for full-time employment openings at our stations. Our broad outreach efforts include posting all positions on our Company-wide Website, as well as posting on each individual radio station Website, the NAB Career Center Website, and NationJob site.
5. Additionally, our various stations regularly participate in career fairs in their local markets and as a broadcasting group we participate in bi-annual NAB Career Fairs.
Furthermore, all Susquehanna stations are involved in broad outreach within their markets and voluntarily notify a variety of diverse organizations and industry associations, post position vacancies at local colleges, host college internships, speak to

students about broadcasting careers in school settings, announce job opportunities on the air, and advertise in large metropolitan newspapers.

6. We have found our efforts to be comprehensive and effective without the undue hardship of mandatory reporting requirements and numerical targets for recruiting and outreach. Importantly, job-specific recruiting, when employed in addition to our broad outreach efforts under the former FCC regulations, resulted in no significant difference whatsoever in recruiting and attracting minority candidates. For example, we had minimal response, if any, from the required job-specific notifications. Therefore, the added burden and cost of job-specific recruiting was ineffective and unproductive.
7. We believe our ongoing general outreach initiatives make job-specific recruitment unnecessary. As we continue our commitment to strengthening our workforce through a wide range of diversity efforts, we believe the interests of potential employees and our company are best served by broad outreach efforts.



Julie A. Lichy
Vice President, Administration
Susquehanna Radio Corp.



Date

EXHIBIT 3

**Federal Communications Commission
Job Vacancy Announcements**

FEDERAL COMMUNICATIONS COMMISSION
ATTORNEY VACANCY ANNOUNCEMENT

ANNOUNCEMENT #: 02-109DG

POSITION TITLE: Program Analyst
PAY PLAN/SERIES/GRADE: GS-343-13/14

OPENING DATE: 4/9/02
CLOSING DATE: 4/23/02

ORGANIZATION LOCATION: Wireless Telecommunications Bureau
Commercial Wireless Division
Licensing and Technical Analysis Branch
Washington, D.C.

SALARY RANGE: \$66,229 - 101,742

PROMOTION POTENTIAL: GS-14

AREA OF CONSIDERATION: FCC-Wide-3 VACANCIES

HOW TO APPLY: (All applications should include the vacancy announcement number.) To receive consideration, the following documents should be submitted (HAND DELIVERED, OR SENT VIA INTERNET) BY THE CLOSING DATE:

- (1) An OF-612 (Optional Application for Federal Employment"), a Resume, an SF-171 F ("Application for Federal Employment"), or any other application document you choose attachment ("Applying for a Federal Job"), for specific information which must be co application;
- (2) Current Federal employees should submit a copy of their most recent annual performance appraisal;
- (3) A narrative description of how you meet any Selective Factors and any Evaluation and,
- (4) When the area of consideration is "Government-wide" or "All Sources," status candidates should submit an SF-50 Form ("Notification of Personnel Action") showing permanent or conditional tenure attained in either a current or former position in the competitive
- (5) When the position is announced at multiple grade levels, candidates should specify grade(s) and/or salary for which you wish to be considered. When no grade(s) or salary indicated, consideration will be given only at the grade or salary currently or former the higher grade(s) for which eligible.
- (6) When Area of Consideration is "All Sources," status candidates who wish to be competitive both status and nonstatus must submit two complete applications. When only one application received, consideration will be given only as a status candidate.

We also request that you submit SF-181 ("Race and National Origin Identification"), This form is for gathering statistical data and will not be a part of the application

WHERE TO APPLY:

HAND-CARRY TO: Federal Communications Commission
445 12 Street, SW, Room 1-A207
Washington, DC 20554

FAX APPLICATIONS TO: (202)418-1498

SUBMIT APPLICATIONS VIA INTERNET TO: tculmer@fcc.gov (Please forward applications in Word format)

For further information, contact Teresa Culmer at (202)418-0131.
The TTY telephone number for the hearing impaired is (202)418-2555.

In order to qualify and receive consideration, applicants must meet the qualification grade requirements by the closing date of this announcement. All candidates will be without regard to political or religious affiliation, marital status, race, color, and nondisqualifying physical or mental handicap, age, or any other nonmerit factor.

THE FEDERAL COMMUNICATIONS COMMISSION IS AN EQUAL OPPORTUNITY EMPLOYER.

BRIEF DESCRIPTION OF DUTIES: Incumbent serves as a Program Analyst in the Commercial Wireless Division of the Wireless Telecommunications Bureau, identifying and implementing electronic licensing initiatives. This involves keeping abreast of state-of-the-art initiatives; identifying and analyzing requirements stemming from the Commission's policies, and the needs of customers inside and outside the agency; documenting and communicating requirements to computer programmers, and test the resulting software; planning the deployment of software. The incumbent also identifies and implements changes resulting from new or revised electronic licensing requirements. The incumbent communicates with customers inside and outside the agency to develop requirements, communicate transition issues, and gain constructive feedback. The incumbent trains or revises software and staff processes. The incumbent participates in the rule- and process (e.g., drafting memoranda, Public Notices, short Orders, internet content, and documents) in order to ensure that electronic licensing requirements and limitations account. The incumbent conducts complex research related to the commercial wireless including structuring and conducting complex queries of electronic licensing records creates briefing materials (e.g., charts, diagrams, and maps) in support of the rule making functions of the Bureau. The incumbent represents the Division and the Bureau Division and inter-Bureau working groups and task forces related to electronic licensing and processes. The incumbent represents the Division and Bureau at public forums and events in order to increase awareness regarding the Bureau's electronic licensing in

GENERAL EXPERIENCE: None

SPECIALIZED EXPERIENCE: Applicants must possess one year of specialized experience equivalent to the next lower level in the Federal Service. Specialized experience is directly related to the position to be filled and which has equipped the applicant with knowledge, skills, and abilities needed to successfully perform the duties of the position.

Candidates should submit a narrative statement on a separate page(s) with specific references to the evaluation criteria in this announcement. Failure to submit your narrative response negatively affect your eligibility and/or rating for this position.

EVALUATION CRITERIA:

1. Demonstrated knowledge of a wide range of concepts, principles and practices with electronic licensing.
2. Demonstrated ability to gather user requirements, draft software specifications and implement software.
3. Demonstrated ability to conduct technical research.
4. Ability to communicate verbally and in writing.

RELOCATION EXPENSES WILL NOT BE PAID.

RACE AND NATIONAL ORIGIN IDENTIFICATION FORM (Elec. Ver. SF-181) PLEASE FILL OUT

THIS FORM AND ATTACH TO YOUR APPLICATION

NAME:

SSN:

DOB:

Specific Instructions: The categories below are designed to identify your basic racial origin category. If you are of mixed racial and/or national origin, identify yourself with which you most closely identify yourself. Place an "X" next to the appropriate category.
NOTE: Mark only ONE category.

CATEGORIES FOR USE IN ALL AREAS EXCEPT HAWAII AND PUERTO RICO:

1. A person having origins in any of the original peoples of North America, and who cultural identification through community recognition or tribal affiliation.

AMERICAN INDIAN OR ALASKAN NATIVE

2. A person having origins in any of the original peoples of the Far East, Southeast Asian subcontinent, or the Pacific Islands. This area includes, for example, China, Korea, the Philippine Islands, and Samoa.

ASIAN OR PACIFIC ISLANDER

3. A person having origins in any of the black racial groups of Africa. Does not include persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture (see Hispanic).

BLACK, NOT OF HISPANIC ORIGIN

4. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins. Does not include persons of Portuguese culture or origin.

HISPANIC

5. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East. Does not include persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins (see Hispanic). Also includes persons not included in the other categories.

WHITE, NOT OF HISPANIC ORIGIN

CATEGORIES FOR USE IN PUERTO RICO:

1. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins whose official duty station is in Puerto Rico. Does not include persons of Portuguese culture or origin.

HISPANIC

2. A person not of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins whose official duty station is in Puerto Rico.

NOT HISPANIC IN PUERTO RICO

Privacy Act Statement for RACE AND NATIONAL ORIGIN IDENTIFICATION FORM

You are requested to furnish this information under the authority of 42 U.S.C. 2000e requires that Federal employment practices be free from discrimination and provide employment opportunities for all. Solicitation of this information is in accordance of Commerce Directive 15, "Race and Ethnic Standards for Federal Statistics and Admi Reporting."

This information will be used in planning and monitoring equal employment opportunit and to identify employees for inclusion in skill banks and referral pools.

Your furnishing this information is voluntary. Your failure to do so will have no e your Federal employment. If you fail to provide the information, however, then the agency will attempt to identify your race and national origin by visual perception.

You are requested to furnish your Social Security Number (SSN) under the authority o Order 9397 (November 22, 1943). That Order requires agencies to use the SSN for the economy and orderly administration in the maintenance of personnel records. Because personnel records are identified by your SSN, your SSN is being requested on this fo the other information you furnish on this form can be accurately included with your furnishing of your SSN is voluntary and failure to furnish it will have no effect on provide it, however, may result in it being obtained from other agency sources.

(Rev 5-82) US GPO 1990 262-061-20023 181-102 NSN 7540-01-099-344

APPLYING FOR A FEDERAL JOB

(Optional Form 510)

September 1994

United States Office of Personnel Management

JOB OPENINGS

For job information 24 hours a day, 7 days a week, call 912-757-3000, the U.S. Offic Personnel Management (OPM) automated telephone system. Or, with a computer modem di 912-757-3100 for job information from an OPM electronic bulletin board. You can als board through the Internet (Telnet only) at JOB.MAIL.OPM.GOV.

APPLICANTS WITH DISABILITIES

You can find out about alternative formats by calling OPM. Select "Federal Employmen and then "People with Disabilities." Or, dial our electronic bulletin board. If yo disability, call TDD 912-744-2299.

HOW TO APPLY

Review the list of openings, decide which jobs you are interested in, and follow the given. You may apply for most jobs with a resume, the Optional Application for Fede Employment, or any other written format you choose. For jobs that are unique or fil automated procedures, you will be given special forms to complete. (You can get an Application by calling OPM or dialing our electronic bulletin board at the numbers a

WHAT TO INCLUDE

Although the Federal Government does not require a standard application form for mos do need certain information to evaluate your qualifications and determine if you mee

requirements for Federal employment. If your resume or application does not provide information requested in the job vacancy announcement and in this flyer, you may lose consideration for a job. Help speed the selection process by keeping your resume or brief and by sending only the requested material. Type or print clearly in dark ink

Here's what your resume or application must contain (in addition to specific information in the job vacancy announcement):

JOB INFORMATION

Announcement number, and title and grade(s) of the job for which you are applying.

PERSONAL INFORMATION

- * Full name, mailing address (with ZIP Code) and day and evening phone numbers (with code)
- * Social Security Number
- * Country of citizenship (Most Federal jobs require United States citizenship.)
- * Veterans' preference (See below.)
- * Reinstatement eligibility. (If requested, attach SF 50 proof of your career or current status.)
- * Highest Federal civilian grade held (Also give job series and dates held.)

EDUCATION

- * High school (Name, City, and State, and ZIP Code if known). Date of diploma or GED
- * Colleges and Universities (Name, City, and State, and ZIP Code if known). Majors and year of any degrees received. (If no degree, show total credits earned and indicate semester or quarter hours.)
- * Send a copy of your college transcript only if the job vacancy announcement requires

WORK EXPERIENCE

Give the following information for your paid and nonpaid work experience related to which you are applying. (Do not send job descriptions.)

- * Job title (include series and grade if Federal job)
- * Duties and accomplishments
- * Employer's name and address
- * Supervisor's name and phone number
- * Starting and ending dates (month and year)
- * Hours per week
- * Salary
- * Indicate if we may contact your current supervisor.

OTHER QUALIFICATIONS

- * Job-related training courses (title and year)
- * Job-related skills, for example, other languages, computer software/hardware, tools, machinery, typing speed
- * Job-related certificates and licenses (current only)
- * Job-related honors, awards, and special accomplishments, for example, publication memberships in professional or honor societies, leadership activities, public speaking performance awards. (Give dates but do not send documents unless requested.)

VETERANS' PREFERENCE IN HIRING

* The Defense Authorization Act of November 18, 1997, extended veterans' preference to persons who served on active duty during the Gulf War from August 2, 1990, through January 1992. The law grants preference to persons otherwise eligible and who served on active duty during this period, regardless of where the person served or for how long. The law

authorizes the Secretary of each military department to award the Armed Forces Exped Medal for service in Bosnia during the period November 20, 1995, to a date to be det The award of the Medal is qualifying for veterans' preference. More information on preference is available in the VetGuide that may be found on the United States Offic Personnel Management web site at www.opm.gov.

- * If you served on active duty in the United States Military and were separated und conditions, you may be eligible for veterans' preference. To receive preference if began after October 15, 1976, you must have a Campaign Badge, Expeditionary Medal, o service-connected disability. For further details, call OPM at 912-757-3000. Selec Employment Topics" and then "Veterans." Or, dial our electronic bulletin board at 9
- * Veterans' preference is not a factor for Senior Executive Service jobs or when co limited to status candidates (current or former Federal career or career-conditional
- * To claim 5-point veterans' preference, attach a copy of your DD-214, Certificate Discharge from Active Duty, or other proof of eligibility.
- * To claim 10-point veterans' preference, attach an SF 15, Application for 10-Point Preference, plus the proof required by that form.

OTHER IMPORTANT INFORMATION

Before hiring, an agency will ask you to complete a Declaration for Federal Employme determine your suitability for Federal employment and to authorize a background inve The agency will also ask you to sign and certify the accuracy of all the information application. If you make a false statement in any part of your application, you may you may be fired after you begin work; or you may be fined or jailed.

- * If you are a male over age 18 who was born after December 31, 1959, you must have registered with the Selective Service System (or have an exemption) to be eligible f job.
- * The law prohibits public officials from appointing, promoting, or recommending th
- * Federal annuitants (military and civilian) may have their salaries or annuities r employees must pay any valid delinquent debts or the agency may garnish their salary

PRIVACY AND PUBLIC BURDEN STATEMENTS

The Office of Personnel Management and other Federal agencies rate applicants for Fe under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 o the United States Code. We need the information requested in this brochure and in t associated vacancy announcements to evaluate your qualifications. Other laws requir about citizenship, military service, etc.

- * We request your Social Security Number (SSN) under the authority of Executive Ord order to keep your records straight; other people may have the same name. As allowe Presidential directive, we use your SSN to seek information about you from employers banks, and others who know you. Your SSN may also be used in studies and computer m with other Government files, for example, files on unpaid student loans.
- * If you do not give us your SSN or any other information requested, we cannot proc application, which is the first step in getting a job. Also, incomplete addresses a slow processing.
- * We may give information from your records to: training facilities; organizations for retirement, insurance, unemployment or health benefits; officials in litigation proceedings where the Government is a party; law enforcement agencies concerning vio law or regulation; Federal agencies for statistical reports and studies; officials o organizations recognized by law in connection with representing employees; Federal a other sources requesting information for Federal agencies in connection with hiring security clearances, security or suitability investigations, classifying jobs, contr licenses, grants, or other benefits; public or private organizations including news or publicize employee recognition and awards; and the Merit Systems Protection Board Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Relations Authority, the National Archives, the Federal Acquisition Institute, and c offices in connection with their official functions.
- * We may also give information from your records to prospective nonfederal employer

concerning tenure of employment, civil service status, length of service, and date a action for separation as shown on personnel action forms of specifically identified individuals; requesting organizations or individuals concerning the home other relevant information on those who might have contracted an illness or been exp health hazard; authorized Federal and nonfederal agencies for use in computer matchi spouses or dependent children asking whether an employee has changed from self-and-f self-only health benefits enrollment; individuals working on a contract, service, gr agreement or job for the Federal Government; non-agency members of an agency's perfo or other panel; and agency-appointed representatives of employees concerning inform issued to an employee about fitness-for-duty or agency-filed disability retirement p

* We estimate the public burden for reporting the employment information will vary 240 minutes with an average of 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data, and completing and re information. You may send comments regarding the burden estimate or any other aspect collection of information, including suggestions for reducing this burden, to the U. Personnel Management, Reports and Forms Management Officer, Washington, DC 20415-000

Form Approved: OMB 3206-0219 50510-101 NSN 7540-01-351-9177

FEDERAL COMMUNICATIONS COMMISSION
ATTORNEY VACANCY ANNOUNCEMENT

ANNOUNCEMENT #: 02-108CL
POSITION TITLE: Attorney Advisor (General)
PAY PLAN/SERIES/GRADE: GS-905-13/14
OPENING DATE: 4/03/02
CLOSING DATE: 4/16/02
ORGANIZATION LOCATION: Media Bureau
Industry Analysis Division
Washington, DC
SALARY RANGE: \$66,229 to \$101,742
PROMOTION POTENTIAL: GS-14
AREA OF CONSIDERATION: FCC-Wide

HOW TO APPLY: (All applications should include the vacancy announcement number.) To receive consideration, the following documents should be submitted (HAND DELIVERED, FAXED, OR SENT VIA INTERNET) BY THE CLOSING DATE:

- (1) An OF-612 (Optional Application for Federal Employment"), a Resume, an SF-171 Form ("Application for Federal Employment"), or any other application document you choose. See attachment ("Applying for a Federal Job"), for specific information which must be contained in your application;
- (2) Current Federal employees should submit a copy of their most recent annual performance appraisal;
- (3) A narrative description of how you meet any Selective Factors and any Evaluation Criteria; and,
- (4) When the position is announced at multiple grade levels, candidates should specify the grade(s) and/or salary for which you wish to be considered. When no grade(s) or salary is indicated, consideration will be given only at the grade or salary currently or formerly held and at the higher grade(s) for which eligible.

We also request that you submit SF-181 ("Race and National Origin Identification"), attached. This form is for gathering statistical data and will not be a part of the application.

FAX APPLICATIONS TO: (202) 418-6386

SUBMIT APPLICATIONS VIA INTERNET TO: CHERYL@fcc.gov (Please forward applications in Word format.) For further information, contact Cheryl Williams at (202) 418-2615. The TTY telephone number for the hearing impaired is (202) 418-0126.

A background investigation will be required of all new hires to the FCC. FCC employees will be required to undergo an investigation based on the new position's risk/sensitivity level if the employee has not been appropriately investigated. The nature of the background check will be based on the risk designation assigned to the position. The investigation can range from a National Agency Check with Investigation, Minimum Background Investigation, Limited Background Investigation, or Background Investigation. Continued

employment will be subject to the successful completion of the investigation and favorable adjudication.

This agency provides reasonable accommodations to applicants with disabilities. If you need a reasonable accommodation for any part of the application and hiring process, please notify the agency. The decision on granting reasonable accommodation will be on a case-by-case basis.

In order to qualify and receive consideration, applicants must meet the qualifications and time-in grade requirements by the closing date of this announcement. All candidates will be considered without regard to political or religious affiliation, marital status, race, color, sex, national origin, nondisqualifying physical or mental handicap, age, or any other nonmerit factor. THE FEDERAL COMMUNICATIONS COMMISSION IS AN EQUAL OPPORTUNITY EMPLOYER.

BRIEF DESCRIPTION OF DUTIES:

As an Attorney Advisor (General), the incumbent handles proceedings regarding sensitive and complex media ownership and attribution issues. Employs a detailed expert working knowledge of the legal precedents related to such proceedings and may create new precedents where necessary. Drafts a wide variety of written documents including the most complex agenda items, briefing papers, reports and orders, rulemakings, memoranda, and public notices. The proceedings are very likely to be the subject of judicial appeals, and the proffered decisions must be of the highest quality so as to satisfy the court's in-depth review. The legal documents proffered involve complex fact patterns and often present policy and decisional questions of first impression. The legal work requires extensive research, comprehensive analysis, and the obtaining and evaluating of expert testimony or information on controversial legal issues. Responds to general and special inquiries from a wide variety of persons, such as applicants and their legal representatives, representatives of the telecommunications industry, and the general public.

GENERAL EXPERIENCE: None

SPECIALIZED EXPERIENCE: Applicants must possess one year of specialized experience equivalent to the next lower grade in the Federal service. Specialized experience is that which is directly related to the position to be filled and which has equipped the applicant with the particular knowledge, skills, and abilities needed to successfully perform the duties of the position. Examples of specialized experience are analyzing complex technical and legal issues, preparing comprehensive legal documents, and researching case precedents.

CURRENT ACTIVE BAR MEMBERSHIP IS REQUIRED.

EVALUATION CRITERIA:

1. Ability to communicate in writing; e.g., legal memoranda and Commission Orders.
2. Ability to explain positions orally in a clear, cogent, and persuasive manner.
3. Ability to analyze issues, weigh implications, identify potential problems, and develop options.
4. Ability to interact effectively with individuals at all levels of

CATEGORIES FOR USE IN PUERTO RICO:

1. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins whose official duty station is in Puerto Rico. Does not include persons of Portuguese culture or origin.

___ HISPANIC

2. A person not of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins whose official duty station is in Puerto Rico.

___ NOT HISPANIC IN PUERTO RICO

Privacy Act Statement for
RACE AND NATIONAL ORIGIN IDENTIFICATION FORM

You are requested to furnish this information under the authority of 42 U.S.C. 2000e-16, which requires that Federal employment practices be free from discrimination and provide equal employment opportunities for all. Solicitation of this information is in accordance with Department of Commerce Directive 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting."

This information will be used in planning and monitoring equal employment opportunity programs and to identify employees for inclusion in skill banks and referral pools.

Your furnishing this information is voluntary. Your failure to do so will have no effect on you or on your Federal employment. If you fail to provide the information, however, then the employing agency will attempt to identify your race and national origin by visual perception.

You are requested to furnish your Social Security Number (SSN) under the authority of Executive Order 9397 (November 22, 1943). That Order requires agencies to use the SSN for the sake of economy and orderly administration in the maintenance of personnel records. Because your personnel records are identified by your SSN, your SSN is being requested on this form so that the other information you furnish on this form can be accurately included with your records. Your furnishing of your SSN is voluntary and failure to furnish it will have no effect on you; failure to provide it, however, may result in it being obtained from other agency sources.

(Rev 5-82) US GPO 1990 262-061-20023 181-102 NSN 7540-01-099-344

APPLYING FOR A FEDERAL JOB
(Optional Form 510)
September 1994
United States Office of Personnel Management

JOB OPENINGS

For job information 24 hours a day, 7 days a week, call 912-757-3000, the U.S. Office of Personnel Management (OPM) automated telephone system. Or, with a computer modem dial 912-757-3100 for job information from an OPM electronic bulletin board. You can also reach the board through the Internet (Telnet only) at FJOB.MAIL.OPM.GOV.

APPLICANTS WITH DISABILITIES

You can find out about alternative formats by calling OPM. Select "Federal Employment Topics" and then "People with Disabilities." Or, dial our electronic bulletin board. If you have a hearing disability, call TDD 912-744-2299.

HOW TO APPLY

Review the list of openings, decide which jobs you are interested in, and follow the instructions given. You may apply for most jobs with a resume, the Optional Application for Federal Employment, or any other written format you choose. For jobs that are unique or filled through automated procedures, you will be given special forms to complete. (You can get an Optional Application by calling OPM or dialing our electronic bulletin board at the numbers above.)

WHAT TO INCLUDE

Although the Federal Government does not require a standard application form for most jobs, we do need certain information to evaluate your qualifications and determine if you meet legal requirements for Federal employment. If your resume or application does not provide all the information requested in the job vacancy announcement and in this flyer, you may lose consideration for a job. Help speed the selection process by keeping your resume or application brief and by sending only the requested material. Type or print clearly in dark ink.

Here's what your resume or application must contain (in addition to specific information requested in the job vacancy announcement):

JOB INFORMATION

Announcement number, and title and grade(s) of the job for which you are applying.

PERSONAL INFORMATION

- * Full name, mailing address (with ZIP Code) and day and evening phone numbers (with area code)
- * Social Security Number

- * Country of citizenship (Most Federal jobs require United States citizenship.)
- * Veterans' preference (See below.)
- * Reinstatement eligibility. (If requested, attach SF 50 proof of your career or career-conditional status.)
- * Highest Federal civilian grade held (Also give job series and dates held.)

EDUCATION

- * High school (Name, City, and State, and ZIP Code if known). Date of diploma or GED
- * Colleges and Universities (Name, City, and State, and ZIP Code if known). Majors and Type and year of any degrees received. (If no degree, show total credits earned and indicate whether semester or quarter hours.)
- * Send a copy of your college transcript only if the job vacancy announcement requests it.

WORK EXPERIENCE

Give the following information for your paid and nonpaid work experience related to the job for which you are applying. (Do not send job descriptions.)

- * Job title (include series and grade if Federal job)
- * Duties and accomplishments
- * Employer's name and address
- * Supervisor's name and phone number
- * Starting and ending dates (month and year)
- * Hours per week
- * Salary
- * Indicate if we may contact your current supervisor.

OTHER QUALIFICATIONS

- * Job-related training courses (title and year)
- * Job-related skills, for example, other languages, computer software/hardware, tools, machinery, typing speed
- * Job-related certificates and licenses (current only)
- * Job-related honors, awards, and special accomplishments, for example, publications, memberships in professional or honor societies, leadership activities, public speaking, and performance awards. (Give dates but do not send documents unless requested.)

VETERANS' PREFERENCE IN HIRING

* The Defense Authorization Act of November 18, 1997, extended veterans' preference to persons who served on active duty during the Gulf War from August 2, 1990, through January 2, 1992. The law grants preference to persons otherwise eligible and who served on active duty during this period, regardless of where the person served or for how long. The law also authorizes the Secretary of each military department to award the Armed Forces Expeditionary Medal for service in Bosnia during the period November 20, 1995, to a date to be determined. The award of the Medal is qualifying for veterans' preference. More information on veterans' preference is available in the VetGuide that may be found on the United States Office of Personnel Management web site at www.opm.gov.

* If you served on active duty in the United States Military and were separated under honorable conditions, you may be eligible for veterans' preference. To receive preference if your service began after October 15, 1976, you must have a Campaign Badge, Expeditionary Medal, or a service-connected disability. For further details, call OPM at 912-757-3000. Select "Federal Employment Topics" and then "Veterans." Or, dial our electronic bulletin board at 912-757-3100.

* Veterans' preference is not a factor for Senior Executive Service jobs or when competition is limited to status candidates (current or former Federal career or career-conditional employees).

* To claim 5-point veterans' preference, attach a copy of your DD-214, Certificate of Release or Discharge from Active Duty, or other proof of eligibility.

* To claim 10-point veterans' preference, attach an SF 15, Application for 10-Point Veterans' Preference, plus the proof required by that form.

OTHER IMPORTANT INFORMATION

Before hiring, an agency will ask you to complete a Declaration for Federal Employment to determine your suitability for Federal employment and to authorize a background investigation. The agency will also ask you to sign and certify the accuracy of all the information in your application. If you make a false statement in any part of your application, you may not be hired; you may be fired after you begin work; or you may be fined or jailed.

* If you are a male over age 18 who was born after December 31, 1959, you must have registered with the Selective Service System (or have an exemption) to be eligible for a Federal job.

* The law prohibits public officials from appointing, promoting, or recommending their relatives.

* Federal annuitants (military and civilian) may have their salaries or annuities reduced. All employees must pay any valid delinquent debts or the agency may garnish their salary.

PRIVACY AND PUBLIC BURDEN STATEMENTS

The Office of Personnel Management and other Federal agencies rate applicants for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5 of the United States Code. We need the information requested in this brochure and in the associated vacancy announcements to evaluate your qualifications. Other laws require us to ask about citizenship, military service, etc.

* We request your Social Security Number (SSN) under the authority of Executive Order 9397 in order to keep your records straight; other people may have the same name. As allowed by law or Presidential directive, we use your SSN to seek information about you from employers, schools, banks, and others who know you. Your SSN may also be used in studies and computer matching with other Government files, for example, files on unpaid student loans.

* If you do not give us your SSN or any other information requested, we cannot process your application, which is the first step in getting a job. Also, incomplete addresses and ZIP Codes will slow processing.

* We may give information from your records to: training

facilities; organizations deciding claims for retirement, insurance, unemployment or health benefits; officials in litigation or administrative proceedings where the Government is a party; law enforcement agencies concerning violations of law or regulation; Federal agencies for statistical reports and studies; officials of labor organizations recognized by law in connection with representing employees; Federal agencies or other sources requesting information for Federal agencies in connection with hiring or retaining, security clearances, security or suitability investigations, classifying jobs, contracting, or issuing licenses, grants, or other benefits; public or private organizations including news media that grant or publicize employee recognition and awards; and the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the National Archives, the Federal Acquisition Institute, and congressional offices in connection with their official functions.

* We may also give information from your records to prospective nonfederal employers concerning tenure of employment, civil service status, length of service, and date and nature of action for separation as shown on personnel action forms of specifically identified individuals; requesting organizations or individuals concerning the home address and other relevant information on those who might have contracted an illness or been exposed to a health hazard; authorized Federal and nonfederal agencies for use in computer matching; spouses or dependent children asking whether an employee has changed from self-and-family to self-only health benefits enrollment; individuals working on a contract, service, grant, cooperative agreement or job for the Federal Government; non-agency members of an agency's performance or other panel; and agency-appointed representatives of employees concerning information issued to an employee about fitness-for-duty or agency-filed disability retirement procedures.

* We estimate the public burden for reporting the employment information will vary from 20 to 240 minutes with an average of 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the information. You may send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the U.S. Office of Personnel Management, Reports and Forms Management Officer, Washington, DC 20415-0001.

Form Approved: OMB 3206-0219 50510-101 NSN 7540-01-351-9177



Office of Managing Director

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Employment Opportunities

Below is the current list of FCC Employment Vacancy Announcements. Please click on the highlighted links to view the full description of an announcement.

You may also obtain copies of job announcements outside of Room 1-200 at our [headquarters building](#) at 445 12th St. S.W. Washington D.C., or by calling the Job Information Line at (202) 418-0101. To obtain job announcements via our Fax Information Service call (202) 418-2830 from the telephone on the fax machine and then follow the recorded instructions (select Option 2 to obtain the document). Use the Vacancy Announcement number omitting dashes and letters to request a copy of the announcement. For example, announcement 01-312A will be document number 01312 when you are prompted to enter the document number. The document number for the vacancy announcement list is 4906.

Vacancy Announcements

Last Update was April 3, 2002 >

- [Announcement Number: DEU-02-029DG](#)

Opening Date: 02/19/2002

Closing Date: 07/31/2002

Position: ELECTRONICS ENGINEER

GS-0855-05 /09

Salary: \$29,559 - \$55,115 per year

Promotion Potential: GS-13

Duty Location: Many vacancies at Washington Metro Are, DC
Many vacancies at Gettysburg, PA

AREA OF CONSIDERATION: All Sources

- [ANNOUNCEMENT #: DEU-02-034DG](#)

POSITION TITLE: Cultural Resources Specialist

PAY PLAN/SERIES/GRADE: GS-301 -13/14

OPENING DATE: 3/20/02

CLOSING DATE: 4/12/02

ORGANIZATION LOCATION: Wireless Telecommunications Bureau
Commercial Wireless Division
Policy & Rules Branch

SALARY RANGE: \$66,229 - \$101,742 per year
PROMOTION POTENTIAL: GS-14
AREA OF CONSIDERATION: All sources

- [ANNOUNCEMENT #: DEU-02-035DG](#)

POSITION TITLE: Electronics Engineer

PAY PLAN/SERIES/GRADE: GS-0855-14/15
OPENING DATE: 3/21/02
CLOSING DATE: 4/15/02
ORGANIZATION LOCATION: Wireless Telecommunications Bureau
Commercial Wireless Division
Licensing & Technical Analysis Branch
Washington, D.C.
SALARY RANGE: \$78,265 - \$119,682 per year
PROMOTION POTENTIAL: GS-15
AREA OF CONSIDERATION: All Sources

- [ANNOUNCEMENT #: DEU-02-036SR](#)

POSITION TITLE: IT Specialist

(Systems Analysis/Applications Software)
(One Position)

PAY PLAN/SERIES/GRADE: GS-2210-12/13/14
OPENING DATE: 03/28/02
CLOSING DATE: 04/11/02
ORGANIZATION LOCATION: Consumer & Governmental Affairs Bureau
Office of the Bureau Chief
Systems Support Office
Washington, DC
SALARY RANGE: GS-12: \$57,453 to \$74,686
GS-13: \$66,229 to \$86,095
GS-14: \$78,265 to \$101,742
PROMOTION POTENTIAL: GS-14
AREA OF CONSIDERATION: ALL SOURCES

- [ANNOUNCEMENT #: DEU-02-037SS](#)

POSITION TITLE: Supervisory Accountant

PAY PLAN/SERIES/GRADE: GS-510-15
OPENING DATE: 3/29/02
CLOSING DATE: 4/26/02
ORGANIZATION LOCATION: Office of Managing Director
Associate Managing Director-
Financial Operations
Financial Operations Center
Washington, DC
SALARY RANGE: \$92,060 - 119,682
PROMOTION POTENTIAL: None
AREA OF CONSIDERATION: ALL SOURCES

- [ANNOUNCEMENT #: DEU-02-039SS](#)

POSITION TITLE: Human Resources Specialist

(Human Resources Development)
PAY PLAN/SERIES/GRADE: GS-201 -13/14
OPENING DATE: 4/03/02
CLOSING DATE: 4/16/02
ORGANIZATION LOCATION: Office of Managing Director
Associate Managing Director-
Human Resources Management
Learning and Development
Service Center
Washington, D.C.
SALARY RANGE: GS-13: \$66,229 - \$86,095
GS-14: \$78,265 - \$101,742
PROMOTION POTENTIAL: GS-14
AREA OF CONSIDERATION: All Sources

R

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Federal Communications
Commission
445 12th Street SW
Washington, DC 20554

Phone: 888-CALL-FCC (225-5322)
TTY: 888-TELL-FCC (835-5322)
Fax: 202-418-0232
E-mail: fccinfo@fcc.gov

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FEDERAL COMMUNICATIONS COMMISSION
VACANCY ANNOUNCEMENT

ANNOUNCEMENT #: DEU-02-037SS

POSITION TITLE: Supervisory Accountant
PAY PLAN/SERIES/GRADE: GS-510-15

OPENING DATE: 3/29/02
CLOSING DATE: 4/26/02

ORGANIZATION LOCATION: Office of Managing Director
Associate Managing Director-
Financial Operations
Financial Operations Center
Washington, DC

SALARY RANGE: \$92,060 ? 119,682

PROMOTION POTENTIAL: None

AREA OF CONSIDERATION: ALL SOURCES

HOW TO APPLY: (All applications should include the vacancy announcement number.) To receive consideration, the following documents should be submitted and POSTMARKED, FAXED, OR SENT VIA INTERNET BY THE CLOSING DATE:

- (1) An OF-612 (Optional Application for Federal Employment"), a Resume, an SF-171 Form ("Application for Federal Employment"), or any other application document you choose. See attachment ("Applying for a Federal Job"), for specific information which must be contained in your application;
- (2) Current Federal employees should submit a copy of their most recent annual performance appraisal;
- (3) A narrative description of how you meet any Selective Factors and any Evaluation Criteria; and,
- (4) When the area of consideration is "Government-wide" or "All Sources," status candidates should submit an SF-50 Form ("Notification of Personnel Action") showing permanent or conditional tenure attained in either a current or former position in the competitive service.
- (5) When the position is announced at multiple grade levels, candidates should specify the grade(s) and/or salary for which you wish to be considered. When no grade(s) or salary is indicated, consideration will be given only at the grade or salary currently or formerly held and at the higher grade(s) for which eligible.
- (6) When Area of Consideration is "All Sources," status candidates who wish to be considered as both status and nonstatus must submit two complete applications. When only one application is received, consideration will be given only as a status candidate.

We also request that you submit SF-181 ("Race and National Origin Identification"), attached. This form is for gathering statistical data and will not be a part of the application.

WHERE TO APPLY: Federal Communications Commission
Recruitment (Vac Ann #DEU-02-037SS)

35 York Street
Gettysburg, PA 17325

FAX APPLICATIONS TO: (202)418-1498
SUBMIT APPLICATIONS VIA INTERNET TO: ltaperpo@fcc.gov (Please forward applications in Word format.)

For further information, contact Lynette Taper-Pope at (202)418-0160. The TTY telephone number for the hearing impaired is (202) 418-0126.

A background investigation will be required of all new hires to the FCC. FCC employees will be required to undergo an investigation based on the new position's risk/sensitivity level if the employee has not been appropriately investigated. The nature of the background check will be based on the risk designation assigned to the position. The investigation can range from a National Agency Check with Investigation, Minimum Background Investigation, Limited Background Investigation, or Background Investigation. Continued employment will be subject to the successful completion of the investigation and favorable adjudication.

This agency provides reasonable accommodations to applicants with disabilities. If you need a reasonable accommodation for any part of the application and hiring process, please notify the agency. The decision on granting reasonable accommodation will be on a case-by-case basis.

In order to qualify and receive consideration, applicants must meet the qualifications and time-in grade requirements by the closing date of this announcement. All candidates will be considered without regard to political or religious affiliation, marital status, race, color, sex, national origin, nondisqualifying physical or mental handicap, age, or any other nonmerit factor. THE FEDERAL COMMUNICATIONS COMMISSION IS AN EQUAL OPPORTUNITY EMPLOYER.

BRIEF DESCRIPTION OF DUTIES:

The incumbent of this position serves an Associate Chief in the Financial Operations Center. The incumbent is responsible for planning, managing, directing, overseeing and supervising three separate groups, each headed by a subordinate supervisor. The incumbent oversees the following functions: 1) Travel and operations activities (processing of payment documents and disbursement recording functions and activities, maintenance of FCC's Travel program, and settlement of international telecommunications charges; 2) Revenue and Receivable Operations (the collection of all monies owed the Commission and receipts processing activities); and 3) Financial Systems Operations (maintenance of existing accounting systems). The incumbent is also responsible for interpreting new standards and regulations promulgated by GAO, Treasury, FASAB and OMB; implementing policies and procedures to ensure effective management of these programs and activities, and resolving program issues; and representing the Center in conferences, consultations, planning and briefing sections with senior management and other governmental agency officials.

GENERAL EXPERIENCE:

A degree in accounting or a degree in a related field such as business administration, finance, or public administration that included or was supplemented by 24 semester hours in accounting. The 24 hours may include up to 6 hours of credit in business law; or a combination of

education and experience equivalent to 4 years of experience in accounting or an equivalent combination of accounting experience, college level education, and training that provided professional accounting knowledge which must include one of the following: (1) 24 semester hours in accounting or auditing courses; (2) a certificate as a Certified Public Accountant or a Certified Internal Auditor; (3) completion of the requirements for a degree that included substantial course work in accounting or auditing.

SPECIALIZED EXPERIENCE:

Applicant must possess one year of specialized experience equivalent to the GS-14 grade level in the Federal Service.

Specialized experience is experience which is directly related to the position to be filled and which has equipped the candidate with the necessary knowledge, skills, and abilities to successfully perform the duties of the position. For example: experience managing and overseeing the processing of payment documents and disbursement recording functions; managing a revenue and receivables operation, and overseeing the maintenance of accounting systems.

SELECTIVE FACTOR(S): None

EVALUATION CRITERIA:

1. Knowledge of federal rules, regulations, standards, and legislation governing financial management, accounting and reporting.
2. Knowledge of financial automated systems and standard requirements for federal financial systems.
3. Ability to oversee, analyze, verify and reconcile complex financial information/data, as it relates to: (i.e., travel operations, revenue and receivables, and financial systems operations), including reconciliations of subsidiary ledgers and the General Ledger.
4. Ability to supervise a diverse staff.
5. Ability to communicate orally.
6. Ability to communicate in writing.

IF YOU ARE A DISPLACED FEDERAL EMPLOYEE REQUESTING SPECIAL SELECTION PRIORITY CONSIDERATION UNDER THE INTERAGENCY CAREER TRANSITION ASSISTANCE PROGRAM (ICTAP), YOU MUST: Submit a copy of the appropriate documentation such as a RIF separation notice, or letter from OPM or your agency documenting your priority consideration status with your application package, and be rated well-qualified for the position. Well-qualified means the individual must be rated at the fully qualified level in the Commission rating plan.

RELOCATION EXPENSES WILL NOT BE PAID

___ HISPANIC

2. A person not of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins whose official duty station is in Puerto Rico.

___ NOT HISPANIC IN PUERTO RICO

Privacy Act Statement for
RACE AND NATIONAL ORIGIN IDENTIFICATION FORM

You are requested to furnish this information under the authority of 42 U.S.C. 2000e-16, which requires that Federal employment practices be free from discrimination and provide equal employment opportunities for all. Solicitation of this information is in accordance with Department of Commerce Directive 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting."

This information will be used in planning and monitoring equal employment opportunity programs and to identify employees for inclusion in skill banks and referral pools.

Your furnishing this information is voluntary. Your failure to do so will have no effect on you or on your Federal employment. If you fail to provide the information, however, then the employing agency will attempt to identify your race and national origin by visual perception.

You are requested to furnish your Social Security Number (SSN) under the authority of Executive Order 9397 (November 22, 1943). That Order requires agencies to use the SSN for the sake of economy and orderly administration in the maintenance of personnel records. Because your personnel records are identified by your SSN, your SSN is being requested on this form so that the other information you furnish on this form can be accurately included with your records. Your furnishing of your SSN is voluntary and failure to furnish it will have no effect on you; failure to provide it, however, may result in it being obtained from other agency sources.

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APPLYING FOR A FEDERAL JOB
(Optional Form 510)
September 1994
United States Office of Personnel Management

JOB OPENINGS

For job information 24 hours a day, 7 days a week, call 912-757-3000, the U.S. Office of Personnel Management (OPM) automated telephone system. Or, with a computer modem dial 912-757-3100 for job information from an OPM electronic bulletin board. You can also reach the board through the Internet (Telnet only) at FJOB.MAIL.OPM.GOV.

APPLICANTS WITH DISABILITIES

You can find out about alternative formats by calling OPM. Select "Federal Employment Topics" and then "People with Disabilities." Or, dial our electronic bulletin board. If you have a hearing disability, call TDD 912-744-2299.

HOW TO APPLY

Review the list of openings, decide which jobs you are interested in, and follow the instructions given. You may apply for most jobs with a resume, the Optional Application for Federal Employment, or any other written format you choose. For jobs that are unique or filled through automated procedures, you will be given special forms to complete. (You can get an Optional Application by calling OPM or dialing our electronic bulletin board at the numbers above.)

WHAT TO INCLUDE

Although the Federal Government does not require a standard application form for most jobs, we do need certain information to evaluate your qualifications and determine if you meet legal requirements for Federal employment. If your resume or application does not provide all the information requested in the job vacancy announcement and in this flyer, you may lose consideration for a job. Help speed the selection process by keeping your resume or application brief and by sending only the requested material. Type or print clearly in dark ink.

Here's what your resume or application must contain (in addition to specific information requested in the job vacancy announcement):

JOB INFORMATION

Announcement number, and title and grade(s) of the job for which you are applying.

PERSONAL INFORMATION

- * Full name, mailing address (with ZIP Code) and day and evening phone numbers (with area code)
- * Social Security Number
- * Country of citizenship (Most Federal jobs require United States citizenship.)
- * Veterans' preference (See below.)
- * Reinstatement eligibility. (If requested, attach SF 50 proof of your career or career-conditional status.)
- * Highest Federal civilian grade held (Also give job series and dates held.)

EDUCATION

- * High school (Name, City, and State, and ZIP Code if known). Date of diploma or GED
- * Colleges and Universities (Name, City, and State, and ZIP Code if known). Majors and Type and year of any degrees received. (If no degree, show total credits earned and indicate whether semester or quarter hours.)
- * Send a copy of your college transcript only if the job vacancy

announcement requests it.

WORK EXPERIENCE

Give the following information for your paid and nonpaid work experience related to the job for which you are applying. (Do not send job descriptions.)

- * Job title (include series and grade if Federal job)
- * Duties and accomplishments
- * Employer's name and address
- * Supervisor's name and phone number
- * Starting and ending dates (month and year)
- * Hours per week
- * Salary
- * Indicate if we may contact your current supervisor.

OTHER QUALIFICATIONS

- * Job-related training courses (title and year)
- * Job-related skills, for example, other languages, computer software/hardware, tools, machinery, typing speed
- * Job-related certificates and licenses (current only)
- * Job-related honors, awards, and special accomplishments, for example, publications, memberships in professional or honor societies, leadership activities, public speaking, and performance awards. (Give dates but do not send documents unless requested.)

VETERANS' PREFERENCE IN HIRING

* The Defense Authorization Act of November 18, 1997, extended veterans' preference to persons who served on active duty during the Gulf War from August 2, 1990, through January 2, 1992. The law grants preference to persons otherwise eligible and who served on active duty during this period, regardless of where the person served or for how long. The law also authorizes the Secretary of each military department to award the Armed Forces Expeditionary Medal for service in Bosnia during the period November 20, 1995, to a date to be determined. The award of the Medal is qualifying for veterans' preference. More information on veterans' preference is available in the VetGuide that may be found on the United States Office of Personnel Management web site at www.opm.gov.

* If you served on active duty in the United States Military and were separated under honorable conditions, you may be eligible for veterans' preference. To receive preference if your service began after October 15, 1976, you must have a Campaign Badge, Expeditionary Medal, or a service-connected disability. For further details, call OPM at 912-757-3000. Select "Federal Employment Topics" and then "Veterans." Or, dial our electronic bulletin board at 912-757-3100.

* Veterans' preference is not a factor for Senior Executive Service jobs or when competition is limited to status candidates (current or former Federal career or career-conditional employees).

* To claim 5-point veterans' preference, attach a copy of your DD-214, Certificate of Release or Discharge from Active Duty, or other proof of eligibility.

* To claim 10-point veterans' preference, attach an SF 15, Application for 10-Point Veterans' Preference, plus the proof

required by that form.

OTHER IMPORTANT INFORMATION

Before hiring, an agency will ask you to complete a Declaration for Federal Employment to determine your suitability for Federal employment and to authorize a background investigation. The agency will also ask you to sign and certify the accuracy of all the information in your application. If you make a false statement in any part of your application, you may not be hired; you may be fired after you begin work; or you may be fined or jailed.

* If you are a male over age 18 who was born after December 31, 1959, you must have registered with the Selective Service System (or have an exemption) to be eligible for a Federal job.

* The law prohibits public officials from appointing, promoting, or recommending their relatives.

* Federal annuitants (military and civilian) may have their salaries or annuities reduced. All employees must pay any valid delinquent debts or the agency may garnish their salary.

PRIVACY AND PUBLIC BURDEN STATEMENTS

The Office of Personnel Management and other Federal agencies rate applicants for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5 of the United States Code. We need the information requested in this brochure and in the associated vacancy announcements to evaluate your qualifications. Other laws require us to ask about citizenship, military service, etc.

* We request your Social Security Number (SSN) under the authority of Executive Order 9397 in order to keep your records straight; other people may have the same name. As allowed by law or Presidential directive, we use your SSN to seek information about you from employers, schools, banks, and others who know you. Your SSN may also be used in studies and computer matching with other Government files, for example, files on unpaid student loans.

* If you do not give us your SSN or any other information requested, we cannot process your application, which is the first step in getting a job. Also, incomplete addresses and ZIP Codes will slow processing.

* We may give information from your records to: training facilities; organizations deciding claims for retirement, insurance, unemployment or health benefits; officials in litigation or administrative proceedings where the Government is a party; law enforcement agencies concerning violations of law or regulation; Federal agencies for statistical reports and studies; officials of labor organizations recognized by law in connection with representing employees; Federal agencies or other sources requesting information for Federal agencies in connection with hiring or retaining, security clearances, security or suitability investigations, classifying jobs, contracting, or issuing licenses, grants, or other benefits; public or private organizations including news media that grant or publicize employee recognition and awards; and the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the National Archives, the Federal Acquisition Institute, and congressional offices in connection with their official

functions.

* We may also give information from your records to prospective nonfederal employers concerning tenure of employment, civil service status, length of service, and date and nature of action for separation as shown on personnel action forms of specifically identified individuals; requesting organizations or individuals concerning the home address and other relevant information on those who might have contracted an illness or been exposed to a health hazard; authorized Federal and nonfederal agencies for use in computer matching; spouses or dependent children asking whether an employee has changed from self-and-family to self-only health benefits enrollment; individuals working on a contract, service, grant, cooperative agreement or job for the Federal Government; non-agency members of an agency's performance or other panel; and agency-appointed representatives of employees concerning information issued to an employee about fitness-for-duty or agency-filed disability retirement procedures.

* We estimate the public burden for reporting the employment information will vary from 20 to 240 minutes with an average of 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the information. You may send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the U.S. Office of Personnel Management, Reports and Forms Management Officer, Washington, DC 20415-0001.

Form Approved: OMB 3206-0219 50510-101 NSN 7540-01-351-9177