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

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

To: The Commission

COMMENTS OF NATIONAL RELIGIOUS BROADCASTERS

National Religious Broadcasters ("NRB") hereby submits its comments supporting the Commission's proposal in the above-referenced proceeding to readopt a limited exemption to its broadcast equal employment opportunity ("EEO") rules for religious broadcasters.[1] That action would reinstate the FCC policy of allowing religious broadcasters to "establish religious belief or affiliation as a job qualification" for station employees.[2] NRB urges the Commission, however, to clarify the agency's definition of a "religious broadcaster" in order to reduce unnecessary uncertainty as to which religious licensees qualify for the exemption. As explained below, the

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1 *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies* (Second Notice of Proposed Rulemaking), MM Docket No. 98-204, ¶¶ 17, 22 (rel. Dec. 21, 2001) ("*Notice*"). NRB is a national association of radio and television broadcasters and programmers whose purpose is to "foster and encourage the broadcasting of religious programming." National Religious Broadcasters, Directory of Religious Broadcasting 14 (1992-93). NRB members therefore are directly affected by Commission action in this docket, and the association has actively participated in this rulemaking as well as related prior proceedings. *See* Comments of National Religious Broadcasters, MM Docket No. 96-16 (filed Apr. 30, 1996) ("NRB 1996 Comments"); Comments of National Religious Broadcasters, MM Docket Nos. 98-204, 96-16 (filed Mar. 1, 1999) ("NRB 1999 Comments") (suggesting bright-line definition of "religious broadcaster").

2 *Notice* at ¶ 17.

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minor revision that NRB proposes also would help avoid needless expenditures of agency and licensee resources.

The *Notice* does not explicitly address the definitional issue but raises the topic by implication through its proposal to revive the approach codified in 2000.[3] Under that framework, qualified "religious broadcasters" were not required to satisfy all of the broad outreach recruitment obligations imposed on other licensees, but still were expected to undertake "reasonable good faith efforts to recruit widely among their co-religionists."[4] In the EEO regulations promulgated that year, the Commission defined a "religious broadcaster" as one who "is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity."[5]

The Commission further stated in 2000 that if a question were to arise as to the qualifications of a particular licensee—such as a nondenominational "religious entity"—the agency would conduct a case-specific review "based upon an evaluation of the religious entity's characteristics, including whether the entity operates on a nonprofit basis, whether it has a distinct religious history, and whether the entity's articles of incorporation set forth a religious

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[3] *See Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, 13 FCC Rcd 322 (1998) ("*Order and Policy Statement*"); *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, 15 FCC Rcd 2329 (2000) ("*2000 EEO Order*"). Both the *Order and Policy Statement* and *2000 EEO Order* made clear that religious licensees may not discriminate on the basis of race, color, national origin, or gender from among those who share their religious affiliation or belief—a position that NRB has consistently and wholeheartedly supported. *See, e.g.*, NRB 1996 Comments at 3, 14, 19-20.

[4] *2000 EEO Order* at 2389.

[5] *Id.* at 2390.

purpose."[6] None of these characteristics was to be treated as "a sole determining factor."[7] In particular, the FCC stated, "a licensee's lack of nonprofit status will not automatically disqualify it from claiming religious broadcaster status."[8] In cases involving nondenominational licensees, the agency suggested that it would give significant weight to the entity's religious history and organizational documents, such as articles of incorporation.[9] The Commission also stated that it would treat the amount of airtime devoted to "religious programming" as another factor, but it did not identify any specific minimum number of hours that it would consider favorably.[10]

Because the EEO rules of 2000 were invalidated less than a year after their adoption, no precedent was established to provide religious licensees with guidance as to how the Commission would apply this multi-factor analysis in actual cases. NRB remains concerned that the current definition could be interpreted to place undue emphasis on the licensee's status as a for-profit entity. Although the FCC has plainly stated that this factor alone would not prevent a licensee from qualifying for the religious broadcaster exemption, it is not difficult to foresee that this characteristic still could become a significant issue in future cases. Without further guidance from the Commission now, the agency staff might be required to expend substantial time wrestling with how to balance the profit-status factor with the other factors that the Commission

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6 *Id.*

7 *2000 EEO Order* at 2392.

8 *Id.*

9 *Id.* at 2393.

10 *Id.*

has enumerated. As a result, both the agency staff and licensees could be forced to devote considerable time and resources to resolving disputes that need not arise in the first place.

To prevent such uncertainty, NRB requests that the Commission clarify that if a for-profit broadcaster meets the following criteria—all based on the agency's existing factors—the licensee is deemed a qualified religious broadcaster without further question:

(1) the licensee devotes at least 50 percent of its airtime to religious programming, and

(2) the licensee has either

(a) organic organizational documents that explicitly "set forth a religious purpose,"[11] or

(b) a "distinct religious history."

This clarification would serve to ensure that the Commission's religious broadcaster exemption is appropriately limited to those who demonstrate a genuine commitment to airing religious content.[12] At the same time, the clarification would forestall needless and time-consuming disagreements over the weight to be accorded to the licensee's for-profit status.

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[11] Although the Commission's 2000 EEO Order speaks only of "articles of incorporation," *2000 EEO Order* at 2390, NRB assumes that the agency also would accept for these purposes partnership agreements or other organizational documents that are valid under relevant state law. If this is not the case, however, NRB urges the Commission to clarify that such organic documents also fulfill this definitional factor.

[12] In comments submitted earlier in this docket, NRB pointed out that a very large number of long-time religious broadcasters operate on a commercial basis—in 1999, approximately 50% of NRB's member stations were run as for-profit entities. *See* NRB 1999 Comments at 4 (noting that for-profit status reflects fact that religious stations receive no public funding from government entities such as the Corporation for Public Broadcasting and often operate independently of an established church, seminary, or other religious institution).

Respectfully submitted,

NATIONAL RELIGIOUS BROADCASTERS

By: _____

Lawrence W. Secrest, III
Rosemary C. Harold
WILEY REIN & FIELDING, LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

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Its Counsel