Before the
Federal Communications Commission
Washington, D.C. 20554

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

Initial Regulatory Flexibility Analysis Comments

American Cable Association

I. Introduction

On behalf of nearly 1,000 independent cable companies, ACA submits these comments in response to the Initial Regulatory Flexibility Analysis ("IFRA") appended to the Commission's Second Report and Order and Third Notice of Proposed Rule Making.[1]

ACA's members, many of whom are small or family-owned, share an important interest in reducing any disproportionate burdens imposed by the Commission's EEO rules. Accordingly, ACA proposes the following relief:

- Extend to cable employment units the same policy adopted for broadcast licensees in the Second R&O – owners holding a 20% or greater voting interest in a broadcast licensee will not be considered an "employee" for EEO purposes.[2]

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[1] *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, Second Report and Order and Third Notice of Proposed Rule Making*, FCC 02-303, MM Docket No. 98-204 (rel. Nov. 20, 2002) ("*Second R&O*"), Appendix E, Initial Regulatory Flexibility Analysis.

[2] *Second R&O* at ¶¶ 172-173.

- Reduce the number of Prong 3 menu options to be performed by cable employment units by September 30, 2003, to account for the shortened implementation period between the effective date of the Commission's EEO rules and the September 20, 2003, filing date of the annual report.

II. The American Cable Association

Together, ACA members serve more than 7.5 million cable subscribers. Many ACA members are small or family-run cable systems. About half of ACA's members serve fewer than 1,000 subscribers. ACA members face special challenges building, operating, and upgrading broadband networks in smaller markets and rural areas.

For many small employment units, compliance with EEO outreach, recordkeeping, and reporting requirements imposes substantial administrative burdens and costs, and drains scarce resources from already lean budgets and staff. The Commission's EAS docket provides ample evidence of the financial hardship faced by many small cable systems.[3] The burdens on these systems will increase if the Commission extends its EEO rules to part-time employees. ACA members share an important interest in extending the 20%-owner rule to cable employment units.

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[3] *See, e.g., Big Sandy Telecom, Inc., Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-094, DA 02-1328 (rel. June 21, 2002); Lovell Cable TV, Inc.; *Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-100, DA 02-1753 (rel. July 30, 2002); *Panora Cooperative Cable Association; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-155, DA 02-1333 (rel. June 21, 2002); *Souris River Television, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-090, DA 02-1275, (rel. May 31, 2002); *WMW Cable Television Co.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-068, DA 02-1277, (rel. May 31, 2002).

III. Requested Relief

To address the special circumstances of smaller cable companies, ACA proposes that the following relief adopted in the Second R&O for small broadcast licensees be extended to cable employment units.

A. Owners holding a 20% or greater voting interest in a cable employment unit will not be considered "employees" for EEO purposes.

In the Second R&O, the Commission adopted the following policy for broadcasters:

> [W]e will not consider owners holding a 20 percent or greater voting interest in a licensee as station "employees" for EEO purposes. This will be subject to the proviso, however, that no single owner has positive control (greater than 50 percent voting control) of the licensee. In that circumstance, the principal enjoying positive control would be in a position to determine whether other stockholders could be employed at the station, and only he or she could properly claim employment as an incident of ownership.[4]

As the Commission recognized in the broadcast context:

> This policy could assist small operators by reducing the number of full-time employees an entity would have when assessing its eligibility for a small entity exemption or other small business relief.[5]

For this reason alone, the Commission should extend its 20%-owner policy to cable employment units. But there are other good reasons to extend the policy: it will help conform the broadcast and cable EEO policies, and will have little effect on diversity in the workplace.

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[4] Id. at ¶ 173.

[5] *Second R&O* at Appendix B(E), Final Regulatory Flexibility Analysis.

B. The number of Prong 3 menu options to be performed by cable employment units by September 30, 2003, should be reduced to account for the shortened implementation period between the effective date of the Commission's EEO rules, and the September 30, 2003, filing date of the annual report.

There is a shortened implementation period for the EEO rules in 2003. The Commission noted the shortened period for broadcasters, and reduced the menu options to be performed to be proportionate with the amount of time available.[6] ACA requests that the Commission also reduce the number of Prong 3 menu options to be performed by cable employment units in 2003.

IV. The Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Commission in its initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities.[7] The IRFA must contain a description of any significant alternatives to the proposed rule that would accomplish the stated objective of the statute and that would minimize any significant economic impact of the proposed rule on small entities.[8] An example of an alternative includes an "exemption from coverage of the rule, or any part thereof, for such small entities."[9]

The Commission has a statutory obligation to consider the impact any Commission action would have on small entities. Economic realities require the Commission establish an alternative treatment for small cable companies. Because of the impact on small cable as discussed above and in ACA's Comments, the

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[6] *See Second R&O* at ¶ 119.

[7] 5 USC § 603(a).

[8] 5 USC § 603(c).

[9] 5 USC § 603(c)(4).

Commission must address these issues and include a comprehensive discussion of the impact its actions will have on small cable in its Final Regulatory Flexibility Analysis.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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