

**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)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
ON THE THIRD NOTICE OF PROPOSED RULEMAKING**

The National Association of Broadcasters (“NAB”)¹ hereby submits its reply comments on the Third Notice of Proposed Rulemaking in the above-captioned proceeding.²

I. Background

In the *Second Report and Order*, the Commission applied its new rules governing equal employment opportunity (“EEO”) in the broadcasting industry only to full-time positions, which it defined as jobs requiring 30 hours or more per week.³ Under the Commission’s previous EEO rules, stations needed only to “substantially comply” with the EEO recruitment and recordkeeping requirements when seeking to fill part-time vacancies.⁴ However, the

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

² *Second Report and Order and Third Notice of Proposed Rule Making* in MM Docket No. 98-204, FCC 02-303, 68 FR 670 (Jan. 7, 2003), ___ FCC Rcd ___ (rel. Nov. 20, 2002) (“*Second Report and Order*” and “*Third Notice*”).

³ *Second Report and Order* at ¶ 104.

⁴ *Id.*

Commission in the *Second Report and Order* did not subject part-time positions to the new rules because it found the record on hand inadequate to support a decision on whether and how to do so.⁵ Instead, the Commission issued the *Third Notice* to obtain more input on the importance and prevalence of part-time positions in the broadcasting industry.⁶

NAB argued in its comments that the Commission’s wisest course of action regarding EEO for part-time positions is regulatory restraint. NAB stated that full application of the new rules to part-time jobs is not warranted because part-time positions constitute only a very small percentage of the broadcasting industry’s workforce.⁷ NAB stated that the “substantial compliance” rule would enable stations to best respond to most of the typical situations that arise with respect to part-time employees, especially in combination with the long-standing obligation to perform full recruitment before promoting a part-time employee into a full-time position.⁸

II. Discussion

NAB found no support in the record of the *Second Report and Order* to necessitate full application of the new EEO rules to part-time positions, and likewise finds nothing in the comments on the *Third Notice* to change that conclusion.

Arguments in favor of extending the EEO rules to part-time positions may be condensed as follows: (1) part-time positions are extremely prevalent in the industry and therefore should be covered by all the new EEO rules;⁹ (2) without EEO for part-time jobs, broadcasters will

⁵ *Third Notice* at ¶ 182.

⁶ *Id.*

⁷ NAB Comments at 2-3.

⁸ *Id.* at 3-4.

⁹ NOW Comments at 3-4; EEO Supporters Comments at 5-7.

manipulate their hiring to evade the EEO rules governing full-time positions;¹⁰ or (3) applying the EEO rules to part-time positions will not impose additional burdens on broadcasters.¹¹

None of these contentions holds much water. First, in attempting to show that part-time work represents a significant percentage of the broadcasting industry, NOW and the EEO Supporters cite: (1) an RTNDA/Ball State study in 2000 which found that part-time jobs constituted 31% of radio news staffs and 10% of television news staffs;¹² (2) a 1987 Commission determination that part-time workers comprised 17% of the broadcast workforce;¹³ and (3) anecdotal observations of an AFTRA executive of an extremely high percentage of part-time employees at a select few stations in five markets.¹⁴

NAB believes that all of this information concerning the prevalence of part-time workers in the broadcasting industry pales in comparison to that of the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”) provided in NAB’s initial comments. Specifically, in response to NAB’s request, BLS parsed its database to ascertain that in calendar year 2001 only 39,284 of the total 447,897 employees in the broadcasting and cable industries, or 8.77%, held “part-time” positions, which BLS defines as fewer than 35 hours per week.

¹⁰ NOW Comments at 6-7; AWRT Comments at 3.

¹¹ AWRT Comments at 4-5; EEO Supporters Comments at 11.

¹² EEO Supporters Comments at 7; NOW Comments at 3-4.

¹³ EEO Supporters Comments at 5; NOW Comments at 4.

¹⁴ EEO Supporters Comments at 6. NOW also cites a Missouri School of Journalism report in 2001 finding that 5,500 of 12,000 radio station employees worked less than 40 hours per week. NOW Comments at 4. However, this report is too vague to invite an informed response. For example, it is unclear what number of work hours per week this pool of employees averaged. If most of these employees averaged more than 30 hours per week, then NOW presumably would have no objections since the new EEO rules would fully apply. Also, it is quite possible that certain jobs, such as advertising sales, may be accepted characterized as “full-time” even though they require fewer than 40 hours per week.

This figure is based on the annual average of the BLS 2001 Current Population Surveys, which are monthly surveys of approximately 60,000 U.S. households that the U.S. Bureau of the Census conducts on behalf of BLS. A new sample of households is scientifically selected and contacted for each monthly survey. The Current Population Survey is the same study used by the government to determine the national unemployment rate.¹⁵

In terms of scope, timeliness and weight, the BLS data is far superior to the information offered by NOW and the EEO Supporters. With respect to scope, the RTNDA/Ball State study is fatally narrow as it concerns only newsroom employees, excluding the many employees working in sales, financial, and many other departments in most broadcast stations. In terms of timeliness, the Commission's 1987 findings are essentially obsolete next to the recent BLS data. Finally, the observations of AFTRA's National Director of News and Broadcast about a handful of stations, while interesting, simply cannot carry the same weight as a federal monthly survey of 60,000 U.S. households.

The best available information thus indicates that only 8.77% of the broadcast and cable industries work fewer than 35 hours per week. In turn, it is a logical assumption that an even smaller percentage of these employees work fewer than 30 hours per week, which would categorize them as part-time for purposes of the Commission's EEO rules. Such a low prevalence of part-time positions in the broadcasting industry renders the extension of the EEO rules to such positions unwarranted and unwise, especially the extensive recruitment and recordkeeping obligations. The impact of extending the rules in this way would be minimal, given the limited number of job candidates it would affect. In addition, the financial and personnel costs needed to fulfill the EEO rules for part-time positions would greatly outweigh

¹⁵ See <http://www.bls.gov/cps/home.htm>.

any resulting benefits. Accordingly, the Commission's best course of action is to reinstate its policy that stations seeking to fill part-time vacancies must "substantially comply" with the EEO rules. Similarly, the Commission should revive its practice of not "focus[ing] on part-time hires in [its] review of EEO programs."¹⁶

The second allegation listed above -- that broadcasters will attempt to evade the Commission's rules -- is provided by NOW and AWRT without any support or substantiation whatsoever. For example, NOW posits that "disparate standards" for part- and full-time positions "may lead to substantial abuse" of the new rules, and as "evidence," describes a hypothetical situation where a broadcaster attempts to circumvent the EEO rules by hiring a large percentage of part-time employees who work "just under 30 hours per week."¹⁷ This claim borders on the absurd, as no broadcaster in her right mind would go to such lengths merely to escape the EEO rules. Besides placing a station at a severe disadvantage in competing for qualified job candidates, such a practice would make it virtually impossible to maintain a successful, stable workforce. Overall, arguments like these do little more than display a worrisome lack of understanding of the real world business concerns that broadcasters must consider in assembling a staff.

Finally, regarding the additional burdens of extending the EEO rules to cover part-time jobs, both the University of Missouri and NASBA note that part-time positions turn over at a

¹⁶ *Second Report and Order* at ¶ 104; *see also Report and Order* in MM Docket Nos. 98-204 and 96-16, 15 FCC Rcd 2329, 2375-76 (2000) citing *WFSQ (FM)*, 7 FCC Rcd 6045 (1992); *Enterprise Media of Toledo, L.P.* 12 FCC Rcd 3920 (1997).

¹⁷ NOW Comments at 6-7. *See also* AWRT Comments at 3 (asserting that stations will manipulate a job description to reduce the weekly hours to under thirty simply to avoid having to recruit for the position).

much faster rate than full-time positions.¹⁸ Therefore, since the numerous recordkeeping and recruitment obligations of the EEO rules must be performed on a per-vacancy basis, expanding the EEO rules in this way would increase the burdens of fulfilling the EEO obligations “exponentially.”¹⁹ For example, as the Joint State Associations explain, fulfilling the administrative EEO obligations for part-time employees “would require additional staffing and administration just to maintain a part-time staff, including college interns, skills, and unskilled positions alike.”²⁰

Naturally, this will create a strong disincentive to create or fill part-time vacancies, thereby threatening the future availability of such positions in the broadcasting industry. In the words of the University of Missouri (where students are employed as part-time workers at its radio and television stations), “application of the FCC’s 2002 EEO Rule to part-time employees is likely to result in the elimination of jobs that students might otherwise take.”²¹ Surely the Commission would prefer to avoid this “unintended consequence” of expanding the EEO rules to cover part-time positions.²²

¹⁸ University of Missouri Comments at 4-5; NASBA Comments at 2-4.

¹⁹ NASBA Comments at 4.

²⁰ Joint State Associations’ Comments at 2-3.

²¹ University of Missouri Comments at 6. Commenters in favor of expanding the rules also state that the importance of part-time jobs as a gateway for entry into the broadcasting industry is additional support for full application of the EEO rules to such positions. NOW Comments at 5-6; AWRRT Comments at 3; EEO Supporters Comments at 8-9. Although NAB agrees with this view of part-time jobs as a valuable gateway, NAB believes this only further justifies its position that the Commission should not do anything to jeopardize the continued availability of part-time jobs, such as imposing the extensive EEO recruitment and recordkeeping obligations on broadcasters seeking to fill part-time vacancies.

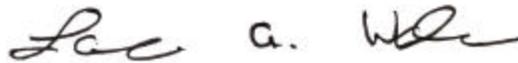
²² See Joint State Associations’ Comments at 3.

III. Conclusion

Accordingly, NAB respectfully urges the Commission to retain its long-time policy of requiring substantial compliance with the EEO recruitment obligation, and not subject part-time positions to the full complement of new EEO regulations.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Lawrence A. Walke". The signature is written in a cursive style with some capital letters.

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Jack N. Goodman
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February 3, 2003