

ANN BAVENDER
HARRY F. COLE
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
EUGENE M. LAWSON, JR.
MITCHELL LAZARUS
SUSAN A. MARSHALL
HARRY C. MARTIN
LEE G. PETRO
RAYMOND J. QUIANZON
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER
LILIANA E. WARD
HOWARD M. WEISS
*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH. P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON VIRGINIA 22209 3801

OFFICE (703) 812 0400

FAX (703) 612 0486

www.fhhlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE
DONALD J. EVANS
EDWARD S. O'NEILL

WRITER'S DIRECT

(703) 812-0483
petro@fhhlaw.com

February 6, 2003

RECEIVED

FEB - 6 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery

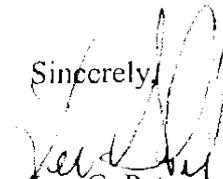
Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Rc: Petition for Reconsideration
Alaska Broadcasters Association,
Arkansas Broadcasters Association,
Mississippi Association of Broadcasters, and
New Mexico Broadcasters Association
MM Docket No. 98-204

Dear Ms. Dortch:

Transmitted herewith, on behalf of the Alaska Broadcasters Association, the Arkansas Broadcasters Association, the Mississippi Association of Broadcasters, and the New Mexico Broadcasters Association, is an original and ten copies of its Petition for Reconsideration in the above-referenced proceeding.

Should any questions arise concerning this application, please communicate with this office

Sincerely,

Lee G. Petro

Enclosures

RECEIVED

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

FEB - 6 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of: }

Review of the Commission's Broadcast }
And Cable Equal Employment }
Opportunity Rules and Policies }

MM Docket No. 98-204

TO: THE COMMISSION

PETITION FOR RECONSIDERATION

The Alaska Broadcasters Association, the Arkansas Broadcasters Association, the Mississippi Association of Broadcasters, and the New Mexico Broadcasters Association (collectively, the "Joint State Associations"), pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429(2001), hereby submits this "PETITION FOR RECONSIDERATION" of the *Second Report and Order*, released on November 20, 2002, in the above-referenced proceeding.¹

Although the Joint State Associations do not believe that the extensive record-keeping and outreach requirements set forth in the Order are necessary to serve the Commission's EEO policy goals, the instant Petition seeks the clarification and reconsideration of several "operational" issues associated with the new EEO rules. By granting the instant Petition, the Commission will permit the smoother implementation of its extensive new EEO rules.

¹ *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order, 17 FCC Rcd 24,018 (2002) (the "Order"). Public notice of the Order was published in the Federal Register on January 7, 2003. 68 Fed. Reg. 670 (Jan. 7, 2003). Therefore, pursuant to Section 1.4(b)(1) of the Commission's rules, this Petition for Reconsideration is timely filed.

DISCUSSION

As noted above, the Joint State Associations do not believe that the substantial outreach and record-keeping requirements adopted in the Order are necessary to further the Commission's articulated goals for the EEO program. In the absence of any evidence that broadcasters in general have discriminated against minorities and women in their recruitment and/or hiring practices, the Joint State Associations firmly believe that new requirements are unnecessary and overly burdensome. Despite the Commission's arguments to the contrary,² the absence of past discriminatory practices clearly establishes that these new EEO regulations are not necessary.³

However, even if the new rules pass judicial scrutiny, there are numerous "operational" problems with the Order that require clarification or modification. Many of these changes will assist broadcasters in developing a less burdensome program, which certainly will benefit the public interest and help the Commission achieve its goal of wide dissemination of information concerning employment opportunities. Specifically, the following changes are proposed:

- Elimination of the separate reporting requirements for interviewees and hires;
- Codification of "exigent circumstances" in Section 73.2080(c)(1) of the EEO rules;
- Modification of the filing date of the Annual EEO Public File Report;

First, under Section 73.2080(c)(6) of the new EEO rules, the Commission requires that the broadcast licensee include the recruitment source that referred each full-time hiree in its Annual EEO Public File Report. The Joint State Associations do not believe that this

² **Order, ¶ 58.**

³ The Commission has repeatedly found that the absence of evidence of past discriminatory actions is sufficient for determining that new regulations are not necessary. For example, in its recent rulemaking decision, the Commission repeatedly pointed to the lack of evidence of past discriminatory actions in declining to expand its inside wiring regulations. *See In the Matter of Telecommunications Services Inside Wiring*, FCC 03-9, ¶¶ 18, 19, 25 (rel. Jan 29, 2003)(declining to adopt new regulations in the absence of evidence in the record.).

information is necessary, and, in fact, will lead to abuse by organizations seeking to file frivolous objections to renewal applications. Since broadcasters are already required to provide information with respect to each of the recruitment sources to whom they forward employment notices, the additional information with respect to the actual recruitment source that referred the interviewees and hiree provides little other than additional information that can be used by third-party organizations in opposing renewal applications.

Since the Commission specifically stated that its EEO rules “focus on the process of recruitment, not the results thereof,”⁴ there is no need for further information whose sole purpose would be to serve as fodder for future petitions against broadcast renewal applications. While the Commission stated that the recruitment-source information with respect to interviewees and hirees will demonstrate whether “the program is being conducted in good faith,”⁵ the Joint State Associations believe that the filing of information with respect to the recruitment sources utilized for employment opportunities is sufficient to serve this limited goal. The Commission has vested with broadcasters the responsibility to “analyze the results of their recruitment efforts” and there is no justification in the record for making this additional information available to the general public.⁶

Additionally, the Joint State Broadcasters urge the Commission to specifically integrate language in Section 73.2080(c)(1) referring to the “exigent circumstances” exception. In the *Order*, the Commission agreed with the NAB that there might be limited instances where a broadcast licensee must hire an individual without recruiting for the position. *Order*, ¶ 83. However, the language of Section 73.2080(c)(1) contained in **Appendix C** of the *Order* does not

⁴ *Order*, ¶ 134.

⁵ *Order*, ¶ 135.

⁶ *Order*, ¶ 134.

allow for this exception, while it does specifically discuss the exception for religious broadcasters. While the Commission specifically declined to specify what events would qualify as exigent circumstances, the Joint State Broadcasters urge the Commission to include language in Section 73.2080(c)(1) relating to this exception.’

Finally, the Joint State Broadcasters seek reconsideration of the rule requiring placement of the Annual EEO Public File Report on the anniversary of the license renewal filing date. The stated purpose of the Annual EEO Public File Report is to provide a “snap shot” over the past year for all employment opportunities with the broadcast licensee.

However, to enable the preparation of a comprehensive Report, along with required posting of the Report on the broadcaster’s internet site, the Joint State Broadcasters suggest that the Commission establish a limited window, i.e., 10 days, after the renewal filing date anniversary, to place the Annual Report in the station’s local public file. Much as with the Children’s Television Report, there is a strong possibility that information may inadvertently not be included in the Annual Report if the licensee is required to prepare the report within 24 hours of the closing of the affected time period.

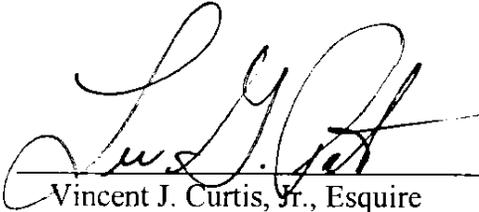
CONCLUSION

Thus, while the Joint State Associations do not believe that the new EEO rules are necessary, and institute extremely burdensome and costly outreach and record-keeping requirements, the Commission must take steps to clarify and modify the new EEO rules. The changes discussed herein will assist broadcasters in implementing EEO rules that will serve the Commission’s EEO goals, and will serve the public interest.

⁷ *Order*, ¶ 81

Respectfully Submitted,

**ALASKA BROADCASTERS ASSOCIATION
ARKANSAS BROADCASTERS ASSOCIATION
MISSISSIPPI ASSOCIATION OF BROADCASTERS
NEW MEXICO BROADCASTERS ASSOCIATION**

By:  _____

Vincent J. Curtis, Jr., Esquire
Frank R. Jazzo, Esquire
Lee G. Petro, Esquire

Their Counsel

Fletcher, Heald & Hildreth, L.C.
1300 North 17th Street
11th Floor
Arlington, VA 22209
(703)812-0400

February 6, 2003