DOCKET FILE COPY ORIGINAL

A** 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
LEEG PETRO*
RAYMOND J QUIANZON
LEONARD R RAISH
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) 812-0486
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) 812-0453
petro@fhhlaw.com

March 24, 2003

RECEIVED
MAR 24 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

Re: Opposition
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 "Opposition" to the "Petition for Clarification, or, in the Alternative, for Partial Reconsideration" filed by the EEO Supporters on February 6, 2003.

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

Sincerely,

Lee G. Petro

Enclosures

RECEIVED

MAR 2 4 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	3	
	3	
Review of the Commission's Broadcast	}	**MM Docket No. 98-204**
and Cable Equal Employment	3	
Opportunity Rules and Policies	3	
	3	

To: The Commission

JOINT OPPOSITION TO
"PETITION FOR CLARIFICATION, OR, IN THE ALTERNATIVE, FOR PARTIAL 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"),* hereby submit this **OPPOSITION** to the self-styled "Petition for Clarification, or, in the Alternative, for Partial Reconsideration" (the "Petition") filed by the EEO Supporters on February 6, 2003, in the above-referenced proceeding.'

The Petition seeks neither clarification, nor reconsideration, and therefore, it should be dismissed. Instead, the Petition merely seeks to present an additional discussion on a study that was submitted long after the notice and comment period closed, and of which only selected excerpts were provided. In their Petition, the EEO Supporters do not contest that the Blumrosen Study' was untimely filed, nor do the EEO Supporters argue that the Commission was incorrect in declining to

---

[1] The Joint State Associations filed a Petition for Reconsideration of the EEO Second Report and Order on February 6, *2003. 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, 17 FCC Rcd 24,018 *(2002)* (the "*EEO Report and Order").*

[2] *The Reality of Intentional Iob Discrimination in Metropolitan America – 1999,* by Alfred W. Blurnrosen and Ruth G. Blurnrosen (Rutgers University, *2002).*

consider the Blumrosen Study in the proceeding based on its untimely submission. Rather, the EEO Supporters merely seek a pronouncement by the Commission that "aggregate statistical data" can be utilized in the EEO proceeding. Petition, pg. 4. Additionally, the EEO Supporters object to the lessened EEO requirements imposed on "small market" broadcasters, but only request that the Commission "pledge" to revisit the EEO rules once the Commission commences its requirements for filing annual employment reports (FCC Form 395-8). Petition, pg. 8.

The Commission must dismiss the Petition, since neither "request" is an appropriate basis for seeking reconsideration of the EEO Report and Order. The Commission's rules establish specific grounds for submitting a "Petition for Reconsideration," which requires the petitioner to:

> state with particularity the respects in which petitioner believes the action taken should be changed.

47 C.F.R. § 1.429(c) (2001).[3] However, in the Petition, the EEO Supporters "stop short of asking the Commission to correct its [perceived] error." Petition, pg. 7. Moreover, the EEO Supporters have merely sought a declaratory ruling with respect to the use of statistical data in rulemaking proceedings, not the reconsideration of the application of statistical data in ***this*** rulemaking proceeding. Therefore, the Petition must fail.[4]

---

[3] Although the EEO Supporters cite Section 1.106 of the Commission's rules for the basis of their "reconsideration", the applicable rule with respect to reconsideration of a rulemaking proceeding is Section 1.429. Regardless, Section 1.106(d) of the Commission's rules imposes the same requirement on petitioners to "state with particularity" their basis for reconsideration.

[4] The Joint State Associations are aware of a "Joint Opposition" that may be filed in response to the EEO Supporters' Petition by the State Broadcasters Associations. The Joint State Associations hereby state their full and unequivocal support for that submission, along with the "Petition for Reconsideration" filed on their behalf in the instant proceeding on February 6, 2003.

The Commission must dismiss the EEO Supporters' self-styled "Petition" as procedurally deficient. The EEO Supporters have not presented any specific decisions made in the EEO Report and Order for which they reconsideration, and the Commission should reject the call for declaratory rulings or pronouncements in the context of this rulemaking proceeding.

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

March 24, 2003

CERTIFICATE OF SERVICE

I, Carla M. Whitlock. a secretary in the law firm of Fletcher, Heald & Hildreth. d h ?by certify that a true copy of the foregoing "Opposition" was sent this 24th th day of March, 2003 via United States First Class Mail, postage prepaid, to the following:

David Honig
Executive Director
Minority Media and Telecommunications
3636 16th Street, NW Suite B-366
Washington, D.C. 20010

Hon. Michael Powell
Chairman
Federal Communications Commission
445 12 th St. SW
Washington, D.C. 20554

Hon. Michael Copps
Commissioner
Federal Communications Commission
445 12 th St. SW
Washington, D.C. 20554

Hon. Kevin Martin
Commissioner
Federal Communications commission
445 12 th St. SW
Washington, D.C. 20554

Hon. Jonathan Adelstein
Commissioner
Federal Communications Commission
445 12 th St. SW
Washington, D.C. 20554

Kenneth Feree, Esq.
Chief, Media Bureau
Federal Communications Commission
445 12 th St. SW
Washington, D.C. 20554

Jane Mago, Esq.
General Counsel
Federal Communications Commission
445 12 th St. SW
Washington, D.C. 20554

Carla M. Whitlock