

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

OPPOSITION TO PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

The National Organization For Women, Office of Communication of the United Church of Christ, Inc., Minority Media and Telecommunications Council, and thirty other civil rights, labor, trade and religious organizations (*NOW et al.*)¹ respectfully oppose the Petition for Reconsideration and/or Clarification filed by a number of State Broadcasters Associations (“State Broadcasters”) in response to the *Third Report and Order* in this proceeding.²

¹ The full list of parties to this Opposition is: The National Organization For Women, Minority Media and Telecommunications Council, Office of Communication of the United Church of Christ, Inc., Philadelphia Lesbian and Gay Task Force, Alliance for Community Media, Alliance for Public Technology, American Association of People with Disabilities, American Federation of Television and Radio Artists, Black Citizens for a Fair Media, Communications Commission of the National Council of Churches, USA, Communications Workers of America, Hispanic Americans for Fairness in Media, Independent Spanish Broadcasters Association, Leadership Conference on Civil Rights, League of United Latin American Citizens, Minority Business Enterprise Legal Defense and Education Fund, National Asian American Telecommunications Association, National Asian Pacific American Legal Consortium, National Association for the Advancement of Colored People, National Association of Black Owned Broadcasters, National Association of Black Telecommunications Professionals, National Association of Latino Independent Producers, National Council of Hispanic Organizations, National Council of La Raza, National Hispanic Foundation for the Arts, National Hispanic Media Coalition, National Urban League, People for the American Way Foundation, Puerto Rican Legal Defense & Education Fund, Rainbow/PUSH Coalition, Telecommunications Research and Action Center, UNITY: Journalists of Color, Inc., Women's Institute for Freedom of the Press

² Released June 4, 2004, published at 69 Fed. Reg. 34,986.

State Broadcasters ask the FCC to amend the Note to Section 73.3612 to add language foreclosing the Commission from ever using EEO data to show that discrimination has occurred at a broadcast station.³ NOW *et al.* oppose this request as unnecessary and potentially harmful.⁴

State Broadcasters claim that modification of the Note is necessary to prevent unconstitutional pressure on stations to recruit and hire based on race, ethnicity and gender.⁵ However, the Note itself, along with the text of *3rd R&O*, make it plain that the FCC will *not* use annual employment data to assess the compliance with the EEO rules of any individual broadcast licensee.⁶ Thus, the possibility of any unconstitutional pressure has already been eliminated.

It would be a mistake to go beyond what is required and categorically limit the FCC's discretion to use EEO data as one of many factors in assessing a complaint of discrimination. In assessing allegations that a station violated the antidiscrimination provision of Rule 73.2080(a), the FCC ought to be able to consider all relevant evidence. It is true that statistics alone are generally inadequate to make out a *prima facie* case of discrimination.⁷ Moreover, the FCC may well conclude, in the context of a particular complaint, that employment statistics have no relevance. Yet, for two generations it has been commonplace for employment statistics to be embraced by the federal courts and civil rights enforcement agencies as one of many pieces of evidence used to show a pattern of discrimination. In addition, like other employers, stations have long used, and could continue to use these statistics to rebut an allegation of discrimination.

³ Petition for Reconsideration at 2-3.

⁴ NOW *et al.* do not oppose State Broadcasters' request to add the phrase "or permittee's."

⁵ Petition for Reconsideration at 2-3.

⁶ See also, *MO&O*, 15 FCC Rcd 22548, 22559 (2000).

⁷ See, e.g., *Applications of Citicasters Co.*, 14 FCC Rcd 3619, ¶5 (1999) (finding percentage of minorities currently employed by licensee not *prima facie* evidence of discrimination where there was no other evidence of employment discrimination).

CERTIFICATE OF SERVICE

I, Karen Henein, hereby certify that, on this the seventh day of September 2004, I caused to be served upon the parties listed below by first class mail, postage prepaid, one copy of the attached opposition to petition for reconsideration.

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