

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

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

TO THE COMMISSION

PARTIAL OPPOSITION TO JOINT PETITION FOR RECONSIDERATION

The EEO Supporters (listed in Annex 1 of EEO Supporters' Petition for Clarification or Reconsideration) partly oppose the Petition by 43 state broadcast associations ("STBA Petition") seeking partial reconsideration and clarification of Broadcast and Cable Equal Employment Opportunity Rules and Policies (Second Report and Order), 17 FCC Rcd 24018 (2002) ("Second R&O").^{1/} The STBAs seek an expeditious decision, and ask that interpretive rulings be posted on the FCC's website. See STBA Petition, pp. 3-4. We agree. We concur with, or do not oppose, 17 of their 36 proposals, and we urge that the Commission address them (and the two points raised in our Petition for Clarification or Reconsideration) in an erratum or brief supplemental order, after which the rules should go into effect without further delay.

Most broadcasters are at peace with the Second R&O. The four largest networks, the two largest radio broadcasters, the NAB and NCTA have constructively expressed their willingness to assist the FCC in implementing these rules.

A. The "Internet Plus" Plan Is Deeply Flawed And Was Properly Rejected

The STBAs contend that anyone qualified for broadcast employment uses the Internet to find a job.^{2/} They offer no evidence. On the other hand, the EEO Supporters offered un rebutted evidence showing that Internet recruiting is deeply flawed: few broadcasters use the Internet for recruitment, and a near-majority of these actually omitted the formerly ubiquitous "EOE" notices

^{1/} The views expressed herein are the institutional views of the commenting organizations, and are not intended to reflect the individual views of each of their officers, directors or members.

^{2/} STBA Petition, p. 8.

from their Internet postings.^{3/} Further, NTIA's most recent research shows that only half of Americans use the Internet from any location.^{4/} The other half of Americans are not unqualified for broadcast employment simply because they are not online. Nor is it fair to presume that these Americans will never be qualified for broadcast employment and, thus, are unworthy of the outreach activities contemplated by Prong 3 of the rules.

Any effective strategy aimed at integrating a close-knit industry must do three things: (1) stop discrimination, (2) secure recruitment beyond the network of personal contacts, and (since that network will always be a powerful factor) (3) include new entrants within the network of personal contacts. Section 73.2080(a) does the first of these things. Prongs 1 and 2 do the second thing,^{5/} and Prong 3 does the third. The beauty of Prong 3 is that its multiplicity of race-neutral techniques provide for personal contact between broadcasters and those traditionally excluded from broadcasting. Since the Internet is inherently impersonal, it cannot do what Prong 3 does. A broadcaster that discriminates could rest assured that posting openings exclusively on the Internet will insulate him from personal contact with those outside the old boy network.

The STBAs promote their Internet-based, zero-outreach plan as a protection against complaints of discrimination.^{6/} We are confident that most broadcasters do not believe that protecting lawbreakers is a proper role of government. We are just as confident that most broadcasters have no genuine fear of overzealous prosecution by the FCC.

^{3/} See Reply Comments of EEO Supporters, May 29, 2002, pp. 28-31, finding that of 837 job postings on all 35 accessible state association (and NASBA) websites (visited 5/23-29/02), 348 (42%) did not contain EOE notices. Our followup review of the 43 accessible sites (visited 1/9 - 2/13/03) found that of 775 postings, 159 (21%) still did not contain EOE notices. Although this large a proportion is disturbing, public exposure evidently has cut the EOE noninclusion rate from 42% to 21% -- a good indication that FCC EEO enforcement will produce results.

^{4/} NTIA, "A Nation Online: How Americans are Expanding Their Use of the Internet" (February 2002), Table 2-2 (cited in Second R&O, 17 FCC Rcd at 24051 ¶99 and n. 169).

^{5/} The STBAs are simply wrong in suggesting that Prong 2's "safety valve" procedure substitutes for Prong 3. See STBA Petition, p. 7. Prong 2 helps ensure that a wide spectrum of qualified people learn of specific openings. Prong 3 has a different goal: it is "designed to encourage outreach to persons who may not be aware of the opportunities available in broadcasting...or have not yet acquired the experience to compete for current vacancies." Second R&O, 17 FCC Rcd at 24055 ¶113. Attracting new talent will "promote not just diversity, but also true competition." Id. at 24129 (Separate Statement of Commissioner Kevin J. Martin).

The STBAs state that they will have to “create huge lists of referral organizations” to which to send job notices. STBA Petition at 9. With little difficulty, many broadcasters maintained these lists from 1971-1998. That task is even easier now, thanks to the miracle of electronic databases. Indeed, almost every broadcaster already owns or can access databases of community groups, which are used to ensure wide dissemination of promotional information about featured and special programming. The marginal cost of an additional name on an e-mail list is virtually zero, so if a few organizations do not respond to job listings, or do not notify a broadcaster that they have changed contact people, no damage is done. Throughout the year, an experienced general manager, taking pride in being well connected to her community, will encounter leaders of many organizations that would welcome inclusion on a job referral list.

At bottom, the STBAs seek to avoid contact with those they deride as “intermediary ‘referral’ organizations.”^{7/} Who are these organizations? They are the 112 fully-staffed affiliates of the National Urban League. They are the dozens of local and state employment services. They are the tens of thousands of high school and college placement offices. They are the nation’s thousands of NAACP branches. They are hundreds of LULAC councils, La Raza chapters and NOW chapters. They are over 100,000 houses of worship. The vast majority of these organizations have charged nothing for 30 years of service to the industry. Have these organizations produced results? Consider this: from 1971-1998, an EEO rule based on the use of these organizations transformed broadcasting from a segregationist backwater to an industry on the move toward equal opportunity, with many stations fully integrated by race and gender.^{8/}

^{6/} See STBA Petition, pp. 8-9. The STBAs also suggest that the FCC is “threatening stations for ‘unintentional discrimination’ without either explaining what that means or providing examples.” *Id.*, p. 8. Years of caselaw have defined intent very thoroughly. The STBAs should have stated what they do not understand about this term. The FCC should not have to guess.

^{7/} See STBA Petition, p. 6.

^{8/} See Comments of EEO Supporters, Vol. I (March 5, 1999), p. 46, Table 1: Employment of Minorities and Women in Fulltime Broadcast Professional Capacities, 1971-1997 (documenting growth in minority professional broadcast employment from 8.0 to 19.2%).

The STBAs complain, further, that “a third party” might “call referral organizations to verify” whether the organizations actually received the job notices promised by broadcasters.^{9/} However, broadcasters with searchable e-mail databases (of the type used by virtually every business today), if audited, can easily confirm in minutes that they transmitted job notices to a variety of sources. Thus, citizen review of job referral performance will seldom be necessary.^{10/}

Finally, let us bury the urban legend that FCC EEO compliance is too time consuming:

Even the most conservative estimates indicate that performance of all the tasks reasonable related to the requirements of the new EEO Rule will require, on an annual basis, the full-time employment of between 1 and 2 extra full staff persons, including other staff members on an as needed basis. ^{11/}

What is the source of these “most conservative” estimates? Why is there no stampede of broadcasters searching for FCC EEO compliance officers?^{12/}

A former EEOC Director of Compliance and broadcaster, Eduardo Peña, has provided a declaration (appended hereto) setting out estimates of the time a typical broadcaster can actually expect to incur complying with the new rules in a typical year. Mr. Peña notes that many of the required tasks must be performed by broadcast stations irrespective of the FCC’s rules:

^{9/} STBA Petition at 10.

^{10/} Nonetheless, citizen involvement in civil rights enforcement should be welcomed. Nondiscriminators have no fear of citizen participation in civil rights, just as sober drivers don’t fear MADD. Citizen involvement in broadcasting is especially necessary in light of many broadcasters’ tendency to forget their EEO promises. See Audrey Murrell, “Verification of Recruitment Sources Within the Radio Broadcast Industry: An Empirical Study of EEO Compliance,” Katz School of Management, University of Pittsburgh (filed in Comments of EEO Supporters, Vol. II (March 19, 1999), Appx.) (recommending that Form 396 should “provide guidelines for the standardization of information collected (such as specific identification of the source, contact person, frequency of contact[.]”) In her examination of the 1997 recruiting practices of 503 radio stations in 20 markets, Dr. Murrell contacted recruitment sources identified in renewal applications to determine whether they had heard from the stations claiming to have used them. Dr. Murrell found that only 12% of the sources listed on the renewal applications could be verified. Among those, only 14% confirmed that they had been sent job notices. Of the sources that could give a “Yes” or “No” answer to the question “was your organization contacted in 1997 and 1998,” 13 (24%) said “No.”

^{11/} STBA Petition, p. 11.

^{12/} As far as we can discern, during the 1972-1998 period of more intensive EEO programs than now contemplated, only about five people (at New York and Los Angeles network O&Os) were ever employed almost fulltime doing FCC EEO compliance work at broadcast stations.

For example, the recordkeeping on recruitment, interviewing and hiring that is contemplated by the new FCC EEO regulations is also performed in the normal course by most broadcasters subject to Title VII, or subject to the regulations of state and local agencies sharing EEO enforcement responsibility with the EEOC under Section 706 of the 1964 Civil Rights Act. As a practical matter, such recordkeeping is also expected of federal contractors. Furthermore, some of the outreach options that can be performed by broadcasters under the new regulations (e.g. speaking at high schools and colleges) are performed in the normal course by every successful, community-spirited broadcaster.

Noting that e-mailing job postings “requires a marginal time of zero,” since these postings “have to be prepared for internal use, except by the rare broadcaster that only recruits through the ‘old boy network,’” Mr. Peña concludes that the additional tasks to be undertaken that are attributable to FCC EEO compliance by a typical (20 employee) SEU

should require the equivalent of less than one week of a person’s time (liberal estimate) or less than one day of a person’s time (conservative estimate). The STBAs state that these activities will really require one or two fulltime people throughout the year, which translates to 2,000 to 4,000 hours. Even if the task-specific estimates I have provided were wrong by more than a factor of ten, the STBAs’ estimates would still not be realistic.

Anything worth having requires some time and effort. Equal opportunity and outreach are well worth the modest annual investment of time and effort contemplated by the new rules.

B. Some of the STBAs’ Proposed Clarifications Are Reasonable

Of the STBAs’ 36 proposals, two have merit^{13/} and 15 are unobjectionable.^{14/} The other 19 are addressed below, using the numbers assigned them by the STBAs.

1. Effective Date: An erratum or supplemental order addressing most of the open items should be issued promptly. Still, these rules have been delayed long enough! Broadcasters are sophisticated enough to know what it means to perform an activity, to count job candidates, and to file simple reports. The NAB has graciously announced that it will help its members understand and comply with the new rules. Now is the time to restore public confidence in the nondiscriminatory performance of industries that are essential to democracy.

^{13/} Item 11(a) (allowing broadcasters to “mix and match” subparts of Prong 3 initiatives) is creative and constructive: it “rewards broadcasters for diversifying the types of events in which they would participate.” STBA Petition, p. 16. Item 11(c) (credit for “co-hosting” a job fair) also has merit. However, a host should actually perform some work, e.g., perform training at the industry orientation workshops held as part of most well-conceived broadcast job fairs.

^{14/} See Items 3, 7, 10 and 12, the first paragraph of Item 5, the first and fourth paragraphs of Item 8, and subproposals 11(b), 11(d), 11(e), 11(g), 11(h), 11(i), 14(c) and 16(c).

2. Permanent Employees: Employing students is a principal means of providing entry opportunities. The STBAs do not explain how the public would benefit by denying EEO protection to students. Actually, students should receive heightened EEO protection.

4. Exigent Circumstances: The STBAs seek an exemption from recruitment that is wide enough to swallow the rule.^{15/}

5. Section 73.2080(a): Religious broadcasters, especially those that do not actually limit their workforces to co-religionists, should not be completely exempted from the common industry responsibility of recruiting and encouraging new talent, including religious adherents. Nonetheless, a religious broadcaster should not be expected to reach out to organizations that deliberately exclude their co-religionists.

6. Definition of Exempt SEU: We do not understand why the consolidation of small stations into a cluster makes it more difficult to comply with EEO regulations. The opposite is true, since consolidation saves costs. Furthermore, with fewer job sites in the industry, the public needs greater EEO protection, especially in small markets where only a handful of broadcast employers may remain. The STBAs' single paragraph of speculation is not a serious argument for exempting about 20-30% of the industry from EEO recruitment and outreach.^{16/}

8. Section 73.2080(c)(1): The STBAs seek clarification of when an SEU may rely on applications already on file, instead of recruiting for a specific job opening. The Second R&O has already answered this question.^{17/} Recruitment can be done by hitting an e-mail key on a computer, so if the position is the same as an earlier one, resolicitation can be done in an instant.

The STBAs' suggestion that interviewing includes "by e-mail" should also be rejected. An e-mail "interview" is no interview at all. In a people-centered business whose product is speech,

^{15/} See Comments of EEO Supporters, April 15, 2002, pp. 87-96 (explaining how reasonably broad recruitment is possible even when confidentiality or time constraints are factors).

^{16/} See Office of Communication of the United Church of Christ v. FCC, 560 F.2d 529, 533 (2d Cir. 1977) (rejecting a comparable proposal).

^{17/} Second R&O, 17 FCC Rcd at 24048 ¶90 (applications elicited from a search three months prior to a hire are not necessarily stale). However, this three month period should not be a de facto rule, since qualified new entrants often enter the job market in intervals far shorter than three months. For some positions, more frequent resolicitations would be appropriate.

a job candidate can only meaningfully present her qualifications in a meeting or conversation. E-mail lacks that capacity.

9. Section 73.2080(c)(1)(i): For the reasons set out on pp. 1-2 supra, the STBAs' Internet-based alternative was properly rejected, although the FCC should manifest its willingness to revisit this question as Internet recruitment improves over time.

11. Section 73.2080(c)(2): Subproposal 11(f) (use of a website to post job openings) would have greater merit if the site is well publicized, and if it is interactive, e.g. by allowing candidates to post their resumes.

Subproposal 11(j) seeks clarification of a new Prong 3 option under which broadcasters can assist nonprofits in developing recruitment websites. This was our proposal.^{18/} We intended it as a blend of organization-based and Internet outreach, so that organizations unaffiliated with the broadcasting industry, but having access to those historically excluded from broadcasting, could bridge the distance between these individuals and broadcasters. Since the STBAs have questioned the usefulness of nonindustry sources,^{19/} we hope they will reconsider their proposal and embrace an initiative aimed at improving the effectiveness of these sources.

13. Recordkeeping and Reporting. As with the Census, recordkeeping with respect to race is unobjectionable; constitutional questions only arise if the government misuses this data.^{20/} In the foreseeable future, the FCC intends to address the uses of racial statistics.^{21/} Thus, the STBAs' proposal is unripe. The mere collection and reporting of racial statistics does not

^{18/} See Comments of EEO Supporters, April 15, 2002, pp. 116-17.

^{19/} See STBA Petition, p. 6.

^{20/} See Nordlinger v. Hahn, 505 U.S. 1, 10 (1992) (“[t]he equal protection clause does not forbid classification. It simply keeps decision makers from treating differently persons who are in all relevant respects alike”); U.S. v. New Hampshire, 539 F.2d 277, 280 (1st Cir. 1976), cert. denied, 429 U.S. 1023 (1977) (in rejecting a challenge to a requirement that a state file an EEO-4 form containing statistics on the racial makeup of state employees, the First Circuit noted that “[s]tatistical information as such is a rather neutral entity which only becomes meaningful when it is interpreted. And any positive steps which the United States might subsequently take as a result of its interpretation of the data in question remain subject to law and judicial scrutiny.”)

^{21/} Second R&O, 17 FCC Rcd at 24024-25 ¶17.

“pressure” broadcasters to do anything, since such data collection and reporting can have no impact on whether a broadcaster receives a federal benefit or a sanction.

14. Section 73.2080(c)(6): Subproposal (a) is without merit. Audits are not a “threat” to an equal opportunity employer, any more than the selection of some airline passengers for pre-boarding searches is a threat to unarmed passengers. Audits are a minor inconvenience whose value lies in general deterrence and in the apprehension of lawbreakers. Furthermore, members of the public have a vital role to play in the enforcement of our civil rights laws. Nonsensitive information that would assist in law enforcement should not be withheld from the public.

Subproposal (b) would permit an SEU to decline to identify “non-Eligible Referral Organizations” to which it sends job notices. Under this proposal, a discriminator could conceal the fact that most of its recruitment efforts are made through sources that exclude qualified persons based on race or gender. Further, there is no reason to conceal the names of referral source contact people, the identification of whom requires little time and effort. Contact people may leave their jobs, but that is no reason not to identify them; broadcast engineers and lawyers also leave their jobs but they are identified on FCC forms. Identifying referral source contact people would help keep the industry honest ensuring that promises made are promises kept.^{22/}

Subproposal (d) seeks to eliminate website posting of EEO Public File Reports. The STBAs promote Internet-based recruitment and seek reduced paperwork “burdens,” yet by disdaining the Internet for EEO reports the STBAs would burden their own audiences with greater expenses of reviewing the reports. We agree, however, that it would be reasonable to attach PDF copies of the reports to station websites.

^{22/} It is too tempting for some broadcasters to put down the names of a few organizations on Form 396, secure in the knowledge that if they never send job notices to these sources, no one could ever prove it because there would be no verifiable person in the chain of custody. For years, under the former rules, hundreds of broadcasters simply wrote down “NAACP” and “NOW” on Form 396 year after year, without actually sending the NAACP or NOW job notices. See Comments of EEO Supporters, Vol. II (March 19, 1999), pp. 225-26 n. 336 (giving examples of recruitment sources listed in most of their local stations’ Form 396’s (including the Miami-Dade NAACP and the Howard University School of Communications) that seldom actually received job notices from these broadcasters). Searchable e-mail databases should protect the conscientious broadcaster, since a station having such a database can confirm in minutes that it transmitted job notices to a variety of sources. See p. 4 supra.

Subproposal (e) does not explain how religious broadcasters would be “chilled” if they had to disclose their referral sources. We agree that religious broadcasters should not have to recruit from sources that deliberately exclude their co-religionists. See p. 6 supra. We would not object if the Commission states that if this protection proves insufficient in practice for reasons not clear now, a religious broadcaster could seek a waiver.

15. Owner-Employees: The STBAs have provided no justification to expand this exemption. For consistency, the definition of owner-employee should track the attribution rules.

16. EEO Forms: The language on religion in Subproposal (a) is unobjectionable. However, the FCC should retain the requirement that broadcasters not rely on nonproductive sources. A well-run station seldom deletes nonproductive sales accounts from promotional e-mail lists, but no station relies on nonproductive accounts to generate sales. The FCC should expect broadcasters’ personnel practices to be equally professional. A “nonproductive” source could be defined as one that has yielded no referrals in a year, or after receiving 20 job notices.

Subproposal (b) asks whether age or handicap discrimination allegations should be reported. They should be. Although the FCC’s rules do not prohibit these forms of discrimination, a licensee responsibly accused of age or handicap discrimination could well be exhibiting a pattern of disrespect for human dignity. That would be germane to the licensee’s credibility if it is also accused of race or gender discrimination. In this regard, we note that the cable EEO rules include age, 47 C.F.R. §76.73(a), but the broadcast EEO rules do not, 47 C.F.R. §73.2080(a). The Commission should correct this unjustifiable discrepancy in its two sets of rules.

17. Forfeitures. The STBAs state that “legal principles of fundamental fairness” require publication of a base forfeiture. The STBAs cite no case nor explain their meaning. Forfeitures for this and dozens of other rules are addressed in Title V of the Communications Act.

Conclusion

Although the FCC rejected the STBAs' Internet-based plan, it did not reject the use of the Internet as an integral part of a comprehensive recruitment plan.^{23/} In 2000, the Commission had intended to assess the effectiveness of the Internet, but was unable to do so because the 2000 EEO rules were only briefly in effect.^{24/} The Commission has taken the same approach here: it will "continue to monitor the viability of the Internet as a recruitment source and will consider petitions seeking to demonstrate in the future that circumstances have changed sufficiently to warrant a change in our policy."^{25/}

These rules are essential if the industry is to maintain its competitive edge.^{26/} The time has come for delay to end and equal opportunity to begin.

Respectfully submitted,

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February 19, 2003

^{23/} See 47 C.F.R. §73.2080(c)(2)(vi), (xiii) and (xvi).

^{24/} Id. at 24050 ¶97.

^{25/} Id. at 24051 ¶99.

^{26/} See Comments of EEO Supporters (April 15, 2002), pp. 24-29. For a discussion of the pro-competitive value of racial diversity, see, e.g., Diversity: An Imperative for Business Success, The Conference Board (1999); Trevor Wilson, Diversity at Work: The Business Case for Equity (1996); "Diversity Helps to Deliver Better Business Benefits," Personnel Today, June 18, 2002 ("[f]our out of five organizations believe there is a direct link between diversity and improved business performance, according to independent research); "Research Makes a Business Case for Diversity," Federal Human Resources Week, September 24, 2001 ("[r]esearch by the National Academy of Public Administration shows that diverse workforces are more productive); Robert L. Lattimer, "The Case for Diversity in Global Business, and the Impact of Diversity on Team Performance," Competitiveness Review, Vol. 8, No. 2, pp. 3-17 (1998).

DECLARATION OF EDUARDO PENA

I, Eduardo Peña, respectfully provide this declaration in support of the “Partial Opposition to Petition for Reconsideration” being filed by the EEO Supporters. My qualifications to offer this declaration are as follows: from 1969 through 1979, I served as Director of Compliance for the EEOC. I have been engaged in the fulltime practice of civil rights law since 1979, and in that capacity I have advised numerous corporations on how to comply with equal employment opportunity (EEO) laws and regulations and on how to design and implement effective EEO programs. I am also very familiar with broadcast station personnel operations and practices. I served as a partner and 16.7% owner of Panorama Broadcasting, which owned and operated KLDO-TV, Laredo, TX (originally an ABC and later a Telemundo affiliate) from 1984 through 1997. Further, since 1984 I have served as communications counsel to the League of United Latin American Citizens (LULAC), the nation’s largest Hispanic organization. In 1978 and 1979 I served as President of LULAC.

I have seen the estimate given by 43 state broadcast associations (“STBAs”) that one or two fulltime people will be needed to comply with the FCC’s new EEO requirements. I am not aware of the origin of this number, but it is far divorced from reality. I am not aware of more than a very small handful of television stations (and no radio stations) that have ever employed an FCC EEO compliance officer fulltime or even parttime. The FCC’s new regulations are easy to implement, especially if a station uses e-mail and searchable computer databases, such as most broadcast stations use in their sales operations.

In order to estimate the amount of time required to comply with the new FCC EEO regulations, one must first recognize that many of the required tasks must be performed by broadcast stations in any event. For example, the recordkeeping on recruitment, interviewing and hiring that is contemplated by the new FCC EEO regulations is also performed in the normal course by most broadcasters subject to Title VII, or subject to the regulations of state and local agencies sharing EEO enforcement responsibility with the EEOC under Section 706 of the 1964 Civil Rights Act. As a practical matter, such recordkeeping is also expected of federal contractors. Furthermore, some of the outreach options that can be performed by broadcasters under the new regulations (e.g. speaking at high schools and colleges) are performed in the normal course by every successful, community-spirited broadcaster.

The FCC’s estimates of the number of hours needed to fill out EEO forms are found in the Commission’s drafts of the respective FCC forms. See Second Report and Order in MM Docket No. 98-204, 17 FCC Rcd 24018, 24105, 24108 and 24118 (2002). The FCC’s estimates are: Form 396A: 1:00; Form 396: 1:30; Form 397: 0:30. These estimates appear reasonable, based on the nature and complexity of the forms.

E-mailing job postings requires a marginal time of zero. These postings have to be prepared for internal use, except by the rare broadcaster that does only recruits through the “old boy network.” The task of sending these postings to more people requires only the additional effort of striking a computer key.

Assembling an external recruitment list is a task with which broadcasters are already familiar, since they were expected to have these lists from 1971-1998 and in 2000. This has always been an easy task, since broadcast station promotion departments or personnel typically maintain lists of community organizations to notify about station promotions, events, special programming and the like. Furthermore, EEO recruitment lists are available off the shelf in virtually every market in the country. The task of identifying and maintaining accurate lists of contact people can be done in a few minutes with a periodic mass e-mail.

Declaration of Eduardo Peña -- Page Two

Logging applicant flow data should take, at most, five minutes per entry for 100-200 entries per year for a typical (e.g. 20 employee) SEU (thus requiring, in round numbers, 8-17 hours per year of time).

Based on these considerations and my experience with EEO compliance and with broadcasting, here are my liberal and conservative estimates of annual compliance times for a typical (e.g. 20 employee) SEU. Total activity times for smaller stations should be considerably less than these estimates, since smaller stations have relatively fewer job openings and fewer job applicants. I have incorporated in the "liberal estimates" four of the more substantial Option 3 outreach activities, and in the "conservative estimates" four of the Option 3 outreach activities that require little or essentially no time.

I. Activities Already Performed To Comply With Federal/State EEO And OFCCP Rules

<u>Activity</u>	<u>Liberal Est.</u>	<u>Conservative Est.</u>
1. Prepare staff training on EEO (except FCC rules)	4:00	1:00
2. Train the staff on EEO (except FCC rules)	2:00	1:00
3. Answer staff questions during year (except on FCC rules)	2:00	1:00
4. Set up and review recordkeeping system	2:00	1:00
5. Maintain applicant flow data log	17:00	8:00
6. Build and update job referral lists	4:00	1:00
7. E-mail job notices to job referral lists	0:00	0:00
Subtotal	31:00	13:00

II. Community Activities Performed By Most Broadcasters In The Normal Course

1. Speak at two schools' career days	4:00	n/a
2. Address community group convention	n/a	2:00
3. Serve on scholarship committee	n/a	2:00
Subtotal	4:00	4:00

III. Activities Specific To Compliance With New FCC EEO Regulations

1. Read FCC rules; review rule compliance with counsel	2:00	1:00
2. Add FCC rules to general EEO training material	2:00	1:00
3. Train staff on FCC duties not required by other rules	2:00	1:00
4. Answer staff questions during year (just on FCC rules)	2:00	1:00
5. Fill out FCC EEO Forms (per FCC's time estimates)	2:00	2:00
6. Maintain EEO portion of FCC public file	2:00	1:00
7. E-mail job notices to job referral lists (see above)	0:00	0:00
8. Participate in two job fairs	10:00	n/a
9. Train referral source personnel about broadcasting	4:00	n/a
10. Hold monthly meetings with mentee	12:00	n/a
11. E-mail openings to NASBA job bank	n/a	0:00
12. E-mail upper-level jobs to trade group	n/a	0:00
Subtotal	38:00	7:00

Declaration of Eduardo Peña -- Page Three

In conclusion, performing activities required by the rules that are not already performed in the normal course should require the equivalent of less than one week of a person's time (liberal estimate) or less than one day of a person's time (conservative estimate). The STBAs state that these activities will really require one or two fulltime people throughout the year, which translates to 2,000 to 4,000 hours. Even if the task-specific estimates I have provided were wrong by more than a factor of ten, the STBAs' estimates would still not be realistic.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed 2/17/03.

/s/

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CERTIFICATE OF SERVICE

I, David Honig, hereby certify that I have this 19th day of February, 2003 caused a copy of the foregoing "Partial Opposition to Joint Petition for Reconsideration" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

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/s/

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