

# **BASIC NEGOTIATED AGREEMENT**



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**Between**

**Federal  
Communications  
Commission**



**National Treasury  
Employees Union  
NTEU**



**Effective Date: March 17, 2023**

## BNA Table of Contents

| Article<br>Number | Title   | Page<br>Number |
|-------------------|---|----------------|
| 1                 | Recognition and Coverage .....  | 3              |
| 2                 | Effect of Law and Regulation .....  | 5              |
| 3                 | Employee Rights .....   | 6              |
| 4                 | Union Rights and Obligations .....  | 9              |
| 5                 | Employer Rights .....   | 11             |
| 6                 | Union Representation .....  | 12             |
| 7                 | Labor-Management Relations Committee .....  | 17             |
| 8                 | Union Facilities and Services .....   | 19             |
| 9                 | Employee Space and Facilities .....   | 22             |
| 10                | Personnel Records .....   | 24             |
| 11                | Notice to Employees .....   | 26             |
| 12                | Merit Promotion and Other Competitive Actions in the<br>Competitive Service ..... | 27             |
| 13                | Promotions and Other Actions for Attorneys .....                                  | 35             |
| 14                | Upward Mobility .....   | 42             |
| 15                | Security .....  | 52             |
| 16                | Performance Appraisal Program .....   | 53             |
| 17                | Acceptable Level of Competence Determinations .....                               | 58             |
| 18                | Details and Temporary Promotions .....  | 62             |
| 19                | Reassignments, Realignments and Relocations .....                                 | 64             |
| 20                | Part-time and Job Sharing Opportunities .....                                     | 67             |
| 21                | Training .....  | 69             |
| 22                | Awards .....  | 71             |
| 23                | Position Classification .....   | 76             |
| 24                | Reduction in Force .....  | 77             |
| 25                | Retirement .....  | 78             |
| 26                | Equal Employment Opportunity .....  | 79             |
| 27                | Annual Leave .....  | 81             |
| 28                | Sick Leave .....  | 84             |

| <b>Article<br/>Number</b> | <b>Title</b>   | <b>Page<br/>Number</b> |
|---------------------------|--|------------------------|
| 29                        | Leave for Maternity/Paternity Purposes.....                  | 87                     |
| 30                        | Family and Medical Leave, Other Leave Provisions .....       | 88                     |
| 31                        | Administrative, Weather and Safety, and Other Paid Leave ... | 93                     |
| 32                        | Overtime .....   | 96                     |
| 33                        | Safety and Health.....                                       | 97                     |
| 34                        | Probationary Employees .....                                 | 104                    |
| 35                        | Disciplinary Actions .....                                   | 106                    |
| 36                        | Adverse Actions .....  | 109                    |
| 37                        | Actions Based on Unacceptable Performance .....              | 112                    |
| 38                        | Negotiated Grievance Procedure .....                         | 115                    |
| 39                        | Arbitration.....   | 122                    |
| 40                        | Expedited Arbitration .....                                  | 126                    |
| 41                        | Miscellaneous Provisions.....                                | 129                    |
| 42                        | Hours of Work and Alternative Work Schedules.....            | 131                    |
| 43                        | Transit Subsidy .....  | 136                    |
| 44                        | Dues Withholding .....                                       | 137                    |
| 45                        | Mid-Term Negotiations .....                                  | 141                    |
| 46                        | Telework .....   | 145                    |
| 47                        | Travel and Gainsharing Program .....                         | 159                    |
| 48                        | Reasonable Accommodations.....                               | 169                    |
| 49                        | Effective Date, Duration, and Termination.....               | 173                    |
| Appendix A                | Geographic Areas.....  | 176                    |
| Appendix B                | Upward Mobility Training Program.....                        | 177                    |
| Appendix C                | Grievance Form .....   | 179                    |
| Appendix D                | FCC Telework Request Form and Agreement.....                 | 180                    |
|                           | Signature Page.....  | 183                    |

## **ARTICLE 1**

### **RECOGNITION AND COVERAGE**

#### **Section 1**

The Federal Communications Commission (Employer) recognizes the National Treasury Employees Union (Union) as the exclusive representative of all employees in the bargaining units, as defined in Section 2 of this Article, and that it is entitled to act for and to negotiate agreements covering all employees in the bargaining units.

#### **Section 2**

A. The following employees are included in the bargaining units covered by this Agreement:

1. all professional General Schedule employees of the Federal Communications Commission, nationwide; and
2. all non-professional General Schedule and Wage Grade employees of the Federal Communications Commission, nationwide.

B. The following employees are excluded from the bargaining units covered by this Agreement: all management officials; supervisors; confidential employees; employees engaged in Federal personnel work in other than a purely clerical capacity; temporary employees; and other employees excludable pursuant to the Civil Service Reform Act of 1978.

#### **Section 3**

The terms and conditions of this Agreement apply only to employees and positions within the bargaining units. However, nothing in this Section shall be construed to prevent a bargaining unit employee who applies for a non-bargaining unit position from grieving, within the time periods set forth in Article 38 of this Agreement, the job performance evaluation he/she receives pursuant to Article 16 of this Agreement.

#### **Section 4**

In the event that any provision of this Agreement shall at any time be rendered, found, or declared to be illegal by a court of competent jurisdiction or other third-parties of competent jurisdiction outside the FCC, or through any higher level government regulation or decree, such decision(s) shall not invalidate the entire Agreement, since it is the expressed intention of the Employer and the Union that all provisions not rendered, found, or declared to be invalid shall remain in full force and effect for the duration of the Agreement.

## **Section 5**

The Parties agree that the only covered-by defense that may be asserted by either party under this Agreement is one based on the “express language” of the Agreement. The “inseparably bound up with” defense will not be available to either party. Additionally, neither party may in any way rely upon the bargaining history of the “express language” to argue that there is a covered-by defense. The “express language” defense may only be raised while the Agreement is in effect.

## **ARTICLE 2**

### **EFFECT OF LAW AND REGULATIONS**

#### **Section 1**

In the administration of all matters covered by this Agreement, the Parties are governed by Federal law; Government-wide rules or regulations in effect upon the effective date of this Agreement; and Government-wide rules or regulations issued after the effective date of this Agreement that do not conflict with this Agreement.

#### **Section 2**

To the extent that provisions of the Federal Communications Commission Personnel Manual or any other Commission notice, circular, directive, instruction, regulation or other issuance, not required by higher level authority, are in conflict with this Agreement, the provisions of this Agreement will govern.

#### **Section 3**

A. The Agency shall comply with its own regulations and policies governing personnel policies and practices and general conditions of employment insofar as they affect the working conditions of bargaining unit employees.

B. This section shall not be construed to require the Agency to issue, change or retain such regulations and policies, which it may continue to do in accordance with law.

#### **Section 4**

Within six (6) months of the effective date of this Agreement, the Employer will make available to all employees, an electronic link from the FCC Intranet to the United States Code, Code of Federal Regulations, Office of Personnel Management directives, General Services Administration Federal Travel Regulations, FCC manual and regulations, and the Department of Labor Office of Workers' Compensational Programs.

### **ARTICLE 3**

#### **EMPLOYEE RIGHTS**

##### **Section 1**

A. The Parties recognize that each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided by applicable laws and regulations, such right includes the right to:

1. act for a labor organization in the capacity of representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other applicable authorities; and
2. engage in collective bargaining with respect to conditions of employment through representatives chosen by employees in accordance with applicable laws and regulations.

B. The Parties shall not interfere with, restrain, or coerce any employee in the exercise of rights set forth in Section 1.A of this Article; further, the Employer will not encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment.

C. Section 1.A of this Article does not authorize participating in the

management of the Union or acting as a representative of the Union by a management official, a supervisor, a confidential employee, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

D. Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, election of labor organization officials, and collection of dues) shall be performed only during the time the employee is in a non-duty status.

##### **Section 2**

Nothing in this Agreement shall require an employee to become or to remain a member of the Union, or to pay money to the Union, except pursuant to a voluntary, written authorization by the employee for the payment of dues through payroll deduction.

##### **Section 3**

An employee's conduct during off-duty hours in a non-official capacity shall have no bearing on the employee's job performance evaluation. The Agency will adhere to applicable laws and regulations in determining whether or not to take a disciplinary or adverse action against an employee based upon his/her off-duty conduct. The Employer recognizes that the "efficiency of the service" standard requires a nexus between the off-duty conduct and the disciplinary or adverse action(s) and will inform an employee disciplined for off-duty conduct of that nexus in the written

disciplinary action.

#### **Section 4**

A. In the event of a difference of opinion between an employee and his/her supervisor on a matter pertaining to the way in which work should be done, the employee shall comply with the instructions of his/her supervisor, and the supervisor shall assume full responsibility for those instructions if they are carried out in the manner prescribed by the supervisor.

B. In such situations where a difference of opinion does arise between an employee and his/her supervisor, the employee shall have the option of reducing the supervisor's instructions to writing and the supervisor shall initial these written instructions if they completely and accurately reflect the instructions given. Nothing in this Section shall be construed as affecting (1) the Employer's right to assign work as prescribed by Chapter 71 of Title 5, U.S.C. or (2) an employee's obligation to follow instructions promptly.

C. Consistent with the Occupational Safety and Health Act and implementing regulations, an employee has a right to decline to perform his or her assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures. No employee will be subject to restraint, interference, coercion, discrimination or reprisal because of the exercise of this right.

#### **Section 5**

The initiation of a grievance in good faith by an employee shall not reflect adversely on his/her standing with his/her supervisor or on his/her loyalty to the organization. Employees and Union stewards who present relevant information in seeking a resolution of any matter pursuant to the terms of this Agreement will be assured freedom from restraint, interference, coercion, discrimination, intimidation or reprisal.

#### **Section 6**

A. The Union shall have the right to be represented at any examination of an employee in the bargaining units by a representative of the Employer in connection with an investigation if:

1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
2. the employee requests representation.

B. Upon request of an employee for Union representation, the employee will be given a reasonable opportunity to obtain such representation.

C. The Employer shall inform bargaining unit employees annually of their right to request Union representation under Section 6, A of this Article.

#### **Section 7**

The Employer agrees that employees will be permitted to take up to one hour of official time per year to meet with an NTEU benefits counselor. The NTEU



benefits counselor will advise the employees on their benefits and alternative benefits.

### **Section 8**

Employees may elect to have additional voluntary deductions withheld from their pay. Such discretionary allotments may be used, consistent with regulations, to contribute to the Union's Political Action Committee.

## **ARTICLE 4**

### **UNION RIGHTS AND OBLIGATIONS**

#### **Section 1**

The Union is the exclusive representative of the employees in bargaining units defined in Article 1 of this Agreement and is entitled to act for and represent the interests of all employees in the units without discrimination.

#### **Section 2**

A. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Employer and one or more employees in the bargaining units or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment.

B. The Employer shall provide the Union with reasonable advance notice of such formal discussions. The Employer will attempt to provide a minimum of two (2) workdays advance notice unless a shorter period of time is considered reasonable under the circumstances.

#### **Section 3**

The Employer shall furnish the Union with two copies of all new issuances promulgated by the Office of Managing Director which pertain to personnel policies or practices or working conditions applicable agency-wide. One of these copies shall be furnished to the Chapter and the other to the Union's national office. However, nothing in this

Section requires the Employer to furnish the Union with copies of intra-management communications.

#### **Section 4**

A. The Union shall not call, or participate in, any strike, work stoppage, slowdown, or picketing of the Federal Communications Commission if such picketing interferes with the Commission's operations.

B. The Union shall not condone any activity described in Section 4.A of this Article by failing to take action to prevent or stop such activity.

#### **Section 5**

The Employer will provide the Union with two tables in the lobby on which to display union literature during the annual Labor Recognition Week (to be held on or about Labor Day each year). The Employer will also seek permission from the building owner for the Union to use the building lobby for this purpose. Bargaining unit employees may be granted up to one (1) hour of official time to attend Union sponsored educational activities. NTEU Chapter 209 shall be provided with eight (8) hours of official time to prepare and conduct Labor Recognition Week activities.

#### **Section 6**

The Employer will provide the chapter with a biweekly list of SF-1187, Request for Payroll Deduction of Labor Organization Dues forms that have been submitted to the Employer. This list will

include the dates the SF-1187s were processed and their expected effective dates and a list of all SF-1187s that have not been processed, an explanation for the delay, and their expected processing dates.

## **ARTICLE 5**

### **EMPLOYER RIGHTS**

#### **Section 1**

Management officials of the Employer retain the authority:

A. to determine the mission, budget, organization, number of employees, and internal security practices of the Federal Communications Commission; and

B. in accordance with applicable laws:

1. to hire, assign, direct, layoff, and retain employees in the Federal Communications Commission, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which operations of the Federal Communications Commission shall be conducted;
3. with respect to filling positions, to make selections for appointments from:
  - a. among properly ranked and certified candidates for promotion; or
  - b. any other appropriate source; and
4. to take whatever actions may be necessary to carry out the mission of the Federal

Communications Commission during emergencies.

#### **Section 2**

In the administration of all matters covered by this Agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities; by published agency policies and regulations in existence at the time the Agreement was approved and which do not conflict with the terms of this Agreement; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities outside the Federal Communications Commission.

## **ARTICLE 6**

### **UNION REPRESENTATION**

#### **Section 1**

A. The term NTEU or Union "officer" means any employee holding an elected office of Chapter 209.

B. The term NTEU or Union "steward" means any employee designated by Chapter 209 as a steward including stewards-at-large and chief stewards.

C. The term NTEU or Union "representative" includes any employee designated by Chapter 209 to act on behalf of the Union.

#### **Section 2**

The term "official time" as used in this Article is defined as:

A. The time granted by the Employer to Union representatives to perform representational functions authorized by Sections 6.A and 8 of this Article while otherwise in a duty status without charge to leave or loss of pay; and

B. The time granted by the Employer to bargaining unit employees other than Union representatives to participate with a Union steward or officer or the Employer in activities authorized by Sections 6.A and 8 of this Article while otherwise in a duty status without charge to leave or loss of pay.

#### **Section 3**

A. The Employer agrees to recognize officers, stewards and representatives designated by the Union in accordance

with Section 4 of this Article.

B. The Employer will not impose any restraint, interference, coercion, or discrimination against a bargaining unit employee for using reasonable official time authorized pursuant to Sections 6 and 8 of this Article or for exercising his/her right to secure a Union steward to represent him/her in matters involving the interpretation or application of this Agreement.

#### **Section 4**

A. The Union may appoint one (1) Chief Steward.

B. Outside the District of Columbia the Union shall designate one steward for each designated "geographic area," unless otherwise specified in Appendix A of this Agreement. (See Appendix A of this Agreement for a list of designated "geographic areas" and the field installations contained therein.)

C. Within the District of Columbia, the Union shall designate twelve (12) stewards and three (3) stewards-at-large.

#### **Section 5**

A. The Union shall furnish to the Employer the names of the Chief Steward, all recognized stewards, and all alternate stewards at least five (5) workdays before the representatives assume their positions.

B. Within the District of Columbia, each recognized steward will be assigned an identified grouping of employees to represent which shall be called the steward's "area of representation." The

Union shall have the prerogative of identifying the "area of representation" each steward will be assigned to represent. The Union shall provide the Employer with a description of each "area of representation" and the name of the steward assigned to represent the area at least five workdays before the areas become operational. The Chapter Officers, Chief Steward, and stewards-at-large may represent all employees without regard to representational area. An employee seeking Union representation or otherwise seeking Union assistance pursuant to the terms of this Article will seek such representation or assistance from the steward designated to represent the area of representation or "geographic area" in which the employee is employed.

C. In exceptional circumstances when particular expertise is required, which is not possessed by the designated area steward, the Chapter President shall have the right to assign any other recognized steward who has such expertise to a particular representational matter. The Chapter President shall advise the Employer's Labor Relations Officer of the assignment before it becomes effective and explain the exceptional circumstances that warrant the assignment.

D. The Chief Steward, each recognized steward, and each alternate steward shall be a full-time, permanent bargaining unit employee.

## **Section 6**

A. The Chief Steward, each recognized steward, and five chapter officers shall receive reasonable and necessary

official time to carry out representational functions:

1. conferring with employees on matters for which remedial relief may be sought under this Agreement;
2. investigating matters for which employees may seek remedial relief under this Agreement;
3. interviewing and preparing witnesses;
4. reviewing documents;
5. preparing or assisting in the preparation of an employee's grievance, Union grievance or grievance appeal, including arbitration;
6. preparing or assisting in the preparation of an employee's statutory complaint or appeal;
7. preparing for and attending joint Labor-Management Relations Committee meetings as provided for in Article 7 of this Agreement;
8. conferring or meeting with the Employer on matters other than negotiations;
9. presenting grievances to the Employer;
10. presenting statutory complaints to the Employer;
11. attending meetings with the Employer held pursuant to 5 U.S.C. § 7114(a)(2)(A) or (B);

12. addressing orientation sessions pursuant to Section 4 of Article 8 of this Agreement.
13. conferring with employees on representational matters;
14. assisting employees in preparing written replies to any action taken by management;
15. participating in FLRA investigations or preparing for hearings as a representative of the Union;
16. preparing for and participating in labor-management negotiations; or
17. meeting with national NTEU staff representatives in connection with a grievance, arbitration or ULP charge;
18. participating with the Employer in cooperative efforts/partnerships activities;
19. to prepare and maintain records and reports required of the Union by 5 U.S.C. § 7120(c) and other Government Agencies; and/or
20. Union representatives shall be granted a reasonable amount of official time to respond to contacts from Congress, but not to lobby a member of Congress or staff person of a member of congress.

B. The Parties recognize that to effectively administer this provision a supervisor should be given sufficient information by the steward to determine

how much official time is needed.

C. A grievant or necessary employee witness involved in a grievance shall receive a reasonable amount of official time to confer with a designated Union steward, a chapter officer, or the Employer concerning the activities referenced in Section 6.A of this Article.

## **Section 7**

A. During each year of this Agreement the Union shall receive an amount of bank time based on the following formula for recognized stewards and the number of authorized Officers, Chief Stewards, and Stewards at-large to attend Union sponsored training on representational matters:

16 hours x the number of recognized stewards, three stewards at-large, the Chief Steward, and five chapter officers at the beginning of each year of this Agreement. (During the first year of the contract an additional eight hours x the number of recognized stewards, three stewards at-large, the Chief Steward, and five chapter officers shall be provided for Union sponsored training on the new contract.)

B. The amount of bank time available for training purposes under Section 7.A of this Article shall not be cumulative and may not be carried over from year to year.

C. Requests to attend Union sponsored training under this Section should be submitted fourteen calendar days in advance to the employee's immediate supervisor and will not be denied unless precluded by work requirements or work schedules.

D. Bank time shall be granted to representatives to attend Union-sponsored training.

### **Section 8**

A. In addition to official time authorized for the activities set forth in Section 6.A of this Article, a recognized steward or alternate steward, when traveling during his/her normal duty hours to represent an employee(s) from his/her "geographic area" or area of representation, will receive a reasonable amount of official time to travel in a reasonable manner under the circumstances.

B. A grieving or appealing employee who is on the rolls and who is involved in a meeting or hearing set forth in Section 6.A(1-4) of this Article will receive a reasonable amount of official time to travel to such meeting or hearing as well as travel expenses paid in accordance with applicable travel regulations. An employee who is called by the Union as a necessary witness at a binding arbitration hearing or statutory hearing shall receive official time to travel to such hearing as well as travel expenses paid in accordance with applicable travel regulations. If a dispute arises between the Employer and the Union over whether an employee called by the Union is a necessary witness, the matter shall be resolved by an arbitrator or presiding officer.

C. In the event the designated steward would be required to travel to another "geographic area" to represent an employee in a meeting or hearing set forth in Section 6.A(1-4) of this Article, and there is another designated steward

in the area where the meeting or hearing is to be held who would not be required to travel, the Union may assign either steward to represent the employee. In no event shall more than one steward be granted official time to travel to such meetings or hearings.

### **Section 9**

A. All official time utilized by Union representatives shall be duly recorded on the employee's time and attendance report.

B. The Employer recognizes that the time spent by officers and stewards may be unpredictable and that meetings, tasks and/or telephone calls may arise without notice. When obtaining advance supervisory approval is not practicable, the Employer agrees to allow officers and stewards up to 30 minutes of official time without advance supervisory approval. The employee agrees to keep his/her supervisor apprised of his/her use of official time under this section.

C. Union representatives who want to use official time on representational matters, as provided for in Sections 6 and 8 of this Article, shall first advise their immediate supervisor of his/her request for official time. In the event the immediate supervisor is not available, the steward shall contact the next higher level supervisor or management official within his/her Bureau or Office who is available. The representative's request for official time shall not be denied except when work requirements or work schedules preclude the representative's absence. In the event that a representative cannot advise any supervisory official through the representative's third level of



supervision (where applicable) of the need to use official time and an emergency situation arises which requires the representative's immediate attention, the representative may attend to such emergency situation unless precluded by work requirements or work schedules. In such emergency situations the representative shall contact his/her immediate supervisor via email or other method designated by the supervisor. The message should advise the supervisor of the employee's absence, where he/she may be contacted, when the representative left, and the expected time of return.

D. If the representative must enter a work area supervised by a supervisor other than his/her own, the representative will check in with that supervisor before conducting business. Access to the area will not be denied unless precluded by the work requirements or work schedules of the employee the representative wishes to contact or would be disruptive of the work of other employees. In the event that access by a representative to a work area would be disruptive of the work of employees, the supervisor in the area shall notify the employee to be interviewed that the representative was denied access to the area. The employee will be able to leave his/her work area on official time after having obtained the approval of his/her immediate supervisor. Such approval will not be denied unless precluded by work requirements or work schedules of the employee.

E. An employee who wants to leave his/her work area on official time to meet with a Union representative on representational matters covered in

Section 6.A of this Article must first obtain the approval of his/her immediate supervisor. Such approval will not be denied unless precluded by work requirements or work schedules of the employee.

F. If a representative's discussion with an employee involves a confidential matter or will last more than a few minutes, the discussion will be held away from the work area if other employees are in the immediate proximity.

G. Upon completion of business the officer/steward and the employee will report back to their respective supervisors.

H. This section is not determinative of the amount of official time which, under Sections 6.A and 8 of this Article, may be deemed to be reasonable in any particular instance.

## **Section 10**

NTEU Chapter 209 will receive travel and per diem funds, to the extent permitted by law, rule, or regulation, not to exceed \$3000 per fiscal year for performance of representational duties when there is no trained union representative available in the immediate office to handle the matter.

Time spent traveling to and from representational activities under this provision will be considered official time when such travel falls within the traveler's regularly scheduled tour of duty and is otherwise in accordance with applicable law, rule, and regulation.

## **ARTICLE 7**

### **LABOR-MANAGEMENT RELATIONS COMMITTEE**

#### **Section 1**

The Parties recognize that the execution of a negotiated agreement is but one act of joint labor-management cooperation and that the success of a labor-management relationship is further promoted if a forum is available and used to communicate with each other. With this in mind, the Parties agree to establish a joint Labor-Management Relations Committee for the purpose of exchanging information and discussing matters of concern or interest to each of them and to advise and make recommendations to the Employer in the broad area of personnel policy or practice, including such matters as labor management relations, equal employment opportunity, safety and health, upward mobility, career ladder opportunities, job swaps, and training.

#### **Section 2**

The Labor-Management Relations Committee shall consist of two (2) core members, the Chapter 209 President and the Chief of LRPMS, and four (4) permanent members, two (2) appointed by the Union and two appointed by the Employer. Either Party may, at its option and with advance notice to the other Party, have an additional person(s) attend Committee meetings who has special knowledge which will contribute to the success of the discussions.

#### **Section 3**

A. At a minimum, the core members of the Labor-Management Relations Committee shall meet on a monthly basis at times mutually agreed upon, and at other times when the Parties mutually agree there is a need. Permanent members may attend any meeting without advance notice; however, the full committee will meet three (3) times per calendar year. These meetings may be cancelled or rescheduled only by mutual consent.

B. Five workdays prior to a Committee meeting the Parties shall exchange agenda items.

#### **Section 4**

In performing the functions set forth in Section 1 of this Article, recommendations made by the Labor-Management Relations Committee to the Employer shall be made by a majority vote of the Committee members in attendance. If the Committee meeting is other than the regular monthly meeting, no recommendations shall be made by the Committee unless each Party has adequate advance notice of the meeting, the specific subject matter to be discussed, and that recommendations may be voted on.

#### **Section 5**

Labor-Management Relations Committee meetings will be held during normal duty hours. The two (2) members of the Committee appointed by the Union shall receive official time in accordance with Section 6.A, 7 of Article 6 of this Agreement. For

purposes of this Section only, any Committee member who is not a chapter officer or steward will, nevertheless, receive official time pursuant to Article 6, Section 6.A, 7.

## **Section 6**

The Labor-Management Relations Committee shall not adjust, resolve, or discuss the merits or procedural aspects of individual employee complaints and/or grievances. However, in discussing general personnel policies or practices or working conditions, the Parties may cite or refer to individual complaints and/or grievances or to those general personnel policies or practices giving rise to individual complaints and/or grievances.

## **ARTICLE 8**

### **UNION FACILITIES AND SERVICES**

#### **Section 1**

A. Upon adequate advance notice by the Union, the Employer will provide meeting space, when available, for business meetings before or after office hours. It is agreed that the Union will comply with all security and housekeeping rules in effect on the Employer's premises at that time and place.

B. Upon adequate advance notice by the Union, the Employer will provide space for the placement of ballot boxes being used in conjunction with chapter officer elections governed by local chapter bylaws. However, if the Union desires to use space not under the control of the Employer (such as the entrance lobbies to the Commission's headquarter offices), the Union must make arrangements directly with the General Services Administration or the building owner/manager, as appropriate. The Union will be responsible for the placement, safety, and security of the ballot boxes.

#### **Section 2**

The Employer, upon appropriate advance request, will provide local and national Union representatives a meeting room, when available, for the following purposes:

- A. preparing or discussing a grievance;
- B. preparing for meetings with the Employer; and

C. preparing or discussing a statutory or regulatory appeal.

#### **Section 3**

A. The Employer will provide the Union with bulletin board space of approximately two feet by three feet on every floor of each FCC Washington, D.C. office building and at each FCC field post of duty. This bulletin board space will be for the Union's exclusive use under a heading entitled "NTEU Chapter 209." The Union will be responsible for the maintenance of assigned bulletin board space.

B. The Union may distribute literature on the Employer's premises during non-duty hours (including lunch periods) and in non-work areas during scheduled work hours, provided the employees distributing and receiving the materials are on their own time. In making such distribution the Union shall give the Employer's Labor Relations Officer one full workday's advance notice and ensure that 1) all the Employer's security and housekeeping requirements are complied with, and 2) there is no disruption to agency operations. Casual, isolated distribution of materials among individual employees may occur in work areas, provided both employees are on non-duty time.

C. Material which reflects adversely on the integrity or motives of any individual, other labor organizations, government agencies, or activities of the Federal government may not be posted or distributed. Moreover, the Union will not use the Employer's electronic mail system or place literature on bulletin boards to urge support for a particular

charity or to advertise the individual/personal sale of items.

#### **Section 4**

NTEU Chapter 209 will be given advance notice of orientation sessions given by the Human Resources Management Office to new employees in Washington, D.C. A Union representative will be given 30 minutes to address unit employees with respect to the Union's representational responsibilities. Such time will be scheduled contiguously with another portion of the orientation session.

#### **Section 5**

A. A copy of this Agreement will be printed by the Employer in booklet form and given to each present and future unit employee.

B. The Employer agrees to furnish NTEU Chapter 209 with 100 copies of this Agreement and the NTEU National Office with 200 copies of this Agreement.

#### **Section 6**

The Union's room number and telephone number of NTEU Chapter 209 will be available through the Employer's electronic telephone directory.

#### **Section 7**

The Employer agrees to furnish the Union, on a monthly basis for its internal use only, four copies of a list of unit employees, including names, grades, position titles, and organizational codes.

#### **Section 8**

An NTEU national field representative may, upon reasonable advance notice, visit the public areas (where they exist) maintained by the Employer at any duty station to discuss appropriate Union business with employees who are members of the bargaining units.

#### **Section 9**

The Employer agrees that each recognized chapter steward may use his/her designated telephone (other than his/her supervisor's telephone) in the steward's work area to carry out his/her representational responsibilities under this Agreement. Such telephones will not be used for the conduct of internal Union business. Telephones will be used in accordance with applicable regulations and FCC instructions.

#### **Section 10**

A. The Employer agrees to allow the Union to use the intra-agency mail system for distributing mail pertaining to Union representational matters.

B. The Employer will provide the NTEU National and Chapter 209 email access to all bargaining unit employees through its electronic mail system for representational purposes, including conducting surveys of bargaining unit employees for representational purposes, pursuant to 5 U.S.C. § 7101 et seq.

C. Upon request, Union Officers will be provided a Blackberry or similar device with email and telephone capabilities unless he/she already has one.

## **Section 11**

At FCC Headquarters, the Employer will furnish the Union with three lockable file cabinets. At any other duty station at which an officer or steward is employed, upon request, the Employer shall furnish one (1) lockable file cabinet for the Union.

## **Section 12**

In the event that additional space is acquired by the Employer for the Washington, D.C. offices, the Employer will negotiate over the provision of eating space, or other space needs, of the employees.

## **Section 13**

The Employer shall maintain the current Union offices at the FCC Headquarters, the Gettysburg Consumer Center.

## **Section 14**

The Union will have reasonable access to fax machines and copiers for use in performing representational duties. Additionally, Chapter 209 will be provided a webpage on the FCC intranet. The Chapter will be responsible for maintaining the webpage. Its format and content will comply with all FCC policies and directives concerning electronic media. It will not contain material which reflects adversely on the integrity or motives of any individual, other labor organizations, government agencies, or activities of the Federal government. Moreover, the Employer's intranet will not be used to urge support for a particular charity or to advertise the individual/personal sale of items.

## **ARTICLE 9**

### **EMPLOYEE SPACE AND FACILITIES**

#### **Section 1**

A. Notice of proposed changes in space, furniture, parking and/or physical premises shall be provided to the Union no less than thirty (30) calendar days prior to any modification and the parties will bargain in accordance with Article 45.

B. Unless otherwise agreed upon during negotiations, office space will be assigned in the following order:

1. operational requirements;
2. grade level;
3. FCC seniority;
4. Federal government seniority.

C. When space is assigned pursuant to 1.A above, all similarly situated employees (i.e., same grade or FCC seniority) shall be notified prior to any determination by the Employer of which employee will be assigned to the new space.

D. Subject to 1.A above, and the consent of all employees involved, the Employer will endeavor to accommodate employee requests to share offices.

E. The Parties agree that the Employer may reserve an office/workstation at the time an offer letter has been sent to a new hire.

F. Consistent with current practice and

absent express written agreement from an employee occupying a smaller office, the Employer will make every reasonable effort to assign employees in similar job series/grades to similarly sized workspace/offices to the extent practicable.

#### **Section 2**

The Employer will ensure that each employee will have a place in which to secure personal valuables, such as purse, wallet, cash, jewelry, and keys. (The term "personal valuables" does not include such matters as radios, televisions, coffee pots; etc.) The secured place will be within a reasonable walking distance of the employee's work station and each employee will have sole access to his/her secured space.

#### **Section 3**

In the event of office relocation or renovation, the Employer agrees to negotiate, in accordance with the Article 45 of this Agreement on all appropriate matters.

#### **Section 4**

A. Where the Employer provides formal notice to the Union of a proposed change to employee workspace, the following information will be provided to NTEU:

1. a copy of floor plans before they are submitted to GSA;
2. a copy of building leases;
3. a copy of all action plans the Employer uses in the process of

modifying or occupying space;

4. a copy of build out requests before they are submitted to GSA; and
5. the anticipated start and completion dates of the project.

B. The parties recognize that building specifications, build out specification, floor plans and action plans used in the process of modifying or occupying are subjects to be negotiated between the parties prior to implementation.

## **Section 5**

As funds permit, the Employer shall endeavor to establish a full day care facility of sufficient size to accommodate the child care needs of all FCC Headquarters bargaining unit employees and include kitchen and bathroom facilities. On a semi-annual basis the Employer shall brief the Union as to the status of the day care facility, upon request. The Employer will provide notice to, and bargain with, the Union in accordance with Article 45 regarding the establishment of a day care facility.



## **ARTICLE 10**

### **PERSONNEL RECORDS**

#### **Section 1**

A. Each employee will, upon reasonable advance request to the Office of Human Resources, be provided access to examine any documents appearing in the employee's Official Personnel Folder (OPF), except insofar as such access is prohibited by law and/or applicable regulations. Upon request, an employee shall be provided a copy of any document contained in his/her Official Personnel Folder (OPF). Records of employees who are not located at the FCC Headquarters will be made available to employees as an electronic or paper copy of the requested document(s) within five (5) workdays. An employee who is not located at the FCC Headquarters must submit a written request to Human Resources to access his/her OPF. An employee must submit a written authorization/consent form to receive documents via email.

B. An employee's personally designated representative must have a written authorization from the employee before the representative will be permitted to:

1. examine the employee's Official Personnel Folder;
2. receive a copy of documents contained in the employee's Official Personnel Folder;

or

3. attend a discussion between the

Employer and the employee concerning the employee's Official Personnel Folder.

C. If an employee believes that incorrect material is contained in his/her Official Personnel Folder (OPF), he/she may prepare a written statement of disagreement which will be attached to the document believed to be incorrect if the document is maintained on the left (temporary) side of the Official Personnel Folder. If the document is contained on the right side of the Official Personnel Folder, the written statement of disagreement shall be filed on the left side of the OPF.

#### **Section 2**

The Official Personnel Folders of unit employees will be maintained in accordance with applicable laws and regulations.

#### **Section 3**

A. An employee who is subject to an investigation conducted by the FCC pursuant to Section 19.735-107 of the FCC Rules and Regulations will be informed when the investigation is closed. When law or appropriate regulation does not require recordation in the Official Personnel Folder (administrative determination to close, groundless charges, minor indiscretion or informal reprimand), the employee may request that such action be confirmed in writing and placed in his/her Official Personnel Folder.

B. An employee who is interviewed by the Employer in connection with an investigation conducted by the FCC pursuant to Section 19.735-107 of the

FCC Rules and Regulations will, upon request of the employee, be informed as to whether he/she is under investigation.

**ARTICLE 11**

**NOTICE TO EMPLOYEES**

**Section 1**

A bargaining unit employee who receives from the Employer a notice of proposed disciplinary action, a notice of proposed adverse action, or a notice of RIF will simultaneously receive a copy of such notification with a form attached which states in capital letters: "THIS COPY MAY, AT YOUR OPTION, BE FURNISHED TO NTEU CHAPTER 209."

**Section 2**

The Employer will make available to unit employees, upon request, information regarding FCC personnel policies, including safety and health, leave, and merit promotion.

**Section 3**

Union stewards may have an opportunity to present the following information card to new bargaining unit employees:

**NATIONAL TREASURY EMPLOYEES UNION CHAPTER 209**

The exclusive representative for all eligible employees in the FCC is Chapter 209 of the National Treasury Employees Union. So that Chapter 209 (Commonly known as NTEU) may provide maximum service to employees, NTEU invites you to furnish the following information on this self-addressed and postage paid card:

NAME:

LAST FIRST MIDDLE INITIAL

ADDRESS:

CITY STATE ZIP

SS#

HOME PHONE:

DIVISION:

BRANCH:

NTEU MEMBER: Yes No:

DUES PAID BY: WITHDRAWAL

CASH

NTEU INSURANCE:

LIFE:

ACCIDENT:

Income:

**Section 4**

The Employer agrees to provide each new bargaining unit employee with information as to what to do if injured at work. The employer will also provide each employee with a copy of the Department of Labor Publication "Questions and Answers about the Federal Employees Compensation Act", Publication CA 550 or equivalent.

## **ARTICLE 12**

### **MERIT PROMOTION AND OTHER COMPETITIVE ACTIONS IN THE COMPETITIVE SERVICE**

#### **Section 1. General Principles**

A. The purpose of this Article is to ensure that promotions and certain other placement actions to bargaining unit positions as set forth in Section 2.-,A of this Article are made on a merit basis by means of systematic and equitable procedures.

B. Actions to fill bargaining unit positions pursuant to this Article shall be based on job related criteria. Non-merit factors, on the basis of which employment discrimination is expressly prohibited by law and/or Executive Order, will not be considered in any action taken pursuant to this Article. That includes discrimination based on sex, race, religion, color, national origin, politics, age, marital status, handicapping condition (unless precluded by the physical requirements of the job) and labor organization affiliation or non-affiliation.

#### **Section 2. Coverage**

A. Consistent with 5 C.F.R. Part 335 the provisions of this section apply to all placement actions within the bargaining unit except those specifically excluded by subsection 2.C.

Examples of such action include:

1. the filling of a bargaining unit position by promotion;
2. filling a position by reassignment

or demotion with more promotion potential than any position previously held on a permanent basis;

3. filling a position by transfer or reinstatement at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service;
4. filling a position by temporary promotion for more than one hundred and twenty (120) days;
5. filling a position by reassignment if a vacancy announcement has been posted unless:
  - a. unforeseen circumstances of an extraordinary nature become known subsequent to the posting of a vacancy announcement;
  - b. a roster has been established;
  - c. the Employer uses any of the reassignment procedures described in Article 19;
6. details for more than one hundred twenty (120) days to higher graded positions or to a position with higher promotion potential; and
7. selection for training which is covered by 5 C.F.R. 335.103(5)(c)(iii).

B. When a position is filled by a placement action set forth in Section 2.-,A of this Article, applications received from individuals outside the Federal

Communications Commission who are eligible for transfer or reinstatement will be rated and ranked using the same procedures set forth in this Article, to the maximum extent practicable.

C. The following placement actions are excluded from the coverage of this Article:

1. any promotion resulting from the upgrading of a position without significant changes in the duties and responsibilities due to the issuance of a new classification standard or the correction of an initial classification error;
2. a position change permitted by reduction in force regulations;
3. consideration of a candidate not given proper consideration in a competitive promotion action (see Section 14 of this Article);
4. selections made for and promotions made under agency upward mobility procedures;
5. a career ladder promotion following an appointment under the Pathways Program.
6. repromotion to a grade or position from which an employee was demoted without personal cause and not at his/her request;
7. career ladder promotions (the Union will be provided a list of career ladders within the bargaining units);
8. Details and Temporary Promotions – These include:
  - a. the temporary promotion of a bargaining unit employee to a bargaining unit position for 120 calendar days or less;
  - b. the detailing of a bargaining unit employee for 120 calendar days or less to a bargaining unit position which has higher promotion potential than the position which the employee occupies;
  - c. the detailing of a bargaining unit employee for 120 calendar days or less to a bargaining unit position of higher grade than the position which the employee occupies;
9. promotions and other competitive actions applicable to Schedule A positions;
10. a promotion (excluding career ladder promotions) without current competition when at an earlier stage and employee was selected from an FCC or Office of Personnel Management register or under competitive procedures for an assignment intended to prepare the employee for the position being filled, and the promotion potential was initially identified at the time of recruitment;
11. accretion of duties;
12. lateral (at the same grade) transfer or reinstatement to a position with no higher promotion potential than a position an employee currently holds or previously held on a permanent

basis in the competitive service.

13. appointments made from FCC or Office of Personnel Management registers, but only insofar as the Employer has complied with Section 3.A of this Article;
14. a position change within the Federal Communications Commission from a position having known promotion potential to a position having no higher potential than the former position;
15. appointments made pursuant to direct hire authority;
16. filling of positions at entry level;
17. appointments of persons entitled to priority or special consideration under civil service laws and regulations;
18. non-competitive appointments and subsequent promotions authorized by civil service laws and regulations;

### **Section 3. Area of Consideration**

A. The parties recognize that the Employer may, at its discretion fill vacant bargaining unit positions by utilizing the procedures set forth in this Article or from any appropriate recruitment source by any appropriate means. However, when a vacant bargaining unit position is filled by a placement action covered by Section 2. A of this Article with an applicant from outside the bargaining unit, including a person certified from an FCC or Office of Personnel Management register, bargaining unit employees must have

been given the opportunity to apply for such vacancy and must have been given first consideration, pursuant to the terms of this Article.

B. Except as set forth in Section 3.C, *infra*, the minimum area of consideration for bargaining unit positions shall be agency-wide, provided, however, that the minimum area of consideration may be the local commuting area when competitively filling clerical positions in one-grade interval series in Enforcement Bureau field offices.

C. The minimum area of consideration for competitive details and competitive temporary promotions will be the local commuting area.

D. For purposes of this Section, the "local commuting area" for Washington, D.C. shall include agency facilities located at Columbia, Maryland.

### **Section 4. Vacancy Announcements**

A. Vacancy announcements will be posted prior to filling any vacancy under competitive procedures as listed under Section 2.A of this Article.

B. When the minimum area of consideration is agency-wide, internal vacancy announcements for bargaining unit positions will be posted on the Commission's automated recruitment system for a minimum of 10 working days.

C. Vacancy announcements will comply with regulatory requirements for information that must be included in vacancy announcements.

D. Employees on approved extended

absence are encouraged to establish their employee notification vacancy preferences through the Commission's automated recruitment system.

### **Section 5. Application**

A. To be considered for an announced vacancy in the area of consideration within which the employee is eligible to compete, the employee must apply online using the Commission's automated recruitment system. Employees must submit all necessary application materials identified in the announcement by the specified closing date.

B. Prior to the closing date of the vacancy an employee may request clarification on the application procedures, the completeness of their application, and their basic eligibility. Requests not responded to by the Employer prior to the closing date may still be addressed and will be handled on a case by case basis.

### **Section 6. Determining Eligibility for Consideration for Promotion and Other Competitive Actions**

A. To receive consideration for promotions and other competitive actions, applicants must demonstrate that they meet the appropriate minimum qualification standards and, if applicable, the selective factors.

B. The Employer shall be responsible for determining the minimum eligibility of applicants for promotion and other competitive actions.

### **Section 7. Rating and Ranking**

A. The Employer has decided to implement the automated ranking system described below to fill all bargaining unit positions. To utilize the automated rating and ranking system, the Employer has determined that the procedures in 7.B and 7.C below will be followed.

#### **B. Validation**

1. The ranking of applicants, completed by the automated system, will be based on the Critical Elements for the position to be filled using responses to the job-related questions completed during the automated application process. The applicant's responses to the questions will determine their potential to perform in the vacant position. Critical Element questions will be developed in accordance with 5 C.F.R. Part 300, Subpart A.
2. All information that is collected in the application process will conform to 5 C.F.R. Part 300. In addition, the Employer will ensure that this process is consistent with applicable laws, rules, and regulations.

C. The Employer shall identify the evaluation criteria which will be used to determine the relative merit of applicants for positions filled pursuant to this Article. The evaluation criteria are based on the job-related knowledge, skills, abilities, and work characteristics above and beyond minimum qualifications required by Office of Personnel Management standards. The Employer agrees that only those selective placement factors that are essential to the successful performance of the position will be

used. They will constitute a part of the minimum requirements of the position and will be part of the merit promotion file. Selective factors will be available to the Union upon request.

D. The Commission's automated recruitment system will assign a numerical score to each application based on how the applicant responds to the minimum qualification and job-specific questions. The numerical scores will be used to assign applicants to one of three groups: those which are minimally qualified, those which are fully qualified; and those which are highly qualified. In so ranking the applications, the applicant certifies the degree to which s/he possesses the knowledge, skills, and abilities necessary to the performance of the position being filled. Each application rated less than 80 shall be designated as minimally qualified. Each application rated equal to or higher than 80 but less than 90 shall be designated as fully qualified. Each application rated equal to or higher than 90 shall be designated as highly qualified.

## **Section 8. Referral and Selection**

A. The top ranked candidates will be referred to the selecting official. The number referred will be as follows:

1. Five (5) unless there is a tie at the lowest of the group, in which case all tied candidates will be referred.
2. Five (5) for the first vacancy and one (1) additional person for each additional vacancy.

B. If there are declinations from among referred candidates, a corresponding number of additional names may be added to ensure that the selecting official has an adequate number of candidates to consider.

C. The names of the best qualified candidates will be sent to the selecting official in alphabetical order. The selecting official will receive the evaluation materials for each applicant on the best qualified list, if available.

D. Any selection technique utilized by the selecting official will be uniformly applied to all referred candidates.

E. The Employer will provide first consideration to FCC employees for bargaining unit vacancies by considering the "best qualified" (BQ) candidates at all grades for which the position was announced.

1. In this regard, the Employer may simultaneously post vacancy announcements for, and separately rate, rank, and assess, as applicable, both internal and external candidates for such vacancies. However, the certificate(s) listing internal BQ candidates, as determined according to the procedures set forth in this Article, will be referred first to the selecting official for consideration.
2. Under no circumstances will the selecting official be permitted to review and/or consider external candidates prior to considering the internal BQ candidates.
3. This first consideration given to internal candidates may result in



the selection of a BQ candidate or the selecting official may decide to review external candidates before making a selection. If the selecting official reviews external candidates and decides to interview one or more of them, the selecting official must also interview all internal BQ candidates.

F. Non-competitive eligibles who applied through the competitive merit promotion vacancy announcement will be referred to the selecting official in alphabetical order on a non-competitive referral list.

G. When the selection official does not make any selection from the best qualified (BQ) list referred to him or her, upon request Human Resources will provide the specific reason(s) why no selection was made.

H. If the selecting official does not make a selection from among the best qualified applicants initially referred, the Employer may re-announce the vacancy.

I. All those who are not selected for the position will be notified.

### **Section 9. Documentation and Notification**

A. Upon conclusion of the evaluation process; a case file shall be established and maintained by the Human Resources office for at least one year.

B. All applicants will be advised as to whether they were or were not among the best qualified at the conclusion of the selection process.

C. All best qualified candidates who were not selected for a position will be

notified as to their non-selection, and advised, upon request, as to who the selectee was, if any.

D. Any employee involved in a competitive action governed by the terms of this Article will, upon request, be given the score assigned to him/her by the Commission's automated recruitment system. Such requests should be made to the Human Resources Office.

E. An employee who applies for a vacancy under this Article and is found basically ineligible will be notified at the time the ineligible determination is made. (The Parties agree that grievances filed over eligibility determinations shall not serve to delay or interfere with the continued processing of the subject personnel action.)

F. Any candidate for promotion who is not selected will, upon request, be entitled to discuss his/her qualifications with Human Resources.

### **Section 10**

The fact that an employee is the subject of a conduct investigation will not prevent or delay his/her promotion that would otherwise be made. However, the Parties agree that promotions or other personnel actions will not be effected until required security clearance eligibility is established for the position.

### **Section 11**

An employee's accumulation or approved usage of earned annual or sick leave may not be considered by the selecting official as a basis for selection,

except insofar as continued use of leave based on illness or incapacitation may be reasonably be expected to have an effect on the employee's ability to perform the job to be filled.

## **Section 12. Career Ladder Promotions**

A. Provided there is work available at the next higher level and funds are available, employees in career ladder positions will be promoted in the first pay period after:

1. they become minimally eligible to be promoted (after the last workday of the 52<sup>nd</sup> week in their positions or whatever lesser period satisfies the basic eligibility requirements);
2. they are capable of satisfactorily performing at the next higher level, and;
3. all necessary clearances and approvals are obtained.

B. For employee whose elements and standards are not different than those of the next higher grade level in the career ladder, an overall annual rating of 'pass' at the current grade level will normally satisfy the performance requirements, but does not confer entitlement to promotion.

C. The Employer shall notify an employee at least ninety (90) calendar days in advance of the date on which the employee will have satisfied minimum eligibility requirements for advancement to the next higher level in the career ladder if the employee's performance does not demonstrate the

ability to perform at the next higher level. In this case the Employer will notify the employee in writing of the following:

1. an explanation of how the employee has not demonstrated the ability to perform at the next higher level in the career ladder;
2. advice as to what the employee must do to demonstrate the ability to perform at the next higher level;
3. a statement that the employee may not be recommended for a career ladder promotion when eligible unless the employee demonstrates the ability to perform at the next higher level;
4. a statement that the supervisor will review the employee's performance no later than the time the employee is eligible for the career ladder promotion.

D. If an employee, when initially eligible, is not recommended for a career ladder promotion because of failure to demonstrate ability to perform at the next higher level, the Employer shall periodically review the work of the employee and at such time as the employee demonstrates the ability to perform at the next higher level, certify and recommend and request the employee's career ladder promotion. If there is work available to be performed at the higher level, and funds are available, the employee will receive such promotion the first pay period following all necessary clearances and approvals.

### **Section 13**

At the employee's request the Employer will make a reasonable effort to return to his/her former or like position an employee who was promoted within the last year but was subsequently found unable to perform at the higher level.

### **Section 14. Consideration of a Candidate Not Given Proper Consideration in a Competitive Promotion Action**

A. If an employee was erroneously omitted from the best qualified list for a position in the bargaining unit, he/she will receive priority consideration (i.e., certification of his/her name and qualifications to the selecting official) for the next appropriate vacancy for which he/she is qualified. An appropriate vacancy is one in the same series, at the same grade level, which has comparable promotion opportunity as the position for which the employee received improper consideration. In the event that two or more employees who are entitled to priority consideration are qualified for the same vacancy, the names of all such employees shall be certified together to the selecting official.

B. When an employee is eligible for priority consideration as a remedy for failure to receive proper consideration in a competitive promotion action, the employee should, to the extent practicable, be considered and, if possible, interviewed by the selecting official BEFORE a vacancy announcement is issued. In the event priority consideration is not given until after a vacancy announcement is issued, the employee due the priority consideration must be considered by the

selecting official before other applicants are referred for selection. If the employee is not selected, the selecting official must document this consideration, including the reason for non-selection, and this documentation must be maintained as part of the official promotion file. Supervisors must have valid job-related reasons for non-selection and these reasons must be documented.

## **ARTICLE 13**

### **PROMOTIONS AND OTHER ACTIONS FOR ATTORNEYS**

#### **Section 1. General Principles**

A. The purpose of this Article is to ensure that promotions and certain other placement actions to Schedule A, Attorney positions in the bargaining unit, as set forth in Section 2.A of this Article, are made in a systematic and equitable manner.

B. Actions to fill bargaining unit positions pursuant to this Article shall be based on job-related criteria. Non-merit factors, on the basis of which employment discrimination is expressly prohibited by law and/or Executive Order, will not be considered in any action taken pursuant to this Article. That includes discrimination based on sex, race, religion, color, national origin, politics, age, marital status, handicapping condition (unless precluded by the physical requirements of the job) and labor organization affiliation or non-affiliation.

#### **Section 2. Coverage**

A. This Article applies to the following placement actions:

1. the filling of a bargaining unit position by competitive promotion;
2. the filling of a bargaining unit position with known promotion potential by reassignment or voluntary demotion;
3. the appointment to a bargaining

unit position when the appointee has not previously held a position at or above the grade of the position to which appointed;

4. the filling of a bargaining unit position by temporary promotion if for more than 120 calendar days;
5. selecting bargaining unit employees for training which is given primarily to prepare employees for promotion to bargaining unit positions;
6. detailing of a bargaining unit employee for more than 120 calendar days to a bargaining unit position of higher grade than the position which the employee occupies;
7. detailing of a bargaining unit employee for more than 120 calendar days to a bargaining unit position which has higher promotion potential other than the position which the employee occupies.

B. When a position is filled by a placement action set forth in Section 2.A of this Article, applications received from individuals outside the Federal Communications Commission who are eligible for appointment will be evaluated using the same procedures set forth in this Article, to the maximum extent practicable.

C. The following placement actions are excluded from the coverage of this Article:

1. any promotion resulting from the

- upgrading of a position without significant changes in the duties and responsibilities due to the issuance of a new classification standard or the correction of an initial classification error;
2. a position change permitted by reduction in force regulations;
  3. re-promotion to a grade or position from which an employee was demoted without personal cause and not at his/her request;
  4. career ladder promotions (the Union will be provided a list of career ladders within the bargaining unit);
  5.
    - a. the temporary promotion of a bargaining unit employee to a bargaining unit position for 120 calendar days or less;
    - b. the detailing of a bargaining unit employee for 120 calendar days or less to a bargaining unit position which has higher promotion potential than the position which the employee occupies;
    - c. the detailing of a bargaining unit employee for 120 calendar days or less to a bargaining unit position of higher grade than the position which the employee occupies;
  6. a promotion resulting from an employee's position being reclassified in a higher grade because of additional duties and responsibilities, provided most of the duties and responsibilities of the former position are absorbed administratively in the new position;
  7. appointment to a position no higher than the highest permanent grade, previously held;
  8. appointment at the career ladder or lower;
  9. a position change from a position having known promotion potential to a position having no higher potential than the former permanent position;
  10. Notwithstanding the provisions of Section 3.A of this Article, when the Employer contemplates filling a bargaining unit vacancy within an established career ladder, attorneys in the bargaining unit concurrently will be given the opportunity to apply for non-competitive consideration for the vacancy. Employees will be advised of the opportunity to apply for such vacancies by means of an informational posting. Selections made under this provision shall not be based on personal favoritism, discrimination, or other non-merit factors;
  11. consideration of a candidate not given proper consideration in a competitive promotion action (see Section 13 of this Article);
  12. a promotion (excluding career ladder promotions) without current competition when at an earlier stage an employee was

selected under competitive procedures set forth in this Article for an assignment intended to prepare the employee for the position being filled, and the promotion potential was initially identified at the time of recruitment;

13. appointment of persons entitled to priority or special consideration under civil service laws and regulations;\_

### **Section 3. Area of Consideration**

A. The Parties recognize that the Employer may, at its discretion, fill vacant bargaining unit positions by utilizing the procedures set forth in this Article or from any appropriate recruitment source by any appropriate means. However, when a vacant bargaining unit position is filled by a placement action covered by Section 2,A of this Article with an applicant from outside the bargaining unit, bargaining unit employees must have been given the opportunity to apply for such vacancy and must have been given first consideration, pursuant to the terms of this Article, with such outside applicants.

B. The minimum area of consideration for bargaining unit employees for actions under this Article will be Washington, D.C.

### **Section 4. Vacancy Announcements**

A. Vacancy announcements will be posted prior to filling any vacancy pursuant to a personnel action under Section 2, A of this Article.

B. Vacancy announcements will be

posted on the Commission's automated recruitment system for a minimum of five working days.

C. Vacancy announcements will include at least the following information: announcement number, title, series, grade, location of position, promotion potential, area of consideration, description of duties, required qualifications, and application procedures.

### **Section 5. Applications**

To be considered for an announced vacancy in the area of consideration within which the employee is eligible to compete, the employee must apply online using the Commission's automated recruitment system. Employees must submit all necessary application materials identified in the announcement by the specified closing date.

### **Section 6. Evaluation**

A. In advance of the posting of a vacancy (s), the selecting official will place with his/her Administrative Office a brief statement of the evaluation criteria for evaluating the candidates for the vacant position, over his/her signature, and the date. "Evaluation Criteria" are those broad-based, job-related knowledge, skills, abilities, and work characteristics that are important to the job to be filled.

B. All "Evaluation Criteria," as described in 6, A above, will be set forth in the vacancy announcement for the position to be filled.

- C. All applicants who meet the minimum qualifications for the position will be referred to the selecting official who will then consider the candidates by applying the "Evaluation Criteria". Only those "Evaluation Criteria" expressly contained in the vacancy announcement may be used to consider any candidate. All applicants will be evaluated upon all of the "Evaluation Criteria".
- D. The agency shall make a written record of each objective evaluation criterion as applied to each bargaining unit candidate. It shall also indicate all applicants interviewed and the individual selected for the position. For the applicant selected, the employer will prepare a brief statement applying each evaluation criterion (objective and subjective) that served as the basis for selection.

**Section 7. Referral and Selection**

- A. The names of the best qualified candidates will be sent to the selecting official in alphabetical order. The selecting official will receive the evaluation materials for each applicant on the best qualified list, if available.
- B. Any selection technique utilized by the selecting official will be uniformly applied to all referred candidates.
- C. The Employer will provide first consideration to FCC employees for bargaining unit vacancies by considering the "best qualified" (BQ) candidates at all grades for which the position was announced.

1. In this regard, the Employer may simultaneously post

vacancy announcements for, and separately rate, rank, and assess, as applicable, both internal and external candidates for such vacancies. However, the certificate(s) listing internal BQ candidates, as determined according to the procedures set forth in this Article, will be referred first to the selecting official for consideration.

2. Under no circumstances will the selecting official be permitted to review and/or consider external candidates prior to considering the internal BQ candidates.
3. This first consideration given to internal candidates may result in the selection of a BQ candidate or the selecting official may decide to review external candidates before making a selection. If the selecting official reviews external candidates and decides to interview one or more of them, the selecting official must also interview all internal BQ candidates.

D. Non-competitive eligibles who applied through the competitive merit promotion vacancy announcement will be referred to the selecting official in alphabetical order on a non-competitive referral list.

E. If the selecting official does not make a selection from among the best qualified applicants initially referred, the Employer may re-announce the vacancy.

**Section 8. Documentation and Notification**

A. Upon conclusion of the evaluation

process, a case file shall be established and maintained by the Human Resources office for at least one year.

B. All qualified candidates who were not selected for a position will be notified in writing as to their non-selection, and advised, upon request, as to whom the selectee was, if any.

C. An employee who applies for a vacancy under this Article and is found basically ineligible will be notified at the time the ineligible determination is made. (The Parties agree that grievances filed over eligibility determinations shall not serve to delay or interfere with the continued processing of the subject personnel action.)

D. Any candidate for promotion who is not selected will, upon request, be entitled to discuss his/her qualifications with Human Resources.

### **Section 9**

The fact that an employee is the subject of a conduct investigation will not prevent or delay his/her promotion that would otherwise be made. However, the Parties agree that promotion or other personnel actions will not be effected until required security clearance eligibility is established for the position.

### **Section 10**

An employee's accumulation or approved usage of earned annual or sick leave may not be considered by either the evaluating or selecting official as a basis for selection, except insofar as continued use of leave based on illness or incapacitation may reasonably

be expected to have an effect on the employee's ability to perform the job to be filled.

### **Section 11. Career Ladder Promotions**

A. Provide there is work available at the next higher level and funds are available, employees in career ladder positions will be promoted in the first pay period after:

1. they become minimally eligible to be promoted (after the last workday of the 52<sup>nd</sup> week in their positions or whatever lesser period satisfies the basic eligibility requirements);
2. they are capable of satisfactorily performing at the next higher level; and
3. all necessary clearances and approvals are obtained.

B. For employee whose elements and standards are not different than those of the next higher grade level in the career ladder, an overall annual rating of 'pass' at the current grade level will normally satisfy the performance requirements, but does not confer entitlement to promotion.

C. The Employer shall notify an employee at least ninety (90) calendar days in advance of the date on which the employee will have satisfied minimum eligibility requirements for advancement to the next higher level in the career ladder if the employee's performance does not demonstrate the ability to perform at the next higher level. In this case the Employer will notify the employee in writing of the following:



1. an explanation of how the employee has not demonstrated the ability to perform at the next higher level in the career ladder;
2. advice as to what the employee must do to demonstrate the ability to perform at the next higher level;
3. a statement that the employee may not be recommended for a career ladder promotion when eligible unless the employee demonstrates the ability to perform at the next higher level;
4. a statement that the supervisor will review the employee's performance no later than the time the employee is eligible for the career ladder promotion.

D. If an employee, when initially eligible, is not recommended for a career ladder promotion because of failure to demonstrate ability to perform at the next higher level, the Employer shall periodically review the work of the employee and at such time as the employee demonstrates the ability to perform at the next higher level, certify and recommend and request the employee's career ladder promotion. If there is work available to be performed at the higher level, and funds are available, the employee will receive such promotion the first pay period following all necessary clearances and approvals.

## **Section 12**

At the employee's request the Employer will make an effort to return to his/her former or like position an employee who was promoted within the last year but was subsequently found unable to perform at the higher level.

## **Section 13. Consideration of a Candidate Not Given Proper Consideration in a Competitive Promotion Action**

A. If an employee was erroneously omitted from the best qualified list for a position in the bargaining unit, he/she will receive priority consideration (i.e., certification of his/her name and qualifications to the selecting official) for the next appropriate vacancy for which he/she is qualified. An appropriate vacancy is one in the same series, at the same grade level, which has comparable promotion opportunity as the position for which the employee received improper consideration. In the event that two or more employees who are entitled to priority consideration are qualified for the same vacancy, the names of all such employees shall be certified together to the selecting official.

B. When an employee is eligible for priority consideration as a remedy for failure to receive proper consideration in a competitive promotion action, the employee should, to the extent practicable, be considered and, if possible, interviewed by the selecting official BEFORE a vacancy announcement is issued. In the event priority consideration is not given until after a vacancy announcement is issued, the employee due the priority consideration must be considered by the

selecting official before other applicants are referred for selection. If the employee is not selected, the selecting official must document his/her consideration, including the reason for non-selection, and this documentation must be maintained as part of the official promotion file. Supervisors must have valid job related reasons for non-selection and these reasons must be documented.

## **ARTICLE 14**

### **UPWARD MOBILITY**

#### **Section 1. General Provisions**

##### **A. Purpose and Objectives**

In recognition of the policies set forth in Public Law 92-261 and Executive Order 13152, and in recognition of the benefits of maximizing the utilization of Commission employees and enabling employees to realize their potential by increasing opportunities for development and advancement, the Union and the Employer do hereby enter into this collective bargaining agreement governing the Upward Mobility Program for bargaining unit employees of the Commission.

##### **B. Definitions**

1. Upward Mobility. The systematic effort, as established in this Agreement, to ensure that career opportunities are made available to bargaining unit employees in positions classified at one-grade intervals at GS-9 and below, or the equivalent in Federal wage system positions, who are in positions or occupational series which do not enable them to realize their full work potential. The career opportunities to be made available, through the procedures contained in this Agreement, are to occupational series or positions in the bargaining units which afford greater growth potential for the employee. Two facets of upward mobility are as follows:

- a. Better Utilization Efforts. This applies to employees whose education and/or experience are not fully utilized in their present positions, and who currently meet qualification standards for other greater growth potential positions in the Commission offering.
  - b. Developmental Efforts. This applies to employees with potential who can be developed through specialized training and work experience (provided through an Individual Training Plan) to perform at a higher level than their present positions require. These employees require additional training and/or experience to meet the qualification requirements of another occupation.
2. Potential. The ability and desire to acquire and use skills and knowledge needed to successfully perform higher level work.
  3. Job Restructuring. The technique of restructuring duties and responsibilities of positions to develop a progression of training and experience which will provide developmental opportunities for employees stymied in low-level jobs.
  4. Bridge or Trainee Position. A position which provides an employee with the opportunity through performance, formal training and/or on-the-job training to move from a position with little

or no opportunity for advancement to a technical, administrative, or professional position in an occupational area with advancement opportunities.

5. Individual Training Plan (ITP). A program of formal and/or on-the-job training, work experience, and/or other developmental efforts designed to provide an employee with qualifications that the employee does not presently possess and which are required in order to enter into and perform the duties of the target position. The ITP is developed in conformance with the Upward Mobility Training Agreement between the FCC and the Office of Personnel Management. The ITP is intended to substitute developmental efforts for normal qualification standards requirements that an employee otherwise lacks.
6. Target Position. A designated position into which an employee will be placed who is selected through upward mobility procedures and, if required, satisfactorily completes an ITP. This target position will provide greater known promotion potential to an underdeveloped or underutilized employee who is selected under upward mobility procedures.
7. One Grade Interval Series. Clerical and technician positions are in occupational series which progress in one-grade intervals; e.g., GS-5, GS-6, GS-7.

## C. Covered Employees

1. Employees who meet the following program eligibility requirements may apply for advertised developmental upward mobility vacancies which do not require meeting full qualification standards:
  - a. are employed in positions classified at one-grade intervals at GS-9 and below, or the equivalent in Federal Wage System;
  - b. have a career or career-conditional appointment, or an excepted appointment under Schedule A authority 213.3102(u) or a Veterans Readjustment Appointment (VRA). [Selection of employees under Schedule A authority 213.3102(u) requires prior approval of the Office of Personnel Management if the physical requirement of the trainee target position are substantially different from those of their current position. VRA appointees may compete for upward mobility positions after they have completed at least one year of training under their VRA appointments]; and
  - c. demonstrate that they possess an overall background of sufficient level and quality to indicate that they have the potential ability to perform successfully in the target position after completion of the required

training, and the motivation to profit from the developmental experience.

2. Any employee whose education and/or experience is not being fully utilized in his/her present position may apply for an advertised upward mobility vacancy for which the employee already meets the qualification standards, provided he/she meets the program eligibility requirements set forth in Section 1.(C)(1) above.

#### D. Responsibilities

1. The Employer agrees that:
  - a. career counseling services and job-related counseling services concerning the upward mobility program will be provided to employees;
  - b. target positions will be identified and the procedures set forth herein will be used in staffing these positions;
  - c. where appropriate, entry level and/or trainee positions will be established in furthering the objectives of the upward mobility program;
  - d. selection criteria, training and developmental efforts, and performance requirements will relate directly to evaluating and furthering the development of employees who compete under and participate in the upward mobility program; and

- e. career ladders in which target positions are located will be restructured, as defined herein, where appropriate.

2. It shall be the responsibility of the joint Labor-Management Relations Committee, as established in Article 7 of this Agreement, to review the operation of the Upward Mobility Program, to discuss problems encountered in the implementation of the program, and as warranted, to develop ideas for improving the administration of the program.

3. Employee participants are expected to actively participate in the counseling and training process of the program and to satisfactorily complete all training and work requirements before being placed in the target position.

### **Section 2. Establishment of Upward Mobility Target Positions**

A. In order to effect the purposes and objectives of the Upward Mobility Program, the Employer shall make a good faith effort to achieve the goal of announcing as upward mobility vacancies fifteen percent of all vacancies announced annually for positions other than those indicated below:

1. positions at GS-4 grade level and below;
2. positions outside the bargaining units;

3. professional positions as defined in 5 U.S.C. Section 7103 (a)(15);
4. part time and temporary positions;
5. positions in field locations of the Enforcement Bureau.  
(Notwithstanding this exclusion of positions in EB field locations, EB management shall keep the availability of these upward mobility procedures in mind when filling positions in field locations.)

B. An annual announcement rate of ten percent or better raises a rebuttable presumption of good faith efforts by the Employer to achieve the goal of fifteen percent. In any grievance concerning the Employer's failure to achieve more than ten percent as an annual announcement rate, the Union shall bear the burden of proof to show both bad faith on the part of the Employer and damages to bargaining unit employees.

C. Failure to meet the goal of ten percent announcement will only be warranted on the basis of work requirements, staffing needs, or circumstances beyond the administrative control of the Employer.

D. Upward mobility procedures will initially be the exclusive means for announcing and processing upward mobility vacancies. If the Employer, after having announced and processed an upward mobility action, makes no selection under upward mobility procedures, the Employer shall be able to use any other appropriate procedures in considering applicants for the vacancy.

E. As the sole remedy for unwarranted failure to meet a ten percent annual announcement rate, the number of vacancies which would have otherwise been announced, but were not, will be added to the ten percent minimum annual announcement rate for the subsequent year.

F. In pursuing the goal of fifteen percent referenced in Section 2.A-D, above, the Employer will make reasonable efforts to announce upward mobility vacancies in a wide variety of appropriate occupational series and grades within those series.

G. Target positions may be no more than one grade higher than the entry level when entry is into a one-grade interval series, or two grades higher when entry is into a two-grade interval series.

H. When the Employer determines necessary, target positions may be restructured from the established position series and grade, down to the entry level needed for trainee selections.

### **Section 3**

#### **Selection Procedures for the Upward Mobility Program**

A. Vacancy announcements for upward mobility positions will indicate their status as such at the top of the announcement.

B. Vacancy announcements for upward mobility positions will be posted on the Commission's automated recruitment system for a minimum of fifteen (15) calendar days.

C. Vacancy announcements will contain, at a minimum, the following:

1. the announcement number;
2. opening and closing dates;
3. job title, series, grade, and location of the trainee and target position and area of consideration;
4. statement of equal employment opportunity;
5. brief summary of the duties of the target position;
6. statement of program eligibility requirements and qualification standards;
7. statement of evaluation and selective factors to be used;
8. a general statement of the type and duration of training that may be required in the training position;
9. statement of promotion potential; and
10. where and how to apply, and where appropriate forms may be obtained.

D. An employee who applies for a vacancy under this Article and is found basically ineligible will be notified at the time the eligibility determination is made. (The Parties agree that grievances filed over eligibility determinations shall not serve to delay or interfere with the continued processing of the subject personnel

action.)

E. To be considered for an announced vacancy in the area of consideration within which the employee is eligible to compete, the employee must apply on-line using the Commission's automated recruitment system and submit all of the material listed below:

1. a current resume,
2. a most recent job performance appraisal provided an employee has been issued an appraisal. Performance appraisals which, under agency regulations, should have been executed prior to the closing date of the vacancy announcement, but were not, may be submitted by the employee after the closing date of the announcement, but prior to the start of the evaluation process,
3. a "Supervisory Evaluation of Potential" as described in Section 3.H of this Article; and,
4. a Self-Assessment of the employee's ability to meet the evaluation and selective factors for the identified position. The self-assessment form for each announced vacancy is included in the vacancy announcement.

F. There are no restrictions on the number of vacancies for which employees may apply.

G. To receive consideration applications must be entered into the Commission's automated recruitment system by midnight eastern standard time on the

closing date of the announcement.

H. At the time of application each applicant's current supervisor will complete, in a fair and objective manner, an evaluation of the applicant's potential to perform the duties of the target position in relation to the selective and evaluation criteria. This evaluation shall be recorded on a "Supervisory Evaluation of Potential" form and shall be based on the supervisor's assessment of the applicant's potential in relation to the evaluation factors as being "superior," "above average," "average," or "little or none." These "adjective" evaluations shall be supported by written comments or explanations by the supervisor.

1. Applicants will be furnished a copy of the "Supervisory Evaluation Potential" form upon request. The employee should submit the form to his/her immediate supervisor who will complete the evaluation and return it to the employee. The applicant shall submit this "Supervisory Evaluation of Potential" along with any other applicable documents noted on the vacancy announcement.
2. If the employee's immediate supervisor is precluded from making an Evaluation of Potential by reason of absence or any other reason or has not supervised the employee for a period of at least ninety calendar days, the Evaluation shall be made by another higher level supervisory for management official familiar with the employee's work.

I. The Employer shall identify the knowledge, skills, abilities or work characteristics (hereinafter referred to as "Evaluation Factors") which will be used to determine the relative potential of each of the applicants for positions to be filled under this Article. The Employer will do this for each vacancy in advance of posting by considering the nature of the target position to be filled. The evaluation of applicants shall pertain only to their potential to perform in the target, training, or bridge position.

J. The Commission's automated recruitment system will assign a numerical score to each application based on how the applicant responds to the evaluation factors. The numerical scores will be used to assign applicants to one of three groups: those which are minimally qualified, those which are fully qualified; and those which are highly qualified. Each application rated less than 80 shall be designated as minimally qualified. Each application rated equal to or higher than 80 but less than 90 shall be designated as fully qualified. Each application rated equal to or higher than 90 shall be designated as highly qualified. The best qualified list shall be determined as described in Section M of this Article.

K. The following materials shall be used in evaluating applicants for a vacancy:

1. position description of target position;
2. resume;
3. vacancy announcement;
4. evaluation factors;



5. applicant's most recent performance appraisal;
6. Supervisory Evaluation of Potential (as described in Section 3.H of this Article); and
7. Applicant's Self-Assessment of his/her ability to meet the evaluation and selective factors of the position being filled.

In addition, the process may require written tests, work samples, or interviews when applicable, except that if such required tests, work samples, or interviews are used for one applicant, then they shall be used for all. Such tests, work samples, or interviews shall be used only to determine the potential of the applicants. However, the selecting official may consider writing or other work samples submitted voluntarily by an applicant.

L. Applicants will be evaluated by how the applicants certify the degree to which they demonstrate the potential to successfully perform the duties of the target position. The following information derived from the evaluation materials listed in Section 3.K of this Article will be considered in evaluating applicants:

1. type and quality of work experience (length of experience may be used only when it is a valid, job-related criterion or to resolve ties);
2. education, training, self-development, and other activities that are job-related or provide evidence of learning ability for training and/or target positions;

3. quality of past job performance;
- and
4. honorary and/or monetary awards received for past performance, achievements, and suggestions within the last five years.

M. The selecting official will receive a list of the best qualified applicants in alphabetical order plus their rating scores. The best qualified applicants will initially be the top five applicants plus the next additional name for each additional vacancy. For a single vacancy, up to ten applicants may be certified if certifying a lesser number results in the exclusion of equally qualified applicants; i.e., applicants being scored within one point of each other. For multiple vacancies, up to ten plus one additional applicant for each vacancy may be certified if certifying a lesser number results in the exclusion of equally qualified applicants. If, however, additional applicants are equally qualified, length of Federal service will be used to break ties.

N. The selecting official will receive the evaluation materials listed in Section 3.K of this Article. The selecting official will receive the same evaluation material for each applicant on the best qualified list, if available. Under no circumstances will the selecting official conduct a test essentially equivalent to one given to an applicant in connection with the subject vacancy. In addition, the Employer agrees that, where consistent with applicable regulations, the Personnel Office should administer all standardized tests.

O. Upon conclusion of the rating process set forth in this Article, a file shall be maintained by the Employer which contains the following:

1. the position description of the target position;
2. the vacancy announcement;
3. a composite list of all competitors which identifies those screened out as ineligible for the competition; the qualified; and the best qualified.
4. the certificate of best qualified candidates sent to the selecting official; and
5. the name of the selecting official.

P. The promotion file will be maintained by the Employer for at least two years.

Q. All applicants will be advised as to whether they were or were not among the best qualified at the conclusion of the selection process.

R. All best qualified candidates who were not selected for a position will be notified as to their non-selection, and advised upon request as to whom the selectee was, if any.

S. Any employee involved in a competitive action governed by the terms of this Article will, upon request, be given the score assigned to him/her by the Commission's automated recruitment system. Such requests should be made to the Human Resources Management office.

T. If an employee was erroneously

omitted from the best qualified list for a position in the bargaining unit, he/she will receive priority consideration (i.e., certification of his/her name and qualifications to the selecting official) for the next appropriate vacancy for which he/she is qualified. An appropriate vacancy is one in the same series, at the same grade level, which has comparable promotion opportunity as the position for which the employee received improper consideration. In the event that two or more employees who are entitled to priority consideration are qualified for the same vacancy, the names of all such employees shall be certified together to the selecting official.

U. If an employee was among the best qualified candidates, and if the performance appraisal or Supervisory Evaluation of Potential which was reviewed by the selecting official is subsequently increased, then the employee shall receive priority consideration for the next appropriate vacancy.

V. When an employee is eligible for priority consideration as a remedy for failure to receive proper consideration in a competitive promotion action, the employee should, to the extent practical, be considered and, if possible, interviewed by the selecting official BEFORE a vacancy announcement is issued. In the event priority consideration is not given until after a vacancy announcement is issued, the employee due the priority consideration must be considered by the selecting official before other applicants are referred for Selection. If the employee is not selected, the selecting official must document this consideration, including the reason for non-selection, and this

documentation must be maintained as part of the official promotion file. Non-selection shall not be based on personal favoritism, discrimination, or other non-merit factors.

#### **Section 4. Training in Connection with Developmental Efforts**

A. With respect to upward mobility developmental efforts (wherein the candidate selected does not meet the qualification requirements of the target position), an Individual Training Plan will be developed, consistent with the FCC-OPM Training Agreement, for each successful candidate whose potential has been underdeveloped. This Individual Training Plan will be developed within thirty calendar days after selection. The plan will provide for training and developmental activities which will assist the trainee in acquiring the necessary knowledge, skills, abilities, and work characteristics required for the career field at the appropriate level of the target position, and take into account the trainee's aptitudes, interests, and background. The trainee's immediate supervisor will design the plan (after obtaining through the Employer any appropriate or necessary career developmental guidance) in consultation with the employee. The plan will specify:

1. a task list of major duties and skills to be learned;
2. rotational assignments, if any, and length of assignments;
3. formal classroom instruction;
4. an outline of on-the-job training; and

5. self-directed developmental activities.

The length of the training period depends upon the grade level of the target position, requirements of the qualification standard, and the existing qualifications of the employee selected. (A sample training plan is provided in Appendix B to this Agreement.)

B. Trainees will assume the duties of the target positions upon successful completion of the Individual Training Plan, which must be completed within two years. However, in order to cover contingencies such as sick leave, emergency annual leave, or a trainee's inability to grasp a portion of the training assignment, the training period may be adjusted up to an additional three month period. Trainees who do not successfully complete the training program may be reassigned to their former positions or equivalent positions at the grade level held prior to entering the program, unless competitive procedures are required.

C. After formulation of an Individual Training Plan, a supervisory evaluation of the employee's overall development on the job and application of training received will be made quarterly (every three months). The evaluation made at the completion of six months shall be summarized in writing and provided to the employee. Other quarterly evaluations shall, at the request of the employee, be summarized in writing and provided to the employee. The employee's performance during the training period, including progress on the ITP, shall be evaluated in accordance with Article 16, "Employee Performance Appraisal System," of this

Agreement. Trainees will make written evaluations quarterly of the training program, including a self-assessment of their development. The Employer will review the written evaluations from the supervisor and the trainee and initiate action to reconcile any problem areas. A trainee's performance appraisal will include a statement as to whether the employee has successfully completed (or is successfully completing) the training. This statement will be based upon the supervisor's determination, made in a fair and objective manner, that the trainee has satisfactorily performed assignments in the training program. Failure to meet minimum standards of accomplishment in any segment of the training period is to be identified in quarterly assessment reports. The training period may be extended up to three months to permit completion of the required training.

D. Upward Mobility training shall be substituted for general or specialized experience requirements of the target position at the rate of one month of training for two months of experience.

E. A copy of all evaluations, reports, and training plans prepared in accordance with this Article pertaining to an employee shall be provided to that employee.

## **ARTICLE 15**

### **SECURITY**

#### **Section 1**

The routine use of the FCC Access Control System in FCC Buildings generates records that are used by FCC supervisors or FCC management representatives to ascertain (either confirm or refute) the time an employee is in the facility.

#### **Section 2**

In addition to the enhanced security consideration in Section 1 above, supervisors and managers may also obtain specific information from the system. When, based upon a reasonable belief, time card fraud is suspected, the Employer may access the System as part of an investigation to help determine whether an employee was in the building. Information from the System may also be retrieved to identify who was present in a building facility when a theft, assault, or other similar incident occurred.

#### **Section 3**

Only information pertaining to a particular employee under investigation will be retrieved unless there is a stated basis for accessing information on other employees.

#### **Section 4**

In accordance with 5 U.S.C. § 7114 and this Agreement, the Union may request a copy of the System Request Form and the data/information retrieved from the System.

#### **Section 5**

The Employer shall not access any data within the FCC Access Control System beyond ninety (90) days absent a demonstrated need. In such cases, the Union will be provided with notice of the action.

## **ARTICLE 16**

### **PERFORMANCE APPRAISAL PROGRAM**

#### **Section 1. Purpose and Coverage**

This Article provides for the appraisal by the Employer of the performance of duties and responsibilities by bargaining unit employees, in accordance with applicable laws and regulations. This Article implements a performance appraisal program for bargaining unit employees in the excepted and competitive service that is designed to:

- A. permit the accurate evaluation of performance in a position on the basis of criteria which is related to that position and which specifies the core competencies of that position;
- B. provide for systematic appraisal of employees and emphasize feedback communication, and employee development to improve individual and organizational performance within the FCC;
- C. evaluate and improve individual and organizational accomplishments and use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, detailing, counseling, reducing in grade, retaining, and removing employees

(Those aspects of the performance appraisal program that have been established by the Employer; e.g., the number and definition of job elements, performance factors, performance standards, and summary rating levels are included in this Article for convenience of reference.)

#### **Section 2. Definitions**

- A. Appraisal. The process under which performance is reviewed and evaluated.
- B. Appraisal Cycle. The specific dates that mark the beginning and ending of the appraisal cycle (May 1 – April 30).
- C. Appraisal Period. The established period of time for which performance will be reviewed and a rating of record will be prepared (i.e., the period of time covered by an employee's appraisal).
- D. Appraising Official. The supervisor who prepares the rating.
- E. Core Competency. A critical component of a position consisting of one or more duties and responsibilities which contribute toward accomplishing individual and organizational goals and objectives and which is of such importance that a core competency rating of "Fail" would result in an overall summary of "Fail."
- F. Element Rating. The written record of the appraisal of each core competency and the assignment of one of two rating levels.
- G. "Fail" Rating. The performance of an employee which is unacceptable in one or more core competency.
- H. Interim Rating. A required summary rating that covers a period of time less than the entire rating cycle. (The rating cycle is 52 weeks.) A summary rating is required when an employee is detailed or temporarily promoted to another position for 90-days or longer or has been reassigned from one position to

another during the appraisal period. An Interim rating must be considered in preparing the rating of record.

I. Mid-term Review. A review of the employee's progress toward achieving the performance standards and is not in itself a rating. This review is normally held mid-way through the appraisal period (November of each year) and shall be in addition to the continuous informal assessment of an employee's performance.

J. Minimum Appraisal Period. Ninety calendar days is the minimum amount of time employees must be under elements and standards before they may receive a summary rating.

K. "Pass" Rating. The performance of an employee that meets or exceeds all established standards for the fully successful level in all core competencies.

L. Performance. An employee's accomplishment of assigned work as identified in each of the core competencies of the employee's position.

M. Performance Standard. The expressed measure of the expectations or requirements established by management for a core competency at a particular rating level.

N. Rating of Record. The summary that is required on April 30 each year or at the conclusion of an extended rating period if the employee has not been under performance standards for the minimum period of ninety (90) days. This includes a written notice at any time that an employee's performance is

unacceptable on one or more core competency.

O. Summary Rating. The written or otherwise recorded appraisal of performance compared to the performance standard(s) for each core competency and the assignment of an overall summary rating level of "Pass" or "Fail."

P. Transfer Rating. A summary rating required for a bargaining unit employee who is being transferred from one agency to another agency. If the transfer is effective less than 90 days before the end of the performance appraisal period, then the transfer rating becomes the employee's rating of record.

### **Section 3. Critical Job Elements and Performance Standards**

A. Performance standards will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the position in question, consistent with the requirements of 5 U.S.C. § 4302.

B. It is the Employer's practice that, to the maximum extent feasible, performance standards are specific, observable and measurable.

C. To the extent feasible, each performance standard will describe goals in terms of quality, efficiency or timeliness, and provide a clear means of assessing whether objectives have been met.

D. Critical elements and standards will not impose absolute or unreasonable standards unless authorized by law.

## **Section 4**

### **Procedures for Communicating Performance Plans**

A. Supervisors will provide written core competencies to their employees within 30 days of the beginning of the appraisal period (FCC Form A-151, Employee Review Form).

B. Supervisors will meet with their employees at the beginning of the rating cycle to discuss the supervisor's specific job expectations and to give substance and meaning to the employee's core competencies.

C. Meaningful two-way communication about the job and the appraisal plan before the appraisal period begins and during the mid-term progress review provides the opportunity to identify problems and avoid later misunderstandings.

D. Employees and their supervisors should sign Part 2 B of the Employee Review Form (FCC Form A-151) upon completion. Employee's signatures indicate that they have been informed of the core competencies applicable to their positions, and that these criteria will be the basis of any rating for the ensuing appraisal period. When agreement on the plan cannot be reached, supervisors are responsible for deciding what is expected and informing the employee of that decision. If the employee refuses to sign the performance plan, the supervisor should so note on the plan.

### **Section 5. Mid-term Progress Review**

A formal mid-term progress review will

normally be made in November each year. Appraising officials, normally the first-line supervisor, must discuss their employees' performance with them vis-à-vis each of their identified core competencies as well as their overall performance. Employees and appraising officials must acknowledge in writing on the appraisal form that this review has occurred. They may also make written comments if so desired. This is particularly important if less than Fully Successful performance is apparent in order to document problems and efforts taken to resolve them.

## **Section 6**

The process of monitoring performance is ongoing. Therefore, the Employer will counsel employees in relation to their overall performance on an as needed basis. Such counseling will normally take place when a supervisor notices a decrease in performance and include advice or recommendations on better communicating job requirements and providing additional coaching, monitoring, mentoring, and other developmental activities, as appropriate, to help improve employee performance until the employee shows improvement. Special emphasis should be given to those cases when an employee's performance indicates a decrease in the overall rating (from "pass" to "fail").

## **Section 7**

### **Procedures for Appraising Employee Performance**

A. Employees will be given a written rating of record within thirty (30) days of the end of the appraisal period and will receive a rating of record if they have been under the core competencies for the minimum



appraisal period of ninety (90) days.

B. The appraising official is expected to have a substantive and meaningful dialog with the employee about the employee's performance and accomplishments before executing the appraisal as noted in Sub-Sections C and D below. In this meeting the appraising official should explain the extent to which the employee's performance did or did not meet his or her expectations and the employee should be encouraged to comment on his or her performance. If the appraising official has not supervised an employee for ninety (90) days, the second level supervisor or management official knowledgeable of the employee's performance should meet with the employee. After this dialogue is completed, the appraising official should proceed to execute the appraisal in accordance with Sub-Sections C and D below.

C. Appraising officials must rate employee's performance on each core competency at one of the two levels:

1. "Pass" is performance that meets or exceeds the established written fully successful standard (s) for that core competency.
2. "Fail is performance that is unacceptable for that core competency.

D. Appraising officials must then appraise and rate employees' overall performance at one of the two levels:

1. "Pass" is performance of an employee that meets or exceeds

all established standards for the fully successful level in all core competencies.

2. "Fail is performance of an employee that is unacceptable in one or more core competencies.

E. The following rules apply to determining Summary Rating Levels of overall performance:

1. Performance that is "Fail" on one or more core competencies must be given an overall Summary Rating "Fail."
2. Performance that meets or exceeds the fully successful standard for all core competencies is given an overall Summary Rating of "Pass."

F. Appraising officials' recommended ratings must be reviewed and approved by a reviewing official at a higher level in the Bureau/Office than the appraising official when an employee will be given a "Fail" Summary Rating. If the Bureau/Office Chief is the appraising official, the "Fail" rating must be approved by the Managing Director. All appraising officials and reviewing officials must sign the rating.

G. If higher level approval is required, only after the rating has been reviewed and approved, as discussed above, may the supervisor give the employee the rating. The employee should sign Part 4 of the Employee Review Form (FCC Form A-151) acknowledging receipt and may make written comments if so desired. If the employee refuses to sign the appraisal, the appraising official should so note on the rating.

H. If an employee is detailed or temporarily promoted within the Commission, and the detail or temporary promotion is expected to last ninety (90) days or longer, the employee and interim supervisor will meet to discuss the supervisor's performance expectations and to sign the Employee Review Form (A-151). This discussion will take place as soon as possible, but not later than thirty (30) calendar days after the beginning of a detail or temporary promotion. Interim summary ratings must be prepared for these details and temporary promotions.

I. If an employee is detailed outside of the Commission, a reasonable effort should be made to obtain appraisal information from the outside organization.

J. If an employee is reassigned or promoted during the annual appraisal period, an interim summary rating (a "close out" rating) must also be prepared.

K. These interim ratings, as well as ratings transferred with an employee from another agency during the appraisal period, must be considered when preparing the annual rating of record. Due weight should be given to the length of time covered by the interim summary rating or transfer rating, the nature of the assignment, and the Summary Rating Level given.

L. If employees receive a transfer or interim rating during the performance appraisal period and if those employees are not in their current position for ninety (90) days before the end of the performance appraisal period, then the transfer or

interim rating becomes the employees' rating of record.

M. When a rating of a record cannot be given on April 30, the appraisal period shall be extended for the amount of the time necessary to allow for the minimum appraisal period of ninety (90) days.

## **ARTICLE 17**

### **ACCEPTABLE LEVEL OF COMPETENCE DETERMINATIONS**

#### **Section 1**

A. This Article provides for acceptable level of competence determinations by the Employer for bargaining unit employees in General Schedule positions who are otherwise eligible for consideration for within-grade salary increases.

B. The Employer has determined that acceptable level of competence determinations will normally be made by an employee's immediate supervisor, and will be executed in a fair and objective manner. If an employee's supervisor is leaving his/her position less than ninety days before an employee's acceptable level of competence determination is due, the employee will receive a performance appraisal by the departing supervisor prior to the supervisor's departure. An in-coming supervisor shall not make a determination on an employee until the supervisor has served in the position for a minimum of ninety calendar days. If the employee's immediate supervisor is precluded from making a determination by a reason of absence or any other reason or has not supervised the employee for a period of at least ninety calendar days, the determination shall be made by another higher level supervisor or management official familiar with the employee's work.

#### **Section 2**

A. The Employer has determined that an employee is performing at an

acceptable level of competence when the employee's performance during the waiting period is at 'pass' level, as described in Article 16, Section 2.K.

B. An employee who is not being paid at the maximum rate of his/her grade is entitled to be advanced in pay to the next higher rate of basic pay upon meeting the following three requirements established by law or higher level regulation: (1) the employee must have completed the required waiting period for advancement to the next rate of his/her grade; (2) the employee may not have received an equivalent increase during the waiting period; and (3) the employee's performance must be determined to have been at an acceptable level of competence during the waiting period.

#### **Section 3**

A. The acceptable level of competence determination shall be based on an employee's performance of the duties and responsibilities of his/her assigned position or positions during the waiting period (except as noted in Section 3.C, below) and shall be communicated to the employee in writing as soon as possible after completion of the waiting period. If the determination is favorable to the employee, the determination shall be effective on the first day of the first pay period following completion of the waiting period, provided the employee has not received an equivalent increase during the waiting period.

B. The Employer shall notify an employee at least ninety (90) calendar days in advance of the date on which the employee will complete the waiting period if the employee's performance is

such that he/she might receive a negative acceptable level of competence determination. (The purpose of the ninety (90) calendar days' notice is to provide the employee that period of time to attempt to bring his/her performance up to an acceptable level of competence.) In this case the Employer will notify the employee in writing of the following:

1. an explanation of those requirements of the position in which the employee's performance falls below an acceptable level of competence;
2. advice as to what the employee must do to bring his/her performance up to an acceptable level of competence;
3. a statement that the employee may receive a negative determination of acceptable level of competence at the end of the waiting period unless performance improves to the point where the supervisor can determine that the employee's performance was of an acceptable level of competence during the waiting period;
4. a statement that the employee has a period of time not to exceed the end of the waiting period in which to bring his/her performance up to an acceptable level of competence. The failure to give an employee ninety calendar days' notice due to administrative error, mistake, similar inadvertence, or deterioration of performance within the last ninety calendar

days of the waiting period alone shall not be construed as warranting a favorable acceptable level of competence determination upon completion of the waiting period.

C. The determination described in Section 1. A, above, may be postponed when:

1. an employee has not been informed of the specific requirements for performance at an acceptable level of competence at least ninety (90) calendar days before the end of the waiting period; or
2. an employee is reduced in grade because of unacceptable performance to a position in which he/she is, or will within ninety calendar days become, eligible for consideration for a within-grade increase. Under these circumstances, the employee shall be informed that his/her determination is postponed and of the specific requirements for performance at an acceptable level of competence. The determination shall be based on a period during which the employee has had ninety (90) calendar days to demonstrate performance at an acceptable level of competence.

D. When a determination is not made on a timely basis because of administrative oversight, error or delay, any within-grade increase will be effective retroactively to the date it was properly due had it not been for administrative oversight, error or delay.

E. When the waiting period is completed during a period for which an employee is granted back pay under 5 C.F.R. Part 550, Subpart H, a within-grade increase is effective retroactively to the date it was properly due had it not been for the unjustified or unwarranted personnel action.

F. When a negative determination is made by the Employer, the Employer will make a new determination within fifty-two weeks of the end of the waiting period to which the negative determination applies. Furthermore, after a within-grade increase has been denied pursuant to this Article, and the employee subsequently demonstrates sustained performance at an acceptable level of competence, the Employer shall grant the within-grade increase.

#### **Section 4**

A. If, during the advance notice period prior to the completion of the waiting period, the employee's performance improves to the point that he/she demonstrates that he/she has performed at an acceptable level of competence during the waiting period, the Employer shall so certify, and the within-grade increase shall be granted on completion of the statutory waiting period. In such an instance, the advance written notice shall not be maintained as part of the employee's Official Personnel Folder, or any other system of records maintained by the agency.

B. If, during the advance notice period, prior to the completion of the waiting period, the employee's performance has not improved to the point that he/she has demonstrated that he/she has performed at an acceptable level of

Competence during the waiting period, the Employer will inform the employee, in writing, that his/her within-grade increase is denied, and the reasons for the negative determination, including any warnings that have been given. In addition, the decision shall inform the employee of his/her right to request that the supervisor who made the negative determination reconsider the decision. Such request for reconsideration must be submitted in writing to the supervisor within fifteen (15) calendar days of the date of receipt of the negative determination. A grievance over the denial of the within-grade increase may be filed under the negotiated grievance procedure of Article 38 of this Agreement only after the employee has received a decision on the request for reconsideration.

#### **Section 5**

When a negative determination is changed pursuant to appropriate appeals procedure, the change supersedes the negative determination.

The within-grade increase will become effective on the date it would have become effective had the supervisor made a positive determination, and the pay increase will be retroactive unless prohibited by applicable law or higher level regulations.

#### **Section 6**

An employee who receives a negative determination under this Article shall, upon request, be provided those documents, if any, used by the supervisor to substantiate the negative determination. The employee shall be able to submit written comments rebutting these documents, and such

comments shall be maintained in the same file as the documents upon which the negative determination was based.

## **ARTICLE 18**

### **DETAILS AND TEMPORARY PROMOTIONS**

#### **Section 1**

##### **A. Detail**

For the purposes of this Article, a detail is defined as the temporary assignment of an employee to a different bargaining unit position for a specified period with the employee returning to regular duties at the end of the assignment. This includes positions at higher or lower grades. An employee who is on a detail is considered to be permanently occupying his/her regular position and is not required to meet the qualifications of the temporary position.

##### **B. Non-Competitive Temporary Promotion**

Consistent with 5 C.F.R. § 335.103(c)(1)(i), a non-competitive temporary promotion is defined as the temporary assignment of an employee to a higher graded position for a specific period of time not to exceed one hundred twenty (120) days with the employee returning to his or her permanent position of record at the end of the non-competitive temporary promotion. To receive a non-competitive temporary promotion an employee must meet OPM qualifications for the temporary position and any selective placement factors.

##### **C. Reasons**

Among the reasons that employees may be detailed or non-competitively temporarily promoted are the following:

1. when temporary shortage of personnel exists;
2. where an exceptional volume of work develops and seriously interrupts the work schedule or where there is a temporary shortage of work;
3. to respond to problems associated with changes in mission or organization;
4. pending official reassignment;
5. pending description and classification of a new position;
6. to fill temporarily the positions of employees absent from work;
7. pending security clearance;
8. other conditions of a special and temporary nature.

##### **D. Detailing to Lower Graded Positions**

The detailing of personnel to lower graded positions generally is considered to be inconsistent with sound planning and management.

#### **Section 2**

A. Temporary promotions of unit employees in excess of thirty (30) consecutive calendar days to bargaining unit positions of higher grade will be processed as non-competitive temporary promotions provided the affected employee meets qualification and eligibility requirements.

B. Details and temporary promotions,

and combinations thereof during the preceding 12 (twelve) months, of bargaining unit employees in excess of 120 calendar days will be processed competitively pursuant to Article 12 of this Agreement.

are at different duty locations.

C. All temporary promotions must be documented on a SF-50. All details in excess of thirty (30) days shall be documented on a SF-52. The Employer shall provide the Union with notice of all details and temporary promotions.

### **Section 3**

An employee will not be held accountable for or be evaluated on regularly assigned duties of the position from which he/she is detailed for the period of the detail.

### **Section 4**

A. For a detail in excess of ten workdays, the detailed employee will receive a copy of the description of the position to which detailed, or a statement of duties, as applicable. The document shall include a statement of the intended length of the detail.

B. Details in excess of thirty (30) calendar days will be documented on a Standard Form 50 and/or 52, or equivalent, and a copy of the SF-50 or SF-52, or equivalent, will be furnished to the employee. A copy of the SF-50 or SF-52, or equivalent, will be maintained as a permanent record in the employee's Official Personnel Folder.

C. Reasonable notification of details will be provided to employees when such details require employees to work a different tour of duty or when the details



## **ARTICLE 19**

### **REASSIGNMENTS, REALIGNMENTS AND RELOCATIONS**

#### **Section 1. Purpose and Definitions**

A. This Article establishes procedures for making certain changes in employees' work assignments subject to applicable law, rule, and regulation.

B. For the purposes of this Article:

1. "Position" means a set of duties requiring full or part-time employment as described in the official position description.
2. "Reassignment" is defined as "a change of an employee, while serving continuously in the same agency, from one position to another without promotion or demotion." (5 C.F.R. § 210.102(b)(12)).
3. "Realignment" is defined as the movement of an employee and his/her position when;
  - a. an organizational change (such as reorganization or transfer of function) occurs;
  - b. the employee stays in the same agency and,
  - c. there is no change in the employee's position, grade or pay.
4. "Commuting Area" is defined by the Employer for the purpose of this Agreement.

5. "Enter on Duty" (EOD) means the date an employee entered on duty with FCC; (can be modified to include any prior FCC service). The FCC EOD date will not be adjusted for time spent outside of the FCC in any other Federal Service.

#### **Section 2. Procedures**

A. The Employer will notify the Union of lateral (non-competitive) reassignment opportunities affecting bargaining unit employees as they arise. If, on a case-by-case basis, there is no objection by the Union that a particular employee be reassigned, no general notification to unit employees regarding the reassignment opportunity is required. If the Union objects, the Employer will post via the Intranet for a period of five workdays each vacancy to be filled through reassignment and the minimum qualifications employees must possess to volunteer for the vacancy. Qualified employees may volunteer for the reassignment by contacting the appropriate Bureau/Office where the vacancy occurs.

B. Management will consider qualified volunteers based on such factors as experience, job performance, education and other relevant job qualifications and organizational need. If the qualifications and suitability of candidates are equal, the employee with the earliest FCC EOD will be selected. If there are no qualified volunteers, management will select from among eligible employees based on such factors as experience, job performance, education and other relevant job qualifications and organizational need. If the qualifications and suitability of candidates are equal,

the employee with the latest FCC EOD will be selected.

C. The Employer agrees to pay relocation expenses as required by applicable law and regulations when such law and regulations apply.

D. When a decision has been made to either reassign an employee to a different physical location, or to realign a group of employees, they will be provided a reasonable amount of administrative time to pack and unpack their belongings.

E. If an employee is reassigned, or a group of employees are realigned, out of the commuting area, they will receive a minimum of twenty (20) days advance notice of such an intended move.

F. The parties jointly commit to work together in minimizing the adverse impact on employees who are involuntarily reassigned/realigned under this Article.

### **Section 3. Hardship Relocations**

A. Consistent with workload, mission and staffing needs, the Employer will grant the request of an employee who demonstrates a significant hardship that can be relieved by relocation outside of their commuting area (including a change of duty station).

B. Employees requesting a hardship relocation will be eligible for positions to be permanently filled at the same or lower grade for which they meet OPM qualifications and selective placement factors, provided that there is a vacant position at the duty location which the Employer intends to fill.

C. Hardship relocation under this process will not entitle the employee to moving expenses, but neither will it void any independent entitlement the employee may have.

D. Employees accepting a voluntary hardship relocation will have their pay set in accordance with Government-wide regulations.

E. Employees who accept a voluntary change to a lower grade in order to receive a hardship reassignment will be assigned work commensurate with their grade level.

F. The employee must provide verifiable documentation concerning the situation or condition that gave rise to the hardship request.

G. Employees will not be eligible for hardship relocation if they are not performing at a pass level.

H. The employee may be required to recertify that the hardship still exists before an office extends an offer of a position. Employees will notify the "gaining" office of any changes in the hardship situation.

I. Where an employee is experiencing a temporary hardship, the employee may request a temporary telework arrangement, as set forth in Article 46.

J. Examples of hardship situations or circumstances are listed below. This list is not intended to be all inclusive. There may be other situations when the totality of circumstances constitutes a hardship situation. The Employer reserves the right to exercise judgment in those circumstances:

1. The employee or employee's immediate family is experiencing a significant hardship. "Immediate family" refers to spouses, parents (or legal guardians), brothers, sisters, and children. "Step" relationships and life partners are included in the definition of immediate family.
2. If medical in nature, the hardship must be serious, affecting major life functions and not treatable in the employee's current location, for example, a severe condition of hay fever which might be alleviated by relocation to another geographic area would not be considered a significant hardship unless the employee's condition cannot be alleviated or controlled by recognized medical treatment.
3. Access to a hospital that specializes in treatment of a specific life threatening disease or condition would qualify as a hardship, even though there is a general care hospital in the employee's current location.
4. Access to special educational facilities (for example, schools for hearing or visually impaired) would be considered a significant hardship if there is not an equivalent facility in the employee's present location.

K. The Employer has determined that if a "gaining" office has more than one hardship waiting for relocation, that office will offer the hardship reassignment according to the length of time that an eligible employee has been waiting. That is, the employee who can

perform the duties and meets the position requirements and who has been eligible the greatest length of time.

L. Until such time as employees who accept a voluntary downgrade achieve their previous grade, employees who apply for a position may indicate on their application that they have previously received a hardship relocation. The Employer will take into consideration prior to selection that the employee(s) have accepted a downgrade as a result of a hardship reassignment.

M. Denials of hardship requests will continue to be resolved through the grievance procedure.

## **ARTICLE 20**

### **PART-TIME AND JOB SHARING OPPORTUNITIES**

#### **Section 1**

In accordance with 5 C.F.R. 340.202, to be considered part-time for purposes of this section, an employee must have a regularly scheduled tour of duty, set in advance, of at least sixteen (16) hours but not more than thirty-two (32) hours in each administrative workweek, except as provided in Section 4.B of this Article.

#### **Section 2**

A. It is the intention of the Employer to make part-time and job sharing opportunities available consistent with the Employer's mission and staffing constraints for positions through GS-15. Accordingly, requests for part-time employment will not be unreasonably denied.

B. The Employer recognizes that part-time career employment and job sharing are particularly appropriate for the following classes of employees:

1. Older employees seeking a gradual transition into retirement;
2. Disabled individuals and others who require a reduced workweek;
3. Parents who must balance family responsibilities with the need for additional income; and
4. Students who must finance their own education and training.

#### **Section 3**

Denials of requests for any part-time employment from any employees or to share a position will be discussed with the employee and, upon request, the employee will be provided with a written statement with the specific reasons for the denial.

#### **Section 4**

Except as provided in the Federal Employees Part-Time Career Employment Act of 1978 (PTCA), and Section 5 below:

A. The tour of duty for a PTCA employee will be not less than sixteen (16) and no more than thirty-two (32) hours per week;

B. The tour of duty for a PTCA employee on an alternative work schedule may be set on the basis of thirty-two (32) to sixty-four (64) hours per pay period, but must include at least one (1) hour in each administrative workweek; and

C. A PTCA employee's tour of duty will be documented on an SF-50, Notification of Personnel Action.

#### **Section 5**

An increase of a PTCA employee's tour of duty above thirty-two (32) hours per week or sixty-four (64) hours per pay period is not permitted for more than two (2) consecutive pay periods.

#### **Section 6**

A. In accordance with 5 U.S.C. § 3403(a), the Employer will not abolish

any position occupied by an employee in order to make the duties of such a position to be performed on a part-time or job sharing basis.

B. Subsection 6.A above does not preclude the Employer from permitting a full-time employee from voluntarily changing to a part-time work schedule.

### **Section 7**

In accordance with 5 U.S.C. § 3403(b), any person who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.

### **Section 8**

A part-time employee receives a full year of service credit for each calendar year worked (regardless of tour of duty) for the purpose of computing service for retention, retirement, career tenure, completion of probationary period, within-grade increases and leave accrual rate.

### **Section 9**

A part-time employee is relieved from duty without charge to leave on the same designated or "in lieu of" holiday as full-time employees.

### **Section 10**

Before an employee is assigned to a part-time or job sharing position, the Employer will brief the employee on the impact of this assignment on the following: retirement, RIF, health and life insurance, promotion and step increases.

### **Section 11**

An employee's work schedule/tour of duty is not a merit factor and shall not be considered in connection with any promotion action.

## **ARTICLE 21**

### **TRAINING**

#### **Section 1**

The Employer and the Union agree that the training and development of unit employees is a matter of significant importance in carrying out the mission of the Employer. In recognition of this, the Employer will, within budgetary limitations, make available to employees the training the Employer determines is necessary for the performance of officially assigned duties.

Notwithstanding the Employer's right to determine the training necessary for the performance of officially assigned duties, an employee may raise lack of training as a defense in an action taken under 5 U.S.C. § 4303, the denial of a within-grade increase under Article 17 of this Agreement, or the denial of a career ladder promotion under Articles 12 and 13 of this Agreement.

#### **Section 2**

Notice of training opportunities will be distributed electronically to all bargaining unit employees and course offerings will be advertised in the FCC University online catalogue.

#### **Section 3**

The Employer agrees that when an employee is reassigned to another unit position as a result of his/her former unit position being eliminated, the Employer will provide training which the Employer determines is necessary for the employee to perform the duties of the new position. Notwithstanding the Employer's right to determine the

training necessary for the performance of officially assigned duties, an employee may raise lack of training as a defense in an action taken under 5 U.S.C. § 4303, the denial of a within-grade increase under Article 16 of this Agreement, or the denial of a career ladder promotion under Articles 12 and 13 of this Agreement.

#### **Section 4**

All expenses authorized by the Employer for necessary training outside the Federal Communications Commission will be paid by the Employer under the following circumstances:

A. the training will enable the employee to increase his/her ability to perform his/her current job or a job the employee has been selected to fill in accordance with the merit promotion plan and his/her job-related career development plan;

B. comparable training is not available through courses developed or sponsored by the Employer and it would be too costly for the Employer to develop a suitable program;

C. reasonable inquiry has failed to disclose suitable, adequate, and timely programs being offered by other government agencies within the local area;

D. the course meets the needs of the employee and of the Federal Communications Commission as well as or better than other courses of its nature which may also be available;

E. the course is not being taken solely

for the purpose of obtaining a degree, except that payment of expenses will not be denied when training serves to improve an employee's skills, although it may lead to a degree as well;

F. funds are available to pay for the training without deferring or cancelling higher priority commitments.

### **Section 5**

Where sufficient funds are not available to cover the cost of an employee identified training opportunity, an employee may elect to share the cost of training with the Employer.

### **Section 6**

Selection for all training outside of the Agency when the training is given primarily to prepare for advancement or when required for promotion shall be made under the competitive procedures set forth in Article 12 this Agreement.

### **Section 7**

A. The Employer agrees to assist an employee upon request in planning and following a plan of self-development.

B. To the extent that such assignments are available, and unless precluded by work requirements, work assignments which indicate an ability to perform beyond an employee's present grade level shall be distributed equitably among those bargaining unit employees who are capable of performing the assignments effectively.

### **Section 8**

The Employer agrees to allow a

bargaining unit employee to take leave without pay for up to one year after completion of five years of consecutive service with the Employer to engage in full-time, job-related study. It is understood that such requests shall have no bearing on an employee's performance appraisal and shall be granted in accordance with the following:

A. the employee's absence is not precluded by work requirements or staffing needs of the Employer;

B. the maximum number of bargaining unit employees who may receive this leave without pay at any one time is three. (If there are more eligible applicants for such leaves of absence, the length of service with the Employer will be used to determine the selection);

C. It is further understood that any applicable provisions of Article 30 of this Agreement apply to such employees, and that:

1. the course of study must be approved by the Employer as being designated to improve the job skills of the employee;
2. if the study is one which combines work with study, the work portion is subject to the outside work requirements of the Employer;
3. any costs associated with such course of study shall not be borne by the Employer;
4. the employee is expected to return to work with the Employer upon completion of the authorized period of leave without pay.

## **ARTICLE 22**

### **AWARDS**

#### **Section 1. Purpose**

A. The purpose of the awards program set forth in this Article is to recognize and reward achievements that contribute to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Federal Communications Commission.

B. The Employer will administer the awards program in accordance with applicable laws, regulations, and this Agreement.

C. The Parties recognize that there is no entitlement to an award and that all awards are subject to budgetary limitations and are made at the discretion of the Employer.

#### **Section 2. Performance Awards**

Performance awards are cash awards (other than On-the-Spot Awards) that are used to recognize:

A. the long-term achievements of an employee during the preceding 12-month rating cycle, and

B. the specific, relatively short-term, and non-recurring achievements of an individual or group of employees. These are known as special act or service awards. The criteria for justifying performance awards are set forth in Section 4.

## **Section 3**

### **Funding of Awards for Long-Term Performance**

A. The performance awards that are funded under this Section are those that recognize an employee's or group of employees' long-term achievements during the preceding 12-month rating cycle.

B. Notwithstanding the Employer's right to determine its awards budget, the Employer will establish an award pool for funding long-term performance awards for bargaining unit employees that is, based on a percentage of salary, equal to the award pool for supervisors and managers. This award pool for bargaining unit employees shall be derived as follows:

1. The Agency will ensure the percentage of funds (calculated in terms of percentage of employee salary) dedicated to awards for the bargaining unit in each Bureau (or equivalent level) will be no less than the percentage of funds (calculated in terms of percentage of employee salary) dedicated to the non-bargaining unit pool. For example, if non-unit employees received 1.5% of their total annual salary in awards, the union amount will be based on the same percentage.
2. All bargaining unit funds allocated to a Bureau (or equivalent level) shall be distributed as bargaining unit awards each year.
3. No later than September 15<sup>th</sup> of



each year of this agreement, the Employer shall provide NTEU with the funding amounts dedicated for awards, as set forth in 3.A above. This information shall include allocations for each Bureau, Division, Region, District or other similar organizational unit, as applicable.

#### **Section 4. Award Eligibility Criteria**

All nominations for performance awards must be supported by a written justification. In preparing the justification, the nominating or recommending official shall refer to the following criteria:

A. Eligibility. All FCC bargaining unit employees are eligible for performance awards. This includes employees who are on temporary appointment, temporary promotion, or on detail. To be eligible for a performance award, an employee's performance must be at the "Pass" level and meet one or more of the following eligibility criteria.

B. Description. These awards are meant to recognize employees who perform a single job-related action or series of job-related actions either within or outside normal duties that are so significant that recognition is clearly justified. The achievement must have occurred during the 12-month period prior to the nomination.

##### **C. Eligibility Criteria**

1. Contribution to the Agency's Mission. Contributions promoting competition in the communications field, protecting consumers, supporting full

access to communications services and managing the spectrum.

2. Quality Performance Contribution to meeting or surpassing organizational goals and/or improving the efficiency or effectiveness of the government.
3. Leadership. Influencing or guiding others in achieving or surpassing agency goals.
4. Creativity. Initiative, innovation or creativity in completion of work (e.g., overcoming obstacles and barriers) resulting in improved operations or services.
5. Problem Solving. Achieving results with new approaches, novel methods or in resolving issues.
6. Customer Service. Providing service to internal and/or external customers.
7. Streamlining. Achieving a reduction in paperwork and/or improving the efficiency of the work processes.
8. Special Accomplishment. Performing with efforts outside normal job responsibilities.
9. Other. Other long term performance or special act or service in the public interest in connection with official employment procedures.

#### D. Nominating Procedures

Employees may be nominated for awards at any time, including the time of their annual performance appraisal. Supervisory nominations for performance awards must include written justification and will be forwarded to a higher level official for approval.

#### **Section 5. Employee of the Year Award**

A. Establishment of Award. The Parties agree to establish an agency-wide Employee of the Year Award Program. The employer agrees to fund the award at a minimum level of \$10,000.

B. Eligibility. To be eligible for this award a bargaining unit employee's performance during the preceding twelve months must meet one or more of the eligibility criteria set forth in Section 4.C, of this Article.

C. Nominations. Nominations for this award may be made by an employee's peers, immediate supervisor, or other management representative.

D. Review of Nominations. Nominations will be reviewed by a joint union-management awards committee consisting of three union representatives and three management representatives.

1. The awards committee shall review each nomination against the eligibility criteria and decide which employees' performance was of exceptional benefit to the organization and deserve recognition as an Employee of the Year.

2. The committee shall allocate the available funds among those employees it wishes to recognize as an Employee of the Year.

3. Decisions shall be made by consensus. If a consensus cannot be reached, the nomination will not be approved.

4. The committee shall transmit its recommendations to the Chairman (or designee) for final approval.

#### **Section 6. Quality Step Increases (QSIs)**

QSIs increase an employee's basic rate of pay from one step in the grade to the next higher step. The Employer will grant these increases fairly, equitably and uniformly among unit employees as well as in accordance with regulation. One measure of fairness, equity and uniformity will be the practices used among non-unit employees. In order to be eligible for a QSI all of the following criteria must be met:

A. Employee receives a "pass" rating of record;

B. Employee demonstrates performance significantly above that expected for the position:

C. Employee must not have received a QSI in last fifty-two (52) weeks; and

D. Employee level of exceptional performance is expected to continue in the future.

## **Section 7. Other Awards**

A. Awards under this section are designed to permit managers to quickly recognize one-time and short-term efforts of employees or groups/teams that result in service of an exceptionally high quality or quantity. Examples of such efforts include situations where employees or groups/teams:

1. Produce exceptionally high quality work under tight deadlines;
2. Produce added or emergency assignments in addition to their regular duties;
3. Demonstrate exceptional courtesy or responsiveness in dealing with customers or colleagues; or
4. Exercise extraordinary initiative or creativity in addressing a critical need or difficult problem.

B. These awards may be recognized in one or a combination of the following:

1. Special Act Cash Award: Monetary award for satisfying the criteria in Section 6.A.
2. Time-Off Recognition: Time-Off recognition is time off work without charge to leave.
3. 3. Non-Traditional Awards. Non-traditional awards include items with the FCC seal, logo or another specially designed inscription related to the FCC mission/work, ranging from those approved and conferred by the

Commissioner to smaller recognition items such as paperweights. In addition, supervisors have the authority to give other non-traditional awards such as theater tickets or merchandise up to \$100.00 per award item, but no more than a total of \$400.00 per employee per calendar year.

C. Agency managers have the discretion to grant awards under this section without conducting a formal nomination process. However, when management grants an award under this section, the awardee(s) will be notified of the management official granting the award and a brief description of the basis for the award. Furthermore, when granting a Special Act Cash Award under subsection B.(1) above, employees may request and Agency managers will consider providing the award in the form of time off under subsection B.(2) in an amount with a cost equivalent to but not more than the dollar value of the award. Agency managers will exercise their discretion to approve such requests in a fair and equitable manner.

## **Section 8. Award Data**

In addition to any data to which the Union is entitled by law or regulation, the Employer will give the Union annually an electronic spreadsheet showing the following for each agency employee, including non-unit employee:

- A. Grade
- B. Annual salary (base and locality combined)

C. Series

D. Award Amount (If multiple cash awards were given each will be listed separately and in total)

E. Type of award (i.e., QSI, time-off, short-term performance, long-term performance)

F. Bureau (or office)

G. Date the award was given

Race, gender, national origin and age or year of birth award data will be provided on a composite basis FCC-wide. Requests for additional award information may be submitted in accordance with 5 U.S.C. § 7114(b)(4).

### **Section 9. Joint NTEU/FCC Annual Review of Awards Program**

To support the parties' goal of transparency and integrity in the FCC awards program, within thirty (30) days of the effective date of this agreement, the parties will form a Joint Awards Committee consisting of three (3) Union representatives and three (3) Employer representatives. The Joint Committee will meet to develop a matrix and/or form(s) to facilitate the Employer's selection of long-term performance awards recipients. In the event that the parties are unable to reach an agreement within ninety (90) days, the dispute will proceed directly to a mediator for resolution. This timeframe may be expanded by mutual agreement.

## **ARTICLE 23**

### **POSITION CLASSIFICATION**

#### **Section 1**

The Employer agrees that all bargaining unit position descriptions will accurately reflect all principal duties, responsibilities, and supervisory relationships of the position.

#### **Section 2**

A. The Employer shall provide the Union with a copy of any redescribed or amended bargaining unit position description which results in a change to the series, grade, or classification title of the position. The Union may make recommendations and present supporting evidence concerning the adequacy of such position descriptions. A position description is adequate if it states the principal duties, responsibilities, and supervisory relationships of a position sufficiently clearly and definitively to provide information necessary for its proper classification when:

1. considered by one familiar with the occupational fields involved and the application of pertinent classifications standards; and
2. supplemented by otherwise readily available and current information on the organization, functions, programs, and procedures concerned.

B. Bargaining unit employees will be permitted to review their position descriptions and to discuss any disagreement or alleged inaccuracy with

their supervisors, or if this fails to resolve the problem, with other appropriate management officials.

#### **Section 3**

The Employer will furnish to bargaining unit employees a copy of the description of the position to which they are assigned or an appropriate statement of duties as soon as possible after such assignment.

#### **Section 4**

A. A bargaining unit employee who has filed a classification review is entitled to Union representation at all levels of the review including desk audits conducted by the Employer as a result of the review. The Parties agree that the role of the representative is to provide advice and counsel to the employee and not to serve as a spokesperson for the employee.

B. A bargaining unit employee who has filed a classification review shall be free from any reprisal, penalty, harassment, or discrimination as a result of the review.

C. While a classification review or desk audit, in connection with a statutory complaint or grievance, is in process, the Employer shall not reassign duties for the sole purpose of interfering with the review process; however, in accordance with 5 U.S.C. § 7106 the Employer retains the right to reassign duties for other reasons, regardless of the outcome or potential outcome of the review or grievance.

## **ARTICLE 24**

### **REDUCTION IN FORCE**

#### **Section 1**

The provisions of this section will apply to any Reduction in Force (RIF) conducted by the Employer during the life of this Agreement. In addition, any RIF will be accomplished in accordance with laws, rules and government-wide regulations.

#### **Section 2**

A RIF is the release of a competing employee from his/her competitive level by furlough for more than thirty (30) calendar days, by separation, demotion, or reassignment requiring displacement when the release is required by lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise or reemployment or restoration rights, or reclassification of an employee's position due to erosion of duties when the reclassification will take effect after an agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within 180 days.

#### **Section 3**

When the Employer determines that RIF is necessary, the Employer will provide notice to the Union thirty (30) days in advance of bargaining, giving the approximate numbers, types and geographic locations of the position affected and the anticipated effective date.

#### **Section 4**

The parties agree to an expedited bargaining process of 120 days after the completion of notification. If an agreement is not reached at the end of this period, the parties agree that the Employer may invoke binding arbitration or submit the dispute through the statutory process prescribed by the FSLMRS (the Statute).

#### **Section 5**

Nothing stated above compromises the Union's entitlement to get the data the Statute would provide it to properly negotiate over this matter. If needed, the timelines listed above will be modified to allow time for the Employer to give the Union the data and the Union to make appropriate adjustments in its proposals and arguments. The time should not be extended more than thirty (30) days after the Employer has responded to the Union's initial request.

## **ARTICLE 25**

### **RETIREMENT**

#### **Section 1**

The Employer will provide an annual retirement information session for interested employees. In addition, upon reasonable advance notice, the Employer will provide retirement information and estimated annuity computations to unit employees.

#### **Section 2**

Upon request, each unit employee who separates will be advised by the Employer regarding benefits to which he/she may be entitled under the provisions of the Federal retirement system.

#### **Section 3**

An employee may withdraw a retirement application at any time prior to its effective date, provided the withdrawal is communicated to the Employer in writing and received by the Employer prior to the Employer having made a commitment to fill the employee's position or to abolish the position.

#### **Section 4**

The Employer will not coerce an employee to file for voluntary retirement as a substitute for adverse or disciplinary action. Explanations presented by the Employer concerning the employee's option will not be construed as coercion.

## **ARTICLE 26**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **Section 1**

The Labor-Management Relations Committee established in Article 7 of this Agreement shall have the authority to advise and make recommendations to the Employer on the continuing development and administration of the Equal Employment Opportunity Affirmative Action Plan (EEOAAP). In this respect, the Committee may:

- A. recommend to the Employer items for inclusion in the EEOAAP;
- B. review accomplishments under the EEOAAP;
- C. recommend to the Employer how action items may be attained.

#### **Section 2**

The Labor-Management Relations Committee may make recommendations to the Employer regarding the number of EEO counselors assigned to headquarters and regions.

#### **Section 3**

A. The Labor-Management Relations Committee will nominate candidates for part-time EEO counselors for consideration by the Employer. In nominating candidates to serve as EEO counselors, the Committee will, whenever possible, nominate employees who have either volunteered or who have agreed upon request to serve in this capacity, take into account

the composition of the FCC workforce, and endeavor to nominate both bargaining unit and non-bargaining unit employees. Further, the Committee will endeavor to nominate more than one candidate for each vacancy to be filled. The Parties recognize that persons selected to serve as EEO counselors must meet collateral duty qualifications specified by the Office of Personnel Management.

B. Committee nominations for EEO counselors will be made by vote of the Committee. The name of each candidate with a majority vote will be submitted to the Employer.

C. In the event the Employer does not make a selection from the list of nominees submitted by the Committee, the Committee shall submit another list which will contain additional or new names.

#### **Section 4**

The Employer will furnish NTEU Chapter 209 with a copy of EEO-related statistical data that are considered by the Employer in conjunction with the preparation of the annual EEOAAP. The statistics will encompass both bargaining unit and non-bargaining unit employees.

#### **Section 5**

Employees shall be entitled, upon request, to Union representation at all meetings with EEO counselors.

#### **Section 6**

The terms and conditions of this Article will remain in full force and effect after



the termination of this Agreement until such time as a new Agreement may modify any of the terms of this Article.

## **ARTICLE 27**

### **ANNUAL LEAVE**

#### **Section 1. General**

A. Employees shall earn annual leave in accordance with applicable laws and government-wide regulations.

B. Approval of an employee's request for annual leave will be granted when the employee has given reasonable advance notice unless the employee's service cannot be reasonably spared for the time requested consistent with workload and staffing needs. The Employer shall make every reasonable effort to grant such employee requests. Full consideration will be given to each employee's preferred vacation period.

C. Except in emergency situations, annual leave must be requested in advance, by submitting FCC Form 71, "Request for Leave or Approved Absence," or WebTA to the employee's supervisor.

#### **Section 2. Use of Annual Leave**

A. Annual leave may be used in 15 minute increments.

B. Supervisors will consider and respond to request for annual leave according to the following process:

1. Consistent with Section 1.B of this Article, employees' request for annual leave will generally be approved as received, consistent with workload and staffing needs.
2. Where an employee's request for annual leave conflicts with the requests of other employees

such that to grant leave to all who have requested it would be inconsistent with workload and staffing needs, the supervisor will inform the affected employees and will provide the reasons that one or more requests cannot be approved.

3. Affected employees will be afforded the opportunity to work out modifications to their requests that will allow more employees' requests to be approved, subject to review and approval of the supervisor.
4. If the affected employees cannot resolve the competing requests among themselves, the supervisor will approve the leave requests by FCC seniority.

C. Emergency requests for annual leave will be evaluated on a case-by-case basis.

D. In all cases where a request for annual leave is denied, the supervisor will provide the employee with the reason for the denial in writing.

E. Supervisors will allow employees to take at least three (3) consecutive weeks of earned annual leave each year unless permitting such leave will interfere with work requirements.

F. Requests for annual leave of five (5) consecutive workdays or more will be submitted as far in advance as necessary to permit the supervisor to make alternate staffing arrangements.

### **Section 3**

An employee's request for annual leave for unforeseen or emergency reasons shall be made as soon as possible by contacting the employee's immediate supervisor or other designee. An employee shall call his or her immediate supervisor at that supervisor's work number and communicate the request. If the supervisor is unavailable the employee will leave a voicemail detailing his or her request. Additionally, the employee will leave a telephone number indicating where he/she can be reached. Unless otherwise instructed the employee will call in each day to request additional leave.

### **Section 4**

Upon advance request, the Employer shall make every reasonable effort to grant, consistent with workload and staffing needs, an employee's request for annual leave which occurs on a religious holiday.

### **Section 5**

Should the Employer find it necessary to cancel previously approved leave, the supervisor will inform the employee as soon as possible and will inform the employee of the reason for the cancellation.

### **Section 6**

Upon written request employees may change annual leave previously authorized to sick leave where sick leave is appropriate subject to the terms of Article 28, Sick Leave. This requirement does not apply to situations where the law specifically allows for

substitution of annual leave for sick leave, e.g., substituting annual leave for sick leave in connection with the Leave Sharing Program.

### **Section 7**

The Employer has determined that an employee, upon request, will be granted annual leave for up to five (5) days in the case of a death in the immediate family, in accordance with this Article. Employees may also be eligible for Sick Leave consistent with Article 28, Family Leave and/or Leave Without Pay consistent with Article 30.

### **Section 8**

The Employer agrees that annual leave will be requested by the employee, scheduled and approved in accordance with 5 C.F.R. 630.308, so that employees will not lose annual leave at the end of the leave year, whenever possible, consistent with work requirements.

Employees may carry over annual leave at the end of the leave year when the annual leave was approved and scheduled in advance, and the employee was prevented from using the leave due to a business exigency and/or illness. An employee may also carry over annual leave due to administrative error which results in annual leave being forfeited through no fault of the employee.

### **Section 9**

A. An employee's annual leave balance is not relevant to the consideration of whether or not the employee should be placed on leave restriction.

B. Any and all leave restrictions

imposed by the Employer will be reviewed in writing every forty-five (45) days to determine if the circumstances giving rise to the restriction have changed.

## **Section 10**

The granting of advanced annual leave by the Employer is discretionary. However, the Employer has determined that it will grant advanced annual leave when the employee requesting advanced annual leave:

- A. Has completed the first year of his/her probationary or trial period;
- B. Has served more than ninety (90) days in his or her current appointment;
- C. Is eligible to earn annual leave;
- D. Does not request more advanced leave than would be earned during the remainder of the leave year;
- E. Is not on a leave restriction letter or has not been the subject of a leave-related action within the last twelve (12) months, and
- F. Has an outstanding advanced annual leave balance of no more than forty (40) hours and is requesting annual leave either because the employee has a serious health condition or needs to care for a family member with a serious health condition.

## **Section 11**

The Employer shall advise employees concerning the law and regulations pertaining to the forfeiture of “use-or-lose” annual leave. Such advice will be

given annually, in writing, and will be published far enough in advance of the end of the leave year to permit employees in a “use-or-lose” situation to meet the statutory and regulatory guidelines for avoiding forfeiture of annual leave.

## **ARTICLE 28**

### **SICK LEAVE**

#### **Section 1**

Unit employees shall earn and use sick leave in accordance with applicable laws and government-wide regulations. Leave may be used in fifteen (15) minute increments. Employees may not be charged sick leave without consent.

#### **Section 2**

A. Approval of sick leave will be granted to employees when they are incapacitated for the performance of their duties by such reasons as sickness, injury, pregnancy, or a period of emotional bereavement caused by the death of a close relative or equivalent.

B. Sick leave will be granted to employees under certain circumstances involving contagious diseases, as set forth in applicable laws and government-wide regulations, and for medical, dental, or optical examination or treatment when required and requested prior to the beginning of the absence.

C. Employees will be granted approval of sick leave for the care of family members in accordance with Article 30, Family Medical Leave.

D. Notice of unanticipated sick leave, not requested in advance, will be given by the employee to the supervisor as soon as possible, but not later than two (2) hours after normal time of reporting for work on the first day of absence. If the degree of illness or injury prohibits compliance with the two (2) hour limit,

the employee will report the absence as soon as possible. An employee shall call his or her immediate supervisor at that supervisor's work number and communicate the request. If the supervisor is unavailable, the employee shall leave a voicemail detailing his or her request. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so personally. Unless otherwise instructed, the employee will call in each day to request additional leave.

E. An employee's request for sick leave shall be submitted to his or her supervisor on a FCC-71, "Request for Leave or Approved Absence" form or WebTA. The Employer shall issue a timely response to all employee sick leave requests, usually within one (1) day.

#### **Section 3**

Employees are also entitled to sick leave due to emotional bereavement caused by the death of a close relative or equivalent. Normally, absence due to bereavement is charged to sick leave; an employee may not be charged Leave without Pay (LWOP) or have any leave charged against his or her Family Medical Leave Act (FMLA) entitlement, unless specifically requested by the employee and approved by the Employer.

#### **Section 4**

A. Employees may be required to furnish reasonably acceptable evidence to substantiate a request for approval of sick leave if sick leave exceeds three (3)

consecutive workdays.

B. Employees will not be required to furnish reasonably acceptable evidence to substantiate a request for approval of sick leave for periods of three (3) consecutive workdays or less except as provided for in section 4 C below.

C. Reasonable Grounds

1. Where the Employer has reasonable grounds to question whether an employee is properly using sick leave (for example, when sick leave is used frequently or in unusual patterns or circumstances). The Employer may inquire further into the matter and ask the employee to explain. If further inquiry is made by the Employer regarding diagnosis/prognosis, the employee may choose to provide this information only to employer representatives who are medically certified. Absent a reasonably acceptable explanation, the employee will be orally counseled that continued frequent use of sick leave, or use in unusual patterns or circumstances, may result in a written requirement to furnish acceptable documentation for each subsequent absence due to illness or incapacitation, regardless of duration.
2. If reasonable grounds continue to exist for questioning an employee's use of sick leave, the Employer may request that the employee provide reasonably acceptable evidence from the employee's caregiver. This

evidence will indicate that the employee is under medical care, is incapacitated for duty, and the expected duration of such incapacitation. If specific medical information such as diagnosis and prognosis is requested as part of such explanation, the employee may choose to provide this information only to Employer representatives who are medically certified.

3. If reasonable grounds continue to exist for questioning an employee's use of sick leave, the employee may be notified in writing that for a stated period (not to exceed six (6) months) no request for sick leave, or other leave in lieu of sick leave, will be approved unless supported by reasonably acceptable evidence. Any such written notice will describe the frequency, patterns, or circumstances which led to its issuance.

D. Employees who, because of illness, are released from duty, and are not subject to the restrictions of subsection 4.C above, will not be required to furnish reasonably acceptable evidence to substantiate sick leave for the day released from duty. Subsequent days of absence will be subject to the provisions of subsections 4.A, 4.B, and 4.C above.

E. Employees who are not subject to the restrictions of subsection 4.C above will not be required to furnish reasonably acceptable evidence on a continuing basis if the employee suffers from a chronic condition which does not necessarily require medical treatment although absence from work may be

necessary and the employee has previously furnished medical certification of the chronic condition. The employer may periodically require further reasonably acceptable evidence to substantiate an employee's continued sick leave use.

### **Section 5**

A. An approved absence, which would otherwise be charged to sick leave, will be charged to annual leave if requested by the employee and there is no just cause for the Employer to deny such request. Unit employees may not use sick leave as a substitute for other types of leave.

B. An employee who becomes ill while on annual leave may have the time of illness changed to sick leave provided that the employee notifies the supervisor on the first day of the illness and otherwise complies with the requirements of this Article.

### **Section 6**

The Employer has determined that requests for advanced sick leave will normally be granted when all of the following conditions are met:

A. The employee is eligible to earn sick leave;

B. The employee's request does not exceed thirty (30) workdays;

C. There is no reason to believe the employee will not return to work after having used the leave;

D. The employee has provided acceptable medical documentation of

the need for advanced sick leave;

E. The employee is adopting a child or the employee or family member has a serious health condition; and,

F. The employee is not subject to the restriction of subsection 4(C) above.

### **Section 7**

The Employer will treat as confidential any medical information given by an employee in support of a request for sick leave. The Employer may disclose such information subject to its Privacy Act obligations, for work related reasons on a need to know basis only. Sick leave records will not be made public and will be kept confidential.

### **Section 8**

The Employer will implement this Article consistent with 5 C.F.R. Part 630.

## **ARTICLE 29**

### **LEAVE FOR MATERNITY/PATERNITY PURPOSES**

#### **Section 1. Maternity Leave**

A. In addition to any leave to which the employee may be entitled to under the FMLA, employees may be granted an additional six (6) months of leave for maternity reasons.

B. For additional time granted for maternity leave not otherwise covered by the FMLA the following provisions apply:

1. Subject to the provisions of Article 28, sick leave may be used for the time due to delivery and recuperation.
2. Annual leave may be requested under the provisions of Article 27.
3. Leave without pay, credit hours, or compensatory time may be used for approved maternity leave
4. The employee may use all, a part, or none of her available annual or sick leave time.

C. The employee is responsible for notifying the supervisor of her intent to request leave for maternity reasons, including the type of leave, approximate dates and anticipated duration. Requests for leave for maternity reasons will be submitted as far in advance as possible to the employee's supervisor using WebTA or SF-71, "Request for Leave or Approved Absence." This will allow the supervisor

to prepare for any staffing adjustments necessary to compensate for the employee's absence.

D. The Employer will make a reasonable effort to accommodate a pregnant employee's request for a modification of duties or a temporary assignment when the request is supported by acceptable medical evidence.

#### **Section 2. Paternity Leave**

In addition to any entitlement to which a father may have under the FMLA or sick leave, a male employee who has provided the Employer with reasonable advance notice may be absent on part-time or full time annual leave or approved leave without pay for a reasonable period of time for the purpose of assisting or caring for his minor children or the mother of his newborn child while she is incapacitated for maternity reasons. The Employer will make every reasonable effort to accommodate an employee's request for paternity leave, consistent with workload and staffing needs.

#### **Section 3. Adoptive Leave**

An employee who has provided his/her supervisor with thirty (30) calendar days advance notice shall be granted up to thirty (30) workdays of leave from the commencement of the leave for the purpose of adopting a child. Such leave may be rescheduled based upon an unforeseen change in the adoption date.



## **ARTICLE 30**

### **FAMILY AND MEDICAL LEAVE, OTHER LEAVE PROVISIONS**

#### **Section 1. Family Medical Leave Act (FMLA)**

A. The Family Medical Leave Act (FMLA) entitles employees to take unpaid, job-protected leave for specific family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to twelve workweeks of leave in a 12-month period for:

1. the birth of a child and to care for the newborn child up to one (1) year of birth;
2. the placement with the employee of a child for adoption or foster care and to care for the newly placed child up to one (1) year of placement;
3. to care for the employee's spouse, child, or parent who has a serious health condition;
4. a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job as defined by 5 C.F.R. Part 630.
5. Qualifying exigency when the employee is the spouse, son, daughter, or parent of a military member and military member is deployed to a foreign country.

Eligible employees who are the spouse, son, daughter or parent or next of kin of a covered military member may take up to twenty-six (26) weeks of FMLA leave during a 12-month period to care for the military member who is undergoing medical treatment for a serious illness incurred or aggravated in the line of active and/or reserve duty.

B. An employee who has been approved for FMLA may elect to substitute the following paid leave for any or all of the period of unpaid leave:

1. Accrued or accumulated annual or sick leave consistent with laws and Government-wide regulations governing the granting and use of annual and sick leave, or,
2. Advanced annual or sick leave granted under Articles 27 and 28.

C. Employees may use their FMLA leave intermittently. The Employer shall not deny an employee's request to substitute paid leave described above for any or all of the period of leave without pay to which the employee is entitled under FMLA. Additionally, the Employer shall not require an employee to substitute paid leave for any or all of the period of leave without pay to which the employee is entitled under FMLA.

D. Although employees cannot substitute compensatory time or credit hours for approved FMLA leave, employees may use approved compensatory time or approved credit hours prior, or subsequent to, FMLA leave.

E. An employee must invoke entitlement

to FMLA by notifying the employer that he/she intends to take FMLA leave. When the need for FMLA leave is foreseeable, an employee should complete a request through WebTA or SF-71 "Request for Leave or Approved Absence" and submit it to his/her immediate supervisor at least thirty (30) days before the date the leave is to begin. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member, other responsible party) if the employee is unable to do so personally.

F. Once an employee submits the completed medical certification signed by a health care provider, the Employer may not request new information from the health care provider, except as permitted by applicable regulations or if updates are necessary to authorize and/or process related personnel actions, e.g., Telework agreements, advancement of leave or leave share program requests. However, with the employee's permission, the Employer's medical professional may contact the employee's health care provider for purposes of clarifying the medical certification.

G. Employee's using FMLA leave due to a chronic or a long-term condition will not be required to obtain a medical certification more than once per year. The Employer may, at its own expense, require subsequent medical recertification on a periodic basis, but not more than once every thirty (30) days.

H. If the Employer has reason to challenge the validity or diagnosis of the medical certification provided by the employee's health care provider, the Employer may require, at its own expense that the employee obtain the opinion of a second health care provider designated or approved by the employer. If the opinion of the second health care provider differs from the original certification, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or jointly approved by the Employer and the employee. The opinion of the third health care provider shall be binding on the Employer and the employee.

I. If the employee is unable to provide the required medical documentation before leave begins, or if the Employer questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Employer will grant provisional leave pending a final written medical certification.

## **Section 2. Family Friendly Leave**

A. In accordance with applicable laws, rules and regulations, the Employer will grant sick leave to an employee when the employee:

1. Provides care for a family member with a serious health condition or who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
2. Makes arrangements necessitated by the death of a

family member or attends the funeral of a family member;

3. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease, or,
4. Must be absent from duty for purposes related to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and other activities necessary to allow the adoption to proceed.

B. For purposes of this Section, the following definitions apply:

1. Family member means an individual with any of the following relationships to the employee:
2. Spouse and parents thereof;
3. Sons and daughters, and spouses thereof;
4. Parents and spouses thereof;
5. Brothers and sisters, and spouses thereof;
6. Grandparents and grandchildren, and spouses thereof;
7. Domestic partner and parents thereof, including domestic partners of any individual mentioned above; and,

8. Care for a family member with a serious health condition (as defined by 5 C.F.R. Part 630).

C. If, at the time an employee uses sick leave to care for a family member with a serious condition pursuant to this Section, he or she has used any portion of the sick leave authorized under Section 1 during that leave year, the Employer shall subtract the amount from the maximum number of hours authorized to determine the total amount of sick leave that the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted under Section 2 in a leave year, he or she is not entitled to use additional sick leave under Section 1.

D. Employees are not required to keep a balance of sick leave when using the leave described in Sections A and B above.

E. The Employer may advance a maximum of thirty (30) days of sick leave to a full-time employee in the case of serious disability or ailment of the employee or a family member or for the purposes relating to the adoption of a child. For a part-time employee (or for an employee on an uncommon tour of duty), the maximum amount of sick leave the Employer may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

### **Section 3. Other Leave Provisions**

A. Leave without pay (LWOP) is a

temporary non-pay status and absence from duty requested by the employee. Leave without pay may be taken in fifteen (15) minute increments. Employees should submit all LWOP requests on a SF-71 "Request for Leave or Approved Absence" or through WebTA.

B. LWOP is not an entitlement except as provided by the following cases:

1. Disabled veterans who are entitled to LWOP, if necessary, for medical treatment under EO 5396.
2. Reservists and National Guardsmen who are entitled to LWOP if necessary to perform military training under the provisions of the Uniformed Services Employment/ Reemployment Restoration Rights Act; or,
3. Leave provided by the Family Medical Leave Act as set forth in this Article.

C. Requests or notice for LWOP (where LWOP is an entitlement) must be submitted in writing using FCC Form 71. Requests or notices of unanticipated LWOP, not requested in advance, will be given by the employee to the supervisor as soon as possible, but not later than two (2) hours after normal time of reporting for work on the first day of absence. Additionally, the employee will leave a telephone number indicating where he/she can be reached. Upon return to duty the employee must submit a FCC Form 71. FMLA will be administered consistent with this Article.

#### **Section 4**

The Employer will consider all employee applications for leave without pay (LWOP). The Employer will administer LWOP equitably and approval or disapproval of employee requests will be made with due consideration of personal hardship and the needs of both the Employer and the employee in accordance with applicable laws, regulations and this Agreement.

#### **Section 5**

A. Any employee with five (5) years of consecutive service with the Employer is entitled to request a leave of absence of up to one (1) year to engage in full-time job-related study. A program of study will be found to be job-related if it will significantly assist the employee to do her/his current job or some other job within the FCC to which the employee can reasonably aspire. It is understood that such requests will be granted, absent severe workload disruption, if the following criteria are met:

1. If the leave of absence is one which combines work and study, the work portion is subject to the outside employment requirements of the Employer; and,
2. The employee understands that when taking such a sabbatical, the FCC expects that the employee will remain with the Employer for at least one (1) year after the leave of absence is completed.

B. The employee may use a combination of annual leave and leave without pay during the absence provided a uniform schedule for this purpose is established in advance of the absence.

## **Section 6**

A. Subject to its right to assign employees, the Employer will attempt to accomplish the following to the extent possible:

1. Place an employee returning from a leave of absence in the position held at the time that the leave of absence began;
2. Failing this, an effort will be made to place the employee in a like position in the commuting area; and
3. Failing either of the foregoing, the employee will be placed in a like position within the agency

B. Notwithstanding the above, nothing contained in this Article will restrict the Employer's ability to require the presence of an employee, pursuant to its right to assign work under 5 U.S.C. § 7106(a)(2)(B), should the Employer determine that the employee's services are necessary.

## **Section 7**

A. A leave of absence may be approved for any bargaining unit employee elected to a position of National Office of the National Treasury Employees' Union for the purpose of serving full time elected position.

B. Leaves of absence will be for a period concurrent with the term of office of the elected official and will be automatically renewed by the Employer upon notification in writing from the elected official that he/she has been reelected and wishes to continue in a leave of absence status.

C. A leave of absence will be considered for any bargaining unit employee for the purpose of serving in a full-time appointed position for the National Treasury Employees' Union. The terms of leaves of absence (LWOP) will be originally approved for a period of two (2) years. Affected individuals may have their leaves of absence (LWOP) renewed for one additional two (2) year period upon request.

D. The Parties agree that nothing in this Section will require the Employer to grant leaves of absence for the purposes enumerated in this Section to more than two (2) Commission employees at any one time.

**ARTICLE 31**

**ADMINISTRATIVE, WEATHER  
AND SAFETY, AND OTHER  
PAID LEAVE**

**Section 1**

A. For purposes of this Article, administrative leave is leave without loss of or reduction in: (1) pay, (2) leave to which an employee is otherwise entitled under law, or (3) credit for time or service; and that is not authorized under any other provision of law.

B. Administrative leave, Weather and Safety Leave, and other types of paid leave authorized by law, rule, and regulation in effect as of the date of this Agreement will be used or provided as consistent with such law, rule, and regulation.

**Section 2**

A. As a general rule, in Federal, state and local elections when voting places are not open at least three hours either before or after an employee's regular duty hours, an employee may be excused from duty by his/her supervisor so as to permit him/her to report to work three hours after the polls open or leave work three hours before the polls close, whichever requires the lesser amount of time off. If a manager refuses to allow an employee administrative time off to vote, the matter will immediately be referred to the Director, Labor Relations and Performance Management Service Center for a determination whether the granting of administrative time off is appropriate. This applies to federal and state elections where candidates are running for office, including primaries

and caucuses.

B. Under exceptional circumstances when the general rules do not permit sufficient time to vote, such as when an employee's place of voting is outside the local commuting area and the employee may not vote by absentee ballot, an employee may be excused from duty by his/her supervisor for such additional time (not to exceed eight hours) as may be needed to enable him/her to vote.

C. The Employer shall provide all employees annual notice of their rights under this section.

**Section 3**

A. Employees called for jury service shall be excused from duty for such service without charge to pay or leave. An employee shall be entitled to an excused absence for each day he/she is subject to jury duty. Employees shall provide documentation to support their absence.

B. An employee called as witness in a non-official capacity on behalf of a private party in connection with any judicial proceeding to which the United States, the District of Columbia, or a state or local government is not a party, will charge such absence to annual leave. The employee may request leave without pay.

C. An employee called as witness in any judicial proceeding will be considered on official duty if his/her appearance is authorized by the Commission.

**Section 4**

A. Upon advance request to her/his

supervisor and consistent with the Employer's workload requirements, employees will be granted up to four (4) hours of administrative leave for the purpose of donating blood. Such leave time includes the time necessary to travel to the donation site, the donation of blood, recuperation at the donation site, if needed, and the return to work if the employee's tour of duty is not over. If the employee is not accepted for blood donation, only the time necessary for the trip to and from the blood center and the time spent at the blood center as allowed on administrative leave time.

B. Employees are entitled to thirty days of paid leave each calendar year (in addition to annual or sick leave) to serve as a bone-marrow or organ donor. When requesting leave for these purposes, the employee should use WebTA or the FCC Form 71, "Request for Leave or Approved Absence," check the box marked "Other" and specify that the leave is requested for either bone-marrow or organ donation.

## **Section 5**

If an employee is unavoidably or necessarily absent for less than one hour, or tardy, the supervisor, for adequate reason, may excuse him/her without charge to leave. The Employer has determined that, when the absence or tardiness is not excused, the employee may make up the period of absence or tardiness in accordance with the Alternate Work Schedules Agreement negotiated between the Parties, unless the employee is under leave/credit hour restriction.

## **Section 6**

A. An employee, performing duties where a professional certification will be in the interest of the Employer, may be authorized by his/her supervisor an excused absence to take an examination required for such certification, provided the absence is not precluded by work requirements. Such examinations may include, but are not limited to, the CPA examination, professional engineer examination, and the bar examination.

B. In addition, an employee may be granted an excused absence to attend to matters which are prerequisites to receiving such certification; e.g., admission ceremonies or personal interviews before a professional licensing committee.

C. Excused absences granted under this Section shall be limited to a single examination for any one (1) employee for each type of certification.

D. Excused absences granted under this Section will be limited to actual time required, but not to exceed a total of three (3) workdays.

## **Section 7**

When an employee is delayed while in official travel status by reason of the breakdown of a privately owned vehicle, the use of which was determined to be advantageous to the Government, his/her per diem allowances will not be reduced and the period of delay will not be charged to leave if the period of delay was reasonable and the traveler's action following the breakdown accords with administrative instructions or was administratively approved.

## **Section 8**

Within sixty (60) days of execution of this Agreement, each employee will be provided up to six (6) hours to attend a Union-sponsored training session regarding the BNA.

## **Section 9**

A. Whenever it becomes necessary to close an office because of a weather or safety event, the Employer will make every reasonable effort to inform all employees by email, FCC Emergency Notifications, and other methods as appropriate and to the extent feasible.

B. Consistent with 5 U.S.C. 6329(a), 6329(c), and 5 C.F.R. Part 630, employees who are not participants in the FCC's telework program may be approved weather and safety leave during FCC facility closures, delayed arrivals, or early dismissals.

C. Telework Employees: Consistent with the Administrative Leave Act of 2016 and 5 C.F.R. Part 630, Subpart P, employees with telework agreements will generally not be eligible to receive Weather and Safety Leave and will be expected to telework, in accordance with law, rule, and regulations in effect as of the date of this Agreement. In the event of FCC facility closures, delayed arrivals, or early dismissals, Article 46, Section 11 will apply.

D. Closures, Delayed Arrivals, and Early Dismissals when Employees are Scheduled for an Approved Absence:

- a. Employees may be permitted to cancel pre-approved leave or paid time off when its intended purpose is frustrated by the same weather or safety event forcing the office closure. In such cases, the employee may be approved weather and safety leave for that time.
- b. The employee's supervisor may request information or documentation to show that granting weather and safety leave is appropriate in that circumstance.

## **Section 10**

Administrative leave may be granted for attendance at professional conferences.

## **Section 11**

Subject to workload considerations, the Employer shall grant an employee up to a total of four (4) hours excused absence per calendar year for the purposes of attending a health benefits fair, reviewing health benefits information and materials, receiving financial counseling and seeking supplemental retirement counseling.



## **ARTICLE 32**

### **OVERTIME**

#### **Section 1**

Unit employees who work overtime will be compensated in accordance with applicable laws and regulations.

#### **Section 2**

A. When the Employer requires overtime work by unit employees, it will be offered first to unit employees who are currently assigned to the work.

B. When the Employer assigns work to bargaining unit employees that will necessitate (mandatory) overtime, it will first seek volunteers from among those currently performing the work. In those cases where there are no volunteers, the FCC agrees to use inverse seniority to assign the overtime work. Depending on the work required, the Employer may assign mandatory overtime to a specific employee based on that employee's knowledge of the work or case involved. The Employer will endeavor to balance the distribution of mandatory overtime which is assigned to employees in the affected organization. The Employer will try to avoid the assignment of mandatory overtime to employees.

C. The Employer will give unit employees reasonable advance notice of overtime assignments if possible.

D. An employee will, upon request, be released from an overtime assignment if a replacement who is available, fully qualified for the assignment, and willing to work is found by the employee. If no such replacement is found, the

Employer will consider any personal hardship before requiring the employee to work overtime.

E. The Employer will make available to the Union, upon request, current records maintained by supervisor(s) of overtime assignments of employees to aid in resolving problems in overtime distribution.

## **ARTICLE 33**

### **SAFETY AND HEALTH**

#### **Section 1**

A. The Employer will provide and maintain safe working conditions for all employees to the extent required by the Occupational Safety and Health Act (OSHA, Public Law 91-596) and implementing regulations (29 C.F.R. 1960 et seq), and all applicable law; rule; as well as regulations that are in effect as of the effective date of this Agreement, relating to health and safety standards and requirements for federal agencies. The Employer will, to the extent of its authority, provide places of employment that are free from recognized hazards that are causing or are likely to cause illness, disease, death or serious physical harm. The Union will cooperate to that end and will encourage all employees to work in a safe manner.

B. The FCC's Safety and Occupational Health Specialist, or designee, shall conduct an in-person safety inspection annually of the FCC Headquarters building in Washington, D.C., the FCC's Gettysburg, PA office, and the FCC's Columbia, MD laboratory. NTEU will receive copies of reports from annual inspections within five (5) business days of the inspection.

C. In addition to the annual inspections described in Section 1.B, all FCC facilities will be inspected at a frequency, and in a manner determined by, the FCC's Safety and Occupational Health Specialist. NTEU may also request additional inspections. The Employer will review and consider NTEU's requests and will communicate to NTEU the outcome and/or planned course of

action, if any. In addition to in-person inspections, inspections may also be done via checklist by an individual whom the Agency has determined is qualified to conduct the inspection. Where a facility inspection is completed via checklist, the Agency official who conducted the inspection will submit the completed checklist to the FCC's Safety and Occupational Health Specialist, with a copy to the Union, within five (5) business days of the inspection.

D. The Union will be afforded at least thirty (30) days' advance notice and the opportunity to attend (with the Safety and Occupational Health Specialist or other designated official) all planned, in-person inspections performed pursuant to Section 1.B or 1.C. If the Union intends to attend an inspection, then the Union representative with an official duty station located nearest the facility to be inspected will typically attend.

E. If the Safety and Occupational Health Specialist determines a need to conduct an in-person, ad-hoc safety inspection of a facility, then the Union will be given reasonable advance notice and the opportunity to attend (with the Safety and Occupational Health Specialist or other designated official) any such ad-hoc inspection. If it is not practicable to give advance notice, the Agency will inform the Union within three (3) business days of the nature of the issue and how it was resolved. Situations where the Safety and Occupational Health Specialist determines to inspect a discrete area of an Agency facility in response to a report of a health or safety issue that may reasonably be assumed to be minor (e.g., reports of a bad smell) will

not be considered ad-hoc inspections requiring Union notification for purposes of this Section.

F. In the event an inspection reveals an issue that is not readily resolved and will prevent the employees from safely remaining at the worksite, the Employer will notify the Union and employees as soon as practicable.

G. If the Union elects to attend an in-person safety inspection under this Section, the representative must request Official Time to attend the inspection in accordance with Article 6. Such Official Time will be approved or denied in accordance with Article 6. Travel and per diem will be approved consistent with this Agreement.

H. All reports/documentation resulting from the inspections set forth in this Section will be maintained by the Employer in accordance with applicable record-retention policies. The Union may request information under 5 U.S.C. § 7114(b)(4) that it does not receive pursuant to provisions in this Article.

I. The Employer shall monitor the work environment, including, but not limited to, the chemical composition, air quality, temperature, noise, radiation levels, and maximum permissible exposure (MPE) from equipment in accordance with OSHA regulations on an as needed basis.

## **Section 2**

A. Whenever the Employer determines it becomes necessary in accordance with Section 1.A above to move an employee from a work area for a brief period of time or to send him/her home because conditions in the work area pose a threat

to the employee(s) health or physical safety, the Employer will ensure that the employee will suffer no loss of pay or benefits as a result.

B. An employee or Union representative who observes an unsafe or unhealthy condition in any FCC workplace shall report such condition to his/her immediate supervisor and should copy the FCC's Safety and Occupational Health Specialist. Upon a determination by the Employer that an unsafe or unhealthy condition exists, the Employer will take such action as is appropriate under the circumstances. When a contemporaneous and/or subsequent inspection is necessary, the procedures set forth in Section 1(E) above shall apply.

## **Section 3**

The Employer recognizes the existence of certain employee rights in accordance with 29 C.F.R. Part 1960, among them the right to be free from reprisal, including charge to leave, when employees decline to perform their assigned tasks because of a reasonable belief that, under the circumstances, the tasks pose an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established by the Employer.

## **Section 4**

A. Subject to budgetary constraints, the Employer will maintain in its headquarters office a staffed medical facility capable of providing health

services such as those set forth in this Article.

B. Subject to budgetary constraints, the Employer will provide health services to unit employees at its headquarters office. Such services may include:

1. emergency treatment for occupational illness or injury sustained on the job;
2. periodic screening and testing for selected health conditions or diseases;
3. immunizations;
4. at the discretion of the health center nurse, administration of medications, such as vitamins, anti-allergens, and vaccines when supplied by the employee and requested in writing by the employee's private physician;
5. counseling regarding health problems;
6. assistance in obtaining emergency ambulance service for any ill or injured employee who requires ambulance transport.

C. The Employer may, consistent with Article 31, grant a reasonable amount of excused absence (not to exceed one hour per visit) to unit employees located in the greater Washington, D.C. area (and to unit employees located outside the greater Washington, D.C. area where applicable) to participate in the government provided health services set forth in this Section. Employees who wish to participate in any of these health services should timely communicate and consult with their immediate supervisor

regarding the timing/scheduling of participation in health services under this Section and any associated request for excused absence. In the event a request for excused absence is denied, the employee may request to use another type of leave, which will not be unreasonably denied.

D. Confidentiality of employee health records is of prime importance and will be maintained in accordance with law and rule, as well as regulations in effect as of the effective date of this Agreement. In accordance with law, rule, and regulations in effect as of the effective date of this Agreement, the Agency will provide notice to employees when their health records have been accessed.

E. The Employer will provide first aid kits at all field offices if there are not full health facilities available on the premises and where there are volunteers to maintain the kits. The Employer will also provide first aid kits in all Government Owned Vehicles generally operated by bargaining unit employees.

F. The Employer will inform employees of defibrillator locations, to the extent they are maintained in an FCC facility or common space in a GSA-leased facility. The Union may post information educating employees on the location of defibrillators on Agency bulletin boards.

## **Section 5**

A. If a unit employee is injured in the performance of his/her duties, and the employee goes to a medical facility for treatment, the Employer will generally accept the employee's self-certification

regarding whether the employee was cleared by that medical facility to return to work on the date of injury, but may request additional information if needed. The Employer will grant excused absence for the time the employee is being evaluated at the facility and/or for immediate treatment on the date of injury in accordance with law and rule, and regulations in effect as of the effective date of this Agreement.

B. Information on filing a claim for benefits under the Federal Employees' Compensation Act ("Workers Comp"), 5 U.S.C. 8101 et seq., will be available on the FCC Intranet. If employees need more information on filing these claims, they may contact the FCC's Occupational Safety and Health Specialist.

C. When an injured employee returns to work with a medical certification signed by a physician, certifying that the employee is medically incapacitated to perform his/her normal duties due to an injury sustained in the performance of his/her duties, the Employer will consider assigning the employee temporarily to light duty for the duration of such incapacitation. The medical certification should typically contain a date by which the physician estimates that the employee is able to return to his/her normal duties. If the employee's medical provider is unable to provide a date the employee is medically cleared to return to work due to the nature of the incapacitation, the Employer may request that the employee provide additional documentation regarding the need for temporary light duty on an as needed basis to determine whether the temporary light duty should be continued. The Parties recognize that light duty assignments may not be available and

that, if such an assignment is made, it is a temporary arrangement. An employee will not receive an adverse performance appraisal or otherwise be penalized solely because he/she is assigned to light duty.

## **Section 6**

A. Subject to budgetary constraints the Employer will continue to provide or make available the Employee Assistance Program (EAP) to assist employees in addressing personal health and well-being issues.

B. The Employer will provide notice to, and bargain with, NTEU regarding any proposed changes to the EAP in accordance with Article 45, Mid-Term Negotiations.

C. The Employer recognizes that the EAP is designed to deal forthrightly with the problem at an early stage when the problem is more likely to be correctable. Employees may request, and the Agency will consider granting, up to one (1) hour of excused absence for an initial EAP appointment. If the request for excused absence is denied, the employee may request to use sick leave for this purpose, and such leave will be granted in accordance with Article 28.

D. The Employer will annually make employees aware of the EAP and available medical services provided by the Employer. In the annual notice, employees will be informed that instead of identifying the medical appointment as EAP, they may request sick leave and indicate that the purpose is for a medical appointment. In situations in which an employee's leave request is granted,

he/she may elect to stay onsite and use an assigned office or reserve a small conference room for any EAP telephone consultation. All employees, including those outside the Washington, D.C. area, may access information about EAP services through the EAP website: [www.foh4you.com](http://www.foh4you.com).

## **Section 7**

A. The Employer shall continue its efforts to ensure that the level of maintenance at working sites is reasonable and repairs are made in a timely manner.

B. The Employer will make reasonable attempts to abate, or ask the landlord to abate, any hazards or conditions the abatement of which is required by generally accepted practices and principles of industrial hygiene.

C. The Employer recognizes that there may be circumstances which give rise to a need to test office buildings for the presence of certain airborne contaminants which adversely affect the health and productivity of employees. Whenever the Employer determines that it may need to test an office building or worksite for certain airborne contaminants, the Employer will, if necessary, contact and consult with Federal Occupational Health. If such testing is determined to be necessary, required by law, and/or recommended by Federal Occupational Health, then the Employer will conduct the testing. The Employer will attempt to address or ameliorate air quality issues identified by Federal Occupational Health and/or revealed by testing, in a manner consistent with accepted practices of industrial hygiene. The Employer will notify NTEU when it conducts testing pursuant to this Section, and, in the

event an air quality issue is found, how the Employer remedied the issue. Within five (5) calendar days of receipt by the Agency, the Union shall be given a copy of air test results, as well as a copy of any documentary support for the results, which typically include data, findings, and recommendations (if any).

## **Section 8**

A. The Employer will maintain a page on the FCC's Intranet with a link on the home page containing health and safety resources, namely information relevant to employee health and safety, such as: current health news information (i.e. health alerts); emergency preparedness and Continuity of Operations plans; links to available training programs related to health and safety; worker's compensation laws and forms; ergonomics; the FCC's Drug-Free Workplace Plan; and resources regarding select health and safety topics that the Employer determines may be useful or beneficial for employees.

B. The Employer will send an annual reminder to employees regarding the existence of the health and safety resources page.

C. NTEU may suggest topics, resources, and information to post on the FCC's health and safety resources page. Nothing precludes NTEU from directly communicating with unit employees on these issues.

D. The Employer may distribute email newsletters to employees regarding health and safety topics on a schedule, and at a frequency,

determined by the Safety and Occupational Health Specialist, or designee.

E. Within 120 days of the effective date of the BNA, the Parties will, upon request by either Party, establish a standing Health and Safety Workgroup consisting of no more than three (3) members appointed by NTEU and no more than three (3) FCC representatives. The purpose of this workgroup is to establish a forum to discuss health and safety matters affecting employees. The workgroup will meet quarterly for the first year and twice a year in subsequent years, in-person or via videoconference /teleconference. The group may meet at a different frequency upon mutual agreement. Two weeks prior to any scheduled meeting, the Parties should exchange a list of topics they plan to discuss.

F. The Health and Safety Workgroup may submit any consensus recommendations regarding health and safety matters to the Safety and Occupational Health Specialist. To the extent feasible, within twenty-one days of the submission, the Safety and Occupational Health Specialist, or his/her designee, will provide a response to the recommendations.

G. The Health and Safety Workgroup may discuss any subjects related to the health and safety of employees.

H. Bargaining over health and safety matters will be handled in accordance with Article 45, Midterm Bargaining.

## **Section 9**

A. After notifying the appropriate authorities, the Employer will, unless

otherwise advised and/or directed by competent authority, promptly notify the designated NTEU representative of any bomb threat, biological threat, or terrorist threat directed at an FCC facility. The notice will include an explanation for evacuating or not evacuating the building.

B. The Employer will post on the FCC Intranet guidance regarding safety and security during active shooter situations. On an annual basis, the Employer will make employees aware of this guidance.

C. The Employer will encourage employees to subscribe to the FCC's emergency notification system as well as other available alert systems (e.g., OPM Alerts, D.C. Alerts Emergency Notification system) by sending an annual communication to employees.

D. The FCC encourages any employee concerned by a reasonably perceived or actual threat in the immediate area surrounding, or inside, an FCC office location to notify his/her immediate supervisor and the FCC Security Office. In the event of a safety event affecting an FCC facility that necessitates the involvement of law enforcement, employees should follow the applicable instructions of the Employer, Federal Protective Service, or other applicable law enforcement agencies.

E. The Employer will identify the safety representatives in each building the FCC occupies who will be responsible for reporting to the Safety and Occupational Health Specialist any hazardous or unsafe conditions which have been observed or reported.

## Section 10

Where the water has been tested by competent authority (e.g., GSA, Federal, State, or local regulators) and found to be unsafe or unhealthy for consumption, and another potable water source is not available in close proximity to the office location, the Employer will, consistent with law, provide bottled water or suitable alternative at the worksite at no charge to the employee if the unavailability of water at the worksite will continue for more than one week.

## Section 11

A. In the event of a pandemic health emergency or other crisis which requires closing or evacuating FCC buildings for a week or longer, the following provisions will apply:

1. FCC will designate a point person for Union questions and concerns. This person will be responsible for quickly and accurately responding to the Union concerning the crisis.
2. The Chapter president will be informed of the decision to implement the Agency's Continuity of Operations Plan (COOP) as soon as practicable.
3. The Union will be given a list of "mission critical" bargaining unit employees who are required to report to the office in the emergency and will be informed on measures taken to ensure the safety of these employees. NTEU may, pursuant to 5 U.S.C. § 7114(b)(4), request information regarding non-bargaining unit employees required to report to

the office.

4. When employees who generally do not have telework-ready work to perform are required to telework due to an emergency under this Section, clear instructions will be given regarding the work they are expected to do from their alternate work site. Work may be assigned without regard to employees' grade, level, or title, provided the employees have the necessary knowledge and skills to perform the assigned work.

5. During a pandemic or other similar emergency, the Employer will consider granting leave, including administrative leave or other excused absence, consistent with law and rule, as well as regulations in effect as of the effective date of this Agreement.



## **ARTICLE 34**

### **PROBATIONARY EMPLOYEES**

#### **Section 1**

The probationary or trial period of bargaining unit employees shall be twelve months.

#### **Section 2**

The supervisor of each employee serving a probationary or trial period shall certify that the employee's performance, conduct, and general character traits have been found satisfactory or that they have been found unsatisfactory. In addition, during the mid-term performance review, the supervisor will discuss the employee's progress towards completion of the probationary period.

However, nothing in this Article is to be interpreted as preventing the separation of an employee at any time during the probationary period.

#### **Section 3**

The following procedures shall be followed when the Employer determines that an employee serving a probationary or trial period is to be separated due to unsatisfactory performance, conduct and/or general character traits:

A. The employee shall receive a letter from his/her supervisor stating:

1. the date of separation; and
2. the reason(s) for the separation.

B. The letter of separation shall be hand delivered whenever possible. If the

employee is not physically available, the letter will be mailed, by certified mail return receipt requested to the employee's address of record.

C. The termination letter will advise the employee of his/her right to statutory appeal rights and will include the following:

"In addition to any right you may have to appeal to the Merit System Protection Board (MSPB), you may also have other appeal rights if your claims are within the jurisdiction of other Federal agencies."

#### **Section 4**

When separation during a probationary period is based, in whole or part, on conditions arising or conduct before employment, the following procedures will apply:

A. The probationary employee will be notified in writing ten (10) workdays in advance of the separation date except when less than ten (10) days remains in the probationary period or in emergency situations;

B. The notice will contain a detailed statement of the reasons for the separation decision;

C. The employee is entitled to reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his/her answer;

D. The Employer will give due consideration to the employee's reply; and,

E. The employee is entitled to be notified of the Agency's decision at the earliest practicable date. The Employer shall deliver its decision to the employee on or before the effective date of the termination. The notice shall be in writing, informing the employee of the reasons for the action and his/her rights to appeal to the MSPB, including the time limits within which the appeal must be submitted. The notice shall also inform the employee that he or she may have the right to appeal to other Federal agencies

### **Section 5**

The separation of any employee serving a probationary or trial period will not be subject to the grievance and arbitration procedures set forth in this Agreement. Furthermore, any arbitration decision issued under this Agreement may not have the effect of requiring the Employer to reinstate an employee serving a probationary or trial period under any circumstance, or of reversing the Employer's decision to separate such employee.

### **Section 6**

This Article shall not preclude an employee from exercising statutory appeal rights established under law or regulation.

## **ARTICLE 35**

### **DISCIPLINARY ACTIONS**

#### **Section 1**

A. A disciplinary action for the purpose of this Article is defined as an oral admonishment confirmed in writing, a written reprimand, or a suspension of fourteen calendar days or less.

B. No bargaining unit employee will be the subject of a disciplinary action except for reasons that will promote the efficiency of the service. The Employer will utilize progressive discipline to the extent it determines progressive discipline is appropriate. However, the Parties recognize that major offenses may be cause for severe disciplinary action, including removal, irrespective of whether previous disciplinary action has been taken against the offending employee. Nothing in this Section precludes an employee or his/her representative from challenging, in the appropriate forum, consistent with this Agreement, the Agency's decision not to use progressive discipline. The burden of proof in a disciplinary action shall be on the Employer to show that the disciplinary action is supported by a preponderance of evidence.

C. The Union shall have the right to be represented at any examination of an employee in the bargaining unit by a representative of the Employer in connection with an investigation if:

1. the employee reasonably believes that the examination may result in disciplinary

action against the employee;  
and

2. the employee requests representation.

D. Upon request of an employee for Union representation, the employee will be given a reasonable opportunity to obtain such representation.

E. The Employer shall inform bargaining unit employees annually of their right to request Union representation under 5 U.S.C. § 7114(a)(2)(B).

#### **Section 2**

A. When the Employer proposes to suspend an employee for fourteen (14) calendar days or less, the following procedures shall apply:

1. not less than fifteen (15) calendar days in advance of any suspension, the employee shall receive an advance written notice stating the specific reasons for the proposed action;
2. the employee will be given a reasonable period of time, but not less than seven (7) calendar days, to answer orally and/or in writing and/or to furnish affidavits and other documentary evidence in support of the answer;
3. the employee may be represented by an attorney or other representative;

4. the employee shall receive a written decision and the specific reasons thereto at the earliest practicable date; and
5. upon request, the employee will be furnished a copy of the material relied upon by the Employer to support the proposal.

B. An employee who is suspended for fourteen (14) calendar days or less shall, upon request:

1. receive an additional copy of the proposed action;
2. receive a copy of the employee's answer, if written, or a summary of the employee's answer if given orally;
3. receive an additional copy of the notice of decision and reasons therefore; and
4. receive a copy of the material relied upon by the Employer to support the decision, if not previously provided pursuant to Section 2.A.5. above.

### **Section 3**

A. The final decision in a suspension of fourteen (14) calendar days or less must be made by a higher level manager in the organization than the one who proposed the action, should a higher level manager exist. The final decision letter shall contain the specific reasons for the decision and shall be issued at the earliest practicable date after receipt of the employee's oral and/or written reply

or after the date that such reply would have been due. The decision shall inform the employee of his/her grievance rights and with whom the grievance, if applicable, should be filed.

B. When an employee chooses to make either an oral or a written reply, the reply shall be heard by or submitted to the deciding official as described in Section 3.A, above.

C. The Employer shall prepare a summary of any oral reply. The employee and the employee's designated Union representative shall be provided a copy of the summary. The employee and the Union representative may submit to management a statement of any perceived discrepancies in the summary to be added as an attachment.

D. In arriving at his/her written decision the deciding official shall consider only the reasons specified in the notice of proposed action and shall consider any reply of the employee or his/her representative. The notice of decision shall be issued to the employee on or before the date the action becomes effective.

### **Section 4**

The provisions in this Article do not apply to:

- A. disciplinary actions taken against an employee who is serving a probationary or trial period under an initial appointment;
- B. suspensions taken under U.S.C.

§ 7532 or 7521;

C. any action initiated under 5 U.S.C. § 1206;

D. emergency suspensions.

## **Section 5**

Oral admonishments confirmed in writing and written reprimands shall be subject to appeal pursuant to the negotiated grievance and arbitration provision of this Agreement. Oral admonishments confirmed in writing may remain in an employee's Official Personnel Folder for not more than six months. A written reprimand may remain in an employee's Official Personnel Folder for not more than one year. Upon expiration of these time limits all copies of the oral admonishment confirmed in writing or written reprimand shall be destroyed, except as provided for in law or regulation.

## **Section 6**

Suspensions under this Article affecting competitive service employees, preference eligible employees in the excepted service, and non-preference eligible employees in the excepted service who have completed two years of continuous service in the same or similar position under other than a temporary appointment limited to two years or less, may be appealed to the deciding official and, thereafter, processed through the remaining steps of the negotiated grievance and arbitration procedures.

## **ARTICLE 36**

### **ADVERSE ACTIONS**

#### **Section 1**

A. An adverse action for the purpose of this Article is defined as a removal, suspension for more than fourteen (14) calendar days, a reduction in grade, a reduction in pay, or a furlough of thirty (30) calendar days or less.

B. No bargaining unit employee will be the subject of an adverse action except for reasons that will promote the efficiency of the service. The Employer will utilize progressive discipline to the extent it determines progressive discipline is appropriate. However, the Parties recognize that major offenses may be cause for severe disciplinary action, including removal, irrespective of whether previous disciplinary action has been taken against the offending employee. Nothing in this Section precludes an employee or his/her representative from challenging, in the appropriate forum, consistent with this Agreement, the Agency's decision not to use progressive discipline. The burden of proof in a disciplinary action shall be on the Employer to show that the disciplinary action is supported by a preponderance of evidence.

C. The Union shall have the right to be represented at any examination of an employee in the bargaining units by a representative of the Employer in connection with an investigation if:

1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and

2. the employee requests representation.

D. Upon request of an employee for Union representation, the employee will be given a reasonable opportunity to obtain such representation.

E. The Employer shall inform bargaining unit employees annually of their right to request Union representation under 5 U.S.C. § 7114(a)(2)(B).

#### **Section 2**

A. When the Employer proposes to impose an adverse action against an employee the following procedures shall apply:

1. Not less than thirty (30) calendar days in advance of any adverse action, the employee shall receive an advance written notice stating the specific reasons for the proposed action (unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed);
2. The employee will be given a reasonable period of time, but not less than seven (7) calendar days, to answer orally and/or in writing and/or to furnish affidavits and other documentary evidence in support of the answer;
3. the employee may be represented by an attorney or other representative;
4. the employee shall receive a written decision and the specific reasons therefore at the earliest practicable date; and

5. upon request, the employee will be furnished a copy of the material relied upon by the Employer to support the proposal.

B. An employee against whom an adverse action is taken shall, upon request:

1. receive an additional copy of the notice of proposed action;
2. receive a copy of the employee's answer, if written, or a summary of the employee's answer if given orally;
3. receive an additional copy of the notice of decision and reasons therefore; and
4. receive a copy of the material relied upon to support the decision, if not previously provided pursuant to Section 2.A.5 above.

### **Section 3**

A. The final decision in any action covered by this Article must be made by a higher level manager in the organization than the one who proposed the action, should a higher level manager exist. The final decision letter will contain the specific reasons for the decision and will be issued at the earliest practicable date after receipt of the employee's oral and/or written reply or after the date that such reply would have been due. The decision shall inform the employee of his/her grievance or appeal rights and with whom the grievance, if applicable, should be filed.

B. When an employee chooses to make either an oral or written reply, the reply shall be heard by or submitted to the deciding official as described in Section 3.A. above.

C. The Employer shall prepare a summary of any oral reply. The employee and the employee's designated union representative will be provided a copy of the summary. The employee and the Union representative may submit to management a statement of any perceived discrepancies in the summary to be added as an attachment.

D. In arriving at his/her written decision the deciding official shall consider only the reasons specified in the notice of proposed action and shall consider any reply of the employee or his/her representative. The notice of decision shall be issued to the employee on or before the date the action becomes effective.

### **Section 4**

The provisions of this Article do not apply to:

A. actions and employees excluded by 5 U.S.C. § 7511(b) and § 7512;

B. actions and employees excluded by 5 C.F.R. § 752.401;

C. actions taken pursuant to 5 C.F.R. § 752.404(d);

D. adverse actions taken against an employee who is serving a probationary or trial period under an initial appointment.

## **Section 5**

Competitive service employees, preference eligible employees in the excepted service, and non-preference eligible employees in the excepted service who have completed two years of continuous service in the same or similar position under other than a temporary appointment limited to two years or less, subject to an adverse action under the terms of this Article may appeal the decision either (1) to the Merit Systems Protection Board or (2) pursuant to the negotiated grievance and arbitration provisions of this Agreement.

## **Section 6**

Except in the case of grievances filed under the negotiated grievance procedure in Article 38, the rights of the Union under this Agreement shall not be construed to preclude an employee from:

A. being represented by an attorney or other representative, other than the Union, of the employee's own choosing in any grievance or appeal action; or,

B. exercising grievance or appellate rights established by law, rule or regulation.



## **ARTICLE 37**

### **ACTIONS BASED ON UNACCEPTABLE PERFORMANCE**

#### **Section 1**

This Article sets forth the procedures to be followed in processing involuntary reductions in grade and involuntary removals based solely on unacceptable performance, pursuant to 5 U.S.C. § 4301 et seq.

#### **Section 2**

Employee performance in one or more core competencies which is unacceptable requires remedial action by the Employer which may include, but is not limited to, counseling, training, reassignment, reduction in grade, or removal.

#### **Section 3**

Before proposing a reduction in grade or removal for unacceptable performance, the Employer shall identify in writing for the employee the core competency for which performance is unacceptable and give the employee a reasonable period of time, but not less than thirty calendar days, to demonstrate acceptable performance.

#### **Section 4**

An employee whose reduction in grade or removal is proposed under this Article shall be provided with at least thirty (30) calendar days' advance written notice of the proposed action which identifies:

A. specific instances of unacceptable performance by the employee on which

the proposed action is based;

B. the core competency of the employee's position involved in each instance of unacceptable performance;

C. that the employee may be represented by an attorney or other representative;

D. that the employee may have a reasonable period of time, but not less than seven (7) calendar days, to answer orally and/or in writing (Note: An employee who is unable to reply during the reply period for reasons beyond the employee's control or who demonstrates good and sufficient cause will be granted an extension of time to reply not to exceed thirty (30) calendar days from the end of the original notice period); and

E. that the agency will provide a written decision and specific reasons therefore within thirty (30) calendar days after the expiration of the advance notice period.

#### **Section 5**

The decision to retain, reduce in grade, or remove an employee:

A. shall be in writing;

B. shall, in the case of a reduction in grade or removal, be based only on those instances of unacceptable performance by the employee which occurred during the one year period ending on the date the advance notice was issued under Section 4, above;

C. shall, in the case of a reduction in grade or removal, specify the instances of unacceptable performance by the employee on which the reduction in

grade or removal is based;

D. unless proposed by the Chairman of the FCC, shall be concurred in by a supervisory or management official who is in a higher position than the supervisor or management official who proposed the action;

E. shall be made within thirty (30) calendar days after the date of expiration of the advance notice period.

### **Section 6**

An employee who is reduced in grade or removed shall, upon request:

A. receive an additional copy of the notice of proposed action;

B. receive a copy of the employee's answer, if written, or a summary of the employee's answer if given orally;

C. receive an additional copy of the notice of decision and reasons therefore, and;

D. be given access to those documents used by the supervisor as the basis of or to substantiate an employee's appraisal. Upon request, an employee will be given access to those documents used by a supervisor as the basis to substantiate a notice of proposed reduction in grade or removal.

### **Section 7**

The provisions of this Article do not apply to:

A. the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial

period under an initial appointment or who has not completed one year of current continuous employment under other than a temporary appointment limited to one year or less;

B. the reduction in grade or removal of an employee in the excepted service who has not completed one year of current continuous employment in the same or similar positions;

C. an action that is excluded under 5 C.F.R. § 432.102(f) and 5 U.S.C. § 4303(f).

### **Section 8**

Except in the case of grievances filed under the negotiated grievance procedure in Article 38, the rights of the Union under this Agreement shall not be construed to preclude an employee from:

A. being represented by an attorney or other representative, other than the Union, of the employee's own choosing in any grievance or appeal action; or

B. exercising grievance or appellate rights established by law, rule or regulations.

### **Section 9**

Competitive service employees who have completed a probationary or trial period or, if not subject to a probationary or trial period have completed one year of current continuous employment in the same or similar position under other than a temporary appointment limited to one year or less, and preference eligible employees in the excepted service who have completed one year of current

continuous employment in the same or similar position or non-preference eligible employees in the excepted service who have completed two (2) years of current continuous employment in the same or similar position under other than a temporary appointment limited to two (2) years or less may:

A. appeal the action to the Merit Systems Protection Board; or

B. grieve the action pursuant to the negotiated grievance and arbitration provisions of this Agreement. An employee may not appeal an action to the Merit Systems Protection Board and also file a grievance on the action under the negotiated grievance procedure.

### **Section 10**

The burden of proof in any action under this Article shall be on the Employer to show that the action is supported by substantial evidence

## **ARTICLE 38**

### **NEGOTIATED GRIEVANCE PROCEDURE**

#### **Section 1**

A. The purpose of this Article is to provide for a mutually acceptable procedure for processing and disposing of grievances that may arise during the life of this Agreement and over which the Employer has administrative control and/or policy discretion.

B. The Employer and the Union recognize and endorse the importance of bringing to light and adjusting grievances promptly. Employees are entitled to file grievances without fear of penalty or reprisal.

C. Employees, Union representatives of employees, and other employees who have relevant information concerning the grievance, will, in seeking resolution of a grievance, be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal. Retaliatory conduct is prohibited.

D. All parties to this process should treat one another with dignity, respect and professionalism and utilize the Negotiated Grievance Procedure to address and resolve problems in the workplace.

E. Grievances will be filed and processed in good faith.

F. Nothing in this Article precludes the Parties from informally discussing and attempting to resolve employment matters. An agreement to attempt informal resolution of a matter pursuant to this provision does not toll statutory

timeframes (e.g., EEO), but the parties may mutually agree to extend deadlines related to the Negotiated Grievance Procedure to accommodate attempts at informal resolution.

#### **Section 2**

A. Subject to the exclusions listed in Section 3, for the purpose of this Article a grievance means any complaint:

1. by an employee concerning any matter relating to the employment of the employee;
2. by the Union concerning any matter relating to the employment of any employee; or
3. by any employee, the Union, or the Employer concerning;
  - a. the effect or interpretation, or a claim of breach, of this collective bargaining Agreement or other negotiated agreement between the Parties; or
  - b. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. Without more, personality conflicts, petty slights, minor annoyances, ordinary workplace disagreements, tribulations, or dissatisfaction are not grievable actions.

C. The term "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and

matters:

- c. relating to political activities prohibited by law;
- d. relating to the classification of any position; or
- e. matters that are specifically provided for by Federal statute.

D. When an employee initiates a grievance and does not elect to be represented by the Union, consistent with the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7114(a)(2)(A), the Union will be given notice and the opportunity to attend any discussions concerning the grievance between the employee and the Employer, including Step meetings required by Section 8 below. The resolution of grievances must be consistent with the terms and conditions of this Agreement or any interim agreement negotiated by the Parties.

E. Grievances over emergency suspensions and grievances over subsequent final actions related to the emergency suspension shall be filed, processed or merged, as appropriate, as a single grievance.

F. For the purpose of this Article, "date of receipt" means the date of service by hand delivery or, if served by email, the date of transmission.

G. For timeframes measured in calendar days, if the deadline falls on a Saturday, Sunday, or day the Agency is otherwise closed (e.g., federal holiday), the period shall run until midnight the next workday on which the Agency is open. If an unforeseen emergency (e.g., an unexpected weather or safety event)

prohibits a Party from meeting a deadline in this Article, requests for extensions that are timely communicated will not be unreasonably denied.

### Section 3

The following matters are specifically excluded from the Negotiated Grievance Procedure:

A. Matters excluded under 5 U.S.C. § 7121(c):

1. any claimed violation of subchapter III of Title 5, U.S.C. Chapter 73 (relating to prohibited political activities);
2. retirement, life insurance, or health insurance;
3. a suspension or removal under Section 7532 of Title 5, U.S.C.;
4. any examination, certification, or appointment;
5. the classification of any position which does not result in the reduction in grade or pay of an employee.

B. Pursuant to 5 C.F.R. § 335.103, non-selection for promotion from a group of properly ranked and certified candidates;

C. Termination of any benefits under 5 U.S.C. § 5361, et seq. relating to grade and pay retention as specifically excluded under 5 U.S.C. § 5366;

D. Matters over which the Employer has "sole and exclusive discretion" as set forth in law, rule, or government-wide regulation;

E. A preliminary warning or proposal of a disciplinary or adverse action, if the action itself would be covered under this procedure or under a statutory appeals procedure.

F. The separation of any employee serving a probationary or trial period.

G. Complaints of discrimination for which relief is available pursuant to the procedures established under 29 C.F.R. Part 1614, including denials of requests for reasonable accommodation.

#### **Section 4**

A. Grievances must be in writing and filed with the Employer/Union within fifteen (15) business days after the grievant becomes aware, or reasonably should have become aware, of the matter out of which the grievance arises. In the event that a group grievance is filed, each grievant's claim will be assessed individually for timeliness in accordance with this Section. An assertion that any individual grievant's claim is untimely will have no effect on other grievants' claims. If the grievance involves a continuing violation, the grievance may be filed at any time.

B. Absent mutual agreement, new issues and/or claims may not be raised by the filing Party unless they have been raised at the initial step of the Negotiated Grievance Procedure, except that a grievance may be amended pursuant to Section 7.

C. The issue of timeliness with respect to initiating a grievance or any other procedural or substantive grievability/arbitrability issue may be raised at any stage of the grievance procedure.

D. A grievance decision at any step of the Negotiated Grievance Procedure that denies the grievance on the basis of a procedural defect(s) (e.g. timeliness, lack of specificity) does not waive any future defenses on the merits of the grievance or other procedural or arbitrability issues.

E. For the Union to initiate a grievance on behalf of an employee or group of employees, the employee(s) must not have previously waived related claims in his/her individual capacity. An assertion that any individual grievant has waived his/her claim will have no effect on other grievants' claims.

#### **Section 5**

Institutional or Chapter grievances filed by the Union must be signed by the NTEU National President, the Chapter President, or designee. Such grievances shall be initiated at Step 2 of the grievance procedure and filed with and decided by the Chief of the Labor Relations and Performance Management Service Center or designee. "Institutional grievance" means any complaint by the Union concerning the effect or interpretation, or a claim of breach of the provisions of this Agreement relating to the rights and benefits that accrue to the Union as the exclusive representative of bargaining unit employees.

#### **Section 6**

A. When two or more employees file individual grievances involving the same facts or issues, the grievances may, by mutual agreement of the Parties, be joined and processed through the grievance procedure. A maximum of three (3) grievants will participate in any grievance meeting or arbitration hearing

concerning such a joint grievance, absent mutual agreement otherwise. A grievance either filed by a group of employees, or the Union on their behalf, shall be filed at Step 1 with the employees' immediate supervisor if all the employees have the same supervisor. If all the employees are in the same Bureau or Office, it shall be filed at Step 1 with the Chief of the Labor Relations and Performance Management Service Center, who will assign the grievance to an appropriate official in the employees' Bureau or Office. If the employees are in different Bureaus or Offices, the grievance shall be filed at Step 2 with the Chairman.

B. For a group grievance the filing party shall, to the extent possible, identify the applicable employees by name or by a description sufficient to put the responding party on notice of the group of employees to whom the grievance applies.

C. If a grievance is initiated by an employee who is represented by the Union or by the Union on behalf of an employee, then the Union may ordinarily have one representative attend each step meeting, but may request to have additional representatives so long as the request is made prior to the meeting. The Employer will not unreasonably deny such requests.

## **Section 7**

Grievances must be submitted in writing to the referenced Agency official in accordance with Section 8, with a copy emailed concurrently to labor relations at [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov). The grievance must provide information concerning: the nature of the grievance; the articles and sections of the Agreement that are

alleged to have been violated; and the remedy sought. When applicable, the grievance must cite or reference (e.g., "Privacy Act") the law(s) and regulation(s) that are alleged to have been violated. Grievances may be filed by using the grievance form in Appendix C; if not filed using the grievance form, the grievance shall include the information requested in the grievance form. Failure to provide the required information when the grievance is filed will nullify the grievance, unless the grievant amends the grievance to include the required information prior to the written decision or the deadline for the written decision. If a grievance is timely amended, the timeframe for providing a written decision under Section 8 will restart from the date the amended grievance is submitted.

## **Section 8**

Except for grievances submitted by the Union in accordance with Section 5 of this Article, the following steps shall be followed in filing and processing grievances:

A. Step 1: The matter to be grieved shall be reduced to writing in accordance with Section 7 and submitted to the immediate supervisor, with a copy emailed concurrently to labor relations at [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov), by the grievant and/or his/her Union steward within the time limit set forth in Section 4 of this Article. If the Employer determines that the immediate supervisor is not the official that will be deciding the grievance because he/she was not involved in or responsible for the action(s) at issue in the grievance, then the Employer will notify the grievant, and/or his/her Union steward, who will be deciding the grievance. After the Step 1 Deciding Official receives the written grievance, either Party may request that a

meeting be held to discuss the grievance, and, upon such request, the meeting will be held within five (5) business days of the date the grievance is submitted. The meeting will generally be attended by at least the grievant, his/her representative, if any, the Union, the Step 1 Deciding Official, and a representative of LRPMSC. The Step 1 Deciding Official will give the grievant a written decision on the grievance within ten (10) business days of the close of the meeting, if one is held, or within twenty (20) business days of receipt of the grievance if no meeting is held. The decision will state specifically the reason(s) for the decision. In the event the Step 1 Deciding Official fails to provide a written decision on the grievance within the timeframes required by this Section, and the Parties have not agreed to an extension, the grievant or Union may move the grievance to Step 2. All timelines in this Section may be extended by mutual agreement.

B. Step 2. If an employee is dissatisfied with the decision provided in Step 1, the employee may appeal his/her grievance in writing to the Chairman, with a copy emailed concurrently to labor relations at [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov), stating the reason(s) the decision is not acceptable. Such notice of appeal must be filed within ten (10) business days of the receipt of the Step 1 decision. If no Step 1 decision is issued by the applicable timeframes in Section 8.A, and the Parties have not otherwise agreed to an extension, then a Step 2 grievance must be filed within ten (10) business days after the due date for the Step 1 decision. Grievances filed initially at this step will be considered timely if filed within the time limits established in Section 4 of this Article. Upon request, a grievance meeting will be held with the Chairman or designee

within twenty (20) business days of the date that the Step 2 grievance is submitted. The Chairman or designee will give the grievant a written decision within fifteen (15) business days of the meeting, if one is held, or no later than twenty (20) business days of the appeal if no meeting is held. If issued, a copy of the decision will be provided to the Chapter President and the employee by mail or email, unless otherwise agreed by the parties.

C. Where the Chairman is the supervisor at the first step of the Negotiated Grievance Procedure, the time limits set forth in Section 8.B. of this Article shall apply.

## **Section 9**

If the grievant is not satisfied with the decision of the Step 2 official, or if no Step 2 decision is timely issued, the Union may appeal the grievance to arbitration in accordance with Article 39 or 40 of this Agreement, provided the appeal is made within fifteen (15) business days of receipt of the decision, or the deadline for the decision if none is issued. At the time a grievance is appealed to arbitration, the Union will notify the Chief of the Labor Relations and Performance Management Service Center by email and copy [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov).

## **Section 10**

Evidence that is relevant to the resolution of a grievance may be introduced during the grievance process. The Parties may mutually agree to request that persons who have relevant information on a grievance participate in the efforts to resolve the grievance. If a Party intends to have an individual other than the grievant, the grievant's representative(s),



and the supervisor attend the grievance meeting(s), it will provide notice to the other Party as soon as practicable, generally at least two (2) days before the scheduled grievance meeting.

### **Section 11**

Upon request of the grievant or his/her Union representative, the Employer shall provide one copy (sanitized, if necessary) of the grievance record. The Union may request any other documents by filing an information request pursuant to 5 U.S.C. § 7114(b)(4). The pendency of an information request will not toll the deadlines in the grievance procedure, unless the Parties agree otherwise. For example, the Parties may agree to extend timeframes in the grievance procedure for the purposes of filing and processing an information request related to a grievance, especially where an information request has been filed prior to or concurrently with the grievance. The Parties are encouraged to engage in informal discussions regarding what information may be timely provided.

### **Section 12**

All time limits in this Article may be extended by mutual agreement of the Parties. By mutual agreement, the Employer and the Union may waive any step of the Negotiated Grievance Procedure. The leave status of a grievant will not toll any deadline set forth in this Article unless the Parties agree otherwise. Requests for extensions will not be unreasonably denied.

### **Section 13**

Responses to grievances from Step 1 and/or Step 2 official(s) will be provided

to the grievant and his/her union representative.

### **Section 14**

Failure by the grievant or his/her representative to prosecute the grievance at any step of the Negotiated Grievance Procedure within the time limits specified will have the effect of nullifying the grievance. Failure on the part of the Party responding to the grievance to meet any of the time limits set forth in the Negotiated Grievance Procedure will permit the Party filing the grievance or the Union to move to the next step of the procedure; but such failure on the part of the Party responding to the grievance does not constitute an agreement with any statements or facts contained in the grievance or a waiver of any defenses to the grievance.

### **Section 15**

A. When the Employer grieves against the Union, the matter shall be submitted in writing by the Managing Director or designee to the Chapter President and copied to the NTEU National Field Representative. Such grievances will not be considered unless they are submitted to the Union within fifteen (15) business days after the Employer becomes aware of, or should reasonably have become aware of, the matter out of which the grievance arises. Upon request, the Managing Director, or designee, and the Chapter President, or designee, and other persons mutually agreed upon, shall meet within twenty (20) business days after receipt of the grievance to discuss the matter. A written response by the Union will be submitted to the Managing Director within fifteen (15) business days after the meeting, if one is held, or within twenty (20) business days

after receipt of the grievance if no meeting is held. These time limits may be extended by mutual agreement.

B. If the Union's written response does not resolve the matter, the Employer may refer the matter to arbitration within fifteen (15) business days of the written decision, or the deadline for such decision if none is issued, in accordance with Article 39 or 40 of this Agreement. At the time the grievance is appealed to arbitration, the Employer will notify the NTEU Chapter 209 President and the NTEU National Field Representative via email.

## **ARTICLE 39**

### **ARBITRATION**

#### **Section 1**

A. An unresolved grievance processed through the last step of Article 38, Negotiated Grievance Procedure, may be appealed by the Union or the Employer to binding arbitration. The provisions of 5 U.S.C. § 7121(b)(1)(A)(iii) establish that the Union or the Employer has the authority to invoke arbitration as an appeal of a grievance. Therefore, when an employee proceeds through the grievance/arbitration process, the employee must be mindful that the power to invoke arbitration rests solely with the Union. Thus, an employee must recognize that should he/she decide to appeal through the grievance/arbitration process and the Union decides not to invoke arbitration, then the employee will have no further recourse through a statutory-appeal process.

B. The Party invoking arbitration will, within five (5) business days from the date arbitration is invoked, request a list of five (5) arbitrators from the Federal Mediation and Conciliation Service, and must notify the non-invoking party of the date it makes the request. If a list of five (5) arbitrators is not requested within five (5) business days of the invocation of arbitration, or if the request fails to conform to the requirements of this subsection, the arbitration will be considered withdrawn and not subject to refiling, unless the Parties agree otherwise. The Parties normally will meet within five (5) business days after receipt of the list to seek agreement on an arbitrator. The Employer and the Union will strike one name from the list alternately until one name remains. The

remaining person shall be the duly selected arbitrator. The toss of a coin shall determine who strikes the first name.

C. Within two (2) weeks of the selection of the arbitrator, the invoking party will provide to the non-invoking party and the arbitrator a list of at least five (5) dates it is available for an arbitration hearing in the following six (6) months; the dates provided must also be dates that the invoking Party's necessary witnesses are available. For purposes of this provision, when NTEU is the invoking party, "necessary witnesses" is limited to the grievant and other bargaining unit employees and NTEU personnel. When the Agency is the invoking party, "necessary witnesses" is limited to supervisors, management officials, and other non-bargaining unit employees.

D. The Parties will make every, reasonable effort to schedule an arbitration hearing within six months of the date of invocation, consistent with the arbitrator's availability. If the selected arbitrator's availability prevents the hearing from occurring within six (6) months, the Parties may mutually agree to request a new list of arbitrators, and such request will be made in accordance with Section 1.B of this Article and within five (5) business days of an agreement to request a new list. Whenever any requested arbitration has not been held for hearing within twelve (12) months of the invocation, the invocation will be deemed to be withdrawn and no arbitration will take place with respect to the matters covered by the grievance, unless 1) the Parties agree otherwise; 2) the arbitrator determines that the delay is not attributable to the invoking party; or 3) where there is pending litigation regarding an information request that is related to the arbitration, in which case the twelve-

month timeframe will be tolled until such litigation is fully resolved.

E. The Parties shall attempt to jointly stipulate to the issue(s) to be decided by the arbitrator. If the Parties are unable to agree to a joint stipulation of issues within two (2) weeks of the selection of the arbitrator, then the Parties will exchange lists of their proposed stipulation of issues within two (2) weeks after the expiration of the initial two-week period. The arbitrator will ultimately frame the issues by selecting from the issues as proposed by the Parties, or based on them. Absent mutual agreement, the Parties will not propose issue(s) to the arbitrator that differ from the issue(s) on their exchanged lists.

F. The strict rules of evidence are not applicable, and the hearing shall be informal. Neither Party shall be entitled to discovery before or during the arbitration.

G. For timeframes measured in calendar days, if the deadline falls on a Saturday, Sunday, or federal holiday, then the period shall run until the end of the next workday which is not a Saturday, Sunday, or federal holiday.

## **Section 2**

A. Absent mutual agreement otherwise, the arbitrator's fees and any other reasonable expenses/costs accrued by the arbitrator will be borne as follows:

1. If the grievance is granted or denied in full, the non-prevailing party will pay all fees, expenses, and costs.
2. If the grievance is granted in part and denied in part, the fees, expenses, and costs will be shared equally by the Parties.

B. Absent extraordinary circumstances, once an arbitration date has been established, a Party that unilaterally requests that a hearing be postponed, delayed, and/or cancelled will pay all fees and expenses that result from its request. In any case where the Parties mutually agree to postpone, delay, and/or cancel an arbitration proceeding, the Parties will equally share the cost of any cancellation fees.

C. The arbitration hearing will be held on the Employer's premises, unless the Parties mutually agree to hold it at another site.

D. A verbatim transcript of the arbitration proceeding will be made by an authorized court reporter unless the Parties mutually agree not to have a transcript made. The cost of the transcript shall be borne equally by the Parties.

E. Witnesses will be excused from duty to the extent necessary to participate in the arbitration proceedings without loss of pay or charge to annual leave. The grievant shall be on official time during the arbitration proceeding. To the extent the grievant is represented by a Chapter 209 FCC employee, official time will be granted in accordance with Article 6. Unless otherwise agreed, and consistent with Article 6, each party will be responsible for any travel and per diem expenses for its witness(es), other than the grievant, to attend and participate in the arbitration hearing. If it is necessary for the grievant to travel for the hearing, the Agency will pay travel and per diem expenses.

## **Section 3**

A. At least twenty-five (25) business days prior to the hearing, the Parties will hold a pre-hearing conference, in person or telephonically, to discuss means of expediting the hearing.

During this conference, the Parties will, at a minimum: (1) exchange a complete list of witnesses, exhibits, and identify any other anticipated hearing attendees and (2) determine whether any facts can be stipulated and/or if documents or exhibits can be authenticated. The Parties will also discuss potential settlement, but neither Party is obligated to settle any claim(s).

B. If there are potential work requirements or other conflicts that arise which might prevent a witness from attending the arbitration hearing, the Parties will discuss and try to resolve the issue before the hearing so that necessary witnesses can attend.

C. It will be in the sole discretion of the arbitrator to determine who may testify. The arbitrator may exclude testimony or evidence which is determined to be irrelevant or unduly repetitious.

D. At or before the hearing, the Parties will indicate whether they will submit closing arguments or post-hearing briefs.

E. The arbitrator shall have the authority and jurisdiction to render final and binding decisions on all grievances brought before him/her. The arbitrator shall also have the authority to determine whether the grievant is entitled to any of the requested remedies or other appropriate remedy.

F. Either Party to arbitration under this Article may file with the Federal Labor Relations Authority an exception to any

arbitrator's award under regulations prescribed by the Authority.

G. The arbitrator will determine the manner in which question(s) of grievability/arbitrability will be resolved, and shall make grievability and/or arbitrability determinations prior to addressing the merits of the grievance.

H. The Parties may mutually agree to join separate grievances before an arbitrator.

I. Issues not raised by the Parties during the grievance procedure may not be raised by either Party or the arbitrator. The jurisdiction and authority of the arbitrator will be confined exclusively to the interpretation of the provision(s) of any agreement, rule, law, regulation, or policy at issue between the Parties.

#### **Section 4**

The Employer and the Union agree that the arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement, including Articles 2 and 5, or any other negotiated agreement between the Parties.

#### **Section 5**

The Parties shall jointly request that the arbitrator render a written decision, unless the Parties mutually agree otherwise. The Parties agree to jointly request that a written decision from the arbitrator be issued no later than thirty (30) calendar days after the submission of post-hearing briefs (if any are submitted) or, in the alternative, thirty (30) calendar days after the hearing.

## Section 6

A. An award on the merits may not include the assessment of expenses or attorney's fees against either Party, unless the subject of the grievance concerns the division of expenses as they pertain to arbitration, and except as provided for by statute.

B. Upon issuance of a final and binding award on the merits, the arbitrator shall retain jurisdiction to determine the entitlement to attorney's fees, if any.

C. Any request for attorney's fees may be submitted to the arbitrator only after a full resolution on the merits and all appeals processes are complete, including the resolution of exceptions, if applicable. The requesting Party must notify the arbitrator and the non-requesting Party of its intent to seek attorney's fees no later than fifteen (15) calendar days after a final resolution on the merits. The request shall be accompanied by documentation, legal argument and citation sufficient to enable the arbitrator to decide the fee request. The request shall be simultaneously served on the other Party. Within thirty (30) calendar days of receipt of the fee request, the other Party shall submit its response, if any. Such response shall be accompanied by sufficient documentation, legal argument and citation. The response shall be simultaneously served on the requesting Party. The arbitrator shall decide whether to accept further rebuttal briefs.

D. The fee award decision shall contain a detailed explanation of why fees were or were not awarded pursuant to applicable statutory requirements, as well as the hours and rates allowed if awarded.

E. If no fees are awarded, then the requesting party will bear the cost of the arbitrator's fees and reasonable expenses incurred in resolving the fee request. If fees are awarded in full, the Party against whom fees were assessed will bear the cost of the arbitrator's fees and reasonable expenses incurred in resolving the fee request. If some fees are awarded, the Parties will share equally the cost of the arbitrator's fees and reasonable expenses incurred in resolving the fee request.

## **ARTICLE 40**

### **EXPEDITED ARBITRATION**

#### **Section 1**

A. In lieu of the arbitration procedures set forth in Article 39 of this Agreement the Parties may, by mutual agreement, process grievances under the expedited procedures of this Article.

B. A request to use these expedited procedures must be submitted by one Party to the other Party, in writing, within twenty-one (21) calendar days of the date a final decision is issued on a grievance under Article 38, Negotiated Grievance Procedure.

#### **Section 2**

A. The Parties will designate a panel of three (3) arbitrators to hear grievances processed under this Article which arise within the Metropolitan Washington, D.C. area. (With respect to grievances which arise outside the Metropolitan Washington, D.C. area, arbitrators and the site of arbitration hearings will be selected on a case-by-case basis by mutual agreement of the Parties and with the assistance of the Federal Mediation and Conciliation Service.) Arbitrators shall be prepared to conduct the arbitration hearing in accordance with the provisions of this Article.

B. The arbitrators will serve in rotation.

C. Within five (5) workdays of agreement by the Parties to use these expedited procedures, the arbitrator who is to hear the next arbitration case will be notified.

D. The Parties and the arbitrator shall

schedule a hearing to be held within twenty (20) workdays after the arbitrator has been notified. If the arbitrator cannot hold the hearing within the twenty (20) workdays, the next panel member(s) in rotation shall be notified until an available arbitrator is obtained. However, the Parties may mutually agree to extend the time limits for holding the arbitration hearing until an arbitrator on the panel is available.

#### **Section 3**

A. The arbitration hearing will be held on the Employer's premises, at the grievant's assigned duty station or at any site mutually agreed upon.

B. The Parties agree that the purpose of these expedited arbitration procedures is to provide a procedure that is economical and expeditious for resolving identified grievances.

C. The following procedural guidelines will apply:

1. The hearing for a single case normally should not last longer than four (4) hours. The arbitrator shall ensure that the length of the hearing is not unnecessarily extended.
2. The hearing shall be informal.
3. Strict rules of evidence will not apply.
4. No briefs shall be filed.
5. Generally, no transcripts shall be made. However, either Party may, at its own expense, have the arbitration proceeding

- transcribed or videotaped. Should both Parties want a copy of the transcription or video tape, these expenses shall be shared equally.
6. The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought before him/her by the representatives of the Parties in the most expeditious manner.
  7. It will be at the sole discretion of the arbitrator to determine who may testify.
  8. The arbitrator may exclude testimony or evidence which he/she determines to be irrelevant or unduly repetitious.
  9. The arbitrator shall have the authority and jurisdiction to render final and binding decisions on all grievances brought before him/her. The arbitrator will also have the authority to make an aggrieved employee whole to the extent permitted by higher level regulation, law or executive order, or the regulation of appropriate authorities outside the agency.
  10. The Parties have the right to present and cross-examine witnesses.
  11. When dealing with disciplinary actions, the Parties agree that the jurisdiction and authority of the arbitrator and his/her opinions as expressed will be confined exclusively to affirming, mitigating or reversing the Employer's decision.
  12. Upon submission of reasonable proof to the arbitrator that a witness who has personal knowledge of the facts involved cannot be physically present, the arbitrator may accept an affidavit. The arbitrator should accord weight to this type of evidence as the circumstances warrant. Copies of the affidavits will be made available to all Parties concerned.
  13. Issues not raised by the Parties during the grievance procedure may not be raised by either Party or the arbitrator except for statutory bars to arbitration. The jurisdiction and authority of the arbitrator will be confined exclusively to the interpretation of the provision or provision(s) of the Agreement, rule, law, regulation, or policy at issue between the Parties.
  14. The Employer and the Union agree that the arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement or any rule, policy or regulation. An award may not include the assessment of expenses against either Party unless the subject of the grievance concerns the division of expenses as they pertain to arbitration.
  15. The arbitrator shall issue a written decision no later than five (5) workdays after the conclusion of the hearing. His/her decision shall be based



upon the record developed by the Parties before and at the hearing and shall include a brief written explanation for the decision.

interpretations and/or application of this Agreement, rule, policy, or regulation.

#### **Section 4**

Either Party to arbitration under this Article may file with the Federal Labor Relations Authority an exception to an arbitrator's award under regulations prescribed by the Authority [other than an award relating to a matter described in 5 U.S.C. § 7121(f)].

#### **Section 5**

A. The arbitrator's fee shall be based on each hearing day plus reasonable study time and expenses.

B. The arbitrator will bill each of the Parties for one-half of the total fees and expenses.

#### **Section 6**

The grievant's representative and all employees of the Employer who are called as witnesses will be excused from duty to the extent necessary for them to participate in the arbitration proceeding without loss of pay or charge to annual leave. The grievant will be on administrative time during the entire hearing.

#### **Section 7**

Arbitration awards rendered under these expedited procedures shall not serve as precedent in the administration of this Agreement, or any rule, policy, or regulation, or in subsequent arbitrations of grievances arising from the

## **ARTICLE 41**

### **MISCELLANEOUS PROVISIONS**

#### **Section 1**

A. The Employer and the Union recognize that the Combined Federal Campaign, United States Bond Drive, Blood Donor Drive and other similar worthy programs are beneficial. Furthermore, the Parties agree that employee participation in these programs will be on a completely voluntary basis. Suggested levels of giving shall not be treated as mandatory quotas.

B. The Employer will maintain no specifically prepared list of non-contributing employees for any reason.

#### **Section 2**

The Employer will make a reasonable effort to notify a deceased unit employee's designated beneficiary or next of kin of any benefits to which he/she is entitled, and assist him/her in filing claims for unpaid compensation, including lump sum leave payments, and any retirement or insurance resulting from the employee's Federal employment.

#### **Section 3**

A. When, through administrative error, a unit employee receives an overpayment, the employee will repay the amount due the government through bi-weekly deductions from his/her pay. The amount of each bi-weekly deduction shall be decided by the Employer after discussion with the employee.

However, these repayments shall be made in amounts of at least \$25.00 per pay period (unless a lesser amount constitutes full repayment). Further, the amount deducted for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon the written consent of the individual involved. Finally, payment in full will be made within 12 months unless a longer period is authorized by the Employer or this would require a deduction of more than 15 percent of disposable pay per pay period.

B. If an employee terminates his/her employment with the Federal Communications Commission prior to the liquidation of any overpayment described in Section 3, A of this Article, the Employer will collect any outstanding balance from any funds due and owed the employee.

#### **Section 4**

Employees' Earnings and Leave (E&L) statements will contain cumulative earnings and leave deductions from January 1<sup>st</sup> of each calendar year. An employee's E&L statement shall also contain, among other information, cumulative totals of annual and sick leave and credit hours, if applicable, used and remaining. Employee compensation is transmitted by direct deposit into an account of the employee's choosing. Employees shall have access to their electronic E&L statements. Employees are responsible for monitoring the accuracy of their E&L statements. Employees should report perceived errors or discrepancies in their E&L statement in writing to the Human Resources Office as soon as

they become aware of them. When, through administrative error or oversight, the employee is denied benefits or pay to which otherwise entitled, restoration of said benefits or pay shall be made, as soon as they become available, in accordance with law, rule, and regulation, as expeditiously as practicable.

## **Section 5**

When an employee fails to receive his or her regularly scheduled salary payment the employee shall notify the Payroll and Benefits Office in writing as soon as possible of the non-receipt of the salary payment. The Employer will submit a request to NFC for an interim or replacement payment within three (3) workdays of receipt of the employee's written notification.

## **ARTICLE 42**

### **HOURS OF WORK AND ALTERNATIVE WORK SCHEDULES**

#### **Section 1. Introduction**

A. The official business hours for the FCC shall be from 8:00 a.m. to 5:30 p.m. Monday through Friday of each week except for holidays. Official business hours in field offices will maximize to the extent feasible, the hours of overlap with Headquarters official business hours when time zone adjustments are taken into consideration.

B. This Article sets forth the FCC's hours of work and Alternative Work Schedule program. The parties recognize that the use of alternative work schedules have the potential to improve productivity and morale and provide greater service to the public. This Article covers all bargaining unit employees; however, the parties acknowledge that certain positions or organizational segments, because of the nature of the work performed, may not be suitable for alternative work schedules.

#### **Section 2. Definitions**

A. The "alternative work schedule" (AWS) refers collectively to the Flexible Work Schedule (FWS) and the Compressed Work Schedule (CWS).

B. The "administrative workweek" begins at 12:01 am Sunday and ends at 12:00 midnight Saturday. The "basic workweek" is five (5), eight (8) hour workdays, Monday through Friday.

C. The "basic work requirement" for each full-time employee is eight hours per day, 40 hours per week, and 80 hours per bi-weekly pay period. The "basic work requirement" for each part-time employee is the number of hours, excluding overtime hours, which an employee is required to account for by leave.

D. The "core time band" is from 10:00 a.m. to 3:30 p.m. Monday through Friday of each week including a 30-minute lunch period. Core hours are the designated period of the day when all employees must be at work.

E. The "flexible work schedule" enables employees to establish, subject to supervisory approval, their fixed work schedule within the agency's flexible time bands (7:00 a.m. to 10:00 a.m. and 3:30 p.m. to 6:30 p.m.).

F. The "flexible time bands" are from 7:00 a.m. to 10:00 a.m. and 3:30 to 6:30 p.m., except when local conditions require different hours in field activities. The flexible time bands comprise (together with the core time band) the hours during which employees must complete their basic work requirement of eight hours per day.

G. The "compressed work schedule" means an eighty hour biweekly basic work requirement that is scheduled for less than ten (10) workdays.

H. "Credit hours" are any hours worked by employees (excluding employees under a CWS) which exceed their basic work requirement and which they volunteer to work, provided there is assigned and necessary work to be done.

### **Section 3. Alternative Work Schedules**

A. In order to participate in AWS, employees must have a “pass” performance appraisal. For the purposes of this provision, an employee without a rating of record will be considered to have a “pass” performance appraisal. If an employee receives a “fail” performance appraisal, his or her supervisor may move the employee off his or her current alternative work schedule.

B. The supervisor has the option of removing an employee from AWS due to performance and/or conduct problems or if the operational needs of the Employer so require.

C. If the supervisor removes, or temporarily removes, the employee from AWS, the employee will be assigned to a tour of duty that coincides with the business hours of the FCC.

D. Premium pay provisions will not apply to work that is performed as part of an approved alternative work schedule. Premium pay is only appropriate when work is ordered by the Employer to be performed outside the employee’s normal work schedule and during periods in which the employee would otherwise be entitled to premium pay.

E. Part-time employees may work alternative work schedules. Specific days and hours of work will be determined, with the supervisor’s approval, on a case-by-case basis to accommodate the amount of time the employee works.

### **Section 4. Flexible Work Schedules**

**A. Basic Work Requirement.** A Flexible Work Schedule (FWS) allows employees to establish, subject to supervisory approval, their fixed work schedule within the agency’s flexible time bands (7:00 a.m. to 10:00 a.m. and 3:30 p.m. to 6:30 p.m.). For full-time employees, a FWS includes the basic work requirement of five (5) workdays of eight (8) hours each day totaling 40 hours each week, and 80 hours in a bi-weekly pay period. A part-time employee’s basic work week is the number of hours he or she is scheduled to work in a day, week, or bi-weekly pay period.

**B. Tour of Duty.** An employee’s tour of duty will cover an 8-1/2 hour period, including a 30-minute lunch period and will begin between 7:00 a.m. and 10:00 a.m. and end between 3:30 p.m. and 6:30 p.m. Starting times for each employee may be set at fifteen-minute intervals.

#### **C. Credit Hours**

1. Employees may work credit hours only between 6:00 a.m. and 10:00 a.m. and between 3:30 p.m. and 8:30 p.m. Part time employees, because of their abbreviated tour of duty, may work credit hours during the “core time band” (excluding the lunch period).
2. Employees may earn up to two (2) credit hours per workday without advanced supervisory approval provided there is assigned and necessary work to

be done and up to one (1) additional credit hour per workday with advance supervisory approval with a maximum of twenty (20) credit hours per bi-weekly pay period.

3. Full-time employees may carry over up to twenty-four (24) credit hours, and part-time employees may carry over up to one-fourth of the hours they work in a bi-weekly pay period, to be used in a subsequent bi-weekly pay period. Employees who carry over 24 credit hours from one pay period to the next must use some of those hours before earning any additional credit hours.
4. Credit hours may be earned in 15 minute increments and may not be used before they are earned.
5. Prior approval from the employee's supervisor must be obtained before credit hours can be used. If an employee will have accumulated more than 24 credit hours by the end of a bi-weekly pay period and has failed to obtain prior supervisory approval to use the excess credit hours within that pay period, the excess credit hours will be lost without compensation. If the employee has received prior approval and the supervisor subsequently places a work requirement on the employee which prevents the employee from using the excess credit hours during the pay period, the employee shall be compensated for the loss of these excess credit hours in accordance with

applicable laws and regulations.

6. Employees may earn credit hours at a duty station, telework site or, with supervisory approval, another location.

**D. Overtime.** Overtime hours for an employee under a FWS are any hours (excluding credit hours) worked in excess of eight hours in a day or 40 hours in a week which are officially ordered and approved in advance by the Employer.

**E. Compensatory Time.** An agency may, at the request of an employee, approve compensatory time off in lieu of overtime pay.

## **Section 5. Compressed Work Schedule**

**A. Basic Work Requirement.** For full-time employees, a compressed work schedule (CWS) means an eighty hour biweekly basic work requirement that is scheduled for less than ten (10) workdays. A compressed work schedule is fixed and non-flexible, meaning that it does not vary from day-to-day.

### **B. Tour of Duty**

1. "5/4-9 Schedule." "5/4-9" is a compressed work schedule that includes eight workdays of nine (9) hours each, one (1) workday for eight (8) hours and one (1) non-workday within the biweekly pay period. An employee's tour of duty will cover a 9-1/2 hour period on 9 hour work days and an 8 1/2 hour period on the 8 hour work day, including a 30-minute lunch period. The employee must choose a fixed

schedule and will begin between 7:00 a.m. and 9:00 a.m. and end between 3:30 p.m. and 6:30 p.m.

2. **“4-10” Schedule.** “4-10” is a compressed work schedule that includes four (4) workdays of ten (10) hours each work week and one (1) non work day each week for a total of 80 hours per biweekly pay period. An employee’s daily tour of duty will cover a 10-1/2 hour period, including a 30-minute lunch period. Employees must choose a fixed schedule and may begin between 6:00 a.m. and 8:00 a.m. and end between 5:00 p.m. and 6:30 p.m.

**C. Credit Hours.** Employees under a Compressed Work Schedule are not eligible to earn credit hours.

**D. Overtime.** Overtime work for an employee under a CWS is work ordered and approved in advance and is in excess of the compressed work schedule requirement.

**E. Compensatory Time.** Compensatory time off may be approved in lieu of overtime pay only for irregular or occasional overtime work by an employee.

**F. Holidays.** When a holiday falls on an employee’s scheduled AWS day off, the employee’s preceding workday will be designated as the “in lieu of” holiday.

## **Section 6. Approval Procedure**

A. All employees may request and will be considered for all work schedules established by this Article. An employee may request to switch to a different work schedule not more than twice a year absent any unforeseen emergency

circumstances.

B. Requests for any schedule other than the basic work week must be made to an employee’s immediate supervisor, in writing, at least one pay period in advance of the desired starting of the schedule. An employee’s request to change or adjust their alternative work schedules may be submitted at any time; however, changes will be made on a quarterly basis, absent an unforeseen emergency situation. The employer will make a reasonable effort to grant requested work schedules.

The employee’s request to work at a telecommuting site shall not be a factor in the employee’s eligibility for an alternate work schedule.

C. The Employer will provide an employee with at least one week advance notice in the event of a cancellation or revision of the employee’s approved work schedule. The parties recognize that workload, mission or staffing requirements may necessitate a shorter notice period.

D. The Employer will provide an employee with at least one (1) week advance notice in the event of a change in work schedule (e.g., a cancellation or revision, either temporary or permanent). In accordance with law, rule and government-wide regulation, the Employer may in rare circumstances, where the work of the applicable unit would otherwise be significantly compromised in carrying out its functions, provide a shorter notice period. Shorter notice periods will not be used to avoid overtime, compensatory time or credit hours to which employees would otherwise be

entitled.

E. When submitting his/her request, an employee may request that the approval/denial be provided in writing.

F. Employees may grieve the denial of an alternate work schedule request.



## **ARTICLE 43**

### **TRANSIT SUBSIDY**

#### **Section 1**

The Employer will subsidize an employee's use of public transit by paying for qualified transit passes up to the non-taxable amount. The subsidy must be in a form not readily convertible to cash or used for purposes other than intended, e.g., fare cards, passes, tokens, tickets or other instruments issued by authorized local transit authorities. Direct cash subsidies are prohibited. Employees will apply for the transit subsidy using the "Employee Transit Benefit Application." See Appendix E.

#### **Section 2**

On an annual basis, the Employer will survey employees regarding the transit subsidy program to evaluate employee satisfaction regarding registration and ways to improve the program. The results of the survey and any recommendations will be shared with the Chairman.

#### **Section 3**

The Parties agree that at such time as the National Finance Center (NFC) can accommodate a pre-tax set aside of employee income to pay for transit or eligible van pools, the Agency will provide this option to the full extent provided for by law and in accordance with OPM, IRS, and NFC rules, regulations, guidance and instructions.

## **ARTICLE 44**

### **DUES WITHHOLDING**

#### **Section 1. Purpose and Coverage**

A. This Article is for the purpose of permitting eligible employees who are members of the Union to pay dues through the authorization of voluntary allotments from their compensation.

B. This Article covers all eligible employees:

1. Who are members in good standing in the Union;
2. Who have voluntarily completed SF-1187, Request for Payroll Deduction of Labor Organization Dues; and
3. Who receive compensation sufficient to cover the total amount of the allotment.

C. The Employer shall automatically withhold, on a biweekly basis, the appropriate amount of dues from any bargaining unit employee who has submitted an SF-1187.

D. The Employer has determined that all dues withholding processing will be handled by the Employer.

#### **Section 2. Certification and Remittance Procedures**

A. Dues will be wire transferred to the bank account designated by the Union;

B. Electronic files will be transmitted to the Administrative Controller, National Treasury Employees Union, 800 K St., NW, Suite 1000, Washington, DC 20001; and

C. The Union's National President or any chapter officer who has submitted proper notification to the servicing personnel office is authorized to make the necessary certification of SF-1187.

#### **Section 3. Union Responsibilities**

The Union shall:

A. Inform and educate its members on the voluntary nature of the system for allotment of Union dues, including the conditions under which the allotment may be revoked;

B. Purchase and distribute Form SF-1187;

C. Inform the Employer of changes in certification and remittance procedures;

D. Forward properly executed and certified SF-1187's to Employer on a timely basis.

E. Forward an employee's revocation (SF-1188, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues) to the Employer on a timely basis when such revocation is submitted to the Union;

F. Inform the Employer of the name of any participating employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of the date of such final determination;

G. Inform the Employer of any change in the formula for membership dues;

#### **Section 4. Employer Responsibilities**

A. Upon receipt of a properly certified SF-1187 or SF-1188, stamp the date received legibly on the back of all copies, and return to the Union a copy of the SF-1187 to the appropriate Union office;

B. Withhold dues on a biweekly basis;

C. Provide biweekly files containing pertinent information, including the total gross amount deducted for all employees, the total amount of prescribed costs retained, and the net amount remitted;

D. Discontinue allotments when required by OPM rules and regulations;

E. Notify the employee and the Union when an employee is not eligible for an allotment, along with the reasons for the decision, e.g., a temporary promotion out of the unit;

F. Withholding new amounts of dues upon certification from the Union's National President provided that the formula for withholding has not been changed during the past twelve (12) months;

G. Transmit remittance checks to the allottee designated by the Union;

H. Provide electronic files to the Union or its designee;

I. Date stamping a properly executed SF-1188, with the date so that the revocation will be effected consistent with provisions outlined in Section 6 of this Article; and

J. Give NTEU Chapter 209 receipted

copies of all SF-1187s and SF-1188s received within five (5) workdays of the receipt date.

#### **Section 5. Action and Effective Dates**

The effective dates for actions under this Article are as follows:

A. The SF-1187 will be entered into the payroll system as soon as practical but no later than the pay period following receipt of the SF-1187 by the Employer.

B. Changes in the formula for dues withholding will begin the first pay period designated by the Union's National Office (this formula shall be provided to the Employer a minimum of thirty (30) days prior to the effective date of the change).

C. Revocation notices for employees who have had dues allotments in effect for more than one (1) year will be submitted to the FCC payroll office during USDA pay period fifteen (15) each year. The revocation will be effective within two pay periods following submission to the payroll office. Revocations will become effective during pay period eighteen (18). Revocations may only be effected by submission of a completed SF-1188 that has been initialed by the chapter president or his or her designee. If the SF-1188 is not initialed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. To revoke such dues withholding, employees will have had dues withheld for at least one (1) year.

D. Revocation notices for employees who have not had dues allotments in

effect for one (1) year will be submitted on or before the one (1) year anniversary date of their dues allotment. Revocations may only be effected by submission of a completed SF-1188 that has been initialed or signed by the chapter president or her/his designee. If the SF-1188 is not initialed or signed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. The SF-1188 will become effective the first full pay period after the employee's anniversary date.

E. Termination due to loss of membership in good standing will be effective on the beginning of the first pay period after the date of receipt of notification by the Employer.

F. For termination due to separation or movement out of the exclusive unit a final deduction will be made for that pay period in which the action is effective.

## **Section 6. Overpayments to the Union**

A. The Union will pay no fee for these services.

B. Upon determination by the Employer that dues withholding for an employee was not timely terminated and resulted in an overpayment to the Union, the Employer will affect an adjustment to reimburse the employee. The amount repaid to the employee will be charged to the Union overpayments account.

C. Each pay period, the Employer will forward a copy of any bill for dues overpayments, with an accompanying document prescribed by the Debt Collection Act of 1982, to the

Administrative Controller, National Treasury Employees Union, 800 K St, NW, Suite 1000, Washington, DC 20001.

This bill will identify amounts which were reimbursed to employees as a result of dues withholding, and the pay periods in which the overpayments were made to the Union. The bill sent to the Union will request repayment of the overpayments which were made to the Union. The document accompanying the bill will include a statement that debts due to the Government for more than thirty (30) days are subject to interest, to the extent required by law. The bill sent to the Union will request payments be made payable to the FCC and will specify that the payment, and a copy of the bill, be mailed to an address designated on the bill. The right of the Union to request a waiver of overpayment in accordance with 5 U.S.C. 5584 or to dispute the amount of the overpayment will also be contained in the accompanying document. A copy of the bill and accompanying document will be forwarded to the Employer for use in determining the start of the period for requesting waivers by the Union.

D. Upon receipt of the amount due from the Union, the accounts receivable for the applicable pay period will be closed. If a waiver or partial waiver of overpayment is timely requested by the Union the Employer will suspend collection of the amount in question pending adjudication in accordance with 5 U.S.C. 5584. The personnel office that processed the request for waiver will notify the NTEU Chapter 209 of the determination.

E. To be considered timely, a request for waiver of overpayment will be

submitted to the servicing personnel office by the local Union chapter within forty (40) calendar days from the “waiver control date” for the bill for dues overpayment which is sent to the Administrative Controller, NTEU, from the Employer.

F. The “waiver control date” will be determined to be forty (40) calendar days following the bill date, which includes ten (10) days associated with the mailing of the bill from the FCC to the Union. The purpose of this date is limited to its express use in the waiver request process. The bill should be received by the tenth (10<sup>th</sup>) day following the bill date.

G. The bill will be presumed received on this date unless the Union National Office informs the Employer in writing within three (3) workdays following receipt of the bill by the Union. The Employer will provide written acknowledgement of the revised “waiver control date” to the Union with a copy being sent to the servicing personnel office.

H. Denials of Union requests for waiver of overpayment will be subject to the grievance procedure in Article 38 of the Agreement.

### **Section 7**

A. If an employee moves from one (1) permanent bargaining unit position to another permanent bargaining unit position, dues withholding will not be canceled.

B. The NTEU National Office shall be provided electronic files each pay period of all employees who have changed

status that pay period vis-a-vis their bargaining unit position.

### **Section 8**

The Employer will process dues withholding requests within the first full pay period following receipt of a properly executed SF-1187. If processing does not occur within this timeframe, the employer will pay to the Union the dues which were not deducted, in accordance with applicable law and regulation. The Employer will waive claims against employees, provided such claims for waiver meet the criteria set forth in applicable law, regulations.

### **Section 9**

Employees detailed or temporarily promoted to a non-bargaining unit position shall continue to have dues withheld for up to thirty days.

## **ARTICLE 45**

### **MID-TERM NEGOTIATIONS**

#### **Section 1. General Provisions and Ground Rules**

A. This Article establishes ground rules for mid-term bargaining between the Parties over changes to employees' conditions of employment proposed by the Agency or the Union.

B. The timeframes in this article may be extended or altered by mutual agreement of the Parties. If an unforeseen circumstance prohibits a Party from meeting a deadline in this Article, requests for extensions that are timely communicated will not be unreasonably denied.

C. For timeframes measured in calendar days, if the deadline falls on a Saturday, Sunday, or federal holiday, then the period shall run until the end of the next workday which is not a Saturday, Sunday, or federal holiday.

D. The Union's bargaining team may include up to four (4) bargaining unit members and up to two (2) NTEU staff members for a total of up to five (5) Union team members. The parties may agree to include more team members and in no case will the Union team be limited to fewer members than the Agency's team.

E. The parties agree to consolidate substantially related issues for bargaining to the greatest extent possible.

F. Unless otherwise agreed, neither party will submit proposals nor modify existing proposals that raise issues

that are outside the scope of the matter under negotiation.

G. All agreements are tentative until full agreement is reached.

H. Unless otherwise agreed, mid-term agreements reached will be reduced to writing and executed by both parties. In addition, oral agreements must be reduced to writing consistent with the law.

I. Agreements will set forth an "effective date." The effective date will be thirty-one (31) calendar days from execution or upon agency-head approval, whichever occurs first. Agreements reached pursuant to this Article will remain in effect unless the Parties mutually agree to terminate them or if otherwise stated in the Agreement.

J. Agreements negotiated under the provisions of this Article will be subject to agency-head approval pursuant to 5 U.S.C. § 7114(c). In the event of a disapproval, the Union may request to renegotiate the Agreement. The Union must provide notice to the Employer that it intends to renegotiate within ten (10) calendar days of notice of disapproval. Provisions that have not been disapproved may, upon mutual agreement, be severed and implemented. Any subsequent bargaining must commence within ten (10) calendar days of the Union's notification, absent mutual agreement by the Parties.

K. Upon written request, the Employer will notify the Union in writing if any proposals are non-negotiable. The Parties may try to resolve the matter informally before involving the Federal Labor Relations Authority (FLRA) but

the Union must timely file its petition with the FLRA. Proposals declared non-negotiable during bargaining and subsequently found negotiable will be timely negotiated if requested by either Party. Any subsequent bargaining must commence within ten (10) calendar days of the negotiability decision absent mutual agreement by the Parties. Proposals that the Agency has not declared to be non-negotiable and that the Parties have agreed upon may, upon mutual agreement, be severed and implemented.

- L. Unless the Parties agree otherwise, the Agency will email affected employees, copying the Chapter President, a copy of each agreement executed pursuant to this Article.

## **Section 2. Changes to Conditions of Employment**

A. In accordance with 5 U.S.C. Chapter 71, the Employer will provide notice to the NTEU National President, Chapter 209 president and National Field Representative, and, if requested, will bargain with the Union before implementing any change in conditions of employment to the extent required by the Federal Service Labor-Management Relations Statute (Statute).

B. Written or electronic notice of proposed changes in conditions of employment by the Employer will be served, via email, on the NTEU President (or designee), the Chapter President (or designee), and the NTEU National Field Representative. In the notice, the Employer will provide information to the Union that is necessary for a full understanding of the proposed change. At a minimum, the notice will describe or identify the change(s), when the change(s) will be implemented, and why the change(s) will be made.

C. Within seven (7) business days of receiving the notice, the Union may request a briefing, and will include dates and times on which it is available to have the briefing. If the Union requests a briefing, the briefing will be held within ten (10) business days of the request, absent mutual agreement otherwise. During the briefing, the Employer will provide the Union with necessary and relevant information about the change(s) at issue. To the extent the parties identify necessary and relevant information that cannot be provided during the briefing, the Agency will expeditiously provide that information. If no briefing is requested by the applicable deadline, no briefing will be held, absent mutual agreement by the Parties.

D. In the event that a briefing is held, the Union must submit its initial proposals in electronic format (Microsoft Word), which has track-changes capability, within ten (10) business days after the briefing is held. If the Union has filed a request for information pursuant to 5 U.S.C. § 7114(b)(4), the Parties may mutually agree that proposals will be due ten (10) business days after the Employer has responded in writing to the information request.

E. In the event that no briefing is requested, the Union must, within ten (10) business days of receipt of the notice, submit its initial proposals in electronic format (Microsoft Word), which has track-changes capability. If the Union has filed a request for information pursuant to 5 U.S.C. § 7114(b)(4), the Parties may mutually agree that proposals will be due ten (10) business days after the Employer has responded in writing to the information request.

F. Regardless of whether a briefing is held and/or information requests are submitted, to facilitate bargaining, the parties may engage in informal

information sharing, open communications and discussions during bargaining regarding the change(s), including providing needed clarification(s).

G. Absent mutual agreement otherwise, bargaining will commence within ten (10) business days after the Agency receives the Union's initial proposals. The Parties will schedule negotiation sessions at mutually agreeable times on business days, normally between the hours of 8:00 AM and 6:00 PM. The Parties are also encouraged to conduct negotiations by utilizing available technology to minimize unnecessary delays associated with scheduling face-to-face negotiations, but the Parties recognize a preference for face-to-face negotiations where possible.

H. Proposals submitted pursuant to this section must be related to the changes proposed by the initiating party.

I. Each set of proposals should include a header that identifies the party author, the numbered set of proposals (e.g. "NTEU's first set of proposals," "FCC's first set of counter-proposals"), and the date on which the proposals are sent. Modifications to proposals or counter proposals should be made using the Track Changes tool (e.g. redline) and identify the Party as the "author" making the change.

J. The Parties will exchange at least one set of proposals and counter proposals prior to the first scheduled bargaining session, unless the Parties mutually agree otherwise. Parties may amend proposals and counter proposals during the course of bargaining, consistent with the scope of the matter(s) under negotiation.

K. Proposals tentatively agreed upon during bargaining will be highlighted in Word documents exchanged electronically by the Parties. Upon mutual agreement only, the Parties may revisit

tentatively agreed upon provisions.

L. For changes to conditions of employment that are required by law(s) enacted after the effective date of this Agreement and that conflict with provisions of this Agreement, the Employer may implement such changes only as consistent with law and will provide notice to the NTEU National President, Chapter 209 president and National Field Representative of the change to be made, the affected section(s) of the BNA, and the expected implementation date. To the extent practicable and consistent with its obligations under the law at issue, the Employer will engage in pre-implementation bargaining, but such bargaining will not delay implementation beyond the implementation date required by law. If the Parties engage in pre-implementation bargaining that is not completed before the Agency must implement the requirements of the new law, the Employer may implement the change(s) but the Parties will continue to bargain post-implementation to agreement or impasse. Any bargaining done pursuant to this subsection shall be in accordance with the timeframes and procedures contained in this Article, including the timeframes in this Section regarding requests for briefings and/or requests to bargain.

### **Section 3. Union-Initiated Mid-Term Negotiations**

A. The Union may initiate mid-term bargaining by proposing one (1) change in conditions of employment per twelve (12) month period, beginning on the effective date of this Agreement, during the term of this agreement, provided that such changes: (1) are not covered by this Agreement or any other collective bargaining agreement between the Parties and (2) do not relate to matters over which the Union



has waived its right to bargain during the negotiation or duration of this Agreement or any other negotiated agreement.

B. Written or electronic notice of proposed changes in conditions of employment by the Union will be served by the Chapter President or his/her designee on the Chief of the Labor Relations and Performance Management Service Center with a copy to LRPMSC@fcc.gov.

C. All applicable terms of Sections 1 and 2 of this Article shall apply to, and govern the conduct of, Union-initiated mid-term negotiations.

## **ARTICLE 46**

### **TELEWORK**

#### **Section 1. Introduction**

The FCC encourages participation in the telework program. The Telework Program is primarily established to facilitate the accomplishment of the FCC's work and meet Agency mission and operational needs. The Telework Program establishes a workplace flexibility that assists the Agency in maintaining continuity of operations and reducing management costs, while also reducing emissions and/or carbon footprints, improving employees' morale, and enhancing work-life balance. Employee participation in the Telework Program is not an entitlement, and the use of telework by FCC employees should be limited only in conjunction with the eligibility and criteria standards contained in this Article.

#### **Section 2. Definitions**

A. The terms "telework" and "telecommuting" as used herein are synonymous and refer to a work arrangement that allows an employee to perform work during any part of the employee's regular, paid hours, at an approved alternate worksite (e.g., home or satellite office or temporary location).

B. **Alternate Worksite.** The alternate worksite is an approved work location other than the employee's office worksite. An alternate worksite for purposes of telework will generally be an employee's residence or other, approved worksite and will generally be within the local commuting area (as that area is defined in 5 C.F.R. § 351.203)

or otherwise geographically convenient to the employee's office worksite.

#### **C. Telework Program Participant.**

Any employee who has an approved Telework Agreement currently in effect, authorizing any type of telework established under this Article.

D. **Official Worksite.** The official location of an employee's position of record as determined under 5 C.F.R. § 531.605 and documented on a Notification of Personnel Action (Standard Form 50) within an employee's OPF. "Official worksite" is the "official duty station" as that term is used in 5 U.S.C. § 5305(i).

E. **Portable work.** Portable work consists of work and/or duties that are suitable to be performed at home or other alternate worksite with equal effectiveness as work performed at the Official Worksite. The work must be capable of being performed without disruption to the normal workflow requirements of the employee's Bureau/Office and without requiring further adjustment or significant change in duties or the way in which assignments are performed. Examples of appropriate work may include, but are not limited to: research related to markets, methods, statistics, or modeling; analyzing data; reviewing or researching cases; writing decisions, reports, and/or briefing documents; processing applications or licenses; reading and analyzing reports, studies, or other documents; preparing correspondence, letters, and memoranda; completing online training; and responding to the public using electronic tools.

F. **Telework Agreement.** A written agreement that is completed and signed by an employee and appropriate management approving official(s) outlining the terms and conditions of the telework arrangement.

G. **Officially Disciplined.** Any disciplinary or adverse action issued to an employee pursuant to Article 35 or 36 that results in placement of a document in the employee's OPF. For telework-eligibility purposes, the discipline remains in effect as long as the document stays within the employee's OPF.

### Section 3. Types of Telework

A. There are two basic types of telework:

1. Routine telework. Telework that occurs as part of a regular and recurring schedule. Routine telework is appropriate when a position's duties encompass portable work on a regular and recurring basis.

2. Ad hoc telework. Telework that is approved on a case-by-case basis, where the telecommuting hours worked are not part of a routine telework schedule.

a. Ad hoc telework may be appropriate for employees whose work does not regularly or routinely involve portable work or meet the criteria set forth in Section 4.C, and for employees who have a routine telework schedule.

b. Examples of ad hoc telework may include telework: (1) as a

result of inclement weather; (2) to work on special work assignments; (3) to minimize the amount of time not working in order to attend a work or personal appointment (e.g. emergency home maintenance repair; off-site training; doctor's visits; voting in a local, state, or federal election); or (4) other circumstances agreed between the employee and supervisor as consistent with this Article.

c. Supervisory approval is required for each ad hoc occurrence. Each request to ad hoc telework must be submitted via email by the employee to his/her immediate supervisor and include a description of the work to be accomplished and the proposed date(s) of the ad hoc telework. The employee must provide the supervisor reasonable advance notice, generally at least one workday, prior to the requested telework date. Failure to provide adequate notice may be a basis to deny a request.

d. Ad hoc telework is intended to be limited in frequency and duration, and may not be used to establish a regular, floating telework day each week or to circumvent the requirements for telework under Section 6.

B. Employees may request to participate in both routine and/or ad hoc telework.

## **Section 4. Employee Eligibility and Criteria for Participation in Telework Program**

A. Participation in the Telework Program is voluntary.

B. An employee will be ineligible for telework, on either a routine or ad hoc basis, only where the employee:

1. Is currently on a leave restriction or within the last six (6) months has been placed on a leave restriction;
2. Does not have a current Rating of Record of "Pass";
3. Is on a Performance Improvement Plan (PIP) or has been on a PIP within the last six (6) months;
4. Has been officially disciplined for misconduct that would impact the integrity of the Telework Program, including, but not limited to, discipline for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography on a federal government computer or while performing official, federal government duties during the last five (5) years, unless the discipline was a suspension, in which case the ineligibility is permanent;
5. Has documented recurring time and attendance issues, including, but not limited to, arriving late to work, incorrectly reporting time in the Agency's

time and attendance system, and/or a pattern of consistently taking leave on non-telework days, that have been communicated to the employee and documented in writing within the prior twelve (12) months, even if such issues did not result in official discipline. The communication to the employee may take the form of marking the employee absent without leave (AWOL) on the employee's current timesheet in WebTA, or correcting previous timesheets to reflect AWOL, or other written communications (e.g., emails or oral counseling reduced to writing) to the employee regarding the time and attendance issue(s).

6. Has been officially disciplined for being AWOL for more than five (5) days in any calendar year. The ineligibility will be applicable as long as the discipline remains in the employees Official Personnel Folder;

7. Is serving a probationary/trial period or occupying a trainee position. However, a supervisor may make an exception to this provision on a case-by-case basis, particularly upon considering: whether a new employee has completed a reasonable "orientation" period; previous federal service, if any; length and nature of previous work experience; and any previous experience teleworking; and/or;

8. Is excluded from participation by law, rule, or regulations in effect as of the effective date of this Agreement.

C. In addition to meeting the basic eligibility requirements under Section 4.B, to participate in the Telework Program, an employee must also:

1. Have sufficient duties suitable for telework in general and the telework schedule requested specifically, including the number of days of requested telework. Among other possible considerations:

a. the work must be portable; any necessary security requirements must be maintained; and the necessary equipment and resources to accomplish the work must be available at the alternate worksite.

b. The work should be capable of being performed without disruption to the normal workflow requirements of the employee's bureau or office and without requiring further adjustment. For example, work must be effectively accomplished by an employee working independently and by remote means without any adverse impact or disruption to individual, team, or office operations, productivity, or customer service.

2. Complete mandatory telework training through FCC University and a Home Safety Self-Certification form for the Alternate Worksite.

3. Identify an alternate worksite within the local commuting area or otherwise demonstrate that he/she is able to (and will) regularly, physically report to his/her official duty station on non-telework business days, regardless of whether the employee resides within the local commuting area of his/her official duty station. If an employee identifies an alternate worksite that is outside the local commuting area, then the Agency has the discretion to decide whether or not to approve that worksite based upon its geographic convenience to the employee's office worksite. The length of a commute, in and of itself, is not a basis to approve additional telework days compared to employees who live closer to the official duty station. The Agency has the discretion to limit or exclude an employee from participation in the Telework Program if the proposed alternate worksite is so far away from the official duty station that reporting to the official duty station would be impractical, particularly where the employee is not approved under Section 6 to telework more than eight (8) days per pay period and/or have his/her official worksite changed pursuant to an approved telework agreement.

4. For purposes of telework, “necessary equipment” will typically encompass a computer, high speed internet access, and phone capability. Working exclusively through a phone or tablet while teleworking typically will not satisfy the necessary equipment requirement.

5. Have a completed, electronically signed, and approved Telework Agreement on file in the electronic Telework system (e.g. SharePoint) before it becomes effective and comply with the Agreement.

D. Telework is subject to approval by management and is not an employee entitlement. Although an employee may request a particular number of day(s) and/or time(s) to telework, specific telework schedules are subject to approval by an employee’s supervisor or other approving official under Section 5.B.1 of this Article. If an employee’s current telework agreement becomes inconsistent with this Article but the employee remains eligible to telework under this Article, the employee may submit a new telework request for consideration.

E. The Employer will not be responsible for operating costs, home maintenance, insurance, or any other costs (e.g., utilities, internet service) associated with telework. Beyond providing employees with a secure means (e.g. hard or soft RSA token) to access the FCC network, the FCC is under no obligation to provide equipment to employees solely for the purpose of teleworking. The FCC is also under no obligation to service or maintain equipment belonging to an

employee, even if the employee uses it for Agency work.

## **Section 5. Requests to Participate in the Telework Program and Approval Procedures**

### **A. Request to Participate in the Telework Program**

1. By submitting a telework request, an employee certifies that he/she has completed telework training and that his/her alternate worksite is accurate and comports with the requirements of the Home Safety Self-Certification form.

2. After completion of the FCCU Telework training and completion of the Home Safety Self Certification Form, employees must accurately complete, electronically sign, and submit telework requests to their Bureau/Office for approval through the FCC’s internal electronic telework system (e.g. SharePoint). The request will include the requested telework schedule (e.g. specific routine days and/or ad hoc) and its requested duration (up to December 31 of the applicable calendar year, but can be earlier); Alternate Worksite location and contact information; and a description of the work to be performed, both for routine and ad hoc telework requests.

3. A request to participate in the Telework Program normally should be submitted at least ten (10) business days prior to the desired start date or by the date agreed to by the employee and supervisor. Employees must notify

their supervisor (or other designated approving official) by email when they have submitted a telework agreement request in the Agency's internal electronic telework system (e.g., SharePoint).

B. Telework agreements must be approved by all applicable management officials before they become effective.

1. An employee's immediate supervisor will be the approving official for a request to telework, unless the Bureau/Office designates another supervisor in the employee's chain of command. If another supervisor is designated, then the Bureau/Office will inform the employee of this designation.

2. Up to eight (8) routine days of telework per pay period may be approved under this Section for full-time employees on a non-Compressed Work Schedule. Requests for additional days must be submitted pursuant to Section 6, below.

3. Part-time employees or employees on a Compressed Work Schedule (CWS), may be approved for telework under this Section on a proportional basis consistent with the amount of routine telework that may be approved for full-time employees who are not on a CWS. Requests for additional telework must be submitted pursuant to Section 6, below.

4. The approving official will act upon a telework agreement within ten (10) business days of

submission, barring extraordinary circumstances. If the request is denied, the employer will provide the employee at the time of the denial a notice explaining the reasons for the denial.

5. In deciding whether to grant or deny a telework request, including the number of days of telework requested, the approving official will evaluate the request based on the terms of this Article and legitimate business considerations, including:

a. The requirements, nature, and content of the employee's position and duties; whether the employee has demonstrated and maintained acceptable work habits, time-management skills, conduct, adherence to agency policies, and whether they can perform assignments independently without frequent or close oversight or supervision; quality and quantity of work performed while teleworking; and an employee's successful use of telework in the past.

b. Whether certain conditions or expectations that would facilitate effective telework should be incorporated into the agreement in accordance with Appendix D, FCC Telework Request Form and Agreement.

6. For legitimate business reasons and consistent with this Article, a Bureau/Office, sub-organization in a Bureau/Office, and/or immediate supervisor may establish general guidelines for all employees within the applicable organizational unit regarding the number of routine or total telework days per week that may be approved, any days of the week where telework will not be approved, or other general expectations for all teleworkers. Where such a general guideline is established, the approving telework official may consider exceptions to approve additional telework days on a case-by-case basis.

7. All Telework Requests and Agreements (approvals and denials) will be documented in the FCC's electronic telework system.

8. The Employer shall provide the Chapter President with electronic access to the information on employees' Telework Request Forms and Agreements via a link to the Employer's electronic telework system (e.g. SharePoint). The Agency will mask employees' personal phone and fax numbers, email, and home or other alternate worksite address but will provide the city, state, and zip code for the alternate work location.

#### C. Duration of Agreements

1. Approved telework agreements expire no later than on December 31 of each calendar year.

a. Employees or management may establish an expiration date prior to the end of the applicable calendar year.

b. Employees wishing to continue to participate in the telework program must submit a re-executed or new telework request at least ten (10) business days prior to their current agreement's expiration to continue to be a Telework Program Participant without interruption.

c. The Employer will send an email or other communication to employees, no later than December 1st of each year, reminding them to submit new telework agreements by the deadline.

2. Telework agreements may be terminated in accordance with Section 14, below.

D. An updated telework request must be submitted if there is a non-temporary change in the terms of the telework agreement (e.g. alternate worksite changes; a change to the number of days or hours of telework). An employee may request to temporarily change an aspect of a telework agreement from his/her supervisor without resubmitting a new agreement. For purposes of this Section, a "temporary change" will generally be two (2) weeks or less, but requests will be evaluated on a case-by-case basis, and supervisors will make every reasonable effort to approve such requests if they comport with this Article.

E. Management has discretion to change, reduce, suspend, or eliminate telework day(s) on a temporary basis for any employee(s), office, component, or agency-wide due to legitimate business or operational needs. A



temporary modification may be necessary when, for example, there is a seasonal or limited time period where significant and/or time sensitive work is more effectively accomplished in a traditional office setting.

F. Management has discretion to change, reduce, suspend, or eliminate telework day(s) on a temporary basis for any employee(s) due to diminished performance, even if no formal performance action (e.g. a PIP) is taken. In these circumstances, the supervisor and the employee will discuss the need for the temporary suspension or modification and maintain an open dialogue about how the employee can address the performance issue(s). The change, suspension, or elimination of telework will be limited only to the time period necessary to address the performance issue(s).

G. Where a telework schedule is temporarily modified or suspended, either for an individual employee or for offices, components, or agency-wide, advance written notice will be provided where practicable. The Agency will provide at least two (2) weeks of advance notice for large scale suspensions of Telework when possible and consistent with legitimate business needs. Temporary modifications or suspensions under this Section are expected to be infrequent and short in duration (e.g. two months or less). In the event a telework schedule is temporarily changed pursuant to this Section, supervisors and employees will work together and determine if there may be an alternate, acceptable telework arrangement and/or other available workplace flexibilities that may be utilized and are consistent with

operational needs, to minimize the impact of the temporary telework change, including reducing rather than eliminating telework during the temporary modification.

### **Section 6. Requests to telework more than eight (8) days per Pay Period**

A. Telework requests in excess of eight (8) days per pay period and/or that would otherwise require a change in duty station under 5 C.F.R. § 531.605, will be considered on a case-by-case basis. Requests may be granted only in situations that typically fall under one of two categories: (1) temporary employee hardship or (2) critical workforce need. Employees should include a description of the circumstances giving rise to the request with their request, including the expected duration and whether they are seeking the telework arrangement as a temporary employee hardship and/or critical workforce need.

1. An employee hardship is a temporary set of severe or significant circumstances that are beyond the employee's control. An employee's voluntary relocation outside of the local commuting area of his or her official duty station (e.g. due to a spouse's relocation, or to be closer to family) shall not typically constitute hardship justifying more than eight (8) days per pay period of telework. An example of a temporary employee hardship may include, but is not limited to, when an employee or an employee's immediate family member

has a medical emergency or critical medical condition that requires care from a health provider outside the commuting area of the normal duty station, and the employee must temporarily relocate to another area for such care or assistance with such care.

2. An employee may be required to substantiate his/her hardship for the purpose of verifying his/her need for more than eight (8) days of telework per pay period under this Section. If more information is needed to substantiate the hardship, the Agency will provide the employee with a written request specifying the type of information required to substantiate the request.

3. The Agency's Reasonable Accommodation procedures are distinct from approval to telework under this Article. An employee with a disability who seeks telework as an accommodation to enable him/her to perform the essential functions of his/her job should follow the procedures outlined in Article 48 (Reasonable Accommodation).

4. A critical workforce need may be established where the employee:

a. Occupies a position that: (1) the Agency, in its discretion, has determined is likely to be difficult to fill; (2) OPM has approved the use of a direct-hire authority applicable to a competitive-service position; and/or (3) the Agency, in its discretion, has determined that, if it were to post a vacancy for the position, it would be posted as an all-sources, virtual position; and/or

b. The immediate loss of the employee would have a significant detrimental effect on the Agency; prevent the FCC from meeting obligations or deadlines set forth by statute, regulation, court order, or FCC order; subject the FCC to increased likelihood of successful legal challenge against it; and/or would result in substantial risk or detriment to public health or safety.

B. An extended telework request under this Section is subject to approval under Section 5, as well as approval by the employee's Bureau/Office Chief (if not the initial approving official) and the Managing Director. If a telework request under this Section is initially approved by the immediate supervisor, the employee should provide the Bureau/Office Chief with the request, the initial approval, and supporting documentation and information, with a copy to [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov). The Bureau/Office Chief will act upon an extended telework request within ten (10) business days, absent extenuating circumstances. If the Bureau/Office Chief approves the request either as the initial or secondary approving official, then he/she will ensure that the request and relevant information are forwarded to the Managing Director with a copy to [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov). The Managing Director will normally act upon a telework agreement within ten (10) business days of submission to him/her.

C. The employee will be kept informed of the approval status of the request during the process by email.

D. A telework arrangement approved under this Section is intended to be a

temporary and/or atypical measure to enable an employee facing a hardship to continue working and contributing to the FCC until he/she can return to a schedule of regularly reporting to the office at least two (2) days per pay period; or to facilitate a smooth transition of the employee's work and/or institutional knowledge to others.

1. Approval to telework more than eight (8) days per pay period under this Section will normally not exceed six (6) months. After six (6) months, a telework arrangement under this Section may be extended for up to six (6) more months if the circumstances justify an extension. An employee may be required to substantiate his/her need for an extension by providing sufficient information/documentation. If an employee does not provide sufficient information, the request may be denied.

2. In atypical circumstances, a telework arrangement under this Section may be continued for more than one (1) year, for example, where there is a reasonable expectation that the employee will return to a telework schedule of eight (8) days per pay period or less in the very near future, or a critical workforce need extends beyond a 1-year, transition period.

E. The Agency will act consistent with 5 C.F.R. § 531.605 in determining whether an employee's alternate worksite will be the official duty station for any employee approved to regularly telework at an alternate location who is not scheduled to report to the traditional FCC office site at least twice per pay period. An approved change in duty

station will be documented on an SF-50 and maintained in the employee's OPF. While the telework arrangement is in effect, the location of the alternate worksite will be used to determine employee pay, locality pay, and travel-funding responsibilities and will be documented in the employee's OPF.

F. The employee understands that any relocation costs associated with moving are the sole responsibility of the employee.

G. International telework (which does not include officially authorized international travel) will not be approved.

H. In the event a telework arrangement under this section requiring a change to official worksite is terminated, the employee is responsible for all costs associated with returning to the original office duty station. The employee will be provided written notice of termination and will normally have at least sixty (60) days to report to the original duty station. An employee may request in writing additional time to report to the official duty station, and such requests will be considered on a case-by-case basis at the Employer's discretion. The employee may request to use available leave.

I. In the event the Agency determines that an employee was receiving an incorrect locality pay for their worksite under 5 C.F.R. § 531.605, the Agency may seek to recover any overpayments consistent with 5 U.S.C. § 5584. Any such correction for the purpose of recovering overpayment will not serve as a basis to claim that working in a different locality was authorized or should continue.

## **Section 7. Performance and Accountability While Teleworking**

A. As consistent with 5 U.S.C. § 6503(a)(3), a supervisor may require his/her employees to adhere to contact requirements and expectations while teleworking, including using online communication tools to facilitate timely communication.

B. An employee will promptly notify his/her supervisor if a lack of access to resources, documents, or data makes performing assigned duties while teleworking impracticable. In such cases, an employee may be required to report to the office or take leave.

## **Section 8. Prohibited Uses of Telework**

A. The Telework Program is not a substitute for personal leave or dependent care. Family and personal responsibilities must not interfere with the performance of duties while teleworking and time spent on family and/or personal responsibilities may not be counted as telework time.

B. As a general matter, time spent commuting to and from the official worksite may not count as telework time.

## **Section 9. Telework and Employee Workspace**

Employees who telework three (3) or more days per week or six (6) or more days per pay period may be excluded from the FCC-workspace policy (i.e. might not be designated an assigned, sole-occupancy workspace). This Section does not apply if the telework

arrangement is expected to last ninety (90) calendar days or less.

## **Section 10. Tour of Duty and Timekeeping**

A. Employees must adhere to FCC policies regarding work schedules and hours of work when teleworking, including reporting and accounting for periods of expected or unexpected unavailability. Teleworking employees shall work the same hours as established in their regular tour of duty unless alternate hours are approved in the telework agreement or on a temporary basis with the concurrence of the employee's supervisor.

B. Employees must record telework hours on their timesheets with the transaction code specific to telework. Employees whose official duty station has changed to an alternate worksite pursuant to a telework agreement must also continue to report their regular hours of work as telework on their timesheet.

C. Earning overtime, compensatory time, or more than two (2) hours of credit time must have the appropriate advance supervisory approval as set forth in Article 42 (Hours of Work).

D. Existing pay and leave administration rules shall apply while employees are teleworking. Employees must submit their time and attendance in accordance with existing policies. In certifying time and attendance, supervisors may follow up with the employee as necessary to enable them to certify the time and attendance as submitted.

E. Employees who perform Official

Time while teleworking must follow FCC policies and procedures for recording such Official Time in WebTA.

### **Section 11. Telework During Weather and Safety Events**

A. Telework during weather and safety events is governed by 5 U.S.C. § 6329c and 5 C.F.R. Part 630, Subpart P (Weather and Safety Leave), and any other applicable law, rule, and regulation.

B. Telework program participants are expected to telework during weather and safety events as follows:

1. Office closure: If the Agency is closed due to a weather or safety event, and the telework program participant may safely telework from an authorized alternate location, he/she is generally required to telework and may not receive Weather and Safety Leave. The employee must account for the entire workday by teleworking, taking unscheduled leave (paid or unpaid) or other paid time off, or a combination.

2. Delayed Arrival: If the Agency is operating under a delayed arrival, a telework program participant who reports to his/her worksite may receive Weather and Safety Leave, for the number of hours of the delayed arrival. If a telework program participant does not report to his/her regular worksite, then he/she must telework, take unscheduled leave or other paid time off, or a combination—thereby accounting for the entire workday. In general, Weather and Safety Leave is not available to teleworking

employees who do not report to their regular worksite when there is a delayed arrival.

3. Early Dismissal: If the Agency is operating under an early dismissal due to a weather or safety event, then a telework program participant may receive Weather and Safety Leave only for the amount of time required to commute to his/her alternate worksite where they may safely telework. Once the employee arrives at his/her alternate worksite, he/she generally must complete any remaining portion of the workday by teleworking (provided he/she may safely do so), take unscheduled leave (paid or unpaid) or other paid time off, or a combination.

### **Section 12. Return to the Employee's Duty Station**

A. The Employer has the right to direct employees to report to their official duty stations when necessary to meet legitimate mission, staffing, and workload requirements, including, but not limited to, office assignments, meetings, shortages in office coverage, and/or training classes. Employees will be given reasonable advance notice, typically at least two (2) business days, of the need to return to duty stations so employees may, if possible, travel to the official duty station during their regular commuting time. Time spent traveling to the official duty station is commuting and will not be considered hours of work unless an employee is scheduled for a full day tour of duty at the telework location and receives notification to report to the official duty station too late to

travel during their normal commute time. In such instance, when the employee is required to report to the official duty station during his/her tour of duty, with no opportunity to perform such travel during his/her normal commute time, such travel time will be counted as hours of work.

B. If a circumstance provided in Section 12.A. arises, the employee must report to the official duty station barring mutual agreement otherwise. If a circumstance provided in Section 12.A. ceases to exist, and the employee is so informed by the supervisor, the employee may continue to telework consistent with his/her agreement. If the time to commute to the official duty station is longer than the projected remaining workday hours, then the employee may return to the official duty station the following day, unless ordered to report to the official duty station that day to perform overtime.

C. An employee may request, but is not entitled to, another telework day as a result of being recalled to the official worksite on a scheduled telework day, or if the employee is for any other reason unable to telework on a scheduled day.

### **Section 13. Protection of Government Records, Security, and IT Support**

A. The teleworker must continue to comply with the FCC's records management policy and is responsible for maintaining confidentiality and security at the alternate workplace, as the

teleworker would at the official duty station.

B. Any known compromise in the security and/or integrity of government records must be brought to the attention of the employee's supervisor immediately.

C. All information contained on FCC computing resources is subject to access by authorized FCC employees or contractors at any time. Individual users of the FCC information and systems should not have any expectation of privacy while accessing FCC computers, networks, or email.

D. The Employer's IT Service Center is available to assist employees with issues accessing or using FCC systems and programs, including VDI and other FCC-provided technology or programs necessary for performing work while teleworking (e.g., RSA token).

### **Section 14. Termination of Telework Agreements**

A. Participation in the Telework Program may be terminated by the employee at any time by written notification to his/her supervisor. Supervisors, however, retain discretion to disapprove a new telework request that has been submitted within six (6) months of an employee notifying the Agency that he/she no longer wishes to participate in the Telework Program.

B. An employee may be terminated from participation in the Telework Program upon seven (7) calendar days' written notice if the employee

ceases to meet the eligibility criteria in Section 4, above, or otherwise fails to adhere to provisions of the telework agreement or the requirements of this Article.

C. Managers/supervisors shall provide the reason(s) in writing at the time of the decision to remove an employee from the program. Employees may submit a written response to the decision.

D. Employees terminated from the Telework Program may reapply for telework no sooner than six (6) months after the decision to terminate participation, unless informed that they may reapply sooner. Employees may request permission to reapply for telework prior to expiration of the six (6) month period, but the supervisor or approving official retains discretion to deny the request for early reapplication to the telework program.

E. If an employee moves to a new position, is detailed, or has a change in immediate supervisor, the current telework agreement will continue unless the new supervisor requests the employee submit a new telework request.

## **ARTICLE 47**

### **TRAVEL and GAINSHARING PROGRAM**

#### **Section 1. Travel Outside the Established Tour of Duty**

A. The Employer agrees to schedule travel during the regular work hours and workweek of the employee, to the maximum extent practicable. Employees may travel on their own time if they so choose. The time spent traveling outside the established workday results in the travel being considered hours of work for non-exempt employees, and is compensable, if it meets the appropriate provisions of the Fair Labor Standards Act (FLSA), e.g., travel results from an event which cannot be scheduled or controlled administratively.

B. If the meeting is within the control of the Employer, and it is administratively feasible, the Employer will consider rescheduling the meeting to avoid required travel on non-workdays. Emergency travel can be required on non-workdays.

C. When a supervisor knows in advance that an employee's administrative workweek will differ from the regularly scheduled tour of duty, due to travel, the supervisor will reschedule the employee's administrative workweek to correspond with the specific days and hours the employee is expected to work, consistent with mission, staffing and workload requirements.

D. Employees traveling on their own time at their option are responsible for any additional costs resulting from travel

deviations.

#### **Section 2**

**Travel During Established Tour of Duty**  
If circumstances require an employee's attendance at a temporary duty station at a time too early to permit travel on that day during the employee's regularly scheduled working hours, a supervisor will consider an employee's request to travel during regularly scheduled hours on the preceding day. If the preceding day is a non-workday, an employee may travel during the regularly scheduled hours on the last workday preceding the non-workday. If an employee chooses to do so, subsistence reimbursement and use of the government travel card will be limited to what the employee would have been entitled to if traveling on a non-workday.

#### **Section 3. Return to Duty Station**

A. Supervisors will consider requests from employees who are unable to return from temporary duty stations during normal duty hours and request to return that evening or the following day during normal duty hours. An employee electing to travel the next day should return at the earliest practicable opportunity during the regularly scheduled hours of work.

B. If the scheduling of a meeting is not within the control of the Employer, and it is administratively feasible, the Employer will attempt to reschedule the meeting to avoid required travel on non-workdays. Emergency travel can be required on non-workdays.



#### **Section 4. Advance Notice of Travel**

If employees are required to travel, the Employer will provide employees with as much advance notice as reasonably possible.

#### **Section 5. Emergency Travel**

In cases of emergency travel, an employee is expected to use the government issued individual travel card to cover necessary official travel expenses.

#### **Section 6. Reimbursement of Business Related Travel Expenses**

A. The Employer agrees to reimburse employees when in a travel status for authorized expenses incurred by them in the discharge of their official duties to the extent allowable by law and regulation.

B. Official travel generally begins when the employee leaves home, office, or other authorized point of departure and ends when the employee returns home, to the office, or other authorized point.

C. Maximum allowable per diem rates within the Coterminous United States (CONUS) will be based upon the traveler's actual lodging costs up to the maximum allowable amount as well as upon the meals and incidental expenses reimbursement rate for the locality subject to the most current rates published by General Services Administration (GSA) in the Federal Register.

D. For travel within the CONUS to localities designated by GSA as specific per diem rate localities, travelers shall

be reimbursed in accordance with the most current rates published by GSA in the Federal Register. For travel within the CONUS to all other CONUS localities, travelers shall be reimbursed in accordance with the most recent standard per diem rate as published by GSA in the Federal Register.

E. In accordance with GSA regulations, and when authorized in advance by management, reimbursement on an actual subsistence expense basis will be authorized when actual and necessary subsistence expenses of official travel are unusually high due to special or unusual circumstances. Normally, reimbursement on an actual subsistence expense basis should be requested and authorized in advance. Employees will receive as much advance notice as possible that there will be a need for actual expenses so that they can make a timely request for approval to be reimbursed for actual subsistence expenses.

F. For computing meals and incidental expense reimbursement allowances, official travel begins when the traveler leaves home, office or other authorized point of departure and ends when the traveler returns home, to the office, or other authorized point of departure.

In accordance with the Federal Travel Regulations, travelers will be reimbursed for full day official travel. The meals and incidental expenses (M&IE) allowance or a partial day of travel will be a flat three-fourths (3/4) of the applicable M&IE.

For travel more than twelve (12) hours, but not exceeding twenty-four (24) hours, when lodging is required,

travelers will be reimbursed at a flat three-fourths (3/4) of the applicable M&IE.

For travel more than twelve (12) hours, but not exceeding twenty-four (24) hours, when lodging is not required, travelers will be reimbursed at a flat three-fourths (3/4) of the applicable M&IE.

Payment of per diem allowance for travel of twelve (12) hours or less is prohibited.

G. Per diem entitlement is contingent upon an employee's assignment to temporary duty outside the commuting area of the official station or residence. To be considered outside the commuting area, the place of duty must first be outside the boundaries of the employee's official duty station. In addition, the temporary place of duty must be more than forty (40) miles from the employee's permanently assigned physical location (office) and also more than forty (40) miles from the employee's residence, measured by odometer or other readings on the most commonly used route. At any point beyond these distances, and also outside the official station, is outside the commuting area.

H. Consistent with Federal Travel Regulations, an employee may not remain in a travel status over a weekend solely to increase the entitlement to subsistence. The following requirements cover the completion of temporary duty on a Friday preceding a non-holiday weekend:

The traveler should return to home or duty station on Friday unless arrival

would be at an unreasonably late hour; in the latter event, the return should be made on Saturday; in either case, per diem or other authorized travel subsistence expenses will be payable until the traveler's arrival at home or duty station, and,

Instead of travel on Saturday, as indicated above, the traveler may be allowed to return on Monday following the weekend; in this event subsistence reimbursement will be suspended as of midnight Friday, but will be resumed at 12:01 AM Monday, continuing until the traveler reaches home or the duty station.

An employee whose official travel extends from one workweek through the next day may travel home over the weekend or other non-workday using the cost comparison method to determine the amount of reimbursement the employee will receive for travel. The Employer agrees that, unless there is a finding of substantially increased costs, when lodging is included as part of a contract for conference rooms and/or other services, it will not include weekend lodging or lodging for non-workdays so that the cost comparison method, including the cost of the hotel room, can be used.

I. Consistent with Federal Travel Regulations, employees who are assigned to training or duty away from their regular assigned duty station, and elect to return home during non-workdays will be reimbursed for travel not to exceed the amount reimbursable for the per diem had they remained away from home.

### **Section 7. Use of Private Vehicle for Official Business**

When a privately owned vehicle is used for official business, the employee providing such automobile will be reimbursed in accordance with government travel regulations. In no case may an employee be required to use her/his privately owned vehicle in connection with official business.

### **Section 8. Voluntary Return for Non-Workdays**

A. When an employee in travel status voluntarily returns to her/his official duty station or residence for non-workdays, the maximum reimbursement for the round-trip transportation and per diem en route shall be limited to the per diem allowance and travel expenses which would have been allowed had the employee remained at the temporary duty station or actual travel expenses, whichever is less. The employee shall perform any such voluntary return travel during non-duty hours or periods of authorized leave.

B. Employees who are required to routinely perform extended periods of temporary duty may, at agency discretion and within the limits of appropriations available for payment of travel expenses, be authorized round-trip transportation expenses and per diem en route for periodic return travel to their official duty station or residence for non-workdays.

### **Section 9. Illness During Travel**

When an employee in a travel status becomes ill and is expected to remain so for any significant length of time, the

Employer will cover all normal travel expenses in connection with returning that employee to her/his normal duty station as promptly as possible.

### **Section 10. Denial of Claim for Reimbursement of Travel Expenses**

A. If the review of a travel claim discloses irregularities, the reviewer will notify the traveler as soon as practicable and attempt to resolve the irregularity with the traveler. If the finance office finds the voucher improper, the office will return the voucher to the traveler within five (5) working days and include a written explanation of the reasons for the return and a contact in the office for assistance.

B. Consistent with the Federal Travel Regulations, if an audited voucher contains some items not properly supported or allowable, the traveler will be reimbursed initially only for those items properly supportable or allowable. The employee will be notified in writing regarding disallowed items and provided an opportunity to provide additional information/documentation to support the claim. If still unable to support all or part of a claim, the employee will be notified, in writing, why the claim remains disallowed and the process for filing a reclaim voucher or appeal.

### **Section 11. Travel Voucher**

A. Employees are to submit a completed travel claim normally within five (5) workdays after the end of the travel. If the employee is in a continuous travel status, the employee is to complete and submit a travel claim at least once every thirty (30) days when practicable.

B. The Employer will normally reimburse the employee within thirty (30) calendar days from the date the voucher is received from the traveler. If the voucher is returned to the traveler because of questionable claims or because it is incomplete, the thirty (30) day time limit will resume when the voucher is resubmitted.

C. If the Employer fails to meet the thirty (30) calendar day limit following submission of a complete and proper travel voucher, the Employer will reimburse the employee with a late payment fee per the provisions of the Federal Travel Regulations. When an employee's late payment was due solely to administrative problems not within the employee's control, the travel voucher approving official or the servicing finance office (wherever the administrative delay occurred) will, at the employee's request, explain in writing to the credit card company that the late payment was not due to the employee submitting a late or incomplete voucher.

D. Upon request, the Employer agrees to determine the status of an employee's travel voucher and provide the employee with the status and reason why a payment has not been received twenty five days after an employee submitted her/his travel voucher to his/her supervisor.

## **Section 12. Time in Travel Status Defined**

A. Time spent traveling will be considered hours of work and therefore compensable for employees non-exempt from the FLSA if:

1. An employee is required to travel during regular working hours;
2. An employee is required to drive a vehicle or perform other work while traveling;
3. An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or,
4. An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

B. Time spent in a travel status away from the official duty station for employees exempt from the FLSA shall be deemed employment only when:

1. It is within her/his regularly scheduled administrative workweek, including regular overtime work, or,
2. The travel involves the performance of work while traveling, or is incident to travel that involves the performance of work while traveling; or
3. The travel is carried out under arduous conditions; or,
4. The travel results from an event that could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such an

event to her/his official duty station (such as training scheduled solely by a private firm or job-related court appearance required by a court subpoena).

### **Section 13**

Changes in Government-wide regulations that result in a conflict with the provisions of this Article shall entitle either party to reopen those provisions that conflict with the revised regulation.

### **Section 14. Gainsharing (General)**

The Government Employees Incentive Awards Act, 5 U.S.C. §§ 4501 - 4507, authorizes an agency to pay a cash award for "efficiency" or "economy." The FCC will continue its discretionary cash incentive award program that rewards employees who save the agency money while on official, TDY travel. These employee-initiated savings will come from the use of less expensive lodging, the use of frequent flyer benefits to purchase airline tickets, or the use of their privately owned vehicle (POV) for official travel. Employee participation in this program is voluntary and travelers may not be coerced into participation. Bureaus/Offices will fund the program by reprogramming travel funds to incentive awards funds on a quarterly basis.

### **Section 15. Kinds of Travel Covered by Gainsharing**

With the exception of reimbursable travel [501(c)(3) and 1353], official TDY travel with lodging expenses, foreign and/or domestic will be covered under the program.

### **Section 16. Lodging Savings**

Employees who participate in the program can receive cash awards for incurring lodging expenses at a daily rate which is less than the maximum lodging rate for the locality under the lodgings plus method. To determine the maximum lodging rate, see:

1. the Federal Travel Regulation, 41 C.F.R., Chapter 301, Appendix A;
2. rates updated monthly in the Travel Manager Plus software;
3. the Maximum Travel Per Diem Allowances for Foreign Areas, Section 925, published by the State Department; and/or
4. any reduced lodging per diem rates designated, in advance, by a Bureau or Office. Additional transportation costs to the TDY site and return to the hotel will be factored into computing the savings.

Awards will not be made to employees on travel where lodging was prearranged with the hotel; e.g., a purchase order was processed. However, any savings resulting from shared accommodations under such an arrangement do qualify for the travel savings award.

The amount of lodging savings must be reduced by additional transportation costs incurred while staying at lodging farther from the TDY site. For example, if the per diem for lodging in Chicago is \$104 and public transportation can be obtained for less than \$2.00 per trip throughout the city. If a traveler stays in

a Chicago suburb for \$80 and incurs a charge of \$7.50 in local transportation cost to and from the TDY site each day, the lodging savings of \$24 (\$104 - \$80) must be reduced by \$11 (\$15 - \$4) with a net savings of \$13 per day. The travel-reviewing official will determine whether the transportation expenses are additional. Any other local transportation costs to a second TDY site on the same day are not considered.

FCC travelers must apply for a Government-issued credit card. The card must be used for payment of all lodging costs unless the hotel does not accept the card.

When a room is shared while on official travel, there will be lodging savings. The employees should arrange to be billed separately. If this is impossible, a daily rate must be determined for each employee. Divide the total lodging costs by the number of employees and the number of nights to arrive at a daily rate for each employee.

Employees should stay at a hotel that meets the requirements of the Hotel and Motel Fire Safety Act of 1990 whenever possible. The Official Airline Guide (OAG) indicates which hotels are in compliance and can be found on the agency's Intranet at "employee services/travel services".

Lodging costs incurred on personal time, such as annual leave during official travel, will not be counted as lodging savings under this program.

Employees who stay with someone (friend or relative) while on official travel and avoid lodging expenses will receive credit for 50 percent of the savings

realized.

## **Section 17. Redemption of Frequent Flyer Benefits**

Employees who obtain a free coach class ticket with frequent flyer benefits earned on official government travel and use the ticket for other official, agency travel are eligible for the travel savings award. Savings will be measured against the contract rate in effect at the time of the flight. If there is no contract rate, then the lowest available non-restricted coach fare will be used as the basis for measurement of the savings. This information can be obtained from our travel management center or on the Internet at <http://pub.fss.gsa.gov/services/citypairs/search>.

If an FCC employee who has earned frequent flyer miles transfers those miles to another FCC employee (in accordance with airline regulations) for use for official travel, the employee surrendering the frequent flyer miles will be entitled to credit towards a Gainsharing Award. Both employees and the travel approving official will be required to sign a Form A-444 (A), Travel Savings Form and submit it along with the verification from the airlines.

## **Section 18. Use of Privately Owned Vehicle (POV)**

Employees may request to use their POV as the method of transportation. In deciding whether to approve use of a POV, the travel-approving official must select the method most advantageous to the government when cost and other factors are considered. This is discussed in the Federal Travel

Regulation, 41 C.F.R. 301-10.4 and 301-10.5. In determining the amount of savings to the Government, a comparison must be made between the actual costs incurred by the traveler and the costs that would have been incurred if the traveler had used a common carrier fare for transportation.

A. Absent an exigency, use of a POV instead of common carrier must be authorized in advance by the employee's travel-approving official after receipt/review of an appropriate cost comparison and justification from the traveler.

B. A request for approval to use a POV will be governed by the Federal Travel Regulation, 41 C.F.R. 301-10.4 and 301-10.5. Under these regulations, the Commission must select the method most advantageous to the Government, when cost and other factors are considered. Travel by common carrier is presumed to be the most advantageous method of transportation and must be used when reasonably available. When it is determined that travel must be performed by automobile, a Government automobile is presumed to be the most advantageous method of transportation. Travel must be by the most expeditious means of transportation practicable and commensurate with the nature and purpose of your duties. In addition, the Commission must consider energy conservation, total cost to the Government (including costs of per diem, overtime, lost work time, and actual transportation costs), total distance traveled, number of points visited, and number of travelers.

C. To determine whether there is a cost advantage to the agency, travelers must

make a cost comparison using Form A-519, "Request for Use of Private Vehicle."

D. The actual travel reimbursement determined by the voucher prepared after the travel is completed will be used to determine POV savings when calculating a Travel Gainsharing Award. In case of multiple travelers, travelers must submit their own claim.

Examples for Calculating Travel Gainsharing Awards. The following are examples illustrating travel gainsharing awards (TGA) involving POVs. The amounts used are for illustration only.

1. POV, no passengers, no change in M&IE or other expenses. If only the driver/provider of the POV is traveling, common carrier airfare is \$450, but travel cost using a POV is \$50, the traveler is entitled to a TGA calculated as follows:

$$\begin{aligned} &(\text{common carrier cost minus POV cost}) \\ &\text{times TGA percent} = \text{award } (\$450 - \$50) \\ &x 50\% = \$200 \end{aligned}$$

2. POV, multiple passengers, no change in M&IE or other expenses. If two people are traveling, common carrier airfare is \$450 per person, and the travel cost using a POV is \$50, each traveler is entitled only to his or her portion of the savings from using the POV, and thus is entitled to a TGA calculated as follows:

3. (common carrier cost per person minus POV cost per passenger) times TGA percent = award  $[\$450 - (\$50/2)] x 50\% = \$212.50$

4. POV, no passengers, additional M&IE or other expenses. If only the driver/provider of the POV is traveling by POV, and travel by POV will require additional M&IE, common carrier airfare is \$200, POV cost is \$100, and additional M&IE is \$100, the traveler is not entitled to a TGA, calculated as follows:

(common carrier fare minus POV cost minus added M&IE) times TGA percent = award  
 $(\$200 - \$100 - \$100) \times 50\% = \$0$

5. POV, multiple passengers, additional M&IE or other expenses, no TGA for M&IE. If two people are traveling, common carrier airfare is \$450 per person, POV cost is \$100, additional M&IE resulting from the use of a POV is \$50 per person, and no savings will accrue on the M&IE, each traveler would be entitled to a TGA calculated as follows:

(common carrier cost per person minus POV cost per passenger minus added M&IE per passenger) times TGA percent = award  
 $[\$450 - (\$100/2) - \$50] \times 50\% = \$175.$

### **Section 19. Criteria for Award**

The savings to the agency must be at least \$200 before the employee is eligible to receive an award.

### **Section 20**

The amount of the award for each employee will be 50 percent of the

savings on lodging expenses, contract carrier airfare, or use of a POV.

### **Section 21. Process and Responsibilities**

The Travel Savings Form will be completed and submitted by the employee for all trips which show lodging savings, redemption of frequent flyer benefits, and/or savings through use of a POV. Each time the employee records savings, the Travel Savings Form must be submitted along with the related travel voucher to the employee's travel-approving official. After reviewing the voucher and the Travel Savings Form, the employee and the travel-approving official will initial each trip and sign each travel form that will be submitted as supporting documentation for the award. Employees can apply for the award as soon as they meet the minimum eligibility requirement of \$200 and are strongly encouraged to submit their claims throughout the year. To ensure that awards are processed during the current fiscal year, all eligible employees must submit their forms for the award by September 15th of each fiscal year. Employees may earn an award for travel during the latter part of September; however, due to time constraints, the award may not be paid until the following fiscal year. The Bureau/Office award-approving official will complete the FCC Form A-440, Superior Achievement Award or QSI, and submit it with supporting Travel Savings Form(s) to the Labor Relations and Performance Management Service Center (LRPMSC) by the cut-off date. The award will be processed via the National Finance Center. Bureau/Office Fund Managers will monitor the amount(s) of awards being approved



and reprogram funds, as applicable, from the travel budget to the incentive awards category.

## **Section 22. Availability and Completion of Forms**

Instructions for completion of the Travel Savings Form begin in Section 11. The Travel Savings Form will be reproduced locally.

## **Section 23. Distribution of Forms**

The original Travel Savings Forms will be sent with the Forms A-440 to the LRPMS for processing. Field offices that use fax copies for expediency are allowed to do so as long as they retain the original for the full 6-½ year retention period for accounting documents.

## **Section 24. Instructions for completing the Travel Savings Form**

Enter your name and social security number at the top of the form. Enter the travel authorization number for each trip reported on the form. The date and the day of each night of lodging must be entered on the form. Initial the Travel Savings Form for each trip where lodging savings and/or redemption of frequent flyer benefits were realized, and submit it with the appropriate voucher to your Bureau/Office travel approving official. Savings that do not meet the minimum savings of \$200 can be carried over until the minimum is reached. More than one trip may be recorded on each form. An explanation of each line follows:

Line 1. Enter the maximum lodging rate for the TDY locality for each night's lodging.

Line 2. Enter the actual lodging cost for each night's lodging. If no lodging cost is incurred; e.g., the employee avoided lodging costs by staying with a friend or relative, the actual cost to record will be \$0.00.

Line 3. Enter the excessive transportation costs incurred when the lodging is more distant from the TDY site. A determination must be made by the travel voucher-approving official that any transportation expenses incurred were excessive.

Line 4. Deduct actual lodging expense and any excessive transportation expense from the maximum lodging rate for each night to arrive at the net lodging savings for the agency.

Line 5. Add up the lodging savings (line 4) for each night and record the total in the "Summary Data" boxes for each trip.

Line 6. Enter any frequent flyer benefits redeemed for a free airline ticket for each trip in the "Summary Data" boxes.

Line 7. Add the summary totals for the first, second, and third trips on lines 5 and 6 together and enter the total on line 7.

Line 8. Multiply the total entered on line 7 by 50 percent. The results will be recorded on line 8, "Award Amount to Employee." This is the amount that will count toward the minimum cumulative award amount of \$100.

## **ARTICLE 48**

### **REASONABLE ACCOMMODATIONS**

#### **Section 1. Authority and Purpose**

A. This Article applies to all bargaining unit employees, regardless of appointment type (competitive or excepted), career status (temporary, career-conditional, or career), occupation, or work schedule (full-time, part-time, or temporary).

B. The interpretation and implementation of this Article shall at all times be consistent with, and nothing in this article shall alter, amend, or modify the FCC's obligations under, applicable law and rule, as well as regulations in effect as of the effective date of this Agreement, including, but not limited to: the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, et seq.); the Rehabilitation Act of 1992 (29 U.S.C. 701(g)); the Rehabilitation Act of 1973, as amended 29 U.S.C. § 701 et seq.; Executive Order 13164 (65 Fed. Reg. 46,565 (July 26, 2000)); the Equal Employment Opportunity Commission's regulations found at 29 C.F.R. Parts 1614 and 1630, and applicable EEOC enforcement guidance.

C. The objective of this Article is to ensure equal employment opportunity for employees without regard to disability.

D. The Parties are fully committed to making Agency facilities accessible and reasonably accommodating the known physical or mental disabilities

of employees by providing an accommodation that does not impose an undue hardship on FCC operations.

#### **Section 2. Request for Reasonable Accommodation**

A. An employee may request a reasonable accommodation from a supervisor or manager in his/her chain of command, the Office of Workplace Diversity, or any other official designated by the FCC to accept such requests. A request for a reasonable accommodation may be made at any time, orally or in writing. An employee's request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act," but must communicate that an adjustment or change at work for a reason related to a medical condition is needed. While no specific form is required to begin processing the request, the employee must also subsequently complete the FCC's form for reasonable accommodation.

B. A family member, health professional, or other representative may, with proper authorization from the employee, request an accommodation on behalf of the employee. For example, submission of a doctor's note outlining medical restrictions for an employee may constitute a request for a reasonable accommodation. If an employee's representative requests an accommodation, then the Agency must confirm with the employee, where possible, that he/she wants the requested accommodation before proceeding. Where practical, the employee or the employee's representative must provide written

documentation designating the representative to act on the employee's behalf.

C. If an employee makes an initial request for a reasonable accommodation that is recurring in nature, such as requesting a sign language interpreter or a reading assistant, then the accommodation will be provided without the need for the employee to submit additional requests each time that the accommodation is needed.

D. Confidentiality during the reasonable accommodation process is of prime importance. Any FCC employee who obtains or receives medical information associated with a reasonable accommodation request is strictly bound by confidentiality requirements. Certain information may be shared with appropriate Agency officials and/or non-FCC individuals only as consistent with law, rule, and regulations in effect as of the effective date of this Agreement.

E. Consistent with the Federal Service Labor-Management Relations Statute, namely 5 U.S.C. § 7114(a)(2)(A), the Union will be given notice and the opportunity to attend any formal discussions relating to reasonable accommodations. In addition, employees may request Union representation at any point during the reasonable accommodation process.

### **Section 3. Reasonable Accommodation Procedures**

A. Upon receiving a request for a reasonable accommodation, the Employer will contact the employee, within five (5) business days after

receiving the request, barring unforeseen circumstances.

B. The Employer and the employee will engage in an "interactive process" to determine what if any, accommodation should be provided. The Employer and employee will communicate with each other about the request, which may include, to the extent necessary: clarifying the request, nature of the disability, or functional limitations; obtaining information or medical documentation from the requester or his/her medical provider regarding his/her disability, accommodation needs, and alternatives; reviewing the employee's current job and its essential functions; consulting agency and outside resources; and evaluating possible accommodations, including those specifically requested or preferred by the employee.

C. Reassignment is the accommodation of last resort, and the Employer is not required to create a new position as a reasonable accommodation for an employee. Reassignment to a vacant funded position for which the employee is qualified will be offered as a reasonable accommodation only after the Employer has determined that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his/her current position. However, if both the Employer and the employee voluntarily agree that reassignment is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may reassign the employee.

D. The Employer will process and decide requests for reasonable accommodations in an expeditious manner. Absent expedited or extenuating circumstances, requests for reasonable accommodations will be decided within twenty (20) business days after an initial request is made. Where the interactive process and granted accommodation can be provided in less than twenty (20) business days, the Employer will do so. The Employer will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner. Where there is a delay in either processing a request for or providing a reasonable accommodation, the Employer will notify the individual of the reason for the delay and the expected timeframe for the decision.

E. If the requested accommodation is denied, the Employer will provide the employee at the time of the denial a written notice that explains the reasons for the denial; notifies the employee of any available appeal, grievance, or informal dispute resolution processes; and informs the employee of the right to challenge the denial by filing a complaint of discrimination.

F. The FCC will not deny requests for reasonable accommodation for reasons of cost, if the resources available would enable it to provide an effective reasonable accommodation without undue hardship.

#### **Section 4. Informal Dispute Resolution, Requests for Reconsideration, and Applicability of Time Limits to Initiate Actions in Available Forums.**

A. Employees are encouraged to use the Agency's voluntary reconsideration process or other alternative dispute resolution process to resolve reasonable accommodation issues informally. However, pursuing reconsideration, alternative dispute resolution, or other informal review procedures does not affect the time limits for initiating or pursuing an action in other available forums.

B. Upon receiving a written denial of an accommodation, the employee may, within five calendar days, submit a written request to the Official designated by the Agency in the written denial to reconsider the decision. The employee may present additional information or documentation in support of the reconsideration request. The Agency should respond to the request for reconsideration within 10 business days of receipt of the reconsideration request.

#### **Section 5. Reasonable Accommodation Resources**

A collection of resources related to reasonable accommodations will be maintained on the FCC Intranet. NTEU may request that additional resources be added, and the Employer will consider adding them to the extent that it determines they are appropriate and relevant to the issue of reasonable accommodations.

## **Section 6. Training**

The Employer will endeavor to make available through FCC University a training program regarding reasonable accommodations. Employees may take the training during work time no more than once per twelve-month period. Employees should coordinate with their supervisor(s) if they wish to take the training to arrange a date/time that is consistent with operational needs.

## **Section 7. Reasonable Accommodation Data**

A. The Employer will maintain data and reports regarding reasonable accommodations consistent with applicable law, rule, and regulation.

B. The Union may request data/reports concerning reasonable accommodations in accordance with 5 U.S.C. § 7114(b)(4).

## **Section 8. Bargaining Obligations with Respect to Reasonable Accommodations**

A. The Agency may provide reasonable accommodation(s) that conflict with provisions of other Articles in this Agreement so long as it determines that the granting of such accommodation(s) is necessary to effectively accommodate the employee.

B. Absent mutual agreement otherwise, if the provision of a reasonable accommodation to an employee requires more than a de minimis change in the conditions of employment of one or more bargaining unit employee(s), then the Employer

will serve notice on, and bargain with, the Union pursuant to the provisions of Article 45 of this Agreement (Midterm Bargaining). Such bargaining will not delay the implementation of the reasonable accommodation when such implementation is necessary to allow the employee to continue in a duty status.

## **ARTICLE 49**

### **EFFECTIVE DATE, DURATION, AND TERMINATION**

#### **Section 1**

This Agreement will become effective thirty-one (31) days from execution or upon Agency head approval, whichever is sooner. This Agreement shall remain in effect for a period of seven (7) years from its effective date and will expire after seven (7) years unless it is sooner terminated because either Party ceases to exist, or the Union ceases to be the exclusive representative of employees.

#### **Section 2**

A. Upon expiration of this Agreement, any rule or government-wide regulation that conflicts with any provision(s) of this Agreement will supersede all conflicting provisions and will automatically take effect. The Agency will provide notice to the Union of the rule or government-wide regulation taking effect; the affected section(s) of the BNA; and the implementation date. At the Union's request, the Parties will engage in post, impact and implementation bargaining, and such bargaining will be in accordance with the timeframes and procedures contained in Article 45, Midterm Negotiations.

B. Upon expiration of this Agreement, mandatory subjects of bargaining contained in the Agreement will continue in full force and effect. Provisions of the agreement that constitute permissive subjects of bargaining may be terminated at any time after the Agreement's expiration upon written notice. To the extent

practicable, the Employer will engage in pre-implementation bargaining prior to terminating permissive provisions. If the Employer determines it is not practicable to engage in pre-implementation bargaining, it will, upon the Union's request, engage in post-impact and implementation bargaining. Any bargaining under this Section must be requested and take place in accordance with the timeframes and procedures in Article 45. A notice of an intent to terminate a permissive provision must list the specific provision(s) to be terminated.

C. Notice of an intent to terminate a permissive provision from NTEU must be served via email on the Chief of the Labor Relations and Performance Management Service Center, with a copy to [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov). A notice by the Employer must be served via email on the NTEU National President, with a copy to the NTEU National Field Representative and the Chapter 209 President.

#### **Section 3**

A. If neither Party reopens this Agreement consistent with the timeframes and procedures of this Article, then it shall be automatically renewed for successive terms of two (2) years, consistent with the limitations set forth in Section 2 of this Article.

B. Either Party may elect to renegotiate this Agreement upon its expiration and on a biennial basis thereafter. Such notice must be in writing and shall be given no earlier than 105 calendar days and no later than sixty (60) calendar days prior to the date the Agreement would otherwise expire. A notice by NTEU

must be served via email on the Chief of the Labor Relations and Performance Management Service Center, with a copy to [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov). A notice by the Employer must be served via email on the NTEU National President, with a copy to the Chapter 209 President.

C. If negotiations over a new agreement are not concluded prior to this Agreement's expiration date, then this Agreement shall remain in effect pursuant to the limitations in Section 2 of this Article, until a new Agreement becomes effective.

#### **Section 4**

During the first full month following the halfway point of this Agreement, each party may reopen up to two (2) existing Articles in the BNA for renegotiation. A notice by NTEU must be served via email on the Chief of the Labor Relations and Performance Management Service Center, with a copy to [LRPMSC@fcc.gov](mailto:LRPMSC@fcc.gov). A notice by the Employer must be served via email on the NTEU National President, with a copy to the Chapter 209 President and the NTEU National Field Representative. Along with its notice, a party must provide initial proposals for the article(s) it has elected to reopen. Bargaining will commence within ten (10) business days after the close of the window for reopener notification, unless the Parties agree otherwise. The Parties will negotiate the reopened articles in accordance with all other timeframes and procedures in Article 45, Midterm Negotiations.

#### **Section 5**

##### Ground Rules

A. Within thirty (30) calendar days of a notice by a Party of its intent to reopen the agreement pursuant to Section 3 of this Article, the Party that submitted such a notification will submit its initial, ground-rules proposals in electronic format (Microsoft Word), which has track-changes capability.

B. The Parties will negotiate ground rules according to the procedures contained in Article 45 and will bargain to the extent required by law, rule, and regulation.

C. In re-negotiating this Agreement, the parties shall, to the extent practicable and consistent with their interests, use prior ground rules agreement(s) between the Parties as a template.

#### **Section 6**

A. For timeframes measured in calendar days, if the deadline falls on a Saturday, Sunday, or federal holiday, then the period shall run until the end of the next workday which is not a Saturday, Sunday, or federal holiday.

B. The timeframes in this article may be extended or altered by mutual agreement of the Parties.

#### **Section 7**

This Agreement shall be interpreted in a manner consistent with the Articles/provisions incorporated into the Agreement pursuant to the 2019/2020 limited term reopener, including Articles 33, 38, 39, 45, 46, 48, and 49, and

other renegotiated provisions. To the extent that these Articles and/or provisions conflict with other provisions in the BNA, the most recently incorporated language will control.



APPENDIX A  
GEOGRAPHIC AREAS

Atlanta, GA: EB Field Office

Boston, MA: EB Field Office

Chicago, IL: EB Field Office

Columbia, MD: EB Field Office

HFDF Center, PSHSB  
OET Laboratory

Dallas, TX: EB Field Office

Denver, CO: EB Field Office

Gettysburg, PA

Powder Springs, GA:

Equipment and Development Group  
(EDG) and Atlanta EB Field Office

Honolulu, HI: EB Field Office

Los Angeles, CA: EB Field Office

Miami, FL: EB Field Office

New Orleans, LA: EB Field Office

New York, NY: EB Field Office

Portland, OR: EB Field Office

San Francisco, CA: EB Field Office

## APPENDIX B

### (Sample Outline) Upward Mobility Training Plan

Target Position: \_\_\_\_\_(Title, Series Grade)  
Organization and Location: \_\_\_\_\_

| <b>Part I</b> | <b>No. of Weeks</b> |
|---------------|---------------------|
|---------------|---------------------|

|  |   |
|--|---|
| a. <i>General Orientation</i> . This includes background, organization, and procedures of the Commission and the trainees' Bureau or Office. The specifics of the individual's Training Agreement will be discussed. | 1 |
|--|---|

|   |    |
|---|----|
| b. <i>On-The-Job Training</i> . Special emphasis will be placed on the basic fundamentals of the target position, such as: office procedures, clerical activities, files, administration, reports, etc. | 12 |
|---|----|

#### **Part II**

|   |   |
|---|---|
| a. <i>On-The Job Training</i> . This includes training in the Bureau/Office in preparation for work in the target position. | 1 |
|---|---|

b. *Formal Training*. (As appropriate).

#### **Part III**

|  |   |
|--|---|
| a. <i>On-The Job Training</i> . This includes on-the-job training in the Bureau/Office of special work assignments or projects in a related field. | 2 |
|--|---|

|   |   |
|---|---|
| b. <i>Formal Training</i> . (As appropriate). | 1 |
|---|---|

#### **Part IV**

|   |    |
|---|----|
| <i>On-The-Job Training</i> . This includes on-the-job training in the Bureau/Office or in work closely related to and in preparation for the target position. | 13 |
|---|----|

Evaluation and Counseling – The trainee's progress will be evaluated quarterly (every three months). The evaluation made at the completion of six months shall be summarized in writing and be furnished to the trainee and to the Upward Mobility Coordinator. Thirty days prior to the end of the training period, the supervisor will include in the evaluation a statement as to whether the employee has successfully completed the training. This statement will be based upon the supervisor's determination that the trainee has satisfactorily performed assignments and demonstrated ability to fully perform in the target position.

Failure to meet minimum standards of accomplishment in any segment of the training period is to be reported in quarterly assessment reports. The training period may be extended up to three months to permit completion of the required training. In the event the trainee fails to meet the requirements of this training provision, he/she will be withdrawn from the program and every effort will be made to

place the employee in a position commensurate with the position held immediately prior to entering the program.

|               |               |
|---------------|---------------|
| Signed: _____ | Signed: _____ |
| Employee      | Supervisor    |
| Date: _____   | Date: _____   |

Signed: \_\_\_\_\_  
Upward Mobility Coordinator  
Date: \_\_\_\_\_

**APPENDIX C**

**GRIEVANCE FORM  
FOR USE IN FILING GRIEVANCES UNDER  
THE NEGOTIATED GRIEVANCE PROCEDURE**

Date submitted to immediate  
Supervisor \_\_\_\_\_

Employee's (s) name: \_

Employee's (s) position: \_

Employee's(s) organization: \_  
(Section, Branch, Division, Bureau/Office)

Employee's(s) representative (check one):

Represented by Self

Represented by Union

Name, title and telephone number of Union Representative:

\_\_\_\_\_

Name and title of supervisor to whom this form is submitted: \_\_\_\_\_

Description of grievance (i.e., description of incident giving rise to grievance, date of incident, place where the incident occurred, person(s) involved, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Specific provision(s) of the Agreement, policy, or procedure alleged to have been violated or description of the employment condition in dispute:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Explanation of how the provisions(s) of the Agreement, policy, or procedure have been violated:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remedy requested: \_\_\_\_\_

\_\_\_\_\_

## APPENDIX D FCC TELEWORK REQUEST FORM AND AGREEMENT

Instructions: Please review and complete this Request Form and Agreement and provide to your immediate supervisor. If your request is approved, your supervisor will send the original of this Request Form and Agreement to Human Resources. The supervisor, employee, and ABC should retain a copy. Employees must complete the FCC Telework Training and Home Safety Self Certification to participate in the FCC Telework Program.

### 1. The following constitutes an agreement between:

|                      |  |
|----------------------|--|
| Employee's Name      | Bureau/Division/Branch                             |
| Title, Series, Grade | Telephone Number (Include Area Code)               |
| Supervisor's Name    | Supervisor's Telephone Number: (Include Area Code) |
| Date of Request      | Date Telework Training Completed:                  |

### 2. Employee requests the following type of telework:

Please check one of the following:

Routine (regular/recurring)  Situational (ad hoc) Start Date: \_\_\_\_\_ End Date\*: \_\_\_\_\_

If regular/recurring, specify the day(s) of the week you propose to telecommute:

Week 1 of pay period:  Monday  Tuesday  Wednesday  Thursday  Friday

Week 2 of pay period:  Monday  Tuesday  Wednesday  Thursday  Friday

Check if applicable:  I am a member of the Emergency Response Group (ERG) for Continuity of Operations (COOP) and if the FCC continuity plan is activated I understand I must be available to telework.

Bargaining unit status:  I am a bargaining unit employee.  I am not a bargaining unit employee.

Probationary status:  I am a probationary employee.  I am not a probationary employee.

\*All agreements expire at the end of the calendar year but can be revised prior to that. Continued participation in the FCC Telework Program requires the completion and approval of a new telework agreement no later than December 31<sup>st</sup> of each year.

3. Description of Work to be Performed During Telework. The supervisor should include conditions specific to this agreement (e.g., contact expectations, reporting requirements, etc.). Include ERG responsibilities if applicable. Attach additional page if necessary.

### 4. Employee's Official Duty Station

|         |                       |                                      |
|---------|-----------------------|--------------------------------------|
| Address | City, State, Zip Code | Telephone Number (Include Area Code) |
|---------|-----------------------|--------------------------------------|

### 5. Employee's Alternate Work Site(s)

|   |   |                                      |
|---|---|--------------------------------------|
| Address                                       | City, State, Zip Code                         | Telephone Number (Include Area Code) |
| Email Address (If different from work e-mail) | Fax Number, if applicable (Include Area Code) | Tour of Duty (i.e., 9 to 5:30)       |

### 6. Approvals: Employee agrees to comply with this Agreement and the attached terms.

|                      |                        |                        |      |
|----------------------|------------------------|------------------------|------|
| Employee's Signature | Date                   | Supervisor's Signature | Date |
| Cancellation/Denial  | Supervisor's Signature |                        | Date |

Reason:

## FCC TELEWORK REQUEST FORM AND AGREEMENT

- 1. Participation:** The FCC Telework Program is offered as a means of supporting the Commission's goal of enhanced employee flexibility and improved work/life balance. Telework is subject to management approval and is not an employee entitlement. The employee's duties and performance must be suitable for telework, the employee's performance must not be diminished by teleworking, and the efficiency of the FCC and its mission must not be adversely impacted. The employee and supervisor agree to follow all applicable laws, rules, regulations, as well as policies and procedures established by the FCC and the specific requirements outlined herein. Members of the bargaining unit are also governed by the appropriate provisions of Article 46 of the Basic Negotiated Agreement between the FCC and NTEU.
- 2. Duration:** This Telework Agreement ("Agreement") remains in effect up to one calendar year. Agreements must be current and must be re-executed by December 31<sup>st</sup> of every calendar year. If an employee moves to a new position, is detailed, or has a change in immediate supervisor, his/her existing Agreement will continue unless the new supervisor requests the employee submit a new telework request.
- 3. Type of Agreement:** Agreements can be executed under a routine telework schedule or situational (ad hoc). Agreements in excess of 8 days per pay period require the approval of the Bureau/Office Chief and concurrence by the Managing Director. The circumstances under which situational teleworking is acceptable are identified in the Agreement (e.g., with advance supervisory approval, based on the type of work to be performed, when the Office of Personnel Management announces "unscheduled telework," for purposes of Continuity of Operations (COOP) or emergency preparedness). After approval of this Agreement, an employee approved for situational telework must submit via email a request to his/her supervisor on each occasion that he/she desires to telework, with a description of the work to be performed and the proposed date(s) of the situational telework.
- 4. Job Performance:** A basic premise of teleworking is that it does not diminish employee performance. The employee agrees to perform only official duties while teleworking. Employees must be available at a specified place, telephone number, and email during their established work schedule. Employees shall comply with their supervisors' direction as outlined in this Agreement regarding other contact requirements, such as changes to voice mail messages, forwarding work number to the alternate work site, the number of times a day required to check voice mail, e-mail, and other contacts.
- 5. Reporting to Official Duty Station:** The employee, when telecommuting, agrees to report to his/her official duty station as required by his/her supervisor for training, conferences, mandatory meetings, and if necessary, to receive assignments and review completed work. The employee may also be required to report to his or her official duty station to perform work which cannot otherwise be performed at the alternate work site.
- 6. Hours of Work, Work Schedules and Leave:** The employee agrees to follow agency and office procedures regarding work schedules, hours of work, requesting and obtaining approval of leave, and/or other matters, e.g., credit hours. When teleworking, employees shall work the same hours as established in their regular tour of duty unless alternate hours are approved in the agreement. An unplanned period of unavailability must be reported to an employee's supervisor or the supervisor's designee within a reasonable period of time, and the employee must account for the absence by requesting the appropriate leave.
- 7. Time and Attendance Requirements:** Employees are responsible for the accuracy of their time and attendance work hours and leave while at the official duty station and the alternate work site. Telework hours are reported on the time and attendance record as regular hours worked with the appropriate telework code.
- 8. Government Closure/Early Dismissal/Continuity of Operations/Emergency Preparedness:** The employee understands that if an emergency condition occurs either affecting the alternate work site, their official work station, or the Federal government, the employee must contact the FCC and follow appropriate

procedures for continuation of work, dismissal, or request for leave. FCC employees may be required or requested to telework during an emergency situation.

**9. Equipment:** Any government-provided equipment is for official business only and the employee agrees that the use of such equipment will be consistent with FCC policies. The employee agrees that the government will not be responsible for operations, home maintenance, or any other incidental costs; e.g., utilities, associated with the use of the employee's residence if the residence is the alternate work site.

**10. Training:** The employee and supervisor agree to successfully complete the FCC's Telework Training before entering into a written agreement to telework.

**11. Safety and Liability:** The employee is responsible for ensuring the safety and adequacy of the alternate work site, and that he/she has completed and is in compliance with the Home Safety Self-Certification Checklist. The alternate work site is subject to inspection. The employee understands that the Government is not liable for damages to an employee's personal or real property while the employee is working at the approved alternate work site except to the extent the Government is held liable by the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act.

**12. Worker's Compensation:** The employee understands that he/she is generally covered by Federal Employee's Compensation Act if injured in the course of performing official duties at authorized work locations.

**13. Standards of Conduct:** The employee agrees to abide by applicable Standards of Ethical Conduct while working on official duty at his/her official work site and the alternate work site.

**14. Security:** The employee understands he/she is responsible for the security of FCC information entrusted to him/her, regardless of his/her work location or access method. The employee agrees to protect Government records from unauthorized disclosure or damage and to comply with requirements of the Privacy Act of 1974, 5 U.S.C. 552a, and all other regulatory guidance controlling the protection and use of government records. The employee must adhere to the Commission's Policies and Directive on Information Security and complete the annual information security awareness training. Employees may not remove classified material from their official duty station without prior approval from appropriate authorities.

**15. Termination:** An employee may voluntarily terminate his/her participation in the FCC Telework Program at any time by providing written notice to his/her supervisor. An employee's participation in the FCC Telework Program may be terminated in accordance with Article 46.

**This Agreement shall be considered executed on the last signature date set forth below.**

**FOR THE FEDERAL COMMUNICATIONS COMMISSION:**

Ellen Standiford 3/16/2023  
Ellen Standiford  
Acting Chief Human Capital Officer  
FCC Office of the Managing Director

Jayne Ricco 3/16/2023  
Jayne Ricco, Acting Chief  
Labor Relations and Performance Management  
Service Center  
FCC Office of the Managing Director

Meghan T. Mason 3/16/2023  
Meghan T. Mason  
Attorney-Advisor  
Labor Relations and Performance Management  
Service Center  
FCC Office of the Managing Director

**FOR THE NATIONAL TREASURY EMPLOYEES UNION:**

Kenneth E. Moffett, Jr. 3/17/23  
Kenneth E. Moffett, Jr.  
Director of Negotiations  
National Treasury Employees Union

Tracy Bridgham 3/15/23  
Tracy Bridgham, President  
National Treasury Employees Union  
Chapter 209