

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Review of EEO Compliance and) MB Docket No. 19-177
Enforcement in Broadcast and Multichannel)
Video Programming Industries)
)
)
)
)
To: Office of the Secretary
Attn: The Commission

“EEO ENHANCEMENTS”

**JOINT COMMENTS OF 82 BROADCAST STATION LICENSEES AND
PETITION FOR FURTHER NOTICE OF PROPOSED RULEMAKING**

July 18, 2019

SUMMARY

For many years, small broadcasters have complained about the EEO rules, not for their laudable goals, but rather because of the required burdensome paperwork and nonproductive actions required. The proposals below envision a re-allotment of the EEO paperwork and burdens by continuing for larger broadcasters the responsibilities for documentation and supplemental initiatives, and in return increasing the job availability information available from smaller broadcasters that often serve as entry-points into the broadcasting industry.

The burden of bringing diversity to our industry in ways that work is proposed to be placed upon larger broadcasters with human resource departments, rather than foisted upon smaller entities for whom just finding employees is a challenge. Each of the proposals is meant to be mutually-complementary – the adoption of one without the others would be unfair to smaller broadcasters.

The Joint Commenters advocate in Proposal One for the removal of the Section 73.2080(d) small station exemption for notifications of each fulltime employment vacancy including now-exempted entry-level stations. Proposal Two advocates for a pragmatic and sensible definition of employment unit that includes all employees in a broadcast station entity. Proposal Three asks that the Section 73.2080(d) small station exemption number be set for the entire broadcasting entity at 50 employees, the number regarded by the human resources profession as demarcating the smaller from the larger entities.

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**JOINT COMMENTS OF 82 BROADCAST STATION LICENSEES AND
PETITION FOR FURTHER NOTICE OF PROPOSED RULEMAKING**

Eighty-two (82) FCC broadcast station licensees (the “Joint Commenters”)¹, hereby jointly submit their comments in response to the June 21, 2019 Notice of Proposed Rulemaking (the “NPRM”) in this proceeding. To the extent some of the proposals below may exceed the scope of the NPRM, the Joint Commenters request that the Commission consider those proposals in a further notice of proposed rulemaking.

**I. INTRODUCTION – THE QUEST FOR PRAGMATIC AND
EQUITABLE EEO RULES AND PROCEDURES**

1. For many decades now the FCC has had in place rules governing the EEO responsibilities of broadcast licensees.² For just about as many years,

¹ The Joint Commenters are each identified in their respective signature blocks at the conclusion of these Joint Comments. The law firm of Womble Bond Dickinson (US) LLP signs on to these Joint Comments as counsel to the broadcasters identified in footnote 17.

² See NPRM at paragraph 2.

broadcasters have complained about the rules, not for their laudable goals, but rather for the burdensome paperwork and nonproductive actions required of small broadcasters. The Joint Commenters therefore advocate for pragmatism and equity in the FCC's EEO rules for all broadcasters toward diverse broadcast station employment.

2. Toward pragmatism and equity, the Joint Commenters advocate for: (1) a required wide-outreach for every fulltime broadcast station employment opening no matter how few employees that employer may employ; (2) an end to the consideration of market-based "employment units" given the abolition of the broadcast station main studio rule, in favor of an examination of a broadcaster as an entire entity; and (3) a resetting of the FCC's small station exemption for EEO documentation and supplemental initiative requirements, including the Annual EEO Public File report, for broadcast entities that fall beneath the number of employees for which a human resource director is normally regarded by the human resources profession as needed.

3. Proposal One makes available information on every broadcast station vacancy to potential job applicants, particularly those stations in small markets that often serve as entry points to our great industry.³ Proposal Two removes now-antiquated market-based delineations for employment units. Proposal Three transfers the heavy lifting of EEO documentation and paperwork

³ Those stations employing between one to four employees are now excluded from the FCC's wide-dissemination of vacancy information requirement.

requirements, and supplemental initiatives, including the preparation of the Annual EEO Public File Report, to those entities that have a sufficient number of employees to merit the hiring of a human resource manager to productively carry out the informational aspects of educating the public on careers in broadcasting, and informing the FCC of the results of its required efforts. These proposals are detailed and supported below.

4. These proposals should be considered together – the adoption of one without the others may serve to unfairly multiply burdens on broadcasters that can least afford such increased paperwork. It is unfair to continue to divert the limited employee resources of smaller broadcasters for industry-wide educational or FCC-ordered record-keeping, while it is eminently equitable to require such efforts by broadcasting entities that employ human resource directors appropriate to such endeavors. Therefore, these proposals must be considered as a unit.

II. PROPOSAL ONE - REQUIRE WIDE-OUTREACH FOR EVERY BROADCAST STATION EMPLOYMENT OPENING

5. When decades ago the FCC's EEO rules were adopted, seeking out employees through any means of wide-dissemination was expensive. Wide dissemination of any kind usually meant newspaper advertising, trade press advertising, direct mail or other expensive media. While notifications to certain employment agencies and job referral services hit part of the job-seeker universe, by no means did it ensure that any job-seeker had a high probability of finding out about a particular job opening.

6. With the advent of the internet and web, however, everything has changed. One well-placed job vacancy announcement on an employment website is available to anyone who looks for employment vacancy information. It matters not where the job seeker is located – even those seeking entry level positions at the smallest of broadcast stations can learn of an opening through one posting on a website that has as its purpose the transmission of job vacancy information.

7. Thus, the FCC’s current rule that excludes information on job vacancies from job seekers at broadcast stations with fewer than five fulltime employees⁴ is an anachronism. More specifically, it hides from job seekers, particularly entry-level job seekers, vacancy information from the smallest of small broadcast stations that may very well serve as the first step to a career in broadcasting.⁵

8. Therefore, the Joint Commenters advocate an FCC rule change that requires every licensed radio station with a fulltime job opening to post that job opening on at least one employment website that is regionally- or nationally-known.⁶ The website could be hosted by a state broadcasters association; it could be a recognized employment site such as Indeed.com, AllAccess.com, Craigslist.com, Glassdoor.com, LinkedIn.com, or Monster.com; or it could be a portion of a site hosted by a national broadcaster’s organization such as the Radio

⁴ Section 73.2080(d), the “Small Station Exemption”.

⁵ Many of the undersigned can attest to their first job in broadcasting being at one of the smallest of broadcast stations, launching a career that resulted in broadcast station ownership.

⁶ The FCC’s exception for exceptional circumstance hires would remain.

Advertising Bureau, the National Association of Broadcasters, or the National Religious Broadcasters. State departments of labor also host such job vacancy websites.⁷ The criteria should be that the website is known for posting job vacancy information, and the website actually has job vacancy information for several dozen openings.⁸

9. With this first proposal, information on every broadcast station opening will be available to every job-seeker, even those entry level jobs at the smallest of broadcast stations that often serve as first step to a career in broadcasting.

III. PROPOSAL TWO - MOVE TO ENTITY-BASED BROADCAST EMPLOYMENT UNITS

10. The Commission now requires any station employment unit with five or more fulltime employees to comply with certain of the FCC's EEO rules. The Commission in Section 73.2080(e)(2) defines a "station employment unit" as "a station or a group of commonly owned stations in the same market that share at least one employee (emphasis added)".

11. Since the FCC eliminated its main studio rule, using local market-based employment units for EEO metrics is an anachronism as broadcast station employees may not be physically located in a broadcast station's market. Further,

⁷ See e.g. <https://labor.ny.gov/careerservices/CareerServicesIndex.shtm>. The New York State Department of Labor has an office in every county, and maintains free and open-to-the-public computer access for job searching in addition to serving as a repository for the posting of job vacancies.

⁸ In other words, a broadcast station's own website, while certainly not frowned upon for a job vacancy posting for the station, would not qualify as a website where job vacancies are routinely posted unless the website routinely posted job openings for the community or region over a substantial period of time.

the use of market-based employment units multiplies the paperwork and documents that must be prepared to show FCC EEO rule compliance by multi-station entities without furthering the goals of the FCC's EEO programs or increasing the amount of or specificity of the information provided.

12. Rather, for both the purpose of the FCC's specific EEO program requirements in Section 73.2080(c) including documentation such as the FCC's Annual EEO Public File Report, and for the FCC's calculation of the minimum number of employees in the small broadcaster exemption in Section 73.2080(d), the FCC should regard all employees in a broadcast station group entity, including affiliates, subsidiaries and parents, as one employment unit. The result will be that, while still identifying the particular broadcast stations, the broadcaster will keep its required EEO documentation and paperwork for the entity as a whole. The broadcaster will only be required to file one omnibus Annual EEO Public File Report for its entire employment unit, without being foreclosed from filing multiple reports if it chooses.⁹

13. The Joint Commenters observe that with the "market" based delineation of employment units now used by the FCC, many larger entities with a hundred or more employee can escape documentation requirements if their discrete station employment units in a particular market are fewer than five

⁹ The omnibus Annual EEO Public File Report for multi-market employment units will still report on individually licensed stations, identifying those stations (or possibly all stations) for which a particular job vacancy arose. The broadcasting entity should be allowed to choose the due date for its omnibus Annual EEO Public File Report as any date upon which the license renewal is due for any of its stations, with changes allowed in the future so that no greater than one year elapses since the previously-filed report.

fulltime employees, either through the use of multiple part-time employees, or by simply having most of the work done at the home office and making a conscious decision never to reach the five employee benchmark so as to avoid the crushing EEO paperwork. That a large broadcaster with a hundred or more employees can get around the EEO paperwork and documentation burdens by limiting the number of fulltime employees at each market-based employment unit, but a smaller broadcaster in the same market is subject to EEO burdens, is unfair.

14. With a change to entity-based EEO documentation, small broadcasters are relieved from burdensome documentation and paperwork requirements that are appropriately handled by HR departments. Larger broadcasters that likely have HR departments will be able to consolidate their documentation and Annual EEO Public File Report into fewer files and filings. Most importantly, the FCC and public will receive similar information to that which they now receive, provided by broadcasters who actually have the resources to accumulate and compile the required detailed information, rather than burdening and hampering the normal broadcast station operations of smaller broadcasting entities.

IV. PROPOSAL THREE - RESET THE FCC'S SMALL STATION EXEMPTION TO APPLY TO ENTITIES WITH EMPLOYMENT UNITS OF FEWER THAN 50 FULLTIME EMPLOYEES

15. Paraphrasing from the late 60s rock song:

If one is the loneliest number, 50 is the most intimidating for HR teams at small businesses. Once your headcount passes this threshold, you effectively

trigger an avalanche of new reporting and compliance requirements.¹⁰

From the Inc.com article *5 Signs That You Should Hire an HR Person*, author Suzanne Lucas observes that “[f]ifty employees is when the big laws, like FMLA, kick in.”¹¹ Echoing, from the Concordia University-St. Paul article *Does Your Company Need an HR Department?*:

Generally, industry reports recommend hiring a full-time human resource staff member at around 40 employees.¹²

Finally, from a table in the Software Advice article titled *How to Structure Your HR Department As Your Company Grows* by Rhiân Davies:

1-49 Employees - NO HR EMPLOYEE - Software and outsourcing are ideal for this amount of employees

50+ Employees – FIRST HR EMPLOYEE – Hire an HR Generalist

150+ Employees – SECOND HR EMPLOYEE – When you reach 150+ employees, it’s time to hire some extra help¹³

None of these human resources profession authors or articles were, of course, considering broadcast stations where it is not the 50th employee that creates governmental paperwork and documentation burdens, but the 5th employee. Five

¹⁰ “HR Compliance’s Magic Number: 50 Employees”, by Andy Przystanski at <https://blog.namely.com/hr-compliance-50-employees>.

¹¹ <https://www.inc.com/suzanne-lucas/5-signs-that-you-should-hire-an-hr-person.html>.

¹² <https://online.csp.edu/blog/business/does-your-company-need-an-hr-department>.

¹³ <https://www.softwareadvice.com/resources/hr-department-structure/>.

employees is an unrealistically low number for the imposition of extensive and burdensome governmental documentation and paperwork.

16. When broadcasters complain about the FCC paperwork and make-work burdens, they are generally referring to the myriad of FCC EEO requirements contained in Section 73.2080 of the Commission's rules. Section 73.2080(c), the "Specific EEO Program Requirements", lays out, in no less than 1,334 words, the requirements that every broadcast station with five or more fulltime employees must follow.

17. These 1,334 words of FCC EEO requirements necessitate specific and wide ranging notifications and record-keeping each time an employment vacancy occurs at the broadcast station along with annual reports and periodic audits to be sure that the proper records are being kept. The unfortunate truth for most of the broadcasters that are subject to these EEO requirements is not that people are being kept out of the industry through any nefarious means or even omissions – rather, most if not all of smaller broadcasters have immense challenges finding any qualified employees for most openings. That is why there are so many signatories to these comments. This is a plaintive plea by smaller broadcasters for relief from these ongoing, pervasive, time-consuming, and resource-gobbling paper-work and documentation requirements that governments otherwise traditionally only impose upon employers with 50 or more employees.¹⁴

¹⁴ For instance, the Family and Medical Leave Act applies to any private-sector employer who has 50 or more employees within a 75-mile radius. With the Affordable Care Act (ACA), once employers hit 50 employees, they are required to offer health insurance.

Therefore, to lift this burden on small broadcasters, the Small Station Exemption of Section 73.2080(d) should be modified to be applicable to any licensee employment unit, as defined in Proposal Two as the entire entity, with fewer than 50 employees.¹⁵

V. CONCLUSION

18. The Joint Commenters have no desire to lessen or diminish the FCC's quest for diversity in employment, and full and transparent opportunities for all seekers of jobs in the broadcasting industry. To the contrary, Joint Commenters believe that the Commission can do more to achieve its goal. Thus, the Joint Commenters advocate in Proposal One for the removal of the Section 73.2080(d) small station exemption for notifications of each fulltime employment vacancy. The placement of an internet posting for an open position at a broadcast station is something that most stations now do and requiring it of all broadcast stations is not an undue burden and is an effort that may bring future broadcasters into the now exempted stations. Proposal Two advocates for a more pragmatic and sensible definition of employment unit that includes all employees in a broadcast station entity. In return, however, the Joint Commenters are asking in Proposal Three that the Section 73.2080(d) small station exemption number be set at the number regarded by the human resources profession as demarcating smaller

¹⁵ The FCC's "Small Market Exemption" in Section 73.2080(d) of the Commission's rules could also be based upon the revenue definition of "small entities" as detailed in the NPRM's Appendix in which it is noted that the SBA regards a "small business" for both television and radio stations as those entities having \$38.5M or less in annual receipts. The Joint Commenters would, in lieu of a 50 employee Small Station Exemption, also support a Section 73.2080(d) Small Station Exemption based upon the SBA definition of a "small business".

from large for the purposes of hiring a human resources manager. As shown above, that number is 50 fulltime employees.

19. It is important that all broadcasters are behind the FCC's EEO program in both process and spirit. There is nothing more sapping to a small broadcaster than EEO paperwork and documentation that it is not staffed to handle, knowing that its larger competition has an HR department handling such record-keeping. The FCC required EEO documentation and recordkeeping serves the broadcasting industry and its diversity goals as a whole. But when such documentation and recordkeeping is imposed upon a small broadcaster, it is a crippling resource burden that simply takes away from the important task of broadcasting.

20. In conclusion, for pragmatism and equity, the Joint Commenters advocate for: (1) every broadcast station to be required to comply with wide-outreach for every fulltime opening; (2) an end to market-based "employment units" in the Section 73.2080(d) small station exemption in favor of an examination of a broadcaster as an entire entity; and (3) a resetting of the Section 73.2080(d) small station exemption to apply to broadcast licensee employment units of fewer than 50 fulltime employees for EEO program requirements consisting of documentation, paperwork, supplemental initiatives, and the Annual EEO Public File report.

21. The Joint Commenters propose the rule changes specifically delineated below in Appendix A, and if needed, the adoption of a further notice of proposed rulemaking contemplating the adoption of the proposed rule changes.¹⁶

Respectfully submitted,

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¹⁶ The NPRM at paragraph 11, specifically asks for comment on how the FCC might “further reduce the information collection burden for small business concerns with fewer than 25 employees” in compliance with the Small Business Paperwork Relief Act of 2002. The proposed rule changes are in accord with that request, are arguably contemplated by the NPRM, and therefore may not require a further notice of proposed rulemaking.

¹⁷ Womble Bond Dickinson (US) LLP is counsel to those Joint Commenters indicated with an asterisk.

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By: /s/ Will Payne
Will Payne
Owner

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Hugo, OK 74743
(580) 326-2555

**THE ORIGINAL COMPANY, INC.
OLD NORTHWEST BROADCASTING, INC.
THE INNOVATION CENTER, INC.**

By: /s/ Mark R. Lange
Mark R. Lange
President

The Original Company, Inc: WREB-FM/WQTY-FM/WUZR-FM/WZDM-FM/
WBTO-FM/WJPS-FM/WRCY-AM/WYFX-FM/WROY-AM/WRUL-FM/
WFIW-AM/WOKZ-FM/WFIW-FM/WTAY-AM/WTYE-FM
Old Northwest Broadcasting, Inc.: WWBL-FM/WAOV-AM
The Innovation Center, Inc: WSDM-FM
1309 Old Orchard Road
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(812) 882-6060

**S-R BROADCASTING INC.
CAAM PARTNERS LLC**

By: /s/ Chuck Maylin
Chuck Maylin
General Manager

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CAAM Partners LLC
KRKO/Everett's Greatest Hits & KKXA/Classic Country KXA
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**HEARTLAND COMMUNICATIONS GROUP
LLC**

By: /s/ Jim Coursolle
Jim Coursolle
President & CEO

Heartland Communications Group LLC
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TMRG BROADCASTING, LLC

By: /s/ Robert Faehn
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KXLG Radio
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E-COMMUNICATIONS, LLC

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Bob Eckman
President/CEO/Owner

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**CONNER MEDIA CORPORATION*
MEDIA EAST, LLC*
HERITAGE BROADCASTING LLC***

By: /s/Ronald Benfield
Ronald Benfield
President

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Media East, LLC
Heritage Broadcasting LLC
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ADAMS RADIO OF FORT WAYNE, LLC*
ADAMS RADIO OF TALLAHASSEE, LLC *
ADAMS RADIO OF DELMARVA PENINSULA,
LLC*
ADAMS RADIO OF NORTHERN INDIANA,
LLC*

By: /s/ Ron Stone
Ron Stone
President & CEO

Adams Radio of Fort Wayne, LLC
Adams Radio of Tallahassee, LLC
Adams Radio of Delmarva Peninsula, LLC
Adams Radio of Northern Indiana, LLC
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STARCOM LLC*

By: /s/ Dennis Carpenter
Dennis Carpenter
President

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HARBIT COMMUNICATIONS, INC.*

By: /s/ Mike Harbit
Mike Harbit
President/General Manager

Harbit Communications, Inc.
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PINE TO PRAIRIE BROADCASTING, INC.*

By: /s/ Phil Curtis Ehlke
Phil Curtis Ehlke
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EAST TEXAS BROADCASTING, INC.*

By: /s/ James R. Kitchens Jr.
James R. Kitchens Jr.
Vice President/General Manager

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BIG BROADCASTING, INC.*

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Dale Berger
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ROLAND L. BUSHLAND*

 /s/ Roland L. Bushland
Roland L. Bushland

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ELKO BROADCASTING COMPANY, INC.

By: /s/ Paul G. Gardner
Paul G. Gardner
President

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**MTN BROADCASTING, INC.
ELDORA BROADCASTING, INC.
MARSHALLTOWN EDUCATION PLUS, INC.**

By: /s/ Mark Osmundson
Mark Osmundson
President

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Eldora Broadcasting, Inc.: KDAO-FM
Marshalltown Education Plus, Inc.: KTDV-FM/KRFH-FM
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STONECOM COOKEVILLE, LLC

By: /s/ Larry Stone
Larry Stone
President

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HAM BROADCASTING COMPANY, INC.

By: /s/ Beth Mann
Beth Mann
President/CEO

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Lou Vito
President

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**SIMMONS BROADCASTING, INC.*
KNDK INC.***

By: /s/ Ernest N. (Bob) Simmons
Ernest N. (Bob) Simmons
President

Simmons Broadcasting, Inc.
KNDK Inc.
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CAPITAL BROADCASTING VA, LLC *

By: /s/ Alfred L. Hammond
Alfred L. Hammond
President

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GEOS COMMUNICATIONS

By: /s/ Benjamin P. Smith
Benjamin P. Smith
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July 18, 2019

APPENDIX A
Texts of Proposed Rule Changes
(Proposed changes indicated with double-underlines and strikeouts)

§ 73.2080 Equal employment opportunities (EEO).

...

(c) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy by, at a minimum, posting the vacancy on at least one regionally-known or nationally-known employment vacancy internet website.

(ii) In addition to such recruitment sources, a station employment unit, shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) ~~For each market, engage in at least four (if the stations are employment unit has more than ten full-time employees and is not located in a smaller market) or two (if the stations are it has five to ten full-time employees and/or is located entirely in a smaller market)-of the following initiatives during each two-year period beginning with the date stations in the station employment unit are required to file renewal applications, or the second, fourth or sixth anniversaries of that date.~~

(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;

- (vi)** Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);
 - (vii)** Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;
 - (viii)** Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;
 - (ix)** Establishment of a mentoring program for station personnel;
 - (x)** Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;
 - (xi)** Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;
 - (xii)** Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;
 - (xiii)** Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;
 - (xiv)** Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;
 - (xv)** Provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;
 - (xvi)** Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.
- (3)** Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.
- (4)** Periodically analyze measures taken to:
- (i)** Disseminate the station's equal employment opportunity program to job applicants and employees;
 - (ii)** Review seniority practices to ensure that such practices are nondiscriminatory;
 - (iii)** Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;
 - (iv)** Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;
 - (v)** Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c)(1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

(i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) Documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) The date each vacancy was filled and the recruitment source that referred the hiree.

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

(i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year in each market where the stations are in separate markets.

(d) *Small station exemption.* The provisions of paragraphs (b) and (c)(1)(ii) and (c)(2)-(6) of this section shall not apply to station employment units that have fewer than ~~five~~ fifty full-time employees.

(e) *Definitions.* For the purposes of this rule:

(1) A *full-time employee* is a permanent employee whose regular work schedule is 30 hours per week or more.

(2) A *station employment unit* is a station or a group of commonly owned stations ~~in the same market that share at least one employee wherever located~~ including stations owned by an affiliate, subsidiary or parent.

(3) A *smaller market* includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

(f) *Enforcement.* The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing ~~five~~ fifty or more persons in full-time positions, except where noted.

(1) All broadcast stations, including those that are part of an employment unit with fewer than ~~five~~ fifty full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 396, information provided on its Form 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast ~~television~~ station that is part of an employment unit of ~~five~~ fifty or more full-time employees ~~and each radio station that is part of an employment unit of eleven or more full-time employees~~, four years following the station's most recent license expiration date as specified in § 73.1020. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the mid-term review, that review will cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

(3) ...