ARNOLD & PORTER
1200 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 872-6700
CABLE: "ARFOPO"
TELECOPIER: (202) 872-6720
TELEX: 89-2733

PARK AVENUE TOWER
65 EAST 55TH STREET
NEW YORK, NEW YORK 10022-32
(212) 750-5050

1700 LINCOLN STREET
DENVER, COLORADO 80203
(303) 863-1000

MARCIA A. CRANBERG
DIRECT LINE: (202) 872-3736

December 20, 1988

VIA FEDERAL EXPRESS

Mr. Tom Lauher
General Manager
Station KFUO
85 Founders Lane
St. Louis, Missouri 63105

Dear Tom:

Please forgive my delay in responding to your inquiries concerning FCC renewal requirements. Shortly after our conversation I was swamped with several minor emergencies, and knowing that KFUO's renewal application is not due yet for sometime, I put off responding to your inquiry until I could give it a bit more attention.

I had advised in our conversation that I would send you a copy of the FCC's rules pertaining to EEO requirements; copies of recent Annual Employment Reports filed with the FCC by KFUO; and the applicable "RF" (radiofrequency) radiation guidelines. Moreover, you had asked me to determine whether Stations KFUO and KFUO-FM may file a single EEO Program and Annual Employment Report, or whether separate such filings should be made for each of the two stations.

Enclosed are the following:

1. A copy of Section 73.2080 of the FCC's rules, which sets forth the Commission's basic EEO requirements;

2. A copy of the most recent Equal Employment Opportunity Program on file at the FCC for Stations KFUO and KFUO-FM, as well as copies of the stations' Annual Employment Reports for the years 1986-88; and

3. A copy of the FCC's 1985 Report and Order imposing the requirement that renewal applicants certify that their facilities are free of unsafe RF radiation,

as well as a 1986 FCC public notice describing the RF radiation requirements. Note that according to the public notice a copy of the specific technical guidelines can be obtained from the National Technical Information Service at Telephone 1-800-336-4700.

Finally, I have raised with FCC staff your question concerning whether separate Programs and Reports should be filed for each of Stations KFUO and KFUO-FM. I am assured that so long as the stations are commonly owned and under the same general management a single EEO Program will suffice, even if the stations are operated separately and have distinct employees.

Please let me know if I can be of further help. Best wishes for a happy holiday season.

Sincerely yours,

Marcia Cranberg

Marcia Cranberg

Enclosures

cc: Dennis Stortz

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I GENERAL POLICY

It is the policy of KFUO and KFUO-FM to provide equal employment opportunity to all qualified individuals without regard to their race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It is also our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have developed an Equal Employment Opportunity Program which includes the following elements:

II RESPONSIBILITY FOR IMPLEMENTATION

Rev. Rodger P. Abatie, General Manager, is responsible for the administration and implementation of our Equal Employment Opportunity Program. It is also the responsibility of all persons making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III POLICY DISSEMINATION

To assure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts are made:

The station's employment application form contains a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, state, or federal agency if they believe they have been the victims of discrimination.

Appropriate notices are posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, state, or federal agency if they believe they have been the victim of discrimination.

IV RECRUITMENT

With a small staff of employees, job vacancies occur infrequently. (During the past twelve months, for example, only two vacancies occurred and one part-time employee became a full-time employee. Consequently, little recruitment efforts were required.) When vacancies do occur, it is the policy of KFUO and KFUO-FM to seek out qualified minority and female applicants. We deal only with employment services, including state employment agencies, which refer job candidates without regard to their race, color, religion, national origin or sex.

When utilizing media for recruitment purposes, help-wanted advertisements always include a notice that we are an Equal Opportunity Employer and contain no indication, either explicit or implied, of a preference for one sex over another.

We encourage present employees, particularly minority and female employees to refer minority and female candidates for existing and future job openings.

V TRAINING

Station resources and/or needs are such that we are unable to institute specific programs for upgrading the skills of employees. However, we do encourage employees to seek additional job-related formal education. We also encourage training through workshops, seminars, etc. Approved training programs qualify employees for time off with pay while acquiring additional education and/or training.

VI AVAILABILITY SURVEY

Based on current information complied by the Research and Analysis Section of the Missouri Division of Employment Security, the respective minority and female workforce in the station's recruitment area is as follows:

	Women	Blacks, Hispanic, Oriental and American Indian
Percentage in the Workforce	42.9	18.7

VII CURRENT EMPLOYMENT SURVEY

There has been a change in our employment profile since the filing of our last Annual Employment Report. Attached is an updated report identifying the incumbents under each FCC Form 395 category for the two week period beginning May 1, 1983 and ending May 15, 1983.

SECTION V	(Section V and VI) (applicable to all respondents)												
FULL-TIME PAID EMPLOYEES JOB CATEGORIES[1]	ALL EMPLOYEES[2]			MALE					FEMALE				
				MINORITY GROUP EMPLOYEES					MINORITY GROUP EMPLOYEES				
	Total Columns 2 + 3 (1)	Male (2)	Female (3)	Black, not of Hispanic origin (4)	Asian or Pacific Islander (5)	American Indian or Alaskan Native (6)	Hispanic (7)	White, not of Hispanic origin (8)	Black, not of Hispanic origin (9)	Asian or Pacific Islander (10)	American Indian or Alaskan Native (11)	Hispanic (12)	White, not of Hispanic origin (13)
Officials and Managers	7	6	1					6					1
Professionals	4	2	2					2	1				1
Technicians	3	3						3					
Sales workers													
Office and Clerical	4	1	3					1					3
Craftsperson (Skilled)													
Operatives (Semi-skilled)													
Laborers (Unskilled)													
Service Workers													
TOTAL	18	12	6					12	1				5
Total employment from previous Report (if any)	17	11	6					11	1				5

SECTION VI	(Section VI column titles same as Section V)												
PART-TIME PAID EMPLOYEES JOB CATEGORIES[1]													
Officials and Managers													
Professionals	4	4						4					
Technicians	3	3						3					
Sales workers													
Office and Clerical													
Craftsperson (Skilled)													
Operatives (Semi-skilled)													
Laborers (Unskilled)													
Service Workers													
TOTAL	7	7						7					
Total employment from previous Report (if any)	7	7						7					

[1]Refer to Instructions for explanation of all title functions.
[2]Include "Minority Group Employees" and others. See Instruction 7.

VIII JOB HIRES

During the twelve month period beginning July 1, 1983 and ending June 30, 1983, we hired a total of two persons, both male.

An analysis of our recruitment techniques, job applications and new hires suggest that a sufficient number of qualified minorities and women are applying for available positions.

IX PROMOTION

It is our policy to provide promotions on a nondiscriminatory basis. Further, to assure that minorities and women are given due consideration for promotional opportunities, special effort is taken to encourage minorities and women to qualify and apply for advancement.

X EFFECTIVENESS OF AFFIRMATIVE ACTION PLAN

As is indicated in our employment report, of 18 full time employees, 6 or 33% are female. We believe this compares favorably with statistics shown. The report also indicates the level to which certain female and minorities have risen in the organization. 1 of the six female employees is at management level and 2 female employees including 1 black female are at the professional level.

KFUO and KFUO-FM have long been committed to Equal Employment Opportunity and will continue to act affirmatively to maintain that committment.

003194

000007

Approved by OMB
3060-0076
Expires 12/31/87

CODED

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Annual Employment Report 1986

(See Instructions)

SUBMIT two copies to FCC

SUBMIT two copies to FCC

SECTION I (applicable to all respondents)

A. ☐ COMMON CARRIER Respondents with *fewer than sixteen* (16) full-time employees during the selected payroll period: CHECK BOX A, Complete Section III, and the Certification Statement. Sign and return to the FCC.

B. ☐ COMMON CARRIER Respondents with *16 or more* full-time employees during the selected payroll period: CHECK BOX B and *complete* all pertinent sections of the form. Sign and return to the FCC.

C. ☐ BROADCAST Respondents with *fewer than* (5) full-time employees during the selected payroll period: CHECK BOX C. Complete Sections II, III, & IV and the Certification Statement. Sign and return to the FCC.

D. X ☒ BROADCAST Respondents with 5 *or more* full-time employees during the selected payroll period: CHECK BOX D and *complete* all pertinent sections of the form. Sign and return to the FCC.

SECTION III (applicable to all respondents)

A. Check one, to indicate type of respondent
☒ Broadcast Respondent
☐ Common Carrier Respondent

B. Pay Period Ending Covered by this Report: *(date)*
January 31, 1986

C. Name and address of respondent

The Lutheran Church-
Missouri Synod
Radio Station KFUO-AM
85 Founders Lane
St. Louis, MO. 63105

(FOR COMMISSION USE ONLY)
CODE NO. 07905

SECTION II (applicable only to Broadcast respondents)

Check A, B, or C to indicate type of Reporting Units(s) covered in this Report:

A. X ☒ For a single employment unit consisting of one or more stations

B. ☐ For a single Headquarters Office Report

C. ☐ A Consolidated Report

SECTION IV (applicable only to Broadcast respondents)

Answer A, B, or C to identify Reporting Unit(s) covered in this Report

A. (1) If a Commercial Broadcast Station Report - (not a CAR station) check one

AM X ☒ AM
TV ☐ TV
☐ International

FM ☐ FM Independent
AF X ☒ Combined AM and FM
FA ☐ FM Affiliated with AM in same area

(2) If station is noncommercial, check one

ET ☐ Educational TV
ER ☐ Educational Radio

(3)

Call Letters	Location
KFUO-AM	Clayton, Missouri
&	
KFUO-FM	

RECEIVED
MAY 28 1986
ENFORCEMENT DIVISION
EEO BRANCH

B. If a *Headquarters Office Report*, list here (or in Appendix____, if this space is insufficient) the Headquarters Office covered in this Report.

Name of Headquarters Office	Location of Headquarters Office	Stations supervised by listed Hdqrs. Office (list call letters)

C. If a *Consolidated Report*, list here (or in Appendix____, if this space is insufficient) the Headquarters and Stations covered in this Consolidated Report.

Headquarters Office(s) Names and Locations	Station Call Letters and Locations

SECTION V	(Section V and VI) (applicable to all respondents)												
	ALL EMPLOYEES[2]			MALE					FEMALE				
				MINORITY GROUP EMPLOYEES					MINORITY GROUP EMPLOYEES				
FULL-TIME PAID EMPLOYEES JOB CATEGORIES[1]	Total Columns 2 + 3 (1)	Male (2)	Female (3)	Black, not of Hispanic origin (4)	Asian or Pacific Islander (5)	American Indian or Alaskan Native (6)	Hispanic (7)	White, not of Hispanic origin (8)	Black, not of Hispanic origin (9)	Asian or Pacific Islander (10)	American Indian or Alaskan Native (11)	Hispanic (12)	White, not of Hispanic origin (13)
Officials and Managers	6	4	2					4					2
Professionals	7	6	1					6					1
Technicians	1	1						1					
Sales workers													
Office and Clerical	3	1	2					1	1				1
Craftsperson (Skilled)													
Operatives (Semi-skilled)													
Laborers (Unskilled)													
Service Workers													
TOTAL	17	12	5					12	1				4
Total employment from previous Report (if any)	17	11	6					11	2				4

SECTION VI	(Section VI column titles same as Section V)												
PART-TIME PAID EMPLOYEES JOB CATEGORIES[1]													
Officials and Managers													
Professionals	6	6						6					
Technicians	5	5						5					
Sales workers													
Office and Clerical	1		1										1
Craftsperson (Skilled)													
Operatives (Semi-skilled)													
Laborers (Unskilled)													
Service Workers													
TOTAL	12	11	1					11					1
Total employment from previous Report (if any)	10	9	1					9					1

[1]Refer to Instructions for explanation of all title functions.
[2]Include "Minority Group Employees" and others. See Instruction 7.

SECTION VII (For Respondents with On-the-Job Trainees ONLY)

(The data below shall also be included in the figures for the appropriate occupational categories in Sections V and VI)

JOB CATEGORIES		ALL EMPLOYEES[1]			MALE					FEMALE				
					MINORITY GROUP EMPLOYEES					MINORITY GROUP EMPLOYEES				
		Total Columns 2 + 3 (1)	Male (2)	Female (3)	Black, not of Hispanic origin (4)	Asian or Pacific Islander (5)	American Indian or Alaskan Native (6)	Hispanic (7)	White, not of Hispanic origin (8)	Black, not of Hispanic origin (9)	Asian or Pacific Islander (10)	American Indian or Alaskan Native (11)	Hispanic (12)	White, not of Hispanic origin (13)
On-the-job trainees[2]	White Collar													
	Production													

[1]Include "Minority Group Employees" and others. See instruction 7.
[2]Report only employees enrolled in formal on the-the-job-training programs.

CERTIFICATION

(This report must be certified: by licensee or permittee, if an individual; by a partner, if a partnership; by an officer, if a corporation or association, or by an attorney of licensee or permittee, in case of physical disability or absence from the United States of the licensee or permittee.)

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed Paula M. Zika Title Director of Administration

Paula M. Zika

Date May 23, 1986 Name of Respondent The Lutheran Church-Missouri Synod KFUO-AM

Telephone No. (include area code) (314) 725-3030

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.

This request is in accordance with the requirement of P.L. 96-511, Paperwork Reduction Act of 1980

The data collected will be used to assess compliance with FCC Rules and Regulations pertaining to EEO requirements. Your response is mandatory.

CODED

003198

000011

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Approved by OMB
3060-0076
Expires 12/31/87

Annual Employment Report 1987

(See Instructions)

SUBMIT two copies to FCC

SUBMIT two copies to FCC

SECTION I (applicable to all respondents)

A. ☐ COMMON CARRIER Respondents with *fewer than sixteen* (16) full-time employees during the selected payroll period: CHECK BOX A, Complete Section III, and the Certification Statement. Sign and return to the FCC.

B. ☐ COMMON CARRIER Respondents with *16 or more* full-time employees during the selected payroll period: CHECK BOX B and *complete* all pertinent sections of the form. Sign and return to the FCC.

C. ☐ BROADCAST Respondents with *fewer than* (5) full-time employees during the selected payroll period: CHECK BOX C. Complete Sections II, III, & IV and the Certification Statement. Sign and return to the FCC.

D. ☒ BROADCAST Respondents with 5 *or more* full-time employees during the selected payroll period: CHECK BOX D and *complete* all pertinent sections of the form. Sign and return to the FCC.

SECTION III (applicable to all respondents)

A. Check one, to indicate type of respondent
☒ Broadcast Respondent
☐ Common Carrier Respondent

B. Pay Period Ending Covered by this Report: *(date)*
January 31, 1987

C. Name and address of respondent

The Lutheran Church-
Missouri Synod
Radio Station KFUO-AM
85 Founders Lane
St. Louis, MO. 63105

(FOR COMMISSION USE ONLY)

CODE NO. 07905

SECTION II (applicable only to Broadcast respondents)

Check A, B, or C to indicate type of Reporting Unit(s) covered in this Report:

A. ☒ For a single employment unit consisting of one or more stations

B. ☐ For a single Headquarters Office Report

C. ☐ A Consolidated Report

SECTION IV (applicable only to Broadcast respondents)

Answer A, B, or C to identify Reporting Unit(s) covered in this Report

A. (1) If a Commercial Broadcast Station Report - (not a CAR station) check one

AM ☒ AM
TV ☐ TV
☐ International

FM ☐ FM Independent
AF ☒ Combined AM and FM
FA ☐ FM Affiliated with AM in same area

(2) If station is noncommercial, check one

ET ☐ Educational TV
ER ☐ Educational Radio

(3) Call Letters — Location

KFUO-AM — Clayton, Missouri

&

KFUO-FM

RECEIVED
SEP 17 1987
ENFORCEMENT DIVISION
EEO BRANCH

FCC Form 395
January 1987

B. If a *Headquarters Office Report*, list here (or in Appendix____, if this space is insufficient) the Headquarters Office covered in this Report. 003199

000012

Name of Headquarters Office	Location of Headquarters Office	Stations supervised by listed Hdqrs. Office (list call letters)

C. If a *Consolidated Report*, list here (or in Appendix____, if this space is insufficient) the Headquarters and Stations covered in this Consolidated Report.

Headquarters Office(s) Names and Locations	Station Call Letters and Locations

SECTION V	(Section V and VI) (applicable to all respondents)												
FULL-TIME PAID EMPLOYEES JOB CATEGORIES[1]	ALL EMPLOYEES[2]			MALE					FEMALE				
				MINORITY GROUP EMPLOYEES				White, not of Hispanic origin	MINORITY GROUP EMPLOYEES				White, not of Hispanic origin
	Total Columns 2 + 3 (1)	Male (2)	Female (3)	Black, not of Hispanic origin (4)	Asian or Pacific Islander (5)	American Indian or Alaskan Native (6)	Hispanic (7)	(8)	Black, not of Hispanic origin (9)	Asian or Pacific Islander (10)	American Indian or Alaskan Native (11)	Hispanic (12)	(13)
Officials and Managers	6	4	2					4					2
Professionals	8	6	2					6					2
Technicians	1	1						1					
Sales workers	1		1										1
Office and Clerical	2		2										2
Craftsperson (Skilled)													
Operatives (Semi-skilled)													
Laborers (Unskilled)													
Service Workers													
TOTAL	18	11	7					11					7
Total employment from previous Report (if any)	17	12	5					12	1				4

SECTION VI	(Section VI column titles same as Section V)												
PART-TIME PAID EMPLOYEES JOB CATEGORIES[1]													
Officials and Managers													
Professionals	6	6						6					
Technicians	3	3						3					
Sales workers													
Office and Clerical	1		1										1
Craftsperson (Skilled)													
Operatives (Semi-skilled)													
Laborers (Unskilled)													
Service Workers													
TOTAL	10	9	1					9					1
Total employment from previous Report (if any)	12	11	1					11					1

[1]Refer to Instructions for explanation of all title functions.
[2]Include "Minority Group Employees" and others. See Instruction 7.

SECTION VII (For Respondents with On-the-Job Trainees ONLY)

(The data below shall also be included in the figures for the appropriate occupational categories in Sections V and VI)

JOB CATEGORIES		ALL EMPLOYEES[1]			MALE					FEMALE				
					MINORITY GROUP EMPLOYEES				White, not of Hispanic origin	MINORITY GROUP EMPLOYEES				White, not of Hispanic origin
		Total Columns 2 + 3 (1)	Male (2)	Female (3)	Black, not of Hispanic origin (4)	Asian or Pacific Islander (5)	American Indian or Alaskan Native (6)	Hispanic (7)	(8)	Black, not of Hispanic origin (9)	Asian or Pacific Islander (10)	American Indian or Alaskan Native (11)	Hispanic (12)	(13)
On-the-job trainees[2]	White Collar													
	Production													

[1]Include "Minority Group Employees" and others. See instruction 7.
[2]Report only employees enrolled in formal on the-the-job-training programs.

CERTIFICATION

(This report must be certified: by licensee or permittee, if an individual; by a partner, if a partnership; by an officer, if a corporation or association, or by an attorney of licensee or permittee, in case of physical disability or absence from the United States of the licensee or permittee.)

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed Paula M. Zika Title Director of Administration

Date Sept. 10, 1987 Name of Respondent The Lutheran Church-Missouri Synod Radio Station KFUO-AM

Telephone No. (include area code) (314) 725-3030

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.

This request is in accordance with the requirement of P.L. 96-511, Paperwork Reduction Act of 1980

The data collected will be used to assess compliance with FCC Rules and Regulations pertaining to EEO requirements. Your response is mandatory.

Federal Communications Commission
Washington, D.C. 20554

BROADCAST STATION
ANNUAL EMPLOYMENT REPORT 1988

003202
000015

Approved by OMB
3060-0390
Expires 9/30/90

(For FCC Use Only)
Code No. 07905

SECTION I

A. Name of Licensee or Permittee	B. Address
The Lutheran Church - Missouri Synod	85 Founders Lane St. Louis, Missouri 63105

Church

SECTION II

A. TYPE OF RESPONDENT (check one)

COMMERCIAL BROADCAST STATION

AM [ ] AM
FM [ ] FM
AF [X] Combined AM & FM in same area

TV [ ] TV
LP [ ] Low Power TV
IN [ ] International

NONCOMMERCIAL BROADCAST STATION

ER [ ] Educational AM or FM Radio
ET [ ] Educational TV

RECEIVED
MAY 31 1988
Federal Communications Commission
Office of the Secretary

HQ [ ] Headquarters (Name and Location) _____

_____ ZIP Code _____

B. LIST CALL LETTERS AND LOCATION(S) OF INCLUDED STATIONS

CALL LETTERS	LOCATION(S)
KFUO-AM & KFUO-FM	85 Founders Lane St. Louis, MO. 63105

CALL LETTERS	LOCATION(S)
	85 Founders Lane St. Louis, MO. 63105

SECTION III

A. PAY PERIOD COVERED BY THIS REPORT (DATE) Period Ending January 31, 1988

B. CHECK APPLICABLE BOX

[ ] Fewer than five full-time employees during the selected payroll period (Complete page one only and certification statement and return to FCC)

[X] Five or more full-time employees during selected payroll period (Complete all sections of form and certification statement and return to FCC)

SECTION IV CERTIFICATION

This report must be certified, as follows: (a) By licensee, if an individual; (b) By a partner, if a partnership (general partner, if a limited partnership); (c) By an officer, if a corporation or an association; or (d) By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.
U.S. CODE, TITLE 18, SECTION 1001.

I certify to the best of my knowledge, information, and belief, all statements contained in this report are true and correct.

Signed [signature] Title Director of Broadcast Ministries

Print Name Ken Lombardi Date May 25, 1988 Telephone No. (314) 725-3030

FCC 395-B
December 1987

A. FULL-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL (a-j)	MALE WHITE (NOT HISPANIC) (a)	MALE BLACK (NOT HISPANIC) (b)	MALE HISPANIC (c)	MALE ASIAN OR PACIFIC ISLANDER (d)	MALE AMERICAN INDIAN, ALASKAN NATIVE (e)	FEMALE WHITE (NOT HISPANIC) (f)	FEMALE BLACK (NOT HISPANIC) (g)	FEMALE HISPANIC (h)	FEMALE ASIAN OR PACIFIC ISLANDER (i)	FEMALE AMERICAN INDIAN, ALASKAN NATIVE (j)
OFFICIALS & MANAGERS	8	6					2				
PROFESSIONALS	8	8									
TECHNICIANS	1	1									
SALES WORKERS	2						2				
OFFICE & CLERICAL	4						4				
CRAFT WORKERS (SKILLED)											
OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL	23	15					8				

B. PART-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL (a-j)	MALE WHITE (NOT HISPANIC) (a)	MALE BLACK (NOT HISPANIC) (b)	MALE HISPANIC (c)	MALE ASIAN OR PACIFIC ISLANDER (d)	MALE AMERICAN INDIAN, ALASKAN NATIVE (e)	FEMALE WHITE (NOT HISPANIC) (f)	FEMALE BLACK (NOT HISPANIC) (g)	FEMALE HISPANIC (h)	FEMALE ASIAN OR PACIFIC ISLANDER (i)	FEMALE AMERICAN INDIAN, ALASKAN NATIVE (j)
OFFICIALS & MANAGERS											
PROFESSIONALS	7	7									
TECHNICIANS	3	3									
SALES WORKERS											
OFFICE & CLERICAL											
CRAFT WORKERS (SKILLED)											
OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL	10	10									

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, engineers and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

National Environmental Policy Act of 1969
Radiation
Radiation, Electromagnetic, Hazardous Level
Radiation, Exposure
Radiation, Radio Frequency

Report and Order adopted amending §1.1305 to add to the list of "major actions" a category of operations and facilities applicable to health and safety guidelines for human exposure to radiofrequency electromagnetic radiation. Applications for such facilities will be treated as "major actions" as provided in the FCC Rules implementing the National Environmental Policy Act of 1969.
—*Amendment of Part 1*
Gen. Docket No. 79-144

FCC 85-90

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
Responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices.	Gen. Docket No. 79-144
Potential effects of a reduction in the allowable level of radiofrequency radiation on FCC authorized communications services and equipment.	

REPORT AND ORDER

Adopted: February 26, 1985; Released: March 14, 1985

BY THE COMMISSION:

I. Summary

1. The Commission is amending Part 1 of its rules implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§4321 *et seq*. (1976). The amendment provides for environmental analysis of major Commission actions that may result in non-compliance with applicable

health and safety guidelines for radiofrequency (RF) radiation. Our processing guideline for determining the significance of human exposure to RF radiation will be the "Radio Frequency Protection Guides" adopted in 1982 by the American National Standards Institute (ANSI). At this time, the rule amendment will only apply to major actions taken by the Commission with respect to the following facilities authorized by the FCC Rules and Regulations: (1) broadcast facilities authorized under Part 73; (2) broadcast facilities authorized under Part 74 (Subparts A and G only); (3) satellite-earth stations authorized under Part 25; and (4) experimental facilities authorized under Part 5. An accompanying *Further Notice of Proposed Rule Making*, also being issued today, proposes to categorically exclude other FCC-regulated facilities and operations from the provisions of this rule, except for shipboard satellite-earth terminals.

II. Background

2. On June 7, 1979, the Federal Communications Commission (FCC) issued a *Notice of Inquiry* (NOI) concerning the responsibility of the FCC to consider biological effects of radiofrequency (RF) radiation when licensing facilities and authorizing equipment that utilize RF energy.[1] The NOI was designed to: (1) assist the FCC in determining whether it is appropriate for the Commission to take any action under health and safety standards for exposure to RF radiation, and (2) provide documentation so that the FCC can adequately participate in rulemaking proceedings of other agencies to assure that any standards adopted adequately take into account the impact on the licensees and equipment regulated by the FCC.

3. As a result of the comments received in response to the FCC's NOI and our assessment of the Commission's statutory responsibilities under the National Environmental Policy Act of 1969 (NEPA)[2], the Commission issued a *Notice of Proposed Rule Making* (NPRM), on February 18, 1982, proposing to amend Section 1.1305 of the Commission's Rules and Regulations implementing NEPA[3], by expanding the list of "major actions" subject to the Commission's environmental processing standards, 47 C.F.R. §1.1305. It proposed that applications for equipment authorizations would be treated as "major actions" triggering environmental assessment when the equipment in question did not comply with RF radiation emission standards. It was also proposed that applications for construction permits or licenses to transmit would be treated as "major

[1] *Notice of Inquiry*, General Docket No. 79-144, 44 Fed. Reg. 37008 (1979), 72 F.C.C. 2d 482 (1979).

[2] 42 U.S.C. §§4321 *et seq*. (1976).

[3] *Notice of Proposed Rule Making*, General Docket No. 79-144, 47 Fed. Reg. 8214 (1982), 89 F.C.C. 2d 214 (1982). *See also* 47 Fed. Reg. 10871 (1982) and 47 Fed. Reg. 27384 (1982) (*Correction* and *Order Extending Time for Filing Comments and Reply Comments*).

actions" triggering environmental assessment when the proposed operation would result in the exposure of workers or the general public to levels of RF radiation in excess of safe levels established by federal agencies which have jurisdiction to set such standards.

III. Discussion

A. General

4. A total of twenty-three filings of comments and reply comments were received at the FCC in response to the Commission's NPRM in Docket 79-144 and all comments have been considered. The respondents included individuals, broadcast groups, major corporations, trade associations, a labor union, local government officials, and the U.S. Environmental Protection Agency. A list of the parties filing comments and reply comments in this proceeding can be found in Appendix 2.

5. With a few exceptions, respondents to the NPRM generally supported the thrust of the Commission's proposal. The general tone of the comments indicated a desire by many respondents that the Commission clearly establish a policy regarding RF radiation hazards and clarify Commission and licensee responsibilities in this area of growing public concern. Several of the respondents also suggested the Commission take actions that, we believe, go beyond the scope of this proceeding. Although various broadcast groups, such as the National Association of Broadcasters (NAB), the TV Broadcasters All Industry Committee (TVBAC), the Association for Broadcast Engineering Standards, Inc. (ABES), and the National Association of Public Television Stations basically supported the proposed rule, they and others urged the Commission to issue a policy statement dealing with federal preemption of local and state standards for RF radiation. For example, TVBAC urged the Commission to "issue a Policy Statement which clearly and forcefully asserts its authority and intention to preempt unwarranted state or local RF radiation standards that arbitrarily limit or preclude communications services to the public."

6. Two respondents felt that the Commission should not adopt the proposed rule amendment at this time. The Utilities Telecommunications Council (UTC) recommended "that the Commission postpone adoption of its proposal until the EPA or another responsible federal agency establishes a legally enforceable exposure standard." UTC felt that it would be premature for the FCC to adopt its proposed rule in view of the fact that various federal agencies "are only in the preliminary stages of standard development and in light of the disparate views and positions of scientists the world over concerning what constitutes a radiation 'hazard'. . . ."

7. Similarly, RCA Corporation, while endorsing the concept of national standards and while recognizing the proposed Commission regulation as

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"meritorious," nonetheless felt that the Commission should "defer adoption of the regulations implementing NEPA until such time as the Federal agencies issue suitable radiation standards." RCA feared that if the Commission adopted regulations before the issuance of federal standards, "such regulations may be ineffective, inappropriate, or detrimental to those persons regulated thereunder." The UTC and RCA comments, however, were outweighed by those comments supportive of our taking action at this time.

8. It is our judgement that the Commission is required to make a threshold determination as to whether the facilities it approves are "major Federal actions significantly affecting the quality of the human environment," thus triggering environmental review, regardless of whether federal guidelines or standards currently exist for general public exposure to RF radiation.[4] The Commission cannot avoid its independent legal obligation under NEPA to make its own determination as to the environmental impact of its "major actions." Rather, the Commission must comply with its procedural duties under NEPA "to the fullest extent, unless there is a clear conflict of statutory authority."[5] Just as "[c]onsideration of administrative difficulty, delay or economic cost will not suffice to strip [NEPA] of its fundamental importance," *id.*, so too, the mere absence of a federal standard or individual agency expertise does not absolve the Commission of its NEPA responsibilities. Thus, an agency "cannot refuse to give serious consideration to environmental factors merely because it thinks that another agency should assume the

[4] *See* 42 U.S.C. §4322(2)(c) (1976). *See also* NOI, *supra* note 1, at para. 12-13; NPRM, *supra* note 3, at para. 11; *State of Alaska v. Andrus*, 591 F.2d 537, 540-41 (1979), *quoting Natural Resources Defense Council, Inc. V. Morton*, 388 F. Supp. 829, 834 (D.D.C. 1974), *aff'd mem.*, 527 F.2d 1386 (D.C.Cir.), *cert. denied*, 427 U.S. 913 (1976). ("The term 'actions' refers not only to actions taken by federal agencies; but also to decisions made by the agencies such as the decision to grant a license, which allows another party to take an action affecting the environment.") Under NEPA, each federal agency is required to prepare a detailed environmental impact statement for any "major" action it takes "significantly affecting the quality of the human environment." 42 U.S.C. §4332(2) (c). Such a statement need not be prepared whenever the agency can satisfy itself that its proposed action will not significantly affect the environment. The NEPA guidelines issued by the Council on Environmental Quality (CEQ) also permit agencies to exclude categorically from NEPA processing those actions "which do not individually or cumulatively have a significant effect on the human environment . . ." 40 C.F.R. §1508.4 (1980). Even when a proposed action does have a significant effect on the human environment, that action may still be taken if the benefits of the action outweigh the environmental consequences. NEPA requires only that the benefits be weighed against the costs in any environmental assessment or environmental impact statement.

[5] *See Calvert Cliffs' Coordinating Committee, Inc. v. United States A.E. Com'n.*, 449 F.2d 1109, 1115 (D.C. Cir. 1971).

responsibility for promoting the policies of NEPA."[6]

B. Guidelines for RF Radiation Exposure

9. A major topic of discussion among the respondents was the matter of which RF standard or guideline the Commission should use as its criterion for identifying a "major action" for processing under the NEPA rules. The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor has jurisdiction to establish RF exposure standards for workers. The U.S. Environmental Protection Agency (EPA) has the authority to recommend safe levels for exposure of the general public to RF radiation. Our NPRM noted that OSHA had previously issued a radiation protection guide for workers[7], and that, until a federal standard for the general public was developed, we proposed to use the OSHA workers' exposure guidelines for determining what constituted a "major action" with respect to general public exposure to RF radiation. In May 1982, OSHA proposed to revoke its advisory standards, including the advisory standard for exposure of workers to non-ionizing radiation.[8] However, subsequently, OSHA reconsidered and decided to retain its advisory standard for RF radiation.[9]

10. In light of OSHA's proposed revocation, some respondents felt that the Commission should reconsider its proposal to use the OSHA guidelines. To quote the American Radio Relay League (ARRL), "OSHA's decision to now propose revocation of its advisory standard on worker exposure to nonionizing radiation would effectively knock the underpinnings out of the FCC proposed Section 1.1305(d)." Other parties, including most of the broadcast groups, did not think that OSHA's action should affect the Commission's proposal. For example, Satellite Business Systems expressed the opinion that "OSHA proposed to withdraw its standard for procedural reasons related to its powers under its enabling statute. It did not indicate any disapproval of the standard . . ."

11. GTE Service Corporation, Aeronautical Radio, Inc. (ARINC), ARRL, Thomas Agoston, Donald E. Clark, and Motorola, Inc. advanced an

[6] *See Natural Resources Defense Council, Inc.* v. *S.E.C.*, 432 F. Supp. 1190, 1207-1208 (D.C.D.C. 1977), *rev'd on other grounds*, 606 F.2d 1031 (D.C. Cir. 1979), *citing* S. Rpt. No. 91-296, 91st Cong., 1st Sess. 18-19 (1969).

[7] *See* 29 C.F.R. §1910.97(a)(2). The OSHA guide recommended that exposure not exceed a power density of 10 milliwatts per square centimeter (mW/cm²) or the mean-squared electric field strength and mean-squared magnetic field strength equivalents of 40,000 volts squared per meter squared or 0.25 amperes squared per meter squared, respectively, averaged over any six-minute period. These OSHA guidelines were not developed by OSHA itself, but, rather, represented a direct adoption by OSHA of a preexisting standard developed by a non-government, independent organization, the American National Standards Institute (ANSI). (*See* para. 24, *Infra*).

[8] *See* 47 Fed. Reg. 23477 (1982).

[9] *See* 49 Fed. Reg. 5318 (1984).

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alternative approach. They proposed that, in place of the OSHA guidelines, the Commission should use, as an interim or provisional standard, the voluntary RF radiation protection guides issued in 1982 by the American National Standards Institute (ANSI).[10] GTE maintained that:

> Although the Commission has expressed the opinion that it does not have the expertise to *create* health standards for RF and microwave radiation, . . . the Commission does have the expertise to *recognize* a technically sound radiation standard, and, in the absence of other federal agency standards, adopt it as an interim standard. (emphasis in the original)

12. To support its position, GTE pointed to 1982 guidance from the Office of Management and Budget encouraging reliance of federal agencies on voluntary standards.[11] Other parties stated that they either endorsed or did not oppose Commission reliance on the ANSI radiation protection standard as a standard for purposes of application processing under NEPA.

13. Although several of the broadcast groups would have preferred that the Commission use the OSHA radiation protection guide, they indicated that use of the ANSI standard would be acceptable. For example, to quote TVBAC, "[w]hile the ANSI standards are more stringent than the 10 mW/cm² standard at certain frequencies, they are not so strigent as to impair broadcasting services." (TVBAC comments, at 11). Similarly, NAB expressed the view that "[t]he adoption of [the ANSI] standard would pose a hardship in only a few instances and would be infinitely better than the patchwork of unrealistic and varying local standards that is being developed in the absence of federal action." (NAB comments, at 6). NAB maintained that even though there is "no evidence" that the OSHA guideline has failed to protect the public health adequately, "NAB recognizes that good arguments have been made within the scientific community for a fequency-sensitive standard such as the new one proposed by ANSI." (Id.)

14. In its Comments, GTE Service Corporation further noted that the Commission has previously "made reference in its rules to nationally

[10] ANSI C95.1-1982 (revision of ANSI C95.1-1974). Copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., New York, N.Y. 10017. The ANSI protection guides recommend various time-averaged values for safe exposure in five different frequency bands. Recommended equivalent plane-wave, free-space power density levels are 100 milliwatts per square centimeter (mW/cm²) for 300 kHz to 3 MHz, 1 mW/cm² for 30-300 MHz, and 5 mW/cm² for 1500 MHz to 100 GHz, with transitional levels in the intervening frequency bands. Copies of the ANSI recommendations are available from the American National Standards Institute, 1430 Broadway, New York, N.Y. 10018 or from: Standard Sales - IEEE, 445 Hoes Lane, Piscataway, N.J. 08854.

[11] *See* Office of Management and Budget, "Final Issuance of OMB Circular No. A-119, 'Federal Participation in the Development and Use of Voluntary Standards' ", 47 Fed. Reg. 49496 (1982).

recognized standards"[12] as well as "recognized the work done by ANSI in other areas."[13] Citing "strong support" in the record of this proceeding for Commission use of the ANSI standard, GTE, therefore, recommended that "[s]ince the current ANSI standard represents the consensus of the experts active in the field, its recognition by the Commission as an interim federal standard would be in keeping with OMB's guidance and would help to stem the tide of potentially conflicting local standards."

15. Echoing GTE, Motorola, Inc. urged the Commission to "adopt without modification the ANSI standard for human exposure to radiofrequency radiation; it is technically sound and widely supported." Motorola went on to note that "in the absence of Government promulgated standards, it is entirely appropriate for the FCC to employ those formulated by voluntary standards-developing bodies." The ANSI standard, maintained Motorola, "represents the best determination of many knowledgeable parties, and could effectively be used on an interim basis unless or until an appropriate Government agency promulgates new or different standards."

16. In addition to comments filed during the official comment period following our NPRM in this proceeding, the ARRL filed a "Petition for Expedited Special Relief and Declaratory Ruling" on March 20, 1984. In its petition ARRL requested that the Commission issue "at the earliest possible moment" an interim policy statement and status report on the appropriateness of use of the ANSI standard as an RF protection guideline. ARRL restated its recommendation filed previously that the Commission adopt the ANSI C95.1-1982 standard as an interim radiation protection guideline. Similar sentiments were expressed in a letter, dated August 27, 1984, from the Electromagnetic Energy Policy Alliance (EEPA) to Mark S. Fowler, Chairman of the FCC.

17. Significant misgivings about Commission use of the OSHA guidelines were expressed from another perspective in comments of the U.S. Environmental Protection Agency (EPA). EPA noted that, "[i]n general, we are in agreement with the subject document as written, but we have reservations about the use of the OSHA occupational standard as an interim standard for exposure of the general public until EPA issues guidelines for exposure of the public." EPA observed that factors related to environmental heat stress and the health of exposed individuals

[12] *See* GTE Comments, at 5, citing Commission Rules, §73.317(g)(1)(ii), incorporating the National Electrical Code.

[13] *Id.*, citing *Order Terminating Proceeding* in Docket No. 21371, released August 6, 1982 (FCC 82-359) (Commission terminated docket proceeding to develop standards for RF test sites partially because ANSI was creating such a standard.) *See also* the NOI in this proceeding, *supra* note 1, at para. 9, citing previous Commission reliance on an earlier OSHA/ANSI RF radiation standard.

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suggested that the OSHA standard "may not provide adequate protection for certain segments of the public."

18. EPA advised that a plan for the development of "Federal Radiation Protection Guidance for Public Exposure to Radiofrequency Radiation" has been prepared by EPA's Office of Radiation Programs. This plan called for release of the proposed guidance for public comment by the fall of 1983 and publication of the final guidance approximately one year later. EPA suggested that "[u]ntil such time, the FCC should consider using a more conservative approach to evaluating public exposure than that provided in the OSHA standard." In December 1982, EPA issued an "Advance Notice of Proposed Recommendations," indicating its intention to develop "Federal Guidance" for exposure of the general public to RF radiation.[14] However, the EPA recommendations have not been officially released as of this date, and we cannot predict what action EPA will ultimately take in this area.

19. Reservations about FCC adoption of the OSHA guidelines were also expressed in comments submitted by Oregon officials Donald E. Clark and Dr. Charles P. Schade. For example, Schade maintained that occupational exposure standards "do not protect persons in the population who might be especially sensitive to radiofrequency energy." He mentioned small children and persons with chronic illnesses as examples of individuals who might be adversely affected by the Commission's use of an occupational standard as a standard for exposure of the general public.

20. There were two reasons for our initial proposal to rely on the OSHA occupational standard as an interim guideline for exposure of the general public. First, no standard had been established by the Federal Government for exposure of the general public to RF radiation. Second, as indicated in the NPRM, we believed that some guideline is necessary to facilitate the Commission's environmental review process until such time as EPA or another responsible federal agency recommends or adopts guidelines or standards for exposure of the general public to non-ionizing RF radiation.[15]

21. Subsequent developments, however, as noted, necessitated a reconsideration of our initial proposal. In 1982, OSHA proposed to revoke the occupational RF radiation protection guide. Although OSHA reconsidered its original proposal and ultimately decided to retain the RF advisory standard, that reconsideration was for procedural rather than scientific reasons. Moreover, some of the respondents as noted, pointed out serious problems with Commission reliance on the OSHA occupational standard to evaluate public exposure to RF radiation. Finally, as noted, EPA has not yet developed "Federal Guidance" for public exposure to RF radiation.

[14] *See* 47 Fed. Reg. 57338 (1982).

[15] *See* NPRM, note 3, *supra*.

22. Absent a federal standard for exposure of the general population, and in the face of the Commission's acknowledged statutory obligation under NEPA, two questions, therefore, remain. Under these circumstances can the Commission rely on existing exposure guidelines in view of the lack of federal standards? If it can, upon which guidelines should it reply?

23. First, we believe that the Commission can rely on existing exposure guidelines as long as they are technically sound and scientifically supportable. This reliance will enable us to fulfill our explicit NEPA statutory obligation to assess the environmental impact of our "major actions" with respect to potential RF and microwave radiation hazards.

24. Second, regarding the exposure guidelines on which the Commission will rely, in light of recent developments, and as a result of comments received in this proceeding, we are modifying our original proposal for evaluating RF radiation exposure (*see* Appendix 1). We are incorporating by reference into our NEPA rules the guidelines recommended by the American National Standards Institute (ANSI) entitled "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz" (ANSI C95.1-1982).[16] We believe that, for the present, our use of the ANSI guidelines will best implement our statutory obligations under NEPA.

25. We have selected the non-government ANSI guidelines to evaluate general population and worker exposure to RF radiation because they are scientifically based and widely accepted guidelines that are applicable to the general population as well as to workers. These ANSI guidelines were both mentioned in the NPRM and, as discussed in more detail below, advocated by a number of the respondents in lieu of the OSHA occupational exposure guidelines. Although we have neither the expertise nor the jurisdiction to *develop* our own radiation exposure guidelines, we believe, as supported by comments received in this proceeding, that the Commission does have the expertise and authority to *recognize* technically sound standards promulgated by reputable and competent organizations such as ANSI. The OSHA radiation protection guide upon which we had originally proposed to rely was based directly on the prior ANSI standard of 10 milliwatts per square centimeter (mW/cm^2) originally issued in 1966.[17] ANSI's revision of that standard, in 1982, reflected recently acquired knowledge of the biological effects of RF radiation. We, therefore, believe that the 1982 ANSI standard is more appropriate than the OSHA advisory guideline. Furthermore, the OSHA guidelines were written as an exposure guide for workers, whereas the 1982 ANSI recommendations "are intended to apply to non-occupational as well as to

[16] *See* note 10, *supra*.

[17] *See* 29 C.F.R. §1910.99, "Source of standards," identifying the basis for OSHA's RF radiation guide.

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occupational exposures." The revised ANSI guidelines also apply to a broader frequency range than the OSHA guidelines and, unlike the OSHA guidelines, contain recommendations for exposure in the standard (AM) broadcast band.

26. We would prefer to defer in this area to the expert federal health and safety agencies. We believe, however, that NEPA requires us to consider the environmental impact of the operations and facilities we license or approve, regardless of whether federal standards currently exist or we have the requisite expertise to set such standards. For our purposes we require technically sound and widely recognized guidelines which are scientifically supportable. Therefore, we have chosen with this rule amendment to rely upon the widely recognized 1982 ANSI RF radiation protection guidelines as an environmental processing trigger.

27. The Commission will be relying upon the ANSI guidelines to facilitate our environmental review obligations under NEPA.[18] Under our NEPA rules, environmental concerns, such as RF radiation exposure, are weighed and balanced in making a public interest determination. If a proposed operation or facility will result in human exposure in excess of the ANSI limits, environmental analysis will be required. However, the application can be amended to reduce or eliminate the possibility for excessive exposure. If an environmental impact statement is necessary, with regard to RF radiation, the ANSI guidelines will be used in determining whether the environmental impact or risks outweigh the benefits of the proposal.

28. We are aware of new or proposed recommendations for exposure to RF radiation promulgated by other organizations subsequent to the issuance of our NPRM. For example, new exposure guidelines, more restrictive than the ANSI standard for exposure of the general public, were released in April, 1984, by the International Radiation Protection Association (IRPA).[19] The National Council on Radiation Protection and Measurements (NCRP) is currently developing RF exposure guidelines for workers and the public. In addition, the American Conference of Governmental Industrial Hygienists (ACGIH) and the National Institute for Occupational Safety and Health (NIOSH) have recommended or are developing recommendations for occupational exposure to RF radiation, and, as discussed previously, EPA has been in the process of developing federal guidelines for RF exposure. While IRPA has now issued guidelines and other groups may do so in the future, we believe that the Commission should act on the basis of the record before us at the present

[18] *See* note 4, *supra*.

[19] "Interim Guidelines on Limits of Exposure to Radiofrequency Electromagnetic Fields in the Frequency Range from 100 kHz to 300 GHz," published in *Health Physics*, Vol. 46, No. 4, pp. 975-984 (April 1984).

time rather than postpone action indefinitely as we seek the ultimate standard. It is possible that we may revisit this issue and recommend use of a different standard in the future. However, for the present, the record before us supports use of the 1982 ANSI standard.

C. License Renewals and Modifications

29. We have determined that we are legally obligated under NEPA to include license renewal and facility modification applications within the scope of our environmental processing guidelines. To clarify as well as qualify the applicability of our amended NEPA processing rules to such applications, we would note the following points. First, both the NEPA case law[20] and regulations of the Council on Environmental Quality implementing the statute[21] make clear that the statutory term "major Federal action" includes both new and continuing federal activities such as initial licensing as well as license renewals and modifications.

30. Second, NEPA encompasses continuing as well as initial federal actions so as to make environmental quality and environmental protection ongoing concerns of every federal agency.[22] Third, with its emphasis on ongoing environmental quality and protection under ever changing environmental circumstances, the NEPA statute does not provide for grandfathering of any existing facility or project.[23] The procedural

[20] *See, e.g., Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 775 (1983) ("The federal action that affects the environment in this case is permitting *renewed* operation of [the Three Mile Island - 1 nuclear reactor].") (emphasis added); *People vs. Nuclear Energy vs. Nuclear Regulatory Commission*, 678 F.2d 222, 231 (D.C. Cir. 1982) (The " 'major federal action' in the case of TMI-1 is . . . the Commission's continued exercise of supervisory responsibility over its operation and maintenance."). *See also Far East Broadcasting Co., Inc.*, 65 F.C.C. 2d 496 (1977) (FCC denied petition opposing license renewal on basis of alleged radiation effects.)

[21] *See, e.g.*, 40 C.F.R. §1508.18 (1978) defining "major Federal actions" to "include new and continuing activities." *See also Lee v. Resor*, 348 F. Supp. 389, 395 (M.D. Fla. 1972) (citing CEQ guidelines applying NEPA requirements to continuing programs or activities.)

[22] *See, e.g., Lathan v. Volpe*, 455 F.2d 1111, 1116, 1121 (9th Cir. 1971) (NEPA does not apply retroactively, but is is applicable to continuing or ongoing federal projects, including those commenced prior to January 1, 1970, the effective date of the NEPA statute); 40 C.F.R. §1502.9(c)(1)(ii), the CEQ regulation requiring agencies to modify environmental analyses in order to take into account "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact;" *Scientists' Institute for Public Information, Inc. v. AEC*, 481 F.2d 1079, 1088 (1973); *Monarch Chemical Works, Inc. v. Exxon*, 452 F. Supp. 493 (D.C. Neb. 1978), *aff'd* 604 F.2d 1083 (8th Cir. 1979); *Bennett v. Taylor*, 505 F. Supp. 800 (D.C. La. 1980).

[23] Although both the NEPA statute and the accompanying legislative history are silent on grandfathering, the legislative intent is explicit in its enunciation of concern for ongoing environmental quality, a value which will be endangered by, and inconsistent with, grandfathering of facilities despite possibly changing environmental circumstances and standards. Consider for example, the situation of an FM radio facility first licensed under

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requirements of the statute, however, are not applicable to, or triggered by, existing facilities but only apply to, and are triggered by, applications for new facilities, or renewals or modifications, the approval of which would constitute "major Federal actions significantly affecting the quality of the human environment."[24]

31. Finally, based on industry comments received in this proceeding, it is our expectation that, in fact, the vast majority of license renewal and facility modification applications will comply with the ANSI standard we are incorporating today into our NEPA processing guidelines.[25] Thus, our approval of such applications in most instances will not constitute a "major Federal action significantly affecting the quality of the human environment" so as to trigger environmental processing with respect to RF radiation. Therefore, as indicated earlier, we expect that most licensed operations seeking renewal or modification of a previously approved facility without increasing their RF emissions, would, in effect, be exempted from further Commission environmental processing of the particular application. Remaining then for such processing would be those applications which would not comply with the RF radiation standards, including a minority of applications for new facilities, license renewals, and modifications of existing facilities.

D. Evaluation of Compliance

32. Many respondents raised questions that related to the evaluation of whether a facility or operation was in compliance with a given standard. For example, American Telephone and Telegraph (AT&T) expressed its concern that "the intent of the proposed rule is not sufficiently clear and ... this slight ambiguity may result in an unnecessary burden to the Commission as well as applicants." AT&T argued that the proposed rule should address "real, not merely hypothetical, situations in which the emission or exposure guidelines would be exceeded." AT&T urged that the rule make specific reference to exposure "under normal working conditions" and "using standard maintenance and repair practices" and, with respect to public exposure, should make specific reference to exposure "in normally accessible areas."

33. Concern over measurement procedures, particularly in the near-field of a radiating source, was expressed by some respondents. Motorola felt that adoption of the proposed rules without establishing measurement

one RF exposure standard in 1985. When it comes up for renewal seven years later, the application should be examined in the light of *current* environmental circumstances and RF exposure standards in 1992 in order to protect both environmental quality and the public health and safety at that time. Grandfathering such a facility in 1985, however, would preclude such an examination.

[24] *See, e.g.*, 40 C.F.R. §1508.18 defining "major Federal actions."

[25] *See, e.g.*, Comments of Motorola, Inc., the NAB, and the TVBAC, para. 11-13, *supra*.

procedures was "in effect, adoption of no [r]ules at all. . . . [E]nforcement of the rules could be next to impossible in near-field situations. We urge the Commission to promulgate [r]ules *only* after appropriate measurement procedures have been established. . . ." (emphasis in original). Motorola, therefore, suggested that the Commission consider relying upon the new ANSI standard as a basis for an RF radiation criterion in its NEPA processing rules because that standard provides for an alternative measurement technique for near-field exposure.

34. NAB also mentioned potential measurement problems and pointed out that far-field measurement techniques and formulas may not be applicable in the near-field. NAB suggested that broadcasters be allowed to rely on actual measurements made by qualified engineers in lieu of being obliged to use far-field formulas for characterizing RF energy levels.

35. In its comments, NAB also discussed the problem of locations where many different sources of RF energy are present. NAB contended that "[i]n some instances, there is no practical alternative but to locate a variety of transmitting antennas on one tall building or mountain peak. At these locations, the cumulative radiation levels might exceed the new ANSI standard—but almost never in any area accessible to the public." NAB suggested that the Commission should consider various methods to prevent exposure to hazardous radiation at these sites but maintained that "[n]o licensee or applicant should be subjected to special processing where transmitting equipment under that licensee's control by itself produces radiation levels not in excess of the standards."

36. In order to address these various concerns related to the determination of compliance with standards, and to give guidance to our licensees, we plan to issue a technical bulletin which will be developed by Commission staff before the effective date of our rule amendment. This bulletin will discuss prediction methodology, evaluation of exposure situations, measurement problems, multiple source siting, and other relevant issues. For example, in the case of a simple, isolated, broadcast antenna, a "worst-case" prediction for power density in the far-field of the antenna can be made by dividing the effective isotropic radiated power (EIRP) by either $4\pi R^2$ or πR^2 (depending on whether 100% ground reflection is assumed), where R = the minimum distance from the antenna where people might be exposed. Although generally applicable in the far-field, this prediction method could also be used to estimate a "worst-case" *upper limit* for intensities in the near-field of simple, isolated, broadcast antennas. The use of such a formula could provide *prima facie* evidence that a station would be in compliance with the ANSI standard. Other appropriate methods would be acceptable for evaluating compliance, including actual measurement data as suggested by NAB.

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37. With regard to AT&T's concerns over the interpretation of standards, we believe that the ANSI standard on which we propose to rely is reasonably clear as to its applicability. Since we intend to rely on guidelines established and defined by a qualified, non-government, standard-setting organization, we are not in a position to rewrite or modify them. Such guidelines should be self-explanatory, and it will be the responsibility of the applicant to demonstrate compliance with them. However, to avoid confusion our forthcoming bulletin will discuss applicability of the ANSI standard and its interpretation. It should be emphasized that *accessibility* is a key factor in determining compliance with an exposure standard. Compliance can often be realized by appropriate restrictions on accessibility to the environment surrounding an RF transmitting source.

38. In the future, it is expected that various standard-setting agencies and organizations will be issuing information on prediction methods and measurement procedures for use in evaluating exposure to RF radiation. For example, ANSI, EPA, and NCRP (*see* para. 28, *supra*) are all working separately to develop further documentation on this topic. In the meantime, as noted, the ANSI C95.1-1982 standard incorporates certain measurement guidelines.[26] Therefore, our reliance on the ANSI standard should address the concerns expressed regarding the need for Commission clarification of measurement procedures.

39. Concerning the problem of multiple transmitters at the same location, if a proposed facility or modification would result in an incremental increase in RF radiation in an accessible area causing overall non-compliance with the specified guidelines, then we can see no practical way to address this situation other than to require an environmental assessment of the proposal. *Existing* facilities that are not proposing modifications in their operations or are not applying for renewal would not be subjected to NEPA processing under our rules. In the case of renewals at multiple-use sites, all licensees involved will be *jointly* responsible for resolving problems that may arise relative to exposure to RF radiation. Further guidance on evaluation of multiple-use situations will be provided in the bulletin.

E. Docket 79-163 and Categorical Exclusion

40. Motorola, Inc., although generally supporting the Commission's proposed rule, urged us to incorporate the substance of Docket No. 79-163

[26] *See* ANSI C95.3-1973, "American National Standard Techniques and Instrumentation for the Measurement of Potentially Hazardous Electromagnetic Radiation at Microwave Frequencies" and ANSI C95.5-1981, "American National Standard Recommended Practice for Measurement of Hazardous Electromagnetic Fields - RF and Microwave." Both publications are available from ANSI. *See* note 10, *supra*, for address.

into this rulemaking proceeding. Docket 79-163 involves amending the Commission's rules for implementing NEPA so that the rules will be in accordance with the latest directives of the Council on Environmental Quality (CEQ).[27] In particular, Motorola argued that the "categorical exclusion" principle of the rules proposed in Docket 79-163 should be incorporated here.[28] According to Motorola, incorporation of the categorical exclusion principle "will most effectively accommodate the likelihood that most applications for equipment authorizations or transmitting facilities will *not* have a significant affect [sic] on the quality of the human environment and thus be *explicitly excluded* from the Commission's environmental processing requirements." (emphases in original)

41. The Commission understands the concerns of Motorola regarding this issue. We believe, however, that it is beyond the scope of this present rulemaking proceeding to incorporate into it the substance of Docket No. 79-163. This present proceeding is narrowly limited in both scope and purpose and is designed solely and simply to add an RF radiation criterion to the Commission's environmental processing rules. Docket No. 79-163, on the other hand, is a much broader proceeding which would amend the entire set of Commission rules for implementing NEPA in accordance with revised NEPA regulations issued by the Council on Environmental Quality. We believe this latter proceeding deserves separate, thorough consideration by the Commission. Inclusion of this more extensive proceeding within the confines of the present rulemaking would only confuse the latter's consideration and delay its completion. With regard to Motorola's desire for "categorical exclusion" as proposed in Docket 79-163, we point out that, by establishing a threshold for radiation review under our NEPA procedures in Docket 79-144, we are, in effect, already categorically excluding certain types of transmitting operations and facilities. Moreover, we are proposing in the accompanying *Further Notice* a broader application of the principle of categorical exclusion.[29]

F. Federal Preemption of Local and State Standards

42. We continue to be aware that, largely due to the lack of a federal standard, various state and local jurisdictions around the country either have adopted or have proposed standards for exposure of the general public to RF radiation. The issue of federal preemption of such local and state RF standards was a recurring theme in many of the comments. Several of the respondents stressed the need for a federal radiation

[27] *See* 44 Fed. Reg. 38913 (1979).

[28] The CEQ guidelines allow agencies to identify actions which do not normally have a significant effect on the quality of the human environment and to "categorically exclude" such actions from environmental processing requirements. *See* 40 C.F.R. §§ 1500-1508, *et seq.*

[29] *See* para. 58, *infra*, for discussion of our proposal regarding categorical exclusion.

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standard to preempt possibly inconsistent and nonuniform state and local regulation of RF radiation.[30] Others called for the issuance of a Commission policy statement on federal preemption of state and local RF exposure standards that may adversely affect operations and public availability of interstate telecommunications services.[31]

43. We have reviewed these comments closely and given the matter serious consideration. However, we do not believe it is necessary at this time to resolve the issue of federal preemption of state and local RF radiation standards.[32] Should non-federal RF radiation standards be adopted, adversely affecting a licensee's ability to engage in Commission-authorized activities, the Commission will not hesitate to consider this matter at that time.

G. Other Issues

44. Various respondents raised a few other issues, mostly dealing with particular operations or exposure situations. For example, the Radio Officers Union (ROU) of the National Marine Engineers' Beneficial Association, AFL-CIO, submitted comments pertinent to the maritime mobile service. Although ROU could foresee no RF hazards associated with conventional maritime radio transmitters and ship radar equipment, the union felt that shipboard satellite earth stations posed a potential hazard that should be promptly addressed by OSHA and the FCC. The ROU stressed that there are presently no safety regulations with regard to both installation and operation of ship earth terminals. According to the ROU, the primary hazard of such equipment results from their antennas frequently being mounted only a few feet above deck level. The union also expressed concern about port operation of satellite equipment with regard to tankers, LNG carriers, ammunition ships, and similar vessels, as well as the potential for exposure of persons standing dockside.

45. Some respondents urged the Commission to exclude certain types of transmitters from consideration under the NEPA processing rules because of the apparent incapacity of these devices to cause potentially

[30] *See, e.g.*, Comments and Reply Comments of the American Radio Relay League (ARRL), and CBS, Inc.

[31] *See, e.g.*, Comments and Reply Comments of the TVBAC, and NAB, and Thomas C. Agoston.

[32] To our knowledge, only Portland and Multnomah County, Oregon, the Commonwealth of Massachusetts, the state of New Jersey, and the New York Port Authority have adopted RF radiation standards concerning general population exposure. The New York Port Authority standard applies solely to facilitites transmitting from the World Trade Center in New York City. A few other states are also considering the adoption of RF radiation exposure standards. For further details of these state and local actions, *see* comments or reply comments filed in this proceeding by the American Radio Relay League, the Association for Broadcast Engineering Standards, Inc., the National Association of Broadcasters, and the TV Broadcasters All Industry Committee.

hazardous exposure to RF radiation. For example, Motorola mentioned portable radios operating between 300 kHz and 1 GHz with output powers of seven watts or less. NAB suggested an exemption for mobile electronic news gathering ("ENG") equipment used by broadcasters. According to NAB, "these services also pose virtually no health hazard because of the transient nature of the exposure." NAB further urged the Commission to exclude all transmitters with power outputs below ten watts from the environmental assessment rules. Similarly, ARINC urged the Commission to exclude the aeronautical mobile service from consideration under Section 1.1305, and ARRL proposed an exemption for amateur radio.

46. These issues are important and are of concern to the Commission. Suggestions concerning the placement of antennas and the possible categorical exclusion of specific types of transmitters provide us with useful information that can be used in the development of FCC policy with respect to the evaluation of the environmental impact of Commission actions. Our rule amendment will only apply to transmitting facilities that, in our judgement, could have a significant environmental effect with regard to RF radiation exposure. Other types of transmitters such as those discussed above would be categorically excluded from the provisions of the rule as proposed in our *Further Notice*.[33]

47. Another topic mentioned by several respondents was the matter of FCC participation in the rulemaking activities of health and safety agencies such as EPA and OSHA. TVBAC pointed out that one of the original purposes of this docket was to provide documentation the Commission could use in assisting other government agencies in developing RF safety standards that would adequately take into account the impact of standards on FCC regulatees. TVBAC, ABES, and CBS all encouraged the Commission to be an active participant in the proceedings of other federal agencies. To quote TVBAC, "[t]he FCC should actively encourage and assist EPA and OSHA in developing definitive national RF radiation standards with due regard for their effect on publicly important communications services."

48. In this context, it should be noted that the Commission has cooperated with EPA in its development of "Federal Guidance" for public exposure to RF radiation. The Commission has participated in meetings of an interagency working group that was established by EPA to assist it in preparation of its guidelines. The FCC also maintains a liaison relationship with other agencies which may be involved in future standard-setting activities with regard to RF radiation.

[33] *See* para. 58, *infra*.

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