

NAACP EXHIBIT 44

Federal Communications Commission	
Docket No.	<u>94-10</u>
Exhibit No.	<u>44</u>
Presented by	<u>NAACP</u>
Disposition	Identified <u>6/21</u>
	Received _____
	Rejected _____
Reporter	<u>BARBARA LORR</u>
Date	<u>6/21/94</u>

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June 23, 1987

Mr. Dennis Stortz
Acting General Manager
Station KFUE
85 Founders Lane
St. Louis, MO 63105

Re: Amendment of EEO Rules; New Forms
395-B, 396 and 396-A

Dear Dennis:

On June 12, 1987, the FCC released the full text of its Report and Order adopted April 16, 1987, which amended its EEO rules and adopted a new Annual Employment Report and new Broadcast Equal Employment Opportunity Program reports.

I am now enclosing the full text of the Report and Order which is 51 pages in length. However, approximately half of the document, commencing at page 27, consists of Appendices B through E. Appendix B states the new provisions of Rule 73.2080 which now outlines in detail the EEO program which every station must adopt with detailed requirements and contents of such programs. Appendices C through E are copies of the newly adopted Forms 396-A, 395-B, and 396.

The newly adopted rules will require the new Form 396-A (Broadcast Equal Employment Opportunity Model Program Report) to be filed as a part of each original application and each transfer or assignment application.

The new Form 395-B, Annual Employment Report, will continue to be filed by May 31st of each year. (The old 395 will now be used for some common carriers.)

The new Form 396, Broadcast Equal Employment Opportunity Program Report, reporting on what the station has actually done, will be required to be filed with each renewal of license application.

ARNOLD & PORTER

Mr. Dennis Stortz
June 23, 1987
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While much of the text of the Report and Order is devoted to describing the positions taken by the OMB and those who have filed comments in the proceeding, this area is an important part of broadcast regulation and one which, when violated in the past, has resulted in deferred renewals and renewal hearings. For that reason, we urge your careful attention to the Report and the new rules and forms. (Your attention is particularly directed to pages 9-12, paras. 17, 21, 22; pages 12, 13, 17-19, paras. 24, 25, 35-43; pages 20-22, paras. 44-50; Appendices B through E, pages 27-51).

The new rules will be effective August 3, 1987. However, until the newly revised Forms 395-B, 396 and 396-A are available for distribution, licensees and applicants may continue to use the old forms to satisfy Commission reporting requirements.

If you need further assistance or guidance in connection with these new rules and forms, please do not hesitate to call upon us.

Sincerely,



Reed Miller

Enclosure

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

FCC 87-136

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In the Matter of)
)
Amendment of Part 73 of the)
Commission's Rules Concerning)
Equal Employment Opportunity) MM Docket No. 85-350
in the Broadcast Radio and)
Television Services)

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 16, 1987

Released: June 12, 1987

By the Commission:

INTRODUCTION

1. By this Report and Order, the Commission amends its rules and procedures regarding equal employment opportunities (EEO) in the broadcast industry to provide for more effective monitoring of licensees' EEO efforts. In particular, we are incorporating into our rules the general EEO program requirements and suggested practices thereunder that previously have appeared only in our Model EEO Program Reports. Also, we are adopting revisions to our information collection systems for monitoring licensees' EEO activities. The first is a new Broadcast Station Annual Employment Report (FCC Form 395-B) that will require licensees with five or more full-time employees to report employment statistics by race/national origin and sex in nine job categories. This new report requests the same employment data that are reported on the existing Form 395. However, the columns on the statistical tables have been reformatted to conform to the Equal Employment Opportunity Commission's Form EEO-1.¹ The second information requirement is a new Broadcast Equal Employment Opportunity Program Report (FCC Form 396) that will replace the existing FCC Form 396. The new form is based on the proposed Broadcast EEO Program Report submitted by the Office of Management and Budget (OMB). The new Form 396 includes instructions that

¹ FCC Form 395 also is used for reporting annual employment data by certain common carrier licensees. We are not addressing the annual Form 395 filings by those licensees in this proceeding.

performance appears to indicate that it is engaging in discriminatory practices on the basis of an analysis of its Annual Employment Report. ³ In view of OMB's action and the fact that the Commission had recently established new EEO requirements for cable television systems, the Commission adopted a Notice of Proposed Rule Making (Notice) on November 14, 1985, to consider revisions to its broadcast EEO procedures. ⁴

(4)

4. In the Notice, the Commission stated that in considering revisions to its broadcast EEO reporting and monitoring procedures it was primarily concerned with a licensee's overall EEO efforts rather than simply the numerical composition of its workforce. The procedures proposed in the Notice were intended to develop new requirements that would address OMB's concerns for minimizing reporting burdens and provide the Commission with sufficient information to monitor EEO activities. Consistent with this approach, the Commission proposed to incorporate into the rules general guidelines concerning EEO policies and practices similar to those in the existing 5-point and 10-point Program Report forms. It also proposed to eliminate the 5-point Program Report and to replace the 10-point Program Report with an EEO program report that would be significantly less burdensome than the existing requirement. The Commission also proposed to continue to require each licensee to file annual employment information and to adopt a new Broadcast Annual Employment Report (Form 395-B) which would be similar to the existing Form 395, but with revisions to conform to the Equal Employment Opportunity Commission's Form EEO-1. The proposed revisions were to combine data for full-time and part-time employees on a single table and to reformat the table. Further, the Commission proposed to raise the threshold number for reporting information on both the program report and the annual employment report from five to six.

5. By letter of April 2, 1986, OMB returned without action the two proposed forms that had been submitted to it for clearance under the Paperwork Reduction Act. OMB indicated that it had not been provided with the requisite time for review (60 days) pursuant to Section 3504(h) of the Paperwork Reduction Act and Section 1320.13 of its paperwork reduction rules (5 CFR §1320.13). On June 16, 1986, following the conclusion of the formal

3 Since disapproving the Commission's program reporting requirement, OMB has granted a series of extensions which have permitted the continued use of the existing 5-point and 10-point reporting forms.

4 See Notice of Proposed Rule Making, MM Docket No. 85-350, 50 FR 49566 (December 3, 1985). See also Report and Order in MM Docket No. 85-61, 50 FR 40836 (October 7, 1985) wherein the Commission revised its cable EEO policies and practices in accordance with the requirements of the Cable Communications Policy Act.

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DISCUSSION

8. Upon examination of the record in this proceeding, we believe that it is appropriate to adopt revised EEO policies and procedures that emphasize licensees' efforts to operate in a nondiscriminatory manner. The requirements and procedures which we are adopting herein are modifications of the proposals set forth in the Notice and Further Notice in response to the comments we received in this proceeding. We believe that the amended rules and reporting requirements will provide us with the means to improve the effectiveness of our EEO policies and monitoring activities in a manner that will limit the paperwork burden on licensees necessary to the accomplishment of that objective.

9. EEO Rules. In the Notice, the Commission proposed to incorporate into Section 73.2080 of its rules relating to EEO requirements the general guidelines concerning EEO policies and practices that are included in the existing 5-point and 10-point Model Program Reports. The proposed rule provisions included general EEO policy requirements and suggestions for specific practices to ensure compliance with such policies. The Commission indicated that it believed that inclusion in the rules of the specific EEO requirements and the suggested guidelines for meeting them would provide licensees with adequate information to develop satisfactory EEO programs. Therefore, it stated that the 5-point Program Report no longer appeared necessary and, consistent with its desire to minimize the reporting burden, that this report could be eliminated.

10. Those parties commenting on this issue generally support the Commission's proposal, although many commenters suggest modifications to specific sections of the proposed rules. Seven broadcast station licensees filing jointly (Joint Licensees) object to the inclusion of suggested "guidelines" in the rules because they believe it represents a regulatory expansion that runs counter to the Commission's efforts to reduce its rules. The Joint Licensees also contend that over time these suggested means for carrying out EEO policy will become standards of compliance. They believe

on the rules that govern EEO practices for the cable industry ¹¹ and that there is no statutory mandate for a comparable requirement for broadcasters. DLA, therefore, asserts that this requirement is inappropriate for broadcasters and that the Commission cannot justify the imposition of such a significant burden of data collection, maintenance of records, and evaluation on them. DLA further argues that the proposed comparison on a job category basis is contrary to established Commission precedent that focuses the review of licensees' employment policies on its overall employment profile.

13. Broadcast commenters generally support the proposal to eliminate the 5-point Model EEO program. They agree with our initial assessment that this action is consistent with our goal of reducing unnecessary or burdensome reporting requirements. In this respect, Haley, Bader & Potts (HB&P) observes that the principal purpose of the 5-point Program Report is to place licensees on notice of the Commission's Model EEO program and that inclusion of that model in the Commission's rules will serve the same purpose. American Women in Radio and Television (AWRT) opposes the total elimination of the 5-point Model EEO Program Report, although it suggests that it could be replaced by a recruitment source list requirement which would help prospective licensees focus on their EEO responsibilities and the recruitment resources available to them at a time when they may have multiple job openings. The Office of Communication of the United Church of Christ (UCC), Citizens Communication Center (CCC) on behalf of six public interest groups, and NPR contend that the 5-point Program Report should be maintained as a means of requiring broadcasters to affirmatively acknowledge that compliance with the Commission's EEO guidelines is an integral aspect of the application process.

14. We continue to believe that it is desirable to incorporate into the rules our specific broadcast EEO program requirements and general guidelines, in the form of examples of acceptable activities, for meeting those requirements. This will provide a more appropriate and effective means of informing broadcasters, individuals employed or seeking employment by broadcast stations, and other interested parties of these requirements than simply stating them on EEO program reporting forms as we have done in the past. In this respect, we observe that these combined information and report forms are directed only to broadcast applicants and licensees, and only on the relatively infrequent occasions of applying for a station license or license renewal, and hence are not available to all interested parties. By including the EEO program requirements in the rules, we will make them readily available to all interested parties. We also conclude

¹¹ See Cable Act, supra. See also Section 76.75(c) of the Commission's rules, 47 CFR §76.75(c).



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characteristics of the station and its local service area. For this reason, our listing of suggestions for meeting the EEO requirements is not intended to be either exclusive or inclusive but simply to provide guidance.

Reporting Requirements

17. Annual Employment Report. In the Notice, we proposed to continue to require licensees to file Annual Employment Reports and to make several modifications to this reporting requirement. The proposed new Form 395-B would continue to require stations to identify the number of employees by race/national origin and sex in the same nine job categories as the existing broadcast Annual Employment Report. However, we proposed to revise this report to conform to the format used by the Equal Employment Opportunity Commission (EEOC) on its Form EEO-1. Under this proposal, employment statistics for full-time and part-time employees would be combined on a single table and the data would be rearranged to conform with the data table on the EEO-1 form. In addition, we proposed to modify the existing procedures to permit stations with fewer than six full-time employees, rather than five as is currently the case, to complete only the identification and certification portions of the annual employment form. Further, we sought comment on whether we should continue to require the filing of Annual Employment Reports by headquarters, regional, and national offices, as is required under existing rules.

18. Approximately half of the commenters responding to the Notice addressed the proposed Form 395-B. CCC comments that the existing reporting requirement should not be revised since it is not burdensome, is the primary means for monitoring a station's EEO efforts, and was not the basis for OMB's disapproval of our reporting requirements. Most of the commenting public interest groups and some broadcasters oppose the proposal to combine full-time and part-time employees. DLA states that there would not be a material reduction in recordkeeping burdens if the statistics for full-time and part-time employees were consolidated. In fact, it notes that many stations do not have to file an EEO-1 form and the change would probably require adjustment of their existing procedures. Several public interest groups and a few broadcasters are concerned that combining data for full-time and part-time employees may not provide an accurate picture of a station's hiring practices. In this respect, several parties state that if licensees are permitted to combine these data it would be possible for a station to distort its employment profile by hiring minorities only on a part-time basis. The United States Catholic Conference, AWRT, and the National Black Media Coalition (NBMC) believe that it is important to report full-time employees separately since they are the ones who would participate in the operation of a station and would be more likely to influence a station's programming decisions. Several broadcast commenters support the revision of the 395 form to conform to EEOC's EEO-1, including the combination of data for full-time and part-time employees, because it would eliminate duplicative paperwork for many licensees.

contemplation of this matter, we believe that there is an important distinction between full-time and part-time employees in the broadcast industry. For our purposes, it is important to be able to review a station's employment statistics for its full-time employees separately. Unlike employment patterns in the cable industry, part-time employees generally constitute a significant portion of the total workforce at most broadcast stations. For example, of the 206,135 total employees in the broadcasting industry in 1985, according to the Annual Employment Reports, 35,368, or more than 17%, were part-time employees. Therefore, licensees could potentially improve their overall employment profiles by hiring minorities and women only on a part-time basis. If the data were consolidated, we would not be able to detect this practice. We conclude that in order to adequately monitor broadcast stations' EEO efforts, it is necessary to collect separate data for full-time and part-time employment. Thus, we are making no changes in the information collected on the annual report. However, as a matter of administrative convenience for our own use and for stations that also report to the EEOC, we will reformat the tables to order the categories to conform to EEOC's Form EEO-1. In order to implement these changes, we are instituting a new Form 395-B so that we may preserve the existing Form 395, which also is used for submission of annual employment data by some common carrier licensees. 16

22. With respect to raising the reporting threshold from five to six, we recognize that small broadcast stations often offer opportunities for entry by women and minorities to employment and careers in the broadcast field. We also note that the proposal to raise the reporting threshold in the Notice was based on modifications we made regarding the filing requirements for cable systems as set forth in the Cable Act. We have no equivalent statutory directive with regard to broadcast stations. In addition, since the number of stations that would be affected by this proposal is small, we do not believe that such a change would appreciably alleviate the administrative burden imposed on the industry by the EEO reporting requirements. Accordingly, the reporting threshold of five full-time employees will be retained.

23. Finally, we will no longer require the filings of Annual Employment Reports on a consolidated basis. Our monitoring efforts are directed primarily to the individual broadcast station and the consolidated reports are not useful in this respect. However, we believe it is important for us to continue to be informed of the licensee's employment profile at its headquarters office with respect to those personnel who have an operating effect on owned and operated stations. Thus, we will continue to require the filing of Annual Employment Reports for those headquarters employees whose primary duties lie in the operation and/or

16 See footnote 1, supra.



25. As proposed, employment units with fewer than six full-time employees would only be required to complete the identification and certification portions of this form. Other licensees would be required to provide information regarding their EEO policies and practices. In brief, the proposed new Broadcast EEO Program Report (Form 396) would consist of four parts: (1) a series of questions requiring "yes" or "no" answers concerning the station's activities under the EEO program requirements; (2) a request for brief descriptions of the duties and responsibilities of employees in certain job categories; (3) a series of questions concerning the licensee's EEO practices requiring short written narrative answers; and (4) a section providing Metropolitan Statistical Area (MSA) labor force data that would be supplied by the Commission, but which also would provide an opportunity for the licensee to submit alternative data accompanied by an appropriate explanation. Licensees also could submit any additional information that they believe might be useful to the Commission in evaluating their EEO efforts.

26. While several broadcasting interests commend the Commission's refocusing its concern on efforts rather than numbers, most commenters do not favor adoption of the revised Form 396 proposed in the Notice. Many parties believe that the proposed reporting requirement would create more, not less, paperwork and would be burdensome for licensees and the Commission. For example, DLA believes that the yes/no questions may actually result in a more difficult and time-consuming process than that required to submit information on the current form because of the requirement for detailed explanations of negative responses. They also state that compiling and maintaining the records necessary to document these responses will require substantial additional licensee effort. NAB and several others claim that the recordkeeping necessary to prepare job descriptions will increase the administrative burden associated with EEO efforts, especially for smaller stations which have not previously adopted formal job descriptions. BFMA contends that the Commission does not have the resources or the expertise to evaluate submissions of this nature. Several broadcasters, including the Joint Licensees and BFMA, note that preparation of narrative responses to the questions in Part III would be time-consuming. They argue that the Commission should request narrative responses to questions only in cases where the annual report or adjudicated finding indicates that there may be discrimination, and then the questions asked should be specifically directed at the apparent problem. Several commenters also suggest that individual questions in the proposed form be revised to conform to the wording of the guidelines to be included in the rules. They also state that the Commission has not indicated why the existing requirements have proven inadequate for the Commission to fulfill its EEO regulatory responsibilities. NAB states that it suspects that OMB is no more likely to approve this reporting requirement than the existing one.

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30. Comments on OMB's Proposed EEO Program Report. The alternative Form 396 proposed by OMB is styled after the existing 10-point Model EEO Program Report and is intended to reduce the emphasis on reporting numbers rather than efforts. OMB's suggested form integrates the instructions into the form in a manner designed to remind station management of the Commission's EEO requirements and to emphasize that effective affirmative actions in policy dissemination and recruitment are mandatory. Under this proposal licensees would be required to indicate whether they follow specific EEO practices in accordance with the rules and would be required to provide some additional information concerning specific activities in furtherance of these responsibilities. OMB's proposed program report also incorporates the system for reporting local labor force data from the Commission's own proposal. 18

31. Most of the commenters responding to the Further Notice appear to prefer the existing form or a revised version of that form similar to OMB's proposal over the form proposed in the Notice. NAB supports retention of the current form, but finds the rephrasing used by OMB to be an acceptable alternative. BFMA agrees with OMB's position that the Commission should only collect detailed information when a licensee appears to be engaging in discriminatory practices on the basis of its Annual Employment Report. However, BFMA states if the Commission does not adopt this approach, it would support the collection of additional information using OMB's alternative form because it will minimize the reporting and administrative burdens on stations and the Commission. Five broadcast parties filing joint comments (Joint Parties) submit that OMB's proposal would avoid the excessive burden that would be imposed by our original proposal and with minor editorial changes would solicit all the necessary information for the Commission's routine enforcement activities. UCC believes that the Commission should adopt a modified version of the existing form that incorporates the instructions and guidelines within the form itself, as proposed by OMB.

32. However, NPR argues that the OMB proposal would be an unacceptable reformulation of the existing form and urges that the existing form be retained as a means of collecting essential data and analysis for meaningful enforcement of EEO requirements. NPR states that the similarity between the existing form and that proposed by OMB underscores the fact that the existing form contains essential information. NBMC refutes the OMB comments regarding the burden that the Commission's proposal for the submission of job descriptions and narrative responses would place on licensees. NBMC

18 The principal difference in the information requested in OMB's proposed form and that of the existing 10-point form is the elimination of sections concerning a current employment survey, hiring, and promotions.



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has not shown how these data would be used in detecting or deterring discrimination that would not be detected or deterred by other agencies.

35. The New EEO Program Reporting Requirement. We have reexamined our initial proposal for EEO program reporting, the OMB proposal, and the comments submitted in this proceeding and have decided to adopt a new form that follows the general approach of the existing 10-Point Model EEO Program Report and OMB's proposal for this reporting requirement. The new Broadcast Equal Employment Opportunity Program Report (FCC Form 396) is similar to the program report proposed by OMB in that it integrates the instructions into the form and it requires licensees to indicate those activities that they use to implement various elements of their EEO programs.²⁰ The principal differences between the new program report and the form proposed by OMB is that we have eliminated the separate section requesting information about training programs and have retained the request for hiring and promotion data that is part of the existing form. We believe that hiring and promotion data are necessary for a complete review of a licensee's ongoing EEO policies. Furthermore, the request for the submission of hiring and promotion data is consistent with the recommendation of the EEOC, the expert agency in this field, that we require information regarding the areas a licensee's EEO program is supposed to address. We are not retaining the section on current employment from the existing form because it would be duplicative. The data submitted on the annual report for the year of the station's license renewal are sufficient to indicate the composition of the station's workforce. If, in examining a station's EEO performance we find that additional data, including current employment data, are needed, we will obtain it through a supplemental information request. We believe that this reporting requirement will provide us with sufficient information to evaluate licensees' efforts to afford equal opportunity in employment without creating an excessive paperwork burden on either the Commission or broadcasters.

36. Each licensee will be required to submit a Broadcast Equal Employment Opportunity Program Report as part of its license renewal application. The information requested in this submission, along with the data included in the annual report, will provide us with adequate information to assess a licensee's EEO efforts. In situations where this information is insufficient, the needed additional information will be requested from the licensee. Stations with fewer than five full-time employees will be required to complete only the identification and certification portions of the form. Other licensees must complete the entire eight-part form. For the reasons discussed above, we have chosen to keep the reporting threshold at five full-time employees. For stations located in areas where minority group representation in the available labor

²⁰ The Form 396 we are adopting is attached in Appendix E.

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or county where it is located. The licensee would then be able to use these data in its own evaluation of its employment profile and efforts. The Commission has further investigated the possibility of supplying licensees with labor force data. At this time, we do not have the administrative resources, including the data processing capability, to provide these data to licensees when license renewal applications are sent to them. We hope to eventually be able to implement this proposal in order to lessen the burden on licensees. However, for the time-being, licensees will continue to be responsible for obtaining their own data from local sources for their own evaluations, as they have done previously. The Commission will continue to use MSA data, or county data in cases where the station is not located in an MSA, in its evaluation of EEO efforts.

41. We also proposed to permit licensees to submit alternative data with an appropriate explanation if they believed that the MSA or county data would not accurately reflect the available labor force. We are adopting this proposal and licensees may submit alternative data with an explanation of why such data are appropriate with this program report. In this respect, we generally believe that alternative labor force data may be appropriate in instances where: 1) the distance of the station from areas with significant minority population in the MSA is great; 2) commuting from those areas to the station is difficult (such difficulties may be based on distance but may also be based on other factors such as lack of public transportation); or 3) recruitment efforts directed at the MSA minority labor force have been fruitless. If the Commission is satisfied by the licensee's showing, then it will use the alternative data in its examination of the station's workforce statistics. We wish to emphasize that submission of alternative labor force data is strictly optional and at the licensee's discretion. Furthermore, should a licensee choose to submit alternative labor force data, the burden will be on the licensee to justify the use of such alternative data.

42. Licensees must provide a brief description of any complaint alleging discriminatory employment practices in Part VII of their EEO program report. Such descriptions must include information regarding the persons involved, the date of the filing, the court or agency where it was filed, the file number, and the disposition or the current status of the matter. Licensees also must include information regarding all complaints filed or pending since their previous license renewal was granted.

43. The final section of the Broadcast EEO Program Report, Part VIII, asks licensees to describe any other information that they believe will assist the Commission in its evaluation of their efforts to provide equal opportunity in employment and to fulfill their obligations under the Commission's rules. Responses under this part are optional. We have included in Part VIII some examples of the type of information that licensees may choose to submit in response to this section.

47. NAB and BFMA believe the Commission should specify how it will use any alternative labor force data submitted by the licensee in its evaluation. NAB also states that it supports the Commission's desire to go beyond numbers in its review of EEO performance. However, it seeks clarification of how the court-ordered "zone of reasonableness" concept will be incorporated into this process. ²³ NAB notes that in the past the Commission has considered a station whose employment profile meets or exceeds the processing guidelines to have made a prima facie case of employment within this zone. NAB believes that we should either reaffirm this policy or articulate and rationalize any new policies.

48. We will evaluate broadcast licensees' EEO efforts based on several different indicia using a two-step approach similar to that which we adopted for certification of compliance with EEO requirements by cable entities. ²⁴ The first step will be to make an initial evaluation of a station's efforts based on the full range of information available concerning its EEO record. This evaluation will examine the descriptions of the station's EEO program and policies as submitted on its Form 396 program report, any EEO complaints filed against the station or licensee, the composition of the station's workforce as submitted on its Annual Employment Report, the composition of the available labor force in the station's area, and any other pertinent information that may be available concerning the station's EEO activities. If our first-step evaluation indicates that the station's EEO efforts are satisfactory, the station will be accepted as having fulfilled its obligations in this area and no further analysis or investigation will be performed. However, if the initial evaluation indicates that a station's efforts may have been less than satisfactory, it will be subjected to a second-step investigation of those areas of responsibility where its efforts appear deficient. This investigation will involve requests that the licensee submit additional information to the Commission concerning the specific areas of its EEO program that appear deficient.

49. This two-step procedure will minimize the overall EEO reporting burden imposed on the broadcast licensees by requiring stations making plainly satisfactory efforts to submit only sufficient information to verify these efforts. We believe this approach will provide the most cost-effective means of monitoring broadcast EEO efforts from the standpoint of the burden imposed on licensees by information collection requirements and of our own administrative resources and will improve the effectiveness of our EEO activities.

²³ See Stone v. FCC, supra and Bilingual Bicultural Coalition on Mass Media v. FCC, supra at 621, 627 n.15.

²⁴ See Report and Order in MM Docket No. 85-61, supra at paragraphs 76-81.

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A. Issues Raised. Only one commenter, Jefferson-Pilot Communications Company, raised issues specifically in response to the initial regulatory flexibility analysis. In these comments, it states that it believes that the reporting requirements proposed by the Commission in the Notice will have a disproportionately burdensome impact on smaller stations without producing either reliable information useful to us or enhancing EEO at the station level. Other parties also contend that the Commission's proposals, especially its proposed EEO Program Report, will impose a significant additional paperwork burden on licensees.

B. Assessment. Our reexamination of our initial proposals, in light of the comments received, indicated that our proposals were not the least burdensome means to request relevant data from broadcast stations regarding the EEO activities.

C. Changes made as a result of comment. As a result of the comments in this proceeding, we are adopting alternative reporting requirements intended to improve the effectiveness of our EEO monitoring and to the extent possible reduce the burden on both licensees and our administrative resources. In particular, the Broadcast EEO Program Report we are adopting is a revision of our existing 10-Point Model EEO Report, Form 396, which integrates the instructions and guidelines within the form, similar to the proposal submitted by OMB. We will also continue to require applicants for new or existing broadcast stations to file the 5-point Program Report because we believe that this report serves the important purposes of informing these applicants of the our EEO requirements, affirming their understanding of these obligations, and assisting them in the establishment of an EEO program.

41. Significant alternatives considered and rejected. We have considered all the alternatives presented in the Notice, Further Notice, and comments in this proceeding. After full consideration of all of the issues raised throughout the course of this proceeding, we have adopted the rules and reporting requirements that we believe are the most reasonably fashioned in light of the facts and issues presented.

52. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

53. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub.L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §901 et seq., (1981)).

APPENDIX A

List of Commenters

Comments - Notice of Proposed Rule Making

1. University of Michigan (Represented by Dow, Lohnes & Albertson)
2. Multimedia, Inc. (Represented by Dow, Lohnes & Albertson)
3. Cox Communications, Inc. (Represented by Dow, Lohnes & Albertson)
4. Central California Educational TV, Lehigh Valley Public Telecommunications Corporation, Milwaukee Area District Board of Vocational, Technical and Adult Education, and Public Broadcasting of Northwest Pennsylvania, Inc. (Represented by Dow, Lohnes & Albertson)
5. Cosmos Broadcasting Corporation, Guy Gannett Broadcasting Services, and H & C Communications, Inc. (Represented by Dow, Lohnes & Albertson)
6. National Black Media Coalition
7. KBW Associates, Inc.
8. Jefferson-Pilot Communications Company
9. WPIX, Inc.
10. United States Catholic Conference
11. Haley, Bader & Potts
12. National Association of Black Owned Broadcasters, Inc.
13. National Women in Radio and Television, Inc.
14. Office of Communication of the United Church of Christ
15. National Association for Better Broadcasting, the League of United Latin American Citizens, the National Association for the Advancement of Colored People, Chinese for Affirmative Action, the NOW Legal Defense and Education Fund, and the Women's Legal Defense Fund (Citizens Communications Center)
16. Broadcast Financial Management Association
17. National Association of Broadcasters
18. National Public Radio
19. U.S. Department of Justice, Civil Rights Division
20. Anti-Defamation League of B'nai B'rith
21. Foward Communications Corporation, Guaranty Broadcasting Corporation, Lake Huron Broadcasting Corp., May Broadcasting Company, Inc., Retlaw Enterprises, Inc., Shamrock Broadcasting Company, Inc., and WKRG-TV, Inc. (Joint Licensees)
22. CBS Inc.
23. Mexican American Legal Defense and Education Fund
24. Gannett Co., Inc. and Lee Enterprises, Incorporated
25. National Association of Hispanic Journalists
26. National Conference of Black Lawyers

APPENDIX B

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47 CFR Part 73 is amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.2080 is amended by revising it to read as follows:

§73.2080 Equal employment opportunities.

(a) General EEO policy. Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex.

(b) EEO program. Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

- (1) Define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;
- (2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;
- (3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;
- (4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and
- (5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) EEO program requirements. A broadcast station's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent possible, and to the extent that they are appropriate in terms of the station's size, location, etc.:

- (1) Disseminate its equal opportunity program to job applicants and employees. For example, this requirement may be met by:
 - (i) Posting notices in the station's office and other places of employment,

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skills of all lower paid employees with respect to any of the higher paid positions.

(5) Analyze its efforts to recruit, hire, and promote minorities and women and address any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(i) Avoiding use of selection techniques or tests that have the effect of discriminating against qualified minority groups or females;

(ii) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race or sex discrimination.

3. 47 CFR 73.3500 is amended by replacing Form 395 with Form 395-B; by renaming Form 396-A; and renaming Form 396 to read as follows:

§73.3500 Application and report forms.

Form number	:	Title
395-B.....	:	Annual Employment Report and instructions
396-A.....	:	Broadcast Equal Employment Opportunity Model Program Report
396.....	:	Broadcast Equal Employment Opportunity Program Report

INSTRUCTIONS

002049198863

Applicants seeking authority to construct a new commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discrimination in employment and related benefits on the basis of race, color, religion, national origin or sex. See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, an applicant who proposes to employ five or more full-time employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asians or Pacific Islanders, American Indians or Alaskan Natives and Hispanics). This is submitted to the Commission as the Model EEO Program. If minority group representation in the available labor force is less than five percent (in the aggregate), a program for minority group members is not required. In such cases, a statement so indicating must be set forth in the EEO model program. However, a program must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant proposes to employ fewer than five full-time employees, no EEO program for women or minorities need be filed.

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Guidelines for a Model EEO Program and a Model EEO Program are attached.

Note: Check appropriate box, sign the certification below and return to FCC:

- Station will employ fewer than 5 full-time employees; therefore no written program is being submitted.
- Station will employ 5 or more full-time employees. Our Model EEO Program is attached.

GUIDELINES TO THE MODEL EEO PROGRAM

The model EEO program adopted by the Commission for construction permit applicants, assignees and transferees contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

I. General Policy

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of qualified minorities and women in the relevant available labor force.

II. Responsibility for Implementation

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

III. Policy Dissemination

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

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I. General Policy

It will be our policy to provide 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 will also be 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 adopted an Equal Employment Opportunity Program which includes the following elements:

II. Responsibility for Implementation

(Name/Title) _____, will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be 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 will be made:

() The station's employment application form will contain 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 will be 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 victims of discrimination.

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MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

() When we place employment advertisements with media some of such advertisements will be placed in media which have significant circulation or viewership or are of particular interest to minorities and women. Examples of media to be utilized are:

() We will encourage employees to refer qualified minority and female candidates for existing and future job openings.

Training

() Station resources and/or needs will be such that we will be unable or do not choose to institute specific programs for upgrading the skills of employees.

() We will provide on-the-job training to upgrade the skills of employees.

() We will provide assistance to students, schools or colleges in programs designed to enable qualified minorities and women to compete in the broadcast employment market on an equitable basis:

School or Other Beneficiary

Proposed Form of Assistance

() other (Specify)

SECTION IVB EMPLOYEE DATA

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PART-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL	MALE					FEMALE					
		White (Met)	Black (Met)	Hispanic	Asian or Pacific Islander	Native American, Indian, Alaskan, or Native	White (Met)	Black (Met)	Hispanic	Asian or Pacific Islander	Native American, Indian, Alaskan, or Native	
Officials & Managers												
Professionals												
Technicians												
Sales workers												
Office and clerical												
Craft workers (Skilled)												
Operatives (Semi-skilled)												
Laborers (Unskilled)												
Service workers												
TOTAL												

APPENDIX E

FEDERAL COMMUNICATIONS COMMISSION
BROADCAST EQUAL EMPLOYMENT OPPORTUNITY
PROGRAM REPORT

FCC Form 396
OMB 3060-xxxx
Expires xx/xx/xx

:(For FCC Use Only) :
:Code No. :
:

CALL LETTERS _____

NAME OF LICENSEE _____

CITY AND STATE WHICH STATION IS LICENSED TO SERVE _____

TYPE OF BROADCAST STATION (Check one)

Commercial Broadcast Station

Noncommercial Broadcast Station

AM

Educational Radio

FM

Combined AM & FM

Educational TV

FM affiliated with AM in same area

TV

International

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

NAME _____ STREET ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

TELEPHONE NO. (____) _____