

NAACP EXHIBIT 43

Pgs 1-4 WITHDRAWN

Federal Communications Commission			
Docket No.	<u>94-10</u>	Exhibit No.	<u>43</u>
Presented by	<u>NAACP</u>		
Disposition	Identified	<u>6/21</u>	
	Received	<u>6/22</u>	
	Rejected		
Reporter	<u>B</u>		
Date	<u>6/21/94</u>		

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REED MILLER
DIRECT LINE: (202) 872-6826

November 24, 1986

Mr. Dennis Stortz
Acting General Manager
Station KFUD
801 DeMun Avenue
St. Louis, MO 63105

Dear Dennis:

You may recall that last year at about this time the FCC proposed simplifying its present EEO reporting requirements for broadcasters. The present requirements call for the filing of a 5-point EEO program with applications for new stations or for assignment; the filing of a 10-point EEO program with renewal applications; and an Employment Report on an annual basis. The simplification would have eliminated the 5-point program filings and modified the 10-point and annual report forms.

The enclosed Further Notice of Proposed Rulemaking advises that the Office of Management and Budget, which must approve all proposed federal reporting forms, has disapproved of portions of the Commission's proposal. OMB has proposed alternative reporting requirements on which the Commission is seeking comments. The new proposal is described at ¶¶ 8-10 of the enclosure. Comments will be due by January 5, 1987. Let us know if you have any interest in filing in this proceeding.

Very truly yours,


Reed Miller

Enclosure

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-350

Amendment of Part 73 of the
Commission's Rules Concerning
Equal Employment Opportunity
in the Broadcast Radio and
Television Services

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: October 31, 1986 Released: November 12, 1986

By the Commission:

INTRODUCTION

1. On November 14, 1985, the Commission adopted a *Notice of Proposed Rule Making (Notice)* that proposed to amend its rules and procedures regarding equal employment opportunities (EEO) in the broadcast industry.¹ In particular, the Commission proposed two new information collection systems, the Broadcast Station Annual Employment Report (FCC Form 395-B) and the Broadcast EEO Program Report (FCC Form 396), and procedures for evaluating broadcast stations EEO performance based on the information to be provided by these new reports. On June 16, 1986, following the conclusion of the formal comment period in this proceeding, the Office of Management and Budget (OMB) submitted comments regarding the reporting requirements proposed by the Commission and their own alternative proposal for the new Form 396. By this *Further Notice of Proposed Rule Making (Further Notice)*, the Commission seeks comment on the proposed alternative EEO reporting requirements submitted by the Office of Management and Budget.

BACKGROUND

2. The Commission's current rules set forth several requirements to ensure that licensees of broadcast stations afford equal opportunity in employment.² The rules also require the filing of certain information in order that we may determine that broadcasters are complying with the EEO rules. In this respect, broadcasters are required to submit a description of certain aspects of their EEO programs on FCC Form 396-A, the 5-point Model EEO Program report, as part of their application for a license for a new station or their request for assignment of the license of an existing station. In addition, as part of their license renewal application, licensees are required to file FCC Form 396, the 10-point Model EEO Program Report. The Commission also requires broadcast stations to file an Annual Employment Report, FCC Form 395, and to report the status of any EEO complaints.

3. Under the requirements of the Paperwork Reduction Act of 1980, OMB must review all reporting requirements established by federal agencies. On August 26, 1981, OMB disapproved the use of the Commission's EEO program reporting forms and their associated guidelines for program preparation. 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 the *Notice* to consider revisions to its broadcast EEO procedures.³

4. In the *Notice*, the Commission stated that in considering revisions to its broadcast EEO reporting and monitoring procedures that it was primarily concerned with a licensee's overall EEO efforts rather than simply the numerical composition of its workforce. Consistent with this approach, the Commission proposed to incorporate into the rules general guidelines concerning EEO policies and practices similar to those that are now contained in the 5-point and 10-point program report forms. It also proposed to eliminate the 5-point program report and to make the 10-point program report significantly less burdensome. The proposed new Broadcast EEO Program Report 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 written narrative answers; and (4) a section providing 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.⁴ Under this proposal, licensees also could submit any additional information that they believe might be useful to the Commission in evaluating their EEO efforts. The new Form 396 only would be filed in the year of the station's license renewal and only by stations that have six or more employees in that year.

5. Under the Commission's proposal, licensees also would continue to file annual employment reports. However, the Commission proposed 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 current broadcast annual employment report. However, certain changes would be made to conform the report to the format used by the Equal Employment Opportunity Commission (EEOC) on its Form EEO-1.⁵ Under this proposal, full-time and part-time employees would no longer be reported on separate tables and the data would be rearranged to conform with the data table on the EEO-1 form. In addition, the existing procedures would be modified 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 form.

DISCUSSION

6. By letter of April 2, 1986, the Office of Management and Budget returned without action the two proposed forms that had been submitted to it for clearance under the Paperwork Reduction Act. The submissions were returned because OMB 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 OMB's paperwork reduction rules (5 CFR §1320.13). Subsequently, OMB submitted informal comments addressing each of the Commission's proposed new information collection forms. In order to assure compliance with the Paperwork Reduction Act and to provide an opportunity for public comment on OMB's specific suggestions, we are issuing this *Further Notice*.

sent 11-24: V. Hart
Attling
Brown
E. Lewis

1 Green
Kabinson

002745

William J. Tricarico
Secretary

APPENDIX

FEDERAL COMMUNICATIONS COMMISSION

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
DOCUMENT

Every applicant for renewal of a broadcast station license must prepare an equal employment opportunity program document on this form. The document must be sent to the Federal Communications Commission (FCC), and a copy of the document must be kept in the station's public file. These steps are required to obtain license renewal. Failure to meet these requirements may result in license renewal being delayed or denied. These requirements are contained in Section of the FCC Rules (), and are authorized by the Communications Act of 1934 as amended.

CALL LETTERS:
NAME OF LICENSEE:
CITY AND STATE WHICH STATION IS LICENSED
TO SERVE:

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

NAME
STREET ADDRESS
CITY STATE ZIP CODE
TELEPHONE NO. (* * *)

If your station employs less than six full-time employees, then check the box at left, complete the certification below, return these top two sheets only to the FCC and place a copy in your station's public file. You do not have to complete the rest of this form.

If your station employs six or more full-time employees you must complete all of this form and follow all instructions.

CERTIFICATION

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief and are made in good faith. Signed and dated this
day of , 19

Signature:
Title:

13. Written comments are requested on the initial regulatory flexibility analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Further Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub.L.No. 96-354, 94 Stat. 1164, 50 U.S.C. §602 et seq.) (1982).

14. For the purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR §1.1231.

15 Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 5, 1987, and reply comments on or before January 20, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20054. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

16. The proposals contained 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 any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

17. For further information concerning this proceeding, contact Marcia Glauberman, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

|| Other (Specify)

VI. AVAILABLE LABOR FORCE

The following table contains FCC-supplied data concerning the percentages of women and minorities among various categories of workers in your station's area. These data are intended to assist in evaluating your station's equal employment opportunity efforts.

If you have other data that more accurately reflect the percentages of women and minorities in the labor force available to your station, then enter those data in the table next to the table of FCC-supplied data, and attach an explanation.

VII. OTHER INFORMATION

You must provide here a brief description of any complaint which has been filed before any body having competent jurisdiction under Federal, State, territorial or local law, alleging unlawful discrimination in the employment practices of the station including the persons involved, the date of filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

You may also describe here:

* Any problems the station has experienced in assuring equal employment opportunity, or attracting qualified minority and women candidates for employment or promotion.

* Any efforts the station has undertaken or will undertake to promote equal opportunity in its employment and to encourage applications from minorities and women.

* Any other information regarding equal employment opportunity at the station.

FOOTNOTES

¹ See Notice of Proposed Rule Making, MM Docket No. 85-350, 50 FR 49566 (December 3, 1985).

² The current broadcast EEO rules are set forth in Section 73.2080 of the Commission's rules, 47 CFR 73.2080.

³ The Commission revised its cable EEO policies and practices in accordance with the requirements of the Cable Communications Policy Act of 1984 in the Report and Order in MM Docket No. 85-61, 50 FR 40836 (October 7, 1985).

⁴ See Notice, Appendix B.

⁵ See Notice, Appendix C.

⁶ We note that OMB's proposed Form 390 includes a requirement for broadcast station with less than 6 full-time employees to complete the certification section of the form this status, although it exempts them from completing the substantive portions thereof. The Commission's proposal in the Notice would exempt stations with less than 6 full-time employees from any EEO Program Report filing requirement.

⁷ While several trends in employment may be discernible from comparisons of the Annual Employment Reports, as OMB contends, we do not believe that these data are sufficient to determine the actual number of promotions and jobs filled during a 12-month period.

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REED MILLER
DIRECT LINE: (202) 872-6826

November 24, 1986

Mr. Dennis Stortz
Acting General Manager
Station KFUD
801 DeMun Avenue
St. Louis, MO 63105

Dear Dennis:

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Reed Miller

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-350

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Equal Employment Opportunity
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Television Services

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Adopted: October 31, 1986 Released: November 12, 1986

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1. On November 14, 1985, the Commission adopted a *Notice of Proposed Rule Making (Notice)* that proposed to amend its rules and procedures regarding equal employment opportunities (EEO) in the broadcast industry.¹ In particular, the Commission proposed two new information collection systems, the Broadcast Station Annual Employment Report (FCC Form 395-B) and the Broadcast EEO Program Report (FCC Form 396), and procedures for evaluating broadcast stations EEO performance based on the information to be provided by these new reports. On June 16, 1986, following the conclusion of the formal comment period in this proceeding, the Office of Management and Budget (OMB) submitted comments regarding the reporting requirements proposed by the Commission and their own alternative proposal for the new Form 396. By this *Further Notice of Proposed Rule Making (Further Notice)*, the Commission seeks comment on the proposed alternative EEO reporting requirements submitted by the Office of Management and Budget.

BACKGROUND

2. The Commission's current rules set forth several requirements to ensure that licensees of broadcast stations afford equal opportunity in employment.² The rules also require the filing of certain information in order that we may determine that broadcasters are complying with the EEO rules. In this respect, broadcasters are required to submit a description of certain aspects of their EEO programs on FCC Form 396-A, the 5-point Model EEO Program report, as part of their application for a license for a new station or their request for assignment of the license of an existing station. In addition, as part of their license renewal application, licensees are required to file FCC Form 396, the 10-point Model EEO Program Report. The Commission also requires broadcast stations to file an Annual Employment Report, FCC Form 395, and to report the status of any EEO complaints.

3. Under the requirements of the Paperwork Reduction Act of 1980, OMB must review all reporting requirements established by federal agencies. On August 26, 1981, OMB disapproved the use of the Commission's EEO program reporting forms and their associated guidelines for program preparation. 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 the *Notice* to consider revisions to its broadcast EEO procedures.³

4. In the *Notice*, the Commission stated that in considering revisions to its broadcast EEO reporting and monitoring procedures that it was primarily concerned with a licensee's overall EEO efforts rather than simply the numerical composition of its workforce. Consistent with this approach, the Commission proposed to incorporate into the rules general guidelines concerning EEO policies and practices similar to those that are now contained in the 5-point and 10-point program report forms. It also proposed to eliminate the 5-point program report and to make the 10-point program report significantly less burdensome. The proposed new Broadcast EEO Program Report 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 written narrative answers; and (4) a section providing 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.⁴ Under this proposal, licensees also could submit any additional information that they believe might be useful to the Commission in evaluating their EEO efforts. The new Form 396 only would be filed in the year of the station's license renewal and only by stations that have six or more employees in that year.

5. Under the Commission's proposal, licensees also would continue to file annual employment reports. However, the Commission proposed 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 current broadcast annual employment report. However, certain changes would be made to conform the report to the format used by the Equal Employment Opportunity Commission (EEOC) on its Form EEO-1.⁵ Under this proposal, full-time and part-time employees would no longer be reported on separate tables and the data would be rearranged to conform with the data table on the EEO-1 form. In addition, the existing procedures would be modified 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 form.

DISCUSSION

6. By letter of April 2, 1986, the Office of Management and Budget returned without action the two proposed forms that had been submitted to it for clearance under the Paperwork Reduction Act. The submissions were returned because OMB 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 OMB's paperwork reduction rules (5 CFR §1320.13). Subsequently, OMB submitted informal comments addressing each of the Commission's proposed new information collection forms. In order to assure compliance with the Paperwork Reduction Act and to provide an opportunity for public comment on OMB's specific suggestions, we are issuing this *Further Notice*.

7. OMB states that the proposed Form 395-B is a significant improvement over the existing Form 395 because it is simplified and conforms to the Equal Employment Opportunity Commission's Form EEO-1. OMB also supports the Commission's proposal regarding labor force data on Form 396.

8. However, OMB contends that the proposed Form 396 is not an improvement over the existing form in a number of other respects. In particular, OMB criticizes the required submission of job descriptions and essay answers for several reasons. It believes that these requirements would be especially burdensome on small businesses that do not maintain job descriptions and do not have administrative/legal staffs to write answers to narrative questions. OMB submits that the job descriptions and narrative answers would not be very useful because broadcasters could carefully craft responses to be technically true while not revealing their shortcomings in EEO performance. It further contends that a meaningful evaluation of such loosely structured responses would require more hours from skilled employees than the Commission is likely to devote to routine reviews. Because job descriptions and essay answers cannot be evaluated quickly and easily, OMB believes that the Commission is not likely to devote sufficient resources to routine reviews to make meaningful use of this information. It also comments that the proposed form does not appear to significantly reduce the paperwork burden on broadcasters, and may increase the burden. Finally, in OMB's view, the proposed form does not give broadcasters a clear and simple explanation of the Commission's EEO requirements.

9. For these reasons, OMB proposes an alternative Form 396 styled after the existing 10-point Model Program form. OMB believes that its proposal will remedy the problems that it sees with the form proposed by the Commission in the *Notice*. OMB's proposal for Form 396 is attached in the Appendix. This alternative form would request that respondents indicate whether they follow specific EEO practices in accordance with the rules and would require them to provide some additional information concerning specific activities in furtherance of these responsibilities. This form also incorporates the system for reporting local labor force data from the Commission's own proposal. OMB's proposal would eliminate the questions on job hires and promotions in the Commission's proposal on the basis that this information is reflected in the annual employment report. OMB recommends that the Commission rely on the "Broadcast Station Annual Employment Report" (Form 395-B) for the breakdown of employees by race, ethnicity and sex within job categories. It believes this modification to the EEO evaluation procedure would assist in reducing the emphasis on reporting numbers rather than efforts.

10. OMB's suggested form includes instructions that are clarified and integrated into the form. OMB submits that by designing the form in this manner it is more likely to be completed by managers who actually affect employment practices, and less likely to be referred to lawyers to craft an acceptable response. OMB further states that it has designed the instructions to remind station management of the Commission's EEO requirements and to emphasize that effective affirmative actions in policy dissemination and recruitment are mandatory.

11. The Commission believes it appropriate to allow interested parties to comment on the OMB proposal, and, therefore, we will allow a comment period for that purpose. In submitting comments, parties are requested to

consider whether OMB's proposal for Form 396 would provide the Commission with sufficient information to evaluate a broadcast licensee's efforts to comply with the EEO requirements. We are also interested in whether this proposal would minimize the reporting and administrative burden of these requirements for both broadcasters and the Commission. Further, we note that in giving full consideration to OMB's proposal we are not abandoning our initial proposals concerning the Broadcast EEO Program Report at this time. Our publication of this *Further Notice* in the Federal Register, both seeking comment on the OMB proposal and reopening the record with respect to the initial proposal, and the prompt submission of this *Further Notice* to OMB simultaneous to or prior to its publication in the Federal Register should, we believe, constitute full compliance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and OMB's implementing regulations (5 CFR 1320). Our final action in this matter will take into consideration the comments filed in response to the *Notice* along with the comments submitted in response to this *Further Notice*.

Regulatory Flexibility Act Initial Analysis

12. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

I. *Reason for action.* The Commission issued a *Notice of Proposed Rule Making* in response to OMB's review of our broadcast EEO requirements. This action seeks comments on reporting requirements proposed by OMB in its response to the *Notice*.

II. *Objectives.* This proceeding is intended to address the concerns raised by OMB in its disapproval of the use of the Commission's 5-point and 10-point program reports for routine data collection. This proceeding also seeks to reduce the administrative burden of the Commission's broadcast EEO reporting requirements.

III. *Legal basis.* Authority for action as proposed in this rule making proceeding is provided in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

IV. *Description, potential impact and number of small entities affected.* In the *Notice*, the Commission proposed that most broadcast stations would continue to file a modified Annual Employment Report (FCC Form 395). We also proposed to eliminate the 5-point EEO program report that is filed by applicants for construction permits or assignment of license. Finally, the Commission proposed to replace the 10-point EEO program report, filed at the time of license renewal, with a new Broadcast EEO Program Report. In this *Further Notice*, we are requesting comment on a proposal submitted by OMB for an alternative Broadcast EEO Program Report. This proposal would affect approximately 11,000 broadcast stations.

V. *Recording, record keeping and other compliance requirements.* Under the Commission's initial proposals and the modifications suggested by OMB, licensees would continue to file an annual employment report and would file the new Broadcast EEO Program Report with their license renewal application. There would be no change in the recording, record keeping or other compliance requirements.

VI. *Federal rules which overlap, duplicate or conflict with this rule.* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objectives.* None.

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William J. Tricarico
Secretary

APPENDIX

FEDERAL COMMUNICATIONS COMMISSION

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
DOCUMENT

Every applicant for renewal of a broadcast station license must prepare an equal employment opportunity program document on this form. The document must be sent to the Federal Communications Commission (FCC), and a copy of the document must be kept in the station's public file. These steps are required to obtain license renewal. Failure to meet these requirements may result in license renewal being delayed or denied. These requirements are contained in Section of the FCC Rules (), and are authorized by the Communications Act of 1934 as amended.

CALL LETTERS:
NAME OF LICENSEE :
CITY AND STATE WHICH STATION IS LICENSED
TO SERVE:

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

NAME
STREET ADDRESS
CITY STATE ZIP CODE
TELEPHONE NO. (* * *)

If your station employs less than six full-time employees, then check the box at left, complete the certification below, return these top two sheets only to the FCC and place a copy in your station's public file. You do not have to complete the rest of this form.

If your station employs six or more full-time employees you must complete all of this form and follow all instructions.

CERTIFICATION

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief and are made in good faith. Signed and dated this
day of , 19

Signature:
Title:

13. Written comments are requested on the initial regulatory flexibility analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Further Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub.L.No. 96-354, 94 Stat. 1164, 50 U.S.C. §602 et seq.) (1982).

14. For the purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR §1.1231.

15 Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 5, 1987, and reply comments on or before January 20, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

16. The proposals contained 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 any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

17. For further information concerning this proceeding, contact Marcia Glauberman, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

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

The purposes of this document are to remind you of your station's equal employment opportunity responsibilities, and to provide your station, the FCC and the public with information about whether your station is meeting these responsibilities.

I. GENERAL POLICY

Your station must 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.

Your station must also encourage applications from qualified minorities and women for hiring and promotion to all types of jobs at your station.

II. RESPONSIBILITY FOR IMPLEMENTATION

Your station must assign a particular official overall responsibility for equal employment opportunity at your station.

Write that official's name and title here. NAME TITLE

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 no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. POLICY DISSEMINATION

Your station must make effective efforts to make management, staff and prospective employees aware that it offers equal employment opportunity. The efforts listed below are generally effective. Make a check next to each practice that your station follows, and list any other efforts.

[] 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 that they have the right to notify an appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.

[] We seek the cooperation of the unions represented at the station to help implement our EEO program and all union contracts contain a nondiscrimination clause.

[] Other (Specify)

IV. RECRUITMENT

Your station must make special efforts to attract qualified minority and women applicants for all types of jobs at your station. If current efforts are not effective in attracting qualified minority and women applicants, your station must seek more effective approaches.

Make a check next to each practice that your station follows, and list sources and numbers of referrals.

[] We attempt to maintain systematic communication with a variety of minority and women's organizations to encourage the referral of qualified minority and female applicants. Examples of such organizations contacted during the past 12 months are:

Organization/Source Number of Referrals

[] When we recruit prospective employees from educational institutions such recruitment efforts include area schools and colleges with significant minority and female enrollments. Educational institutions contacted for recruitment purposes during the past 12 months and the number of referrals are:

[] 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.

[] When we place employment advertisements in printed media some of such advertisements are placed in media which have significant circulation or are of particular interest to minorities and women. Examples of publications utilized during the past 12 months and the number of referrals are:

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

V. TRAINING

Training programs are not mandatory. Each applicant is expected to decide, depending upon its own individual situation, whether a training program is feasible and would assist it in its effort to increase the pool of available minority and female applicants. Also, where an applicant already has employee training programs, the information reported in this section should enable it to ascertain whether minority and female employees have the same opportunity to participate as other employees. Training programs must not discriminate on the basis of race, color, religion, national origin or sex. Information submitted with respect to any training programs utilized should include a report covering at least the 12 month period prior to the filing of the application, but may encompass the entire license period, if so desired. Additionally, the applicant may set forth any other assistance to students, schools or colleges which benefits minorities and women interested in entering the broadcasting field. The beneficiary of such assistance should be listed, as well as the form of assistance, such as contributions to scholarships, participation in work-study programs, and the like. Assistance must not discriminate on the basis of race, color, religion, national origin or sex.

[] Station resources and/or needs are such that we are unable or do not choose to institute specific programs for upgrading the skills of employees.

[] We provide on-the-job training to upgrade the skills of employees. Tangible benefits of such training to minority and women employees during the past 12 months may be briefly described as follows:

[] We provide assistance to students, schools or colleges in programs that enable minorities and women to compete in the broadcast employment market on an equitable basis:

|| Other (Specify)

VI. AVAILABLE LABOR FORCE

The following table contains FCC-supplied data concerning the percentages of women and minorities among various categories of workers in your station's area. These data are intended to assist in evaluating your station's equal employment opportunity efforts.

If you have other data that more accurately reflect the percentages of women and minorities in the labor force available to your station, then enter those data in the table next to the table of FCC-supplied data, and attach an explanation.

002752

VII. OTHER INFORMATION

You must provide here a brief description of any complaint which has been filed before any body having competent jurisdiction under Federal, State, territorial or local law, alleging unlawful discrimination in the employment practices of the station including the persons involved, the date of filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

You may also describe here:

* Any problems the station has experienced in assuring equal employment opportunity, or attracting qualified minority and women candidates for employment or promotion.

* Any efforts the station has undertaken or will undertake to promote equal opportunity in its employment and to encourage applications from minorities and women.

* Any other information regarding equal employment opportunity at the station.

FOOTNOTES

¹ See Notice of Proposed Rule Making, MM Docket No. 85-350, 50 FR 49566 (December 3, 1985).

² The current broadcast EEO rules are set forth in Section 73.2000 of the Commission's rules, 47 CFR 73.2000.

³ The Commission revised its cable EEO policies and practices in accordance with the requirements of the Cable Communications Policy Act of 1984 in the Report and Order in MM Docket No. 85-61, 50 FR 40836 (October 7, 1985).

⁴ See Notice, Appendix B.

⁵ See Notice, Appendix C.

⁶ We note that OMB's proposed Form 396 includes a requirement for broadcast station with less than 6 full-time employees to complete the certification section of the form this status, although it exempts them from completing the substantive portions thereof. The Commission's proposal in the Notice would exempt stations with less than 6 full-time employees from any EEO Program Report filing requirement.

While several trends in employment may be discernible from comparisons of the Annual Employment Reports, as OMB contends, we do not believe that these data are sufficient to determine the actual number of promotions and jobs filled during a 12-month period.

NAACP EXHIBIT 44

Doc. WITHDRAWN 6/22

Federal Communications Commission

Docket No. 94-10 Exhibit No. 44

Presented by NAACP

Disposition { Identified 6/21
Received _____
Rejected _____

Reporter BARBARA WOOD

Date 6/21/94

003032 6 ①

ARNOLD & PORTER

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June 23, 1987

Mr. Dennis Stortz
Acting General Manager
Station KFUO
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
Page 2

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

CG0004 (3)

198833

6

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)

3605

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.

④

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. 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.

198837

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).

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.

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.

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.

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.