APPENDIX A

LIST OF COMMENTING PARTIES

Comments

1. American Center for Law and Justice (ACLJ)
2. American Federation of Television and Radio Artists (AFTRA)
3. American Women in Radio and Television (AWRT)
4. Ameritech New Media, Inc. (Ameritech)
5. Association of America's Public Television Stations (APTS)
6. Camrory Broadcasting, Inc.; Chambers Communications Corp.; James Chladek; Continental Broadcasting, Inc.; Palm Beach Radio Broadcasting, Inc.; Prime Time Christian Broadcasting, Inc.; Radio 95, Inc.; and Shockley Communications Corporation (Camrory)
7. Christian Legal Society's Center for Law and Religious Freedom; Concerned Women for America; and Focus On the Family (CLS)
8. Church State Council of Seventh Day Adventists (Adventists)
9. Roger Clegg (Roger Clegg)
10. Cole, Raywid & Braverman (CRB)
11. Crawford Broadcasting Company (CBC)
12. Curators of the University of Missouri (Curators)
13. Delta Radio, Inc.; United Communications Corporation; Main Street Broadcasting Company, Inc.; Brooks Broadcasting, LLC; KMRI Radio, LLC; Pollack Broadcasting Company; WDAC Radio Company; Pinebrook Foundation, Inc.; Alpha & Omega Communications, LLC; Pollack/Belz Communication Company, Inc.; Pollack/Belz Broadcasting Company, LLC; Baldwin Broadcasting Company; Eagle III Broadcasting, LLC (Delta Radio)
14. Evening Post Publishing Company & Great Empire Broadcasting, Inc. (Evening Post)
15. Forty-Six Named State Broadcasters Associations (46 Named StBAs)
16. Golden Orange Broadcasting Company (Golden Orange)
17. Good News Radio (GNR)
18. Haley Bader & Potts (HBP)
19. Institute for Justice (Institute)
20. Minority Media and Telecommunications Council; African American Media Incubator; Alliance for Community Media; Alliance for Public Technology; American Civil Liberties Union; Black College Communications Association; Civil Rights Forum on Communications Policy; Cultural Environment Movement; Fairness and Accuracy in Reporting; League of United Latin American Citizens; Mexican American Legal Defense and Education Fund; Minority Business Enterprise Legal Defense and Education Fund; National Asian American Telecommunications Association; National Asian Pacific American Legal Consortium; National Association of Black Owned Broadcasters; National Association of Black Telecommunications Professionals; National Association for the Advancement of Colored People; National Association of Black Journalists; National Bar Association; National Council of La Raza; National Hispanic Media Coalition, including its Los Angeles, New York, Chicago, Tucson, Albuquerque, Phoenix and San Antonio Chapters; National Latino Telecommunications Taskforce; National Urban League; People for the American Way; Project on Media Ownership; Puerto Rican Legal Defense and Education Fund; Rainbow/PUSH Coalition; Telecommunications Advocacy Project; Telecommunications Research and Action Center; Women's Institute for Freedom of the Press (MMTC)
21. National Association of Broadcasters (NAB)
22. National Cable Television Association (NCTA)
23. National Hispanic Foundation for the Arts (NHFA)
24. National Religious Broadcasters (NRB)
25. New Jersey Broadcasters Association (NJBA)

26. NOW Foundation; NOW Legal Defense and Education Fund; Center for Media Education; Feminist Majority Foundation; Philadelphia Lesbian and Gay Task Force; Women's Institute for Freedom of the Press (NOW)
27. Office of Communication, Inc., United Church of Christ; National Council of the Churches of Christ in the U.S.A.; Office of Communication, Evangelical Lutheran Church in America; Presbyterian Church [U.S.A.]; United Methodist Church, Ecumenical Office; American Baptist Churches, USA; Black Citizens for a Fair Media (UCC)
28. Office of Management and Budget (OMB)
29. Michael Oxley/Ralph Hall - Members, United States Congress (Oxley/Hall)
30. Pacific Legal Foundation (PLF)
31. Patrice Rhodes (Patrice Rhodes)
32. Small Cable Business Association (SCBA)
33. Smithwick & Belendiuk, P.C. (S&B)
34. Laurey Tantra (Tantra)
35. Tele-Communications, Inc. (TCI)
36. Texas Association of Broadcasters (TAB)
37. Time Warner Cable (Time Warner)
38. United States Small Business Administration (SBA)
39. Doreen Vincent (Vincent)
40. Virginia Association of Broadcasters and North Carolina Association of Broadcasters (VAB/NCAB)
41. The WBUR Group (WBUR)
42. Suzanne White (Suzanne White)

Reply Comments

1. Americans United for Separation of Church and State (Americans United)
2. Eight Broadcast Groups (Eight Broadcast Groups)
3. Fisher Broadcasting Inc. (Fisher)
4. Forty-Six Named State Broadcasters Associations
5. Gerri L. Gagnon (Gerri L. Gagnon)
6. Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee)
7. Lincoln Broadcasting Company, (Lincoln)
8. Minority Media and Telecommunications Council; African American Media Incubator; Alliance for Community Media; Alliance for Public Technology; American Civil Liberties Union; Black College Communications Association; Civil Rights Forum on Communications Policy; Cultural Environment Movement; Fairness and Accuracy in Reporting; League of United Latin American Citizens; Mexican American Legal Defense and Education Fund; Minority Business Enterprise Legal Defense and Education Fund; National Asian American Telecommunications Association; National Asian Pacific American Legal Consortium; National Association of Black Owned Broadcasters; National Association of Black Telecommunications Professionals; National Association for the Advancement of Colored People; National Association of Black Journalists; National Bar Association; National Council of La Raza; National Hispanic Media Coalition, including its Los Angeles, New York, Chicago, Tucson, Albuquerque, Phoenix and San Antonio Chapters; National Latino Telecommunications Taskforce; National Urban League; People for the American Way; Project on Media Ownership; Puerto Rican Legal Defense and Education Fund; Rainbow/PUSH Coalition; Telecommunications Advocacy Project; Telecommunications Research and Action Center; Women's Institute for Freedom of the Press
9. National Association of Broadcasters
10. National Cable Television Association
11. NOW Foundation; NOW Legal Defense and Education Fund; Center for Media Education; Feminist Majority Foundation; Philadelphia Lesbian and Gay Task Force; Women's Institute for Freedom of

the Press

12. Office of Communication, Inc., United Church of Christ; National Council of the Churches of Christ in the U.S.A., Communication Commission; Evangelical Lutheran Church in America; Presbyterian Church [U.S.A.]; United Methodist Church; American Baptist Churches, USA; Black Citizens for a Fair Media

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rule Making (NPRM)* in this proceeding.[2] The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *NPRM*, including comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for and Objectives of the Rules

The D.C. Circuit court in *Lutheran Church - Missouri Synod v. FCC*[3] held that the equal employment opportunity (EEO) program requirements of the Commission's EEO Rule for broadcasters were unconstitutional and remanded to the Commission to determine whether we have authority to enforce an employment nondiscrimination requirement. The *Report and Order* adopts new EEO rules and policies for broadcasters and cable entities, including multichannel video programming distributors (MVPDs), consistent with the *Lutheran Church* decision. The new EEO rules retain the FCC's anti-discrimination provisions and prohibit broadcasters and cable entities from engaging in discriminatory practices. In addition, the rules require broadcasters and cable entities to establish and maintain an EEO program designed to provide equal opportunity for everyone, including minorities and women. The new rules emphasize inclusive recruitment outreach and prohibit entities from preferring members of any racial, national origin, or gender group in hiring. We note that SBA has approved our approach for small stations and small cable entities in this *Report and Order*.[4]

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

Three comments were filed specifically in response to the IRFA.[5] SCBA states that EEO recruiting, recordkeeping and reporting requirements substantially impact small cable systems since they have limited financial and administrative resources. It urges the Commission to consider its comments regarding small cable entities filed in response to the *NPRM*.[6] For the purpose of providing EEO relief to small cable operators, SCBA believes that a small cable company should be defined by its number of employees, and

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policy and Termination of the EEO Streamlining Proceeding*, 13 FCC Rcd 23004 (1998).

[3] 141 F.3d 344 (D.C. Cir. 1998), *pet. for reh'g denied*, 154 F.3d 487, *pet. for reh'g en banc denied*, 154 F.3d 494 (D.C. Cir 1998) (*"Lutheran Church"*).

[4] Letter from Aida Alvarez, Administrator, U.S. Small Business Administration, to Roy Stewart, Chief, Mass Media Bureau, Federal Communications Commission (January 19, 2000).

[5] Comments of Small Cable Business Association (SCBA), U.S. Small Business Administration (SBA), and Congressmen Michael G. Oxley and Ralph M. Hall (Oxley/Hall).

[6] SCBA Comments at 3.

not its amount of gross revenues, as currently defined by the SBA. It states that a cable system's gross revenues or number of subscribers does not correspond well to EEO rules. We note that the *Report and Order* considers SCBA's concerns and provides relief to small cable employment units on the basis of unit staff size, and by streamlining reporting and recordkeeping requirements for all cable entities.

The SBA urges the FCC to look at the economic impact of its proposed EEO requirements on small stations consistent with the RFA, and if necessary, to maintain its EEO exemptions for small stations defined as those with fewer than five employees.[7] We note that this FRFA conforms to the RFA, and that the Report and Order continues to exempt broadcast station employment units with fewer than five full-time employees from the FCC's specific EEO requirements, as well as providing additional relief for employment units that have between five and ten full-time employees.

C. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.[8] Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 4 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."[9] The rules we adopt in this *Report and Order* will affect broadcast stations and cable entities, including multichannel video programming distributors.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. Last, with respect to applying SBA size standards revenue caps, the SBA has defined "annual receipts" specifically in 13 C.F.R § 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from

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[7] SBA Comments at 1.

[8] 5 U.S.C. § 604(a)(3).

[9] While we stated in the NPRM that we tentatively believe that the SBA's definition of "small business" in this context greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FRFA, we include the SBA's definition in determining the number of small businesses to which the rules would apply.

licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and those data may not correspond completely with the SBA definition of annual receipts.

Television and Radio Stations: The rules in this *Report and Order* will apply to television and radio stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[10] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[11] Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[12]

There were 1,509 full-service television stations operating in the nation in 1992.[13] That number has remained fairly constant as indicated by the approximately 1,616 operating full-service television broadcasting stations in the nation as of September 1999.[14] For 1992[15] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[16] Thus, the rules will affect approximately 1,616 television stations; approximately 77%, or 1,244 of those stations are considered small businesses.[17] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

The rule changes would also affect radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[18] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[19] Included in this

[10] 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833.

[11] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

[12] *Id.*

[13] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9.

[14] FCC News Release, Broadcast Station Totals as of September 30, 1999 (released November 22, 1999).

[15] Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, note 53, III.

[16] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[17] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1999 total of 1,616 TV stations to arrive at stations categorized as small businesses.

[18] 13 C.F.R. § 121.201, SIC 4832.

[19] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9.

industry are commercial, religious, educational, and other radio stations.[20] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[21] The 1992 Census indicates that 96 percent (5,881 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.[22] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[23] As of September 1999, official Commission records indicate that 12,615 radio stations were operating.[24]

Small cable entities, including MVPDs: The rule changes would also affect small cable entities, including MVPDs. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts.[25] This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), satellite master antenna systems (SMATV), and subscription television services. According to the Bureau of the Census, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[26] Below we discuss these services to provide a more succinct estimate of small entities.

Cable Systems: The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[27] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995.[28] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

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[20] *Id.*

[21] *Id.*

[22] The Census Bureau counts multiple radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[23] FCC News Release No. 31327, Jan. 13, 1993.

[24] FCC News Release, Broadcast Station Totals as of September 30, 1999 (released November 22, 1999).

[25] 13 C.F.R. § 121.201, SIC 4841.

[26] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[27] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 6393 (1995).

[28] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000."[29] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $520 million in the aggregate.[30] Based on available data, we find that the number of cable operators serving 617,000 subscribers or fewer totals 1,450.[31] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

MDS: The Commission has defined "small entity" for purposes of the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[32] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[33] The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.[34]

MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts.[35] This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may be subject to our EEO rules.

DBS: As of November 1999, there are four DBS licensees, one of which is not in operation. Providing DBS service requires a great investment of capital to build, launch, and operate satellite systems. Typically, small businesses do not have the financial ability to become DBS licensees because of the high

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[29] 47 U.S.C. § 543(m)(2).

[30] 47 C.F.R. § 76.1403(b) (SIC 4833)

[31] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[32] 47 C.F.R. § 21.961(b)(1).

[33] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding,* MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

[34] One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

[35] 13 C.F.R. § 121.201.

implementation costs associated with launching satellites. Most recent industry statistics suggest that the revenue attributed to DBS subscribers for EchoStar was $682.8 million for the year of 1998 and $1.55 billion for DIRECTV. We do not have similar revenue information for the third operating licensee, Dominion Video Satellite, Inc. However, we do not believe that any DBS licensees could be categorized as small businesses.

Estimates Based on Staff Size: As described, for purposes of providing relief from our EEO rules for entities with fewer staff resources, the *Report and Order* classifies such entities by number of employees. We estimate that, in 1997, the total number of full-service broadcast stations with fewer than five employees was 5,186, of which 340 were television stations.[36] Similarly, we estimate that, in 1997, 2,750 cable system or SMATV employment units employed fewer than six full-time employees. Also, in 1997, 725 MVPD employment units employed fewer than six full-time employees.

We also estimate that, in 1997, the total number of full-service broadcast stations with five to ten employees was 2,145, of which 200 were television stations.[37] Similarly, we estimate that, in 1997, 322 cable system or SMATV employment units employed six to ten full-time employees. Also, in 1997, 65 MVPD employment units employed six to ten full-time employees.

D. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *Report and Order* adopts changes to existing EEO recordkeeping and reporting requirements. It also specifies which EEO materials are required to be kept in the public inspection file. All broadcasters and cable entities must adhere to the EEO rules' general anti-discrimination provisions. Broadcasters with station employment units of five to ten full-time employees are provided some relief from EEO requirements, and station employment units of fewer than five full-time employees are exempt altogether, with the exception that all broadcasters are subject to the nondiscrimination requirement and must report any employment discrimination complaints filed against them. Cable employment units, including MVPD employment units, employing six to ten full-time employees are also provided some relief from the *Report and Order's* specific EEO program requirements, and cable employment units with fewer than six full-time employees are not required to demonstrate compliance with the EEO program requirements. Generally, no special skills will be necessary to comply with the requirements.

Specifically, the *Report and Order* requires broadcasters and cable entities to widely disseminate information concerning job vacancies. Additionally, broadcasters and cable entities must undertake two supplemental recruitment measures described herein. The first supplemental recruitment measure requires broadcasters and cable entities to provide notification of full-time job vacancies to any requesting organization if the organization regularly distributes information about employment opportunities or refers job seekers to employers. Depending on the size of a station's staff, the second supplemental recruitment measure requires broadcasters to engage in at least four (for station employment units with more than ten full-time employees) or two (for station employment units with five to ten full-time employees) of the following menu options every two years: job fairs, job banks and other general outreach efforts,

[36] We base this estimate on a compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC.

[37] We base this estimate on a compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC.

scholarship programs, in-house training programs, mentoring programs, community events related to employment opportunities in the industry, industry career events/programs by educational institutions, internship programs, the listing of upper-level vacancies in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities, and other activities to disseminate information regarding industry employment opportunities, as designed by the broadcaster. Cable employment units with more than ten full-time employees must engage in at least two options from the supplemental recruitment measures menu every year and cable employment units with six to ten full-time employees must engage in at least one option every year. Broadcasters and cable entities that desire more flexibility in their recruitment procedures may dispense with the supplemental recruitment measures as long as they are able to demonstrate success in achieving broad outreach to all segments of the community, as based upon an analysis of the recruitment source, race, national origin, and gender of the applicants attracted by their outreach efforts.

In addition, the *Report and Order* requires broadcasters and cable entities to retain records to demonstrate that they have recruited for all full-time permanent positions. To alleviate recordkeeping burdens, records may be kept in an electronic format. Such recordkeeping shall include: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, and dated copies of advertisements and other documentation announcing vacancies. Broadcasters and cable entities engaging in supplemental recruitment measures must show organizations which requested notification and must also maintain: records and proof of participation in menu options, the total number and referral source of all interviewees, and dates of hire along with the name of the recruitment source which referred the hiree. These revised recordkeeping requirements significantly reduce the cost of compliance because broadcasters and cable entities that use this approach no longer have to keep extensive records on the race and gender of all applicants and interviewees, as was the case under our former EEO rules. For those broadcasters and cable entities that opt out of the supplemental recruitment measures, we will require that they maintain records of the recruitment source, race, national origin, and gender of qualified applicants in order to demonstrate that they widely disseminated information about job openings. Some broadcasters and cable entities, especially the ones with fewer employees, may have only a few vacancies generally available so that this option may be less burdensome to them. Broadcasters' records must be maintained until grant of the renewal application for the term during which the hiring activity occurred. Cable entities must retain their records for a minimum of seven years. To determine compliance with the EEO rules, the Commission may conduct inquiries requesting the records of a broadcaster or cable entity.

The *Report and Order* also requires stations and cable employment units to place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled and recruitment sources used for each vacancy during the preceding year and the address/contact person/telephone number of each recruitment source. Broadcasters and cable entities engaging in supplemental recruitment measures must also include in their public file: an indication of the organizations requesting notification, the recruitment source of all full-time hirees during the preceding year, the total number of persons interviewed for full-time vacancies during the preceding year as well as the total number of interviewees referred by each recruitment source for that vacancy, and a brief description of the menu option items undertaken during the preceding year. Those broadcasters and cable entities that opt out of the supplemental recruitment measures must include in their public file: the total number of applicants generated by each recruitment source utilized for any full-time vacancy during the preceding year, and the number of those applicants who were female and the number who were minority, identified by the applicable racial and/or national origin group with which each applicant is associated. Station units must retain the materials in

their file until final action has been taken on the station's next license renewal application, and cable entities must retain their materials for a period of five years.

In addition, broadcasters must file a Statement of Compliance (Form 397) every second, fourth and sixth year of the license term, on the anniversary of the date the station is due to file its renewal, stating whether the station has complied with the EEO Rule. Broadcasters must place a copy of the latest Statement in the public inspection file. Broadcasters must also continue to place a copy of Form 396 ("Broadcast EEO Program Report") in the public inspection file. However, broadcasters are no longer required to place a copy of their station's Form 395-B ("Broadcast Station Annual Employment Report") in the public file. Cable employment units must continue to place a copy of Forms 395-A ("Cable Television Annual Employment Report") or 395-M ("Multi-Channel Video Program Distributor Annual Employment Report") in their public file. Also, most broadcasters must submit the contents of their station's EEO public inspection file to the FCC at renewal time and midway through the license term for the Commission's mid-term review and cable entities with six or more full-time employees must submit copies of their EEO public inspection file to the Commission every five years. However, broadcasters may limit their submissions to cover only the last 12 months of EEO activity. These changes reduce burdens on all station and cable employment units, both by more clearly defining what must be retained and by specifying the period of retention.

The *Report and Order* eliminates sections concerning specific categories of recruitment sources from Form 396-A ("Model EEO Program Report"). The *Report and Order* also eliminates many sections from Form 396, including sections requesting information on local labor force statistics, and the number of minority and female hires and promotions. The *Report and Order* provides further relief to broadcasters by enabling them to file only one Form 395-B for all commonly owned stations in the same market sharing at least one employee. Form 396 will include a new section for broadcasters to provide a narrative statement demonstrating how the station achieved broad and inclusive outreach. With respect to cable entities, the *Report and Order* eliminates all sections on Forms 395-A and 395-M concerning available labor force and occupational data, employee promotions and job hires.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

This *Report and Order* sets forth the Commission's new EEO rules and procedures, and considers all of the significant alternatives presented in the comments. We have determined that our finalized rules fulfill our public interest goals while maintaining minimal regulatory burdens and ease and clarity of administration. The new EEO rules and procedures are designed to keep essential filing and recordkeeping burdens at a minimum, and increase the efficiency of application processing for all broadcasters and cable entities, including small entities.

The *NPRM* requested comment on the Commission's proposal to exempt small staff stations or stations located in small markets from specific EEO recordkeeping and reporting requirements. The *NPRM* proposed to increase the current staff exemption threshold of fewer than five full-time employees to ten or fewer full-time employees. There was no specific proposal regarding the market threshold for exempting stations. Although we received a few comments regarding small market exemptions, the majority of comments addressed our proposal to increase the staff exemption threshold. Commenters argue that an increase is warranted since stations with small staffs have limited personnel and financial resources to carry out EEO requirements. Other commenters argue against a total exemption from the broadcast EEO Rule for

stations with ten or fewer employees since such stations play a pivotal role in providing essential entry-level opportunities into the broadcast industry. As discussed in the *Report and Order*, we believe that a total exemption is unnecessary since the new EEO Rule streamlines and clarifies recordkeeping requirements, thereby benefiting all broadcasters, including stations with fewer employees. For this same reason, we also believe that additional EEO relief is not warranted for small market stations. Such relief is already built into the new Rule, as further evidenced by the flexibility it affords broadcasters to tailor their EEO programs to their station's particular circumstances, including market size. However, because fewer staff resources are available to them, we believe that station employment units with five to ten full-time employees, which are the smallest staff stations subject to our EEO program requirements, warrant additional relief from EEO program requirements. Therefore, for those broadcasters employing supplemental recruitment measures, we will require station employment units with five to ten full-time employees to engage in only two of the menu options listed in the EEO Rule during each two-year period. Station employment units with more than ten full-time employees are required to engage in four menu options during each two-year period. While not providing a total exemption from our EEO Rule, this approach does provide additional EEO relief to station employment units with five to ten employees. Further, we will exempt radio station employment units with six to ten employees from new mid-term review procedures. Currently, mid-term reviews for all television stations with five or more full-time employees are required by statute. However, only about 200 television stations (or 13%) had between five and ten employees in 1997.[38] Also, a station will not qualify for relief if it shares one or more employees with one or more commonly owned stations in the same market and their combined staffs total more than ten full-time employees since such stations are considered one employment unit for EEO purposes.

We also received comments arguing that cable systems with small staffs should be provided EEO relief since they, too, have limited personnel and financial resources. Upon consideration, we will require cable employment units with six to ten full-time employees that use the supplemental recruitment measures to engage in only one option from the supplemental recruitment measures menu each year, as opposed to the two options required otherwise.

We will continue to exempt broadcast station employment units with fewer than five full-time employees from our specific EEO program requirements. In addition, cable employment units with fewer than six full-time employees will still not be required to demonstrate compliance with the EEO program requirements.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the EEO Rules

Oxley/Hall maintain that the FCC's proposed EEO program substantially replicates the work of the Equal Employment Opportunity Commission (EEOC).[39] As we stated in the *Report and Order*, while the EEOC and FCC share as a common goal the elimination of discriminatory employment practices, the primary functions of the two agencies differ greatly. Whereas the EEOC reviews discrimination complaints in order to provide relief to victims of discrimination, the FCC's principal concern with respect to discrimination allegations is to determine the fitness of broadcasters and cable entities to fulfill their obligations under the Communications Act. Moreover, the *Memorandum of Understanding Between the Federal*

[38] We base this estimate on a compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC.

[39] Oxley/Hall Comments at 3.

Communications Commission and the Equal Employment Opportunity Commission, 51 Fed. Reg. 21798 (1986), coordinates and minimizes overlap of the enforcement efforts of the two agencies.

Report to Congress: The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). In addition, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.

APPENDIX C

I. Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Subpart B - Delegated Authority

Section 0.283 is revised by amending paragraph (b)(1)(iii) to read as follows:

§ 0.283 Authority delegated.

* * * * *

(b) * * *
(1) Petitions to deny, informal objections, and other petitions, directed against AM, FM, and TV applications for new or modified facilities, or for renewal, assignment or transfer of control, will be referred to the Commission if they:
(i) * * *
(ii) * * *
(iii) present documented allegations of failure to comply with the Commission's Equal Employment Opportunity rules and policies.

* * * * *

II. Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Subpart H - Rules Applicable to All Broadcast Stations

Section 73.2080 is amended to delete the present language in its entirety and replace it with the following:

§ 73.2080. Equal employment opportunities ("EEO").

(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. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

(b) *General EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination 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 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 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) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

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

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

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

(2) Engage in at least four (if the station employment unit has more than ten full-time employees) or two (if it has five to ten full-time employees) of the following initiatives during each two-year period preceding the filing of a Statement of Compliance pursuant to subsection (g) hereof:

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

(ii) hosting of at least one job fair;

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

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

(v) establishment of an internship program designed to assist members of the community to

acquire skills needed for broadcast employment;

(vi) participation in job banks, internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

(ix) establishment of a mentoring program for station personnel;

(x) participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

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

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

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

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

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

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

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

(iii) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other

communications announcing vacancies;

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

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

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

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information:

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

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

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

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

(v) a list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year, if applicable.

(7) Stations shall substantially comply with paragraph (c)(1)(i) of this section in connection with hires for part-time positions. The provisions of paragraph (c) are not otherwise applicable to hires for part-time positions.

(d) *Alternative Recruitment Requirements.* A station employment unit may elect not to utilize the provisions of paragraph (c)(1)(ii) (notification to community groups) and (c)(2) (menu options) hereof, provided that it complies with the following requirements:

(1) The station employment unit shall maintain records as required by paragraph (c)(5)(i) through (iii) and shall maintain, in lieu of the records required by paragraph (c)(5)(iv) through (vi), data reflecting the recruitment source, gender, and racial and/or ethnic status of applicants for each full-time job vacancy filled by the station employment unit;

(2) The station employment unit shall include in the annual EEO public file report required by paragraph (c)(6) the information specified in paragraph (c)(6)(i) and (ii) and, in lieu of the information required by paragraph (c)(6)(iii) through (v), data reflecting, for each recruitment source utilized for any full-time vacancy during the preceding year, the total number of applicants generated by that source, the number of applicants who were female, and the number of applicants who were minority, identified by the applicable racial and/or ethnic group with which each applicant is associated.

(3) Station employment units electing to proceed under this paragraph shall otherwise comply with the requirements specified in paragraph (c).

(e) *Election Procedures.* Within forty-five days of the effective date of this Rule, each station employment unit shall elect whether it wishes to utilize the recruitment procedures specified in paragraph (c) or the alternate recruitment procedures specified in paragraph (d) and shall file with the Commission a statement indicating the election which shall also be placed in the station(s) public inspection file maintained pursuant to § 73.3526 or § 73.3527. An applicant for a new station or for the transfer or

assignment of an existing license filed on FCC Form 314 or 315 shall state its election on FCC Form 396-A submitted with the application. A station employment unit may change its election every two years at the time of the filing of the Statement of Compliance referenced in paragraph (i)(1) below, or at the time of the filing of its renewal application. If the station employment unit wishes to change its election, it shall so state in its Statement of Compliance or FCC Form 396 accompanying the renewal application.

(f) *Mid-term review for broadcast stations.* The Commission will conduct a mid-term review of the employment practices of each broadcast television station and each radio station that is part of an employment unit of more than ten full-time employees four years following the station's most recent license expiration date as specified in § 73.1020. Each such licensee is required to file with the Commission the station's EEO public file report, as described in paragraphs (c)(6) or (d)(2) of this section, along with the relevant Statement of Compliance (Form 397), as described in paragraph (i)(1) of this section, four months before the date specified in the previous sentence. The EEO public file report should cover the station's activities during the 12-month period prior to its submission.

(g) *Small Station Exemption.* The provisions of paragraphs (b), (c), (d), (e), and (f) of this section shall not apply to station employment units that have fewer than five full-time employees.

(h) *Definitions.* For the purposes of this Rule:

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

(2) a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

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

(1) Each broadcast station shall file with the Commission a Statement of Compliance (FCC Form 397) stating whether the station has complied with the outreach provisions of the broadcast EEO Rule, § 73.2080, during the two-year period prior to the date the station files the Statement. Before filing the Statement, stations shall review their recruitment activity during the two-year period along with requirements of the EEO Rule and determine whether they have been in compliance with the EEO Rule during the relevant period. The Statement of Compliance shall also report any change in the station's recruitment election pursuant to paragraph (e) hereof. All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. As with Form 397, stations shall indicate on Form 396 whether they have complied with the Broadcast EEO Rule. In addition, stations shall provide a narrative statement demonstrating how their recruitment efforts achieved broad and inclusive outreach during the two years prior to filing the Form 396. Stations should also include in Form 396 any change in recruitment election pursuant to paragraph (e) hereof. If the station believes it was not or may not have been in compliance, it shall submit an appropriate explanation on Form 396 or 397, as applicable. The Statement of Compliance (Form 397) is filed every second, fourth and sixth year of the license term, on the anniversary of the date the station is due to file its application for renewal of license. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Statement of Compliance or Form 396, its Statement should be based on the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a

copy of their Statement of Compliance and Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) On the date a station is due to file for renewal of license, as part of Form 396, it shall file with the Commission an EEO public file report concerning recruitment activity during the 12-month period preceding the filing date. The required contents of the public file report are described in paragraphs (c)(6) or (d)(2) of this Rule. On the date each television station or radio station which is part of an employment unit with more than ten full-time employees files its Statement of Compliance (Form 397) at the mid-term point of its license term, the station shall file, together with Form 397, an EEO public file report concerning recruitment activity during the 12-month period prior to filing the EEO public file report. If any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Statements of Compliance, Forms 396, and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of the Statements of Compliance, Forms 396 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Statements of Compliance, Forms 396, and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Statements of Compliance, Forms 396, and EEO public file reports filed for its own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO Rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Statements of Compliance, Forms 396, and EEO public file reports. To determine compliance with the EEO Rule, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of the EEO Rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on a station's Statement of Compliance or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587-3589 of the Commission's Rules.

(j) *Sanctions and Remedies.* The Commission may issue appropriate sanctions and remedies for any violation of this Rule.

Section 73.3526 is revised by amending paragraph (e)(7) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *
(7) *Equal Employment Opportunity file.* Such information as is required by § 73.2080 to be kept in the public inspection file. These materials shall be retained until final action has been taken on the station's next license renewal application.

* * * * *

Section 73.3527 is revised by amending paragraph (e)(6) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *
(6) *Equal Employment Opportunity file.* Such information as is required by § 73.2080 to be kept in the public inspection file. These materials shall be retained until final action has been taken on the station's next license renewal application.

* * * * *

III. Part 76 of Chapter 1 of the Code of Federal Regulations is amended as follows:

Subpart E -- Equal Employment Opportunity Requirements

Section 76.75 is revised by amending introductory text of Section 76.75, paragraphs (b), (c) and (f) and adding paragraphs (g), (h), (i), (j) and (k):

§ 76.75 Specific EEO program requirements.

Under the terms of its program, an employment unit must:

*****

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a cable entity to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its

reasonable, good faith judgment to widely disseminate information concerning the vacancy.

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

(2) Engage in at least two (if the unit has more than ten full-time employees) or one (if the unit has six to ten full-time employees) of the following initiatives during each twelve-month period preceding the filing of an annual employment report:

(i) participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) hosting of at least one job fair;

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

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

(v) establishment of an internship program designed to assist members of the community in acquiring skills needed for cable employment;

(vi) participation in job banks, internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) participation in a scholarship program designed to assist students interested in pursuing a career in cable communications;

(viii) establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) establishment of a mentoring program for unit personnel;

(x) participation in at least two events or programs sponsored by educational institutions relating to career opportunities in cable communications;

(xi) sponsorship of at least one event in the community designed to inform and educate members of the public as to employment opportunities in cable communications;

(xii) listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; and

(xiii) participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in cable communications to job candidates who might otherwise be unaware of such opportunities.

(c) Retain records sufficient to document that it has satisfied the requirements of paragraphs (b)(1) and (b)(2) of this section. Such records, which may be maintained in an electronic format, shall be retained for a period of seven years. Such records need not be submitted to the Commission unless specifically requested. The following records shall be maintained:

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

(2) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if

applicable, organizations entitled to notification pursuant to paragraph (b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person, and telephone number;

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

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

(5) The total number of interviewees for each vacancy and the referral sources for each interviewee; and

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

* * * * *

(f) A cable entity may elect not to utilize the provisions of paragraph (b)(1)(ii) (notification to requesting community groups) and (b)(2) (menu options) hereof, provided that it complies with the following alternative recruitment requirements:

(1) The employment unit shall maintain records as required by paragraph (c)(1) through (3) hereof and shall maintain, in lieu of the records required by paragraph (c)(4) through (6) hereof, data reflecting the recruitment source, gender, and racial and/or ethnic status of applicants for each full-time job vacancy filled by the employment unit;

(2) The employment unit shall place annually in its public file maintained pursuant to § 76.1702 the information specified in § 76.1702(b)(1) and (2) and, in lieu of the information required by § 76.1702(b)(3) through (5), data reflecting, for each recruitment source utilized for any full-time vacancy during the preceding year, the total number of applicants generated by that source, the number of applicants who were female, and the number of applicants who were minority, identified by the applicable racial and/or ethnic group with which each applicant is associated.

(3) Cable employment units electing to proceed under this paragraph shall otherwise comply with the requirements specified in paragraph (b) hereof.

(g) A cable entity shall analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(h) Within forty-five days of the effective date of this Rule, each cable employment unit with six or more fulltime employees shall elect whether it wishes to utilize the recruitment procedures specified in paragraph (b) or the alternate recruitment procedures specified in paragraph (f) and shall file with the Commission a statement indicating the election which shall also be placed in the public inspection file maintained pursuant to § 76.1702. An employment unit may change its election annually at the time of the filing of the FCC Form 395-A or FCC Form 395-M. If the employment unit wishes to change its election, it shall so state in its FCC Form 395-A or FCC Form 395-M. A cable employment unit may also change its election at the time of a substantial change in its ownership by placing a statement of its new election in the public inspection file.

(i) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in

implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to assure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

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

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(j) Cable entities shall substantially comply with paragraph (b)(1)(i) of this section in connection with hires for part-time positions. The remaining provisions of this section are not otherwise applicable to hires for part-time positions but are applicable only to full-time positions, defined as requiring a regular work schedule of 30 or more hours per week.

(k) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), (f) and (g) of this section shall not apply to cable employment units that have fewer than six full-time employees.

Section 76.77 is revised by amending paragraphs (a), (b), and (c), and adding paragraphs (e), (f), and (g).

§ 76.77 Reporting requirements and enforcement.

(a) *Annual employment reports.* Employment data on the annual employment report required by §76.1802 shall reflect the figures from any one payroll period in July, August, or September of the year during which the report is filed. Unless instructed otherwise by the Commission, the same payroll period shall be used for each successive annual employment report. Employment units shall also provide EEO recruitment information covering a 12-month period, as requested and explained on the form. If a cable entity acquires a unit during the twelve months covered by the annual employment report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's annual employment report to determine whether the unit is in compliance with the provisions of this subpart. Employment profile statistics provided about race, ethnicity, and gender of employees will not be used to determine compliance with the EEO rules. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment

units are required to submit supplemental investigation information with their regular annual employment reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

* * * * *

(e) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with §76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their annual employment reports, supplemental investigation responses, and in the EEO program information required by §76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of employment units at random or if the Commission has evidence of a possible violation of the EEO rules. Upon request, employment units shall make records available to the Commission for its review.

(f) *Public complaints.* The public may file complaints based on annual employment reports, supplemental investigation information, or the contents of a unit's public file.

(g) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of the EEO rules.

Section 76.79 is revised by amending the Note to read as follows:

§ 76.79 Records available for public inspection.

* * * * *

NOTE: Cable operators must also comply with the public file requirements of §76.1702.

Section 76.1702 is revised to read as follows:

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all annual employment reports filed with the Commission pursuant to §76.77 and the equal employment opportunity program information described in paragraph (b) or (c) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's annual employment report is due to be filed and shall be retained for a period of five years. The public inspection file should also contain the election information required by § 76.75 (h), insofar as it is not included in the entity's annual employment report. The file shall be maintained at the central office and at every location with six or more full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the central office of the headquarters employment unit. The cable entity shall provide reasonable accommodation at these locations for undisturbed inspection of its equal employment opportunity records by members of the public during regular business hours.

(b) The following equal employment opportunity program information shall be included annually in the

unit's public file, and on the unit's web site, if it has one, at the time of the filing of its FCC Form 395-A or FCC Form 395-M, except as indicated in paragraph (c) hereof:

(1) A list of all full-time vacancies filled by the cable employment unit during the preceding year, identified by job title;

(2) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to §76.75(b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

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

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

(5) A list and brief description of the initiatives undertaken pursuant to §76.75(b)(2) during the preceding year, if applicable.

(c) An entity that elects to utilize the alternative recruitment procedure pursuant to §76.75(f) shall annually include in the public inspection file the information required therein.

Section 76.1802 is revised to read as follows:

§ 76.1802 Equal employment opportunity.

Each employment unit with six or more full-time employees shall file an annual employment report on FCC Form 395-A (if cable operator or SMATV) or Form 395-M (if MVPD) with the Commission on or before September 30 of each year, in accordance with §76.77.

APPENDIX D

FORMS

Federal Communications Commission
Washington, D. C. 20554

Not Approved by OMB
3060-XXXX

BROADCAST AND CABLE INITIAL ELECTION STATEMENT

(For FCC Use Only)
Code No.

Legal Name of the Licensee or Operator		
Mailing Address of the Licensee or Operator		
Cable Operator MSO Name		
City	State or Country (if foreign address)	Zip Code
County and State in which cable unit's employment office is located		Telephone Number (include area code)
Facility ID Number or Employment Unit ID Number	Broadcast Call Sign	E-Mail Address (if available)

TYPE OF BROADCAST STATION: (if applicable)

Commercial Broadcast Station

☐ Radio ☐ TV

☐ Low Power TV

☐ International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this statement. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

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

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS. Broadcast station licensees and cable entities are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Sections 73.2080 and 76.71 et seq. Pursuant to these requirements, a broadcast station employment unit that employs five or more full-time station employees, and a cable employment unit with six or more full-time employees must file an initial election statement. If a broadcast station employment unit employs fewer than five full-time employees, or a cable employment unit employs fewer than six full-time employees, no election statement need be filed.

A copy of this statement must be kept in the broadcast station's or cable unit's public file. Failure to meet these requirements may result in sanctions or remedies. These requirements are contained in 47 C.F.R. Sections 73.2080 or 76.75 and are authorized by the Communications Act of 1934, as amended.

Does your broadcast station employment unit employ fewer than five full-time employees? ☐ Yes ☐ No ☐ N/A
Does your cable employment unit employ fewer than six full-time employees? ☐ Yes ☐ No ☐ N/A
Consider as "full-time" employees all those permanently working 30 or more hours a week.

If your broadcast station employment unit employs fewer than five full-time employees, or your cable employment unit employs fewer than six full-time employees, complete the certification below, return the form to the FCC, and place a copy in your broadcast station(s) or cable unit(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full-time employees or your cable employment unit employes six or more full-time employees, you must complete all of this form and follow all instructions.

CERTIFICATION. This report must be certified, as follows: A. By licensee, if an individual; B. By the individual owning the reporting system if individually owned; C. By a partner, if a partnership (general partner, if a limited partnership); D. By an officer, if a corporation or an association; or E. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

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

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

RECRUITMENT ELECTION

Please indicate whether the broadcast station employment unit or cable employment unit will utilize the supplemental recruitment measures, or the alternative recruitment option, as described in Paragraph 78 in Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, Report and Order, FCC 00-20, released February 2, 2000 ("Report and Order"). This Report and Order can be downloaded from the Commission's web site at http://www.fcc.gov/Bureaus/Mass_Media/Orders/2000/fcc00020.txt.

☐ Supplemental Recruitment Measures (Option A) ☐ Alternative Recruitment Option (Option B)

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

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. We have estimated that each response to this collection of information will average 5 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-XXXX), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-XXXX.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

August 2000

Pursuant to a revision of the due dates for filing Annual Employment Reports, Annual Employment Reports are now due to be filed with the Commission by September 30 of each year. The employment data reported on the Annual Employment Reports may reflect information from any payroll period in July, August or September of the year in which the report is filed. Amendment of Section 73.3612 and 76.77 of the Commission's Rules Concerning Filing Dates for the Commission's Equal Employment Opportunity Annual Employment Reports, 13 FCC Rcd 6973 (1998). In 2000, however, September 30 falls on a Saturday. Consequently, we will require that the Forms 395-B for 2000 be filed no later than October 2, 2000.