

APPENDIX A  
LIST OF COMMENTING PARTIES

Comments

1. American Cable Association (ACA)
2. American Federation of Television and Radio Artists (AFTRA)
3. American Women in Radio and Television, Inc. (AWRT)
4. Association of America's Public Television Stations (APTS)
5. Walt Baker
6. Joseph Belisle
7. Broadcast Compliance Services
8. John Bronikowski
9. Cox Communications, Inc. (Cox)
10. Curators of the University of Missouri (University)
11. Fletcher, Heald & Hildreth, P.L.C. (FH&H)
12. Golden Orange Broadcasting, Inc. (Golden Orange)
13. Lawyer's Committee for Civil Rights Under Law, et al. and People for the American Way Foundation (LCCR and PFAWF)
14. Local Television Group (LTVG)
15. Media Captioning Services (MCS)
16. Mesquite Independent School District (MISD)
17. Minority Media and Telecommunications Council, et al. (MMTC)  
Office of Communication of the United Church of Christ, Inc.,  
African American Media Incubator, AFTRA, Alliance for Community Media,  
Alliance for Public Technology, American Civil Liberties Union, American  
Hispanic Owned Radio Association, American Indians in Film, Asian  
American Journalists Association, Asian American Media Development, Inc.,  
Black Citizens for a Fair Media, Black College Communication Association,  
Black Entertainment and Sports Lawyers Association, Black Entertainment  
and Telecommunications Association, Civil Rights Forum on Communications  
Policy, Cleveland Talk Radio Consortium, Cultural Environment Movement,  
Fairness and Accuracy in Reporting, League of United Latin American  
Citizens, Minorities in Communications Division of the Association for  
Education in Journalism and Communications, Minority Business  
Enterprise Legal Defense and Education Fund, NAMIC, Inc.,  
(National Association of Minorities in Communications), National Asian  
American Telecommunications Association, National Asian Pacific American  
Legal Consortium, National Association for the Advancement of Colored  
People, National Association of Black Journalists, National Association of  
Black Owned Broadcasters, National Association of Black Telecommunications  
Professionals, National Association of Hispanic Journalists, National  
Association of Hispanic Publications, National Bar Association, National  
Association of Hispanic Organizations, National Council of La Raza,  
National Council of the Churches of Christ in the United States, National  
Hispanic Foundation for the Arts, National Hispanic Media Coalition,  
National Indian Telecommunications Institute, National Latino  
Telecommunications Institute, National Latino Telecommunications  
Taskforce, National Newspaper Publishers Association, National Urban  
League, Native American Journalists Association, Native American  
Public Telecommunications, Puerto Rican Legal Defense & Education Fund,  
San Diego Community Broadcasting School, Inc., Telecommunications

Research and Action Center, UNITY: Journalists of Color, Inc., Women's Institute for Freedom of the Press

18. National Association of Broadcasters (NAB)
19. National Association for the Advancement of Colored People (NAACP)
20. National Cable & Telecommunications Association (NCTA)
21. National Public Radio (NPR)
22. National Religious Broadcasters (NRB)
23. NOW, et al.
24. Russell Oasis
25. Radio One, Inc. (Radio One)
26. State Broadcasters Associations (broadcast associations in 49 states and the District of Columbia and Puerto Rico) (SBAs)
27. State University of New York
28. School Board of Broward County, Florida (Broward)
29. Trinity Christian Center of Santa Ana, Inc., dba Trinity Broadcasting Network (TBN)
30. Various Radio Licensees
31. Doreen Vincent (Ability Today, Inc.)

Reply Comments

1. American Cable Association (ACA)
2. American Women in Radio and Television, **Inc.** (AWRT)
3. Named State **B**roadcasters Associations (49 States, the District of Columbia and Puerto Rico) (**St**BA**s**)
4. The Lutheran Church-Missouri Synod (Lutheran Church)
5. Minority Media & Telecommunications Council, et al. (MMTC)
6. National Association of Broadcasters (NAB)
7. National Cable Television Association (NCTA)
8. North Carolina Association of Broadcasters (NCAB)
9. NOW, et al. (National Organization for Women, NOW Legal Defense and Educational Fund, Feminist Majority Foundation, Philadelphia Lesbian and **G**ay Task Force, Women's **I**nstitute for Freedom of the Press)

EEO *En Banc* Hearing Commenters

1. Ann Arnold, Executive Director, Texas State Broadcasters Association
2. Tom Baxter, President, Time Warner Cable, AOL/TW
3. Linda Berg, Political Director, National Organization for Women
4. Reverend Robert Chase, Executive Director, Office of Communications, United Church of Christ
5. Belva Davis, Special Projects Reporter, KQED-TV, San Francisco, CA
6. Joan E. Gerberding, President, American Women in Radio and Television
7. Gregory Hessinger, National Executive Director, American Federation of Radio and Television Artists
8. Catherine Hughes, Chief Executive Officer, Radio One, Inc.
9. Michael Jack, President and General Manager, WRC-TV
10. Marilyn Kushak, Vice President, Midwest Family Broadcasters
11. Hugh Price, President and Chief Executive Officer, National Urban League
12. Ester Renteria, President, Hispanic Americans for Fairness in Media
13. Henry Rivera, Former FCC Commissioner, Partner at Shook, Hardy & Bacon
14. Art Torres, President, Walter Kaitz Foundation
15. Charles Warfield, President and Chief Operating Officer, ICBC Broadcasting Holdings, Inc.
16. Steve White, Senior Vice President, AT & T Broadband

## APPENDIX B

## FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Notice of Proposed Rule Making (Second NPRM)* in this proceeding.<sup>2</sup> The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *Second NPRM*, including comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rule Changes:**

This *Second Report and Order and Third Notice of Proposed Rule Making (Second Report and Order)* adopts new equal employment opportunity (EEO) rules and policies for broadcasters and multi-channel video program distributors (MVPDs) consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, rehearing *den.* 253 F.3d 732 (D.C. Cir. 2001), *cert. denied*, 122 S.Ct. 920 (2002) (*Association*). The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the *Report and Order in MM Docket Nos. 98-204 and 96-16*, 15 FCC Rcd 2329 (2000) (*Report and Order*), *recon. denied*, 15 FCC Rcd 22548 (2000), and codified as Section 73.2080 of the Commission's Rules, 47 C.F.R. § 73.2080. The Court found the option invalid because it found that nonminority job applicants were less likely to receive notification of job openings under that recruitment option. The Court further found that the other option provided by the Rule, although not invalid, could not be severed from the one unconstitutional option and therefore it vacated the entire Rule.

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

One comment was filed specifically in response to the IRFA. The American Cable Association (ACA)<sup>4</sup> proposes the following relief for smaller MVPDs serving fewer than 15,000 subscribers or, in the alternative, employing ten or fewer employees: an exemption from the EEO outreach requirements, streamlined recordkeeping and reporting requirements, and a streamlined FCC Form 395-A (Cable Television Annual Employment Report). ACA states that for many smaller companies, compliance with EEO outreach, recordkeeping, and reporting requirements imposes substantial administrative burdens and costs. ACA also filed these same comments regarding small MVPDs in response to the *Second NPRM*. We note that the *Second Report and Order* considers ACA's concerns and, as discussed below, provides relief to small MVPD employment units.<sup>5</sup>

<sup>1</sup> 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).

<sup>2</sup> See *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policy*, 16 FCC Rcd 22843-22862 (2001).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See para. 177, *supra*.

### C. Recording, Recordkeeping, and Other Compliance Requirements:

The purpose of this rulemaking is to replace our prior EEO rule that was found in part to be unconstitutional. Hence, the recording, recordkeeping, and compliance requirements of the new rule will not exceed those under the former rule. We note that the Small Business Administration (SBA) approved our approach for small broadcast stations and small MVPDs under our former rule.<sup>5</sup> Generally, no special skills will be necessary to comply with the requirements.<sup>6</sup>

The *Second Report and Order* requires that broadcasters and MVPDs recruit for all full-time job vacancies except in exigent circumstances, that some EEO materials be kept in the public inspection file, and that all broadcasters and MVPDs adhere to the EEO rules' general anti-discrimination provisions.

In addition, broadcasters and MVPDs must undertake two additional recruitment measures. The first recruitment measure requires broadcasters and MVPDs to provide notification of full-time job vacancies to any requesting organization if the organization is involved in assisting job seekers. Depending on the size or location of a station's staff, the second recruitment measure requires broadcasters to engage in at least four (for station employment units with more than ten full-time employees in larger markets) or two (for station employment units with five to ten full-time employees or if they are located in a small market) of the following menu options every two years: participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions; hosting of at least one job fair; co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities; 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); establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment; participation in job banks, Internet programs, and other programs designed to promote outreach generally; participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting; establishment of training and mentoring programs designed to enable station personnel to acquire skills that could qualify them for higher level positions; participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting; sponsorship of at least two events in the community designed to inform members of the public as to employment opportunities in broadcasting; 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; providing assistance to outside non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting; providing training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination; providing training to personnel of outside organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions; and participation in other activities designed by the station employment unit to further the goal of disseminating information about employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. MVPD units in larger markets with more than ten full-time employees engage in at least two options from the recruitment measures menu every year and MVPD units with six to ten full-time

<sup>5</sup> Letter from Aida Alvarez, Administrator, U.S. Small Business Administration, to Roy Stewart, Chief, Mass Media Bureau, Federal Communications Commission (January 19, 2000).

<sup>6</sup> These requirements are described more fully in the text of the *Second Report and Order, supra*, and will be codified at 47 C.F.R. § 73.2080 (broadcasting) and 47 C.F.R. §§ 76.75, 76.77, 76.1702 and 76.1802 (MVPDs).

employees or those located in small markets engage in at least one option every year

Also, broadcasters and MVPDs must retain records to demonstrate that they have recruited for all full-time permanent positions. Such recordkeeping includes: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, dated copies of advertisements and other documentation announcing vacancies, listings of those organizations which requested notification of vacancies, the total number of interviewees for each vacancy, the date and recruitment source of each hire, the number of interviewees referred by each recruitment source, and documentation showing proof of participation in menu options. Broadcasters' records must be maintained until grant of the renewal application for the term during which the hiring activity occurred. MVPDs would retain their records for a minimum of seven years. In order to lessen any burdens, records may be maintained in an electronic format. *e.g.*, by scanning pertinent documents into a computer format.

Stations and MVPDs must place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled during the preceding year, recruitment sources used for each vacancy, the address/contact person/telephone number of each recruitment source, an indication of the organizations requesting notification, the total number of persons interviewed for full-time vacancies during the preceding year, the total number of interviewees referred by each recruitment source, a list of the recruitment source that referred each full-time hiree, and a brief description of the menu option items undertaken during the preceding year. Station units retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities retain their materials for a period of five years.

Most broadcasters must submit the contents of their station's EEO public inspection file to the FCC as part of their renewal application and midway through the license term for the Commission's mid-term review (for those subject to mid-term review), and MVPDs with six or more full-time employees submit copies of their EEO public inspection file to the Commission every five years. Broadcasters' submissions cover only the last two years of EEO activity. MVPDs' submissions cover only the last year of EEO activity. Broadcasters must post their current EEO public file report on their web site, if they have one.

Also, broadcasters subject to mid-term review must file Form 397 (Broadcast Mid-Term Report) and place a copy of the Report in the public inspection file. Broadcasters must also place a copy of Form 396 (Broadcast EEO Program Report) and Form 396-A (Broadcast Model EEO Program Report for the construction or sale of a station) in the public inspection file.

We also note that we have provided relief to broadcast and MVPD entities located in small markets. While this is not specifically a small entity relief, this action also lessens compliance burdens.

#### D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply:

##### I. Definition of a "Small Business"

The new rules would apply to broadcast stations and MVPDs. 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 rules adopted herein. Under the RFA, small entities may include small organizations, small businesses, and

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5 U.S.C. § 603(b)(3).

small governmental jurisdictions.' 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 5 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."

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>11</sup> Finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>12</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>13</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>14</sup> The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

## 2. Issues in Applying the Definition of a "Small Business"

As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

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. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 C.F.R. §

<sup>8</sup> 5 U.S.C. § 601(6).

<sup>9</sup> 5 U.S.C. § 601(3).

<sup>10</sup> 5 U.S.C. § 601(4).

<sup>11</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>12</sup> 5 U.S.C. § 601(5).

<sup>13</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>14</sup> *Id*

121.104, and its calculations include an averaging process. We do not currently require submission of financial data from 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 the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms.<sup>15</sup> The SBA defines affiliation in 13 C.F.R. § 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists." Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

### 3. Estimates Based on Census Data

The rules to be adopted pursuant to this *Report and Order* will apply to broadcast television and radio stations.<sup>18</sup> The SBA defines a television broadcasting station that has no more than \$12.0 million in annual receipts as a small business.<sup>19</sup> Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services." 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.<sup>22</sup> Separate establishments primarily engaged in producing taped television program materials are classified under other North American Industry Classification (NAICS) numbers."

<sup>15</sup> 13 C.F.R. § 121.104(d)(1)

<sup>16</sup> 13 C.F.R. § 121.103(a)(1).

<sup>17</sup> 13 C.F.R. § 121.103(a)(2).

<sup>18</sup> While we 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 rules 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.

<sup>19</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513120.

<sup>20</sup> 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).

<sup>21</sup> *Id.* see Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual*, at NAICS code 513120.

<sup>22</sup> 1992 Census, Series UC92-S-1, at Appendix A-9

<sup>23</sup> *Id.*, formerly SIC code 7812 (Motion Picture and Video Tape Production) (NAICS code 512110); formerly SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs) (NAICS codes 512110, 512191, 512290).

There were 1,695 full-service television stations operating in the as of December 2001.<sup>24</sup> According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year.” Of this total, 734 firms had annual receipts of \$9,999,999.00 or less and an additional 71 had receipts of \$10 million to \$24,999,999.00.<sup>26</sup> Thus, under this standard, the majority of firms can be considered small.

The SBA defines a radio broadcasting station that has no more than \$6 million in annual receipts as a small business.<sup>27</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>28</sup> Included in this industry are commercial, religious, educational, and other radio stations.” Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.” However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.” According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year.” Of this total 4,265 had annual receipts of \$4,999,999.00 or less, and an additional 103 firms had receipts of \$5 million to \$9,999,999.00.<sup>33</sup> Thus, under this standard, the great majority of firms can be considered small.

The *Second Report and Order* also amends EEO rules applicable to MVPDs. SBA has developed a definition of a small entity for cable and other program distribution, which includes all such companies generating \$12.5 million or less in annual receipts.” This definition includes direct broadcast satellite services (DBS), multipoint distribution systems (MDS), and local multipoint distribution service (LMDS). According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.<sup>35</sup> Of this total, 1,180 firms had annual receipts of \$9,999,999.00 or less, and an additional 52 firms had receipts of \$10 million to \$24,999,999.00.<sup>36</sup> Thus, under this standard, the majority of firms can be considered small. Below we

<sup>24</sup> FCC News Release, Broadcast Station Totals as of December 31, 2001 (released May 21, 2002)

<sup>25</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Receipts Size of Firms Subject to Federal Income Tax: 1997,” Table 4, NAICS code 513120 (issued Oct. 2000).

<sup>26</sup> *Id.* The census data do not provide a more precise estimate

<sup>27</sup> 13 C.F.R. § 121.201, NAICS codes 513111 and 513112.

<sup>28</sup> 1992 Census, Series UC92-S-1, at Appendix A-9

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Receipts Size of Firms Subject to Federal Income Tax: 1997,” Table 4, NAICS code 513220 (issued Oct. 2000).

<sup>33</sup> *Id.* The census data do not provide a more precise estimate

<sup>34</sup> 13 C.F.R. § 121.201 (NAICS codes 513210 and 513220).

<sup>35</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Receipts Size of Firms Subject to Federal Income Tax: 1997,” Table 4, NAICS code 513220 (issued Oct. 2000).

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.<sup>37</sup> 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.<sup>38</sup> Since then, some of those companies may have grown to serve more than 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.

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."<sup>39</sup> The Commission has determined that there are 67,700,000 subscribers in the United States."<sup>40</sup> Therefore, we found that an operator serving fewer than 677,000 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 \$250 million in the aggregate.<sup>41</sup> Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450."<sup>42</sup> Since we do not request nor collect information on whether 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:* MDS involves a variety of transmitters, which are used to relay programming to the home or office.<sup>43</sup> The Commission has defined "small entity" for purposes of the 1996 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.<sup>44</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>45</sup> These stations were licensed prior to implementation of Section 309(j) of the

<sup>36</sup> *Id.* The census data do not provide a more precise estimate.

<sup>37</sup> 47 C.F.R. § 67.901(3). 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).

<sup>38</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>39</sup> 47 U.S.C. § 543(m)(2).

<sup>40</sup> FCC Announces New Subscriber Count for the Definition of Small Cable Operator. Public Notice DA 01-158 (January 24, 2001).

<sup>41</sup> 47 C.F.R. § 76.1403(b) (SIC 4833).

<sup>42</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>43</sup> For purposes of this item, MDS includes the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

<sup>44</sup> 47 C.F.R. § 1.2110(a)(1).

<sup>45</sup> *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the*

Communications Act of 1934, as amended.<sup>46</sup> Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas." The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business.

*LMDS:* The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>48</sup> An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years." These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.<sup>50</sup> There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 777 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reaucted 161 licenses: there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

*DBS:* Because DBS provides subscription services, it falls within the SBA-recognized definition of "Cable and Other Program Distribution."<sup>51</sup> This definition provides that a small entity is one with \$12.5 million or less in annual receipts." Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations.<sup>53</sup> Similarly, we estimate that in 1997, 1900 cable employment

*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).

37 U.S.C. § 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$11 million or less). See 13 C.F.R. § 121.201

<sup>47</sup> *Id.* A BTA is the geographic area by which the MDS is licensed. See Rand McNally, 1992 *Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36-39.

<sup>48</sup> See *Local Multipoint Distribution Service, Second Report and Order*, 12 FCC Rcd 12545 (1997).

<sup>49</sup> *Id.*

<sup>50</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (January 6, 1998).

<sup>51</sup> 13 C.F.R. 6 121.201, NAICS codes 513210 and 513220

<sup>52</sup> *Id.*

<sup>53</sup> We base these estimates on a compilation performed by the Equal Employment Opportunity staff, Policy Division, Media Bureau, FCC.

units employed fewer than six full-time employees. Also, in 1997, 296 "MVPD" employment units employed fewer than six full-time employees.<sup>54</sup> We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, approximately 65 MVPD employment units employed six to ten full-time employees.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."

This *Second Report and Order* sets forth the Commission's new EEO rules and procedures, and considers 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 Second NPRM proposed to exempt small staff stations from specific EEO recordkeeping and reporting requirements as had been the case under our previous EEO Rule. Under our former EEO Rule, station employment units with fewer than five full-time employees were exempt from the Rule's outreach provisions; station employment units with five to ten full-time employees performed only two, rather than four, menu options every two years; and radio station employment units with five to ten full-time employees were exempt from the mid-term review requirement. In addition, MVPD employment units employing six to ten full-time employees performed only one menu option each year as opposed to the two options required otherwise. MVPDs with fewer than six full-time employees were not required to demonstrate compliance with the EEO program requirements. The *Second Report and Order* adopts this same relief. Thus, the EEO Rule does not impose unreasonable burdens on small broadcasters or MVPDs.

We provide this relief because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. The exception for small businesses provides them with some relief of any recordkeeping and reporting costs. We believe that the relief to small broadcasters and MVPDs balances the importance of deterring discrimination and achieving broad outreach in broadcast and MVPD employment practices against the need to maintain minimal regulatory burdens.

The *Second NPRM* asked whether the Commission should increase the number of employees below which broadcasters would be exempt from the EEO outreach requirements to include employment units with ten or fewer employees. We also asked whether to increase the threshold for the lesser number of menu options, or permit the lesser number for stations in smaller markets.<sup>56</sup> As noted, we received one comment directly in response to the IRFA. In addition, we received a few general comments that are

<sup>54</sup> At that time, we considered "MVPDs" to be all multichannel video programming distributors that were not cable operators.

<sup>55</sup> 5 U.S.C. § 603(c).

<sup>56</sup> *Second NPRM*, para. 29, 48

pertinent. As discussed in the *Second Report and Order*, the National Association of Broadcasters (NAB) supports exempting stations with fewer than ten full-time employees. NAB explains that such stations face unique obstacles in complying with our Rule because of a lack of personnel and resources, difficulties in competing with larger stations, and a lack of access to resources necessary to implement menu options. NAB also contends that stations in smaller markets face difficulties similar to those facing stations with fewer than ten full-time employees." The Association of Public Television Stations supports an exemption from the EEO Rule for stations with ten or fewer employees because of the funding problems of small public television stations, especially those outside of top 100 markets, and difficulties experienced in attracting and retaining minority employees.<sup>57</sup> The Local Television Group (LTVG) asks the Commission to exempt stations with fewer than 100 employees, in order to parallel Equal Employment Opportunity Commission rules." Minority Media and Telecommunications Council (MMTC), the National Organization for Women (NOW), American Women in Radio and Television (AWRT), the National Association for the Advancement of Colored People (NAACP), and the Lawyers' Committee for Civil Rights Under Law oppose an increase in the exemptions, citing primarily the opportunity for entry into the industry provided by small stations."

The ACA asks for an exemption from the EEO outreach requirements, streamlined recordkeeping and reporting requirements, and a streamlined FCC Form 395-A (Cable Television Annual Employment Report) for cable systems with fewer than 15,000 subscribers or, in the alternative, employing ten or fewer employees." ACA explains that the Commission previously provided relief to systems with fewer than 15,000 subscribers in the context of rate regulation, and that compliance with EEO outreach and recordkeeping imposes substantial administrative burdens for smaller cable companies."

Fletcher Heald & Hildreth, P.L.C. (FH&H) requests that the Commission adopt a policy that when an owner has a controlling interest (20% or greater voting control) in a licensee, he or she would not be considered a station employee for purposes of the EEO Rule, even if he or she in fact worked at the station."

We recognize that smaller markets may not have the resources in the community to support many of the required menu options. Accordingly, the EEO Rule adopted in the *Second Report and Order* provides that small market systems will be required to perform only two, rather than four, menu options during a two-year period.

The EEO Rule also will not consider owners holding a 20% or greater voting interest in a licensee as station employees for EEO purposes. This policy could assist small operators by reducing the number of

<sup>57</sup> NAB Comments at 54-58.

<sup>58</sup> Association of Public Television Stations Comments at 8-9

<sup>59</sup> LTVG Comments at 33

<sup>60</sup> MMTC Comments at 97-100; NOW Comments at 22-27; AWRT Comments at 17-18; NAACP Comments at 2-3; Lawyers' Committee for Civil Rights Under Law Comments at 5.

<sup>61</sup> ACA Comments and IRFA Comments

<sup>62</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, 10 FCC Rcd 7393 (1995).

<sup>63</sup> FH&H Comments.

full-time employees an entity would have when assessing its eligibility for a small entity exemption or other small business relief.

We find no basis in the record to provide any additional exemptions from our Rule. Generalized claims as to the alleged burdens by commenters are unsupported by evidence. Thus, the Rule we are adopting today does not impose unreasonable burdens on small entities. Nor does the Rule impose hardships comparable to those involved in rate regulation. Further, as we found in the *Report and Order*, small entities provide much needed entry-level employment opportunities in the industry.

With respect to streamlining reporting/recordkeeping requirements, we will replace Form **395-A** with a new form, the FCC Form 396-C, as discussed in the *Second Report and Order*. MVPD compliance with the EEO Rule's requirements is monitored pursuant to annual reports filed by MVPDs which must be placed in an entity's public file. The Form 396-C requires information concerning the entity's EEO outreach program and not its workforce. We will consider the adoption of a new form eliciting workforce data in a future Report and Order.

In order to lessen any burdens, the *Second Report and Order* does not require the retention of records of the recruitment sources of applicants as this may require additional efforts to contact applicants who did not provide the information in the application. Also, records may be conveniently maintained in an electronic format, e.g., by scanning pertinent documents into a computer format.

**Report to Congress:** The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A). In addition, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. § 604(b).

## APPENDIX C

1. 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, Class A 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 full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good

faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

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

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

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

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

(ii) hosting of at least one job fair;

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

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

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

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

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

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

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

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

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

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

(xiii) provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

(xiv) provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;

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

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

(4) Periodically analyze measures taken to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

preceding year:

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

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

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

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

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

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

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

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

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

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station 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 Broadcast Mid-Term Report (FCC Form 397) four months prior to that date. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 397, its Report should cover the licensee's EEO recruitment activity during 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 Forms 396, Forms 397, 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 Forms 396, Forms 397 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 Forms 396, Forms 397, 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 Forms 396, Forms 397, 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 Forms 396, Forms 397, 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 Form 397 or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-tiling 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.

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

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**II.** Part 76 of Chapter I of the Code of Federal Regulations is amended as follows:

**Subpart E -- Equal Employment Opportunity Requirements**

Section 76.75 is revised by amending paragraphs (b), (f); deleting existing paragraphs (g), (h), (i), (j) and (k); and adding new paragraphs (g), (h), (i) and (j):

**§ 76.75 Specific EEO program requirements.**

(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 full-time 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 multichannel video programming distributor 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 multichannel video programming distributor employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the multichannel video programming distributor 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 and is not located in a smaller market) or one (if the unit has six to ten full-time employees and/or is located, in whole or in part, in a smaller market) of the following initiatives during each twelve-month period preceding the filing of an EEO program annual 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 multichannel video programming distributor 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 multichannel video programming distributor 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 multichannel video programming 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 multichannel video programming 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 multichannel video programming 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;
- (xiii) provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for multichannel video programming employment and/or other career development assistance pertinent to multichannel video programming communications;
- (xiv) provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;
- (xv) provision of training to personnel of unaffiliated non-profit organizations interested in multichannel video programming employment opportunities that would enable them to better refer job candidates for multichannel video programming positions;
- (xvi) participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in multichannel video programming to job candidates who might otherwise be unaware of such opportunities.

\* \* \* \* \*

(f) A multichannel video programming distributor 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

(g) 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 ensure 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.

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

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

(j) For the purposes of this Rule, a smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

Section 76.77 is amended to read as follows:

#### **§ 76.77 Reporting requirements and enforcement.**

(a) *EEO program annual reports.* Information concerning a unit's compliance with the EEO recruitment requirements shall be filed by each employment unit with six or more full-time employees on FCC Form 396-C on or before September 30 of each year. If a multichannel video programming distributor acquires a unit during the twelve months covered by the EEO program annual 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 EEO program annual report to determine whether the unit is in compliance with the provisions of this subpart. 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 EEO program annual 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.

(d) *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 EEO program annual reports and the supplemental investigation responses 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.

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

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

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Section 76.1702 is revised to read as follows in lieu of both versions of this Rule currently specified in the Code of Federal Regulations:

**§ 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 EEO program annual reports filed with the Commission pursuant to §76.77 and the equal employment opportunity program information described in paragraph (b) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's EEO program annual report is due to be filed and shall be retained for a period of five years. 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 multichannel video programming distributor that operates multiple units shall be maintained at the central office of the headquarters employment unit. The multichannel video programming distributor 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 396-C:

(1) A list of all full-time vacancies filled by the multichannel video programming distributor 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, organization, 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 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.

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Federal Communications Commission  
Washington, D. C. 20554

NOT Approved by OMB  
3060-0120

**BROADCAST EQUAL EMPLOYMENT OPPORTUNITY  
MODEL PROGRAM REPORT**

City	State or Country (if foreign address)	ZIP Code
Facility ID Number		Call Sign

Application for Construction Permit for New Station       Application for Assignment of License

Application for Transfer of Control

a. Service Type:     AM     FM     TV     Other (specify)

b. Community of License:    

City	State
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**INSTRUCTIONS**

Applicants seeking authority to construct a new commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discrimination in employment and related benefits on the basis of race, color, religion, national origin or sex. See 41 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time employees must establish a program designed to ensure equal employment opportunity. This is submitted to the Commission as the Model EEO Program. 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.

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

**NOTE** Check appropriate box, sign the certification below and return to FCC

Station employment unit will employ fewer than 5 full-time employees; therefore no written program is being submitted

Station employment unit will employ 5 or more full-time employees. Our Model EEO Program is attached. (You must complete all sections of this form.)

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

Signed	Name of Respondent

WILL BE FALSE, DECEITFUL, MISLEADING OR ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) AND/OR FORFEITURE OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, SECTION 312(a)(1)).

FCC 396-A  
October 2002

### GUIDELINES TO THE MODEL EEO PROGRAM

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

#### I. GENERAL POLICY

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

#### II. RESPONSIBILITY FOR IMPLEMENTATION

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

#### III. POLICY DISSEMINATION

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

#### IV. RECRUITMENT

The applicant should specify the recruitment sources and other techniques it proposes to use to attract qualified job applicants. The purpose of the listing is to assist the applicant in developing specialized referral sources to ensure wide dissemination of vacancy information as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

### MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

#### I. GENERAL POLICY

It will be our policy to provide equal employment opportunity to all qualified individuals without regard to race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

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

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

**II. RESPONSIBILITY FOR IMPLEMENTATION**

Name/Title

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

**III. POLICY DISSEMINATION**

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

- The station's employment application forms will contain a notice informing prospective employees that **discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.**
- Appropriate notices will be posted informing applicants and employees that the station is an **Equal Opportunity Employer** and of their right to notify an appropriate local, State or Federal agency if they **believe they have been the victims of discrimination**
- We will seek the cooperation of unions, if represented at the station, to help implement our **EEO** program and all union contracts will contain a **nondiscrimination clause.**
- Other (specify)

**N. RECRUITMENT**

To ensure that information concerning each full-time vacancy is widely disseminated, we propose to use the following list of recruitment sources consistent with the requirements of **41 C.F.R. Section 73.2080:**

**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. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour. 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 (3060-0120), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to [jboley@fcc.gov](mailto: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 3060-0120.

**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.**

Federal Communications Commission  
Washington D C 20554

Approved by OMB  
3060-0113

**BROADCAST EQUAL EMPLOYMENT  
OPPORTUNITY PROGRAM REPORT**

(To be filed with broadcast license renewal application)

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

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

**TYPE OF BROADCAST STATION :**

Commercial Broadcast Station

Noncommercial Broadcast Station

Radio  TV

Educational Radio

Low Power TV

Educational TV

International

List call sign and location of all stations included on this report. 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 or information provided in Sections I through IV 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)
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No

FCC 396  
October 2002

City	State	Zip Code	Telephone No. (    )

--

Does your station employment unit employ fewer than five full-time employees?  
 Consider as "full-time" employees all those permanently working 30 or more hours a week

Yes  No

Signed	Name of Respondent
Date	

The purpose of this document is to provide broadcast licensees, the FCC, and the public with information about whether the station is meeting equal employment opportunity requirements.

#### GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

#### RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station 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.

#### I. EEO PUBLIC FILE REPORT

Attach as an exhibit one copy of each of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

Exhibit No.
-------------

#### II. NARRATIVE STATEMENT

Provide a statement in an exhibit which demonstrates how the station achieved broad and inclusive outreach during the two-year period prior to filing this application. Stations that have experienced difficulties in their outreach efforts should explain.

Exhibit No.
-------------

#### 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. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour, 30 minutes. 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 (3060-0113), Washington, D. C. 20554. We will also accept your comments via the internet if you send them to [jboley@fcc.gov](mailto: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 3060-0113.

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.

**NOTICE**

SHOULD **YOU** NO LONGER OPERATE **THIS** EMPLOYMENT UNIT. PLEASE FURNISH THE **CURRENT OPERATOR'S** NAME, ADDRESS, DATE OF TRANSFER AND **RETURN THE FORM 396-C IMMEDIATELY** CALL **(202) 418-1450** TO **OBTAIN** FORMS FOR NEWLY ACQUIRED UNITS OR IF YOU HAVE **ANY EEO** QUESTIONS

**RETURN** THE COMPLETED FORM **IN** DUPLICATE INCLUDING **ANSWERS TO THE SUPPLEMENTAL INVESTIGATION SHEET (SIS) IF APPLICABLE AS SOON AS POSSIBLE.** FOR YOUR INFORMATION. **THE** UPPER RIGHT HAND CORNER OF THE FORM 396-C WILL BE MARKED WITH AN **"X"** FOR **THOSE UNITS THAT MUST FILL OUT AN SIS.** PURSUANT TO **SECTION 76.1802** OF THE **COMMISSION'S** RULES. THE DUE DATE FOR **FLING FORM 396-C** IS SEPTEMBER 30<sup>TH</sup> **OF** EACH YEAR.

Federal Communications Commission  
Washington, D.C. 20554

Approved by OMB  
3060-0095/0574

INSTRUCTIONS FOR COMPLETING  
FCC FORM 396-C

**YOU ARE STRONGLY URGED TO** § **COMMISSION'S CABLE EEO RULES**  
**IF** || **THIS FORM**  
**47 C.F.R. Section 76.71 et seq.**

General Instructions

Supply the requested information for the unit. If the unit is to submit a Supplemental investigation Sheet (SIS), one will be attached to the form and an "x" will appear in the brackets before "Supplemental Investigation Sheet Attached" located in the box "For FCC Use Only" on page 1 of the form. If the unit no longer exists due to consolidation with another unit, or is no longer under your control, attach as Exhibit A an explanation and proceed to Section V.

- A. In addition to the unit operator's legal name, supply, if applicable, the name of the MSO owning or controlling the operator.
- B. Supply the address to which you want the correspondence sent.
- C. Supply the county and state of the unit's principal employment office.
- D. A full-time employee is one who permanently works 30 or more hours per week.
- E. Insert the payroll period in July, August or September used for this year's report.
- F. Place an X in the appropriate brackets for each possible exhibit.

Submit as Exhibit A, a list of communities added or deleted from the unit using the format provided. To obtain this information, review the prior year's form for the unit, noting the communities then comprising the unit, and comparing that list with the names of the communities now comprising the unit.  
(NOT APPLICABLE TO MVPD UNITS)

Section III

Carefully answer each of the nine (9) questions by checking either Yes or No. If the answer is No, attach as Exhibit B an explanation. The focus of question three is on whether cable units have engaged in broad and inclusive outreach. The Commission does not require the targeting of certain kinds of sources or organizations. With regard to question five, we clarify that efforts to seek out entrepreneurs should be broad enough to cover all segments of the community, and that no entity should be excluded on the basis of race, color, religion, national origin, age or gender. See 47 C.F.R. Section 76.75.

FCC FORM 396-C Instructions  
October 2002

Section N

You may attach as Exhibit C any additional information you believe useful in the FCC's evaluation of your EEO efforts. There is no requirement to provide such information.

Sign and date the form in the spaces provided. Also, print the name of the official signing as well as the title of that person. Return the original and one copy to the Commission by September 30<sup>th</sup>. Retain a copy for your files.

Supplemental Investigation Sheet (SIS)

If required, attach as Exhibits D, E, and F the job descriptions requested in Part I, the responses to the questions checked in Part II, and the EEO public file report requested in Part III.

**FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPER 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. If you do not provide the information requested in this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will vary from 10 minutes to 1 hour, 15 minutes. 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 (3060-0095/0574), Washington D.C. 20554. We will also accept your comments via the Internet if you send them to [jboley@fcc.gov](mailto: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 3060-0095/0574.

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

Approved by OMB  
3060-0095

<b>City</b>	<b>State</b>	<b>Zip Code</b>

<b>For FCC Use Only</b>
Emp. <b>Unit ID #</b> _____
<input type="checkbox"/> Supplemental Investigation Sheet (SIS) Attached

<b>E.</b> Pay Period Covered by <b>this Report</b> (inclusive dates)
--

- D. Category of Respondent (check applicable box)
- Fewer than six (6) full-time employees during **the** selected payroll period: Complete Sections I, II and VIII
  - Six (6) or more full-time employees during the selected payroll period: Complete ALL sections of **the** Form 395-A and the Supplemental Investigation Sheet, if attached

- F. Attachments: (Check applicable boxes)
- |                          |                          |                              |
|--------------------------|--------------------------|------------------------------|
| Not Applicable           | Attached                 | Exhibit - For:               |
| <input type="checkbox"/> | <input type="checkbox"/> | A-Section <b>II</b>          |
| <input type="checkbox"/> | <input type="checkbox"/> | B-Section <b>III</b>         |
| <input type="checkbox"/> | <input type="checkbox"/> | C-Section IV                 |
| <input type="checkbox"/> | <input type="checkbox"/> | D-SIS-Job Descriptions       |
| <input type="checkbox"/> | <input type="checkbox"/> | E-SIS Narrative Responses    |
| <input type="checkbox"/> | <input type="checkbox"/> | F-SIS EEO Public File Report |

m 5

**SECTION II COMMUNITY INFORMATION**

System Communities Comprising Local Employment Unit			
<b>Ident No.</b>	<b>Name of Community</b>	<b>Location (State)</b>	<b>Type</b>

Review the list of communities served on the previous year's submission and attach as Exhibit A any additions or deletions using the format noted above. NOTE: **APPLICABLE ONLY TO CABLE OPERATORS AND NOT TO OTHER MVPD UNITS.**

<b>Exhibit No.</b> A
-------------------------

CHECK YES OR NO TO EACH OF THE FOLLOWING QUESTIONS. If answer to any question below is NO, attach as EXHIBIT B an explanation B

YES NO

1 Have you complied with the outreach provisions of the FCC's MPVD Equal Employment Opportunity Rule, 47 C.F.R. Section 76.75(b) during the twelve month period prior to filing this form?

2 Do you disseminate widely your EEO Program to job applicants, employees, and those with whom you regularly do business?

3 Do you contact organizations, media, educational institutions, and other potential sources of applicants for referrals whenever job vacancies are available in your organization?

4 Do you undertake to offer promotions to positions of greater responsibility in a nondiscriminatory manner?

5 To the extent possible, do you seek out entrepreneurs in a nondiscriminatory manner and encourage them to conduct business with all parts of your organization?

6 Do you analyze the results of your efforts to recruit, hire, promote, and use services in a nondiscriminatory manner and use these results to evaluate and improve your EEO program? ■

7 Do you define the responsibility of each level of management to ensure a positive application and vigorous enforcement of your policy of equal employment opportunity and maintain a procedure to review and control managerial and supervisory performance?

8 Do you conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age, or sex from your personnel policies and practices and working conditions?

9 Do you conduct a continuing review of job structure and employment practices and maintain positive recruitment training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility?

9

**SECTION IV ADDITIONAL INFORMATION**

you may provide as Exhibit C my additional information that you believe might be useful in evaluating your efforts to comply with the Commission's EEO provisions. There is no requirement to provide additional data or information.

Exhibit No.  
C

Exhibit No.

This report ~~must~~ be certified as follows

- A By the individual owning the reporting system ~~if~~ individually owned,
- B By a partner, if a partnership; or
- C By an officer, if a corporation or association.

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

---

Date	Name of Respondent
Telephone No (include area code)	

Give brief job descriptions for employees in the job categories specified below. The number specified in the box indicates the number of different job descriptions that are to be submitted for each category. Job descriptions should include the position title and a brief description of the major duties and responsibilities of the individual(s) in the position.

- |    |  |                        |    |  |                           |
|----|--|------------------------|----|--|---------------------------|
| 1. |  | Officials and Managers | 4. |  | Sales Workers             |
| 2. |  | Professionals          | 5. |  | Office and Clerical       |
| 3. |  | Technicians            | 6. |  | Craft Workers (skilled)   |
|    |  |                        | 7. |  | Operatives (semi-skilled) |
|    |  |                        | 8. |  | Laborers (unskilled)      |
|    |  |                        | 9. |  | Service Workers           |

**Part II Inquires Concerning EEO Program and Practices**

Submit responses to the inquiries indicated by an "X." Responses should be brief, but must provide sufficient information to describe the employment unit's activity and efforts in the area of inquiry.

1.  Describe the employment unit's efforts to comply with the outreach provisions of 47 C.F.R. Section 76.75(b) or (f).

2.  Describe the employment unit's efforts to disseminate widely its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business.

3.  Name the organizations, media, educational institutions, and other recruitment sources used to attract applicants whenever job vacancies become available.

4.  Explain the employment unit's efforts to promote in a nondiscriminatory manner to positions of greater responsibility.

5.  Describe the employment unit's efforts to encourage entrepreneurs to conduct business in a nondiscriminatory manner with all parts of its operation and provide an analysis of the results of those efforts.

6.  Report the findings of the employment unit's analysis of its efforts to recruit, hire and promote in a nondiscriminatory manner and explain any difficulties encountered in implementing its EEO program.

7.  Describe the responsibility of each level of the employment unit's management with respect to application and enforcement of its EEO policy and explain the procedure for review and control of managerial and supervisory performance.

8.  Describe the manner in which the employment unit conducts its continuing review of job structure and employment practices.

9.  Other Inquiries.

**Part III EEO Public File Report**

Attach a copy of the EEO public file report from the previous year. Cable entities are required to place annually such information as is required by 47 C.F.R. Section 76.1702 in their public files.

**EMP UNIT ID:**

**MSO NAME:**

**OPR NAME:**

Federal Communications Commission  
Washington, D. C. 20554

DRAFT  
NOT Approved by OMB  
3060-0922

**BROADCAST MID-TERM REPORT**

(For FCC Use Only)  
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

**TYPE OF BROADCAST STATION :**

- |  |  |
|--|--|
| Commercial Broadcast Station                               | Noncommercial Broadcast Station            |
| <input type="checkbox"/> Radio <input type="checkbox"/> TV | <input type="checkbox"/> Educational Radio |
| Low Power TV   | <input type="checkbox"/> Educational TV    |
| International  |  |

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 or information provided in Sections I through III 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)
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV		<input type="checkbox"/> Yes <input type="checkbox"/> No

FCC 397  
September 2002

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

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

If yes, you do not have to file this form with the FCC. However, you have the option to complete the certification below. Return the form 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 employment unit employs five or more full-time employees, if television, or eleven or more full-time employees if radio, 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 a partner, if a partnership (general partner, if a limited partnership);
- C. By an officer, if a corporation or an association; or
- D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND 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 FURTHER PENALTIES (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	

**GENERAL POLICY**

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

**RESPONSIBILITY FOR IMPLEMENTATION**

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station 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.

**MID-TERM REPORT**

Television station employment units with five or more full-time employees and radio station employment units with more than ten full-time employees filing in the middle of the license term must attach a copy of each of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 41 C.F.R. Section 73.2080 in their public file.

**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. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 30 minutes. 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 (3060-0922), Washington, D. C. 20534. We will also accept your comments via the Internet if you send them to [jboley@fcc.gov](mailto: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 3060-0922.

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.