EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
		Part VI Board Actions		
5–170–150	Local Ordinances	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–60.
5–170–160	Conditions on Approvals	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–110.
5–170–170	Considerations for Approval Actions.	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–140.
*	*	*	*	*
		2 VAC 5 Chapter 480 Regulation Governing the Oxygenation of Gasoline		
5–480–10	Definitions	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 1.
*	*	*	*	*
5–480–30	Minimum oxygenate content	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 3.
5–480–40	Nature of oxygenates	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 4.
5–480–50	Record keeping and transfer requirements.	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 5.
5–480–60	Gasoline pump labeling	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 6.
5–480–70	Sampling, testing and oxygen content calculations	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 7.
5–480–80	Compliance and enforcement	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 8.

* * * * *

3. Section 52.2423 is revised by adding paragraph (r) to read as follows:

§ 52.2423 Approval status.

* * * * *

(r) EPA approves as part of the Virginia State Implementation Plan the revised references to the documents listed in Chapter 20, Section 9 VAC 5–20–21 (formerly Appendix M), Sections E.4.a.(1), E.4.a.(2), and E.7.a.(1) through E.7.a.(3), of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Environmental Quality on June 22, 1999.

[FR Doc. 03–93 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204; FCC 02–303]

RIN 4223

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts a new broadcast Equal Employment Opportunity (EEO) rule in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association* v. *FCC.* The Commission also amends and modifies their EEO rules for multichannel video programming distributors (MVPDs). The EEO rules make clear that broadcasters and MVPDs are not required to employ a staff that reflects the racial or other composition of the community or to use racial preferences in hiring. The intended effect is to adopt effective EEO rules for the broadcasting and MVPD industries.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Lewis Pulley, Media Bureau, (202) 418–1456 or via e-mail at *lpulley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Second Report and Order* (''*2R&O*'') MM 98–204; FCC 02–303, adopted November 7, 2002 and released November 20, 2002. The complete text of this *2R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street,

SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Synopsis of Second Report and Order

I. Introduction

1. In this *2R&O,* we adopt a new broadcast equal employment opportunity (''EEO'') rule in response to 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*''). In addition, we amend our EEO rules and policies applicable to cable operators, and other multichannel video programming distributors (''MVPDs''), to conform them, as much as possible, to the broadcast EEO rule. The new broadcast EEO rule and modified EEO rules for MVPDs, adopted herein, emphasize outreach in recruitment to all qualified job candidates and ban discrimination on the basis of race, color, religion, national origin or gender. We are also issuing a *Third Notice of Proposed Rule Making* (''*3rd NPRM*'') requesting comment as to the applicability of our rules with respect to part-time employees.

II. Background

2. We have administered regulations governing the EEO responsibilities of broadcast licensees since 1969, and of cable television operators since 1972. Our responsibilities in this area were codified with respect to cable television operators in 1984. They were further codified with respect to television broadcast licensees and extended to other MVPDs in 1992. In 1998, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission's EEO program requirements for broadcasters were unconstitutional in *Lutheran Church-Missouri Synod* v. *FCC.*

3. In 1998, we issued a *Notice of Proposed Rule Making* (''*NPRM*''), (63 FR 66104, December 1, 1998), for the purpose of adopting EEO rules for broadcast licensees and MVPDs consistent with the Court's decision in *Lutheran Church.* In 2000, we adopted new EEO program requirements for broadcasters, *Report and Order* (''*R&O*''), (65 FR 7448, February 15, 2000). Substantially the same program requirements were applied to MVPDs. The Commission explained that the new rules required more ''than merely refraining from discrimination.'' They also required broadcasters and MVPDs ''to reach out in recruiting new employees beyond the confines of their circle of business and social contacts to all sectors of their communities [because] * * * repeated hiring without broad outreach may unfairly exclude minority and women job candidates * * * .'' The Commission concluded that nondiscrimination in hiring was not enough when not all potential applicants have had a fair opportunity to apply. ''Outreach in recruitment must be coupled with a ban on discrimination to effectively deter discrimination and ensure that a homogenous workforce does not simply replicate itself through an insular recruitment and hiring process.''

4. The new rule contained two primary requirements—a prohibition on discrimination based on race, color, religion, national origin or gender in hiring, and a requirement that broadcasters reach out in recruiting new employees to ensure that all qualified individuals had an opportunity to apply for and be considered as job candidates. The core of the recruitment requirement was that broadcasters widely disseminate information concerning all job vacancies. The Commission concluded that this basic requirement ''is essential to meaningful outreach.'' The Commission left it largely to broadcasters' discretion concerning how they would fulfill this requirement, so long as their procedures were sufficient to ensure wide dissemination of information about all job openings to the entire community.

5. In addition to the basic requirement of wide dissemination of information concerning job openings, the new rule provided broadcast licensees with two recruitment options. Under ''Option A,'' they were required to undertake two types of supplemental recruitment measures. The first measure required licensees to provide notification of job vacancies to any recruitment organization that requested such notice from the broadcaster. The second supplemental measure under Option A required broadcasters to participate in additional recruitment activities beyond the traditional recruitment that occurs with individual vacancies. These additional measures were to be selected from an open-ended menu of types of activities that included: Job fairs, job banks, scholarship programs, and community events related to employment opportunities in the industry, among others. Broadcasters were permitted to comply with the supplemental requirement by participating in activities other than the listed ones so long as they were designed to disseminate information about employment opportunities to candidates who might otherwise not learn of them. Broadcasters who selected Option A were required to maintain, but not routinely submit to the Commission, records documenting their compliance with the wide dissemination and supplemental recruitment requirements.

6. The Commission also adopted an ''Option B'' for recruitment that permitted licensees to forego the supplemental recruitment measures required under Option A and to design their own outreach program to suit their needs, as long as they could demonstrate that their program is inclusive, i.e., that it widely disseminated job vacancies throughout the local community. The court held, however, that Option B was unconstitutional under the equal protection component of the Due Process Clause of the Fifth Amendment. The Commission filed for hearing and rehearing *en banc,* arguing that Option B was not essential to achieving its goal of ensuring that broadcasters engage in broad outreach in recruiting new employees and that it had made plain its intent that Option B be severable. The court denied rehearing.

7. We issued the *Second Notice of Proposed Rulemaking* (''*2NPRM*''), (67 FR 1704, January 14, 2002) to request public comment on the adoption of new broadcast and MVPD EEO rules consistent with *Association.* An *En Banc* open hearing on the proposed rules was held before the full Commission on June 24, 2002. Having reviewed the suggestions contained in the comments submitted, both in writing and at the *En Banc* hearing, we are adopting new EEO rules that consist primarily of the elements of our former rules that the Court upheld as constitutional in *Association,* with modifications.

III. Summary

8. In this order, we adopt new outreach requirements applicable to broadcast and MVPDs. We are also retaining the nondiscrimination rules applicable to broadcasters and MVPDs.

9. The following is a summary of the three-pronged outreach requirement we are adopting as it relates to broadcasters:

Prong 1: Widely disseminate information concerning each full-time (30 hours or more) job vacancy, except for vacancies filled in exigent circumstances;

Prong 2: Provide notice of each full-time job vacancy to recruitment organizations that have requested such notice; and

Prong 3: Complete two (for broadcast employment units with five to ten full-

time employees or that are located in smaller markets) or four (for employment units with more than ten full-time employees located in larger markets) longer-term recruitment initiatives within a two-year period.

The following is a summary of recordkeeping and reporting requirements:

(a) Collect, but not routinely submit to the Commission: (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 used to fill the vacancy (including, if applicable, organizations entitled to notification, 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; and (iv) documentation necessary to demonstrate performance of the Prong 3 menu options, *e.g.*, job fairs, mentoring programs; (v) the total number of interviewees for each vacancy and the referral source for each interviewee; and (vi) the date each job was filled and the recruitment source that referred the hiree.

(b) Place in the station public file annually a report including the following: (i) A list of all full-time vacancies filled during the preceding year, identified by job title; (ii) recruitment source(s) used to fill those vacancies (including organizations entitled to notification of vacancies pursuant to Prong 2), including the address, contact person, and telephone number of each source; (iii) a list of the recruitment sources that referred the people hired for each full-time vacancy; (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; and (v) a list and brief description of Prong 3 menu options implemented during the preceding year.

(c) Submit the station's EEO public file report to the Commission as part of the renewal application and midway through the license term for the Commission's mid-term review for those stations subject to mid-term review (television stations with five or more full-time employees and radio stations with more than ten full-time employees). EEO public file reports for the preceding two year period will be required because broadcasters have two years in which to complete the Prong 3 menu options. Broadcasters must also post the current EEO public file report on their web site, if they have one.

10. The same requirements will apply to MVPDs, except as necessary to comply with different statutory requirements. The Commission is also required to certify that MVPD employment units are in compliance with the EEO requirements on an annual basis. To comply with the Prong 3 requirements, MVPD employment units with six to ten full-time employees and employment units located in smaller markets will be required to undertake one recruitment initiative each year and larger employment units located in larger markets two recruitment initiatives per year. MVPD employment units are not subject to a renewal process at the Commission. Pursuant to section 634(e)(2) of the Communications Act, the Commission is required to conduct a more thorough review of each cable employment unit's EEO compliance every five years. Hence, MVPDs with six or more full-time employees will submit a copy of their most recent EEO public inspection file report to the Commission every five years.

11. The Commission has implemented the MVPD annual reporting requirement under section 634 by FCC Forms 395–A (cable operators) and 395–M (other MVPDs). We will create a new Form 396–C for all MVPDs that will encompass the same information concerning the unit's EEO outreach efforts that was formerly required in FCC Forms 395–A and 395–M. The prior forms were also used to collect data concerning the race/ethnicity and gender of the unit's workforce. The form we are adopting today will not encompass such data because, as indicated below, we will defer action on the collection of workforce data.

12. We are not acting at this time on issues raised in the *2NPRM* concerning the broadcast annual employment report (FCC Form 395–B), which has in the past been used to collect data concerning the workforces of broadcast employment units, including data concerning the race/ethnicity and gender of those workforces. We are similarly not acting on a comparable form for MVPDs. The Office of Management and Budget (''OMB'') adopted new standards for classifying data on race and ethnicity in 1997 that must be incorporated in any such forms beginning in 2003. We must incorporate these new standards in our future forms. In addition, a party has raised issues concerning the collection and processing of the forms. Because the employment reports are filed on September 30 of each year, the next reports would not be due earlier than September 30, 2003.

IV. Discussion

A. Statutory Authority for EEO Program Requirements and Anti-Discrimination Rules

1. EEO Rules Applicable to Multichannel Video Programming Distributors

13. The Commission is explicitly authorized by section 634 of the Communications Act to adopt and enforce the MVPD EEO rules. Indeed, section 634 requires us to enforce EEO rules for MVPDs.

14. Although the Commission is required by section 634 to enforce EEO ruless for the MVPD industry, Congress built into section 634 flexibility by allowing the Commission to implement MVPD EEO rules by rulemaking rather than simply prescribing MVPD EEO requirements by statute; by stating in section 634(d)(2) that the ''rules shall specify the terms under which'' an entity shall take the actions specified in that section; and by providing in section 634(d)(4) that the Commission may amend the MVPD EEO rules ''from time to time to the extent necessary to carry out the provisions of this section.'' Our rulemaking authority, particularly under sections 634(d)(2) and 634(d)(4), permits us to adopt new, race-neutral outreach requirements and to revise the FCC Forms filed by MVPDs to make them consistent with our modified broadcast EEO rules.

15. Section 634(d)(2) obligates the Commission to implement the listed requirements only ''to the extent possible,'' consistent with other conflicting requirements or limitations. The court's decision in *Association* delineates constitutional limitations with which we must reconcile the MVPD EEO rules. We believe that section 634(d)(2) permits the Commission to eliminate those provisions of the MVPD EEO rules that are similar to those struck down by the court in *Association* because it is not ''possible'' for the Commission to enforce a provision that a court has found unconstitutional. We modify the MVPD EEO rules in this *2R&O* to remove provisions similar to those found unconstitutional in *Association.* We also revise the forms filed by MVPDs to conform them with our modified rules.

2. EEO Rules Applicable to Broadcasters

16. In 1992, Congress enacted section 334 of the Communications Act as part of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 192–385, 106 Stat. 1460 (''1992

Cable Act''). Section 334 provides that ''the Commission shall not revise:''

(1) The regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 CFR 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

(2) The forms used by such licensees and permittees to report pertinent employment data to the Commission, 47 U.S.C. 334(a).

The Conference Report accompanying this legislation indicates that section 334 ''codifies the Commission's equal employment opportunity rules, 47 CFR 73.2080'' for television licensees and permittees. Section 334 thus grants the Commission explicit authority to regulate the EEO practices of television broadcasters. Section 334 was enacted as part of section 22 of the 1992 Cable Act, which sets forth Congressional findings that, despite existing FCC EEO rules, there were few women and minorities in managerial positions in the MVPD and broadcast industries; that increased employment of women and minorities in managerial positions will advance the national policy favoring diversity of viewpoints in the electronic media; and that rigorous enforcement of EEO rules is required to effectively deter racial and gender discrimination.

a. Congressional Ratification

17. The Commission has maintained nondiscrimination and EEO program requirements for broadcasters for more than 30 years. In 1968, the Commission concluded that the national policy against discrimination and the fact that broadcasters are licensed under the Communications Act to operate in the public interest required the Commission to consider allegations of employment discrimination in licensing broadcast stations. In 1969, the Commission adopted rules prohibiting broadcast stations from discriminating against any person in employment on the basis of race, color, religion, or national origin, and requiring stations to maintain a program designed to ensure equal opportunity in every aspect of station employment. It reiterated its view that discriminatory employment practices are incompatible with a station's obligation to operate in the public interest, and relied on sections 4(i), 303, 307, 308, 309 and 310 in adopting the new rules. Relying on its authority to license and regulate broadcasters in the public interest, the Commission has revised and extended its rules on numerous occasions since 1969 to, *inter alia,* refine its EEO program requirements, require licensees to file information concerning these programs and other statistical employment information with the Commission, and prohibit discrimination against, and require outreach to, women.

18. Over the last 30 years, the Commission has vigorously enforced its EEO requirements, sanctioning broadcast licensees in numerous cases for failing to comply fully with those requirements. Commission decisions enforcing the EEO requirements have been challenged both by licensees who have been sanctioned for noncompliance and by petitioners who believed that Commission enforcement was not vigorous enough. Indeed, the Court of Appeals for the DC Circuit held more than 20 years ago that the Commission must investigate broadcasters' employment practices and, in assessing the character qualifications of broadcast licensees, consider whether they have engaged in intentional employment discrimination. And the Supreme Court observed in the seminal case addressing the scope of an agency's authority to serve the ''public interest'' that FCC regulation of the employment practices of its licensees ''can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934 * * * to ensure that its licensees' programming fairly reflects the tastes and viewpoints of minority groups.''

19. During the three decades that the Commission has administered EEO program requirements and nondiscrimination rules, Congress has repeatedly expressed awareness of the rules and has not only acquiesced in them, but has also referred to them approvingly, confirming our view that the Commission has statutory authority to promulgate these rules. Congress has ratified the Commission's authority to adopt and enforce EEO requirements against broadcasters under its statutory mandate to license and regulate broadcasters in the public interest.

20. In 1984, Congress enacted section 634 of the Communications Act as part of the Cable Communications Policy Act of 1984, Pub. L. 98–549, 98 Stat. 2779 (''1984 Cable Act''). Although the Commission at that time already had rules in place regulating the EEO practices of cable operators as well as broadcasters, section 634 was intended to ''codif[y] and strengthen[] the Commission's existing equal employment opportunity regulations.'' Section 634 granted the Commission broad authority to adopt rules banning employment discrimination by cable operators and requiring cable operators to ''establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices * * *.''

21. The legislative history of section 634 makes it unmistakably clear that Congress believed that the Commission already possessed authority to regulate the EEO practices of mass media entities—broadcast as well as cable. The House Commerce Committee Report on the bill proposing the provisions on which section 634 was based explicitly confirmed the Commission's authority to adopt EEO rules. The House Commerce Committee stated:

(1) *It is well established that the Commission has the authority to regulate employment practices in the communications industry.* Among the Commission's efforts in the equal employment opportunity (EEO) area over the last several years has been the enforcement of employment standards in the cable industry. Section 634 endorses and extends those standards.

(2) Because of the potentially large impact cable programming and other services provided by the cable industry has on the public, the employment practices of the industry have an importance greater than that suggested by the number of its employees. The committee strongly believes that equal employment requirements are particularly important in the mass media area where employment is a critical means of assuring that program service will be responsive to a public consisting of a diverse array of population groups.

22. In addition to the explicit recognition of the Commission's broad and ''well established'' authority to regulate employment practices in the communications industry, the legislative history of section 634 shows that Congress viewed the legislation as codifying, strengthening and building upon the Commission's pre-existing regulatory scheme, which it viewed as well within the Commission's statutory authority.

23. Additional evidence of congressional ratification can be found in the Cable Television Consumer Protection and Competition Act of 1992, which further strengthened the cable EEO requirements, extended those requirements to all MVPDs, and codified the Commission's EEO program and nondiscrimination requirements as applied to broadcast television licensees. Congress once again explicitly acknowledged the existence of the Commission's broadcast and cable EEO requirements and proclaimed that vigorous enforcement of those rules served the public interest. Congress made the following findings in section 22(a) of the 1992 Cable Act:

(1) Despite the existence of regulations governing equal employment opportunity,

females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) Increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) Rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

By extending the cable EEO requirements to every entity that provides multiple channels of video programming, such as MMDS operators and DBS licensees, Congress was building upon and closing the gaps in the Commission's regulatory scheme, ensuring that every electronic mass media provider would be subject to EEO regulations enforced by the Commission.

24. The 1992 Cable Act not only strengthened and extended the cable EEO requirements, it also codified the Commission's EEO requirements for broadcast television stations in section 334 of the Act. Section 334 thus explicitly recognizes the existence of the Commission's broadcast EEO rule and requires the Commission to keep its EEO requirements in effect for television broadcasters.

25. Section 22(g) of the 1992 Cable Act required the Commission to report to Congress within two years on ''the effectiveness of [the Commission's] procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority.'' The Commission was required to include in that report ''such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary.'' Congress would not have directed the Commission to review the effectiveness of its broadcast and cable EEO policies and regulations then in effect, and recommend whether further legislative action was necessary, had Congress not believed that those policies and regulations were within the Commission's lawful authority. Section 22(g) is further evidence of Congress's affirmative approval of the Commission's authority to adopt equal employment opportunity requirements for broadcasters.

26. There is another compelling reason to find in the current statutory context that Congress has ratified our authority to regulate the EEO practices of broadcasters. The Supreme Court has held on numerous occasions that courts should interpret a statute ''as a symmetrical and coherent regulatory scheme'' and ''fit, if possible, all parts into an harmonious whole.'' In interpreting statutes granting administrative or judicial jurisdiction, the Supreme Court has held specifically that any interpretation of congressional intent that will result in a ''bizarre jurisdictional patchwork'' is to be disfavored absent legislative history or a persuasive functional argument to the contrary. In this case, Congress has explicitly granted the Commission authority to regulate the EEO practices of television broadcasters, cable operators, and all other MVPDs, including such relative newcomers as DBS and MMDS operators. Thus, rejecting the inference of congressional ratification would leave us in the anomalous situation of having jurisdiction to regulate the EEO practices of broadcast television and MVPDs, but not radio broadcasters. There is no indication in the legislative history that this was Congress's intent and none of the broadcasters commenting in this proceeding even attempts to explain why Congress would have intended such a result.

27. The Commission since 1969 has interpreted the Communications Act's grant of authority to license and regulate broadcasters as the public interest, convenience and necessity require as authorizing the Commission to regulate the equal employment practices of broadcasters. Specifically, it has interpreted the statute as granting it authority to prohibit broadcast stations from engaging in employment discrimination and to require them to maintain programs designed to ensure equal opportunity in all aspects of station employment, including recruitment. It is that interpretation of the scope of the Commission's statutory authority under the Communications Act that Congress has ratified over the course of many years.

B. Broadcast and MVPD EEO Rules, Policies, and Forms

1. Anti-Discrimination Provisions

28. In the *2NPRM* we proposed to retain the nondiscrimination provisions of our broadcast and MVPD EEO rules. We noted that the anti-discrimination provision of the broadcast EEO rule, § 73.2080(a), was not challenged in *Association.* Nonetheless, in rejecting the contention that the unlawful Option B could be severed from the EEO rule, the court stated that the ''entire rule'' must be vacated. In order to avoid any confusion arising from the language in the court's decision, we recodify the nondiscrimination requirement. Nondiscrimination is an essential component of every licensee's obligation as a trustee of a valuable public resource. In *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC,* the court stated that ''[a] documented pattern of intentional discrimination would put seriously into question a licensee's character qualifications to remain a licensee: intentional discrimination almost invariably would disqualify a broadcaster from a position of public trusteeship.'' Finally, we are required by statute to prohibit discrimination by broadcast television licensees and MVPDs.

29. As proposed in the *2NPRM,* we will retain our policy of generally deferring action on individual complaints of employment discrimination against broadcasters and MVPDs pending final action by the Equal Employment Opportunity Commission (''EEOC'') or other government agencies and/or courts established to enforce nondiscrimination laws. We will also retain the discretion to take action, notwithstanding the absence of a final decision by the EEOC or other agency/court, where the facts of a particular case so warrant. As indicated in the *R&O,* our policy generally reflects the fact that Congress intended the EEOC to be primarily responsible for the resolution of discrimination complaints and our separate adjudication of such complaints could result in duplicative or inconsistent decisions.

30. The rule adopted by the *R&O* defined a ''religious broadcaster'' as ''a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity, 47 CFR 73.2080(a).'' In the *R&O,* we clarified that, in the event of a controversy, we would determine on a case-by-case basis whether a licensee was a religious broadcaster by considering such factors as whether it operates on a non-profit basis, whether it has a distinct religious history, whether the entity's articles of incorporation set forth a religious purpose, and whether it carried religious programming.

2. Broadcast EEO Program Requirements

a. Rules and Policies

i. General Considerations

31. Several broadcast commenters have challenged the basis for our adopting any EEO rule for broadcasters. Initially, they seek to characterize our proposals in the *2NPRM* as constituting ''re-regulation.'' In fact, we have never

''de-regulated'' in this area; the court decisions that have invalidated various aspects of our EEO rules have been premised on specific legal defects found in our programs, not on a finding that nondiscrimination rules or outreach requirements are unnecessary.

32. First, our concern is not limited to intentional discrimination. It is not based on Constitutional provisions or on Title VII, but on the public interest standard in the Communications Act. In adopting the Cable TelevisionConsumer Protection and Competition Act of 1992 (''Cable Act''), Congress expressly found in pertinent part: ''Rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.'' Congress has made it clear that the public interest standard is sufficiently broad to cover not only intentional discrimination, but also discrimination that may arise as a result of practices and policies that are not intentionally discriminatory. Further, our policy is not limited to imposing sanctions in response to specific past discrimination; it is also intended to deter discrimination in the first instance. Our policy is designed to prevent both intentional and unintentional discriminatory practices in the broadcast and MVPD industries, and to ensure equal opportunity in employment practices, including recruitment.

33. Second, it is not necessary to find that the broadcast industry ''as a whole'' has engaged in discrimination in order to justify regulations to prevent discrimination. We do not suspect that the entire broadcast industry, or even most of it, engages in intentional or unintentional discrimination.

34. Third, although we commend the broadcast associations for the various activities detailed in their comments, they do not demonstrate that an EEO rule is unnecessary.

35. Some broadcasters support the adoption of an EEO rule. Our proposed EEO requirements also are generally supported by the MVPD industry.

36. Discrimination may be easy to hide and difficult to prove. Allegations of discrimination may never be fully litigated because a violator will elect to settle any litigation before it reaches the stage of a final judgment. It is thus impossible to quantify reliably the extent of actual discrimination that exists today.

37. Many of the opponents of our EEO program cite language from the *2R&O* that ''[o]utreach in recruitment must be coupled with a ban on discrimination to effectively deter discrimination and ensure that a homogenous workforce does not simply replicate itself through an insular recruitment and hiring process.'' These parties contend that the broadcast workforce is not homogeneous and that it does not employ insular recruitment and hiring practices to replicate itself. The cited language was intended to explain why outreach in recruitment as well as a ban on discrimination is necessary to deter discrimination. We did not intend to suggest that every broadcast station has a homogeneous workforce. We recognize that in many significant respects the industry has become more diverse over the past decades. We attribute this in large measure to the fact that the industry has been subject to our various EEO requirements since 1969.

38. We accordingly conclude that adoption of new outreach rules for broadcast and MVPDs is supported by the record in this case. The evidence in this proceeding demonstrates an ongoing need to deter discrimination and ensure equal employment opportunity in the broadcasting and MVPD industries. Moreover, Congress has made clear its intention that we should enact EEO rules for the broadcast and MVPD industries.

39. Finally, as noted, our primary goal in adopting EEO program requirements is to ensure broad outreach in recruitment for broadcast and MVPD employment vacancies. We seek to do so in a manner that affords some flexibility to affected industries. The regulations we are adopting today provide sufficient flexibility. Entities will have broad discretion as to the type of recruitment sources they will use, the number of recruitment sources they will use, and the Prong 3 menu options they will implement. We are also providing that entities in smaller markets may implement fewer menu options than those in larger markets.

ii. *EEO Program and Related Provisions*

40. In the *2NPRM,* we proposed a three-prong EEO program requirement designed to ensure equal opportunity to all potential applicants, including all races and both genders, without infringing on the rights of any group. The rules were further designed to be flexible enough to avoid imposing an undue burden and to apply reasonably and effectively to broadcasters and MVPDs in differing circumstances. Based on our review of the comments, reply comments and other presentations filed in this proceeding, we adopt the proposed program, with some modifications.

41. *Outreach Prong 1—Recruitment for All Full-time Vacancies.* We will adopt the requirement that broadcasters recruit for all full-time vacancies, except in exigent circumstances. Recruitment for substantially all vacancies using sources designed to achieve broad outreach is necessary to ensure that all segments of the population have an equal opportunity to compete for broadcast (and MVPD) employment and that no segment is subjected to intentional or unintentional discrimination.

42. The effectiveness of our requirements in the past does not justify eliminating them now. Nor can we justify such a conclusion based on recent outreach efforts by the broadcast industry commendable, given that this has been an area under high scrutiny for some time. We can draw no inference from these facts; therefore, regarding the likely behavior of licensees in the absence of any current on proposed EEO program. Second, our requirements provide sufficient flexibility to design recruitment programs appropriate for different positions and circumstances.

43. In the *2NPRM,* we recognized that there might be occasional exigent circumstances in which recruitment may not be feasible. We cited as an example the need to replace immediately an employee who departs without notice and whose duties cannot be fulfilled, even briefly, by other station employees. We stated in the *R&O* that we could not anticipate every circumstance which might justify filling a position without recruitment and indicated that we would rely on the good faith discretion of broadcasters. We nonetheless cautioned that we expected nonrecruited vacancies to be rare relative to the number of vacancies for which recruitment is conducted, because our rule generally requires recruitment for every vacancy. We will incorporate this approach in our new rules.

44. The requirement that broadcasters recruit for every full-time vacancy, unless exigent circumstances exist, will become a component of our rule. Recruitment for only some openings could leave the most desirable positions open to a limited number of potential applicants, possibly excluding significant segments of the community. We will require that broadcasters develop and use for each vacancy a recruitment source or list of recruitment sources (which may be freely modified as circumstances warrant) sufficient to ensure wide dissemination of information about the opening. We will not dictate the number or type of sources that a broadcaster must use. If, however, the source or sources used cannot reasonably be expected,

collectively, to reach the entire community, the broadcaster may be found in noncompliance with our EEO rule. A broadcaster may widely disseminate job postings through any combination of methods sufficient to ensure that its recruitment efforts are inclusive. Broadcasters may contact the FCC's EEO staff with any questions on this matter. We also clarify that the same recruitment sources need not be used for every hire. We do not require licensees to use recruitment sources that, in their good faith judgment, are unlikely to elicit responses from qualified applicants in light of the demands of a particular job. We do expect them, however, to use whatever recruitment source or sources can reasonably be expected to widely disseminate notice of the vacancy to qualified applicants. Although our rule seeks to achieve broad outreach to the community, this does not preclude the use of regional or national recruitment sources. We will accordingly give consideration to a broadcaster's use of such sources in assessing its EEO record. Whatever sources a licensee uses, however, or whatever a licensee's perception is regarding whether anyone in its community is qualified for a unique job, we are requiring that sources reach qualified potential applicants in the licensee's community. Licensees are not permitted to target any group in the community for exclusion from the recruitment process.

45. With reference to the definition of community for purposes of the broad outreach requirement, we proposed in the *2NPRM* to define ''community'' as encompassing, at a minimum, the county in which a station is licensed or MVPD employees are primarily located, or the Metropolitan Statistical Area (''MSA'') in the case of counties located in an MSA. We will instead define ''community'' for the purpose of the broad outreach requirement in accordance with the approach taken in the *Recon*, (Memorandum Opinion and Order, 65 FR 76948, December 8, 2000). There, we left the definition of ''market'' or ''community'' to the licensee's good faith discretion. We indicated, that in making this determination, a broadcaster should assess the technical coverage of its station(s); its marketing, promotional, and advertising practices; the pertinent market definitions adopted by public agencies or commercial services, such as Nielsen and Arbitron; and requests for notices of job vacancies from locally-based community groups. We will adopt the same policy for purposes of our new rule. (Although we are according discretion regarding the definition of ''community,'' we expect broadcasters to be able to provide a reasonable explanation for their determinations should it become pertinent. We would be concerned if the circumstances suggested that a broadcaster is unreasonably defining its community in a manner that excludes certain areas or populations that it clearly does serve.)

46. We require only that EEO recruitment sources be reasonably calculated to reach the entire community. We do not require that broadcasters demonstrate that any particular segment of the community actually was aware of any vacancy. Nor do we require that recruitment be targeted to a specific segment or that broadcasters prove that they obtained a response from a particular segment. Prong 1 neither requires nor precludes the use of any number or type of sources a broadcaster deems appropriate to achieve broad outreach. Further, we leave the definition of ''community'' to the licensee's good faith discretion. We also recognize that it is difficult for licensees to recruit for vacancies in exigent circumstances. Thus, Prong 1 allows broadcasters flexibility in implementing appropriate recruitment programs for their individual circumstances.

47. Notwithstanding the greater availability of job-related Internet sites, the record does not reflect the extent to which the Internet has become well known as a principal resource for job seekers or the nature of any difficulties that Internet recruitment would create. We anticipated in the *R&O* that we would be able to assess the extent of any such difficulties based on our experience under the rules adopted therein. Because those rules were in effect for only a few months, we do not have the experience necessary to reach definitive conclusions in that respect.

48. With regard to the access of minority and rural populations to the Internet, our concerns arose from a series of reports by the National Telecommunications and Information Administration (''NTIA'') in 1995, 1998 and 1999.

49. Proponents of the use of the Internet as a sole recruitment source cite the improvements reflected in NTIA's 2002 report. Although the NTIA 2002 report shows increases in Internet usage, the report also indicates continuing disparities in usage among different segments of society. Indeed, only about half of all U.S. households had Internet service as of September 2001, and only slightly more than half of individuals used the Internet from any location. We are unable to conclude that Internet usage has become sufficiently widespread to justify allowing it to be used as the sole recruitment source. As we indicated in the *R&O*, we will continue to monitor the viability of the Internet as a recruitment source and will consider petitions seeking to demonstrate in the future that circumstances have changed sufficiently to warrant a change in our policy.

50. As indicated in the *R&O,* we expect broadcasters to allow a reasonable time after recruitment is initiated for applications to be filed before the position is filled. We recognize that occasionally a shorter time might be necessary because of extraordinary circumstances. We caution that excessive instances of hires being made shortly after the initiation of recruitment could result in a finding of noncompliance if the evidence suggests that the broadcaster is not in good faith allowing adequate time for applicants to respond to its outreach efforts or is not considering their applications. Also, it is not the intention of our rule to prohibit word of mouth recruitment. Our purpose is to ensure that word-of-mouth recruitment practices are not the sole method of recruitment and that all members of the public have an opportunity to compete for available jobs. Broadcasters are free to use non-public recruitment sources and to interview and hire persons referred by such sources, so long as they also use public recruitment sources sufficient to achieve broad outreach and fairly consider the applications generated by those sources.

51. We will continue our policy stated in the *R&O* that broadcasters may engage in joint recruitment efforts. Broadcasters may also rely upon the services of outside organizations or individuals to assist it in designing or implementing their recruitment efforts. Each broadcaster (or MVPD) remains individually responsible for compliance with our rule. No broadcaster (or MVPD) is required to use the services of an outside party.

52. We will not require recruitment for internal promotions, nor will we require recruitment for temporary employees. Typically, we view temporary employees as including those hired as emergency replacements for absent regular employees or those hired to perform a particular job for a limited period of time. If a person is hired full-time to perform a regular station function for an extended period of time (*e.g.*, more than six months), such a hire will be treated as a permanent hire for which recruitment would be required. We recognize that some broadcasters may wish to hire employees initially on

a temporary basis with the possibility of retaining them on a permanent basis if their performance is satisfactory. In such circumstances, if recruitment is done at the time of the temporary hire, any later decision to convert the employee's status to full-time in the same, or essentially the same, job may be treated as a promotion. If an employee is hired as a temporary employee without recruitment, recruitment should occur if the employee is later considered for a permanent position. We caution that excessive instances of temporary hires being converted to permanent hires, without a meaningful opportunity for recruited applicants to compete, could result in a finding of noncompliance. (If an employee is hired with the expectation that successful completion of an initial probation will result in an eventual elevation to permanent status, we would not regard that as a temporary hire and would expect regular recruitment for that position.)

53. We will continue to define ''full-time employee'' as a permanent employee whose regular work schedule is thirty hours or more per week. In the *Recon*, we indicated that, as in the case of temporary hires, if a part-time employee is initially hired after broad outreach to all segments of the community, the decision subsequently to convert him or her to full-time in the same, or essentially the same, job may be treated as a promotion. If the broadcaster did not engage in full recruitment at the time of the initial part-time hire it would have to recruit before converting the employee to full-time. Also, as in the case of temporary hires, excessive instances of temporary hires being converted to permanent hires without a meaningful opportunity for recruited applicants to compete could result in a finding of noncompliance. We will apply the same policy under the rule being adopted today.

54. *Outreach Prong 2—Notification to Community Groups.* Under the Option A rules adopted in the *R&O*, we required that broadcasters and MVPDs provide notification of full-time job vacancies to organizations involved in assisting job seekers upon request by such organizations. We will incorporate this requirement into our new rules. This requirement provides a ''safety valve'' to ensure that no segment of the community is inadvertently omitted from recruitment efforts. Organizations or other entities with ties to specific segments of the labor force, such as persons with disabilities, college students, or members of different racial, ethnic, or religious groups could help broaden the reach of recruitment efforts. Organizations that come forward to request vacancy notifications may prove to be very productive referral sources. Further, this approach will enable interested groups to more closely monitor and, if necessary, seek to improve, broadcasters' recruitment efforts. We also expect broadcasters to make reasonable efforts to publicize the notification requirements so that qualifying groups are able to learn of the new procedure. Joint announcements by broadcasters or state broadcasters' associations—such as press releases, newspaper ads, and notices posted on the web site—would satisfy the requirement to publicize. Similarly, broadcasters and MVPDs could satisfy this requirement by individually issuing such announcements, or by providing on-air announcements.

55. We will provide broadcasters discretion to determine the method of providing notice to requesting parties. Such methods may include electronic mail and facsimile which may require fewer personnel and financial resources to fulfill the notification requirement than more traditional methods. For example, a broadcaster may maintain an electronic list of recruitment sources and notify all the sources simultaneously with a single e-mail when a vacancy occurs. We will also allow notifications to be made as part of joint recruitment efforts among broadcasters. However, each broadcaster participating in the joint recruitment efforts remains individually responsible for ensuring that requested notifications relating to its employment unit are made. For example, a state broadcast association may have a job bank that notifies certain sources on behalf of an employment unit when a vacancy becomes available at that employment unit. As long as the state broadcast association notifies all organizations requesting vacancy announcements from that employment unit as part of this process, the employment unit itself need not do so. Therefore, given the flexibility provided by electronic forms of notice and joint recruitment, we expect that the notification requirement will place minimal burdens on broadcasters.

56. An organization that wishes to be notified of vacancies need only notify a broadcaster once in order to be entitled to notification of all future full-time vacancies. If a broadcaster is uncertain as to the status or continuing interest of a particular group, it is free to contact the group to resolve any questions. So long as the group indicates its continued interest in receiving notifications, it is entitled to receive them.

57. The obligation to notify recruitment sources that request notice of vacancies is intended as a supplement to, not a substitute for, broadcasters' core, non-delegable obligation to widely disseminate information concerning all job vacancies. Although recruitment sources will have the right to ask broadcasters for notices of vacancies, they have no obligation to do so. And even if a broadcaster does not receive a single request for notice of vacancy information, it will nevertheless be responsible for ensuring that notice of vacancies is widely disseminated. If it fails to do so, it is not a legitimate excuse that no recruitment organizations requested notices.

58. Prong 2 of the EEO rule requires broadcasters and MVPDs to provide requested notification of full-time job vacancies to organizations involved in assisting job seekers, regardless of whether they are minority or women's organizations.

59. *Outreach Prong 3—Menu Options.* Under the rules adopted by the *R&O*, we required, under Option A, that broadcasters and MVPDs engage in a specified number of activities selected from a menu of options, such as job fairs, community events relating to broadcast employment, internship programs, scholarships, and similar activities. These activities are designed to go beyond the normal recruitment activities directed at filling particular vacancies. They are designed to encourage outreach to persons who may not be aware of the opportunities available in broadcasting or the MVPD industry or have not yet acquired the experience to compete for current vacancies. Interested members of the community will not only have access to information concerning specific job vacancies, but also will be encouraged to develop the knowledge and skills to pursue them. This approach remains justified and is not unduly burdensome. Various menu options encourage outreach to students and others who would benefit from training, mentoring and scholarships, which can work to enhance the employability of persons seeking jobs in the broadcasting or MVPD industries. These menu methods of outreach also are designed to further broaden outreach efforts to reach segments of the labor force who may be inadvertently omitted from vacancy-specific recruitment. As indicated, under this approach, broadcasters and MVPDs have great flexibility to design the types of recruitment activities best suited to their organizations and communities. In the rule we are adopting today, we will adopt this

requirement while providing additional flexibility by incorporating additional menu options that have been suggested by the parties. We are also reducing the number of menu options that employment units located in smaller markets must perform.

60. The first three specific menu options include participation in at least four job fairs by station personnel who have substantial responsibility for hiring decisions; hosting at least one job fair; or co-sponsoring at least one job fair with an organization in the business and professional community whose membership includes substantial participation of women and minorities. Job fairs are a useful method to reach a broad range of individuals who are interested in employment in the industry. The fourth option is participation in at least four activities sponsored by community groups active in broadcast employment issues, including conventions, career days, workshops and similar activities. The fifth option is the establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment. Such an endeavor would serve the goal of broad outreach by increasing the number of qualified potential employees not only for one broadcaster, but for all broadcasters in the area. The sixth option is participation in general (as opposed to vacancy-specific) outreach efforts by such means as job banks or Internet programs such as those described in the model program developed by NASBA. While such sources may be used as recruitment sources when specific vacancies occur, they can also be useful even when there is no specific vacancy to elicit interest from persons who may later be considered for a specific position. The seventh option is participation in scholarship programs directed to students desiring to pursue a career in broadcasting. The benefit of this outreach is that it attracts students of both genders and all races to careers in broadcasting, ultimately increasing the number of qualified potential employees. The eighth and ninth options are, respectively, the establishment of training and mentoring programs designed to enable station personnel to acquire skills that could qualify them for higher level positions. These options would not be satisfied by ordinary training required for employees to perform their current positions. These options are rather intended to increase employee skills so they can qualify for higher positions.

61. The tenth option is participation in at least four events or programs relating to career opportunities in broadcasting sponsored by educational institutions. Such participation again serves the purpose of increasing the universe of potential employees from which broadcasters attract job applicants. The eleventh option includes sponsorship of at least two events in the community designed to inform the public as to employment opportunities in broadcasting. Such activities can serve to increase public awareness of the opportunities available in broadcasting. The twelfth option would entail listing each upper-level opening in a job bank or newsletter of a media trade group with a broad-based membership, including participation of women and minorities.

62. The thirteenth option will consist of 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. The fourteenth option consists of providing training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination. The fifteenth option consists of providing training to personnel of outside recruitment organizations that would enable them to better refer job candidates for broadcast positions.

63. The sixteenth option (which was the thirteenth option in our former rule) includes participation in activities other than the fifteen listed options that the licensee has designed to further the goal of disseminating information about employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. This will provide flexibility for worthwhile initiatives that broadcasters may develop but that are not strictly within the scope of the menu options we have specified. The inclusion of this option makes it clear that the list of menu options is an open-ended list intended to guide, rather than limit, broadcasters and MVPDs.

64. In the *R&O,* we required station employment units with more than ten full-time employees to implement four of these options every two years. If that time period is less than two years, the number of menu options may be reduced proportionally to the amount of time available. If a station is required generally to perform four menu options every two years, it would be expected to perform one for each six-month period between the effective date of the rule and the next regular pertinent anniversary. Although we ordinarily do not dictate when a broadcaster must complete its menu options during the regular two-year period, when a broadcaster owns a station or stations for less than the full two-year period, it must complete the prorated number of menu options within the available time period. We will require employment units with five to ten full-time employees as well as employment units in certain smaller markets to perform two of the menu options every two years.

65. We will also permit broadcasters to perform menu options on a joint basis, either with other broadcasters, organizations such as state broadcaster associations, or with a corporate licensee's corporate headquarters. A station seeking credit for a particular menu option performed on a joint basis must have a meaningful involvement in the activity for which credit is sought. It is not sufficient for the station merely to lend its name to an activity or provide money where the activity is otherwise entirely conducted by another entity such as a trade association or the licensee's corporate headquarters. In the *Recon*, we discussed a number of circumstances where credit might be sought for activities engaged in on a joint basis. This discussion remains applicable to joint efforts engaged in pursuant to the rules we are adopting herein.

66. We note that the term ''sponsor'' as used in connection with several options set forth in § 73.2080(c)(2) of the old rule, which we also use in our new rule, was apparently misunderstood by some as referring only to a financial contribution. Our intent for the purpose of these options is that a ''sponsor'' should have a meaningful input into the planning and implementation of a specified event. Simply lending one's name or making a monetary contribution would not be sufficient. Events can be jointly sponsored, so long as each broadcaster seeking credit for sponsoring the event is actively involved in planning and implementing the event.

67. With respect to the maintenance of a scholarship program by a corporate licensee, it is reasonable for a corporate licensee to maintain a scholarship program for those employment units it owns. Any such scholarship program should incorporate involvement by the employment units for which credit will be claimed in such areas as the design of the program, the solicitation of prospective scholarship recipients, the interviewing and selection of scholarship recipients, on-air promotion of the program, and evaluation of the effectiveness of the program. While each

employment unit need not be involved in every aspect of the program, meaningful involvement in the program is essential to ensure that the employment unit is fulfilling its responsibility under our rule. In addition, the number of employment units seeking credit for a scholarship program should bear a reasonable relationship to the number or type of scholarships awarded by the corporate licensee.

68. Unrelated broadcasters may also jointly maintain a scholarship program, which could be done through a state or local broadcast association, including efforts by such associations to coordinate regional efforts. We believe that the program should incorporate meaningful involvement by each broadcaster seeking credit for the initiative in such areas as the design of the program, the solicitation of prospective scholarship recipients, the interviewing and selection of scholarship recipients, on-air promotion of the program, and evaluation of the effectiveness of the program. As in the case of corporate scholarship programs, the number or type of scholarships awarded by the joint scholarship program would have to bear a reasonable relationship to the number of employment units seeking credit for it.

69. With respect to mentoring, internships, or training programs administered by a corporate licensee, employment units of the licensee could claim credit for such a program even if not implemented in the community where the employment unit is located, but only so long as personnel from the employment units are participants in the mentoring, internships or training program. Similar questions arose under our former rule as to job fairs hosted by a corporate licensee. We would credit individual employment units with cohosting the job fair only to the extent that personnel from the unit were involved in planning and implementing the job fair. Employment units of the licensee could be credited with attendance at the job fair, but only if personnel from the employment unit with substantial responsibility in making hiring decisions at the unit in fact participated in the job fair. Although the corporate headquarters can assist in the implementation of menu options, personnel from the respective employment units must also be involved in implementation should they seek credit for participation.

70. The EEO rules adopted by the *R&O* under Option A required broadcasters and MVPDs to engage in activities selected from a broad menu of options, such as job fairs, community events relating to broadcast employment, internship programs, scholarships, and similar activities. These Prong 3 activities are designed to go beyond the normal recruitment activities directed at filling particular vacancies in order to encourage outreach to persons who may not be aware of the opportunities available in broadcasting or the MVPD industry or have not yet acquired the experience to compete for current vacancies. Interested members of the community will not only have access to information concerning specific job vacancies, but also will be encouraged to develop the knowledge and skills to pursue them. Prong 3 activities are intended as a method to reach segments of the community who might otherwise be omitted, possibly inadvertently, from vacancy-specific recruitment efforts.

71. *Outreach Requirements of Religious Broadcasters.* In the *NPRM,* we proposed to adopt a policy under which religious broadcasters that elected to apply a religious qualification to all of their employees were not required to comply with the broad outreach recruitment requirement or the menu options, but they must make reasonable, good faith efforts to recruit applicants, without regard to race, color, national origin or gender, among those who are qualified based on their religious belief or affiliation. We adopt that policy. This approach reflects our judgment that the more specific recruitment requirements described above may not be suited to recruitment that is limited to members of a certain religious faith. This requirement will also apply to religious broadcasters that elect to establish a religious qualification for some, but not all, of their positions, with respect to those positions that are subject to the religious qualification. Such religious broadcasters, with respect to other positions not subject to a religious qualification, must comply with prongs one and two. A religious broadcaster that treats five or more its full-time positions as non-religious are required to comply with the prong three menu options because, in regard to those positions, the station is in a comparable position to stations that have five or more full-time employees and none subject to a religious qualification. A religious broadcaster electing to treat none of its positions as subject to a religious qualification would be required to comply with all three prongs. Once an entity establishes its qualifications as a religious broadcaster, it has the discretion to define the religious qualification it seeks to establish. Thus, it may define the qualification generally as encompassing an entire denomination; more specifically as encompassing only persons who share a particular doctrinal belief; or even more specifically as encompassing only persons who are members of a particular church or religious organization. We do not intend to inquire into a religious broadcaster's definition of its religious qualification. All we require is that some effort be made to notify persons who meet the definition established by the religious broadcaster itself as to the availability of employment at the religious broadcaster's station.

72. *Outreach Requirements for International Stations.* In the *Recon*, we indicated that international broadcast stations licensed pursuant to section 73, Subpart F, § 73.701, *et seq.*, would be subject to our EEO requirements, except for the public file requirement, given that such stations are not required to have a public file. We are continuing this requirement in the new rules.

73. *Recordkeeping.* We will require broadcasters to retain documentation concerning their compliance with the three recruitment prongs, as proposed in the *2NPRM.* This documentation must be retained by the station, but will not be routinely submitted to the Commission. The data must be provided to the Commission upon request in the event of an investigation or audit. The documentation includes: (1) Listings of all full-time job vacancies filled by the station employment unit, identified by job title; (2) for each such vacancy, the recruitment sources used to fill the vacancy (including, if applicable, organizations entitled to notification, which should be separately identified), identified by name, address, contact person and telephone number; (3) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies; and (4) documentation necessary to demonstrate performance of the Prong 3 menu options, including sufficient information to disclose fully the nature of the initiative and the scope of the station's participation, including the station personnel involved. This documentation will allow us to verify compliance with our rules; we find no reason to believe that this minimal record retention requirement imposes an unreasonable burden on broadcasters or MVPDs.

74. We also sought comments in the *2NPRM* as to whether we should require the retention of documentation concerning the recruitment sources that referred hires and interviewees.

75. Our rule focuses on the process of recruitment, not the results thereof. It is nonetheless necessary to have some means of assessing whether the process has been conducted in good faith and whether the process is working as intended. We expect that broadcasters and MVPDs will analyze the results of their recruitment efforts to ensure that they actually achieve broad outreach. This requires knowledge of what recruitment sources have been productive in generating qualified applicants. Records of the recruitment sources of the most qualified applicants—those interviewed or hired—will be helpful in this regard. We will accordingly require that broadcasters and MVPDs maintain records reflecting the referral sources of interviewees and hires.

76. We will not require the retention of records of the recruitment sources of applicants. Data concerning the recruitment sources of interviewees and hires is sufficient for the limited purpose of determining whether the program is being conducted in good faith and working as intended. Further, although it is minimally burdensome to ascertain the recruitment sources of interviewees and hires because they are readily available to provide this information if it is not reflected in the jobseeker's application, tracking the recruitment source of all applicants may require additional efforts to collect this information. This may place an inordinate burden on broadcasters and MVPDs, particularly in light of the fact that information concerning applicants in the aggregate does not necessarily reflect sources of qualified applicants.

77. We will require that all records documenting outreach efforts be retained until the grant of the renewal application covering the license term during which the hire or activity occurs, except that, if a licensee acquired a station pursuant to an assignment or transfer that required Commission approval of FCC Form 314 or 315 during the license term, it need not retain records pertaining to the outreach efforts of a prior licensee. In order to minimize any burden associated with this requirement, records may be maintained in an electronic format, *e.g.*, by scanning pertinent documents into a computer format. Absent a showing of extraordinary circumstances, we will not credit claimed activities that cannot be supported by records.

78. In the case of religious broadcasters that apply a religious qualification to some or all of their hires, they need only retain, in the case of hires subject to the qualification, documentation as to the full-time vacancies filled, the recruitment sources used, the date each vacancy was filled, and the recruitment sources of the hires. This information is pertinent to monitoring whether the broadcaster made reasonable, good faith efforts to recruit among persons who meet the applicable religious qualification.

79. *Public File.* We will adopt the requirement that broadcasters place in their public file annually, on the anniversary of the date they are due to file their renewal applications, an EEO public file report containing the following information: (1) A list of all full-time vacancies filled by the station employment unit during the preceding year, identified by job title; (2) for each such vacancy, the recruitment source(s) used to fill the specific vacancy (including organizations entitled to notification of vacancies pursuant to Prong 2, which should be separately identified), including the address, contact person, and telephone number of each source; (3) a list of the recruitment sources that referred the people hired for each full-time vacancy; data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and, for each recruitment source used in connection with any such vacancies, the total number of interviewees referred by that source; and (4) a list and brief description of Prong 3 menu options implemented during the preceding year. Religious broadcasters with hires subject to a religious qualification need include, for full-time vacancies subject to the qualification, only the information called for in (1) and (2) above, along with information concerning the recruitment sources that referred the persons hired.

80. Some broadcasters object that documentation concerning a station's EEO efforts should not be made available to the public. To the contrary, as we indicated in the *R&O,* the public has an important role in monitoring broadcaster compliance with our EEO rule. The EEO public file report is designed to facilitate meaningful public input. We recognize broadcaster concerns that the availability of this information could trigger unwarranted, even frivolous, filings. The possibility of abuses by some does not warrant depriving the public of its right to participate in the process of monitoring and enforcing our EEO rule, which directly impacts them.

81. We will also require that broadcasters post the EEO public file report on their web site, if they have one. (Although the reports must be retained in the public file until final action has been taken on the station's next renewal application, all reports need not be maintained on the station's Web site. The requirement to post a station's EEO public file report on its Web site extends only to the current report. Also, we require only that the information contained in the EEO public file report be placed on the Web site. A scanned copy of the actual paper report contained in the public file need not be placed on the Web site; any legible format may be used.) The purpose of this requirement is to facilitate access by persons within the service area. We do not believe that our requirement to place EEO public file report information on a station's Web site is unreasonable or overly burdensome.

82. Broadcasters are free to use any format in their public file report to avoid unnecessary duplication as long as the report clearly provides the information requested. For instance, if a broadcaster used the same recruitment sources for all its vacancies, it may maintain a single list of those sources, indicating that they were used for all vacancies. If a broadcaster used different sources for different vacancies, it may maintain a master list of all its sources and use a cross-reference system to show which sources were used for which vacancies.

83. The EEO public file report need not be routinely submitted to the Commission, except in two instances. The EEO public file reports covering the two-year period preceding the filing of a renewal application must be submitted with that application as an attachment to Form 396, and will be one basis for our review of the broadcaster's compliance at renewal time. Also, for stations subject to mid-term reviews, the EEO public file reports for the two-year period preceding the mid-term review must be filed with the Commission and will be one basis for mid-term reviews. Renewal and mid-term review procedures are discussed in greater detail.

84. Because the filing dates for the EEO public file reports are tied to the date of filing of renewal applications, the due dates will apply to a given station regardless of when the licensee acquired the station. Consequently, if there is a substantial change of ownership requiring approval pursuant to FCC Form 314 or FCC Form 315 during the one-year period covered by an EEO public file report, the new licensee must place the report in the public file by the due date. The information contained in the report would encompass only EEO efforts undertaken by the new licensee.

85. The EEO public file report will be filed for station employment units, rather than only for individual stations. A ''station employment unit'' will be defined, as it was under our former rule, as including a station or group of commonly owned stations in the same market that shared at least one employee. We will leave the definition of the ''market'' to each licensee's good faith discretion. In making this determination a licensee should assess the technical coverage of its station(s); its marketing, promotional, and advertising practices; the pertinent market definitions adopted by public agencies or commercial services, such as Nielsen and Arbitron; and requests for notices of job vacancies from locally-based community groups. We expect a licensee to be able to provide a reasonable explanation for its determination should it become an issue. Finally, stations in the same market should be considered part of the same employment unit even if the licenses are held by different business entities that are commonly owned or controlled. We would view licensees as commonly owned for the purpose of the EEO rule if 50 percent or more of the voting control of the licensees is held by the same persons or entities.

86. If a station is subject to a time brokerage agreement, the licensee's EEO public file report should include data concerning only its own recruitment efforts for full-time positions and not the efforts of the broker. If a licensee is a broker of another station or stations in the same market as an employment unit including a station or stations of which it is the licensee, the licensee's EEO public file report should include data concerning its EEO efforts at both the owned and brokered stations. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include information concerning its EEO efforts at the brokered station in the EEO public file report for its own station that is geographically closest to the brokered station. The same policy will apply to EEO forms filed at mid-term (where applicable) (Form 397) and at renewal (Form 396), discussed. Non-licensee brokers are not required to file EEO public file reports because they are not licensees. If a broker is controlled directly or indirectly by a licensee or licensees, it should be considered a licensee-broker.

87. We recognize that there may be some employment units that are located in markets that include stations licensed to communities in more than one state that are in different renewal groups. As a result, the date of the last renewal application filing differs for some stations in the same employment unit, so that there could arguably be two dates governing the placing of the EEO public file report in the public file because that date is based on the anniversary of the filing of the last renewal application. The same problem arises with respect to the filing of mid-term reports (FCC Form 397), discussed. It is not our intent that employment units comply with these requirements more than once merely because they include stations in more than one renewal group. We will generally expect employment units in this situation to proceed in accordance with the schedule for only one of the renewal groups included in their unit. There may be rare instances involving television stations when it will be necessary for us to request a supplemental filing in order to comply with the statutory requirement that we conduct mid-term reviews of television licensees' EEO compliance.

88. An employment unit consisting of stations in more than one renewal group may select the renewal group that it will use for the purpose of determining the filing dates for its annual public file reports and its mid-term report, where applicable, in accordance with the following criteria. If the employment unit includes a television station, the dates for the television station should ordinarily govern, in order to accommodate the statutory requirement for mid-term review of television licensees' EEO compliance. Apart from this situation, the renewal group that will determine the employment unit's EEO filing schedule should be selected so as to minimize the time between the date for placing the EEO public file report in the public file and the date for the filing of renewal applications for stations located in renewal groups that have different renewal filing dates than the renewal group used to determine the employment unit's EEO filing schedule.

89. There may also be circumstances in which an employment unit consists of television and radio stations that are part of the same renewal group, except that the renewal schedule for radio is one year earlier than the schedule for television. In these circumstances, the filing schedule for television stations should be used for purposes of filing the mid-term report (FCC Form 397) for the employment unit, if it is subject to the requirement to file a mid-term report. This report would cover all stations in the employment unit. Thus, there would be no need to file a separate mid-term report for the radio station(s). Because the date for placing the annual public file report in the public file is the same for both radio and television, the most recent public file report should be submitted with the renewal applications for both television and radio stations in the employment unit.

90. Renewal applications must still be filed separately for each station in accordance with the regular schedule for the station's renewal group. FCC Form 396, the EEO form submitted with the renewal application, discussed below, requires that the licensee attach the EEO public file report that is ordinarily placed in the public file simultaneously with the filing of the renewal application, as well as the report for the prior year. When a station is part of an employment unit that is using the EEO filing schedule for another renewal group, the station should submit with its FCC Form 396 the most recent EEO public file report prepared for the employment unit. If the licensee feels that the most recent EEO public file report does not accurately reflect the employment unit's EEO program as of the date of the filing of the renewal application, it should disclose any pertinent facts as part of the narrative statement also required by the FCC Form 396.

91. Low power television (LPTV) stations are subject to the broadcast EEO rule by virtue of a cross-reference contained in § 74.780 of the Commission's Rules. (Licensees of low power FM (LPFM) stations are subject to the Commission's prohibition against employment discrimination. *See* 47 CFR 73.881. LPFM licensees are not required to comply with any EEO program requirements. As we stated in the LPFM *R&O,* ''[b]ecause we anticipate that the vast majority of this class of licensees will employ very few (if any) full-time, paid employees, we do not intend to require LPFM licensees to comply with any EEO program requirements we adopt in our rulemaking proceeding.'') LPTV stations are not required to maintain a public file. As indicated in the *Recon,* we will not expect them to prepare an EEO public file report, although LPTV stations with five or more full-time employees must comply with the recordkeeping requirements. Class A television stations are subject to the requirement to maintain a public file and are fully subject to the EEO rule, including the requirement to prepare an EEO public file report.

92. *Enforcement.* We will adopt the enforcement process proposed in the *2NPRM,* which is similar to that adopted in the *R&O,* except that we are eliminating the requirement that broadcasters certify compliance with the EEO rule in the second and sixth years of their license term. We will conduct

mid-term review of television stations with five or more full-time employees and radio stations with more than ten full-time employees, using FCC Form 397. We treat television stations differently from radio stations because of the requirements of section 334 of the Communications Act which does not permit us to exempt television stations with five to ten full-time employees from the mid-term requirement.

93. We will also monitor EEO compliance through random audits and targeted investigations resulting from information received as to possible violations. Each year we will select for audit approximately five percent of all licensees in the radio and television services, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Initially, the inquiry may request the contents of the station's public file. Further inquiry or inquiries may be conducted requesting additional documentation of recruitment efforts that is not in the public file. Based on the circumstances of the case, the inquiry could potentially include, but not be limited to, (1) A request for data covering any period of the license term; and (2) interviews of witnesses, including any complainant and present or former station employees.

94. Licensees will be subject to a variety of sanctions and remedies for EEO rule violations or deficiencies. Some examples of violations or deficiencies might include: engaging in employment discrimination in hiring or promotions; failure to file a mid-term review when due; failure to file an EEO public file report when due; failure to file Form 396 when due; misrepresentation of outreach efforts or other information; non-responsiveness or evasion in responding to a written Commission inquiry; failure to recruit for all vacancies absent exigent circumstances; failure to widely disseminate information concerning vacancies for full-time positions; failure to analyze routinely the adequacy of the various program elements in achieving broad outreach to all segments of the community; failure to undertake the required Prong 3 menu options; and failure to notify organizations that request vacancy notices. Also, it may constitute a violation of the EEO rule if, based on all of the evidence, we determine that a licensee has attempted to evade our requirements through token or sham efforts.

95. We take the EEO rules and obligations we establish here very seriously, and fully expect broadcasters and MVPDs to do the same. We remind licensees that it is as true today as it was 20 years ago that a ''documented pattern of intentional discrimination would put seriously into question a licensee's character qualification to remain a licensee.'' We intend to carefully monitor compliance with our EEO rules. Sanctions and remedies that may be issued by the Commission for deficiencies in licensees' EEO compliance include admonishments, reporting conditions, forfeitures, short term renewal of license, or designation for hearing for possible revocation of license or denial of renewal. The appropriate sanction or remedy will be determined on a case-by-case basis. Sanctions will be greater in cases involving recidivism, continuous EEO non-compliance, or intentional discrimination. In particular, if sufficiently egregious violations are found, we will not hesitate to designate for hearing.

96. We will also be taking steps to ensure that broadcasters, MVPDs, and the public are aware of and able to comply with the EEO rules and policies. First, we will continue to maintain an EEO page on the Commission's Web site. In addition, our Consumer & Governmental Affairs Bureau (CGB) will provide information to the public on the new rules adopted by the Commission. CGB will make a factsheet on the rules available to the public through our consumer centers and our Web site. Commission staff will continue to participate in conferences held throughout the country that deal with broadcast and MVPD EEO issues. Finally, as always, our EEO staff is available to answer more specific questions and provide informal guidance regarding the rules. We encourage the industry and the public to take advantage of these resources.

97. *Forms Relating to EEO Compliance.* We readopt the forms adopted in the *R&O,* incorporating the changes discussed above. Primarily, we eliminate the portion of the forms that provided for an election between Option A and Option B because our present rule does not provide for an election. We also will not reissue the Initial Election Statement, which required a licensee to choose between Option A and Option B. We are addressing here only forms relating to our EEO outreach requirements. As indicated, FCC Form 395–B, the Annual Employment Report, which is being deferred, is unrelated to the implementation and enforcement of our EEO program.

98. We readopt, with modifications, FCC Form 396, which is filed by broadcasters as part of their renewal applications. We will delete the Option A/Option B election. The form as adopted by the *R&O* also required the broadcaster to certify that it complied with the EEO rule during the two-year period preceding the filing of the report; to attach a copy of its EEO public file for the preceding year; and to provide a narrative statement demonstrating how the station achieved broad outreach during the preceding two years. The licensee must still certify to the accuracy of the forms it submits to the Commission; it just need not draw a legal conclusion as to whether the facts it submits demonstrate compliance with our rules. We will modify the form to eliminate the certification requirement. We will require the submission of the EEO public file report due at the time of the filing of the Form 396 along with the form filed one year before that. This is because we allow two years for the performance of the Prong 3 menu options. We recognize that in some instances a station may have been sold during the prior two years. In that case, the licensee at the time of renewal need only submit EEO public file reports relating to its own operation of the station.

99. The version of Form 396 adopted by the *R&O* included the following question: ''Have any complaints been filed before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)?'' In the *2NPRM,* we stated that the form required the reporting of ''pending'' discrimination complaints. We did not clarify the period of time to which the word ''pending'' referred, *e.g.*, pending at any time during the most recent license term or pending at the time a renewal application is filed. We will require the reporting of all complaints filed during the most recent license term, consistent with our past practice. This will avoid unnecessary litigation and involves little additional burden. Form 396 requests information concerning the disposition or current status of the complaint, and the Commission will consider complaints only to the extent they are deemed relevant.

100. FCC Form 396–A is to be used for applications for the construction of a new broadcast station or for the sale of an existing broadcast station. We will readopt this form but delete references to the Option A/Option B election.

101. We adopted in the *R&O* FCC Form 397, ''Broadcast Statement of Compliance,'' which was to be submitted in the second, fourth, and sixth years of the license term for the

purpose of certifying whether the licensee's station employment unit complied with the EEO rule during the preceding two years. In the *2NPRM,* we proposed to use the Form 397 only for the purpose of filing mid-term reviews, renaming it the ''Broadcast Mid-term Report.'' We will adopt this proposal. Form 397 will be filed by licensees subject to mid-term review. We will modify Form 397 to eliminate the reference to an election. In addition, consistent with our discussion concerning Form 396, we will eliminate the compliance certification requirement and instead require submission of EEO public file reports for the two years preceding the filing (unless the earlier report does not pertain to the current licensee because of a sale). Two groups of television stations would be required by our new rules to file mid-term reports in 2003: New Jersey and New York filings would be due by February 1, 2003, and Delaware and Pennsylvania filings would be due by April 1, 2003. Because of the extremely short time between the anticipated effective date of the rules and the filing dates, we will not require stations in these groups to file mid-term reports in 2003.

102. *Provisions for Small Stations and Small Markets.* The rule adopted by the *R&O* exempted from the outreach provisions (but not the nondiscrimination provisions) station employment units that had fewer than five full-time (30 hours per week or more) employees. As noted, a ''station employment unit'' referred to a station or group of commonly owned stations in the same market that shared at least one employee. We will include this exemption in our new rule. We also provided in the *R&O* that station employment units with five to ten full-time employees would be required to perform only two, rather than four, Prong 3 menu options every two years. We will incorporate this requirement in our new rule. In addition, we will extend it to certain small market stations. We further provided in the *R&O* that radio station employment units with five to ten full-time employees would be exempt from the mid-term review requirement. We did not extend this relief to television stations because of the requirements of section 334 of the Communications Act. We will include this exemption for radio in our new rule.

103. In the *2NPRM,* we asked whether we should expand the exemption for small stations to include employment units with ten or fewer employees. We also asked whether we should modify the requirement that stations with more than 10 full-time employees complete four menu options every two years. Smaller stations with five to 10 or fewer full-time employees are required to complete two menu options every two years. We further asked whether we should treat all stations with five or more full-time employees that are located in smaller markets like smaller stations. Having reviewed the record, we find no basis for increasing the pertinent exemptions, except that we find some modification warranted with respect to the menu option requirements applicable to stations in smaller markets.

104. With one exception, we find no basis in the record to provide additional exemptions from our rule beyond those referenced. First, we reject as unsupported in the record any suggestion that the rule we adopt today imposes unreasonable burdens on small broadcasters. As a general matter, the rule imposes minimal burdens. In addition, small broadcasters are permitted to perform fewer menu options, and most likely will have fewer hires, resulting in fewer records to keep and fewer job vacancies requiring recruitment under the rule. Further, as we found in the *R&O,* small stations provide entry-level opportunities in the broadcast industries and make up approximately ⅓ of the broadcast industry. If we were to exempt such a large number of stations from the EEO rule—stations that may provide entry level opportunities for people new to broadcasting—we would undermine the central purpose of our EEO rule. We decline to do so.

105. We find that it would be appropriate, to modify our Prong 3 menu option requirement for stations in smaller markets. We recognize that smaller markets may not have the resources in the community to support some of the activities contemplated in Prong 3. We did not address this problem in the *R&O* because small market stations that found the menu option requirement burdensome could elect to proceed under Option B. That alternative will not be available under our new rule. We will accordingly provide that small market stations will be required to perform only two, rather than four, menu options during a two year period.

106. We will define the scope of this exemption as extending to any station employment unit consisting solely of a station or stations licensed to a community that is located in a county that is outside of all metropolitan areas, as defined by OMB, or is located in a metropolitan area that has a population of fewer than 250,000 persons. This will operate to reduce requirements for stations in most markets below the 100 largest markets using definitional criteria that are readily ascertainable from government sources. (The most recent OMB definition of metropolitan areas is contained in OMB Bulletin No. 99–04 (June 30, 1999). *See http://www.whitehouse.gov/omb/inforeg/msa-bull99-04.html.* Metropolitan areas with a population of fewer than 250,000 are defined as Level C and D MSAs or primary MSAs (PMSAs). OMB Bulletin No. 99–04 may be used initially to define areas subject to this provision. OMB has adopted new metropolitan area standards and will announce definitions of areas based on the new standards and Census 2000 data in 2003. *Standards for Defining Metropolitan and Micropolitan Statistical Areas,* (65 FR 82228, December 27, 2000).)

107. In the *Recon,* we adopted a policy pursuant to which an owner who has a controlling interest (50 percent or greater voting control) in a licensee would not be considered a station employee for purposes of the EEO rule, even if he or she worked at the station. We concluded that such an owner's employment at the station would be more an incident of ownership rather than a normal employment relationship because the owner could not be in any normal sense hired or fired. We declined to extend this policy to lesser ownership interests because the circumstances pertaining to their employment might vary widely and we could not assume that the employment was primarily an incident of ownership. Fletcher, Heald & Hildreth, P.L.C. (''FHH''), on behalf of its clients, filed a petition for reconsideration, urging that owners with 20 percent or greater interests should not be treated as ''employees'' for purposes of the EEO rule. We will not consider owners holding a 20 percent or greater voting interest in a licensee as station ''employees'' for EEO purposes. This will be subject to the proviso, however, that no single owner has positive control (greater than 50 percent voting control) of the licensee. In that circumstance, the principal enjoying positive control would be in a position to determine whether other stockholders could be employed at the station, and only he or she could properly claim employment as an incident of ownership. Absent that circumstance, it is reasonable to believe that a 20 percent or greater owner's employment position is an incident of ownership. Someone who owns a 20 percent interest in a licensee company is not truly an

employee of the licensee, holding a position that would be subject to recruitment, and thus should be permitted to work at the station without first requiring outside recruitment. FHH suggests that we should, as a safeguard, require that the owners have made a capital contribution. We do not find this necessary. Legitimate ownership interests may exist that do not involve a capital contribution. In the event of alleged abuse of this exception, we will consider all relevant factors, including the extent of an asserted owner's capital contribution to determine the legitimacy of a claimed ownership interest.

3. MVPD EEO Program Requirements

a. Rules and Policies

108. We will adopt substantially the same outreach program, recordkeeping and reporting requirements for MVPDs, as we have for broadcasters. The only distinctions will arise in light of the specific requirements imposed by section 634 of the Communications Act. We monitor the EEO programs pursuant to annual reports which have contained employment and program data, as required by statute. We will be creating a new form that will contain only program data. As mentioned, we are deferring consideration of a new form for MVPDs that requires employment data. Because our review of MVPD EEO compliance is an annual review pursuant to section 634, we define the Prong 3 menu options requirement for MVPDs in terms of performing two initiatives annually for those with more than ten full-time employees or one initiative annually for those with six to ten full-time employees. With respect to the definition of ''community'' for the purpose of determining broad outreach, we are leaving the definition of ''community'' for this purpose to the reasonable good faith discretion of the entity concerned. We will apply the same policy to MVPDs. MVPDs should use pertinent criteria, including the location of the system, pertinent market definitions adopted by public agencies or commercial services, and requests for notices of job vacancies from locally-based community groups. They should also consider what areas actually produce job applicants. MVPDs should engage in broad outreach throughout the entire local community from which they can reasonably expect to elicit applicants, whether or not that community is defined by its franchise area.

109. MVPD compliance with the EEO requirements is monitored pursuant to annual reports filed by MVPDs: FCC Form 395–A (for cable operators) and FCC Form 395–M (for other MVPDs). The only substantive modification required by the new rules adopted today is the elimination of the Option A/Option B election. In addition, we will combine these forms. The two forms are virtually identical except for a section in the Form 395–A requiring cable operators to list the communities in which they operate. In view of the similarity of the two forms, we do not find any necessity for having separate forms for cable operators and other MVPDs. Both forms request information concerning the entity's EEO outreach program. In addition, both forms request information as to the gender and racial/ethnic composition of the entity's workforce, analogous to the broadcast Form 395–B. As in the broadcast context, the data concerning the entity's workforce is no longer pertinent to the administration of our EEO outreach requirements. We will adopt at this time a single form, FCC Form 396–C, which will include the portions of Forms 395–A and 395–M relating to EEO outreach, but not the portion eliciting data concerning the entity's workforce, for use by all MVPDs. We will consider the adoption of a new form for eliciting workforce data from MVPDs as part of the future *R&O* in which we will also address the broadcast Form 395–B.

C. Constitutional Issues

110. The court in *Association* upheld Option A of the EEO rule as constitutional because it found that broadcasters were not pressured to recruit minorities and women under Option A. The recruitment outreach provisions we are adopting in this *2R&O and 3rd NPRM* are the same in all material respects as the basic requirements of Option A. In enforcing the EEO rule, the Commission will not pressure employers to favor anyone on the basis of race, ethnicity, or gender. As a race and gender neutral regulation, the EEO rule we are adopting today raises no equal protection concerns.

V. Conclusion

111. In this *2R&O,* we adopt a new broadcast EEO rule and set of policies, and we amend our MVPD EEO rules and policies. We remain committed both to prohibiting discrimination in employment and requiring broad and inclusive outreach in recruitment by broadcasters and cable entities.

VI. Procedural Matters

112. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *2NPRM.* The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *NPRM,* including comments on the IRFA. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, a Final Regulatory Flexibility Analysis (''FRFA'') is contained in Appendix B.

113. *Paperwork Reduction Act of 1995 Analysis.* The actions herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to, and become effective upon, approval by the Office of Management and Budget as prescribed by the Act.

VII. Final Regulatory Flexibility Analysis

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

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

115. This *2R&O* 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 *R&O,* and codified as § 73.2080 of the Commission's rules, 47 CFR 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

116. One comment was filed specifically in response to the IRFA. The American Cable Association (ACA) 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 *2NPRM*. We note that the *2R&O* considers ACA's concerns and provides relief to small MVPD employment units.

C. Recording, Recordkeeping, and Other Compliance Requirements

117. 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. Generally, no special skills will be necessary to comply with the requirements.

118. The *2R&O* 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.

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

120. 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.

121. 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.

122. 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.

123. 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.

124. 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

1. Definition of a ''Small Business''

125. 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 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**.''

126. 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. 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.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. 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 (91 percent) are small entities.

2. Issues in Applying the Definition of a ''Small Business''

127. 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.

128. 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. 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.

129. With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 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.

130. 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. The SBA defines affiliation in 13 CFR 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

131. The rules to be adopted pursuant to this *2R&O* will apply to broadcast television and radio stations. The SBA defines a television broadcasting station that has no more than $12.0 million in annual receipts as a small business. 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. Separate establishments primarily engaged in producing taped television program materials are classified under other North American Industry Classification (NAICS) numbers.

132. There were 1,695 full-service television stations operating as of December 2001. 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. Thus, under this standard, the majority of firms can be considered small.

133. The SBA defines a radio broadcasting station that has no more than $6 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. 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. 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. Under this standard, the great majority of firms can be considered small.

134. The *2R&O* 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. 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. Under this standard, the majority of firms can be considered small.

135. *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. 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. 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.

136. 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.'' The Commission has determined that there are 67,700,000 subscribers in the United States. 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. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. 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.

137. *MDS:* MDS involves a variety of transmitters, which are used to relay programming to the home or office. 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. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. 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.

138. *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. 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. 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 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 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.

139. *DBS:* Because DBS provides subscription services, it falls within the SBA-recognized definition of ''Cable and Other Program Distribution.'' 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.

140. 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. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 ''MVPD'' employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 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

141. 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.

142. This *2R&O* 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.

143. The *2NPRM* 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 *2R&O* adopts this same relief. Thus, the EEO rule does not impose unreasonable burdens on small broadcasters or MVPDs.

144. 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.

145. The *2NPRM* 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. As noted, we received one comment directly in response to the IRFA. In addition, we received a few general comments that are pertinent. As discussed in the *2R&O,* 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 that 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. 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.

146. 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.

147. 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.

148. 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 *2R&O* provides that small market systems will be permitted to perform only two, rather than four, menu options during a two-year period.

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

150. 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. 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 *R&O,* small entities provide much needed entry-level employment opportunities in the industry.

151. With respect to streamlining reporting/recordkeeping requirements, we will replace Form 395–A with a new form, the FCC Form 396–C. 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 *R&O.*

152. In order to lessen any burdens, the *2R&O* 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

153. The Commission will send a copy of the *2R&O,* 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 *2R&O,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *2R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clause

154. Pursuant to the authority contained in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554, *2R&O* is adopted, and part 73 and part 76 of the Commission's rules are amended. It is our intention in adopting these rule

changes that, if any provision of the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of the rules not deemed unlawful and the application of such rules to other persons or circumstances shall remain in effect to the fullest extent permitted by law.

155. The late-filed comments and reply comments in this proceeding are considered as part of the record in this proceeding.

156. Pursuant to the Congressional Review Act, the new rules and amendments will become effective either March 10, 2003, or upon receipt by Congress of a report in compliance with the Congressional Review Act, 5 U.S.C. 801, whichever is later, and the information collection contained in these rules will become effective March 10, 2003, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. We will not require television broadcast licensees to file EEO mid-term reports in 2003.

157. FCC Forms 395A, 395B and 395M, and §§ 73.3612 of the Commission's rules, 47 CFR 73.3612 (Annual Employment Report) and § 76.1802 of the Commission's rules, 47 CFR 76.1802 (Equal Employment Opportunity) will remain suspended pending further action on workforce data collection issues.

158. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *2R&O,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

159. MM Docket No. 98–204 will remain open for the limited purpose of considering the issues raised in the *3rd NPRM,* and to facilitate any additional proceedings upon further order of the Commission.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Equal employment opportunity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.2080 is revised to read as follows:

§ 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-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587–3589 of the Commission's rules.

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

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 560, 561, 571, 572, 573.

4. Section 76.75 is amending by revising the section heading and paragraphs (b), (f), (g), (h), (i), and (j); and removing paragraph (k), to read as follows:

§ 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.

5. Section 76.77 is revised 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.

6. Section 76.1702 is revised to read as follows:

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all 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, organizations entitled to notification pursuant to § 76.75(b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

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

(4) Data reflecting the 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.

BILLING CODE 6712–01–P

Appendix—Forms

Note: The following appendix will not appear in the Code of Federal Regulations.

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
3060-0120

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY
MODEL PROGRAM REPORT

Legal Name of the Applicant		
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

☐ 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

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 47 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 faith.

Signed	Name of Respondent
Title	Date

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

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.

V. 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)

IV. 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 47 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. 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

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

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)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

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October 2002

CONTACT PERSON IF OTHER THAN LICENSEE

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

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a license renewal applicant whose station employment unit employs five or more full-time station employees must file a report of its activities to ensure equal employment opportunity. If a station employment unit employs fewer than five full-time employees, no equal employment opportunity program information need be filed. If a station employment unit is filing a combined report, a copy of the report must be filed with each station's renewal application.

A copy of this report must be kept in the station's public file. These actions are required to obtain license renewal. Failure to meet these requirements may result in sanctions or license renewal being delayed or denied. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

DISCRIMINATION COMPLAINTS. Have any pending or resolved complaints been filed during this license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)? ☐ Yes ☐ No

If so, provide a brief description of the complaint(s), including the persons involved, the date of the filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

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

If your station employment unit employs fewer than five full-time employees, 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, 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/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

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

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

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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. 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 FILING FORM 396-C IS SEPTEMBER 30TH 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 CONSULT THE COMMISSION'S CABLE EEO RULES BEFORE COMPLETING 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.

Section 1

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.

Section II

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.

Section IV

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.

Section V

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 30th. 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. 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. 95-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

FCC FORM 396-C

Approved by OMB
3060-0095

Submit the original and one copy by September 30:

Federal Communications Commission
Policy Division, Media Bureau
Washington, D. C. 20554

For FCC Use Only

Emp. Unit ID # _____

( ) Supplemental Investigation Sheet (SIS) Attached

SECTION I IDENTIFYING INFORMATION

A. Name of Operator:		
MSO Name:		
B. Employment Unit's Mailing Address		
City	State	Zip Code
C. County and State in which unit's employment office is located		

E. Pay Period Covered by this Report (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:
( )	( )	A-Section II
	( )	B-Section III
( )	( )	C-Section IV
( )	( )	D-SIS-Job Descriptions
( )	( )	E-SIS Narrative Responses
	( )	F-SIS EEO Public File Report

SECTION II COMMUNITY INFORMATION

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

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.

Exhibit No.
A

SECTION III EEO POLICY AND PROGRAM REQUIREMENTS

Check YES or NO to each of the following questions. If answer to any question below is NO, attach as EXHIBIT B an explanation.

Exhibit No. B

YES	NO		
( )	( )	1.	Have you complied with the outreach provisions of the FCC's Cable 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?

SECTION IV ADDITIONAL INFORMATION

You may provide as Exhibit C any 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

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

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

9.

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

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	7. ☐	Operatives (semi-skilled)
2. ☐	Professionals	5. ☐	Office and Clerical	8. ☐	Laborers (unskilled)
3. ☐	Technicians	6. ☐	Craft Workers (skilled)	9. ☐	Service Workers

Part II Inquiries 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

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this statement. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses 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)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

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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. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a televsion station employment unit that employs five or more full-time station employees must file a full and complete Broadcast Mid-Term Report. If a televsoin station employment unit employs fewer than five full-time employees, only the first two pages of this report need be filed.

A copy of this Mid-Term Report must be kept in the station's public file. Failure to meet these requirements may result in sanctions or remedies. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

Does your station employment unit employ fewer than ten full-time employees if television or fewer than eleven full-time employees if radio? ☐ Yes ☐ 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/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

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 ofeach 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.

☐

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. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0922.

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.

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September 2002

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