

## SUPPORTING STATEMENT

### A. Justification:

#### FCC Form 396

1. The Broadcast Equal Employment Opportunity (EEO) Program Report, FCC Form 396, is a device that is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with FCC's EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Low Power TV and International stations.

#### FCC Form 396-A

The Broadcast Equal Employment Opportunity (EEO) Model Program Report, FCC Form 396-A, is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

#### **History:**

On September 30, 1998, the Commission suspended the requirement that television and radio broadcast licensees submit the FCC Form 396 at the time of filing their renewal applications. In addition, the Commission suspended the requirement that television and radio broadcast licensees and permittees submit the FCC Form 396-A with their construction permit, transfer or assignment applications. These suspensions remained in effect until the Commission revised the EEO rules to be consistent with the D.C. Circuit's decision in *Lutheran Church - Missouri Synod v. FCC*.

On February 28, 1999, OMB approved the Notice of Proposed Rulemaking in MM Docket Nos. 98-204 and 96-16 (Review of the Commission's Broadcast and Cable Equal Employment Opportunity ("EEO") Rules and Policies and Termination of the EEO Streamlining Proceeding) (NPRM). This rulemaking proceeding was initiated to obtain comments concerning the Commission's proposed EEO rules and policies that would be consistent with the *Lutheran Church* decision. This rulemaking proposed to initiate a new broadcasting EEO rule and to change the Commission's cable EEO rules, to emphasize recruitment outreach programs and provide that entities are not to use racial, ethnic, or gender preferences in hiring. In addition, the new rules reinstated the requirement that broadcast licensees file the FCC Form 396-A at the time they file applications for construction permits, or assignments or transfers of license.

On January 20, 2000, the Commission adopted a Report and Order in the above rulemaking proceeding. This Report and Order modified the Commission's broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in *Lutheran Church*. The new rules reinstated the requirement that broadcast licensees file the FCC Form 396 at the time they file for renewal of license.

Following the D.C. Circuit's decision in *MD/DC/DE Broadcasters Association v. FCC (Association)* in January 2001 vacating the FCC's broadcast EEO rules for recruitment, the Commission on January 31, 2001, again suspended the requirement for broadcast licensees to file the FCC Forms 396 and 396-A. On December 21, 2001, the Commission issued a Second Notice of Proposed Rulemaking to replace the EEO rules for both broadcast and multi-channel video program distributors (MVPDs), including new FCC Forms 396 and 396-A.

On November 7, 2002, the Commission adopted a Report and Order establishing new EEO rules and forms to comply with the court's decision in *Association*. The new rules reinstate the requirement that broadcast licensees file the FCC Form 396 at the time they file for renewal of license and FCC Form 396-A at the time they file applications for construction permits, or assignments or transfers of license. The new EEO rules also ensure equal employment opportunity in the broadcast and MVPD industries through outreach to the community in recruitment and prevention of employment discrimination.

**Revised Information Collection Requirements:**

The Commission is consolidating information collections 3060-0113, FCC Form 396, Broadcast EEO Program Report and 3060-0120, FCC Form 396-A, Broadcast Equal Employment Opportunity Model Program Report into one information collection per OMB's request. The information collections are very similar and the Commission agrees with OMB that there is no need to have two separate OMB control numbers for the two collections; therefore, consolidating the two collections will eliminate OMB control number 3060-0120. However, the form for 3060-0120 (FCC 396-A) will now have OMB control number 3060-0113 assigned to it and FCC Form Number 396-A will remain on the form. The Commission will submit an 83-D Form to discontinue information collection 3060-0120 once we receive OMB approval for this information collection (3060-0113) which is being revised due to the consolidation.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The statutory authority for this requirement is in accordance with Sections 154(i) and 303 of the Communications Act.

2. These reports are reviewed by EEO specialists to ensure that licensees widely disseminate information about job openings to ensure that all qualified applicants are able to compete for jobs in the broadcast industry.

3. The Commission requires applicants to electronically file FCC Forms 396 and 396-A.<sup>1</sup>

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<sup>1</sup> On April 9, 2003, the Commission released Public Notice DA 03-1116 announcing the mandatory electronic filing of FCC Form 396. In addition, on March 18, 2003, the Commission released Public Notice DA 03-785 announcing the mandatory electronic filing of FCC Form 396-A. Mandatory electronic filing for these forms began on April 1 and March 10, 2003, respectively. Paper-filed copies of FCC Forms 396 and 396-A will be accepted only if accompanied by an appropriate request for waiver of the electronic filing requirement. Filers must plead with particularity the facts and circumstances warranting grant of a waiver. Waivers will not be routinely granted.

4. No other agency imposes a similar information collection on the respondents. There are no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. **For FCC- Form 396**, this program considers the needs of small stations by requiring stations with fewer than five full-time employees to file only the identification, certification and employment discrimination complaints portions of the form. **For FCC Form 396-A**, the Commission requires applicants with fewer than five full-time employees to file only the identification and certification portions of the form. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities/businesses.

6. **For FCC Form 396**, this form is required to be submitted with the renewal applications of broadcast licensees to determine whether grant of the license renewal application is in the public interest. Infrequent submission would provide insufficient information upon which to make that determination. **For FCC Form 396-A**, the frequency for this collection of information is determined by applicants filing construction permit, transfer or assignment applications. This collection assists respondents in establishing a program designed to ensure equal employment opportunity for all qualified applicants.

7. **For FCC Form 396**, this collection of information requires that records be retained for one license term. Pursuant to Section 73.3526 of the Commission's rules, this retention period is necessary to provide the FCC and the public with information to evaluate the station's performance during its entire license term. **For FCC Form 396-A**, this form should be retained for the length of time set forth in Section 73.3526(e)(2) of the Commission's Rules. This retention period is necessary to provide the FCC and the public with information to evaluate the station's EEO compliance.

8. The Commission published a Notice (71 FR 47220) in the *Federal Register* on August 16, 2006. No comments were generated as a result of the Notice.

9. No payment or gift was provided to the respondents.

10. There is no need for confidentiality.

11. These forms do not address any private matters of a sensitive nature.

Title: Broadcast EEO Program Report, FCC Form 396; Broadcast Equal Employment Opportunity Model Program Report, FCC Form 396-A

12. We report the following public burden:

Number of Respondents	Number of Filings/Forms	Number of Responses/Forms	Respondent's Hourly Burden	Annual Burden Hours	Hrly. In-House Cost	Annual In-House Cost
<b>FCC Form 396</b>						
2,000 applicants	1 form	2,000 forms	1.5 hours	3,000 hrs.	\$33.52	\$100,560.00
<b>FCC Form 396-A</b>						
5,000 applicants	1 form	5,000 forms	1 hour	5,000 hrs.	\$33.52	\$167,600.00
7,000 applicants		7,000 forms		8,000 hrs.		\$268,160.00

13. For FCC Forms 396,<sup>2</sup> it is assumed that the total number of respondents would have their attorneys (\$200/hour) review their forms before they are submitted to the FCC. We estimate review time is 1 hour/form.

$$2,000 \text{ FCC Form 396 applications} \times \$200/\text{hour/form} \times 1 \text{ hour/review} = \$400,000$$

Total Annual Cost Burden: \$400,000

14. Cost to the Federal Government: The Commission will use an EEO Specialist at the GS-12 , step 5 level (\$35.32/hour) to process the FCC Forms 396 and 396-A.

$$2,000 \text{ FCC Form 396 applications} \times \$35.32/\text{hour} \times 3 \text{ hours} = \$211,920.00$$

$$5,000 \text{ FCC Form 396-A applications} \times \$35.32/\text{hour} \times 1 \text{ hour} = \$176,600.00$$

$$\underline{\hspace{10em} \$388,520.00}$$

$$30\% \text{ Overhead} \quad \underline{\hspace{10em} = \$116,556.00}$$

**Total Cost to the Federal Government = \$505,076.00**

15. There are adjustments to the total annual burden hours and total annual cost burdens. These adjustments are due to the Commission consolidating collections 3060-0120 (FCC Form 396-A) and 3060-0113 (FCC Form 396) into one information collection (3060-0113). There are no program changes to this information collection.

16. The data will not be published.

17. We request extension of the waiver not to publish the expiration date on these forms. This will obviate the need for the Commission to update electronic forms upon the expiration of the clearance. OMB approval of the expiration date of the information collection will be displayed at 47 CFR § 0.408.

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<sup>2</sup> The Commission is assuming applicants completing FCC Form 396-A will not need outside assistance unlike applicants completing FCC Form 396.

18. The Commission's 30 and 60 day Federal Register Notices stated the total cost burden as \$350,000. We correct that number to read "\$400,000." There are no other exceptions to the Certification Statement in Item 19 of the OMB Form 83-I.

**B. Collections of Information Employing Statistical Methods**

No statistical methods are employed.