

**Multi-Channel Video Programming Distributor Annual Employment Report,
FCC 395-A**

SUPPORTING STATEMENT

A. Justification:

1. FCC Form 395-A, the “Multi-Channel Video Programming Distributor Annual Employment Report,” is a data collection device used by the Commission to assess industry employment trends and provide reports to Congress. By the form, multi-channel video programming distributors (“MVPDs”) identified employees by gender and race/ethnicity in fifteen specified major job categories in the form approved by the Office of Management and Budget (“OMB”) in 2003 but will now report employees in sixteen categories in the revised form submitted herein.

History:

In Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98- 204, Third Report and Order and Fourth Notice of Proposed Rulemaking, 69 FR 34950, June 23, 2004, 19 FCC Rcd 9773 (2004) (“2004 Order”), the Commission adopted the subject form. A copy of the Order is attached.

Prior to our current EEO rules taking effect on March 10, 2003, FCC Form 395-A existed, along with the nearly identical FCC Form 395-M, as forms for MVPDs. Form 395-A applied to wired MVPDs such as cable companies and Form 395-M was filed by wireless MVPDs. They were used to provide the Commission with annual employment reports and EEO program performance information that we were required to review as part of our annual EEO certification process for all MVPDs.

In paragraph 178 of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98- 204, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24073 (2002), which created the current EEO rules, the Commission decided that there was no need to have different forms filed by wired and wireless MVPDs. Accordingly, the Form 395-M was merged into Form 395-A, which was made applicable to all MVPDs. Also, the EEO program information required by Form 395-A was removed from the form and FCC Form 396-C was created for MVPDs to provide this information to the Commission (OMB Control Number 3060-1033). Thus, Form 395-A was left as merely an annual employment report for all types of MVPDs subject to Commission EEO rules. The 2000 version of Form 395-A is the version of the form when it applied to only wired MVPDs and included EEO program information. As of March 2003, Form 395-A applied to all MVPDs subject to Commission EEO rules and does not request EEO program information. Thus, the 2003 version of Form 395-A conforms to the requirements in the Commission’s current EEO rules and the 2000 version of Form 395-A is obsolete.

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REVISED INFORMATION COLLECTION REQUIREMENTS:

In its 2004 Order, the Commission stated that Form 395-A conformed to the racial and employment categories contained in the then-existing Form EEO-1 Employer Information Report issued by the Equal Employment Opportunity Commission (“EEOC”), 2004 Order, at 9977-78. The Order noted that the EEOC had proposed to revise its EEO-1 form to incorporate new racial and employment categories approved by OMB. It also noted that, when the revised EEO-1 form was released, the Commission would review its Form 395-A to determine what changes were needed to comply with the new OMB standards, and whether it could conform Form 395-A to those standards consistent with Section 634 of the Communications Act of 1934, as amended (the “Act”). 47 U.S.C. § 554; *see* 2004 Order at 9978.

With the EEOC’s release of the EEO-1 incorporating revised racial and employment categories, the FCC’s Media Bureau sought public comment (“Media Bureau Seeks Comment on Possible Changes to FCC Forms 395-A and 395-B,” Public Notice DA 08-752, released April 11, 2008; 73 FR 21346, April 21, 2008) (“Public Notice”) on whether to incorporate the EEOC’s revised categories and whether such changes would be consistent with Section 634 of the Act. The public comment period ended on June 6, 2008, and the Commission has completed its review of all the comments and reply comments. The Commission did not receive any comments opposing the incorporation of the EEOC’s revised categories in the FCC’s annual employment reports.

We have concluded that the proposed changes to FCC Form 395-A are consistent with the racial and job category data required by Section 634 of the Act because the revisions simply reflect different terminology for the same categories and more detailed sub-categories. 47 U.S.C. § 554.

This information collection does not affect individuals; thus, there is no impact under the Privacy Act.

Statutory authority for this collection of information is contained in Section 154(i) and 634 of the Communications Act of 1934, as amended.

2. The FCC staff use these data to assess MVPD industry employment trends and to report to Congress.
3. The Commission formerly created the capability of filing the Form 395-A electronically, and plans to create the same capability for any new versions of this form and make electronic filing mandatory. Paper-filed copies of the form will be accepted only if accompanied by an appropriate request for waiver of the electronic requirement. Waivers are not routinely granted, and filers must

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plead with particularity the facts and circumstances warranting grant of the waiver.

4. Similar employee profile data are collected by the Joint Reporting Committee of the EEOC from most firms with 100 or more employees (EEO-1).
5. The Commission has minimized the burden on small businesses by not requiring MVPDs with fewer than six full-time employees to file Form 395-A, and, if they voluntarily choose to file, to fill out only the identification and certification portions of the form.
6. This information is collected on an annual basis to monitor the MVPD industry's employment trends.
7. MVPDs must now keep records of their employees to prepare their annual employment reports on FCC Form 395-A. Records must be retained for approximately one year, or at least until the newest annual report is filed.
8. The Commission published a Notice in the Federal Register on October 25, 2007 (72 FR 60667). No comments were generated as a result of the Notice.
9. No payment or gift was provided to the respondents.
10. Whether the form will be confidential will be determined in a pending Commission rulemaking.
11. The form does not request any information in the subject areas specified by OMB as being of a sensitive nature.
12. We estimate that 2,500 MVPD units will file FCC Form 395-A. The average burden on an MVPD unit is one hour per report. This estimate is based on FCC staff's knowledge and familiarity with the availability of the data required.

Total number of annual respondents: 2,500 MVPD units

Total number of annual responses: 2,500 FCC Form 395-A filings

Total annual burden hours:

2,500 FCC Form 395-A filings x 1 hour/filing = **2,500 hours**

Annual "In-house costs:" We assume that MVPDs would have a human resources employee at \$22.71 per hour to complete the FCC Form 395-A.

Total "In-house" costs: 2,500 FCC Form 395-A filings x 1 hour/filing x

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\$22.71/hour = \$56,775.

13. Annualized Hour Cost to the Respondents:

(a) Total annualized capital/startup costs: **None**

(b) Total annual costs (O&M): **None**

(c) Total annualized cost requested: **None**

14. Cost to the Federal Government: We estimate 1,100 Forms 395-A will be filed from MVPD units with fewer than 6 full-time employees, with an average processing time of 10 minutes (0.166 hours). In addition, we estimate 1,400 Forms 395-A will be filed by MVPD units with more than 5 full-time employees, with an average processing time of one hour. Staff at the GS-9 step 5 (\$26.13/hour) will process these applications.

1,100 applications x 0.166 hour x \$26.13 = \$	4,771.34
1,400 x 1 hour x \$26.13	= <u>\$36,582.00</u>
Total Cost to the Government:	\$41,353.34

15. There is a program change of +300 hours to the total annual burden hours which is due to the revisions to FCC Form 395-A (the incorporation of the racial and employment categories of the EEO-1 into FCC Form 395-A). There are no adjustments to this information collection.

16. Once each year, a final report will be published by the FCC with MVPD data showing compilations and a brief summary for the report year.

17. The Commission requests an extension of the waiver not to publish the expiration date on this form. OMB approval of the expiration date of the information collection will be displayed at 47 CFR § 0.408.

18. The Commission published a 60 day Federal Register Notice (“Notice”) seeking public comment on October 25, 2007 (72 FR 60667). The Notice was corrected to include not-for-profit institutions as respondents, and to note that the information collection is being submitted as a revision instead of an extension. The estimated time per response is “1 hour” instead of “53 minutes.” Lastly, the total annual burden is “2,500 hours” instead of “2,200 hours.” There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

This information collection does not employ any statistical methods.