

SUPPORTING STATEMENT

A. Justification:

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.

Revision of Information Collection Requirements:

This collection is revised to remove the requirements of a previously approved collection OMB control number 3060-0120. In the 2006 submission, we consolidated information collections 3060-0113 (Broadcast EEO Program Report, FCC Form 396) and 3060-0120 (Broadcast Equal Employment Opportunity Model Program Report, FCC Form 396-A). We have requested reinstatement of information collection 3060-0120 since the forms are different and for different purposes and should not be considered the same kind of collection.

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. This suspension 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 (Lutheran Church)*.

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 Form 396. 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 a new FCC Form 396.

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 reinstated the requirement that broadcast licensees file the FCC Form 396 at the time they file for renewal 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.

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. This report is 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 396.¹

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. 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. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities/businesses.

6. 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.

7. This collection of information requires that records be retained for one license term. Pursuant to Section 73.3526² 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.

¹ On April 9, 2003, the Commission released Public Notice DA 03-1116 announcing the mandatory electronic filing of FCC Form 396. Mandatory electronic filing for this form began on April 1, 2003. A paper-filed copy of FCC Form 396 will be accepted only if accompanied by an appropriate request for waiver of the electronic filing requirement. All paper filers must plead with particularity the facts and circumstances warranting grant of a waiver. A waiver will not be routinely granted.

² See OMB control number 3060-0214 for the recordkeeping requirement of the form.

8. The Commission published a Notice (74 FR 18707) in the *Federal Register* on April 24, 2009. 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 with this collection of information.

11. This form does not address any private matters of a sensitive nature.

12. We estimate that 2,000 licensees will file FCC Form 396 annually. The average burden on respondents is 1.5 hours. This estimate is based on FCC staff's knowledge and familiarity with the availability of the data required.

$$2,000 \text{ FCC Form 396 filings} \times 1.5 \text{ hours/filing} = 3,000 \text{ hours}$$

Total Annual "In-house" Cost: We expect the respondent to complete FCC Form 396. We estimate they have an average salary of \$100,000/year (\$48.08/hour).

$$2,000 \text{ FCC Form 396 filings} \times 1.5 \text{ hours/filing} \times \$48.08/\text{hour} = \mathbf{\$100,950}$$

13. **Annual Burden Cost:** We estimate 1,000 respondents (50% of total respondents) will also have an attorney review the FCC Form 396 before the respondents make submissions to the Commission. We estimate the attorney salary at \$200/hour and estimate the review time is one (1) hour.

$$\mathbf{\text{Total Annual Cost Burden:}} \quad 1,000 \text{ applications} \times \$200 \times 1 \text{ hour} = \mathbf{\$200,000}$$

14. Cost to the Federal Government: The Commission will use an EEO Specialist at the GS-12, step 5 level (\$39.70/hour) to process the FCC Form 396.

$$\mathbf{\text{Total Cost to the Government}} = 2,000 \text{ applications} \times \$39.70 \times 3 \text{ hours} = \mathbf{\$238,200.00}$$

15. There are adjustments of \$-200,000 to the annual cost burden which is due to the Commission recalculating the annual cost burden. There are also program changes of -5,000 hours due to the removal of the information collection related to FCC Form 396-A (previously assigned OMB control number 3060-0120) from this collection. This change is due to the Commission no longer wanting the consolidation of Form 395-A into this collection (3060-0113). It is being removed with this submission and OMB control 3060-0120 is being reinstated which will contain FCC Form 396-A.

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.

18. The Commission published a Notice (74 FR 18707) in the *Federal Register* on April 24, 2009 seeking comments from the public on the information collection requirements contained in this supporting statement. Recordkeeping requirement was mentioned in the notice. It should not have been in the notice. The recordkeeping requirement for this form is actually approved under OMB control number 3060-0214. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.