

SUPPORTING STATEMENT

A. Justification:

1. 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.

This is a request for reinstatement of a previously approved information collection. In the 2006 submission, we consolidated information collection 3060-0120 (Broadcast Equal Employment Opportunity Model Program Report, FCC Form 396-A) into collection 3060-0113 (Broadcast EEO Program Report, FCC Form 396). We request reinstatement of information collection 3060-0120 because the forms are different and serve different purposes.

History:

On September 30, 1998, 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. This suspension was to remain 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 2/28/99, 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. 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.

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-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 a new FCC Form 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 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. 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.

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-A.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. The Commission does not require applicants with fewer than five full-time employees to file Form 396-A, but if they choose to do so, they need to fill out 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. 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. This form should be retained for the length of time set forth in Section 73.3526(e)(2)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 (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 5,000 respondents will file an FCC Form 396-A annually. The average burden on licensee is one (1) hour.

$$5,000 \text{ FCC Form 396-A filings} \times 1 \text{ hour/filing} = \mathbf{5,000 \text{ hours}}$$

¹ 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 March 10, 2003. A paper-filed copy of FCC Forms 396-A will be accepted only if accompanied by an appropriate request for waiver of the electronic filing requirement. A filer 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.

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

$$5,000 \text{ FCC Form 396-A filings} \times 1 \text{ hour/filing} \times \$48.08/\text{hour} = \textbf{\$240,400}$$

This estimate is based on FCC staff's knowledge and familiarity with the availability of the data required.

13. **Annual Cost Burden:** None

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-A.

$$\textbf{Cost to the Government:} 5,000 \text{ applications} \times \$39.70 \times 1 \text{ hour} = \textbf{\$198,500.00}$$

15. This a request for reinstatement of a previously approved this information collection which is OMB control number 3060-0120, Broadcast Equal Employment Opportunity Model Program Report, FCC Form 396-A.. The reinstatement of this information collection and OMB control number adds a +5,000 annual burden hours to this 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.

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.