

SUPPORTING STATEMENT

A. Justification:¹

1. Section 73.2080² provides that equal opportunity in employment shall be afforded by all broadcast stations 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. Therefore, Section 73.2080 requires that each broadcast station employment unit with 5 or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice.

Section 76.73 provides that equal opportunity in employment shall be afforded by all multichannel video program distributors (“MVPD”) to all qualified persons and no person shall be discriminated against in employment by such entities because of race, color, religion, national origin, age or sex.

Section 76.75³ requires that each MVPD employment unit shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a cable entity's policy and practice.

Section 76.79 requires that every MVPD employment unit maintain, for public inspection, a file containing copies of all annual employment reports and related documents.

Section 76.1702 requires that every MVPD place certain information concerning its EEO program in the public inspection file.

Background:

On September 30, 1998, the Commission suspended the enforcement of Section 73.2080 due to the decision in *Lutheran Church – Missouri Synod v. FCC* (“*Lutheran Church*”), wherein the Court of Appeals invalidated Section 73.2080(b) and (c). This suspension was to remain in effect until the Commission revised the EEO rules to be consistent with the Court of Appeals *Lutheran Church* decision.

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 D.C. Circuit’s decision in *Lutheran Church*. 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.

¹ See 47 CFR 76.71 to determine what entities are subject to the MVPD EEO rules and what constitutes an “employment unit” and a “headquarters office.”

² See 3060-0214 for the coverage of the recordkeeping requirement for this rule section.

³ See 47 CFR 76.77 for more detail information on the requirements subject to Sections 76.75 and 76.1702.

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On March 22, 1999, the Commission adopted an Order 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). This rulemaking proceeding was initiated to obtain comments concerning the Commission's proposed EEO rules and policies that would be consistent with the D.C. Circuit's decision in *Lutheran Church*. 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.

On January 20, 2000, the Commission adopted a Report and Order in the above rulemaking proceeding. The 2000 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*.

In *MD/DC/DE Broadcasters Association v. FCC* (“*Association*”) decided in January 2001 the D.C. Circuit found the outreach program portion of the new broadcast EEO rules to be, in part, unconstitutional and vacated them in their entirety. The Commission on January 31, 2001, suspended the EEO outreach requirements for broadcast licensees and MVPDs. Although the EEO outreach requirements applicable to MVPDs were not addressed by *Association*, the MVPD EEO outreach requirements were substantially the same as the requirements applicable to broadcast licensees the Court found to be unconstitutional.

On December 21, 2001, the Commission issued a Second Notice of Proposed Rulemaking to replace the EEO rules for both broadcast and MVPDs. On November 7, 2002, the Commission adopted a Second Report and Order and Third Notice of Proposed Rule Making (“Second Report and Order”), FCC 02-303, establishing new EEO rules and forms to comply with the court's decision in *Association*. The new EEO rules ensure equal employment opportunity in the broadcast and MVPD industries through outreach to the community in recruitment and prevention of employment discrimination.

Specifically, the Report and Order adopts EEO recordkeeping and reporting requirements. It also specifies which EEO materials are required to be kept in the public inspection file. All MVPDs and broadcasters must adhere to the EEO rules' general anti-discrimination provisions. Only MVPD employment units with 6 or more full-time employees are subject to the EEO program provisions. Only broadcasters with 5 or more full-time employees are subject to the EEO program provisions. The Second Report and Order requires MVPDs to widely disseminate information concerning job vacancies. They also must provide notification of full-time job vacancies to any requesting organization if the organization regularly distributes information about employment opportunities or refers job seekers to employers. Depending on the size of an employment unit's staff, MVPDs/broadcasters must engage in at least two(MVPDs) or four(broadcasters) (for employment units with more than ten full-time employees and that are located in a larger market) or one(MVPDs) or two(broadcasters) (for employment units with six to ten full-time employees or that are located in a smaller market) of the following menu options every year (MVPDs) or every two years(broadcast): job fairs, job banks and other general outreach efforts, scholarship programs, in-house training programs, mentoring programs, community events related to employment opportunities in the industry, industry career events/programs by educational institutions, internship programs, the listing of upper-level vacancies in a job bank or newsletter of media trade groups

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whose membership includes substantial participation of women and minorities, EEO training for management personnel; assistance for nonprofit organizations in job counseling and referrals; and other activities to disseminate information regarding industry employment opportunities, as designed by the MVPD/broadcaster.

The Second Report and Order requires MVPDs/broadcasters to retain records to demonstrate that they have recruited for all full-time permanent positions. Such recordkeeping shall include: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, and dated copies of advertisements and other documentation announcing vacancies. MVPDs/broadcasters also must show organizations which requested notification and maintain: records and proof of participation in menu options, the total number and referral of all interviewees, and dates of hire along with the name of the recruitment source which referred the hiree. MVPDs’ records must be maintained for seven years. Broadcasters’ records must be maintained until grant of the renewal application for the term during which the hiring activity occurred.

The Second Report and Order requires MVPDs/broadcasters to place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled and recruitment sources used for each vacancy during the preceding year and the address/contact person/telephone number of each recruitment source. MVPDs/broadcasters must also include in their public file: an indication of the organizations requesting notification, the recruitment source of all full-time hires during the preceding year, the total number of persons interviewed for full-time vacancies during the preceding year as well as the total number of interviewees referred by each recruitment source for such vacancies, and a brief description of the menu options undertaken during the preceding year. MVPDs must retain the material in their file for five years. Stations must retain the material in their file until action has been taken on the station’s next license renewal application. MVPDs/broadcasters that maintain a web site on the Internet are required to post the employment unit’s EEO public file report on that site at the same time that they place the report in the unit’s public file. The public file report (MVPDs) must be filed with the Commission once every five years as part of routine supplemental investigations conducted pursuant to statute. Each television broadcast station with five or more full-time employees and radio stations that have more than ten full-time employees are required to file the public file report for the past two years with the Commission as an attachment to the FCC Form 397 at the mid-term point of its license term and once every eight years on Form 396 filed with their license renewal application.

The recordkeeping and public file requirement report requirements of the Second Report and Order are substantially the same as similar requirements adopted in the 2000 Report and Order, except for aspects found to be unconstitutional in *Association*. The requirements of 76.73 are not changed from those adopted in the 2000 Report and Order.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Section 154(i) and 303 of the Communications Act of 1934, as amended, and Section 634 of the Cable Communications

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Policy

Act of 1984.

2. The data is used by a MVPD/broadcaster in the preparation of the unit's Annual EEO Program

Report (FCC Form 396-C or FCC Form 396, which is filed with the license renewal application) filed with the Commission and the annual EEO public file report. If this information were not

maintained there could be no assurance that MVPDs/broadcasters are complying with the Cable Communications Policy Act of 1984 and the EEO rules.

3. MVPDs/broadcasters may use electronic mail and facsimile to provide notice to parties requesting information about job vacancies. MVPDs/broadcasters may maintain an electronic list of recruitment sources and notify all the sources simultaneously with a single e-mail when a vacancy occurs. MVPDs/broadcasters that maintain a web site on the Internet, are required to post the unit's EEO public file report on that site at the same time that they place the report in a station's public file. The Commission is currently revising electronic filing versions of the EEO forms. When the updates are complete, broadcasters may access the forms on-line for public use.

4. No other agency imposes a similar information collection on the respondents. Each MVPD/broadcaster establishes its own equal employment opportunity program. Therefore, there are no similar data available.

5. The Commission is making an effort to minimize the burden on all respondents. MVPD employment units of six to ten (and for broadcast, five to ten) full-time employees and all MVPD units and broadcast units located in smaller markets (fewer than 250,000 in population) will be required to select only one option from the list of menu options annually, rather than the two required of MVPDs/broadcasters that have more than 10 full-time employees and are located in larger markets. MVPD employment units of fewer than six (and for broadcast, fewer than five) full-time employees are exempt from the EEO program requirements. However, all MVPDs/broadcasters are subject to the nondiscrimination requirement and must report any employment discrimination complaints filed against them. This collection of information is essential for the Commission to carry out its statutory responsibilities.

6. The frequency for responding to this collection of information varies. The EEO public file report is placed in the public inspection file annually. Records are kept based upon job vacancies.

7. For MVPDs: Records regarding recruitment measures must be retained for seven years. The public file report must be maintained five years. Section 634 of the Cable Communications Policy Act requires the Commission to conduct an investigation of a MVPD unit's EEO policy and program every five years. The Act also provides for decertification of MVPD units that fail to comply with the EEO requirements. This retention period enables the Commission and the public to review employment policies and practices and to verify the accuracy of the annual employment reports as required by Section 634 of the Cable Communications Policy Act. The Act requires the Commission to either certify compliance or decertify annually.

For Broadcasters: Records must be retained for one license term. This retention period is

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necessary to provide the FCC and the public with information to evaluate the station's performance during its entire license term.

8. The Commission published a Notice (74 FR 43127) in the *Federal Register* on August 26, 2009. No comments were received from the public as a result of the Notice.

9. No payment or gift was provided to respondents.

10. There is no need for confidentiality with this collection of information.

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

12. **Number of Respondents:** We report the following public burden.

| Section | <u>Number of Respondents</u> | <u>Total Number of Notices/ Responses</u> | <u>Respondent’s Burden Hours</u> | <u>Total Annual Burden Hours</u> | <u>Hrly. In-House Cost</u> | <u>Total Annual In-House Cost</u> |
|---------------------------------------|------------------------------|---|----------------------------------|----------------------------------|----------------------------|-----------------------------------|
| 73.2080 | 12,878 | 12,878 | 42 | 540,876 | \$48.08 | \$26,005,318 |
| Sections 76.73, 75.75, 76.79, 76.1702 | 1,300 | 1,300 | 42 | 54,600 | \$25.00 | \$2,184,000 |
| | 14,178 | 14,178 | | 595,476 | | |
| \$28,630,486 | Respondents | Responses | | Hours | | In-House Cost |

Total Number of Annual Respondents: 14,178

Total Number of Annual Responses: 14,178

Total Annual Burden Hours: 595,476 Hours

Total Annual In-House Cost: \$28,630,486

These estimates are based on Commission staff's knowledge and familiarity with the availability of the data required.

13. **Annual Cost Burden:**

- (a) Total annualized capital/startup costs: None
 - (b) Total annual costs (O&M): None
 - (c) Total annualized cost requested: None
14. There is no cost to the Federal Government.
15. There are no program changes or adjustments to this information collection.
16. The data will not be published.
17. OMB approval of the expiration of the information collection will be displayed at 47 C.F.R. Section 0.408.
18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.