

SUPPORTING STATEMENT

A. Justification:

1. FCC Form 395-B, the “Broadcast Station 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, broadcast licensees and permittees identify employees by gender and race/ethnicity in ten specified major job categories in the form which was last approved by the Office of Management and Budget (“OMB”) in 2008.

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-B existed as a form for broadcast stations. The forms were used to provide the Commission with annual employment reports for compilation in an annual Trend Report concerning employment in the broadcast industry. The 2003 version of Form 395-B conformed to the requirements in the Commission’s current EEO rules.

In its 2004 Order, the Commission stated that Form 395-B 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-B to determine what changes were needed to comply with the new OMB standards, and whether it could conform Form 395-B to those standards consistent with Section 334 of the Communications Act of 1934, as amended (the “Act”). 47 U.S.C. § 334; *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 334 of the Act. The public comment period ended on June 6, 2008, and the Commission completed its review of all the comments and reply comments. The Commission did not receive any comments opposing

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the incorporation of the EEOC's revised categories in the FCC's annual employment reports.

We concluded that the proposed changes to FCC Form 395-B were consistent with Section 334 of the Act, which allows the FCC to make non-substantive technical or clerical revisions to annual employment reports in order to reflect changes in, *inter alia*, terminology. Because these changes did not subtract any information requested on the form, but rather sought more detail on race identification and official/manager occupations, with minor changes in terminology, we concluded that they were consistent with Section 334. 47 U.S.C. § 334.

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

The Commission is requesting OMB approval for an additional three years of this information collection.

Statutory authority for this collection of information is contained in Sections 154(i) and 334 of the Communications Act of 1934, as amended.

2. The FCC staff use these data to assess broadcast industry employment trends and to report to Congress.
3. The Commission formerly created the capability of filing the Form 395-B electronically, and plans to create the same capability for 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 filing requirement. Waivers are not routinely granted, and filers must 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) but are not made public.
5. The Commission has minimized the burden on small businesses by not requiring that broadcast licensees and permittees of stations in units with fewer than five full-time employees file Form 395-B; but, 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 broadcast industry's employment trends.
7. Broadcasters are required to file FCC Form 395-B once per annum with the FCC. There is no records retention requirement for this form.

8. The Commission published a Notice in the Federal Register on May 23, 2011 (76 FR 29749) seeking comments from the public on the information collection requirements that are contained in this supporting. No comments were received from the public.

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 14,000 broadcast licensees and permittees will each file FCC Form 395-B. The average burden on a licensee or permittee 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: 14,000 broadcast licensees and permittees

Total number of annual responses: 14,000 FCC Form 395-B filings

Total annual burden hours:

14,000 FCC Form 395-B filings x 1 hour/filing = **14,000 hours**

Annual "In-house costs:" We assume that the broadcast licensees and permittees would each have a human resources employee who would fill out the FCC Form 395-B. This human resources employee is estimated to have an average salary of \$ 22.92 per hour.

Total "In house" costs: 14,000 filings x 1 hour/filing x \$ 22.92/hour = **\$320,880.**

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 4,200 Forms 395-B will be filed from licenses and permittees of stations in units with fewer than 5 full-time employees, with an average processing time of 10 minutes (0.166 hours). In addition, we estimate 9,800 Forms 395-B will be

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filed by licensees and permittees of stations in units with 5 or more full-time employees, with an average processing time of one hour. Staff at the GS-9 step 5 (\$28.04/hour) will process these applications.

4,200 applications x 0.166 hour/application x \$28.04/hour = \$	19,549.48
9,800 applications x 1 hour x \$28.40/hour	= <u>\$278,320.00</u>
Total Cost to the Government:	\$297,869.48

15. There are no adjustments or program changes to this information collection.
16. Once each year, a final report will be published by the FCC with broadcast 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. 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.