

SUPPORTING STATEMENT

A. Justification:

1. The Broadcast Mid-Term Report (FCC Form 397) is required to be filed by each broadcast television station that is part of an employment unit with five or more full-time employees and each broadcast radio station that is part of an employment unit with more than ten full-time employees. It is a data collection device used to assess broadcast compliance with EEO outreach requirements in the middle of license terms that are eight years in duration.

History:

On November 7, 2002, the Commission adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98-204, FCC 02-303, 68 FR 670 (2003), establishing new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association v. FCC* ("Association"). The new rules revised FCC Form 397. 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.

The revised FCC Form 397 adopted by the Second Report and Order is entitled "Broadcast Mid-Term Report." Thus, unlike the earlier version, it is filed only once at the mid-point of the eight-year license terms of certain television and radio licensees. As noted, the report must be filed only by broadcast television stations that are part of an employment unit with five or more full-time employees and broadcast radio stations that are part of an employment unit with more than ten full-time employees. Pursuant to the prior version of the form, licensees were required to certify whether they have complied with the Commission's EEO rules during the period prior to the date of the Statement. This certification requirement has been deleted. The only substantive information required by the revised FCC Form 397 is that television station and radio station employment units subject to mid-term review attach copies of EEO reports that are required to be placed in the stations' local public file for the last two years.

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 1998 decision in *Lutheran Church-Missouri Synod v. FCC* ("Lutheran Church"). The new rules adopted the prior version of FCC Form 397, which was entitled Broadcast Statement of Compliance, and was required to be filed by all broadcast stations with five or more full-time employees in the second, fourth, and sixth years of their eight-year license terms.

Following the D.C. Circuit's decision in *Association* in January 2001 vacating the FCC's broadcast EEO rules for recruitment, the Commission on January 31, 2001, suspended the requirement for broadcast licensees to file the FCC Form 397. 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 revised FCC Form 397.

In November 1998, the Commission released a 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.

The Commission is seeking a three year extension of this collection from the Office of Management and Budget (OMB).

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 will be used by FCC staff and interested parties to monitor a broadcaster's compliance with the Commission's EEO requirements at the midpoint of the license term.
3. The first filing of this FCC Form 397 was due on June 1, 2007, and the last filing during the current mid-term filing cycle was due by April 1, 2011. This form will be filed electronically.
4. No other agency imposes a similar information collection on the respondents. There are no similar data available.
5. This program considers the needs of small stations by applying the filing requirement only to television stations that are part of an employment unit with five or more full-time employees and radio stations that are part of an employment unit with more than ten full-time employees.
6. The frequency for this collection of information is filed only once at the mid-point of the eight-year license terms of certain television and radio licensees. Requiring the filing of the FCC Form 397 at the midpoint of the license term will encourage licensees to evaluate their EEO efforts on an ongoing basis instead of only once every eight years at renewal time.
7. This collection of information requires that records be retained for one license term. Pursuant to Section 73.2080¹ this retention period is necessary to provide the FCC and the public with information to evaluate the station's EEO program compliance during its entire license term.

¹ See OMB Control Number 3060-0349 for the recordkeeping requirement and burden associated with the requirement. The recordkeeping requirement for all EEO forms is maintained under collection 3060-0349 pursuant to Section 73.2080. The burden and requirement contained in this supporting statement, 3060-0922, deal with the filing of the actual FCC Form 397, only.

8. The Commission published a Notice (77 FR 1068) in the Federal Register on January 9, 2012 seeking comments from the public on the information collection requirements contained in this collection. No comments were received from the public 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 collection of information does not address any private matters of a sensitive nature.

12. We estimate that 9,440 station employment units (SEUs) will file FCC Form 397 mid-point during an eight year period, or an average of 1,180 SEUs annually. The average burden on respondents is 0.5 hours. This estimate is based on the staff's knowledge and familiarity with the availability of the data required.

Total Number of Annual Respondents: 1,180 Broadcast Stations

Total Number of Annual Responses: 1,180 FCC 397 Form Filings

Total Annual Burden Hours:

1,180 FCC 397 Form Filings x 0.5 hours/form = **590 hours**

Annual "In-house" Cost: We assume that the respondent would have its human resources person complete and file the Form 397 at a salary of \$25/hour.

1,180 FCC 397 Form Filings x 0.5 hours/form x \$25/hour = \$14,750

Total Annual "In-house" Cost: \$14,750

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. Cost to the Federal Government: The Commission will use an EEO Specialist at the GS-12, step 5 level (\$40.66/hour) to review the Form 397.

1,180 FCC 397 Form Filings x 1 hour/form x \$40.66/hour = \$47,978.80

Total Cost to the Federal Government = \$47,978.80

15. There are no program changes to this collection. There are adjustments of 642 to the number of respondents, 642 to the annual responses and 321 hours to the annual burden hours. The Commission re-evaluated these numbers based on current figures and in turn these increases occurred.

16. The data will not be published.

17. We request extension of the waiver not to publish the expiration date on the form. 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. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.