

**Title: Multi-Channel Video Program Distributor EEO Program Annual Report,
FCC Form 396-C**

SUPPORTING STATEMENT

A. Justification:

1. The Multi-Channel Video Program Distributors (MVPDs) EEO Program Annual Report, FCC Form 396-C, is a data collection device used to assess compliance with Equal Employment Opportunity (“EEO”) program requirements by Multi-channel Video Program Distributors such as cable television operators, multi-point distribution system operators and satellite program distributors.

All MVPDs with six or more full-time employees must file annually an EEO report in their public file detailing various facts concerning their outreach efforts during the preceding year and the results of those efforts. MVPDs will be required to file their EEO public file report for the preceding year as part of the in-depth MVPD investigation conducted once every five years. In addition, MVPD entities with 6 or more full-time employees are required to file a Supplemental Investigation Sheet (SIS) to FCC Form 396-C once every 5 years.

Lastly, MVPD units with fewer than 6 full-time employees are not required to file Form 396-C but often file the certification and identification portions of the form with the Commission only once so they can go on record reporting their small size, which exempts them from having to file the form.

History:

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 1998 decision in *Lutheran Church-Missouri Synod v. FCC* (“*Lutheran Church*”). This rulemaking proposed to initiate a new broadcasting EEO rule and to change the Commission's MVPD 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 this proceeding. This Report and Order modified the Commission's broadcast and MVPD EEO rules and policies consistent with the D.C. Circuit's decision in *Lutheran Church*. The new rules adopted two MVPD forms to comply, in a manner consistent with *Lutheran Church*, with reporting requirements set forth by Congress in Section 634 of the Communications Act of 1934, as amended, 47 U.S.C. § 554. These forms were FCC Form 395-A (for cable television operators) (3060-0095) and FCC Form 395-M (for other MVPDs) (3060-0574). The two forms requested substantially the same information.

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In *MD/DC/DE Broadcasters Association v. FCC* (“*Association*”) decided in January 2001, the D.C. Circuit found the outreach program portion of the broadcast EEO rule to be, in part, unconstitutional and vacated the broadcast EEO rule. The court did not consider the anti-discrimination portion of the EEO rule and it remained in effect. The Commission on January 31, 2001, suspended the EEO outreach requirements for broadcast licensees and MVPDs, even though the court did not consider the MVPD EEO rules. In addition to suspending the EEO outreach rules, the Commission suspended all EEO forms, including the requirement that MVPDs file the FCC Forms 395-A and 395-M.

On December 21, 2001, the Commission issued a Second Notice of Proposed Rulemaking to replace the EEO rules for both broadcasters 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) 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.

The Second Report and Order also decided to combine the previous Forms 395-A and 395-M because they requested substantially the same information. The new combined form is called Form 395-A and the old Form 395-M was eliminated. In addition, the prior forms requested information concerning two areas, *i.e.*, data concerning the MVPD’s compliance with the EEO program requirements and data concerning the MVPD’s workforce, including gender and race/ethnicity. The Commission in the Second Report and Order decided to defer ruling on issues relating to the collection of workforce data. Accordingly, it adopted the instant Form 396-C that, although a new form, is substantially the same as the portion of former Forms 395-A (3060-0095) and 395-M (3060-0574) that sought data concerning the MVPD’s compliance with the EEO program requirements. The new form omits the portion of the prior forms that sought workforce data.

Under the Commission’s current EEO rules, every MVPD with 6 or more full-time employees and all Satellite Master Antenna Television Systems serving 50 or more subscribers and having 6 or more full-time employees are required to complete the FCC Form 395-A (3060-0095) in its entirety and file it annually. However, MVPD entities with 5 or fewer full-time employees were requested to voluntarily complete and file only Sections I, II and VIII of the FCC Form 395-A and thereafter not file again unless their employment increased. The Form 395-A remains suspended, however, under the Commission’s January 31, 2001 suspension order. In addition, MVPD entities with 6 or more full-time employees were to file a Supplemental Investigation Sheet to FCC Form 396-C once every 5 years.

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 Sections 154(i), 303 and 634 of the Communications Act of 1934, as amended.

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2. FCC staff uses the data to assess MVPD compliance with the EEO program requirements.
3. On September 23, 2003, the Commission released Public Notice DA 03-2896 announcing the mandatory electronic filing of FCC Form 396-C. Mandatory electronic filing for these forms began on September 23, 2003. Paper-filed copies of FCC Form 396-C are still accepted, but only if accompanied by an appropriate request for waiver of the electronic filing requirement. Waivers are not routinely granted, and filers should plead with particularity the facts and circumstances warranting grant of a waiver.
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 endeavoring to minimize the burden on all respondents. This Report considered the needs of small MVPD systems by requiring systems with five or fewer full-time employees to file only the identification and certifications portions of the form and only once. It also considered the needs of small satellite master antenna television systems by exempting systems that serve fewer than 50 subscribers from the filing requirements. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities/businesses.
6. This information is collected on an annual basis. Annual collection is required by Section 634 of the Act. Collection of the data less frequently would impair the Commission's ability to effectively monitor EEO program compliance. The Supplemental Investigation Sheets (SISs) are collected every five years as an additional page to FCC Form 396-C.
7. Pursuant to Section 634 of the Cable Communications Policy Act of 1984 and 47 CFR Section 73.3526 of the Commission's rules, the annual employment report will be kept for 5 years and made available for public inspection.
8. The Commission published a Notice in the *Federal Register* on October 3, 2012 (77 FR 60432) seeking comments from the public on the information collection requirements contained in this collection. The Commission has not received any comments following publication of this Notice.
9. No payment or gift was provided to the respondent.
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 2,125 MVPD units will file a FCC Form 396-C at an average burden of one (1) hour. 420 cable units of these 2,125 MVPD units will complete the supplemental investigation sheet (SIS) of Form 396-C with an average burden of 2.5 hours.

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In addition, we estimate that each year an additional 75 MVPD units (the composition of this group varies year-to-year), that have fewer than 6 full-time employees, and thus are different from the 2,125 MVPDs noted above, will file a one-time certification. The average burden on these 75 MVPD units for certifications is 0.166 hours (10 mins.). The hourly burden hours mentioned above also include recordkeeping requirements for the various documents.

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

Total number of annual respondents: 2,200 respondents (2,125 MVPD units + 75 MVPD units (fewer than 6 employees))

Total number of annual responses:	2,125 FCC Form 396-C
	420 Supplemental Investigation Sheet
	<u>75 Certifications</u>
	2,620 responses

Annual Hourly Burden:

2,125 MVPD units x 1 hr/Form 396-C	=	2,125 hrs.
420 cable units x 2.5 hr/SIS	=	1,050 hrs.
75 MVPD units x 0.166 hrs/certification	=	<u>12 hrs.</u>

Total Annual Hourly Burden: 3,187 hrs.

We assume that MVPD units with 6 or more full-time employees would use a Human Resources person and/or an EEO Specialist to complete the FCC Form 396-C. This Human Resources person and/or EEO specialist would also complete the supplemental investigation sheet when it is submitted once every five years. The estimated average salary is \$40/hour. We also assume that MVPD units with fewer than 6 full-time employees would use the unit manager to complete the certifications. This estimated average salary is \$48.08/hour.

2,125 MVPD units x 1 hr/Form 396-C x \$40/hr	=	\$85,000.00
420 cable units x 2.5 hr/SIS x \$40/hr	=	\$42,000.00
75 MVPD units x 0.166 hrs/certification x \$48.08/hr	=	<u>\$ 598.60</u>
Total "In House" Costs:		\$127,598.60

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- (a) Total annualized capita/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 paraprofessional staff at the GS-12, step 5 level (\$40.66/hour) and clerical staff at the GS-5, step 5 level (\$18.50/hour) to process the FCC 396-C. The Commission will use professional staff at the GS-12, step 5 level (\$40.66/hour) to process the supplemental investigation sheets.

2,125 reports x 1.0 hour x \$40.66/hour	=	\$86,402.50
2,125 reports x 0.33 hours x \$18.50/hour	=	\$12,973.13
420 Supplemental Investigation Sheets x 4 hours x \$40.66/hour	=	\$68,308.80
75 Certifications x 1.0 hour x \$40.66/hour	=	<u>\$ 3,049.50</u>
Total Cost to the Federal Government =		\$170,733.93

15. There are no program changes or adjustments to this information collection.

16. The data will not be published.

17. We request an extension of the waiver not to publish the expiration date on Form 396-C. OMB approval of the expiration date of the information collection will be displayed at 47 CFR Section 0.408.

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

This information collection does not employ any statistical methods.