

**SUPPORTING STATEMENT****A. Justification:**

1. The Broadcast Equal Employment Opportunity (EEO) Program Report, FCC Form 396,<sup>1</sup> is a device that is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with the FCC's EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Low Power TV and International stations. Licensees in the Satellite Digital Audio Radio Service (SDARS) also must file FCC Form 396.

The recordkeeping requirements for FCC Form 396 are covered under OMB control number 3060-0214.

**Non-Substantive Revisions to the Information Collection Requirements Which Require Review and Approval from the Office of Management and Budget (OMB):**

The Commission is submitting this non-substantive change request to OMB for approval of minor non-substantive changes made to (current) FCC Form 396, Broadcast Equal Employment Opportunity Program Report. FCC Form 396 is a reporting form that is used to evaluate a broadcaster's Equal Employment Opportunity (EEO) program to ensure that satisfactory efforts are being made to comply with FCC EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, and Low Power TV stations<sup>2</sup> in the current Media Bureau database system, the "Consolidated Database System" (CDBS).

The Media Bureau is transitioning to a new on-line (electronic) licensing database system called the "Licensing Management System" (LMS) in which all Media Bureau broadcast applications and reporting forms will eventually be filed. In effect, the database transition requires a corresponding design conversion of all existing CDBS forms. The Media Bureau is currently developing electronic, LMS-compatible versions of various broadcast station application and reporting forms, such as this Form 2100, Schedule 396 – Broadcast Equal Employment Opportunity Program Report (LMS EEO Report) as part of the database transition.

In general, the new LMS EEO Report will replicate the FCC Form 396. The form sections and substance of the individual questions essentially remain the same. As with the (current) FCC Form 396, the LMS EEO Report requires applicants to certify compliance with statutory and regulatory requirements. The application is presented primarily in a "Yes/No" certification format and contains places for submitting explanatory exhibits where appropriate.

In the initial phase of the LMS roll-out, the LMS EEO Report is replacing FCC Form 396 only for the LMS EEO Reports filed in conjunction with radio station license renewal applications in LMS (e.g., AM, FM, FM translator, Low Power FM). The Commission will subsequently roll-out the use of the LMS EEO Report in other contexts (i.e., after the filing of a construction permit application or an assignment or transfer application) and in conjunction with TV broadcast station (and other services) license renewal applications at a later date.<sup>3</sup>

<sup>1</sup> Pursuant to this non-substantive change, CDBS-based FCC Form 396 will be renamed "Form 2100, Schedule 396 – Broadcast Equal Employment Opportunity Program Report" and encompassed within the new on-line (electronic) licensing database system called the Licensing Modernization System. Accordingly, the title of this Information Collection is also being changed.

<sup>2</sup> FCC Form 396 is also used by International Stations and Licensees in the Satellite Digital Audio Radio Service.

<sup>3</sup> The Commission will subsequently roll-out the use of a new LMS EEO Report for all other services at a later date. Until that time, FCC Form 396 will continue to be used for all other services required to file FCC Form 396.

The respondents, burden hours and costs of this Information Collection are not impacted by the minor non-substantive changes to the FCC Form 396, which will now be a part of the LMS EEO Report. The minor non-substantive change is highlighted below:

Change #1 – To accommodate the Media Bureau’s database transition from CDBS to LMS, FCC Form 396 will be replaced by an LMS-compatible LMS EEO Report. The certification-based questions and explanatory exhibit format remains the same. The substance, respondents, burden hours, and costs of Information Collection OMB Control No. 3060-0113 are not impacted.

**This non-substantive change request to (current) FCC Form 396, now contained in the LMS EEO Report and the new online LMS licensing database system, requires OMB review and approval. There are no new burdens or costs associated with this non-substantive change.**

#### **History:**

**SDARS:** In 1997, the Commission determined that SDARS licensees must comply with the Commission’s EEO requirements. *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754, 5791, para. 91 (1997), FCC 97-70. In 2008, the Commission clarified that SDARS licensees must comply with the Commission’s EEO broadcast rules and policies, including the same recruitment, outreach, public file, website posting, record-keeping, reporting, and self-assessment obligations required of broadcast licensees, consistent with 47 CFR 73.2080, as well as any other Commission EEO policies.<sup>4</sup> *See Applications for Consent to the Transfer of Control of Licenses, SM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, 12426, para. 174, and note 551 (2008).

On September 30, 1998, the Commission suspended the requirement that television and radio broadcast licensees submit the FCC Form 396 at the time of filing their renewal applications. This suspension remained 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 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). 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. This rulemaking proposed to initiate a new broadcasting EEO rule and to change the Commission’s multi-channel video programming distributors (MVPD) EEO rules, to emphasize recruitment outreach programs and provide that entities are not to use racial, ethnic, or gender preferences in hiring. In addition, 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.

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 MVPD EEO rules and policies consistent with the D.C. Circuit’s decision in *Lutheran Church*. The new rules reinstated the requirement that broadcast licensees file the FCC Form 396 at the time they file for renewal of license.

Following the D.C. Circuit’s January 2001 decision in *MD/DC/DE Broadcasters Association v. FCC (Association)*, which vacated the FCC’s broadcast EEO rules for recruitment, the Commission on January

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<sup>4</sup> This collection contains only the renewal reporting requirement.

31, 2001, again suspended the requirement for broadcast licensees to file the FCC Form 396. On December 21, 2001, the Commission issued a Second Notice of Proposed Rulemaking to replace the EEO rules for both broadcast and MVPDs, including a new FCC Form 396.

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 at the time they file for renewal 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 Form 396.<sup>5</sup>
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. This program considers the needs of small stations by requiring stations with fewer than five full-time employees to file only the identification, certification and employment discrimination complaints portions of the form. In addition, there is currently only one SDARS licensee which does not qualify as a small business. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities/businesses.
6. This form is required to be submitted with the renewal applications of broadcast and SDARS licensees to determine whether grant of the license renewal application is in the public interest. Infrequent submission would provide insufficient information upon which to make that determination.
7. This collection of information requires that records be retained for one license term. Pursuant to Section 73.3526 of the Commission’s rules, this retention period is necessary to provide the FCC and the public with information to evaluate the station’s performance during its entire license term.
8. The Commission last published a Notice (83 FR 27772) in the *Federal Register* on June 14, 2018, seeking comment from the public on the information collection requirements contained in this collection. No comments were received from the public.
9. No payment or gift was provided to the respondents associated with this collection.

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<sup>5</sup> On April 9, 2003, the Commission released Public Notice DA 03-1116 announcing the mandatory electronic filing of FCC Form 396. Mandatory electronic filing for this form began on April 1, 2003. A paper-filed copy of FCC Form 396 will be accepted only if accompanied by an appropriate request for waiver of the electronic filing requirement. All paper filers must plead with particularity the facts and circumstances warranting grant of a waiver. A waiver will not be routinely granted.

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 2,001 licensees will file 2,001 FCC Form 396s annually. The average burden on respondents is 1.5 hours. This estimate is based on FCC staff's knowledge and familiarity with the availability of the data required.

2,001 FCC Form 396 filings x 1.5 hours/filing = **3,002 hours**

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

2,001 FCC Form 396 filings x 1.5 hours/filing x \$48.08/hour = **\$144,312**

13. **Annual Burden Cost:** We estimate 1,000 respondents (50% of total respondents) will also have an attorney review the FCC Form 396 before the respondent make a submission to the Commission. We estimate the attorney salary at \$300/hour and estimate the review time is one (1) hour.

**Total Annual Cost Burden:** 1,001 applications x \$300 x 1 hour = **\$300,300**

14. **Cost to the Federal Government:** The Commission will use an EEO Specialist at the GS-12, step 5 level (\$44.28/hour) to process the FCC Form 396.

**Total Cost to the Government** = 2,001 applications x \$44.28 x 3 hours = **\$88,604.28**

15. There are no program changes or adjustments 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. There are no other exceptions to the Certification Statement.

#### **B. Collections of Information Employing Statistical Methods**

No statistical methods are employed.