

SUPPORTING STATEMENT

A. Justification:¹

1. Broadcast

47 C.F.R. Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations² to all qualified persons and no person shall be discriminated against in employment because of race, color, religion, national origin or sex. Section 73.2080 requires that each broadcast station employment unit³ with five 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.

Satellite Digital Audio Radio Service

In 1997, the Commission determined that Satellite Digital Audio Radio Service (“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, ¶ 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. *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, ¶ 174, and note 551 (2008).

Multichannel Video Program Distributors

47 C.F.R. Section 76.73 provides that equal opportunity in employment shall be afforded by all multichannel video program distributors (“MVPD”)⁴ 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 76.75⁵ requires that each MVPD employment unit employing six or more full-time employees 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 employing six or more full-time employees maintain, for public inspection, a file containing copies of all annual employment reports and related documents.

¹ This collection contains recordkeeping and annual reporting requirements. *See* 3060-1033, 3060-0113 and 3060-0922 for additional EEO reporting requirements related to these rules as well as 3060-0214 for EEO recordkeeping requirements as it relates to public inspection files.

² All full-power radio and television stations are subject to the rule as well Class A and international television stations. 73.2080 also applies to Low Power television stations (*see* 47 CFR 74.780).

³ *See* 47 CFR 73.2080 (e)(2) for “station employment unit” definition.

⁴ *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.”

⁵ *See* 47 CFR 76.77 for more detailed information on the requirements subject to Sections 76.75 and 76.1702.

Section 76.1702 requires that every MVPD employment unit employing six or more full-time employees place certain information concerning its EEO program in its online public inspection file.

History:

On January 20, 2000, the Commission adopted a Report and 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*, (Report and Order). The Report and Order modified the Commission’s broadcast and MVPD EEO rules and policies in a manner the Commission believed was consistent with the D.C. Circuit’s decision in *Lutheran Church – Missouri Synod v. FCC (“Lutheran Church”)*, which found that FCC processing guidelines using race and gender applicant data to assess EEO compliance pressured broadcasters to engage in race-conscious hiring in violation of the equal protection component of the Due Process Clause of the Fifth Amendment of the Constitution. The Commission crafted new EEO rules in the Report and Order, requiring that licensees undertake an outreach program to foster equal employment opportunities in the broadcasting industry, providing two different recruitment programs—Options A & B—from which licensees could choose.

In *MD/DC/DE Broadcasters Association v. FCC (“Association”)*, several state broadcaster associations challenged the revised EEO outreach rules. Decided in January 2001, the D.C. Circuit found one recruitment program option (Option B) in the new broadcast EEO rules unconstitutional and, because those rules could not be severed, vacated them in their entirety. As a result, the Commission on January 31, 2001, suspended the EEO recruitment requirements for broadcast licensees and MVPDs. Although the recruitment requirements applicable to MVPDs were not addressed by *Association*, they were substantially the same as the requirements applicable to broadcast licensees that the Court found to be unconstitutional.

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 were designed to ensure equal employment opportunity in the broadcast and MVPD industries through outreach to the community and prevention of employment discrimination.

Specifically, the Second Report and Order adopted rules requiring all employment units adhere to general anti-discrimination provisions and, for MVPD employment units with six or more full-time employees and broadcast station employment units with five or more full-time employees, establish an EEO program incorporating recruitment, recordkeeping and reporting requirements. The recruitment obligations require employment units widely disseminate information concerning full-time 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. Based on the size of an employment unit’s staff, they must also engage in a certain number of general outreach activities to promote employment in their respective industries, selecting from a menu of activities such as job fairs, scholarship programs, in-house training programs, mentoring programs, internship programs as well as EEO training for management personnel.

The Second Report and Order requires employment units 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 and the recruitment sources used to advertise those vacancies, the address, contact person and telephone number of each recruitment source as well as dated copies of advertisements and other documentation announcing vacancies. Employment units also must show organizations which requested notification and maintain records and proof of participation in general outreach activities, the total number and referral source of all interviewees as well as the name of the recruitment source which referred each full-time hire and the recruitment source referring those hires. MVPDs must retain these records for seven years and broadcasters must retain them until grant of the renewal application for the eight-year license term during which the hiring activity occurred.

The Second Report and Order also requires employment units create an annual EEO public file report, which is to be posted to both the online public inspection file at the FCC’s website and to an employment unit’s website, if one is maintained.⁶ The public file report shall include listings of full-time vacancies filled and recruitment sources used to announce each vacancy during the preceding year as well as the address, contact person and telephone number of each recruitment source, 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, the total number of interviewees referred by each recruitment source for such vacancies as well as a brief description of the general outreach activities undertaken during the preceding year. MVPDs must retain the EEO public file report in their online public inspection file for five years while broadcasters must retain it for the duration of their eight-year license term. Only the most current EEO public file report must appear on the employment unit’s website.

For MVPDs, the public file report must also be filed with the Commission once every five years on Form 2100, Schedule 396-C as part of routine supplemental investigations conducted pursuant to statute. Each television broadcast station employment unit with five or more full-time employees and radio station employment unit that has more than ten full-time employees is also subject to a “mid-term review” of two years’ worth of public file reports at the midpoint of their license term. Two years’ worth of public file reports are also reviewed by the Commission for broadcast station employment units with five or more full-time employees once every eight years, which are submitted to the FCC via Form 2100, Schedule 396 in conjunction with license renewal applications. Broadcast and MVPD employment units are also subject to audits of their EEO programs wherein recent annual EEO public file reports and the underlying records must be submitted to the Commission for review.

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

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

⁶ Low power television stations are not required to create annual EEO public file reports.

Title: Equal Employment Opportunity (“EEO”) Policy, 47 CFR Sections 73.2080, 76.73, 76.75, 76.79 and 76.1702

Communications Act of 1934, as amended, and Section 634 of the Cable Communications Policy Act of 1984.

2. MVPD operators as well as broadcast and SDARS licensees use the data in the preparation of the annual EEO public file report as well as the Annual EEO Program Report (FCC Form 396-C, for MVPDs) or FCC Form 396 (which broadcast and SDARS licensees submit in conjunction with their license renewal application). If this information were not maintained, there could be no assurance that MVPD operators as well as broadcast and SDARS licensees are complying with the Cable Communications Policy Act of 1984 and the EEO rules.

3. MVPD operators as well as broadcast and SDARS licensees may use electronic mail and facsimile to provide notice to parties requesting information about job vacancies. They may maintain an electronic list of recruitment sources and notify all the sources simultaneously with a single e-mail when a vacancy occurs. The annual EEO public file report must be posted to the employment unit’s online public inspection file at the FCC’s website. If an employment unit maintains a web site on the Internet, it is required to post the annual EEO public file report on that site (or link to it as posted to its online public inspection file) at the same time that the report is placed in the online public inspection file.

4. No other agency imposes a similar information collection on the respondents. Each MVPD/broadcaster/SDARS licensee 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) are required to select only one (MVPDs) or two (broadcasters) general outreach activities from the list of menu options, rather than the two required of MVPDs annually that have more than 10 full-time employees and are located in larger markets, or the four required of broadcasters every two years that have more than 10 full-time employees and are 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 MVPD operators as well as broadcast and SDARS licensees 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 filled and general outreach initiative activities performed.

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

Title: Equal Employment Opportunity (“EEO”) Policy, 47 CFR Sections 73.2080, 76.73, 76.75, 76.79 and 76.1702

Act requires the Commission to either certify compliance or decertify annually.

For broadcast and SDARS licensees: Records must be retained for one license term. This retention period is necessary to provide the FCC and the public with information to evaluate the licensee’s performance during its entire license term.

8. The Commission published a 60-Day Notice in the *Federal Register* on January 14, 2022, (87 FR 2433) seeking comments on the information collection requirements contained in this collection. No comments were received from the public.

9. No payment or gift was provided to respondents associated with this collection.

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.

	<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>
Section 73.2080	19,556	19,556	42	821,352	\$48.08	\$39,490,604
(SDARS) ⁷	1	1	42	42	\$48.08	\$2,020
Sections 76.73, 75.75, 76.79, 76.1702	1,100	1,100	42	46,200	\$25.00	\$1,155,000
	20,657 Respondents	20,657 Responses		867,594 Hours		\$40,647,624 In-House Cost

Total Number of Annual Respondents: 20,657

Total Number of Annual Responses: 20,657⁸

Total Annual Burden Hours: 867,594 Hours

⁷ This respondent makes up the majority of its universe of respondents. Therefore, OMB approval is needed for this respondent.

⁸ There are various PRA related requirements that are involved in the EEO related responses/various documents that are covered under this collection.

Total Annual In-House Cost: \$40,647,624

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. Based on current data, the overall number of respondents and responses have increased by +6,478 causing an increase to the annual burden hours by + 272,076 hours in 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.