

## Multi-Channel Video Program Distributor EEO Program Annual Report, FCC Form 396-C

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

The Federal Communications Commission (“the Commission” or “the FCC”) seeks the Office of Management and Budget (OMB) approval for an extension of a currently approved collection, Control Number 3060-1033.

1. As required by Section 634 of the Communications Act of 1934, as amended, 47 U.S.C. § 554, and 47 CFR Section 76.77, 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 MVPDs such as cable television operators, multi-point distribution system operators and satellite program distributors. Per 47 CFR Section 76.71, MVPDs such as cable entities are organized into employment units for reporting purposes. Each cable entity may be considered a separate employment unit and, where two or more cable entities are under common ownership or control and are interrelated in their local management, operation, and utilization of employees, they constitute a single employment unit. Each unit is identified by its own employment unit identification number (EUID).

Further, MVPD employment units with 6 or more full-time employees are required to file a Supplemental Investigation Sheet (SIS) with their FCC Form 396-C once every 5 years. With the SIS, all MVPD employment units with six or more full-time employees must attach their annual EEO Public File Report, which details various facts concerning their outreach efforts during the preceding year and the results of those efforts.

MVPD employment units with fewer than 6 full-time employees are not required to file Form 396-C, but may voluntarily file the certification and identification portions of the form with the Commission to report their small size.

**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

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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.

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 combined 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 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. Form 396-C 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.

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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.

**Modifications:**

No changes to the rules were made. However, by a public notice released on October 4, 2022, the Commission announced that MVPD filings were required to be migrated to a new filing database known as the Cable Operations and Licensing System (COALS), which replaced the former Consolidated Database System (CDBS) and now serves as the Form 396-C filing portal. As a result, the Commission submits these edits in order to update certain outdated language in the form as well as to conform the format and language to the new COALS filing platform.

The following edits were made to Form 396-C:

1. Respondents now access the Form 396-C via the “EEO Filing Portal” in the COALS filing platform. The EEO Filing Portal provides introductory text referencing the governing 396-C regulation, relevant deadline and threshold EUID size. The EEO Filing Portal also displays as-filed Forms 396-C for each MVPD, and provides links to: 1) a request page for any MVPD that needs an EUID number for a new employment unit; 2) a Frequently Asked Questions (FAQ) page that presents some guidance on how to complete the electronic Form 396-C; and, 3) an EUID page that allows MVPDs to manage their EUID identifying information, including cable system information (PSIDs, CUIDs) as well contact information. This EUID page mirrors the “Pre-Form” section of the Form 396-C that respondents completed prior to filing a new form in the former CDBS filing platform.
2. “Read INSTRUCTIONS before filling out this form” at the top of the form was eliminated. The instructions now appear in information icons throughout the form which display once respondents hover over a question mark that appears adjacent to certain questions. The instructions will remain present on the paper version of the form, which will be available to filers for reference.
3. The NOTICE requesting filers call to obtain forms, return forms in duplicate, and other outdated procedures has been removed.
4. The instructions for Section 1 and 3 are modified to clarify the form is filed for the particular reporting period, rather than for a particular payroll period.
5. “\* Indicates required” was added to the top of the form, and asterisks were added next each question throughout the form that respondents are required to answer.
6. A “General Information” section has been created, recording the FCC registration number, filing year, and bringing forward employment unit ID from the section titled Identifying information. This information automatically pre-fills from the EUID page referenced in #1 above.

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7. To conform the format used throughout the COALS filing platform, alphabetical letters identifying separate paragraphs were eliminated and replaced with roman numerals.
8. Replacing a similar question in the aforementioned CDBS “Pre-Form,” Section I requests: “Has the identifying information associated with this EUID changed?”
9. Section I replaced “selected payroll period” with “selected reporting period” under Category of Respondent to update outdated language.
10. Per the change referenced in #9, Section I replaced Paragraphs E (Pay Period Covered by this Report) and F (Attachments) with: “12-Month Period Covered by Unit’s EEO Program Annual Report & EEO Public File Report. Designate the 12-month compliance period (beginning no earlier than July 1). Both the EEO Public File Report and this EEO Program Annual Report must be uploaded to the unit’s public file(s) by Sept. 30 each year.” This report is now automatically uploaded to the unit’s public file.
11. Section I requested start and end dates to the reporting period referenced in #9-10 above.
12. Replacing a graph format, Section II – Community Information now presents PSID numbers and numbers designating System Communities Comprising Local Employment Unit in a list format, which automatically pre-fills from the EUID page referenced in #1 above.
13. Section II replaced the accompanying instructions with this text regarding cable system information: “The Physical Systems and Communities associated with selected EUID are displayed here. To make changes, select one or more PSID to populate PSID and associated CUIDs or select the ‘x’ to remove the same. PSIDs and CUIDs submitted on this form will overwrite those stored with this EUID. Note, adding a PSID will cause ALL CUIDs associated with ALL PSIDs in the list to be populated. Please populate all intended PSIDs before removing any CUIDs.
14. Section III – EEO Policy and Program Requirements eliminated the paragraph numbers and worded all questions in the past tense.
15. Section III replaced the instructions with: “For the 12 month period designated in Section I, select YES or NO to each of the following questions:”. As a result, Section III, Question 1 deleted the introductory phrase “during the twelve-month period prior to filing this form” from the question “Have you complied with the outreach provisions of the FCC’s MVPD Equal Employment Opportunity Rule, 47 C.F.R. Section 76.75(b)?”
16. The instructions to Section IV – Additional Information replaced “Exhibit C” with “Exhibit 3.”
17. Section IV replaced the Exhibit No. 3 box with an upload button.
18. Section V -- FCC Form 396-C – Supplemental Investigation Sheet (SIS) replaced Section V – Certification.
19. SIS, Part I eliminated nine boxes of job titles and replaced them with only the selected job title(s) for which the SIS respondents must provide a job description (the 396-C requires SIS respondents to provide job descriptions for up to two of nine available job categories, and each year those job titles change). This update leverages a new electronic feature of the COALS filing platform which presents only the

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- required job titles, and eliminates the need for the agency to announce the required job titles via Public Notice each year (though the agency continues to issue the Public Notice). The accompanying instructions were also changed.
20. For each SIS, individual exhibit numbers have been hidden and replaced with an upload button, which will be stored in under the appropriate exhibit number in the database.
  21. The instructions to SIS, Part II – Inquiries Concerning EEO Program and Practices eliminated “Submit responses to the inquiries indicated by a ‘check’.”
  22. The instructions to SIS, Part III – EEO Public File Report replaced “cable entities” with “MVPD units.”
  23. SIS, Part III eliminated boxes requesting employment unit ID, MSO name, and OPR name.
  24. Section V – Certification was changed to Section VI – Certification.
  25. To conform the format used throughout the COALS filing platform, Section VI added a new heading of “Certifier Information,” a request for “certifying official email,” and the word “certifying” before each line.
  26. Section VI added a link to the Privacy Act Statement.
  27. Section VI added three buttons to facilitate electronic submission: Exit without Saving, Save as draft, and Submit.
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 exempting systems with five or fewer full-time employees to file the form. 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 section to FCC Form 396-C.

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7. Pursuant to Section 634 of the Cable Communications Policy Act of 1984 and 47 CFR Section 76.1702 of the Commission’s rules, the annual employment report will be made available for public inspection in the Commission’s online public inspection file.

8. The Commission published a Notice in the *Federal Register* on February 27, 2024 (89 FR 14490) 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 564 MVPD units will file an FCC Form 396-C at an average burden of one (1) hour. 160 cable units of these 564 MVPD units will complete the supplemental investigation sheet (SIS) of Form 396-C with an average burden of 2.5 hours.

In addition, we estimate that each year some 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 564 MVPDs noted above, may voluntarily file a one-time certification (MVPDs that have fewer than 6 full-time employees are not required to file a 396-C). The average burden on these MVPD units for certifications is 0.166 hour (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: 603 respondents** (564 MVPD units + 39 MVPD units which have fewer than 6 full-time employees)

**Total number of annual responses:** 564 FCC Form 396-C  
 160 Supplemental Investigation Sheet  
39 Certification  
**763 responses**

**Annual Hourly Burden:**  
 564 MVPD units x 1 hour/Form 396-C = 564 hours  
 160 cable units x 2.5 hour/SIS = 400 hours  
 39 MVPD units x 0.166 hrs/certification = 6 hours (rounded)  
**Total Annual Hourly Burden: 970 hours**

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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. Per the United States Bureau of Labor Statistics, the estimated average salary is \$45.81/hour for Management Analysts (code 13-1111). We also assume that MVPD units with fewer than 6 full-time employees would use the unit manager to complete the certifications. Per the United States Bureau of Labor Statistics, the estimated average salary is \$51.62/hour for Management Occupations (code 11-0000).

564 MVPD units x 1 hour/Form 396-C x \$45.81/hour	=	\$25,836.84
160 cable units x 2.5 hours/SIS x \$45.81/hour	=	\$18,324.00
39 MVPD units x 0.166 hour/certification x \$51.62/hour	=	<u>\$ 334.19</u>
<b>Total "In House" Costs:</b>		<b>\$44,495.03</b>

**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 paraprofessional staff at the GS-12, step 5 level (\$53.87/hour) to process the FCC 396-C and the supplemental investigation sheets.

564 reports x 1.33 hours x \$53.87/hour	=	\$40,408.96
160 supplemental investigation sheets x 4 hours x \$53.87/hour	=	\$34,476.80
39 certifications x 0.166 hour x \$53.87/hour	=	<u>\$ 348.75</u>

**Total Estimated Cost to the Federal Government = \$75,234.51**

15. Although there were some minor modifications to the form, there are no program changes to this information collection. However, adjustments were made to the number of respondents from 811 to 603 (-208), the total annual responses from 952 to 763 (-189) and therefore, lowering the annual burden hours from 1,077 to 970 (-107). The decrease can be attributed to changes in the MVPD industry.

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 of the information collection will be displayed on OMB's website.

18. There are no exceptions to the Certification Statement.

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

This information collection does not employ any statistical methods.