

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	<b>FEDERAL COMMUNICATIONS COMMISSION</b>
At the upstream side of Lamoille Valley Railroad ..... Approximately 625 feet upstream of a private drive (approximately 225 feet downstream of upstream corporate limits) ..... <b>Maps available for inspection</b> at the Wolcott Town Hall, 4186 Vermont Route 15, Wolcott, Vermont.	*677     *927	<i>Mississippi River:</i> Approximately 4 miles downstream of U.S. Highway 18 .. Approximately 0.7 mile downstream of U.S. Highway 18 .. <b>Maps available for inspection</b> at the Crawford County Zoning Department, 111 West Dunn Street, Prairie Du Chien, Wisconsin.	*628     *629	<b>47 CFR PARTS 0, 73 AND 76</b> <b>[MM Docket Nos. 98-204 and 96-16, FCC 00-20]</b>  <b>Revision of Broadcast and Cable EEO Rules and Policies</b>  <b>AGENCY:</b> Federal Communications Commission. <b>ACTION:</b> Final rule.
<b>WEST VIRGINIA</b>				
<b>Logan County (Unincorporated Areas) (FEMA Docket No. 7299)</b>				
<i>Mud Fork:</i>				
At the confluence with Copperas Mine Fork ..... Approximately 1,960 feet upstream from CSX Railroad ...	*676  *676	Upstream side of County Route Y .....	*839  *879	<b>SUMMARY:</b> This document adopts new broadcast Equal Employment Opportunity (EEO) rules and policies and amends its cable EEO rules and policies. The document retains the existing ban on discrimination and promulgates recruitment-oriented outreach rules. The EEO rules make clear that broadcasting and cable entities are not required to employ a staff that reflects the racial or other composition of the community or to use racial preferences in hiring. The intended effect is to adopt effective EEO rules for the broadcasting and cable industries.  <b>DATES:</b> Effective April 17, 2000, except for the amendments to §§ 73.2080; 73.3526; 73.3527; 76.75; 76.77; 76.79; 76.1702; and 76.1802, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the <b>Federal Register</b> announcing the effective date of those amendments.
<i>Copperas Mine Fork:</i> At the confluence with Island Creek ..... Approximately 1,070 feet downstream from County Route 9 and County Route 4	*676  *676	<i>De Neveu Creek:</i> Approximately 1,380 feet downstream of U.S. Highway 45 ..... Approximately 1,900 feet upstream of confluence of Unnamed Tributary to De Neveu Creek .....	*810  *826	
<i>Island Creek:</i> Approximately 140 feet upstream of confluence of Guyandotte River ..... Approximately 1,425 feet upstream of confluence of Cow Creek .....	*661  *850	<i>Unnamed Tributary to Unnamed Tributary to De Neveu Creek:</i> At confluence with Unnamed Tributary to De Neveu Creek At outlet of Lake De Neveu ....	*826 *824	
<b>Maps available for inspection</b> at the 911 EOC Building, Flood Zoning Office, 28½ Main Avenue, Logan, West Virginia.				
<b>Morgan County (Unincorporated Areas) (FEMA Docket No. 7299)</b>				
<i>Cacapon River:</i>				
Approximately 200 feet upstream of the confluence with the Potomac River ..... Approximately 1,405 feet upstream of the most upstream crossing of State Route 9 ...	*454  *584	<i>Lake De Neveu:</i> Entire shoreline within county <i>Kettle Moraine Lake:</i> Entire shoreline within county <i>Unnamed Tributary to De Neveu Creek:</i> At confluence with De Neveu Creek ..... Just upstream of County Route UU .....	*864  *1,025  *822  *957	
<b>Maps available for inspection</b> at the Morgan County Courthouse, 202 Fairfax Street, Berkeley Springs, West Virginia.				
<b>WISCONSIN</b>				
<b>Crawford County (Unincorporated Areas) (FEMA Docket No. 7295)</b>				
<i>Wisconsin River:</i>				
At confluence with the Mississippi River ..... Approximately 1.88 miles upstream of confluence with Richland Creek .....	*628  *662	(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")  Dated: January 31, 2000. <b>Michael J. Armstrong,</b> <i>Associate Director for Mitigation.</i> [FR Doc. 00-3521 Filed 2-14-00; 8:45 am] <b>BILLING CODE 6718-04-P</b>	<b>Synopsis of Report and Order</b> As proposed in the Notice of Proposed Rule Making (NPRM) in this	

proceeding, 63 FR 66104, December 2, 1998, the Report and Order adopts new broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in *Lutheran Church—Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998) (*Lutheran Church*), rehearing denied, September 15, 1998. In *Lutheran Church*, the D.C. Circuit held that the Commission's broadcast EEO program requirements were unconstitutional because the court concluded that they pressured stations to maintain a workforce reflecting the racial composition of their communities. The court also remanded the case back to the Commission to determine whether it had the authority to continue its ban on employment discrimination.

As described in the Report and Order, the Commission adopts new broadcast and cable EEO rules that require non-discrimination and outreach in employment. None of the rules creates an incentive to hire on the basis of race or gender. In fact, the proposed rules remove all references to any comparison to minority and female labor force statistics, including sections concerning evaluation of employment profile and job turnover.

In order to ensure fundamental fairness, the EEO rules include broad and inclusive outreach requirements designed to ensure that all qualified applicants have the opportunity to compete for jobs in the broadcast and cable industries on an equal basis. Accordingly, the rules require that a broadcaster or cable entity recruit for its vacancies using recruitment sources sufficient in its judgment to reach all segments of its community. However, to enhance the success of their outreach, broadcasters and cable entities are also required to implement two supplemental recruitment measures: (1) notification of job vacancies to any recruitment organization that requests such notification; and (2) outreach efforts such as job fairs, internship programs, training programs, scholarship programs, mentoring programs, and participation in educational and community activities relating to broadcast employment. Broadcasters and cable entities may choose not to engage in the supplemental recruitment measures as long as they maintain records on the recruitment sources, race, ethnicity and gender of applicants in order to monitor the success of their outreach efforts. However, entities choosing this alternative recruitment option remain subject to the core requirement that information about job vacancies be widely disseminated.

In order to provide guidance to entities, the rules also clearly describe what records of EEO efforts must be kept by broadcasters and cable entities, including the records to be placed in the public file. The Report and Order requires broadcasters and cable entities to file annually an EEO report in their public file, detailing their outreach efforts during the preceding year and the results of those efforts. Broadcasters must also file a Statement of Compliance every second, fourth and sixth year of the license term certifying compliance with the EEO Rule. Television stations and every radio station that is part of an employment unit with more than ten full-time employees will be required to file a copy of their EEO public file report midway through the license term. Stations will also be required to file their EEO public file report with their renewal application and cable entities will be required to file their EEO public report as part of the supplemental information required by statute to be filed every five years.

Along with reinstating other broadcast EEO Forms, the Report and Order reinstates the preexisting EEO requirement that broadcast station employment units with five or more full-time employees file an Annual Employment Report, but with the understanding that the Report's data will only be used to monitor industry employment trends and furnish reports to Congress.

The Report and Order retains the Commission's prohibition against employment discrimination and details the Commission's statutory authority to promulgate an employment non-discrimination rule as well as EEO program requirements. Specifically, the Report and Order outlines the Commission's conclusion that Congress has ratified the Commission's authority to adopt broadcast EEO rules; that equal employment of minorities and women furthers the Commission's public interest goal of diversity of programming; and that the statutory goal of fostering minority and female ownership in the provision of commercial spectrum-based services, as directed by section 309(j) of the Communications Act, is furthered by EEO requirements. With respect to broadcasters, the Report and Order clarifies the anti-discrimination prohibition so that religious radio and television broadcasters may establish religious belief or affiliation as a qualification for all station employees.

The Report and Order notes the Commission's intent to limit undue administrative burdens on broadcasters

and cable entities generally, and particularly on those licensees of smaller stations and similarly situated cable entities, consistent with maintaining an effective EEO program. Specifically, the Report and Order exempts broadcast station employment units with fewer than five full-time employees from the FCC's specific EEO requirements, as well as providing additional relief for employment units that have between five and ten full-time employees. Cable employment units with six to ten full-time employees are also provided some relief from the Report and Order's specific EEO program requirements, and cable employment units with fewer than six full-time employees are not required to demonstrate compliance with the EEO program requirements.

The Report and Order also terminates the Commission's EEO streamlining proceeding in MM Docket No. 96-16, 63 FR 11376, March 9, 1998.

#### **Paperwork Reduction Act of 1995 Analysis**

The actions contained in this Report and Order have been duly analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose a new reporting requirement or burden on the public. Implementation of this new reporting requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act. The new paperwork requirement contained in the Report and Order is effective April 17, 2000, upon OMB approval.

#### **Final Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rule Making (NPRM) in this proceeding. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the NPRM, including comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996). (Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)).

#### *A. Need for and Objectives of the Rules*

The D.C. Circuit court in *Lutheran Church* held that the EEO program requirements of the Commission's EEO Rule for broadcasters were unconstitutional and remanded to the

Commission to determine whether we have authority to enforce an employment nondiscrimination requirement. The Report and Order adopts new EEO rules and policies for broadcasters and cable entities, including multichannel video programming distributors (MVPDs), consistent with the *Lutheran Church* decision. The new EEO rules retain the FCC's anti-discrimination provisions and prohibit broadcasters and cable entities from engaging in discriminatory practices. In addition, the rules require broadcasters and cable entities to establish and maintain an EEO program designed to provide equal opportunity for everyone, including minorities and women. The new rules emphasize inclusive recruitment outreach and prohibit entities from preferring members of any racial, national origin, or gender group in hiring. We note that SBA has approved our approach for small stations and small cable entities in this Report and Order. Letter from Aida Alvarez, Administrator, U.S. Small Business Administration, to Roy Stewart, Chief, Mass Media Bureau, Federal Communications Commission (January 19, 2000).

*B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA*

Three comments were filed specifically in response to the IRFA. See Comments of Small Cable Business Association (SCBA), U.S. Small Business Administration (SBA), and Congressmen Michael G. Oxley and Ralph M. Hall (Oxley/Hall). SCBA states that EEO recruiting, recordkeeping and reporting requirements substantially impact small cable systems since they have limited financial and administrative resources. It urges the Commission to consider its comments regarding small cable entities filed in response to the NPRM. For the purpose of providing EEO relief to small cable operators, SCBA believes that a small cable company should be defined by its number of employees, and not its amount of gross revenues, as currently defined by the SBA. It states that a cable system's gross revenues or number of subscribers does not correspond well to EEO rules. We note that the Report and Order considers SCBA's concerns and provides relief to small cable employment units on the basis of unit staff size, and by streamlining reporting and recordkeeping requirements for all cable entities.

The SBA urges the FCC to look at the economic impact of its proposed EEO requirements on small stations consistent with the RFA, and if

necessary, to maintain its EEO exemptions for small stations defined as those with fewer than five employees. We note that this FRFA conforms to the RFA, and that the Report and Order continues to exempt broadcast station employment units with fewer than five full-time employees from the FCC's specific EEO requirements, as well as providing additional relief for employment units that have between five and ten full-time employees.

*C. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply*

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 5 U.S.C. 604(a)(3). Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 4 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register.**" (While we stated in the NPRM that we tentatively believe that the SBA's definition of "small business" in this context greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FRFA, we include the SBA's definition in determining the number of small businesses to which the rules would apply.) The rules we adopt in this Report and Order will affect broadcast stations and cable entities, including MVPDs.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following

estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. Last, with respect to applying SBA size standards revenue caps, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and those data may not correspond completely with the SBA definition of annual receipts.

Television and Radio Stations: The rules in this Report and Order will apply to television and radio stations. The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business. 13 CFR 121.201, Standard Industrial Code (SIC) 4833. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995). Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. *Id.*

There were 1,509 full-service television stations operating in the nation in 1992. FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. That number has remained fairly constant as indicated by the approximately 1,616 operating full-service television broadcasting stations in the nation as of September 1999. FCC News Release, Broadcast Station Totals as of September 30, 1999 (released November 22, 1999). For 1992, the

number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments. (Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, note 53, III. The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) Thus, the rules will affect approximately 1,616 television stations; approximately 77%, or 1,244 of those stations are considered small businesses. We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1999 total of 1,616 TV stations to arrive at stations categorized as small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

The rule changes would also affect radio stations. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business. 13 CFR 121.201, SIC 4832. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. Included in this industry are commercial, religious, educational, and other radio stations. *Id.* Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. *Id.* The 1992 Census indicates that 96 percent (5,881 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992. (The Census Bureau counts multiple radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.) Official Commission records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release No. 31327, Jan. 13, 1993. As of September 1999, official Commission records indicate that 12,615 radio stations were operating. FCC News Release, Broadcast Station Totals as of September 30, 1999 (released November 22, 1999).

Small cable entities, including MVPDs: The rule changes would also affect small cable entities, including MVPDs. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201, SIC 4841. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), satellite master antenna systems (SMATV), and subscription television services. According to the Bureau of the Census, there were 1,423 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We discuss these services to provide a more succinct estimate of small entities.

Cable Systems: The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 6393 (1995). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds \$250,000,000." 47 U.S.C. 543(m)(2). The

Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$520 million in the aggregate. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 617,000 subscribers or fewer totals 1,450. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

MDS: The Commission has defined "small entity" for purposes of the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995). The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue

in excess of \$11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may be subject to our EEO rules.

DBS: As of November 1999, there are four DBS licensees, one of which is not in operation. Providing DBS service requires a great investment of capital to build, launch, and operate satellite systems. Typically, small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with launching satellites. Most recent industry statistics suggest that the revenue attributed to DBS subscribers for EchoStar was \$682.8 million for the year of 1998 and \$1.55 billion for DIRECTV. We do not have similar revenue information for the third operating licensee, Dominion Video Satellite, Inc. However, we do not believe that any DBS licensees could be categorized as small businesses.

Estimates Based on Staff Size: As described, for purposes of providing relief from our EEO rules for entities with fewer staff resources, the Report and Order classifies such entities by number of employees. We estimate that, in 1997, the total number of full-service broadcast stations with fewer than five employees was 5,186, of which 340 were television stations. We base this estimate on a compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC. Similarly, we estimate that, in 1997, 2,750 cable system or SMATV employment units employed fewer than six full-time employees. Also, in 1997, 725 MVPD employment units employed fewer than six full-time employees.

We also estimate that, in 1997, the total number of full-service broadcast stations with five to ten employees was 2,145, of which 200 were television stations. We base this estimate on a compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC. Similarly, we estimate that, in 1997, 322 cable system or SMATV employment units employed six to ten full-time employees. Also, in 1997, 65 MVPD employment units employed six to ten full-time employees.

#### *D. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The Report and Order adopts changes to existing EEO recordkeeping and reporting requirements. It also specifies which EEO materials are required to be kept in the public inspection file. All broadcasters and cable entities must adhere to the EEO rules' general anti-discrimination provisions. Broadcasters with station employment units of five to ten full-time employees are provided some relief from EEO requirements, and station employment units of fewer than five full-time employees are exempt altogether, with the exception that all broadcasters are subject to the nondiscrimination requirement and must report any employment discrimination complaints filed against them. Cable employment units, including MVPD employment units, employing six to ten full-time employees are also provided some relief from the Report and Order's specific EEO program requirements, and cable employment units with fewer than six full-time employees are not required to demonstrate compliance with the EEO program requirements. Generally, no special skills will be necessary to comply with the requirements.

Specifically, the Report and Order requires broadcasters and cable entities to widely disseminate information concerning job vacancies. Additionally, broadcasters and cable entities must undertake two supplemental recruitment measures described herein. The first supplemental recruitment measure requires broadcasters and cable entities to 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. Depending on the size of a station's staff, the second supplemental recruitment measure requires broadcasters to engage in at least four (for station employment units with more than ten full-time employees) or two (for station employment units with five to ten full-time employees) of the following menu options every two years: job fairs, job banks and other general outreach efforts, scholarship programs, in-house training programs, mentoring programs, community events related to employment opportunities in the industry, industry career events/programs by educational institutions, internship programs, the listing of upper-level vacancies in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities,

and other activities to disseminate information regarding industry employment opportunities, as designed by the broadcaster. Cable employment units with more than ten full-time employees must engage in at least two options from the supplemental recruitment measures menu every year and cable employment units with six to ten full-time employees must engage in at least one option every year. Broadcasters and cable entities that desire more flexibility in their recruitment procedures may dispense with the supplemental recruitment measures as long as they are able to demonstrate success in achieving broad outreach to all segments of the community, as based upon an analysis of the recruitment source, race, national origin, and gender of the applicants attracted by their outreach efforts.

In addition, the Report and Order requires broadcasters and cable entities to retain records to demonstrate that they have recruited for all full-time permanent positions. To alleviate recordkeeping burdens, records may be kept in an electronic format. Such recordkeeping shall include: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, and dated copies of advertisements and other documentation announcing vacancies. Broadcasters and cable entities engaging in supplemental recruitment measures must show organizations which requested notification and must also maintain: records and proof of participation in menu options, the total number and referral source of all interviewees, and dates of hire along with the name of the recruitment source which referred the hiree. These revised recordkeeping requirements significantly reduce the cost of compliance because broadcasters and cable entities that use this approach no longer have to keep extensive records on the race and gender of all applicants and interviewees, as was the case under our former EEO rules. For those broadcasters and cable entities that opt out of the supplemental recruitment measures, we will require that they maintain records of the recruitment source, race, national origin, and gender of qualified applicants in order to demonstrate that they widely disseminated information about job openings. Some broadcasters and cable entities, especially the ones with fewer employees, may have only a few vacancies generally available so that this option may be less burdensome to them. Broadcasters' records must be

maintained until grant of the renewal application for the term during which the hiring activity occurred. Cable entities must retain their records for a minimum of seven years. To determine compliance with the EEO rules, the Commission may conduct inquiries requesting the records of a broadcaster or cable entity.

The Report and Order also requires stations and cable employment units to place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled and recruitment sources used for each vacancy during the preceding year and the address/contact person/telephone number of each recruitment source. Broadcasters and cable entities engaging in supplemental recruitment measures must also include in their public file: 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 as well as the total number of interviewees referred by each recruitment source for that vacancy, and a brief description of the menu option items undertaken during the preceding year. Those broadcasters and cable entities that opt out of the supplemental recruitment measures must include in their public file: the total number of applicants generated by each recruitment source utilized for any full-time vacancy during the preceding year, and the number of those applicants who were female and the number who were minority, identified by the applicable racial and/or national origin group with which each applicant is associated. Station units must retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities must retain their materials for a period of five years.

In addition, broadcasters must file a Statement of Compliance (Form 397) every second, fourth and sixth year of the license term, on the anniversary of the date the station is due to file its renewal, stating whether the station has complied with the EEO Rule. Broadcasters must place a copy of the latest Statement in the public inspection file. Broadcasters must also continue to place a copy of Form 396 (Broadcast EEO Program Report) in the public inspection file. However, broadcasters are no longer required to place a copy of their station's Form 395-B (Broadcast Station Annual Employment Report) in the public file. Cable employment units must continue to place a copy of Forms 395-A (Cable Television Annual

Employment Report) or 395-M (Multi-Channel Video Program Distributor Annual Employment Report) in their public file. Also, most broadcasters must submit the contents of their station's EEO public inspection file to the FCC at renewal time and midway through the license term for the Commission's mid-term review and cable entities with six or more full-time employees must submit copies of their EEO public inspection file to the Commission every five years. However, broadcasters may limit their submissions to cover only the last 12 months of EEO activity. These changes reduce burdens on all station and cable employment units, both by more clearly defining what must be retained and by specifying the period of retention.

The Report and Order eliminates sections concerning specific categories of recruitment sources from Form 396-A (Model EEO Program Report). The Report and Order also eliminates many sections from Form 396, including sections requesting information on local labor force statistics, and the number of minority and female hires and promotions. The Report and Order provides further relief to broadcasters by enabling them to file only one Form 395-B for all commonly owned stations in the same market sharing at least one employee. Form 396 will include a new section for broadcasters to provide a narrative statement demonstrating how the station achieved broad and inclusive outreach. With respect to cable entities, the Report and Order eliminates all sections on Forms 395-A and 395-M concerning available labor force and occupational data, employee promotions and job hires.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

This Report and Order sets forth the Commission's new EEO rules and procedures, and considers all of the significant alternatives presented in the comments. We have determined that our finalized rules fulfill our public interest goals while maintaining minimal regulatory burdens and ease and clarity of administration. The new EEO rules and procedures are designed to keep essential filing and recordkeeping burdens at a minimum, and increase the efficiency of application processing for all broadcasters and cable entities, including small entities.

The NPRM requested comment on the Commission's proposal to exempt small staff stations or stations located in small markets from specific EEO recordkeeping and reporting requirements. The NPRM proposed to

increase the current staff exemption threshold of fewer than five full-time employees to ten or fewer full-time employees. There was no specific proposal regarding the market threshold for exempting stations. Although we received a few comments regarding small market exemptions, the majority of comments addressed our proposal to increase the staff exemption threshold. Commenters argue that an increase is warranted since stations with small staffs have limited personnel and financial resources to carry out EEO requirements. Other commenters argue against a total exemption from the broadcast EEO Rule for stations with ten or fewer employees since such stations play a pivotal role in providing essential entry-level opportunities into the broadcast industry. As discussed in the Report and Order, we believe that a total exemption is unnecessary since the new EEO Rule streamlines and clarifies recordkeeping requirements, thereby benefiting all broadcasters, including stations with fewer employees. For this same reason, we also believe that additional EEO relief is not warranted for small market stations. Such relief is already built into the new Rule, as further evidenced by the flexibility it affords broadcasters to tailor their EEO programs to their station's particular circumstances, including market size. However, because fewer staff resources are available to them, we believe that station employment units with five to ten full-time employees, which are the smallest staff stations subject to our EEO program requirements, warrant additional relief from EEO program requirements. Therefore, for those broadcasters employing supplemental recruitment measures, we will require station employment units with five to ten full-time employees to engage in only two of the menu options listed in the EEO Rule during each two-year period. Station employment units with more than ten full-time employees are required to engage in four menu options during each two-year period. While not providing a total exemption from our EEO Rule, this approach does provide additional EEO relief to station employment units with five to ten employees. Further, we will exempt radio station employment units with six to ten employees from new mid-term review procedures. Currently, mid-term reviews for all television stations with five or more full-time employees are required by statute. However, only about 200 television stations (or 13%) had between five and ten employees in 1997. We base this estimate on a compilation of 1997 Broadcast Station

Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC. Also, a station will not qualify for relief if it shares one or more employees with one or more commonly owned stations in the same market and their combined staffs total more than ten full-time employees since such stations are considered one employment unit for EEO purposes.

We also received comments arguing that cable systems with small staffs should be provided EEO relief since they, too, have limited personnel and financial resources. Upon consideration, we will require cable employment units with six to ten full-time employees that use the supplemental recruitment measures to engage in only one option from the supplemental recruitment measures menu each year, as opposed to the two options required otherwise.

We will continue to exempt broadcast station employment units with fewer than five full-time employees from our specific EEO program requirements. In addition, cable employment units with fewer than six full-time employees will still not be required to demonstrate compliance with the EEO program requirements.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the EEO Rules*

Oxley/Hall maintain that the FCC's proposed EEO program substantially replicates the work of the Equal Employment Opportunity Commission (EEOC). Oxley/Hall Comments at 3. As we stated in the Report and Order, while the EEOC and FCC share as a common goal the elimination of discriminatory employment practices, the primary functions of the two agencies differ greatly. Whereas the EEOC reviews discrimination complaints in order to provide relief to victims of discrimination, the FCC's principal concern with respect to discrimination allegations is to determine the fitness of broadcasters and cable entities to fulfill their obligations under the Communications Act. Moreover, the Memorandum of Understanding Between the Federal Communications Commission and the Equal Employment Opportunity Commission, 51 FR 21798 (1986), coordinates and minimizes overlap of the enforcement efforts of the two agencies.

*Report to Congress:* The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the

Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

**List of Subjects**

*47 CFR Part 0*

Organization and functions (Government agencies).

*47 CFR Part 73*

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

*47 CFR Part 76*

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 73 and 76 as follows:

**PART 0—COMMISSION ORGANIZATION**

1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.283 is amended by revising paragraph (b)(1)(iii) to read as follows:

**§ 0.283 Authority delegated.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Present documented allegations of failure to comply with the Commission's Equal Employment Opportunity rules and policies.

\* \* \* \* \*

**PART 73—RADIO BROADCAST SERVICES**

3. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

4. Section 73.2080 is revised as follows:

**§ 73.2080 Equal employment opportunities (EEO rule).**

(a) *General EEO policy.* Equal opportunity in employment shall be

afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

(b) *General EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

(1) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to such recruitment sources, a station employment unit shall provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least four (if the station employment unit has more than ten full-time employees) or two (if it has five to ten full-time employees) of the following initiatives during each two-year period preceding the filing of a Statement of Compliance pursuant to subsection (g) hereof:

(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of

the community to acquire skills needed for broadcast employment;

(vi) Participation in job banks, internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for station personnel;

(x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in

the development of programs to assure all persons equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c) (1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

(i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) Documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, if applicable, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) The date each vacancy was filled and the recruitment source that referred the hiree.

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information:

(i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification



pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year, if applicable.

(7) Stations shall substantially comply with paragraph (c)(1)(i) of this section in connection with hires for part-time positions. The provisions of paragraph (c) are not otherwise applicable to hires for part-time positions.

(d) *Alternative recruitment requirements.* A station employment unit may elect not to utilize the provisions of paragraph (c)(1)(ii) (notification to community groups) and (c)(2) (menu options) of this section, provided that it complies with the following requirements:

(1) The station employment unit shall maintain records as required by paragraph (c)(5)(i) through (iii) of this section and shall maintain, in lieu of the records required by paragraph (c)(5)(iv) through (vi) of this section, data reflecting the recruitment source, gender, and racial and/or ethnic status of applicants for each full-time job vacancy filled by the station employment unit;

(2) The station employment unit shall include in the annual EEO public file report required by paragraph (c)(6) of this section the information specified in paragraph (c)(6)(i) and (ii) and, in lieu of the information required by paragraph (c)(6)(iii) through (v), data reflecting, for each recruitment source utilized for any full-time vacancy during the preceding year, the total number of applicants generated by that source, the number of applicants who were female, and the number of applicants who were minority, identified by the applicable racial and/or ethnic group with which each applicant is associated.

(3) Station employment units electing to proceed under this paragraph shall otherwise comply with the requirements specified in paragraph (c) of this section.

(e) *Election procedures.* Within forty-five days of the effective date of this section, each station employment unit shall elect whether it wishes to utilize the recruitment procedures specified in

paragraph (c) of this section or the alternate recruitment procedures specified in paragraph (d) of this section and shall file with the Commission a statement indicating the election which shall also be placed in the station(s) public inspection file maintained pursuant to § 73.3526 or § 73.3527. An applicant for a new station or for the transfer or assignment of an existing license filed on FCC Form 314 or 315 shall state its election on FCC Form 396-A submitted with the application. A station employment unit may change its election every two years at the time of the filing of the Statement of Compliance referenced in paragraph (i)(1) of this section, or at the time of the filing of its renewal application. If the station employment unit wishes to change its election, it shall so state in its Statement of Compliance or FCC Form 396 accompanying the renewal application.

(f) *Mid-term review for broadcast stations.* The Commission will conduct a mid-term review of the employment practices of each broadcast television station and each radio station that is part of an employment unit of more than ten full-time employees four years following the station's most recent license expiration date as specified in § 73.1020. Each such licensee is required to file with the Commission the station's EEO public file report, as described in paragraphs (c)(6) or (d)(2) of this section, along with the relevant Statement of Compliance (Form 397), as described in paragraph (i)(1) of this section, four months before the date specified in the previous sentence. The EEO public file report should cover the station's activities during the 12-month period prior to its submission.

(g) *Small station exemption.* The provisions of paragraphs (b), (c), (d), (e), and (f) of this section shall not apply to station employment units that have fewer than five full-time employees.

(h) *Definitions.* For the purposes of this section:

(1) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more. A part-time employee is a permanent employee whose regular work schedule is less than 30 hours per week.

(2) A station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

(i) *Enforcement.* The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing five or

more persons in full-time positions, except where noted.

(1) Each broadcast station shall file with the Commission a Statement of Compliance (FCC Form 397) stating whether the station has complied with the outreach provisions of this section during the two-year period prior to the date the station files the Statement. Before filing the Statement, stations shall review their recruitment activity during the two-year period along with requirements of this section and determine whether they have been in compliance with of this section during the relevant period. The Statement of Compliance shall also report any change in the station's recruitment election pursuant to paragraph (e) of this section. All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. As with Form 397, stations shall indicate on Form 396 whether they have complied with of this section. In addition, stations shall provide a narrative statement demonstrating how their recruitment efforts achieved broad and inclusive outreach during the two years prior to filing the Form 396. Stations should also include in Form 396 any change in recruitment election pursuant to paragraph (e) of this section. If the station believes it was not or may not have been in compliance, it shall submit an appropriate explanation on Form 396 or 397, as applicable. The Statement of Compliance (Form 397) is filed every second, fourth and sixth year of the license term, on the anniversary of the date the station is due to file its application for renewal of license. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Statement of Compliance or Form 396, its Statement should be based on the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Statement of Compliance and Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) On the date a station is due to file for renewal of license, as part of Form 396, it shall file with the Commission an EEO public file report concerning recruitment activity during the 12-month period preceding the filing date. The required contents of the public file report are described in paragraphs (c)(6)

or (d)(2) of this section. On the date each television station or radio station which is part of an employment unit with more than ten full-time employees files its Statement of Compliance (Form 397) at the mid-term point of its license term, the station shall file, together with Form 397, an EEO public file report concerning recruitment activity during the 12-month period prior to filing the EEO public file report. If any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Statements of Compliance, Forms 396, and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of the Statements of Compliance, Forms 396 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Statements of Compliance, Forms 396, and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Statements of Compliance, Forms 396, and EEO public file reports filed for its own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with this section. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Statements of Compliance, Forms 396, and EEO public file reports. To determine compliance with this section, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of this section. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request,

stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on a station's Statement of Compliance or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587-73.3589.

(j) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of this section.

5. Section 73.3526 is amended by revising paragraph (e)(7) to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

\* \* \* \* \*

(e) \* \* \*

(7) *Equal Employment Opportunity file.* Such information as is required by § 73.2080 to be kept in the public inspection file. These materials shall be retained until final action has been taken on the station's next license renewal application.

\* \* \* \* \*

6. Section 73.3527 is amended by revising paragraph (e)(6) to read as follows:

**§ 73.3527 Local public inspection file of noncommercial educational stations.**

\* \* \* \* \*

(e) \* \* \*

(6) *Equal Employment Opportunity file.* Such information as is required by § 73.2080 to be kept in the public inspection file. These materials shall be retained until final action has been taken on the station's next license renewal application.

\* \* \* \* \*

**PART 76—CABLE TELEVISION SERVICE**

7. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

8. Section 76.75 is amended by revising the undesignated introductory text, paragraphs (b), (c) and (f) and adding paragraphs (g), (h), (i), (j) and (k) to read as follows:

**§ 76.75 Specific EEO program requirements.**

Under the terms of its program, an employment unit must:

\* \* \* \* \*

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary.

Nothing in this section shall be interpreted to require a cable entity to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to using such recruitment sources, a cable employment unit shall provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the cable employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least two (if the unit has more than ten full-time employees) or one (if the unit has six to ten full-time employees) of the following initiatives during each twelve-month period preceding the filing of an annual employment report:

(i) Participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least two events sponsored by organizations representing groups present in the community interested in cable employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community in acquiring skills needed for cable employment;

(vi) Participation in job banks, internet programs, and other programs designed to promote outreach generally (i.e., that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in a scholarship program designed to assist students interested in pursuing a career in cable communications;

(viii) Establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for unit personnel;

(x) Participation in at least two events or programs sponsored by educational institutions relating to career opportunities in cable communications;

(xi) Sponsorship of at least one event in the community designed to inform and educate members of the public as to employment opportunities in cable communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; and

(xiii) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in cable communications to job candidates who might otherwise be unaware of such opportunities.

(c) Retain records sufficient to document that it has satisfied the requirements of paragraphs (b)(1) and (b)(2) of this section. Such records, which may be maintained in an electronic format, shall be retained for a period of seven years. Such records need not be submitted to the Commission unless specifically requested. The following records shall be maintained:

(1) Listings of all full-time job vacancies filled by the cable employment unit, identified by job title;

(2) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person, and telephone number;

(3) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing job vacancies;

(4) Documentation necessary to demonstrate performance of the initiatives required by paragraph (b)(2) of this section, if applicable, including information sufficient to fully disclose the nature of the initiative and the scope of the unit's participation, including the unit personnel involved;

(5) The total number of interviewees for each vacancy and the referral sources for each interviewee; and

(6) The date each vacancy was filled and the recruitment source that referred the hiree.

\* \* \* \* \*

(f) A cable entity may elect not to utilize the provisions of paragraphs (b)(1)(ii) (notification to requesting community groups) and (b)(2) (menu options) hereof, provided that it complies with the following alternative recruitment requirements:

(1) The employment unit shall maintain records as required by paragraph (c)(1) through (c)(3) of this section, and shall maintain, in lieu of the records required by paragraph (c)(4) through (c)(6) of this section, data reflecting the recruitment source, gender, and racial and/or ethnic status of applicants for each full-time job vacancy filled by the employment unit;

(2) The employment unit shall place annually in its public file maintained pursuant to § 76.1702 the information specified in § 76.1702(b)(1) and (2) and, in lieu of the information required by § 76.1702(b)(3) through (5), data reflecting, for each recruitment source utilized for any full-time vacancy during the preceding year, the total number of applicants generated by that source, the number of applicants who were female, and the number of applicants who were minority, identified by the applicable racial and/or ethnic group with which each applicant is associated.

(3) Cable employment units electing to proceed under this paragraph shall otherwise comply with the requirements specified in paragraph (b) of this section.

(g) A cable entity shall analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(h) Within forty-five days of the effective date of this paragraph (h) each cable employment unit with six or more fulltime employees shall elect whether it wishes to utilize the recruitment procedures specified in paragraph (b) of this section or the alternate recruitment procedures specified in paragraph (f) of this section and shall file with the Commission a statement indicating the

election which shall also be placed in the public inspection file maintained pursuant to § 76.1702. An employment unit may change its election annually at the time of the filing of the FCC Form 395-A or FCC Form 395-M. If the employment unit wishes to change its election, it shall so state in its FCC Form 395-A or FCC Form 395-M. A cable employment unit may also change its election at the time of a substantial change in its ownership by placing a statement of its new election in the public inspection file.

(i) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to assure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(j) Cable entities shall substantially comply with paragraph (b)(1)(i) of this section in connection with hires for part-time positions. The remaining provisions of this section are not otherwise applicable to hires for part-time positions but are applicable only to full-time positions, defined as requiring a regular work schedule of 30 or more hours per week.

(k) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), (f) and (g) of this section shall not apply to cable employment units that have fewer than six full-time employees.

9. Section 76.77 is amended by revising paragraphs (a), (b), and (c), and

adding paragraphs (e), (f), and (g) to read as follows:

**§ 76.77 Reporting requirements and enforcement.**

(a) *Annual employment reports.* Employment data on the annual employment report required by § 76.1802 shall reflect the figures from any one payroll period in July, August, or September of the year during which the report is filed. Unless instructed otherwise by the Commission, the same payroll period shall be used for each successive annual employment report. Employment units shall also provide EEO recruitment information covering a 12-month period, as requested and explained on the form. If a cable entity acquires a unit during the twelve months covered by the annual employment report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's annual employment report to determine whether the unit is in compliance with the provisions of this subpart. Employment profile statistics provided about race, ethnicity, and gender of employees will not be used to determine compliance with the EEO rules. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment units are required to submit supplemental investigation information with their regular annual employment reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

(e) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with § 76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their annual employment reports, supplemental investigation responses, and in the EEO program information required by

§ 76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of employment units at random or if the Commission has evidence of a possible violation of the EEO rules. Upon request, employment units shall make records available to the Commission for its review.

(f) *Public complaints.* The public may file complaints based on annual employment reports, supplemental investigation information, or the contents of a unit's public file.

(g) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of the EEO rules.

10. Section 76.79 is revised to read as follows:

**§ 76.79 Records available for public inspection.**

A copy of every annual employment report, and any other employment report filed with the Commission, and complaint report that has been filed with the Commission, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the cable entity and the Commission pertaining to the reports after they have been filed in all documents incorporated therein by reference, unless specifically exempted from the requirement, are open for public inspection at the offices of the Commission in Washington, D.C.

**Note to § 76.59:** Cable operators must also comply with the public file requirements § 76.1702.

11. Section 76.1702 is added to read as follows:

**§ 76.1702 Equal employment opportunity.**

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all annual employment reports filed with the Commission pursuant to § 76.77 and the equal employment opportunity program information described in paragraph (b) or (c) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's annual employment report is due to be filed and shall be retained for a period of five years. The public inspection file should also contain the election information required by § 76.75 (h), insofar as it is not included in the entity's annual employment report. The file shall be maintained at the central office and at every location with six or more full-time employees. A headquarters employment unit file and

a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the central office of the headquarters employment unit. The cable entity shall provide reasonable accommodation at these locations for undisturbed inspection of its equal employment opportunity records by members of the public during regular business hours.

(b) The following equal employment opportunity program information shall be included annually in the unit's public file, and on the unit's web site, if it has one, at the time of the filing of its FCC Form 395-A or FCC Form 395-M, except as indicated in paragraph (c) of this section:

(1) A list of all full-time vacancies filled by the cable employment unit during the preceding year, identified by job title;

(2) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to § 76.75(b)(1)(ii), which should be separately identified), identified by name, address, contact person and telephone number;

(3) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(4) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(5) A list and brief description of the initiatives undertaken pursuant to § 76.75(b)(2) during the preceding year, if applicable.

(c) An entity that elects to utilize the alternative recruitment procedure pursuant to § 76.75(f) shall annually include in the public inspection file the information required therein.

12. Section 76.1802 is added to read as follows:

**§ 76.1802 Equal employment opportunity.**

Each employment unit with six or more full-time employees shall file an annual employment report on FCC Form 395-A (if cable operator or SMATV) or Form 395-M (if MVPD) with the Commission on or before September 30 of each year, in accordance with § 76.77.

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