

GOV (dot-gov) domain used by Internet Domain Name Service (DNS). The GSA is also providing second-level domain registrations in the GOV domain (e.g. Fed.gov). Similarly, the GSA is providing second-level domain registrations in the fed.us domain under authority from the Internet Assigned Numbers Authority (IANA). Internet registration services are limited to Federal, State, and local Government organizations. GSA is not responsible for and will not charge fees for any further delegation of a domain name assigned to an agency. For example, if USDA were to register usda.fed.us, the registrations such as region1.usda.fed.us would be the responsibility of the domain manager for USDA.

#### **§ 101-35.703 Procedures for using GSA's registration services.**

Individuals or organizations who wish to register or would like more information should contact the registration officials at GSA by sending an e-mail message to [registration@fed.gov](mailto:registration@fed.gov) or by web access at <http://registration.fed.gov>.

#### **§ 101-35.704 Fee schedule.**

GSA will assess Government agencies and commercial organizations nominal fees to cover the cost of registration and other services as listed in the table below. The fees are based on anticipated costs for providing the services and are consistent with industry charges.

Service	Set-up	Recurring (Annual)
(a) Network Address Registration (GOSIP) .....	\$1000.00	\$500.00
(b) Government-wide Directory Operation (X.500/LDAP)	1000.00	500.00
(c) Domain Name Registration	250.00	50.00

**Note to 101-35.704.** Set-up fees may be waived at the discretion of the GSA. When levied, set-up fees include annual fee for one year.

#### **§ 101-35.705 Method of payment.**

GSA will invoice registrants according to the fee schedule in section 101-35.704. Government registrations must be paid by credit card (IMPACT). Commercial organizations are encouraged to pay by credit card. All other payments should be made to GSA Registration Services, 1800 F Street NW, Suite G-222, Washington, DC 20405.

Dated: July 30, 1998.

**G. Martin Wagner,**

*Associate Administrator for Governmentwide Policy.*

[FR Doc. 98-31828 Filed 11-30-98; 8:45 am]

BILLING CODE 6820-34-P

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Parts 0, 73 and 76**

[MM Docket No. 98-204, FCC 98-305]

### **Revision of Broadcast and Cable EEO Rules and Policies**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** In this *Notice of Proposed Rule Making* (NPRM), the Commission proposes new broadcast and cable Equal Employment Opportunity (EEO) rules and policies. The NPRM proposes to retain the existing ban on discrimination and to promulgate recruitment-oriented outreach rules. The proposed EEO rules make clear that broadcasting and cable entities, including multichannel video programming distributors, 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 NPRM also proposes to streamline the Commission's broadcast EEO requirements, while, at the same time, maintaining an effective broadcast EEO program. These proposals include the possibility of granting administrative relief to small broadcasters and crediting joint recruitment efforts. Finally, the NPRM terminates the Commission's EEO streamlining proceeding in MM Docket No. 96-16, 60 FR 9964, March 12, 1996, with the exception of the one petition for reconsideration filed in that docket, which will now be considered in this proceeding. The intended effect of the NPRM is to invite comments on all aspects of the Commission's proposals and on the Commission's belief that it has the statutory authority to retain the anti-discrimination provisions of its broadcast EEO rule.

**DATES:** Comments are due January 19, 1999; reply comments are due February 18, 1999. Written comments by the public on the proposed information collections are due January 19, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before February 1, 1999.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C-1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Hope Cooper or Kathy Harvey, Mass Media Bureau, Enforcement Division. (202) 416-1450. For additional information concerning the information collections, contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 98-204, adopted November 19, 1998, and released November 20, 1998.

The complete text of this NPRM, which was adopted in MM Docket No. 98-204, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 202-857-3800, 1231 20th Street, NW, Washington, D.C. 20037.

### **Synopsis of Notice of Proposed Rule Making**

1. The NPRM proposes and requests comments regarding 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 they pressured stations to maintain a workforce reflecting the racial composition of their communities, thus inducing them to grant illegal hiring preferences on the basis of race. The court also remanded the case back to the Commission to determine whether it had the authority to promulgate its ban on employment discrimination, which was not invalidated.

2. The NPRM proposes new broadcast and cable EEO rules which ensure non-discrimination in employment and broad dissemination of recruitment information. None of the proposals

create 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. One proposal would require entities to recruit for each vacancy with a certain number of national and/or local sources, including minority and female sources. The Commission believes that this kind of approach would ensure that all qualified potential applicants are informed of, and have an opportunity to apply for, vacancies. Another proposal would leave to an entity's good faith discretion what methods it would use to ensure broad dissemination of vacancy information. In order to provide guidance to entities, the proposed rules also clearly describe what records of EEO efforts must be kept by broadcast and cable entities, and detail how an entity should analyze its EEO program.

3. The NPRM also proposes to reinstate the preexisting EEO requirement that broadcasters file an Annual Employment Report, but with the understanding that the Report's data would only be used to monitor industry employment trends.

4. The NPRM 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 NPRM outlines the Commission's belief 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 NPRM proposes modifying the anti-discrimination prohibition so that religious radio broadcasters may establish religious belief or affiliation as a *bona fide* occupational qualification for all station employees.

5. The NPRM notes the Commission's intent to limit undue administrative burdens on broadcasters generally, and particularly on those licensees of smaller stations and other distinctly situated broadcasters, consistent with maintaining an effective EEO program. Specifically, the NPRM invites comment on whether and, if so, how the

Commission can reduce undue burdens on stations with small staffs or those located in small markets. Options include exempting qualifying stations from EEO reporting and recordkeeping requirements entirely; or permitting qualifying stations the option of attending a minimum number of recruiting events annually, such as job fairs, in lieu of vacancy specific recruitment. Further, the NPRM invites comment on how to award credit for licensees generally who participate in joint recruitment efforts and minority training and internship programs. Finally, the NPRM terminates the Commission's EEO streamlining proceeding in MM Docket No. 96-16 (with the exception of the one petition for reconsideration filed in that docket, which will now be considered in this proceeding) because MM Docket No. 96-16 concerned the provisions of our EEO Rule invalidated by the Court.

6. The NPRM invites comments on all aspects of the Commission's proposals and on the Commission's belief that it has the statutory authority to retain the anti-discrimination provisions of its broadcast EEO rule.

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

This NPRM contains proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

This NPRM contains proposals that are proposed to affect the following existing information collections that collectively make up the Commission's EEO program.

*Rules:* 47 CFR 73.2080 and 76.75

*Form Numbers:* FCC 395-A, FCC 395-B, FCC 395-M, FCC 396, FCC 396-A

*Respondents:* Businesses or other for-profit, Not-for-profit institutions

These estimates represent the existing burden as currently approved by OMB under the individual OMB approval numbers.

*OMB Approval Number:* 3060-0212

*Title:* Section 73.2080 Equal

*Employment Opportunity Program*

*Number of Respondents:* 15,290

*Estimated Time Per Response:* 52 hours

*Total Annual Burden:* 679,744.

*OMB Approval Number:* 3060-0349

*Title:* Section 76.73/76.75—Cable TV

*EEO Policy and Programs*

*Number of Respondents:* 5,600

*Estimated time per response:* 2,125

cable employment units/MVPD with 6 or more employees will have an average burden of 52 hours/year; 3,475 cable employment units/MVPD with fewer than 6 employees will have an average burden of 8 hours/year

*Total annual burden:* 138,300 hours.

*OMB Approval Number:* 3060-0095

*Title:* Annual Employment Report—

*Cable Television (FCC 395-A)*

*Number of Respondents:* 2,564

*Estimated time per response:* 1.75

hours/form; 0.25/certification; 2.417

hours/supplemental information sheet

*Total annual burden:* 4,683 hours.

*OMB Approval Number:* 3060-0390

*Title:* Broadcast Station Annual

*Employment Report (FCC 395-B)*

*Number of Respondents:* 14,000

*Estimated Time Per Response:* 0.88

hours per report

*Total Annual Burden:* 12,320 hours.

*OMB Approval Number:* 3060-0574

*Title:* MVPD Annual Employment

*Report (FCC 395-M)*

*Number of Respondents:* 155

*Estimated time per response:* 1.75

hours/form; 0.25/certification; 2.417

hours/supplemental information sheet

*Total annual burden:* 233 hours.

*OMB Approval Number:* 3060-0113

*Title:* Broadcast Equal Employment

*Opportunity Program Report (FCC 396)*

*Number of Respondents:* 235

*Estimated Time Per Response:* 3.0 hours per report

*Total Annual Burden:* 705 hours.

*OMB Approval Number:* 3060-0120

*Title:* Broadcast Equal Employment

*Opportunity Model Program Report (FCC 396-A)*

*Number of Respondents:* 2,068

*Estimated Time Per Response:* 1.0 hours per report

*Total Annual Burden:* 2,068 hours.

*Needs and Uses:* This rulemaking proceeding is initiated to obtain comments concerning the

Commission's proposed EEO rules and policies that would be consistent with the D.C. Circuit's decision in *Lutheran Church*. This rulemaking proposes a new broadcasting EEO program rule and to change the Commission's cable EEO program rules emphasizing recruitment outreach programs. These information collections are necessary to monitor industry trends and to ensure that broadcast stations and cable entities do not engage in discriminatory practices and afford equal employment opportunity.

### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. See 5 U.S.C. 603. [The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. See *id.*

#### A. Need for, and Objectives of, the Proposed Rule Changes

The D.C. Circuit court in *Lutheran Church* held that the Commission's EEO minority outreach requirements for broadcasters were unconstitutional and remanded to the Commission to determine whether we have authority to enforce an employment non-discrimination rule. The NPRM seeks comment on proposed new EEO rules and policies for broadcast and cable entities, including multichannel video programming distributors (MVPDs), that are designed to be consistent with the *Lutheran Church* decision. We also request comment on our statutory authority to retain the anti-discrimination prong of our EEO rules. We invite comment on EEO rules which seek to ensure that broadcast stations and cable entities do not engage in discriminatory practices. In addition, our proposed rules would require broadcasters and cable entities to

establish and maintain an EEO program designed to provide equal opportunity for minorities and women. Another proposal would grant administrative relief to small entities based on various criteria. One of the criteria proposed involves the number of employees at a station, *e.g.*, if a station has 10 or fewer full-time employees, it would be entitled to relief. The Commission's earlier attempt at implementing a similar proposal was declared arbitrary and capricious by the court in *Office of Communications of the United Church of Christ v. FCC*, 560 F.2d 529, 532 (2nd Cir. 1977) because the Commission had failed to provide a reasoned justification for departing from its prior precedent. Therefore, the Commission requests that commenters who favor this proposal provide ample evidence as to why this type of station deserves this type of relief. To accomplish the goals set forth, the NPRM proposes: (1) to initiate a new broadcasting EEO program rule and to change the Commission's cable EEO program rules, that would emphasize recruitment outreach and provide that entities are not to use racial, ethnic, or gender preferences in hiring; and (2) to permit administrative relief to small entities that meet proposed qualifying factors.

#### B. Legal Basis

Authority for the actions proposed in this NPRM may be found in Sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

#### C. Recording, Recordkeeping, and Other Compliance Requirements

The NPRM proposes that broadcasters and cable entities be required to retain records to demonstrate that they have recruited for each hire. Such recordkeeping may include: listings of recruiting sources utilized for each vacancy; copies of all advertisements, bulletins and letters announcing vacancies; and compilations totaling the race, ethnic origin, and gender of all applicants generated by each recruiting source according to vacancy.

#### D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

##### 1. Definition of a "Small Business"

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 Small Business Administration (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 tentatively believe that the SBA's definition of "small business" 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 NPRM, we utilize the SBA's definition in determining the number of small businesses to which the rules would apply. We reserve the right, however, to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules proposed in this NPRM and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *Report and Order* in MM Docket No. 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981, August 12, 1996, *citing* 5 U.S.C. 601(3). The new rules would apply to broadcast stations and cable entities, including multichannel video programming distributors (MVPDs).

##### 2. Issues in Applying the Definition of a "Small Business"

We could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

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. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, 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 the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

### 3. Estimates Based on Census Data

The rules proposed in this NPRM 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.* Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 [Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs)].

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 1,584 operating full-service television broadcasting stations in the nation as of October 1998. FCC News Release, Broadcast Station Totals as of October 30, 1998 (released November 18, 1998). For 1992<sup>1</sup> the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments. (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 proposed rules will affect approximately 1,584 television stations; approximately 77%,

or 1,219 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 1998 total of 1,584 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. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In August 1998, minorities owned and controlled 32 (2.6%) of 1,209 commercial television stations in the United States. *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't. of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (August 1998). (MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.) According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States. See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business*, WB87-1, U.S. Department of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, the Commission recently amended its Annual Ownership Report Form 323 to require information on the gender and race of broadcast license owners in future filings. See *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes, Report and Order*, MM Docket No. 98-43 (adopted October 22, 1998).

<sup>1</sup> 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, *supra* note 53, III.

The proposed 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.* However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. *Id.* The 1992 Census indicates that 96 percent (5,861 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 October 1998, official Commission records indicate that 12,448 radio stations are currently operating. FCC News Release, Broadcast Station Totals as of October 30, 1998 (released November 18, 1998).

The proposed 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, 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 67.901(3). 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), 60 FR 544919, September 15, 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 less 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. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995), 60 FR 36524, July 17, 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. 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 which 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 IRFA, 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 amended EEO rules.

**DBS:** As of October 1997, there were nine DBS licensees, some of which were not in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS services requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

An alternative way to classify small entities is by the number of employees. We estimate that the total number of full-service broadcast stations with 4 or

fewer employees is 5,186. 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, the total number of cable employment units with six or more full-time employees was 2,750, and that 1,900 cable employment units employed fewer than six full-time employees. Also, in 1997, the total number of other MVPDs employing six or more full-time employees was 725, and 225 such MVPDs employed less than six full-time employees.

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

This NPRM solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. As an example, the NPRM requests comment on whether we should grant administrative relief to stations with small staffs or in small markets. Finally, the NPRM seeks comment on whether to raise the employment threshold for EEO reporting and recordkeeping requirements. This change may create a new definition of small business requiring approval from the SBA before doing so.

*F. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules*

The proposed rules do not overlap, duplicate or conflict with any other rules.

**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.*

**Proposed Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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:** Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

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).**

(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 in every aspect of station employment policy and practice. Under terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure a 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 positive 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.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and non-discrimination in every aspect of station employment policy and practice. Under the terms of its program, a station 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 bona fide occupational qualification for a job position are not required to comply with these recruitment requirements with respect to that job position only, but will be expected to make reasonable, good faith efforts to recruit minorities and women 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, ethnic origin, religion, or gender.

(2) Analyze its efforts to recruit, hire and promote without discrimination on the basis of race, ethnic origin, color, religion, and gender and address any difficulties encountered in implementing its equal employment opportunity program. As part of its license renewal application, a station shall submit a statement detailing its analysis of such efforts for the 12 months prior to license expiration. Analysis should occur on an ongoing

basis. A station's analysis shall include measures taken to:

(i) Disseminate its equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are non-discriminatory;

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

(iv) Assess the productivity of recruiting sources;

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

(vi) Offer promotions of qualified minorities and women in a nondiscriminatory fashion to positions of greater responsibility;

(vii) Where union agreements exist, cooperate with the union or unions in the development of programs to assure qualified minority persons or women of equal opportunity for employment, and include an effective non-discrimination clause in new or renegotiated union agreements; and

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

(3) Retain records to prove that it has satisfied the requirements of (c)(1) and (c)(2) of this section. Such recordkeeping shall include:

(i) Listings of recruiting sources utilized for each vacancy and the date the vacancy was filled;

(ii) Dated copies of all advertisements, bulletins and letters announcing vacancies; and

(iii) Compilations totaling the race, ethnic origin, and gender of all applicants generated by each recruiting source according to vacancy.

(d) *Mid-term review for television broadcast stations.* The Commission will conduct a mid-term review of the employment practices of each broadcast television station four years following the station's most recent license expiration date as specified in § 73.1020 of this part. Television licensees are required to submit a narrative statement, as described in paragraph (c)(2) of this section, four months before the date specified in the previous sentence.

(e) *Enforcement.* The Commission will review a station's EEO program at renewal time and may conduct random audits, including on-site audits, throughout the license term to enforce this rule.

(f) *Sanctions.* The Commission may impose appropriate sanctions for any violation of this rule.

## PART 76—CABLE TELEVISION SERVICE

5. 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, 552, 554, 556, 558, 560, 561, 571, 572, 573.

6. Section 76.75 is amended by revising paragraphs (b), (c) and (f) and by adding paragraph (g) to read as follows:

### § 76.75 EEO program requirements.

\* \* \* \* \*

(b) 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, ethnic origin, color, or gender.

(c) Retain records to prove that it has satisfied the requirements of (b) and (f) of this section. Such recordkeeping shall include:

(1) Listings of recruiting sources utilized for each vacancy and the date the vacancy was filled;

(2) Dated copies of all advertisements, bulletins and letters announcing vacancies; and

(3) Compilations totaling the race, ethnic origin, and gender of all applicants generated by each recruiting source according to vacancy.

\* \* \* \* \*

(f) Analyze its efforts to recruit, hire, promote and use services without discrimination on the basis of race, ethnic origin, color, religion, and gender and explain any difficulties encountered in implementing its equal employment opportunity program. As part of its Form 395-A/395-M supplemental investigation, an employment unit shall submit a statement detailing its analysis of such efforts for the previous 12 months. Analysis should occur on an ongoing basis. A unit's analysis shall include measures taken to:

(1) Where union agreements exist, cooperate with the union or unions in the development of programs to assure qualified minority persons or women of equal opportunity for employment, and include an effective non-discrimination clause in new or renegotiated union agreements;

(2) Review seniority practices to ensure that such practices are non-discriminatory;

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

(4) Assess the productivity of recruiting sources;

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

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

(g) The Commission may impose appropriate sanctions for cable entities not found to be in compliance with paragraphs (b), (c), or (f) of this section.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[I.D. 111998B]

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Atlantic Sea Scallop Fishery, and Atlantic Salmon Fishery; Fishery Management Plan (FMP) Amendments to Designate Essential Fish Habitat (EFH)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of an omnibus amendment to FMPs; request for comments.

**SUMMARY:** NMFS announces that the New England Fishery Management Council (NEFMC) has submitted for review and approval by the Secretary of Commerce (Secretary) an omnibus amendment that includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. The document also includes Amendment 1 to the Monkfish FMP prepared jointly by NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC). Because MAFMC has not yet adopted Monkfish Amendment 1, the FMP amendment is not being considered for Secretarial approval at this time. Finally, the omnibus amendment includes the EFH components of the