(156.8 MHz) when required, by the call sign "PATCOM".

Dated: September 27, 1985.

J.I. Maloney,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 85-23912 Filed 10-4-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-85-13]

Drawbridge Operation Regulations; Vermilion River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD) and Vermilion Parish, the Coast Guard is changing the regulations governing the operation of four state owned drawbridges and one parish owned drawbridge over the Vermilion River, Louisiana, as follows:

(1) The lift span bridge, mile 22.4 on LA82 at Perry, Vermilion Parish.

(2) The lift span bridge, mile 25.4, on LA14 at Abbeville, Vermilion Parish.

(3) The lift span bridge, mile 26.0, on LA14 Bypass at Abbeville, Vermilion Parish.

(4) The swing span bridge, mile 34.2, near Milton, Vermilion Parish, (parish owned).

(5) The lift span bridge, mile 37.6, on LA92 at Milton, Lafayette Parish.

This change requires that the draw of the bridge at Perry, mile 22.4, open on at least four hours advance notice from 9 p.m. to 5 a.m., and that the draws of the other four bridges open on at least four hours advance notice from 6 p.m. to 10 a.m. The draws will open on signal outside these hours.

This change is being made because of the infrequent requests for opening the draws at mile 25.4, 26.0, 34.2 and 37.6 between 6 p.m. and 10 a.m. This action does not change the existing advance notice period for the Perry bridge, but it does reduce the advance notice time to be given for an opening for that bridge from 12 to four hours, to be consistent with the other bridges. This action will relieve the bridge owners of the burden of having a person constantly available at each of the four bridges from 6 p.m. to 10 a.m., while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on November 6, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 18 July 1985, the Coast Guard published a proposed rule (50 FR 29236) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 24 July 1985. In each notice interested persons were given until 3 September 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Two letters were received in response to the notices, offering no objections to the proposed rule.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the number of vessels passing these four bridges during the advance notice period, 6 p.m. to 10 a.m., is two vessels every three days. These few vessels can reasonably give four hours notice for a bridge opening between 6 p.m. and 10 a.m. by placing a collect call at any time to the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233-7304, for the state owned bridges; and, to Vermilion Parish at Abbeville, Louisiana, telephone (318) 893-0118, for the parish owned bridge. Scheduling their arrival at the bridges at the appointed time would involve little or no additional expense to the mariners. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Section 117.509 is amended by revising paragraph (a), designating existing paragraph (b) as paragraph (c), and adding new paragraphs (b) and (d) to read as follows:

§ 117.509 Vermilion River.

(a) The draw of the S82 bridge, mile 22.4 at Perry, shall open on signal; except that, from 9 p.m. to 5 a.m. the draw shall open on signal if at least four hours notice is given.

(b) The draws of the following bridges shall open on signal; except that, from 6 p.m. to 10 a.m. the draws shall open on signal if at least four hours notice is given:

(1) S14 bridge, mile 25.4 at Abbeville.

(2) S14 Bypass bridge, mile 26.0 at Abbeville.

(3) Vermilion Parish bridge, mile 34.2 near Milton.

(4) S92 bridge, mile 37.6 at Milton.

(c) * * *

(d) During the advance notice periods, the draws of the bridges listed in this section shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: September 17, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-23910 Filed 10-4-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Miami, Florida Regulations CCGD7-85-49]

Safety Zone Regulations; the Rickenbacker Causeway Bridge, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone at the Rickenbacker Causeway Bridge, Biscayne Bay, Miami, Florida, position latitude 25-45 N, longitude 80-11 W. This zone is needed to protect bridge construction workers, and pleasure and commercial vessels transitting the area. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 2 October 1985 and terminates on 18 October 1985. The safety zone will in effect between 7:00 am and 5:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: CWO3 P.J. MacDonald, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office, Miami, Fl. 33130, Tel (305) 350-5691.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to personnel and vessels involved.

Drafting Information

The drafters of this regulation are CWO3 P.J. MacDonald, project officer for the Captain of the Port, and LCDR K.E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The reason for this regulation is the construction of a new Rickenbacker Causeway Bridge, over Biscayne Bay, Miami, Florida, position latitude 25–45 N, longitude 80–11 W. The company performing the work is Atlantic Foundation Co., Inc. Construction will take place Monday through Friday between the hours of 7:00 am and 5:00 pm, from 2 October 1985, through 18 October 1985. During this time the channel will be closed for several hours each day. The following schedule will be followed on a daily basis:

7:00 am–9:00 am Channel closed
9:00 am–9:30 am Channel open
9:30 am–11:30 am closed
11:30 am–12 noon open
12 noon–2:00 pm closed
2:00 pm–2:30 pm open
2:30 pm–4:30 pm closed.

The channel will be open to traffic from 4:30 pm until 7:00 am each day, and all day on weekends. Vessels transitting this area should minimize the effects of their wake.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T–07 is added to read as follows:

§ 165.T–07 Safety Zone: The channel under the Rickenbacker Causeway Bridge, Biscayne Bay, Miami, Florida, position latitude 25–45 N, longitude 80–11 W.

(a) *Location:* The following area is a Safety Zone: In the channel under the Rickenbacker Causeway Bridge, Biscayne Bay, Miami, Florida. Position latitude 25–45 N, longitude 80–11 W. The zone is needed to protect bridge construction workers and pleasure and commercial vessels transitting the area. Construction will take place Monday through Friday, beginning 2 October 1985 through 18 October 1985, between the hours of 7:00 am and 5:00 pm. The channel will be closed for several hours each day. The following schedule will be followed on a daily basis:

7:00 am–9:00 am Channel closed
9:00 am–9:30 am Channel open
9:30 am–11:30 am closed
11:30 am–12 noon open
12 noon–2:00 pm closed
2:00 pm–2:30 pm open
2:30 pm–4:30 pm closed.

Daily after 4:30 pm the channel will be open to traffic until 7:00 am the following morning. Vessels transitting this area should minimize the effects of their wake.

(b) *Regulations:*

(1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port.

(2) Vessels transitting this area should minimize the effects of their wake.

Dated: September 26, 1985.

R.N. Roussel,

Commander, U.S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 85-23907 Filed 10-4-85; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 85-3A]

Cancellation of Completed Registrations

AGENCY: Copyright Office, Library of Congress

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing final regulation 37 CFR 201.7 regarding cancellation practices and procedures under the Copyright Act of 1976. The effect of this new regulation is to specify the conditions under which the Copyright Office will cancel a completed registration.

EFFECTIVE DATE: October 7, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559 (202) 287-8380.

SUPPLEMENTARY INFORMATION: Cancellation is an action taken by the Copyright Office to expunge an already completed registration. On August 16, 1985, the Copyright Office published in the Federal Register a proposed regulation setting forth the policies and procedures governing cancellation [50 FR 33065]. Although the Copyright Office applied cancellation procedures under both the 1909 Act and the 1976 Act, no regulation had even specified in detail the circumstances under which the Office would cancel a completed registration. Regulations in effect since 1956,[1] however, had established the principle that the Office would correct its own errors by cancelling where the claim is invalid.

The Copyright Office received two comments from three attorneys practicing in the same law firm. The comments urged that the proposed regulation be withdrawn for a variety of reasons. The comments asserted the cancellation regulation posed constitutional problems due to the location of the Library of Congress within the legislative branch. It was further argued that cancellation procedures should be limited to "administrative" cancellations and no action should be taken in the case of "substantive" cancellation. The comments asserted the cancellation regulation enlarged the scope of the Register's authority, and reduced public confidence in the registration system. Additionally, the comments claimed the cancellation regulation would establish procedures similar to "interference" proceedings such as those provided by the Federal trademark and patent laws, and the lack of a hearing procedure raised procedural due process concerns under the Administrative Procedure Act (APA). Finally, the comments asserted the cancellation procedures were properly before a federal court in a case they described as the "*Zap Mail*" case.

The Copyright Office considers the withdrawal of a proposed regulation embodying procedures applied for many years, and described in the Office's publicly available practices,[2] to be an

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[1] 37 CFR 201.5(a) (1957); 37 CFR 201.5(a)(2) (1978).

[2] *Compendium I of Copyright Office Practices*, Supplementary Practice No. 15, at S-48 and S-49 (1973).

extreme position. For reasons which will be detailed subsequently, the Copyright Office has rejected the request to withdraw the cancellation regulation.

In adopting § 201.7, the Copyright Office has made a technical change in the language of § 201.7(a) regarding the definition of cancellation. The most significant change in this language is the deletion of the reference to "an error of the Office." In general cancellation for substantive invalidity will be invoked to correct Copyright Office errors, i.e., where the original administrative record reveals a material defect in the claim which the examiner should have noticed at the time of original examination. In other instances, however, cancellation is also appropriate where the Office discovers that the factual circumstances relied on at the time of registration were not accurate, and that on the basis of facts as they actually exist, registration was not authorized.[3] Cancellation because of insufficient funds also does not involve Office error. Since the reasons for an erroneous registration may encompass errors by either the Copyright Office or by the copyright claimant, the Office decided to delete the reference entirely.

The Office intends no change however in practices that it has been following under the current Act. As we stated in the Supplementary Information to the proposed regulation, the Office "does not invite, and will generally not respond favorably to, requests to cancel a completed registration" from members of the public.

The Copyright Office studied carefully the criticism in both comment letters before it decided to adopt the cancellation regulation in final form. The discussion of the background and present cancellation practices, and of the authority to cancel, as published at 50 FR 33065–67, is reconfirmed and incorporated by reference here. In addition, the Copyright Office has rejected the points raised by the comment letters for the following reasons.

1. *Constitutional infirmities.* The argument that refusals to register on substantive grounds pose constitutional problems because the Library of Congress is located in the legislative branch was considered thoroughly and rejected by the Fourth Circuit in *Eltra Corp.* v. *Ringer,* 579 F.2d 294 (4th Cir. 1978), decided under the Act of 1909:

> * * * It is irrelevant that the Office of the Librarian of Congress is codified under the legislative branch or that it receives its appropriation as part of the legislative appropriation. The Librarian performs certain functions which may be regarded as legislative (i.e., Congressional Research Service) and other functions (such as the Copyright Office) which are executive or administrative. Because of its hybrid character, it could have been grouped code-wise under either the legislative or executive department.[4]

The authority of the Register to examine claims and refuse registration of invalid claims is explicitly stated in the current Act. 17 U.S.C. 410. In a cancellation for substantive invalidity, the Office simply corrects the public record to show what action the Office would have taken initially if the claim had been examined correctly or if the claimant had truthfully presented the material facts on which registration was based. The authority to refuse registration clearly encompasses the authority to cancel a completed registration that is invalid as a matter of law.

Since the courts have held that the Copyright Office can constitutionally refuse registration it seems obvious that the Office can constitutionally act to correct errors (whether its own or the claimant's) by simulating the action that should have been taken initially.

2. *Distinction between "administrative" cancellation and "substantive" cancellation.* The law firm argued that the Copyright Office should limit its cancellation procedures to so-called "administrative" cancellations. No cancellation should be considered on "substantive" grounds, which the firm identified as "based upon non-copyrightable subject matter."

It is unclear why the law firm believes non-copyrightable subject matter is an inherently different matter from other material defects in the validity of the claim. As an example of an "administrative" cancellation, the firm gave the following case: ". . . if the Copyright Office discovers that a renewal copyright application was actually filed too late because the original application discloses an early year date in the copyright notice, then the Copyright Office should have the authority to cancel a registration upon proper notice to the renewal claimant."

In both the above example and the case of registration of non-copyrightable subject matter the registration is invalid under the copyright law. The Office can see no reason why one should be classified as "administrative" cancellation and within the authority of the Copyright Office, and the other a "substantive" cancellation and outside the authority of the Copyright Office. In applying the cancellation policies under the 1909 Act and 1976 Act, the Copyright Office has never attempted to distinguish between "administrative" cancellations and "substantive" cancellations, as defined by the law firm, and no compelling argument or authority has been advanced for establishing such a distinction.

3. *Enlarging the scope of the Register's authority and reducing public confidence.* Section 201.7 neither enlarges the scope of the Register's authority under the statute nor reduces public confidence in the registration system. As detailed in the Supplementary Information published in the **Federal Register** at 50 FR 33065–33067 and hereby incorporated by reference cancellation has long been practiced under both the 1909 Act and 1976 Act. In considering enactment of the 1976 Act Congress was clearly informed of the cancellation procedures.[5] The provisions of the 1976 Act reflect a clear concern that the factual content of Copyright Office registration records be accurate and that claims at least facially satisfy the legal requirements of the Act. Section 410 authorizes an examination for copyright validity and section 506(e) makes it a criminal misdemeanor knowingly to misrepresent a material fact in an application for registration. In discussing the correction and amplification provision of section 408(d), both Congressional Reports on the Copyright Revision Bill acknowledges the authority of the Copyright Office to correct its own errors:

> . . . The "error" to be corrected under subsection (d) is an error by the applicant that the Copyright Office could not have been expected to note during its examination of the claim; *where the error in a registration is*

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[3] An example of such a case arises where a work is deposited without a notice of copyright and the application designates a date of publication on or after January 1, 1978. After the original registration is made, the copyright claimant files a corrective application designating the publication date as before January 1, 1978. In such a case registration would not be authorized because under the terms of the 1909 Act, publication without notice divested copyright protection. Registration must be refused. It would be a fraud on, or at least a disservice to, the public if the Office allowed the original registration to remain valid where, on the claimant's own admissions, the registration is invalid.

[4] *Eltra Corp.* v. *Ringer,* 579 F.2d 294, 301 (4th Cir. 1978). As the court also noted, "it seems incredible that, if there were a constitutional infirmity in the 1909 Act, it would have so long escaped notice by either the Supreme Court or the bar or that the Supreme Court would have given implicit authorization . . . for the exercise by the Register of the power to issue rules and regulations, as provided in the Act." *Id.* at 299.

[5] Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, 1965 Revision Bill, Copyright Law Revision, Part 6, 89th Cong., 1st Sess. 120 (Comm. Print 1965).

the result of the Copyright Office's own mistake or oversight, the Office can make the correction on its own initiative and without recourse to the "supplementary registration" procedure.[6] (Emphasis added.)

Section 201.7 embodies existing Copyright Office procedures with one exception. It authorizes cancellation for substantive invalidity only after a copyright claimant has been notified of the proposed cancellation and has been given an opportunity for 30 days to show cause why the cancellation should not be made. The Copyright Office believes this new policy is a wise addition and the commentators appear to agree that notice to the claimant is desirable.

The Copyright Office believes that cancellation procedures are necessary to maintain the integrity of Copyright Office records. Without cancellation procedures, a copyright registration could be given prima facie effect in federal court where the Copyright Office knew the registration to be invalid under its regulations or practices. This would place an unfair burden on the public and on defendants in copyright litigation to overcome the strong presumption of validity that the courts have generally accorded copyright registrations. If not corrected, registrations that are inconsistent with published regulations and practices might be cited to the courts to support arguments that the Office has not consistently applied its regulations and practices. The Office views cancellation of invalid claims as a necessary measure to ensure the integrity of the copyright registration system and to ensure consistent application of its regulations and practices.[7] In addition, restricting cancellation procedures in the manner suggested by the law firm could create an incentive to misrepresent facts since the Copyright Office would be powerless to correct certain errors once the registration was made.

4. *Similarity to interference proceedings and lack of hearing procedures.* The agrument in the comments asserting that the cancellation procedures would establish an interference proceeding similar to the Patent Office is false. In examining claims for copyright registration, the Copyright Office does not resolve factual disputes and does not conduct adversarial proceedings. In general, the Copyright Office accepts the facts as given by the copyright claimant.[8] Interference proceedings before the Patent Office, on the other hand, involve the resolution of difficult factual controversies.

Likewise, the hearing requirement under 5 U.S.C. 554 of the APA involves adjudications. The Copyright Office does not adjudicate factual controversies between parties. There is no requirement of a hearing in the Copyright Act for any action of the Office. Any due process concerns are satisfied by notice to the applicant and the opportunity to show cause why cancellation should not be made.

5. *The "Zap Mail" case.* The Copyright Office is not entirely certain what the commentators mean by the "*Zap Mail*" case. The commentators provided no citation as to the parties nor to the court in which this action is filed. One recent case, *Kiddie Rides, U.S.A., Inc.* v. *Donald Curran,* Civ. No. 85-1368 (D.C.D.C. Apr. 26, 1985) initially raised an issue concerning cancellation procedures, but the case was dismissed on July 31, 1985, after the Copyright Office reinstated the cancelled registrations for the purpose of affording the applicant an opportunity to show cause why the claims should not be cancelled. There are presently no pending actions involving the cancellation procedures.

With respect to the Regulatory Felxibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[9]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this proposed regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Claims to copyright, Copyright.

Final Regulations

In consideraion of the foregoing, Part 201 of 37 CFR, Chapter II is amended as follows:

PART 201—[AMENDED]

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.7 is also issued under 17 U.S.C. 408, 409, and 410.

2. By adding a new § 201.7 to read as follows:

§ 201.7 Cancellation of completed registrations.

(a) *Definition.* Cancellation is an action taken by the Copyright Office whereby either the registration is eliminated on the ground that the registration is invalid under the applicable law and regulations, or the registration number is eliminated and a new registration is made under a different class and number.

(b) *General policy.* The Copyright Office will cancel a completed registration only in those cases where: (1) It is clear that no registration should have been made because the work does not constitute copyrightable subject matter or fails to satisfy the other legal and formal requirements for obtaining copyright; (2) registration may be authorized but the application, deposit material, or fee does not meet the requirements of the law and Copyright Office regulations, and the Office is unable to get the defect corrected; or (3) an existing registration in the wrong class is to be replaced by a new registration in the correct class.

(c) *Circumstances under which a registration will be cancelled.* (1) Where the Copyright Office becomes aware after registration that a work is not copyrightable, either because the authorship is de minimis or the work

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[6] Sen. Rep. No. 94-473, 94th Cong., 1st Sess. 137 (1975); H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 155 (1976).

[7] Double examination or other quality review before issuance of the certificate would be another way to obviate the need for most cancellations on substantive grounds. This would of course result in significant delays in certificate issuance. The Office and the public have preferred the present system in the past, and, in view of the exceedingly small number of errors, the Office continues to favor correction of errors after registration to delays in processing for all claims.

[8] While the Copyright Office generally accepts the factual assertions of the copyright claimant as true, the Copyright Office is not required to accept factual assertions which are beyond belief. For example, the assertion of independent creation of the U.S. Constitution would not be accepted.

[9] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

does not contain authorship subject to copyright, the registration will be cancelled. The copyright claimant will be notified by correspondence of the proposed cancellation and the reasons therefor, and be given 30 days, from the date the Copyright Office letter is mailed, to show cause in writing why the cancellation should not be made. If the claimant fails to respond within the 30 day period, or if the Office after considering the response, determines that the registration was made in error and not in accordance with title 17 U.S.C., Chapters 1 through 8, the registration will be cancelled.

(2) When a check received in payment of a registration fee is returned to the Copyright Office marked "insufficient funds" or is otherwise uncollectible the Copyright Office will immediately cancel any registration(s) for which the dishonored check was submitted and will notify the remitter the registration has been cancelled because the check was returned as uncollectible.

(3) Where registration is made in the wrong class, the Copyright Office will cancel the first registration, replace it with a new registration in the correct class, and issue a corrected certificate.

(4) Where registration has been made for a work which appears to be copyrightable but after registration the Copyright Office becomes aware that, on the administrative record before the Office, the statutory requirements have apparently not been satisfied, or that information essential to registration has been omitted entirely from the application or is questionable, or correct deposit material has not been deposited, the Office will correspond with the copyright claimant in an attempt to secure the required information or deposit material or to clarify the information previously given on the application. If the Copyright Office receives no reply to its correspondence within 30 days of the date the letter is mailed, or the response does not resolve the substantive defect, the registration will be cancelled. The correspondence will include the reason for the cancellation. The following are instances where a completed registration will be cancelled unless the substantive defect in the registration can be cured:

(i) Eligibility for registration has not been established;

(ii) A work was registered more than 5 years after the date of first publication and the deposit copy or phonorecord does not contain a statutory copyright notice;

(iii) The deposit copies or phonorecords of a work published before January 1, 1978 do not contain a copyright notice or the notice is defective;

(iv) A renewal claim was registered after the statutory time limits for registration had apparently expired;

(v) The application and copy(s) or phonorecord(s) do not match each other and the Office cannot locate a copy of phonorecord as described in the application elsewhere in the Copyright Office of the Library of Congress;

(vi) The application for registration does not identify a copyright claimant or it appears from the transfer statement on the application or elsewhere that the "claimant" named in the application does not have the right to claim copyright;

(vii) A claim to copyright is based on material added to a preexisting work and a reading of the application in its totality indicates that there is no copyrightable new material on which to base a claim;

(viii) A work subject to the manufacturing provisions of the Act of 1909 was apparently published in violation of those provisions;

(ix) For a work published after January 1, 1978 the only claimant given on the application was deceased on the date the application was certified;

(x) A work is not anonymous or pseudonymous and statements on the application and/or copy vary so much that the author cannot be identified; and

(xi) Statements on the application conflict or are so unclear that the claimant cannot be adequately identified.

(d) *Minor substantive errors.* Where a registration includes minor substantive errors or omissions which would generally have been rectified before registration, the Copyright Office will attempt to rectify the error through correspondence with the remitter. Except in those cases enumerated in paragraph (c) of this section, if the Office is unable for any reason to obtain the correct information or deposit copy the registration record will be annotated to state the nature of the informality and show that the Copyright Office attempted to correct the registration.

Dated: September 26, 1985.

Ralph Oman,

Register of Copyrights.

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-23900 Filed 10-4-85; 8:45 am]

BILLING CODE 1410-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 76

[MM Docket No. 85-61; FCC 85-511]

Amendment To Implement the Equal Employment Opportunity Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order changes the Commission's rules and regulations regarding equal employment opportunities in the cable industry. This action is necessitated by the passage of the Cable Communications Policy Act of 1984 which sets a national cable equal employment opportunity policy. This action is intended to revise our rules and regulations to conform with the Cable Communications Policy Act of 1984.

EFFECTIVE DATE: September 25, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce A. Franca, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Report and order

In the matter of amendment of Part 76 of the Commission's Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984, MM Docket No. 85-61, FCC 85-511.

Adopted: September 18, 1985.

Released: September 25, 1985.

By the Commission: Commissioner Patrick dissenting in part and issuing a statement at a later date.

Table of Contents

I. Introduction

1. On October 30, 1984, the Cable Communications Policy Act of 1984 (Cable Act) was signed into law.[1] This legislation established guidelines for the regulation of cable systems in the areas of ownership, channel usage, franchising, rates and service regulations and equal employment opportunity (EEO) requirements.[2] By this *Report and Order*, the Commission is amending its rules to implement the EEO provisions of the Cable Act.

II. Background

2. On March 1, 1985, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*) that proposed rules and regulations to implement the equal employment opportunity provisions of the Cable Act. Section 634 of the Cable Act sets forth EEO requirements for the cable industry. This section of the Cable Act requires that each cable operator establish a program to ensure equal employment opportunities. In addition, it states that cable operators must file an annual employment report with the Commission and defines the contents of that report. Section 634 of the Cable Act also provides that the Commission must certify annually those cable systems that are in compliance with these EEO provisions and, must periodically investigate the employment practices of each cable system to review and verify its compliance with the prescribed EEO standards.

3. Section 634(d)(1) of the Cable Act requires that the Commission, not later than 270 days after the effective date of the Cable Act, and after notice and opportunity for hearing, prescribe rules to ensure that the cable industry carriers out these EEO provisions.[3] In the *Notice*, we proposed rule changes we believed were required to implement the EEO provisions of the Cable Act and sought comment from all interested parties on the proposed rules.

4. Seventeen comments and eleven reply comments were filed in response to the *Notice*.[4]

III. Current State of the Cable Industry

5. The Commission has broad experience in the enforcement of EEO standards in the cable industry. The Commission first adopted EEO requirements for the cable industry in 1972.[5] These rules were subsequently modified in 1978.[6] The cable EEO rules currently require all operators of cable television systems to afford equal opportunity in employment to all qualified persons. Cable operators may not discriminate against any person in employment because of race, color, religion, national origin or sex. In addition, each cable operator must establish and file with the Commission an equal employment opportunity program which includes specific practices designed to assure equal opportunity in employment. Finally, cable operators are required to file an annual employment report with the Commission.

6. The cable industry has generally increased the number of minority and female employees since the adoption of the Commission's EEO rules and regulations. The following tables show the minority and female employment statistics for the cable industry over the last ten years:

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Overall Employment in the Cable Industry[1]										
Percent of minority employees	8.6	9.3	10.9	11.7	12.3	12.8	13.9	15.2	15.2	17.4
Percent of female employees	28.4	30.0	29.1	29.6	32.0	32.4	33.3	34.7	36.0	37.2
Employment in Top Four Job Categories[2]										
Percent of minority employees	N/A	N/A	N/A	10.3	10.6	10.4	11.0	12.7	12.6	14.0
Percent of female employees	N/A	N/A	N/A	10.8	12.6	13.9	16.5	18.4	19.4	21.5

[1] Source: FCC Public Notices concerning Cable Television Employment Statistics. These figures do not include headquarters personnel.

[2] *Id.*

7. Several commenting parties point to the present composition of the cable industry as an indication of the general non-discriminatory nature of the cable industry's current employment practices. The National Cable Television Association, Inc. (NCTA), in its comments, states that the cable industry has nearly doubled its percentage of minority employees since 1975. Over the same period, NCTA notes that the precentage of female employees has grown by almost one-third. NCTA also indicates that the cable industry has significantly increased the percentage of minorities and women in the top four job categories. The Joint Comments of Cable Companies (Joint Commenters) indicate that since 1974 minority employment in the top four job categories has more than doubled. The Joint Commenters believe that such statistics demonstrate the non-discriminatory nature of cable industry employment practices and the effectiveness of the Commission's rules in promoting such practices. Similar observations were made by other commenters.

IV. Scope, Policy and Program

8. Section 634 of the Cable Act states that equal opportunity in employment shall be afforded by entities operating cable systems and that no person shall be discriminated against in employment because of race, color, religion, national origin, age, or sex. In addition, it sets forth a number of provisions to ensure opportunity for equal employment in the cable industry.[9] In this regard, it defines the scope of applicability of the EEO rules and, delineates the policy, program and practices that cable entities must establish to ensure equal employment opportunity.

9. *Scope of EEO Rules.* Section 634(a) of the Cable Act defines the cable entities subject to the EEO provisions. It states that these provisions: "shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the

[1] Cable Communications Policy Act of 1984, Pub. L. No. 98-549, § 1 *et seq.*, 98 Stat. 2779 (1984).

[2] The Commission implemented certain provisions of the Cable Act other than those pertaining to equal employment opportunity in the *Report and Order* in MM Docket 84-1296, 50 FR 18637 (1985).

[3] Appendix A contains the rule changes we are adopting to implement the Cable Act.

[4] Appendix B is a list of commenters.

[5] *See Report and Order*, Docket No. 19246, 34 FCC 2d 186 (1972).

[6] *See Report and Order*, in Docket No. 20829, 69 FCC 2d 1324 (1978).

[9] Our EEO Authority does not preclude states and franchising authorities from requiring EEO standards that are consistant with the requirements of Section 634. *See* Section 634(i)(1)(A). Regarding state and local authority to adopt more stringent EEO standards, we concur with the Department of Justice's comments that the Commission misstated the intent of the Cable Act in the *Notice* because of our reliance on the legislative history of an earlier version of the statute. *See Notice* at fn. 4.

management or operation of any cable system."

In addition, section 634(h) broadens the scope of systems subject to the EEO provisions. This section provides that the EEO requirements also apply to operators of satellite master antenna television systems (SMATVs), including those systems that serve only to retransmit the signals of broadcast television stations.[10] Section 634(h) also provides that a SMATV operator is not subject to the EEO requirements if it serves fewer than 50 subscribers. The House Report on the Cable Act indicates that SMATV operators are subject to the EEO provisions regardless of whether the systems only serve commonly-owned apartments without crossing public rights of way.[11]

10. The House Report indicates that section 634 applies to cable "entities," rather than cable "operators," that manage or operate cable systems pursuant to any existing or future franchises.[12] The House Report also emphasizes that both individual cable systems and the regional and national headquarters of a company, to the extent such operations are primarily engaged in the management of any cable system, are subject to the provisions of this section. It states:

> where a subsidiary of affiliate of a corporation or other entity has primary responsibility for the management or operation of one or more cable systems, the affiliate or subsidiary, and the cable system it manages or operates, will be subject to the requirements of this section as separate employment units; the parent entity will not be subject to the requirements of this section. Similarly, other affiliates or subsidiaries of the parent entity, if not engaged primarily in the management or operation of any cable system, also will not be subject to the requirements of this section.[13]

11. In the *Notice*, the Commission observed that the scope of the EEO requirements of the Cable Act differs in certain respects from that of the Commission's EEO rules. First, the requirements of the statute apply to entities involved in management or operation of cable television systems, while our EEO rules apply to "operators" of such systems. In the *Notice*, the Commission stated its belief that this difference constitutes a minor change in terminology with no substantive effect. However, for purposes of consistency, we proposed to amend our rules to comport with the language in the Cable Act. In addition, section 634 specifies a broader range of video distribution systems as "cable systems" for purposes of EEO enforcement than our current rules.[14] We proposed to modify our rules concerning the scope of systems subject to EEO enforcement so that they conform with the statute.

12. No specific comments were received concerning our proposals with regard to the scope of the EEO provisions of the Cable Act. However, the Office of Management and Budget (OMB), in its response to our request for approval of the EEO reporting requirements, is critical of the proposed scope of these requirements. OMB questions whether Section 634 requires SMATV operators to file statistical reports. It recognizes that section 634 includes operators of SMATV systems as "cable operators" and that some portions of the section apply specifically to cable operators. Notwithstanding this, OMB argues that the portion requiring an annual statistical report does not refer to cable operators, but rather to the cable "entities" described in section 634(a). OMB, therefore, holds that the statute does not require SMATV operators to file statistical EEO reports.

13. After reviewing the record, we believe the modifications proposed in the *Notice* concerning the scope of systems subject to the EEO requirements are generally appropriate to conform our rules with section 634. We disagree with OMB's interpretation that the Cable Act does not require SMATV operators to file statistical EEO reports. We do not believe that the fact that the statute refers to operators of SMATV systems as "cable operators" rather than "cable entities" exempts operators of SMATV systems from the statistical reporting requirements. Section 634(a) of the Cable Act specifies that the EEO requirements shall apply to "any corporation, . . . , or trust engaged primarily in the *operation of any cable system* (emphasis added)." Further, section 634(i)(3) provides that "the provisions of this section shall apply to any cable operator. . . . " and that "cable operator" includes a SMATV operator. Based on this language, we believe that Congress intended that SMATV operators be subject to all provisions of section 634. Accordingly, we will require SMATV operators to comply with the cable EEO statistical reporting requirements. It should be noted, however, that section 634(h)(3) provides that where the cable operator is also the owner of a multiple unit dwelling, the EEO requirements will only apply with respect to its employees who are primarily engaged in cable telecommunications. We believe that in most cases, SMATV operators will have fewer than six employees who are involved in the operation of the cable service on a full-time basis and, therefore, it would appear that most SMATV operators would be exempt from the filing requirement.

14. *EEO Policy*. Section 634(b) of the Cable Act requires that each cable entity afford equal opportunity in employment. This section, thus, sets the general policy that cable entities are prohibited from discriminating on the basis of race, color, religion, national origin, age, or sex. Section 634(c) of the Cable Act requires that each cable entity establish, maintain and execute a continuing program of specific practices to ensure equal employment opportunity in every aspect of its employment policies. The Cable Act sets forth the following five steps each entity shall take as part of its EEO program:

(1) Define and review the responsibility of each level of management with regard to the application and enforcement of its EEO policy;

(2) Inform its employees and recognized employee organizations of the EEO policy;

(3) Solicit the assistance of sources of qualified applicants, without regard to race, color, religion, national origin, age, or sex, to fulfill its employment needs;

(4) Conduct a continuing program to exclude discrimination on the basis of race, color, religion, national origin, age, or sex in its personnel practices and working conditions; and

(5) Continually review its job structure and employment practices to ensure genuine equality of opportunity at all levels.

These provisions are similar to the requirements of § 76.311(e) of the Commission's rules with the exception that the Cable Act adds a specific prohibition against age discrimination. In the *Notice*, we proposed to add the age category and to change the language of our rules to conform with the Cable Act.

15. Commenting parties generally support our proposal to amend our rules

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[10] Section 634(h) states that "the term 'cable operator' includes any operator of any satellite master antenna television system, including a system described in section 602(6)(A)." Section 602(6)(A) refers to "a facility that serves only to retransmit the television signals of one or more television broadcast stations."

[11] *See* House Committee on Energy and Commerce, H.R. Rep. No. 934, 98th Cong., 2nd Sess. (1984) (hereinafter House Report) at 93.

[12] *Id.* at 86.

[13] *Id.*

[14] We also noted that the definition of a cable television system in our rules differs from that described in the statute. In the *Report and Order* implementing other provisions of the Cable Act, the Commission adopted the Cable Act definition of a cable system. *See Report and Order*, Docket No. 84-1296, *supra*.

to add a prohibition on age discrimination and to conform the language or the rules to the statute. Accordingly, we are amending Section 76.311 of the rules to conform to section 634(c) of the Cable Act, as proposed in the *Notice*. These provisions appear in a new rule § 76.73 as shown in the attached Appendix A.

16. *EEO Program*. Section 634(d)(2) directs the Commission to promulgate rules that specify the manner in which each cable entity shall, to the extent possible:

(1) Disseminate its equal opportunity program to job applicants, employees, and those with whom it regularly does business;

(2) Use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applications to supply referrals whenever jobs are available in its operation;

(3) Evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area;

(4) Undertake to offer promotions of minorities and women to positions of greater responsibility;

(5) Encourage minority and female entrepreneurs to conduct business with all parts of its operation; and

(6) Analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program.

17. The legislative history indicates that this subsection conforms in large part of the existing EEO program requirements contained in § 76.311(f) of the rules. For example, these rules state that each cable entity must disseminate its equal opportunity program by posting notices in its offices and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights. This section of the Cable Act adds, however, a requirement that the Commission design rules to encourage cable systems to conduct business with minority and women entrepreneurs. In the *Notice*, we indicated that we believe this can be accomplished by requiring cable entities, to the extent possible, to affirmatively seek bids from minority and female entrepreneurs for contracted work.

18. The commenting parties generally agree with our proposed approach for revising our rules concerning the requirements of a cable system's EEO program. In particular, most parties are in favor of our proposal to encourage cable systems to conduct business with minority and female entrepreneurs. Accordingly, we are amending our rules to incorporate the provisions of section 634(d)(2) as proposed in the *Notice*.

V. Monitoring of EEO Performance

19. Section 364 of the Cable Act requires that the Commission monitor the EEO performance of cable entities. The statute requires that all entities with more than five full-time employees file an annual employment report with the Commission. Furthermore, the Commission is required to certify annually that each cable entity is in compliance with the EEO standards prescribed in paragraphs (b), (c), and (d) of Section 634. This certification is to be based on information in the possession of the Commission, including the annual reports. The Commission also must investigate each cable entity at least once in five years to review its employment policies and practices and to verify the accuracy of its annual employment reports.

20. In the *Notice*, the Commission proposed a comprehensive revision of its EEO reporting requirements and compliance procedures to reflect the provisions of section 634 of the Cable Act. The Commission proposed to delete the rule requiring each cable operator to file a copy of its EEO program and to replace it with a new procedure for certifying compliance with our EEO requirements. The new certification and investigation procedures would be based on information submitted on a revised Form 395A, "Cable Television Annual Employment Report and Application for Certification," and a new Form 397, "Cable Television Equal Employment Opportunity Investigation Form."[15] As proposed, Form 395A would satisfy the Cable Act's annual reporting requirement and provide the Commission with sufficient additional information for certification. The Commission made specific proposals for certification based on these reports, including the use of the existing EEO processing guidelines. The proposed new Form 397 would elicit more detailed information and would be submitted once every five years, in lieu of the Form 395A. The Form 397 reports would be the basis of the Commission's investigation of cable systems' EEO performance. The Commission also proposed to allow arrangements with multiple system operators (MSOs) for the coordinated review of their EEO reports.

21. In developing proposals for the reporting formats and the certification and investigation procedures, we considered several criteria. First, the reporting requirement must provide the Commission with sufficient information to enable us to implement fully our statutory EEO enforcement responsibilities. Second, we attempted to minimize the reporting burden on individual cable operators. Finally, in order to process the required data from more than 5,000 employment units every year, we sought procedures that would be feasible for us to administer and would allow us to automate much of our review of cable system EEO performance.

A. Annual Employment Reports

22. Section 634(d)(3) of the Cable Act requires that each cable entity with more than five full-time employees file an annual employment report that identifies full-time and part-time employees by race and sex in each of the following job categories:

(A) Officials and managers;
(B) Professionals;
(C) Technicians;
(D) Sales persons;
(E) Office and clerical personnel;
(F) Skilled craft persons;
(G) Semiskilled operatives;
(H) Unskilled laborers; and
(I) Service workers.[16]

This reporting requirement is similar to the Commission's existing Form 395A. The Cable Act also requires that the annual report include the number of minorities and women in the relevant labor market for each of the specified job categories. The Cable Act further specifies that the reports shall be available at the central office and at every location where more than five full-time employees are assigned to work.

23. Upon review of the record in this proceeding, we have developed revised annual EEO reporting requirements that we believe will provide adequate information for our certification activity with the minimum burden on all parties involved. The various aspects of the revised EEO annual reporting requirement are discussed below.

24. *Filing Requirements*. As proposed in the *Notice*, each employment unit and headquarters unit with more than five full-time employees would submit a revised Form 395A each year. This form would request identifying information about the cable employment unit (name,

[15] *See Notice*, Appendices B and C.

[16] These job categories are determined by the Office of Management and Budget and are presently used by the Commission for its EEO reporting requirements. These categories are also used government-wide for all industries. *See Notice* Appendix B for complete definitions of these terms.

address, etc.); a breakdown of full-time employees by sex, race and national origin in the nine job categories specified in section 634 of the Cable Act; data on part-time employees, promotions and job hires in the upper four job categories and in the aggregate; and, a list of primary minority and female recruitment sources contacted. In addition, the form would request available labor force data (aggregate) and, if available, occupational availability data in each of the nine job categories and in the aggregate. The employment information on the form would be based on one payroll period in January, February or March of the year during which the report is filed. Each employment unit would be expected to use the same payroll period each year. We also proposed to require employment units with five or fewer full-time employees to submit page one of the form which contains various identifying information. This information would allow us to keep consistent records, especially for cable entities that may meet the reporting cut-off in some years, but do not meet it in other years.[17]

25. Several parties had general comments relating to these proposals. OMB questions the need to collect this information from those cable entities that also are required to submit similar data to the Equal Employment Opportunity Commission (EEOC) on its Form EEO-1. Centel Cable Television (Centel), which must also file with the EEOC, suggests that we incorporate that agency's filing into our forms, as much as possible, to minimize the reporting burden on the affected cable entities. OMB states that the proposed Form 395A and its instructions do not state why the data are being collected. OMB states that section 3504(c)(3)(C) of the Paperwork Reduction Act requires that the commission indicate how the requested data will be used and whether a response to the form is voluntary, required to obtain a benefit or mandated by law. NCTA and the National Association of Minorities in Cable (NAMIC) support our proposal to require all employment units to file page one of the form to facilitate our recordkeeping. OMB, however, objects to this proposal, stating that we already collect identifying information from each cable system on the annual Form 325. As an alternative, OMB suggests the addition of a certification statement to Form 325 to the effect that the cable entity has less than six employees and is not required to submit an annual employment report.

26. The Office of Communication of the United Church of Christ and Action for Children's Television (UCC/ACT) and OMB request that we clarify the date that the annual report is due at the Commission. UCC/ACT notes that the proposed instructions indicate that Form 395A must be submitted by May 1 and the proposed form requires a response within 60 days of receipt. The Joint Commenters recommend that the Commission permit an employment unit to change its reporting period if there is a change of ownership.

27. The Form 395A reports will be required to be submitted by May 1 of each year. After consideration of these comments, we are adopting filing requirements that include some modifications of our initial proposals. We will require each cable employment unit with six or more full-time employees to submit Form 395A annually. The statistical information contained on the Form 395A should be based on one pay period during January, February, or March, as proposed in the *Notice*.[18]

28. We will not, in general, require an annual submission from cable entities with fewer than six full-time employees. However, we will require such entities to initially identify that they have less than six employees and are not subject to the statistical reporting requirements. This information would be provided by a one-time certification on page one of the Form 395A that the unit has fewer than six full-time employees.[19] Of course, if such a cable entity increased its workforce to six of more full-time employees, it would then become subject to the full Form 395A reporting requirements. On the other hand, if a cable entity reduces its workforce to fewer than six full-time employees, it would be subject only to the page one identification requirement.

29. We believe that these reporting requirements are appropriate under the provisions of the Cable Act. In addition, we believe that this approach will satisfy our administrative need for information to determine which cable entities are required to file reports while minimizing the impact of our efforts to obtain this information on cable entities with fewer than six full-time employees.

30. In view of OMB's request, we are adding a statement to the revised Form 395A to inform the respondent that the information requested is for the purpose of determining compliance with sections 634 (b), (c) and (d) of the Communications Act and that a response is mandatory.

31. *Employment Data.* In the *Notice*, we proposed to continue to use the existing format for reporting the number of full-time employees by job category on Form 395A. Commenters generally favored our approach for collecting the required annual employment data. For example, NCTA states that the proposed form is already familiar to the Commission and the industry, is consistent with the statute, and is an appropriate tool for gathering information concerning EEO performance. However, NCTA suggests reversing the order of the headings for race, sex and national origin classifications to conform to EEOC's EEO-1 form that is required from cable entities with more than 100 employees. OMB asserts that the Commission's proposal goes beyond the statute. Since the statute only requires that employees be classified by race and sex, OMB states that we should exclude all requests for information regarding ethnic background (*e.g.*, Hispanic). American Women in Radio and Television (AWRT) requests that we define the word "full-time," especially as it might effect sales representatives whose work hours may not be fixed. AWRT and the Joint Commenters request a clarification of how to report employees on leave, those terminated but still on the payroll and contract employees.

32. In the *Notice*, we also requested comments on whether the job titles listed for each job category were appropriate. The legislative history provides no specific guidance regarding an appropriate definition for each of the job categories for the annual reporting form and the investigation processes. However, the House report notes "that the Commission has not recently reconsidered the job category definitions required for the existing

[17] This is our existing procedure for systems with fewer than five employees.

[18] These provisions apply to cable entities as employment units. Each cable system may be considered a separate employment unit. However, where two or more cable systems are under common ownership or control and are interrelated in their local managment, operation and utilization of employees, they shall consititute a single employment unit. A multiple system operator shall treat as a separate employment unit each headquarters office to the extent that work of the office is primarily related to the operation of more than one employment unit.

[19] In the first year of the implementation of the EEO reporting requirements, we will send a copy of the new Form 395A to all cable entities that are presently required to file annual employment reports. All cable units will be required to submit either a full report or page one of Form 395A, certifying that they have fewer than six full-time employees. After this, only those entities with six or more full-time employees or those entities that filed a full report the previous year will be subject to a reporting requirement.

annual statistical employment report." The House then directs the Commission to reexamine these "job categories for the specific purpose of ensuring that the definitions accurately reflect the nature of the categories and the specific positions within them.[20]

33. Most of the parties commenting on this issue believe that the job categories should not be changed. Commenters, such as NCTA, the Equal Employment Advisory Council (EEAC), Centel and the Joint Commenters, note that these are the classifications used by EEOC and should be retained. In particular, NCTA and the Joint Commenters state that the existing general definitions of job categories allow the cable operator the flexibility needed to report the wide range of employees within cable companies.

34. Several commenters suggest minor changes to the list of job titles. For example, NCTA and the Joint Commenters recommend the addition of "salaried supervisors who are members of management" to the job category titled officers and managers. EEOC suggests that the word "person" should be replaced by either "technican" or "worker" (*i.e.*, camera technician instead of cameraperson). EEOC also believes that stagehands should be moved from the technical to the laborer category and that it is more appropriate to classify computer operators in the office and clerical workers category than in the technical category, as they are now classified. Further, EEOC suggests additional minor modifications to the job titles listed in each job category.

35. A few commenters, such as AWRT, UCC/ACT, and the New York City Bureau of Labor Statistics (NYC), believe that the job titles should be more cable industry specific. UCC/ACT has specific suggestions for cable industry job titles to be added. [21] AWRT states that doing this would facilitate completion of the employment report and would ensure uniformity in the categorization of positions. Also, AWRT suggests that the general descriptions of each job category be made more complete.

36. The Cable Act also requires each cable entity to provide annual data on part-time employment by race and sex. This requirement is similar to that of our current rules. In order to minimize the reporting burden, we proposed to revise our rules to combine these data into two categories. The first groupings would include the upper four job categories (*i.e.*, officials and managers, professionals, technicians and sales persons) and the second would be the total of all job categories. We requested comment on whether this information would fulfill the requirements of the statute.

37. UCC/ACT and the Black Citizen's for a Fair Media, *et al.*, (BCFM) state that this proposal would be inadequate and a violation of the Cable Act because it explicitly requires data for each of the nine job categories. Further, BCFM asserts that this would make it more difficult to evaluate whether minority and female employees are gaining access to part-time jobs. EEOC recommends two alternative sets of classifications for reporting these data. They suggest either "white collar" (comprising the upper five job categories) and "blue collar and service workers" (comprising the remaining four job categories) or "white collar and service workers" (comprising the upper five job categories and the service worker category) and "blue collar" (comprising skilled craftpersons, semiskilled operatives and unskilled laborers). [22] Finally, Cole, Raywid & Braverman, on behalf of cable operators (Cable Operators), requests a further explanation of how the Commission will take these data into account when the cable entity's employment profile is compared to the processing guidelines.

38. Under the reporting requirements we are adopting, all EEO units or headquarters units employing more than five full-time employees will be required to complete the data portion of Form 395A.[23] However, we are modifying the format for submitting these data to conform with EEOC's EEO-1 form. We believe that this approach will minimize the reporting burden, particularly for those cable operators subject to EEOC's reporting requirements.

39. The revised format will consist of a grid identical to the one on the EEO-1 form. For each EEO unit or headquarters unit with more than five full-time employees, the cable entity will enter the number of employees, full-time, part-time, apprentice or on-the-job- trainee, for each job category by sex and race or national origin classification.[24] Those units that file an EEO-1 form may substitute a copy of that filing as an attachment to the Commission's form if they choose. This will eliminate duplication of preparation effort for those entities that must also file with the EEOC.

40. In spite of OMB's objection to the collection of data regarding ethnicity as well as race and sex, we will continue to request these data. All of the ethnic or national origin classifications mentioned in the Commission's proposal are recognized by OMB, EEOC and the Commission as minority groups.[25] In fact, in many areas, ethnic or national origin minorities are the largest minority group in the labor force (*e.g.*, Hispanics in El Paso, Texas). Thus, data on significant groups covered by the affirmative action provisions of the Cable Act would not be available if the ethnic and national origin classifications were deleted from the form.

41. We see no reason to change the job categories or their definitions at this time. We believe that the job categories, their definitions and most of the suggested job titles are generally appropriate as proposed in the *Notice*. These are the job categories listed in the statute and are the same as those used by EEOC on its Form EEO-1. Further, our description of each job category is identical to that of EEOC.

42. The job titles listed for each job category are intended to give an indication of the types of cable industry jobs that are likely to be consistent with the responsibilities described for each job category. We are satisfied that most of the job titles included in each job category are appropriate for the cable industry. Moreover, we do not believe it

[20] *See* House Report at 91.

[21] For example, UCC/ACT believes that the public access director should be included in the officials and managers job category.

[22] EECO and NCTA also note an inconsistency between the text of the *Notice* and the proposed Form 395A in Appendix B. In the *Notice*, we stated that the two groupings for part-time statistics would be the upper four job categories and the aggregate of all other categories. However, the proposed form groups the data by upper four job categories and the total of all job categories. NCTA prefers the format on the proposed form since it is consistent with the current evaluation of the data. As indicated in paragrph 39, we are including part-time and full-time employees in the same table.

[23] A full-time employee will be defined as an employee who regularly works at least 30 hours per week. This is the same definition of full-time employees that is currently used by the Commission for broadcast EEO reporting purposes.

[24] This procedure eliminates the separate reporting format for part-time employees. Based on our experience with the broadcast industry, we requested these data separately for the cable industry because we feared that possible differences between the hiring practices for full-time and part-time employees might skew the entity's employment profile. A cursory review of Form 395A data previously submitted to the Commission indicates that temporary or part-time employment is not significant in the cable industry. Therefore, we believe that it is appropriate to combine all employment statistics in one report. Furthermore, there is no indication that discrimination is more likely to occur against part-time employees than against full-time employees. If so, we believe the Commission will become aware of its existence through complaints or during the periodic investigation.

[25] For example, the Form EEO-1, includes ethnic classifications. *See* also section 309(i)(3)(C)(ii) of the Communications Act of 1934, as amended (lottery provision definition of minority group).

is necessary to add job titles. Additional titles would likely not correspond with the employment classifications of many cable systems and could be particularly cumbersome in cases where an individual employee's responsibilities overlapped classifications. As currently defined, the job categories allow each cable operator the flexibility to classify each employee in the manner that best represents his or her duties and responsibilities.[26] Should any questions arise regarding the classification of employees on the annual report, the Commission may require additional documentation in the context of the periodic investigation or through a Multiple System Operator Reporting Agreement (MRA) (see discussion below). For these reasons, we will adopt the job titles and descriptions as proposed in the *Notice* with only minor modifications (i.e., replacing the word "person" with "worker" or "technician" as suggested by the EEOC) and to eliminate certain classifications such as "weaver" that clearly do not pertain to the cable industry.

43. *Labor Force Data.* As set forth in section 634(d)(3) of the Cable Act, the annual statistical report must also include the numbers of minorities and women in the relevant labor market for each job category. Accordingly, we proposed to add this information to the existing Form 395A. In the *Notice*, we stated that we believed that these labor force data were available through each state's employment security division and accessible at an employment center located near the cable system. We requested comments on the availability of labor force data on an aggregate basis and by occupational availability.

44. We also noted that labor force data are generally available on a county basis, or aggregated by standard metropolitan statistical area (SMSA), metropolitan statistical area (MSA) or primary metropolitan statistical area (PMSA) basis.[27] We proposed that a cable employment unit use data for the the MSA where its employment office is located. If the employment office is not located in an MSA, we stated that county data could be used. For headquarters units, we indicated that national data may be the most appropriate. We sought comments also on the geographic area that is most appropriate for reporting the relevant labor market for employment and headquarters units.

45. EEOC states that the data we seek are available through the research offices of each state's employment security agency. OMB states that they have contracted several of these state agencies to request information on women and minorities in the labor force. The data these state agencies had were reprints of U.S. Department of Labor statistical reports based on census data. OMB claims that our requirements that cable entities supply the Commission, one Federal agency, with data produced by another Federal agency is wasteful and ge burdensome. OMB believes that we could meet the requirements of the statute by supplying each entity with the appropriate census-based data. If necessary, the cable operator could add and explain any adjustments that would more accurately reflect the local labor market. The American Legal Foundation (ALF) contends that we should only require the submission of occupational availability data where it is readily available. Centel, in its reply, suggests that other data bases may be available in the marketplace. Centel believes that the Commission should investigate the availability of these alternative sources and establish criteria for using alternative sources.

46. Many parties commented on the issue of the appropriate geographic unit of the relevant labor market. For individual employment units, the Joint Commenters, NCTA and the Cable Operators comment that cable operators should have the discretion to submit the labor market statistics that they believe are the most appropriate for their community. These commenters generally note that the Cable Act does not require any particular rigid definition of the local labor force. NCTA and the Joint Commenters state that factors such as location, geography, transportation and the local economy affect a cable entity's employment circumstances. NCTA suggests that a cable system be allowed to choose the MSA, the county or the franchise area as the relevant labor market. ALF and the Joint Commenters concur with NCTA that franchise area should be added. Additionally, the Joint Commenters suggest that the Commission adopt guidelines to assist cable entities in defining the relevant labor market. EEAC recommends that the Commission adopt the Office of Federal Contract Compliance Programs' (OFCCP) approach that recognizes that there may be qualified applicants in the local labor force for entry level positions but many firms recruit nationwide for high level or highly technical positions.[28] UCC/ACT asserts that the labor force data should, as early as possible, approximate the labor force of the area served by the cable system, and not just the area where the cable unit's employment office is located. According to NCTA, the Commission should assume that the cable operator's choice is reasonable and justifiable. The Cable Operators suggest that if an area other than the MSA, or county where the employment unit is outside the MSA, is chosen, then it could be justified at the time of the five-year investigation.

47. Regarding the appropriate geographic unit for labor force data for headquarters units, many parties, such as UCC/ACT, the Cable Operators, NCTA, Centel and the Joint Commenters, comment that the national labor market may be relevant for the upper level positions for which individuals may be willing to relocate. However, many believe that this choice is unrealistic for most middle management, sales, clerical, technical and skilled labor jobs that are likely to be filled by individuals who live in the area immediate to the headquarters unit. ALF and NCTA state that the Commission has previously treated headquarters units in the same manner as other cable employment units and applied MSA data to those entities located in an MSA and county data to those located outside an MSA. NCTA believes that the Commission should adopt a flexible approach, accepting MSA, county or franchise area data. The submitted data should be assumed to be reasonable and valid, in NCTA's view. According to ALF, if the Commission adopts the proposal to apply national data to headquarters units, then these entities also should be allowed to submit county and MSA data. Centel states that each headquarter's unit should have the discretion to chose the relevant market for its various job categories.

48. Other commenters focused on the mechanics of submitting the data to be required on Form 395A. OMB, for example, states that the instructions do not explain how to complete the boxes

[26] However, we accept the EEOC's suggestion that stagehands should be recategorized as laborers, and that the title "weavers" be eliminated.

[27] Prior to 1983, data were available on an SMSA (Standard Meteropolitan Statistical Area) basis. In 1983, OMB changed the reporting unit from SMSA to MSA. These two areas are equivalent. *See Metropolitan Statistical Areas 1983*, published by the Office of Management and Budget. An MSA is a geographic area that consists of a central city, the county in which it is located and contiguous counties with a high degree of economic and social intergration with the central city.

[28] The *Federal Contract Compliance Manual* section 2-100.5a states in part: The area in which a contractor can reasonably recruit will often be different from [the] immediate labor area, depending upon the skills involved in the job group, and thus will often exert a controlling influence on the requisite skills availability data that are appropriate for use in the analysis.

labeled SMSA, MSA, PMSA and county. OMB also states that we do not define the terms "available labor force," "occupational availability" or "source" and we do not explain which sources would be acceptable. The commenters also note that the Form 395A instructions are not clear as to whether occupational availability data should be reported in the form of absolute numbers or percentages. UCC/ACT and NYC suggest that labor force data should be reported using the same grid that is required for full-time employment statistics to avoid counting minority women twice.

49. As set forth in section 634(d)(3) of the Cable Act, it is the responsibility of each entity filing a statistical report to include not only a breakdown of its own employees by race and sex but also a comparable report on the number of minorities and women in the relevant labor market. Section 634(d)(2)(C) requires the system operator to use data of this type to "evaluate its employment profile and job turnover against the availability of minorities and women *in its franchise area* (emphasis added)." The legitimate point has been raised in the OMB filing that it makes little sense for the Federal government to collect labor force information through the census process, require businesses to obtain that data from the Federal government, and then require that they refile it with the Federal government. To the extent this back-and-forth filing can be eliminated it clearly should be. The statute remains clear, however, that there is a filing requirement on the part of the system operator and it must have the information before it in any case to comply with the evaluation requirements of section 634(d)(2)(C). Moreover, while some general guidance can be provided as to the scope of the "relevant labor market" the statute, by imposing the filing obligation on the system operator, appears to impose on the system the initial task of defining that area as well. Thus, we cannot simply exempt systems from this part of the filing obligation. To minimize the burden of this requirement and in recognition of the point raised by OMB, we are investigating the possibility of supplying each cable employment unit with the county or MSA labor force statistics for each individual cable entity on Form 395A before it is sent to the operator. The statute is specific, however, that it is the operator's responsibility to have and to file this information regardless of whether the Commission is able to develop a system for making the data more readily available. The EEOC, however, has this information and at this point we see no insurmountable obstacle to pre-printing it on the annual forms before they are mailed out.

50. The data provided and used by the Commission in the analysis of the Form 395A will, in the absence of an alternative submission, be the data for the MSA in which the employment office is located. If the employment office is not located in an MSA, the data for the county in which it is located will be used. In the case of headquarters units, we will use national labor force statistics for the top four categories and local data of the lower four categories. We believe that these data generally will comport with the hiring practices of cable employment offices and headquarters units.

51. We will, however, allow the cable entities to substitute alternative labor force data. The Cable Act places the principal responsibility for the identification of the relevant labor force on the system operator. Although under earlier rules the Commission had indicated that it would itself undertake to define appropriate labor pools using a flexible approach based on a review of relevant geographic and demographic considerations, experience indicates that this is not a function that can be performed centrally by the Commission with any facility given the many variables involved and our lack of information concerning labor force hiring patterns for the thousands of areas where there are cable employment units subject to the reporting requirements. We have generally used either MSA or county data in the past and we expect that such data will continue to be relevant to the majority of situations in the future as well. We recognize, however, that MSA or county area data may not always be appropriate and their use could be counterproductive. Systems must undertake a self-analysis as part of the affirmative action program required by the Cable Act so that use of relevant data rather than a centrally dictated arbitrary standard is particularly important.[29] The use of alternative labor force data must be accompanied by a brief explanation as to why these data are more appropriate than MSA or county data. For example, such explanations might be based on the fact that (a) the distance of the employment unit from areas of minority concentration in the MSA is great; (b) commuting from those areas to the cable unit is difficult (such difficulties will usually be based on distance but may also be based on other factors such as lack of public transportation); or (c) that recruitment efforts directed at the MSA minority labor force have been fruitless.[30]

52. As a final matter, we also will add more explicit instructions and definition of terms of the Form 395A, as requested by OMB and other commenters.

53. *Additional Information.* In the *Notice*, we proposed to add several elements to the existing Form 395A that we believed would indicate whether the cable operator is implementing the EEO policies and program set forth in subsections (b), (c) and (d) of the Cable Act. This additional information would include the number of hires and promotions, categorized by sex and race or national origin in the upper four job categories and the total of all other job categories, and a list of recruitment sources contacted by the cable operator over a twelve month period.[31] Regarding this proposal, OMB requests clarification of the instructions. It states that it is unclear whether these data should be reported as absolute numbers or percentages. Also, OMB states that it is unclear whether we are requesting recruitment sources in general or only

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[29] The legislative history of the Cable Act suggests that the principles set forth in Title VII of the Civil Rights Act of 1964 should govern proceedings before the Commission under the Cable Act. *See* House Report at 93. Some guidance for establishing what should be considered within the relevant labor area may be obtained from decisions under Title VII. In one leading case, the issue was whether the labor pool for Fairfax County, Virginia, a suburban Washington, D.C. county, should cover the whole of the Washington SMSA. The court concluded that it should not, citing a number of factors contributing to the separation of Washington, D.C. and Fairfax and inhibiting a flow of applicants, including the distances involved, the absence of conveniently available public transportation and the salary differentials between the communities. *See U.S. v. County of Fairfax*, 629 F.2d 932 (1980).

[30] *Compare Renewals of Indiana, Kentucky and Tennessee Broadcast Stations* (WHIN/WWKX, Gallatin, Tennessee) FCC 83-574, 54 RR 2d 1473, 1484 (1983) *with Media-Com, Inc.* (WDBN-FM), FCC 84-70, 55 RR 2d 1291, 1294 (1984). In the case of WHIN/WWKX, no showing had been made relative to the licensee's efforts in Nashville, while in the case of WDBN-FM, a substantial documented showing indicated that the distance from areas of minority concentration to the station was a mitigating factor. *See Application of Radio Station WPFB, INC. for Renewal of License of Station WSMJ(FM), Greenfield, Indiana*, 66 FCC 2d 459 (1977). Also, *see, e.g.* letter from Glenn A. Wolfe to M. Christopher Derick, dated February 15, 1985 (system allowed to use data for various counties rather than St. Louis PMSA data); letter from Glenn A. Wolfe to Jerry Haines, Esquire, dated April 3, 1984 (station in Port Huron, Michigan, may use St. Clair County data rather than Detroit PMSA).

[31] EEOC notes that the Commission proposed to require data for the upper four job categories and the aggregate of all other job categories for hires and promotions in the text of the *Notice*. However, the proposed Form 395A requests this information for the upper four job categories and the total of all job categories.

those for female and minority employees. OMB further questions the need for these additional data. Centel likewise believes that we should not request the submission of these data since they are not required by the statute. Centel contends that interpretation of these data would have to be subjective and would interject the Commission into management decisions that the cable operator is entitled to make. Centel believes that a statement certifying compliance with the provisions of Sections 643 (b), (c) and (d) would be sufficient.

54. Several commenters believe that the Commission's proposal to collect hiring and promotion information would not provide sufficient data to certify that the employment unit is in compliance with the provisions of section 634. NYC, UCC/ACT and BCFM argue that the data on hiring and promotions should be submitted for each of the nine job categories individually. In UCC/ACT's view, the proposed format would not allow the Commission to identify instances of "ghettoization."[32] According to BCFM and UCC/ACT, this format would not show instances where a promotion does not result in increased pay or responsibility. UCC/ACT comments that the proposed form does not require compliance with section 634(c)(5) regarding training and that this should be added to the form. UCC/ACT also states that a section regarding on-the-job training is needed on Form 395A.

55. Our initial proposal focused on only a few of the many elements of the EEO policies and practices enumerated in section 634 of the Cable Act. We now believe that this proposal would not provide us with sufficient information to verify that the cable entity is in compliance with the EEO provisions of the Cable Act. Furthermore, we believe that our original proposal may have placed excessive emphasis on statistical information and omitted certain other necessary information concerning the cable entities EEO policies and practices. Accordingly, in addition to the hiring and promotion information proposed on the *Notice*, we will require the submission of some additional information.[33] This additional information will consist of the series of questions addressing the policy aspects and program obligations of section 634.[34] Each question will require a "yes" or "no" response. A "no" response to any question will require a further explanation as to why this aspect of the EEO program was not complied with. We believe that this approach will provide us with the necessary data to fulfill the certification requirement of the Cable Act without being overly burdensome on cable operators. The proposal that the cable entity be required to submit detailed recruitment information on the Form 395A will not be adopted. Instead, recruitment activity will be the subject of one of the questions on the report.

56. *Public Inspection.* Section 634(d)(3) of the Cable Act requires that the annual employment report must be available for public inspection at the central office of each cable entity and at any location that has more than five full-time employees on a regular basis. Our existing rules require that these annual statistical reports and the EEO program filed with the Commission must be available for public inspection at the principal workplace of each employment unit or another accessible place.[35] The rules also specify that they must be retained for five years. In the *Notice*, we proposed to conform the terminology of our rules to that of the Cable Act.[36]

57. A few parties commented on the issue of record retention. UCC/ACT seeks a clarification of the definitions of "central office" and "principal workplace." Without a clarification, the commenter believes that it is possible to misinterpret the meaning of the term central office as the headquarters unit. UCC/ACT believes that Congress meant the principal workplace of the local cable system. BCFM requests that the Commission explicitly state that these filings are to be available at both the central office and any work place employing more than five employees.

58. According to UCC/ACT, neither the Cable Act nor the Commission in the *Notice* specifies the length of time the forms must be retained. They state that a seven-year retention requirement would be consistent with the cable EEO enforcement activities prescribed in the Cable Act.[37] UCC/ACT also proposes adding a statement regarding these record retention requirements to the instructions for Form 395A. The United States Catholic Conference (Catholic Conference) proposes that the Commission require each cable system to publish a notice informing the public of its EEO filing with the FCC and the location in the community where it is available for inspection. The Cable Operators, in their reply, assert that this proposal should be rejected since it would go beyond the requirements of the statute.

59. In the *Notice*, we noted that the requirements of the Cable Act relating to the retention of the annual statistical report for public inspection were essentially the same as the existing regulations. The principal difference is in terminology. While nothing in the comments leads us to change our basic proposal, it is apparent that there is a need for clarification of our intent and of the wording of the rule.

60. We will require each individual employment unit to maintain a public inspection file at its central office and at any other work place that is part of the employment unit and has more than five full-time employees. This file must include copies of the annual employment reports. Each headquarters unit will be required to maintain a public inspection file that includes its annual employment reports and a consolidated set of all documents pertaining to the other employment units of the MSO at its central office.

61. Contrary to UCC/ACT's comments, we proposed that all documents must be retained for five years, as is required under our existing

[32] "Ghettoization" is the situation where minorities and women are represented in one or more of the upper four job categories but are virtually excluded from other upper four job category positions. *See* House Report at 89.

[33] OMB claims that the Commission has not shown how the hiring and promotion data will be useful in detecting or deterring discrimination that would not be detected or deterred by other agencies. We believe that OMB misunderstands our mandate. We are required by the Cable Act to do more than simply detect and deter discrimination. Our function is to certify that cable operators do not discriminate (section 634(b)), that they have a positive program of specific practices designed to ensure equal employment opportunity (section 634(c)) and that they regularly evaluate the results of their practices relative to the available minority and female labor force (section 634(d)). We believe that the information we proposed to collect is the minimal amount needed to be consistent with the intent of the statute. Without this information, we would have no way of determining whether the cable operator even has the means for undertaking the analysis required by section 634(d)(2)(F) of the Cable Act. Conversely, if the summary data are prepared and presented, we are assured that the cable operator has in place the means to analyze its efforts and we are in a position to certify that the operator has in fact complied with the EEO provisions of the Cable Act.

[34] The questions parallel the major EEO program requirements contained in the new § 76.75 of the rules. For example, one of the questions that will be included on the Form 395A is "Does the cable entity disseminate its EEO program to job applicants, employees, and those with whom it regularly does business?" (*See* section 634(d)(2)(A) of the Cable Act.)

[35] *See* § 76.311(j) of the Commission's rules.

[36] The proposed § 76.79(b) would require that the annual employment and investigation reports be retained and made available for public inspection at the central office and at every location with more than five full-time employees for five years.

[37] *See* section 634(f)(1).

rules. This time period is particularly appropriate now that each employment unit will undergo a Commission investigation once every five years. We do not believe that a statement regarding the placement of Form 395A in the public inspection file is needed on the instructions to that form, as UCC/ACT suggests. Each cable operator is expected to be familiar with the Commission's rules. Finally, we believe that the Catholic Conference's recommendation that each cable system be required to publish a public notice regarding its Form 395A filing would place an unnecessary burden on the cable operator.

B. Annual Certification

62. Section 634(e)(1) of the Cable Act requires that the Commission annually "certify" each cable entity, including each headquarters unit, is in compliance with paragraphs (b), (c) and (d) of section 634. The Cable Act states that certification is to be based on information in the possession of the Commission, including the annual employment report.[38] The statute does not, however, specify how the Commission is to carry out the certification process. In the *Notice*, we proposed to certify cable entities based on the information contained in our proposed Form 395A and any other relevant information before the Commission. Certification would be withheld only in those instances where the available information suggests that the cable entity's EEO efforts are deficient. As part of the certification process, we proposed to use our existing EEO processing guidelines to perform an initial screening of the information on Form 395A.

63. *Use of Processing Guidelines.* In the *Notice*, we proposed to certify cable entities as complying with the EEO requirements of the Cable Act based on the information contained in the proposed FCC Form 395A and any other relevant information that might be before us. In addition, we stated that as an aid in this determination, we intended to use our existing EEO processing guidelines to evaluate the compliance of cable entities with our EEO standards.[39] The proposal to use the existing EEO processing guidelines generated a considerable amount of controversy and comment. Several parties comment that the use of processing guidelines would be tantamount to a quota system and contrary to the intent of the statute. Centel states that "it is clear that there must be no parity or similar 'quota-type' requirements." The Civil Rights Division of the Department of Justice (Department of Justice) states that Congress did not intend that a numerical standard be used to evaluate disparities between the minority and female composition of a cable entity's workforce and the composition of the relevant labor market. The Department of Justice states that any such use of a numerical standard would contradict the intent of Congress. The United States Commission on Civil Rights (Civil Rights Commission), in its comments, indicates that the Commission's "proposed rules impermissibly interpret the Cable Act's EEO provisions by claiming authority to impose employment quotas which the Congress clearly withheld."

64. ALF, in its reply comments, supports the view that the use of processing guidelines is both a violation of the Equal Protection Clause of the U.S. Constitution, and a direct contravention of the Congressional intent of the Cable Act. BCFM, in its reply, indicates that the use of processing guidelines is appropriate and within the statutory authority of the Commission. BCFM states that the Commission's existing processing guidelines are not prohibited by the Cable Act nor the legislative history and are not constitutionally suspect.

65. Several members of Congress also commented on our proposal to use our existing processing guidelines in reviewing EEO compliance. Congressmen Dingell, Wirth and Leland, in their joint letter, state that "all Congressional parties involved with the drafting of this section of the Cable Act understood and anticipated that the legislation adopted would permit the Commission to continue to utilize processing guidelines in monitoring cable industry EEO compliance."[40] The Congressmen also indicate that the Commission's use of processing guidelines is "clearly permissible" under the Cable Act. Congressmen Dingell, Wirth and Leland state that they strongly support the continued use of processing guidelines as a means of assessing EEO compliance and as an indicator for when additional Commission scrutiny may be necessary. Senator Hatch, on the other hand, expresses serious concerns about the proposal to use the existing processing guidelines to evaluate EEO compliance.[41] Senator Hatch states that such numerical standards have little in common with the language of the Cable Act; and, that the use of arbitrary numerical tests constitutes bad public policy because they ultimately frustrate the very objectives they are designed to achieve. Senator Hatch further questions why the Commission has chosen a standard contrary to other Federal affirmative action regulations, such as those administered by the OFCCP.

66. The question of how these processing guidelines would be used in conjunction with the requirements of the Cable Act received substantial attention in the comments. The Anti-Defamation League of B'nai B'rith (ADL) is concerned that the processing guidelines may function as a hiring quota in the cable industry. ADL suggests that the proposed regulations should be amended to include the processing guidelines "explicitly stating that statistics alone will not support or rebut a finding of EEO deficiency." EEAC, in its comments, indicates that it assumes that the Commission intends to use the processing guidelines simply as a means for channelling limited compliance resources, and not as a device for imposing *de facto* employment quotas of the type which were removed from the Cable Act legislation prior to enactment. EEAC further states that the Commission should not presume that cable entities with employment profiles below the rates specified in the processing guidelines are out of compliance with EEO the standards. Similarly, NCTA states that noncompliance with the EEO requirements of the Cable Act must be based on finding that cable system has

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[38] The House Report suggests that other available relevant information, such as complaints filed by employees or applicants, information from the franchising authority or information submitted by public or private organizations, shall be considered by the Commission when determining compliance. *See* House Report at 88.

[39] The Commission currently selects for further review those employment units with five to ten employees where the most recent annual employment report indicates that minorities and/or women are employed on a full-time basis at a ratio of less than 50 percent of their availability in the labor force with respect to all full-time jobs and at a ratio of less than 25 percent of their availability with respect to full-time jobs in the upper four job categories. Employment units with eleven or more full-time employees are subject to further review where the most recent annual report shows that minorities and/or women are employed on a full-time basis at a ratio of less than 50 percent of their availability in the labor force with respect to all full-time jobs and at a ratio of less than 50 percent of their availability with respect to full-time jobs in the upper four job categories. *See* Public Notice No. 1364, December 15, 1983. *See Report and Order* in Docket 20829 *supra*.

[40] *See* Letter to Honorable Mark S. Fowler, Chairman, Federal Communications Commission, dated June 19, 1985.

[41] *See* Letter to Honorable Mark S. Fowler, Chairman, Federal Communications Commission, dated June 28, 1985.

not in good faith implemented an EEO plan. It should not, in NCTA's opinion, be based on a numerical evaluation of the statistical report. NCTA states that based on its understanding of the Commission's review processes, it can accept the general approach proposed in the *Notice*. NCTA urges, however, that the Commission clearly state that the processing guidelines are to be used only as a screening mechanism in the evaluation of a cable operator's EEO performance.

67. The National Black Media Coalition (NBMC), on the other hand, states that the certification procedure appears to be designed to make it all but impossible for a cable system to fail to be certified.

68. In its reply comments, NAMIC urges the Commission to clarify that the processing guidelines will be used as an "investigative trigger" and will not constitute a quota system. BCFM asserts that the Commission's processing guidelines have been critical in helping to identify media entities that had ineffective or discriminatory employment practices. BCFM also states that goals and timetables have been critical in assessing the effectiveness of plans and programs designed to remedy such discriminatory practices. In addition, BCFM believes that the continued use of such tools is well within the Commission's authority and was anticipated by Congress.

69. While there is no clear or explicit guidance provided in the Cable Act with regard to the certification procedure, we belive that a plain reading of the language contained in paragraph (e)(1) of section 634 of the Cable Act demonstrates that Commission review of the statistical report is warranted. Paragraph 634(e)(1) states:

[o]n an annual basis, the Commission shall certify each entity described in subsection (a) as in compliance with this section if, on the basis of information in the possession of the Commission, *including the [statistical] report filed pursuant to subsection (d)(3)*, such entity was in compliance, during the annual period involved, with the requirements of subsections (b) (c), and (d). (Emphasis added.)

70. We believe that there is no legal bar to the Commission's continued use of its processing guidelines for the purposes of the annual certification requirement contained in the Cable Act. We find nothing in the record of this proceeding, in the statute, or the legislative history to indicate that the Cable Act prohibits the Commission from using its existing processing guidelines.

71. We also find the constitutional questions raised by the ALF and other commenters to be without merit. The arguments raised here rest essentially on the premise that the Commission's use of processing guidelines is a quota system. These guidelines are clearly not intended to be used for any such purpose. Furthermore, we intend to work to assure that they do not unintentionally serve as a quota system.

72. In addition, the Commission has addressed the matter of processing guidelines on a number of occasions, most particularly in the context of the similarly used guidelines for broadcast licensees. In its decision in *EEO Processing Guidelines*, 79 FCC 2d 922 (1980), the Commission rejected an argument by the National Association of Broadcasters (NAB) alleging, *inter alia*, that the processing guidelines were quotas defining employment results that broadcasters were required to achieve.[42] In making that decision, the Commission explained that the processing guidelines are an administrative device by which the Commission determines which of the broadcast licensees filing renewal applications will have their station's EEO program subjected to further staff review. This determination is based on our analysis of the station's employment profile plus the licensee's efforts to recruit and employ minorities and women. *Id.* at 926. Thus, the Commission concluded that the processing guidelines in no way set quotas for a licensee. In accordance with this decision the Commission dismissed NAB's argument that the processing guidelines are substantive rules and regulations that trigger the notice and comment requirements of section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Commission pointed out that the guidelines are intended to regulate the Commission's own behavior, and should not be construed as having a substantial impact on broadcast conduct. Therefore, the processing guidelines are exempt from the notice and comment requirements of section 553. *Id. at* 927.

73. The General Counsel of the Commission has also found that the Commission's broadcasts of EEO rules do not impose hiring quotas. *Opinion of General Counsel/EEO Rules*, 44 RR 2d 907, 909 (1978). Following the United States Supreme Court decision in *Regents of University of California* v. *Bakke*, 438 U.S. 265 (1975), the General Counsel of the Commission was asked to determine the impact of that decision on the Commission's EEO rules. The General Counsel concluded that the *Bakke* case did not cast any doubt on the Commission's EEO rules and policies. In distinguishing the University of California's special admission program and the Commission's EEO rules, the General Counsel noted that the EEO rules and policies, including the processing guidelines, "do not establish fixed hiring quotas for minorities." *Opinion of General Counsel/EEO Rules, supra* at 909.

74. After full consideration of the record, we have developed a new process for evaluating EEO compliance. We believe that this new procedure will better judge a cable entity's performance based on its overall efforts rather than solely relying on the composition of its workforce. This process will consider any EEO complaints filed against the entity, responses to the questions concerning the entity's EEO program and practices, and the composition of the entity's workforce. In developing this process, we recognized the concerns raised by some commenters with respect to use of our existing guidelines and the possibility that the certification of compliance function might serve as a quota system. It is our intention that certification of compliance be based on a comprehensive analysis of a cable system's efforts to comply with the EEO requirements and not simply statistical measures of its workforce. Accordingly, we have designed the certification process and criteria to ensure that full consideration is given to the full range of available information describing a cable entity's EEO efforts.

75. However, we continue to believe that our existing guidelines for examining employment statistics are a useful tool and will use them in the certification process. As described below, these guidelines will be used only for screening the statistical information to reveal cases where more in-depth examination of actual employment activity is warranted. Use of the guidelines in this manner will provide the Commission with an economical and effective method of evaluating the statistical information from the over 5000 cable entities that are subject to certification each year. We believe this will speed the certification process and enable the Commission to use its limited resources in the most efficient manner.

76. *Certification Process*. We will certify based on several different indicia of efforts. Our administrative processing guidelines—the relationship between the numbers of minorities or women employees—will be used solely for an administrative purpose in this process,

[42] *Dismissed without opinion*, 610 F. 2d 1000 (D.C. Cir. 1979).

i.e., to sort out those systems which may require further review of their EEO efforts. In any event, certification will be based on the evidence of efforts contained in the answers to the 395A questions, discrimination complaints and any further information that the cable entity may provide or that the Commission may request in individual cases. This review will be even more thorough for those systems which fall below the Commission's administrative processing guidelines. The certification process itself will consist of a series of separate examinations of the information from Form 395A, any EEO complaints that may have been filed, and, if necessary, additional information that may be supplied by or requested from the cable entity. The initial step will be to examine the cable entity's Form 395A for completeness. Where the cable entity has failed to file the required report, or where the report has been found to be substantially incomplete, certification of the cable entity will be withheld. In this regard, we will consider a report substantially incomplete if the cable entity has failed to submit the required statistical information, failed to answer any of the required questions, or failed to respond to any request for additional information.

77. The second step will be to determine whether any EEO complaints have been filed against the cable entity, either with the FCC, the EEOC, or elsewhere, relating to the certification period. In cases where an adjudicated decision has been issued finding discrimination in response to such a complaint, we will consider that finding to be evidence that the cable entity has not complied with the EEO requirements. We will examine the findings in such cases and will deny certification where a lack of compliance with Section 634 is indicated. In general, we will not consider unresolved complaints to be grounds for denial of certification. Furthermore, any such complaints that are ultimately judged to be cases in which the cable entity has discriminated in its employment policies and practices in violation of the EEO provisions of the Cable Act will be grounds for the Commission to take subsequent action to revoke certification that might otherwise have been granted.

78. The next phase of the certification process will be an examination of the answers to the questions in Part A of Form 395A (See attached Appendix C). If there are negative responses, we will examine any supplemental information or explanation the cable entity may have provided with respect to the questions. We will consider any negative responses that are not satisfactorily justified to be evidence that the entity has not met the EEO requirements and accordingly will deny certification in such cases. If all questions are answered in the affirmative, we will proceed to an analysis of the statistical information on Part B of Form 395A and any additional information supplied by the Cable entity.

79. As part of the certification process, we will also review the statistical data contained in the annual report. The employment and labor force data will be compared to the processing guidelines. If the composition of the entity's labor force does not meet the processing guidelines, we would then examine any other information before us with respect to the cable entity's efforts. We would examine the hiring and promotion information on the Form 395A; and, any explanatory statements or additional information supplied by the cable operator. For example, such additional explanations might include detailed analyses or statements concerning the relationships between the number of minority and female workers employed by the cable system and the number of minorities and women in the available labor force with background, skills or experience appropriate to the relevant job categories. If necessary, we would request additional information concerning the cable entity's actual EEO performance. Such requests for additional information might include inquiries with respect to the specific yes/no questions contained in Part A of Form 395A. Certification of compliance would be granted upon our determination that such explanations and information indicated the cable entity had made sufficient efforts to comply with the statute. In light of the discussion above relating to the permissible use of employment statistics, it is important to emphasize that if the record indicates that the cable entity is making reasonable and good-faith efforts to recruit and employ minorities and women and place them in responsible positions, certification will be granted even though there may be a disparity between the number of minorities and women employed and their respective proportions in the relevant labor market.

80. Upon completion of this review, the Commission will notify cable entities by mail of grant of certification of compliance with paragraphs (b), (c), and (d) of section 634 of the Cable Act. In cases where certification of compliance with the EEO requirements is denied, we will inform the cable entity by letter. This letter will indicate the reasons why we were unable to grant certification and the consequences of this action, including any sanctions the Commission may deem necessary.

81. To summarize the certification of EEO compliance process, cable entities with no EEO complaints, affirmative responses to all of the questions on Part A of Form 395A, and an employment record or other information indicates sufficient efforts to comply with the statute will be granted certification of compliance. Certification of compliance will be denied or withheld in cases where: (1) The cable entity has failed to submit a Form 395A or has filed a substantially incomplete Form 395A; (2) the cable entity has been found as a result of an adjudicated complaint to have discriminated in violation of the provisions of the Cable Act; or, (3) the cable entity's EEO program and practices (*i.e.*, EEO efforts) are found unsatisfactory. Given the Form 395A filing schedules involved, we anticipate that the annual certification period will extend from July 1 to June 30 of each year.

82. *Implementation of the Certification Process.* NCTA and Centel suggest that a three-year transition period be observed before conducting investigations and on-site inspections. NCTA believes this transition period would provide an adequate time frame for the FCC to accumulate the necessary computer facilities and personnel to process forms and to negotiate reporting agreements with operators. NCTA is concerned that certification will be delayed because of a backlog in the Commission's review processes. NAMIC would take a "wait and see" position and believes that if such a backlog occur, the FCC should obtain more staff until the problem is resolved. NAMIC points out that there is no Congressional intent to delay enforcement of EEO compliance and that no transition period is necessary.

83. The Cable Act specifies that within 270 days of the effective date of this title, the FCC is to establish rules to enforce and effectuate the requirements of section 634. The Commission agrees with NAMIC that there is no Congressional intent to delay implementation or enforcement of this section beyond the specified date. We will commence implementation and enforcement of this section as soon as possible after the effective date. It is our intention to effectively administer the EEO certification procedures upon their adoption. However, we recognize that implementation of the certification

process entails development of substantial and complex procedures and automated data systems and that initially it is possible that we may experience some processing delays. While we intend to make every effort to avoid or minimize such problems, we wish to indicate that cable systems will not be penalized or otherwise held accountable for any certification delays that arise during the implementation period.

C. Investigations

84. Section 634(e)(2) of the Cable Act requires that the Commission investigate the employment practices of all cable entities at least once every five years. The purpose of these investigations is to determine whether each cable entity has been in compliance with the requirements of section 634 (b), (c) and (d), including whether the entity's employment practices provide minorities and women equal employment opportunities. As part of this investigation, the Commission must also review the accuracy of employment practices and job classifications reported in the annual statistical report. Again, the statute and the legislative history provide only limited guidance with respect to the implementation of the investigation activity.

85. In the *Notice*, we proposed to investigate 20 percent of all cable entities each year primarily using a paper process. We proposed a new reporting requirement, Form 397, consisting of three parts. The first part (Part A) would ask identifying information of the cable entity and would contain a series of questions requiring "yes" or "no" responses. These questions address the policy aspects and program obligations of section 634 (b), (c) and (d) and are more detailed than the questions in Part A of the new Form 395A we are adopting. The second part (Part B) requests the statistical information contained in the annual employment report and would replace the submission of a Form 395A in the year of the investigation. The third part (Part C) asks that the cable entity submit data to support the statistical information contained in the annual employment report.

86. Specifically, we proposed that Part C of Form 397 would include a list of employees, their current job titles, job categories and a brief description of each employee's primary duties and responsibilities. In addition, we proposed to require that cable entities submit a list of all employees hired or promoted during the year by sex and race or national origin. We also proposed to require each entity to provide a list of the total number of contracts that were open for bid during the preceding twelve months, the total number of minority and female entrepreneurs that bid on each contract and the total number of contracts that were awarded to minority and female entrepreneurs. Finally, we proposed to permit cable entities to submit any additional information that they believed was relevant to our evaluation of their compliance with the EEO requirements.[43]

87. The Commission's proposed Form 397 received a significant amount of criticism from cable interests, minority groups and other parties.[44] OMB, in its filing, asserts that the Commission's proposal to collect this information exceeds the specific requirements of the Cable Act. OMB asserts that the Commission did not justify the collection of these data in the *Notice*.[45] OMB also states that the proposed form does not contain a statement informing the respondent why the information is being collected and how it will be used and whether response is voluntary, required to obtain a benefit, or mandatory, as required by the Paperwork Act. Centel and the Cable Operators also believe that the Commission has not justified the burden of this form and that it goes beyond the intent of Congress. NAMIC contends that the proposed form is burdensome without being useful.

88. With respect to the proposed "yes" or "no" questions in Part A, UCC/ACT expresses skepticism about the reliability of the yes/no responses for obtaining information that is substantially more complex. BCFM argues that the questions do not provide the amount, type, or specificity of information needed for the conduct of an effective investigation of a cable entity's EEO practices. NYC, NAMIC, and NBMC note that the "yes" or "no" questions allow the cable operator to determine what constitutes compliance, a judgment these commenters believe should be made by the Commission. The Joint Commenters recommend that cable operators have the option to add additional information that they believe is relevant to their response to any of the questions. NBMC states that the response to each question should require an explanation. Finally, some parties suggest additional questions, the elimination of some of the proposed questions, or modifications to the proposed questions.[46]

89. Many commenters consider Part C of the proposed Form 397 burdensome. NCTA doubts that this detailed information would be useful for indicating compliance with the statute and suggests that Part C be replaced by an organization chart or a discussion of the organization's structure and a description of the internal audit system for maintaining its EEO program. Some of the commenters, notably Centel, the Joint Commenters, the Cable Operators, and NCTA, are concerned that this requirement would be intrusive on the privacy of employees, as the data will become publicly available for the first time.[47] According to Centel, similar data are already reviewed by EEOC and OFCCP and an additional review would not be fruitful.

90. The Joint Commenters, NCTA, Centel, EEAC, NAMIC and the Cable Operators state that for most cable companies the detailed job description information is not readily available and to prepare it would be a tremendous and costly undertaking. Further, it is likely to produce a massive amount of information that the Commission will not be able to process. Centel states that if the Commission insists on job data it should simply require a statement that job descriptions exist or at most require a one-time filing. NAMIC recommends the submission of a list of job titles, by department, in order of salary, at least for the upper four job categories. According to NCTA, Centel, and the Joint Commenters, the request for data regarding hiring and promotions on Form 397 will not add significantly to the material before the Commission as it

[43] We also offered a second option for meeting this requirement that would encompass reviewing and evaluating the annual Form 395A filings for the previous five years, together with complaints of violations by employees or job applicants, and other information presented by the franchising authority and by private or public agencies or organizations. *See Notice* at footnote 18. NCTA comments that this proposal is insufficient for the investigation process. NCTA contends that the Commission should at least require some additional information to provide a better basis for detecting compliance with the statute's requirements. UCC/ACT states that a five-year trend analysis using the Form 395A filings should be performed in addition to the submission of proposed Form 397. BCFM assets that this alternative would be totally inadequate.

[44] We will only discuss comments on Parts A and C of the proposed Form 397 since Part B is identical to the annual employment report, Form 395A.

[45] Accordingly to OMB, to have practical utility, the information must be significantly useful in detecting or deterring cases of employment discrimination that would not be detected or deterred by other Federal, State or local EEO laws and enforcement programs.

[46] *See*, for example, NCTA at 47–48, Cole at 11–13, Joint Commenters at 39–41, EEAC at 9.

[47] The Cable Operators are particularly concerned that this information and other data requested on Form 397 that it considers proprietary will become public at the Commission or by its inclusion in the cable system's public inspection file.

is already reported on the annual employment report. However, these parties believe that it will impose an additional paperwork burden on cable operators. In the Joint Commenters' view, this reporting requirement would intrude on management's rights because it places the Commission in a role of second guessing a cable operator's decision as to which employees merit promotion.

91. NCTA and Centel state that the request for data on contract bids on the proposed Form 397 exceeds the requirements of the Cable Act. They argue that section 634(d)(2)(E) of the statute only requires that a cable entity encourage all parts of its operation to conduct business with minority and female entrepreneurs. By limiting the inquiry to the bidding process, NCTA and the Joint Commenters assert that the Commission is ignoring the fact that once the cable system is operational, the cable operator rarely engages in the competitive bidding process in the conduct of ordinary business. OMB views this data request as burdensome and intrusive as it would require the cable operator to obtain information about every bidding firm's owners and their race, sex and ethnicity. However, UCC/ACT recommends expanding this question to include an explanation of why a contract was not awarded to a female or minority entrepreneur, if that was the case.

92. Several commenters recommend alternative approaches for investigating compliance with the Cable Act. NCTA suggests that compliance would best be assessed during on-site audits. EEAC recommends that this information be collected only if necessary during a compliance review. Other commenters, however, tended to believe that the proposal did not provide sufficient information. NYC, BCFM and NBMC recommend that the proposed Form 397 be replaced by a more detailed submission.[48] UCC/ACT and NAMIC recommend that Form 397 include the submission of an analysis of past practices and proposals for improving the employment unit's EEO program in accordance with section 634(d)(2)(F) of the Cable Act. Finally, the Catholic Conference proposes that each cable operator be required to circulate, and certify that it has circulated, its investigation submission among its employees who are perhaps the best judge of the veracity of the submission.

93. We continue to believe that the investigative process should consist of the annual Form 395A certification information plus additional information to support the information on that report. As stated in the statute, the investigation should ensure that the entity is in compliance with the provisions of the Cable Act and that the statistical reports submitted by the cable entity accurately reflect employee responsibilities in the reported job classifications. After consideration of the record, however, we find that the filing requirements proposed in the *Notice* would be unduly burdensome for both the cable industry and the Commission. Accordingly, we are amending the investigation procedure, as indicated below, to limit the filing requirements to the minimum necessary to carry out our statutory responsibility.

94. *Supplemental Investigation Sheet.* Several commenters raised questions whether the proposed Form 397 would replace the Form 395A for the year of the investigation or would be in addition to the 395A filing. To avoid any confusion regarding the Commission's cable EEO filing requirements and in view of the substantial modifications in the investigation filing requirement, we will not adopt the proposed Form 397. Instead, during the year in which a cable entity comes under investigation, a "Supplemental Investigation Sheet" will be included with the Form 395A that is sent to the cable entity. The cable entity will be required to submit the requested additional information with the regular annual report Form 395A.

95. The Supplemental Investigation Sheet will request additional information to support the cable entity's statistical filing and to support any questions that may arise regarding the cable entity's EEO program or practices. In order to meet the statutory requirement that the Commission ensure that employees are assigned to the proper job categories, Part I of the Supplemental Investigation Sheet will request brief descriptions of the major duties and responsibilities of employees listed in certain job categories. In the case of cable entities that have been granted certifications of EEO compliance in each of the years subsequent to their most recent investigation, this request in general will be limited to three job descriptions per employment unit. The job categories from which the job descriptions are to be selected will be specified by the Commission. In the case of cable entities that have been denied certification in one or more of the years subsequent to their last investigation, the Commission may ask for additional job descriptions in the same or other job categories. The nature and extent of the expanded request for job descriptions in such cases will depend on the nature of the problems in the cable entity's EEO program that resulted in denial of certification. In such cases, we intend to limit our additional requests to information relating to the specific areas where the entity was not found to be complying with the EEO requirements.

96. Part II of the Supplemental Investigation Sheet will ask specific questions concerning the cable entity's EEO practices and its conformance with the EEO requirements of the Cable Act and Part 76 of our rules. For example, one such question might be to describe the cable entity's efforts to promote minorities and women in a non-discriminatory fashion to positions of greater responsibility under the requirements of section 634(d)(a)(D) of the Cable Act and § 76.75(d) of the Commission's rules. We will ask cable entities that have been granted certification in each of the years subsequent to their most recent investigation to respond to three such questions. We may also ask cable systems that have been denied certification in one or more of the years subsequent to their last investigation to respond to additional questions. In such cases, the additional questions will be directed to the specific EEO program deficiencies that formed the basis for the denial of the certificate of EEO compliance.

97. *Investigation Process.* The investigation process will consist of an examination of the information on the Form 395A and the Supplemental Investigation Sheet. The first step will be to evaluate the regular Form 395A information generally in accordance with the procedures and standards of the normal certification of EEO compliance process. However, we will not grant a certification of EEO compliance until we also have completed our examination of the responses to the inquiries on the Supplemental Investigation Sheet and have determined that these responses

[48] Among the additional information NYC believes that the Commission should collect would be details of recruitment, training and promotion policies, and copies of employment applications and recruiting advertisements. BCFM suggests that the investigation include three things: Form 395A, supplemented by the specific employment practices listed in § 76.311(g) of the current rules; open-ended questions that require more in-depth responses; and the proposed Part C of Form 397. NBMC's proposal would require a cable operator to submit, in addition to the information requested by the Commission's proposal, data on the source of each applicant, training of prospective employees and the operation of cooperative training programs with schools and colleges.

substantially verify the Form 395A report.

98. Once the evaluation of the regular Form 395A report is completed, we will examine the supplemental information. We will review the job descriptions requested in Part I of the Supplemental Investigation Sheet to determine whether the employee's duties and responsibilities are consistent with the job category in which the employee was reported. If any questions arise in this examination, we will ask the cable entity to provide additional information with respect to the employees' responsibilities and may also request additional job descriptions and information concerning the manner in which jobs/employees are assigned to the various categories. If necessary, we may conduct an on-site audit of the cable unit's employment statistics report. If, after further examination, we determine there are substantial deficiencies in the cable entity's reporting methods, lack of EEO performance, or effort as required under the Cable Act, we will take appropriate action, including possible denial of certification and other sanctions as provided in the Cable Act and § 1.80 of our rules.

99. We next will examine the responses to the questions concerning EEO practices and their conformance with requirements of the Cable Act. Any apparent deviations in the cable entity's EEO practices from the requirements of the Cable Act and/or our rules will be subject to further investigation, including additional questions and, if necessary, an on-site audit of the cable unit's EEO practices and activities. If the further investigation reveals substantial deviation from the EEO requirements, lack of effort, or activity inconsistent with the EEO provisions of the Cable Act or our rules we will take appropriate action. This may result in denial of certification, forfeiture, or other sanctions as provided under the Cable Act and § 1.80 of our rules. If the information provided on Form 395A and in response to the inquiries on the Supplemental Investigation Sheet and any further requests or on-site audits indicates satisfactory compliance with the EEO requirements of the Cable Act, we will grant certification of EEO compliance

100. We believe that this investigation process will provide us with sufficient data and information to assess whether the EEO practices of an employment unit are in compliance with the requirements of section 634 (b), (c) and (d) of the Cable Act. This procedure will limit the burden on the cable system and on the Commission to that which we believe is the minimum necessary to fully satisfy our obligations under the Cable Act.

D. On-Site Audits

101. As stated in the House and Senate legislative reports, Congress intended that the Commission use random on-site audits as part of the process of determining compliance with the EEO provisions of the Cable Act. In particular, the legislative history states:

> in order to ensure compliance with this section, the Commission is directed to annually review the employment profiles of reporting employment units, including random on-site audits of some reporting units. These audits will provide the Commission with a basis for determining whether employment profiles are accurately reported on the required annual statistical employment reports, and whether job classification and employee responsibilities are accurately defined.[49]

In the *Notice*, the Commission proposed to conduct random on-site audits on a more limited basis than the paper investigations. Due to the inherent costliness of conducting on-site audits, we proposed that these audits would be conducted only in response to problems that arose during the investigations procedure.

102. NCTA and ALF comment that random on-site audits are a reasonable approach for verification of the reported data and descriptions. These commenters, however, state that such audits should be kept to a minimum and used only when the paper investigation suggests the existence of a problem. ALF believes that on-site audits are a deterrent mechanism and should be used sparingly to preserve their effectiveness. The Joint Commenters and ALF note that on-site audits are not only costly to the Commission, but to the cable entity being audited. NCTA suggests that the Commission limit the number of units owned by a single MSO that can be audited during the company's year of investigation. NYC and BCFM state that the Commission should indicate how frequently and under what circumstances on-site audits will be conducted. The Joint Commenters, ALF and NCTA recommend that the Commission adopt guidelines for the conduct of on-site audits to ensure that they are handled fairly and efficiently. Among the suggested guidelines are notification of the intent to conduct an audit and notification of the intended scope and manner of the inquiry. Further, according to these parties, audits should not disrupt the cable entity's normal operations and system operators and their employees should be permitted to have counsel present.

103. NBMC asserts that the Commission should audit a specified percentage of cable systems that are randomly selected by lottery each year. Each system should be subject to an on-site audit once every five years, not necessarily the same year as the paper investigation. UCC/ACT believes that in addition to the audits conducted in response to problems, the Commission should conduct a specific number of random on-site audits each year. In UCC/ACT's view, if problems are evidenced during an on-site audit, a follow-up audit should be conducted within three years. UCC/ACT also suggests that the Commission establish criteria to determine the existence of problems.[50] NBMC states that the Commission should not be concerned with the inherent costliness of on-site audits. Rather the Commission should ask Congress for whatever funds are necessary to ensure that the Commission is able to comply with the Cable Act.

104. We intend to concentrate our on-site auditing efforts on those situations that present problems during the paper investigation, as proposed. In particular, we believe on-site audits would be most effective for verification of a cable entity's classification of specific jobs in the various job categories. We believe that this approach will make the most efficient use of our limited resources. On-site audits, as we previously noted, are costly to conduct and are likely to be burdensome for the cable operator subject to this type of investigation. By directing our efforts toward those situations where there appear to be problems, we believe that we can be most effective in ensuring compliance with the EEO requirements of the Cable Act throughout the cable industry. Before the Commission conducts an on-site audit of an EEO unit, we intend to provide the cable operator with adequate notification. In general, on-site audits will be limited in scope, focusing on questions raised during our routine investigations. Further, we will attempt to conduct audits in a manner that will be least disruptive to the operator and employees of the cable system.

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[49] *See* 98th Cong. 2d Session 130 Cong. Rec. S14,286 (1984) and House Report at 91.

[50] UCC/ACT's criteria are failure to obtain certification three or more times in a seven-year period, evidence of problems in the five-year investigation and irregularities in either the annual Form 395A report or the Form 397 submission.

E. Multiple System Operators Reporting Agreements

105. In the *Notice*, we proposed to develop multiple system operators reporting agreements (MRAs). As proposed, these agreements would include:

(1) An analysis of each individual employment unit of the MSO (basically, this would consist of the regular Form 395A information);

(2) An understanding of how the employment units are organized and how the personnel policies and practices are administered (the *Notice* suggested that an organizational chart of the MSO might be appropriate for providing the necessary information);

(3) A complete listing of job titles with corresponding job category classifications and a brief general description of the job duties and responsibilities for each job title; and

(4) A description of internal audit systems, including forms for analyzing personnel actions and provisions for corrective measures where goals are not being met; and a description of methodology to calculate detailed goals that may be necessary to correct identifiable problem areas.

We indicated in the *Notice* that the MRAs would permit MSOs to file coordinated certification and investigation reports for all their employment units at one time. All employment units subject to certification or under investigation would then be reviewed within the context of the MSO's total organizational data and pre-approved reporting format. While each employment unit of the MSO would still be required to meet its individual EEO obligations, we stated our belief that the MRA procedure would reduce the overall administrative costs of compliance and be beneficial for both the MSO and the Commission.

106. In general, the commenters support the MRA approach. EEAC supports the Commission's efforts to reduce recordkeeping and reporting burdens. UCC/ACT believes that the MRA would provide valuable structural, organizational and administrative information to the Commission and to the MSO for its annual certification. UCC/ACT also supports the listing of job titles, job category classifications and job responsibilities. NBMC, in its comments, states that the MRA is a laudable proposal requiring only minor fine tuning. In fact, NBMC believes that review of MSO company-wide performance should always be performed and supports requiring an MRA for any MSO with more than five systems. The Catholic Conference suggests that the MRAs be made available for public inspection.

107. The Cable Operators endorse the MRA proposal, but urge that it be an optional reporting procedure. The Cable Operators also suggest certain clarifications. NCTA supports the adoption of the MRA concept but suggests certain modifications. For example, NCTA opposes the proposed requirement that all cable entities submit job descriptions for their employees. NCTA suggests that the request for this information should be limited to only those units undergoing the periodic investigation. NCTA further is opposed to the use of the term "goals" in the MRA and its concomitant suggestion of numerical standards. NCTA also believes that all cable entities should be permitted to enter into special reporting agreements. Finally, NCTA requests clarification of the "pre-approved reporting format" language contained in the proposal. In this regard, NCTA supports the concept of allowing cable operators to establish a reporting format that accommodates their individual organizational structures and interests.

108. Centel suggests that the MRAs be limited to the five year investigation. The Joint Commenters agree that an MRA could serve a useful purpose; however, they believe that the MRA procedure proposed in the *Notice* is too burdensome. The Joint Commenters indicate that the Commission could develop a list of potentially useful information and that submission of this information could be left to the discretion of the MSO. According to the Joint Commenters, the Commission would not routinely review the submitted information except in cases where the annual employment report or the Form 397 raise concerns. The Joint Commenters suggest that the Commission could then refer to the submitted information to determine whether those questions or concerns could be resolved without further inquiry. The Joint Commenters believe that this approach to the MRA would create a valuable, efficiency-promoting administrative tool for both the Commission and the cable entity.

109. After consideration of the comments, we believe that an MRA procedure would be beneficial to both the Commission and the cable industry. However, we agree with those commenters who believe that the proposed procedure would be excessively burdensome and conclude that it is necessary to modify the MRA procedure proposed in the *Notice* and to make it an optional arrangement.

110. *Purpose and Scope of the MRA.* We believe that the ability to consolidate the filing of EEO reports for all employment units, to coordinate the supplemental information for the units under investigation, and to review this information within the context of the MSO organizational make-up will be beneficial in reducing the administrative costs for both the MSO and Commission. However, we disagree with NBMC and other groups that have suggested that various MSOs should be required to file MRAs. Since the concept of an MRA is neither required nor contemplated by the Cable Act, but rather was intended to benefit the Commission and the MSO, we do not believe that mandatory MRAs would be desirable. Thus, an MSO will not be required to enter into an MRA. However, as discussed above, we believe such arrangements would be cost-efficient for both MSOs and the Commission, and therefore, encourage MSOs to participate in the MRA program.

111. The principal purpose of the MRA is to establish an effective dialogue between an MSO and the Commission on EEO matters. The MRA will provide an arrangement under which an MSO can file consolidated EEO reports for all its employment units. In addition, the MRA will provide a mechanism for a coordinated review of the MSO's employment practices for the purpose of determining compliance with the EEO requirements of the Cable Act. In this regard, we envision that the MRA procedure, in general, will be used for both the annual certification and the five-year investigation of an MSO's employment units.[51]

112. Since the purpose of the MRA is to encourage a dialogue between the Commission and MSOs regarding the unique problems that MSOs face, we intend, in most instances, to review the MRA agreement annually. This systematic review will enable the Commission and the cable entity to identify problem areas. Furthermore, an annual review process will avoid the broad inquires that might otherwise be necessary.

113. With respect to the scope of the MRA, several commenters have

[51] We believe that this is a reasonable approach since one of the provisions of the MRA will be to determine which of the MSO's employment units will be subject to investigation (*e.g.*, 20% per year). In this regard, the MRA would provide the information needed for both certification and investigation activities and would eliminate the need for the MSO to submit the additional information for its cable units that might be requested if the units were certified and investigated on an individual basis.

indicated that MRAs should be available to both MSOs and independent operators. These commenters have stated that by limiting MRAs to multiple system operators we are depriving the independent cable operator of the benefits of being evaluated within the contex of a greater range of information. We wish to make clear that independent operators, those operators with one system and filing one form, are not precluded from seeking the technical assistance otherwise afforded MSOs. We do believe that MSOs stand to benefit most from MRAs, insofar as we will allow them to coordinate the filing of certification and investigation reports for several employment units at one time. However, we also encourage individual operators to enter into reporting agreements to the extent that they provide the opportunity to submit additional information concerning the company's employment practices or good faith efforts.

114. *MRA Information.* Several commenters expressed concern that the MRA information proposed in the *Notice* was overly burdensome. NCTA, for example, expressed concern that the Commission might seek detailed information regarding how employment units are interrelated and how policies are administered. Many cable parties were concerned with the proposal that the MRAs include "(a) complete listing of job titles with job category classifications . . . ."

115. The Commission's intended purpose in developing the MRA procedure is to reduce, rather than increase, the administrative burden associated with complying with the EEO requirements of the Cable Act. We agree with the commenters that some of the information requested in the original proposal is unnecessary. Accordingly, we have amended the MRA procedure to make the information filing requirement as minimally intrusive as possible. At the same time, we believe that the new MRA procedure will allow us to collect sufficient information to perform our certification and investigatory responsibilities under the statute. In general, we envision that the principal filing requirement under an MRA will be the same as that for all cable entities, *i.e.*, FCC Form 395A. The MRA will be merely an administrative device to enable an MSO to coordinate and consolidate the filing of the necessary EEO information; to take into account the special aspects and nature of the MSO organizational structure; and to permit an orderly review of the MSO's EEO efforts by the Commission.

116. With respect to corporate organizational information, we believe that it is important for the purpose of the MRA that the Commission be aware of how cable employment units are interrelated and how personnel policies are administered within the cable firm. Nevertheless, we can understand the concern with such a broad submission. Therefore, MRA agreements will permit MSOs to submit whatever information meets this end, and, in most instances, an organizational chart will be adequate.

117. Many cable operators oppose the proposal to include a complete listing of job titles and corresponding job category classifications in the MRA. The parties state that such a proposal would impose an enormous financial and administrative burden on MSOs. In order to impose the least burden on cable operators and still comply with the statutory requirements to review the accuracy of employment practices and job classifications reported in the annual report, we believe it generally would be sufficient for MSOs participating in the MRA program to submit job information for only three job titles. The categories from which these job titles are to be selected will be specified by the Commission. This job information should include a brief general description of the major duties and responsibilities of each job title. This modification should alleviate the concerns regarding the financial and administrative burden imposed on cable operators, the inability of the Commission to review this information, and the concerns regarding violation of employee privacy rights. In the case of MSOs that have been denied a certification of EEO compliance in one or more of the previous five years, we may ask for additional job descriptions as described in the discussion of Supplemental investigation Sheets above.

118. *Internal audit system.* In the *Notice*, we proposed that the MRA include a description of who the MSO would monitor and analyze personnel actions. In addition, we proposed to collect information on provisions for corrective measures where goals are not being met and a description of methodology to calculate detailed goals that may be necessary to correct identifiable problem areas.

119. Several commenters strongly object to the use of the word "goals" in this proposal. NCTA suggests that the current language of the proposal be shortened to delete the goal language and that a statement be included that operators must submit with the MRA "a description of internal audit systems including forms for analyzing personnel actions and provisions for corrective measures." Inasmuch as we have no intention of imposing numerical quotas on cable operators, we believe that the edit proposed by NCTA is appropriate. Our concern is that the Commission receive information to determine whether procedures have been implemented to correct identifiable problems that may exist. Accordingly, the MRA will include only a description of how the MSO monitors and analyzes its personnel actions.

120. *Implementation of the MRA.* A number of commenters have requested that the Commission clarify how it intends to implement an MRA agreement with an MSO. It is our desire to allow MSOs the flexibility to negotiate an MRA in a manner that is most convenient for their respective needs. In the usual case involving a large MSO, we would assume that the MSO representative initially would find it beneficial to discuss the MRA orally, in person or by telephone, with a Commission staff member. In any event, the initial discussion should be scheduled by January 1 of each year.

121. *Preliminary Discussion.* An MSO seeking to enter into a MRA initially will be assigned to an EEO Specialist who would be responsible for conducting a preliminary discussion. This discussion will center on how to review each individual employment unit's EEO performance within the context of its organizational structure. The outcome of this discussion will determine which employment units will be investigated and the extent of the investigations. Administratively, one-fifth of the employment units will be investigated annually. However, some flexibility will be provided to accommodate the individual structure of each MSO.

122. *Pre-Approved Reporting Format.* NCTA requests that the Commission clarify the proposal to allow cable operators to arrange "pre-approved reporting formats." Centel and others express a similar concern as to whether the MRA reporting format would be individually negotiated and would take into account the unique characteristics of each MSO. It is the Commission's intention to establish a reporting format that accommodates each MSO's unique characteristics. In this regard, the aspects of the reporting requirements that will be discussed are:

(i) The determination of which labor force data (*i.e.*, national vs. regional data) individual employment units must apply;

(ii) The unique characteristics of the cable entity's decentralized personnel practice;

(iii) Which employment units will undergo the formal investigation each year;

(iv) Whether a large MSO should file a single MRA or separate MRAs for regional units;

(v) A determination of the three job titles for which the MSO will submit a brief general description of duties and responsibilities; and

(vi) How to deal with individual employment units with deficient EEO programs, and how to bring these deficient units into compliance.

IV. Sanctions

123. Section 634(f) of the Cable Act provides sanctions for failure to comply with EEO requirements and outlines procedures to be used by the Commission when it believes that a sanction is warranted. Subsection (f)(1) specifies that if the Commission finds, after notice and hearing, that an entity has "willfully or repeatedly without good cause failed to comply with the requirements of [section 634]," such a failure is a substantial failure to comply with the Cable Act.[52] Such a failure, in turn, is a basis for the nonrenewal of the system's franchise pursuant to section 626(c)(1)(A).

124. Subsection (f)(2) specifies that any person who is determined by the Commission "to have failed to meet or failed to make best efforts to meet" the requirements of section 634 or our cable EEO rules is liable to a forfeiture penalty of $200 per day for each violation. While there is a limit of 180 days for forfeitures accruing prior to notification by the Commission of a potential violation, there is no limit regarding violations that continue after the issuance of such notification. In addition, subsection (f)(2) authorizes the Commission to suspend one or more of a violator's cable auxiliary relay service (CARS) licenses until the violation is corrected.[53] Only one violation of the cable EEO provisions is specifically defined, namely a misrepresentation occurring in connection with an application for certification.

125. Subsection (f)(3) specifies that certain parts of the Commission's existing statutory authority respecting the issuance of a forfeiture penalty shall apply to cable EEO forfeitures. Subsection (f)(4) directs the Commission to provide notice to the public and appropriate franchising authorities of any penalty imposed.

126. In the *Notice*, we noted that § 1.80 of our rules sets forth both the amounts of forfeiture and the procedures to be followed before a forfeiture can be imposed. We expressed our belief that because § 1.80(a) states that "[a] forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act," no change in our rules was necessary.

127. Commenters express concern over certain language in this section and the lack of specificity as to when penalties are applied. NYC claims there is no definition of "failure" to make best efforts to meet standards or whether "willful" violations are required before the FCC imposes penalties. The Joint Commenters and NCTA are concerned that section 634 of the Cable Act has the potential to exact penalties over and above those provided for in § 1.80 of the Commission's rules. They believe cable entities could, therefore, be penalized twice for the same infraction.

128. In accordance with section 634(f)(1) of the Cable Act, the Commission will consider any willful or repeated without good cause failure to comply with the EEO provisions of section 634, or our rules, to be a substantial failure to comply with the Cable Act. Any such failure to comply may constitute a basis for the imposition of a forfeiture or a suspension of a CARS license. The amount of the forfeiture will be limited by the provisions of section 634(f)(2) of the Cable Act. Before a forfeiture or suspension is imposed, we will follow the procedures for notification and hearing in § 1.80(e) *et seq.* Further, § 1.80 of our rules will be modified to exclude EEO violations from the monetary limits for forfeitures in accordance with the provisions of the Cable Act.

VII. EEO Complaint Procedures

129. In the *Notice*, we noted that the Commission has experience in EEO complaint procedures dealing with broadcast licensees. We proposed to invoke similar procedures involving discrimination complaints against cable entities. In this regard, the Commission has a formal Memorandum of *Understanding* (*MOU*) with the EEOC regarding the exchange of information and the disposition of discrimination complaints involving broadcast licensees.[54] The *MOU* establishes a procedure for the orderly exchange of information between the FCC and the EEOC and a process for the investigation and resolution of complaints of employment discrimination against broadcast licensees.[55] We proposed to modify the *MOU* to include cable operators and multiple system operators. In addition, we proposed the addition of a prohibition against age discrimination to comport with the provisions of the Cable Act. Since the amended *MOU* provides for the orderly exchange of information for the investigation and resolution of discrimination complaints involving cable operators, we also proposed to eliminate from our rules § 76.311(h), *Report of Complaints*. This section provides that every employment unit submit an annual report to the Commission indicating whether any complaints have been filed regarding violations of equal employment statutes by a cable operator.

130. Of the parties who commented on this section, most favor our proposals regarding complaint procedures and the modifications to the *MOU*. However, several parties request clarification of various aspects of the complaint procedures. NCTA would have the FCC explain procedures for processing complaints of EEO violations as described in paragraph 42 of the *Notice*. NCTA, the Joint Commenters and the Cable Operators want the Commission to review all complaints for strict compliance with the adopted requirements and swiftly dismiss those complaints that fail to meet those requirements. These parties are especially concerned with "interested" party status regarding EEO complaints. NCTA claims that charges must be substantial and detailed and that it should be made clear that interested parties have standing and specificity of evidence and must supply affidavits of personal knowledge of the complaint. NCTA also contends that complainants must be made aware that false statements are punishable so as to discourage frivolous complaints and that alleged violations must be filed within 180 days. NAMIC proposes to delete the time limit for filing complaints.

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[52] Repeatedly is defined as three or more times during any seven year period.

[53] Section 634(i)(2) states that the remedies and enforcement provisions of section 634 are in addition to any other penalty available under the Communications Act or any other law.

[54] *Memorandum of Understanding Between the Federal Communications Commission and the Equal Employment Opportunity Commission*, 70 FCC 2d 2320 (1978).

[55] For a general description of the EEOC's statutory authority, *see id.* at 2321 n. 2. The EEOC's jurisdiction extends to employers with 15 or more employees, while the jurisdiction of a state or local agency may be broader in scope. Further, to be timely, a charge must be filed with the EEOC within 180 days of the alleged unlawful employment practice, except as otherwise noted in 29 CFR 1601.13.

131. The Catholic Conference suggests that anyone filing a complaint that fails to comply with the adopted requirements be given a plain English explanation of the rules and allowed to resubmit the complaint in proper form. In addition, the Commission should develop a "Cable EEO and Complaint Procedures Manual." This manual should be provided to cable operators for their public file.

132. The Joint Commenters note that the Commission stated that it intended to add cable operators and multiple system operators to the *MOU*. They ask that the Commission clarify that this does not mean that filing a complaint against a single system of an MSO will trigger an investigation of all of the MSO's systems.

133. Section 634(g) of the Cable Act establishes certain restrictions relating to the filing of EEO complaints. It provides that complaints shall be in writing and shall be signed and sworn to. In addition, it limits the filing of complaints to "employees or applicants for employment" and "any other interested person." To the extent these requirements are unclear, some useful guidance may be obtained from the parallel provisions of section 309(d)(1) of the Communications Act and from the decisions interpreting that section, including in particular *Office of Communications of the United Church of Christ* v. *FCC*, 359 F. 2d 994 (1966). The standing of employees and job applicants under section 634(g) is clear. The basic holding of *UCC* v. *FCC* is that any person may establish standing to participate as a party in interest by alleging a threatened or actual inquiry will be personally suffered that is likely to be prevented or redressed by a favorable decision. *UCC* v. *FCC* makes it clear that consumers may be included within this group. These precedents also appear to be the origin of the requirement that all allegations must be supported by an affidavit of a person or persons with personal knowledge of the facts recited. The Commission established that any individual may qualify as a party in interest if he alleges that he is a listener or viewer of the broadcast station in question or that he resides within the stations's service area. An organization may establish standing to represent the interest of local listeners or viewers. To do so, it must provide the affidavit of one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf. Given this precedent, a party in interest to a formal cable EEO complaint shall be anyone, or group representing said person, residing within the cable system's franchise area who alleges noncompliance and, according to the Cable Act, signs and swears to a written description of the allegations. We will not process formal complaints which do not meet these requirements. Thus, if a complaint does not allege facts raising a *prima facie* question of noncompliance with the statute or our rules, we will notify the complainant that the matters alleged do not warrant further action or inquiry on our part.[56] On the other hand, where a complaint does raise a *prima facie* question of noncompliance, we will submit it to the cable entity or a response. The Commission will then evaluate the submissions and determine what, if any, action is appropriate. Furthermore, since all that is required to file an EEO complaint is to submit a written, sworn to and signed statement, we see no need to develop a "complaint procedures manual" as the Catholic Conference has suggested. Such a manual would merely be repetitive of this section.

134. The Joint Commenters, the Cable Operators and NCTA suggest that all charges be timely filed with the Commission. These parties suggest a 180-day time limit to file charges of discrimination. In this regard, the Commission has considered previously a 180-day time limit for EEO complaints involving broadcasters.[57] There, the Commission noted that although such a time limit might be desirable "as a safeguard against faded memories, lost records, and dispersed witnesses," the time limit for accepting discrimination complaints was not adopted because of the importance of considering performance in the EEO area throughout the license term of the broadcaster. In the context of section 634(g) of the Cable Act, however, we believe that a 180-day time limit is warranted. title VII of the Civil Rights Act, the principles of which the Congress has indicated that we should follow here, contains such a limit and we see no reason why that policy should not be followed for complaints filed under the Cable Act. Thus, specific EEO complaints under section 634(g) of the Cable Act must be filed within 180 days of the alleged act of discrimination or non-compliance with the provisions of the statute.

135. With respect to the *MOU*, the EEOC, in its comments, has agreed to revise the *MOU* with certain modifications to include cable system operators and to include a prohibition against age discrimination as proposed in the *Notice*. With respect to the concerns raised by multiple system operators, extension of the *MOU* to cable system operators does not mean that a complaint filed against an affiliated cable system will automatically trigger an investigation of all of the MSO's cable systems. Such an investigation would occur only upon a determination that an affiliated cable system's violation of EEO standards are reflective of the MSO's policy.

136. After discussion with the EEOC, the Commission and the EEOC have also agreed to amend section V of the *MOU* to enhance coordination and cooperation between the agencies of EEO matters. Under the new provisions of section V of the *MOU*, the Commission will confer, to the extent legally permitted, with the EEOC prior to Commission action on non-restricted EEO rule making proceedings. In general, this action will permit the disclosure by Commission staff of non-restricted rule making items, such as notices of inquiry, notices of proposed rule makings, and certain reports and orders, to the EEOC prior to Commission action on such items.[58] In taking this action, the Commission notes that the provisions of § 1.1231 of its rules and all other *ex parte* restrictions remain in effect. In addition, the EEOC will be prohibited from disclosing the contents of any pre-coordinated Commission item.[59] Furthermore, nothing in the *MOU* affects the Commission's independence in making its own policy determinations. We believe that these changes to the *MOU* will permit a more orderly exchange of information between the Commission and the EEOC and permit a more effective Federal policy in this area.

137. Since we are adopting the attached *MOU*, we find that § 76.311(a) *Report of Complaints* is no longer necessary and will, therefore, delete this section from our rules. This section provided that every employment unit submit an annual report to the Commission indicating whether any complaints have been filed regarding violations of equal employment statutes by a cable operator. Under the *MOU*, such information is and will continue to

[56] This does not preclude or limit the Commission from consideration, on its own motion, of any information concerning EEO noncompliance that is brought to its attention on an informal basis.

[57] *Report and Order*, Docket 20550, 60 FCC 2d at 226 (1976).

[58] Such disclosure by authorized Commission employees will be exempt from the provisions of § 19.735-206 of the Commission's rules. Disclosure of reports and orders will not be made when the EEOC is a party to the proceeding.

[59] *See* Paper Work Reduction Act, 44 U.S.C. section 3510(b).

be provided directly by the EEOC to the Commission on a regular basis.

VIII. Conclusion

138. By this *Report and Order*, the Commission is amending its rules to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984. These rules set forth the policies and program obligations that the Cable Act requires cable operators to observe in order to comply with the Cable Act and to ensure equal employment opportunities. This *Report and Order* also establishes the procedures the Commission will use to monitor EEO performance and compliance with the statute.

IX. Regulatory Flexibility Final Analysis

139. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need for and purpose of the rules.* The Cable Communications Policy Act of 1984 establishes guidelines for the regulation of equal employment opportunity policy and practices in the cable industry. The Cable Act directs the Commission to take the appropriate action in these areas in order to promote a national policy to encourage employment opportunities for women and minorities and to ensure non-discrimination in the cable industry. As a result of this mandate, we have eliminated some rules, modified other and promulgated new rules.

II. *Summary of issues raised by public comments in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.*

A. *Issues Raised.* The Equal Employment Advisory Council (EEAC) suggested that this rule could create multiple reporting obligations for those entities also subject to Executive Order No. 11246. The EEAC recommends that the Commission permit compliance determinations with respect to the FCC EEO standards to be made on the basis of a review of cable entity's affirmative action program prepared pursuant to Executive Order No. 11246.

B. *Assessment.* Cable entities do not routinely file affirmative action program information under Executive Order No. 11246. This information is only provided by an entity upon request. Therefore, we do not believe that duplication of reporting obligations occurs. However, to the extent such information is duplicative of our requirements, we would accept copies of such affirmative action program statements for our purposes.

C. *Changes made as a result of such comments.* None.

III. *Significant alternatives considered and rejected.* The Commission considered all the alternatives presented in the *Notice* and considered all the timely filed comments directed to the various issues in the *Notice*. After carefully weighing all aspects of this proceeding, the Commission has adopted the most reasonable course of action under the mandate of the Cable Act.

140. Accordingly, it is ordered that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and the Cable Communications Policy Act of 1984, Parts 1 and 76 of the Commission's Rules and Regulations are amended as set forth in the attached Appendix A. Pursuant to the requirements of section 634(d)(1) of the Cable Communications Policy Act of 1984 and the authority contained in the Administrative Procedure Act, 5 U.S.C. 553(d)(3), these rules and regulations are effective September 25, 1985. The forms and information collection requirements adopted herein are subject to Office of Management and Budget approval pursuant to the procedures specified in the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

141. It is further ordered that the Memorandum of Understanding between the Equal Employment Opportunity Commission and the Federal Communications Commission as set forth in the attached Appendix D is adopted and will become effective thirty days after signature by both parties.

142. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

47 CFR Parts 1 and 76 are amended to read as follows:

1. The authority citation for Parts 1 and 76 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

PART 1—[AMENDED]

2. 47 CFR 1.80 is amended by revising paragraphs (b)(2) (i) and (ii) and adding paragraph (b)(2)(iii) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b)(2) * * *

(i) $20,000, if the violator is a common carrier subject to the provisions of the Communications Act, a broadcast station licensee or permittee, or a cable television system operator except for EEO violations, and the violation relates to operation of those facilities.

(ii) $5,000, in the case of any other violator, and

(iii) No limit on EEO violations for cable operators.

* * * * *

PART 76—[AMENDED]

§ 76.12 [Amended]

3. 47 CFR 76.12 is amended by removing paragraph (g) in its entirety.

4. 47 CFR Part 76 is amended by adding a new Subpart E, entitled Equal Employment Opportunity Requirements, to read as follows:

Subpart E—Equal Employment Opportunity Requirements

Subpart E—Equal Employment Opportunity Requirements

§ 76.71 Scope of application.

(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in § 76.5(a) of the rules and all satellite master antenna television systems serving 50 or more subscribers.

(b) *Employment units.* The provisions of this subpart shall apply to cable entities as employment units. Each cable entity may be considered a separate employment unit; however, where two or more cable entities are under common ownership or control and are interrelated in their local management, operation, and utilization of employees, they shall constitute a single employment unit.

(c) *Headquarters office.* A multiple cable operator shall treat as a separate employment unit each headquarters office to the extent the work of that office is primarily related to the operation of more than one employment unit as described in paragraph (b) of this section.

§ 76.73 General EEO policy.

(a) Equal opportunity in employment shall be afforded by each cable entity to all qualified persons, and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age or sex.

(b) Each employment unit shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity to every aspect of cable system employment policy and practice. Under the terms of its program, an employment unit shall:

(1) Define the responsibility of each level of management to ensure a positive application and 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 progam and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age 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, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

§ 76.75 EEO program requirements.

An employment unit's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent possible and to the extent that they are appropriate in terms of employment unit size, location, etc.:

(a) Disseminate its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business. For example, this requirement may be met by:

(1) Posting notices in the employment unit's office and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency, if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of the community of a cable television system of the relevant labor area are Hispanic, such notices should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(2) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of race, color, religion, national origin, age or sex is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against.

(b) Use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever job vacancies are available in its operation. For example, this requirement may be met by:

(1) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(2) Recruiting through schools and colleges with significant minority-group enrollments;

(3) Maintaining systematic contacts with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority or female applicants;

(4) Encouraging current employees to refer minority or female applicants;

(5) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the employment unit hires.

(c) Evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area. For example, this requirement may be met by:

(1) Comparing composition of relevant labor area with the composition of the entity's employees;

(2) Comparing its employees, within each job category, with the people available for such positions;

(3) Where there is underrepresentation of either minorities and/or women, examining the company's personnel policies and practices to assure that they do not inadvertently screen out any protected group and take appropriate action where necessary.

Note.—These data are generally available on a metropolitan statistical area (MSA), primary metropolitan statistical area (PMSA) or county basis.

(d) Undertake to offer promotions of minorities and women in a non-discriminatory fashion to positions of greater responsibility. For example, this requirement may be met by:

(1) Instructing those who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(2) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counselling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(3) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(e) Encourage minority and female entrepreneurs to conduct business with all parts of its operation. For example, this requirement may be met by:

(1) Recruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests.

(f) Analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women 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 qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Avoiding use of selection techniques or tests that have the effect of discriminating against qualified minority groups or females;

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

(4) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race or sex discrimination.

§ 76.77 Reporting Requirements.

(a) *Annual employment report.* Each employment unit with six or more full-time employees shall file an annual employment report (FCC Form 395A) with the Commission on or before May 1 of each year. Employment data on the annual employment report shall reflect the figures from any one payroll period in January, February, or March of the year during which the report is filed. Unless instructed otherwise by the FCC, the same payroll period shall be used for each successive annual employment reports.

(b) *Certification of Compliance.* The Commission will use the information submitted on Form 395A to determined whether cable systems are in compliance with the provisions of this subpart. Cable systems found to be in compliance with these rules will receive a Certificate of Compliance.

(c) *Investigations.* The Commission will investigate each cable system at least once every five years. Cable systems are required to submit supplemental investigation information with their regular Form 395A reports in the years they are investigated.

§ 76.79 Records available for public inspection.

(a) 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.

(b) Every employment unit shall maintain for public inspection a file containing copies of all annual employment reports. Each document shall be retained for a period of five years. The file shall be maintain at the central office and at every location with more than five 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 accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

§ 76.311 [Removed].

5. 47 CFR 76 is amended by removing § 76.311 in its entirety.

6. 47 CFR 76.402 is revised to read as follows:

§ 76.403 Cable television system reports.

The operator of every operational cable television system shall correct and/or furnish information in response to forms, encompassing each community unit, mailed to said operator by the Commission. These include:

Community unit data—"Annual Report of Cable Television System," Form 325, Schedule 1

Physical system data—"Annual Report of Cable Television System," Form 325, Schedule 2

Operator ownership data—"Annual Report of Cable Television," Form 325, Schedules 3 and 4

These forms shall be completed and returned to the Commission within 60 days after the date of mailing by the Commission.

Note.—The operator of a cable television system having fewer than 1000 subscribers shall only be required to file Schedules 1 and 2 of Form 325 for each community unit.

Appendix B.—List of Commenters

Initial Comments

American Women in Radio and Television, Inc.
Anti-Defamation League of B'nai B'rith
Black Citizens for a Fair Media, League of United Latin American Citizens, the National Association for Better Broadcasting, the National Association for the Advancement of Colored People, Chinese for Affirmative Action, the NOW Legal Defense and Education Fund, the National Women's Political Caucus, the Women's Equity Action League, and the Women's Legal Defense Fund
Centel Cable Television
Cole, Raywid & Braveman on Behalf of Cable Operators
Equal Employment Advisory Council
Joint Comments of Cable Companies
National Association of Minorities in Cable
National Black Media Coalition
National Cable Television Association, Inc.
Office of Management and Budget
Rodriguez Associates, Ltd.
United States Catholic Conference
United Church of Christ and Action for Children's Television
United States Commission on Civil Rights
United States Department of Justice
United States Equal Employment Opportunity Commission

Reply Comments

American Legal Foundation
Black Citizens for a Fair Media, League of United Latin American Citizens, Association for the Advancement of Colored People, Chinese for Affirmative Action, the NOW Legal Defense and Education Fund, the National Women's Political Caucus, the Women's Equity Action League, and the Women's Legal Defense Fund
Centel Cable Television
Cole, Baywid & Braverman on Behalf of Cable Operators
Congressmen John D. Dingell, Timothy E. Wirth and Mickey Leland
Senator Orrin G. Hatch
Joint Comments of Cable Companies
City of Los Angeles
National Association of Minorities in Cable
National Cable Television Association, Inc.
City of New York

Appendix C

Federal Communications Commission, Washington, D.C. 20554

Employment Unit Ident:

Do not alter this area

Operator

Annual Employment Report—Cable Television

FCC Form 395A

Approved by OMB———, Expires

■ This sheet is your FCC form 395A.

If the employment unit is "local," the communities which comprise it have been pre-printed using the most recent information filed with the Commission.

■ Please correct or complete and return to the Commission

Previously filed:

In addition to the responses to Parts A, B, and C of this form Cable systems *may* also provide any supplemental information that they believe might be useful in evaluating their efforts to comply with the Commission's EEO provisions. There is no requirement that cable systems supply additional information.

SYSTEM COMMUNITIES COMPRISING THIS LOCAL EMPLOYMENT UNIT

Event	Name	State	Type

■ If this employment unit did not consist of six or more full-time employees, check here— ☐

Certification

This report must be certified by the individual owning the reporting system, if individually owned; by a partner if a partnership, by an officer of the corporation, if corporation; or a representative holding power of attorney in case of physical disability of an individual owner or her/his absence from the United States.

Willful false statements made on this form are punishable by fine or imprisonment. 18 U.S.C. section 1001

I certify that I have examined this report, and that all statements of fact contained therein are true, complete and correct to the best of my knowledge, information and belief, and are made in good faith.

Signature ——————
Title ——————
Printed Name of Person Signing ——————
Date Signed ——————

■ Return this sheet, properly completed, by May 1 to the: Federal Communications Commission, RM. 244, Washington, DC 20554.

Part A

Check yes or no to each of the following questions.

(Yes) (No) 1. Does the cable entity disseminate its EEO program to job applicants, employees, and those with whom it regularly does business?

(Yes) (No) 2. Does the cable entity contact minority organizations, women's organizations, media, educational institutions, and other potential sources of minority and female applicants for referrals whenever job vacancies are available in its organization?

(Yes) (No) 3. Does the cable entity evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area?

(Yes) (No) 4. Does the cable entity undertake to offer promotions to positions of greater responsibility to minorities and women in a nondiscriminatory manner?

(Yes) (No) 5. To the extent possible does the cable entity seek out minority and female entrepreneurs and encourage them to conduct business with all parts of its organization?

(Yes) (No) 6. Does the cable entity analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and use these results to evaluate and improve its EEO program?

(Yes) (No) 7. Does the cable entity define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal employment opportunity and maintain a procedure to review and control managerial and supervisory performance?

(Yes) (No) 8. Does the cable entity conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age, or sex from its personnel policies and practices and working conditions?

(Yes) (No) 9. Does the cable entity conduct a continuing review of job structure and employment practices and maintain positive recruitment training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility?

Attach an explanation of any negative response to the above questions.

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FCC FORM 395A

PART B

FULL-TIME AND PART-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL	MALE: White (Not Hispanic)	MALE: Black (Not Hispanic)	MALE: Hispanic	MALE: Asian or Pacific Islander	MALE: American Indian, Alaskan Native	FEMALE: White (Not Hispanic)	FEMALE: Black (Not Hispanic)	FEMALE: Hispanic	FEMALE: Asian or Pacific Islander	FEMALE: American Indian, Alaskan Native
Officials & Managers											
Professionals											
Technicians											
Sales workers											
Office and clerical											
Craft workers (Skilled)											
Operatives (Semi-skilled)											
Laborers (Unskilled)											
Service Workers											
TOTAL											

EMPLOYEE PROMOTIONS (DATA FOR 12 MONTHS)

UPPER FOUR											
TOTAL											

JOB HIRES (DATA FOR 12 MONTHS)

UPPER FOUR												
TOTAL												

PART C

AVAILABLE LABOR FORCE AND OCCUPATIONAL AVAILABILITY DATA

SOURCE: ( ) MSA
( ) COUNTY
( ) OTHER [Attach Explanation]

JOB CATEGORIES	Women	Blacks	Hispanics	Others
Officials & managers				
Professionals				
Technicians				
Sales workers				
Office & clerical				
Craft workers (Skilled)				
Operatives (Semi-skilled)				
Laborers (Unskilled)				
Service workers				
TOTAL				

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Form 395A—Supplemental Investigation Sheet

Part I Employee Job Descriptions

Give brief job descriptions for employees in the job categories specified below. The number in parentheses ( ) indicates the number of different job descriptions that are to be submitted for each category. If no female or minorities are employed in the specified job category, choose another job category and indicate this on the form. Job descriptions should include the position title and a brief description of the major duties and responsibilities of the individual(s) in the position. In addition, the number of individuals currently employed under the position title and a breakdown of these employees by sex and minority/national origin should be included.

1. ( ) Officials and managers
2. ( ) Professionals
3. ( ) Technicians
4. ( ) Sales workers
5. ( ) Office and clerical
6. ( ) Craft workers (skilled)
7. ( ) Operatives (semi-skilled)
8. ( ) Laborers (unskilled)
9. ( ) Service workers

Other instructions:

Part II Inquiries Concerning EEO Program and Practices

Submit responses to the inquiries indicated by an "X". Responses should be brief, but must provide sufficient information to describe the employment unit's activity and efforts in the area of inquiry.

1. ( ) Describe the employment unit's efforts to disseminate its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business.
2. ( ) Name the minority organizations, organizations for women, media, educational institutions, and other recruitment sources used to attract minority and female applicants whenever job vacancies become available.
3. ( ) Report the findings of the employment unit's evaluation of its employment profile and job turnover against the availability of minorities and women in the relevant labor market.
4. ( ) Explain the employment unit's efforts to promote minorities and women in a non-discriminatory manner to positions of greater responsibility.
5. ( ) Describe the employment unit's efforts to encourage minority and female entrepreneurs to conduct business with all parts of its operation.
6. ( ) Report the findings of the employment unit's analysis of its efforts to recruit, hire, promote, and use the services of minority and female entrepreneurs and explain any difficulties encountered in implementing its EEO program.
7. ( ) Describe the responsibility of each level of the employment unit's management with respect to application and enforcement of its EEO policy and explain the procedure for review and control of managerial and supervisory performance.
8. ( ) Describe the elements of the employment unit's continuing program to exclude prejudice or discrimination based upon race, color, religion, national origin, age, or sex from its personnel policies and practices and working conditions.
9. ( ) Describe the manner in which the employment unit conducts its continuing review of job structure and employment practices and the positive recruitment, training, job design, and other measures adopted to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.
10. ( ) Other inquiries:

Definitions

Job Categories

Officials and Managers—Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: officials, executives and middle management. This category would include system managers and assistant managers, program directors and assistant directors; office managers, budget officers, promotion managers, public affairs directors, chief engineers and those holding equivalent positions.

Professional—Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, editors, engineers, lawyers, and labor relations workers. This category would include persons engaged in the writing, preparation and reproduction of programming; writers or editors, producers and directors of programs, floor directors, announcers, singers, actors, music librarians and those in similar positions.

Technicians—Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers and operators, engineering aides, junior engineers, and electronic technicians. This category would include strand mappers, audio and video engineers, camera technicians (live or film), film processors, light technicians.

Sales—Occupations engaging wholly or primarily in direct selling. This category would include advertising agents and able service sales personnel (sales representatives).

Office and Clerical—Includes all clerical-type work regardless of level of difficulty, where the activities are predominately nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors of bills and accounts), messengers and clerks, office machine operators, stenographers, typists and secretaries, telephone operators and kindred workers.

Craft Workers (skilled)—Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the process involved in their work. Exercise considerable independent judgment and usually received an extensive period of training. Includes: hourly paid supervisors who are not members of management, mechanics and repair workers, electricians and motion picture projectionists.

Operatives (semiskilled)—Workers who operate machine or processing equipment or perform other factory-type duties or intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices,[1] operatives, truck and tractor drivers, welders, installers, line workers, splicers and trenching machine operators.

Laborers (unskilled)—Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the applications of little or no independent judgment. Includes: gardeners and groundskeepers, laborers performing lifting or digging, stage hands and kindred workers.

Service Workers—Workers in both protective and nonprotective service occupations. Includes: char workers and

[1] Apprentices—Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship regardless of whether the program is registered with a Federal or State agency.

cleaners, elevator operators, guards and watch workers, janitors, and kindred workers.

Note.—A person who does more than one job is to be listed in the job category which represents the most frequently performed task by that person; a person is to be listed only once. Specific job titles listed in the categories above are merely illustrative. The proper categorization of any employee depends on the kind and level of the employees' responsibilities.

On-the-job-trainees

Production—Persons engaged in formal training for Craft workers (skilled)—When not trained under apprenticeship programs; Operatives (semiskilled), Laborers (Unskilled); Service Workers; Apprentices.

White Collar—Persons engaged in formal training for Officials and Managers; Professionals; Technicians; Sales Office; and Clerical.

Minority Group Identification

(a) Minority group information necessary for this section may be obtained either by visual surveys of the workforce, or from post-employment records as to the identity of employees. An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging.

(b) Since visual surveys are permitted, the fact that minority group identifications are not present on company records is not an excuse for failure to provide the data called for.

(c) Conducting a visual survey and keeping post-employment records of the race or ethnic origin of employees is legal in all jurisdictions and under all Federal and State laws. State laws prohibiting inquiries and record-keeping as to race, etc., relate only to applicants for jobs, not to employees.

Race/Ethnic Categories

(a) *Black, not of Hispanic Origin*—A person having origins in any of the black racial groups of Africa.

(b) *Hispanic*—A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(c) *Asian or Pacific Islander*—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or in the Pacific Islands. This area includes, for example, China, Japan, Korea the Philippine Islands, and Samoa.

(d) *American Indian or Alaskan Native*—A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(e) *White, not of Hispanic Origin*—A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Appendix D

Memorandum of Understanding Between the FCC and the EEOC

The text of the Memorandum will be published after it is signed by the Federal Communications Commission and Equal Employment Opportunity Commission.

[FR Doc. 85-23419 Filed 10-4-85; 8:45 am]

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47 CFR Parts 25 and 78

Clarifying the Protection Provisions for the Table Mountain Radio Receiving Zone

AGENCY: Federal Communications Commission.

ACTION: Final rule; Technical amendment.

SUMMARY: This technical amendment corrects the Final Rule (FCC 85-497) published on September 26, 1985, 50 FR 39000 concerning the Table Mountain Receiving Zone, to include Part 78 among the other rule parts clarified.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea, Spectrum Management Division, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, (202) 653-8149.

List of Subjects:

47 CFR Part 25

Radio.

47 CFR Part 78

Cable television.

Erratum

In the Matter of amendment of Parts 21, 22, 23, 25, 73, 78, 90, and 94 the Commission's Rules to clarify the protection provisions for the Table Mountain Radio Receiving Zone.

Released: September 30, 1985.

The Commission's *Order*, FCC 85-497, released on September 16, 1985, clarifying the Commission's intention to provide protection from radio interference to the Table Mountain Radio Receiving Zone failed to include Part 78 among the rule parts clarified. Also, the subparagraphs in § 25.203(f) were incorrectly numbered.

According, the Order is corrected by revising § 25.203(f) and by adding the revised § 78.19(e) as follows:

PART 25—SATELLITE COMMUNICATIONS

§ 25.203 Choice of sites and frequencies

* * * * *

(f) Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado.

(1) Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40° 07' 50"N Latitude, 105° 14' 40"W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency range	In authorized bandwidth of service	
	Field strength (mV/m)	Power flux density[1] (dBW/m[2])
Below 540 kHz	10	−65.8
540 to 1600 kHz	20	−59.8
1.6 to 470 MHz	10	[2] −65.8
470 to 890 MHz	30	[2] −56.2
Above 890 MHz	1	[2] −85.8

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of $376.7 = 120\pi$ ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(2) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 1.5 statute miles;

(ii) Stations within 3 statute miles with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;