

FORM 395-B BACKGROUND

The FCC has voted on an Order that would reinstate the FCC Form 395-B, the Annual Employment Report. The Order has not been made public, so we do not know its exact content yet. However, we are providing this background so that you can be prepared to discuss it with your members, as the item could be released at any time, launching a court appeal window.

Historically, the FCC required broadcast Station Employment Units (local station combinations with at least one common employee) that had five or more full time employees, and headquarters units of broadcasters owning multiple stations, to file Annual Employment Reports detailing the racial, ethnic and gender makeup of their staffs, as well as the job categories in which those staff members are employed. Updated for the current categories that the federal government uses, that means that stations must report the number of Males, Females, Whites, Blacks/African Americans, Asians, Native Hawaiian or other Pacific Islanders, American Indians or Alaska Natives, and employees of two or more races that they employ in each of the following job categories during a particular two-week payroll period each year: Executive/Senior Level Officials/Managers; First/Mid-Level Officials/Managers; Professionals; Technicians; Sales Workers; Administrative Support Workers; Craft Workers; Operatives; Laborers and Helpers; and Service Workers.

Before use of the form was discontinued over 20 years ago in response to court decisions finding the FCC's related EEO Rules to be unconstitutional, the data collected via the Annual Employment Report was physically available to the public in stations' local Public Inspection Files and at the FCC Public Reference Room. Advocacy groups collected copies of these filings and used the data to compare the racial composition of each Station Employment Unit's staff against the racial composition of the work force in the market the stations served (which the FCC called "parity"). Where disparities were found, either with regard to the whole staff or specific categories like Management, the advocacy groups petitioned to deny stations' license renewal applications at the FCC, often filing in bulk against as many as a hundred stations in a state in a single pleading. The petitions contained no information other than a comparison of each station's Annual Employment Report data against labor force data for the market. The FCC would then issue Letters of Inquiry requiring each station to provide detailed responses to questions about discrimination complaints filed against the station during the license term, jobs filled, recruitment sources used, and interviewee and hiree racial and gender data. These proceedings created considerable legal costs and processing delays for stations, often stretching years given the workload the petitioners placed upon the FCC's staff through these petitions (during which time stations could not complete station sales and often faced difficulties with financing from nervous banks). Eventually, these investigations were often resolved through a settlement that included a payment to the petitioners to deny, or through a conditional license renewal grant with annual reporting requirements, fine, short-term license renewal, or in some cases, designation of the license renewal application for a trial-type hearing to determine if the broadcast license should not be renewed.

To try to avoid these risks, each year prior to the filing of the Annual Employment Report, stations' lawyers would conduct statistical analyses of the draft reports and advise the licensee regarding the racial and gender mix by job category of employees that would need to be hired in order to achieve "parity" with the labor force demographics and thereby improve the

station employment profile before the next year's report or the station's next license renewal application was due.

This situation continued for decades. The FCC only suspended the requirement to file the form in 2001 after the United States Court of Appeal for the District of Columbia Circuit ruled that the FCC's use of Annual Employment Report data to compare stations' racial and gender composition against that of the surrounding labor force constituted an unconstitutional racial quota. After that decision and another in a subsequent case brought by the State Broadcasters Associations, the FCC adopted a new EEO Rule that focuses solely on employment outreach rather than staff demographics. Under this new rule, stations must place an annual report in their online Public Inspection File listing the job title of each job filled during the year, the referral sources that were used to advertise each job, the source that referred each interviewee and hiree, and a description of the required non-vacancy specific outreach efforts the station engaged in during the year, such as job fairs, internships, EEO training, and scholarships.

Given that the FCC's current EEO Rule does not rely on the employment profile of the station employment unit or its headquarters, there does not seem to be any rational reason for the FCC to collect this information. Nevertheless, the FCC continued to seek regular renewals of its authority to use the form from the Office of Management and Budget (OMB) in case it someday decided to resume collecting this data. It has also conducted a number of proceedings regarding its current EEO Rule over the years, stating that it requires this employee information to make reports to Congress regarding employment trends. The State Broadcasters Associations have urged for over two decades that if the FCC should ever reinstate the Annual Employment Report, it should only release the data in aggregate form with no data attributable to any specific station or group. The FCC has never ruled on that request. Indeed, in 2008, when the FCC last sought OMB approval to update the racial classifications on the form, OMB stated that the FCC should not reinstate the form until it decides the data anonymity question, and should then return to OMB for a determination as to whether further review and approval of the form is needed in light of that decision.

We have now received reports that the FCC has voted to not only reinstate use of the Form 395-B, but to create a centralized electronic portal where the public can look up stations' employment profiles, including (once multiple years of reports are in the system) comparisons of the year-to-year changes. Since the FCC previously required such reports also be filed on behalf of each broadcaster's "corporate headquarters," we assume the FCC will also resume that data collection as well.

For stations, reinstatement of the Form 395-B at a minimum represents an additional annual paperwork requirement. As noted above, Station Employment Units that have five or more full time employees must already complete an EEO Public File report annually which makes public the sort of data on recruiting outreach that the FCC previously only collected and shared with petitioners in response to a Letter of Inquiry after a statistical analysis of the station's workforce triggered scrutiny of the station. But, more than the paperwork burdens, the reinstatement of the Form 395-B and the online availability of each station's employee data is an obvious invitation to activist and other groups seeking to leverage that data against stations for various purposes.

PRIVILEGED AND CONFIDENTIAL

While we will need to review the precise wording of the Order when it is released, our understanding is that the FCC is attempting to shield the reinstatement from court appeals by claiming it will not use the data against stations. However, if that were the case, there would be no reason to collect it and publicize it (and certainly not on a station-by-station basis). In fact, FCC commissioners supporting the reinstatement have made public statements such as “Without a reliable window into the Equal Employment Opportunity (EEO) practices of broadcasters, we may never be able to fully understand the scope of the issue, *least of all address it.*” Of course, the main point of the earlier court decisions is that merely looking at staff demographics reveals nothing of a station’s EEO *practices*, which in any event are already audited on an annual basis by the FCC. Finally, even if the FCC actually did not intend to use the data against stations directly, publishing it on a station-by-station basis is obviously intended to facilitate adverse actions against stations by third parties, whether in the form of fomenting advertiser or listener boycotts, protests and picketing, or complaints under state or federal employment laws.

BROADCAST STATION ANNUAL EMPLOYMENT REPORT

SECTION I

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

SECTION II

A. TYPE OF RESPONDENT

Commercial Broadcast Station

Noncommercial Broadcast Station

Headquarters

- Radio TV
 Low Power TV
 International

- Educational Radio
 Educational TV

- HQ

B. List call sign and location of all stations whose employees are on this report. This should include commonly owned stations which share one or more employees.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV	
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV	
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV	
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV	
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV	
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		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV	
		<input type="checkbox"/> AM <input type="checkbox"/> FM <input type="checkbox"/> TV	

SECTION III

A. PAYROLL PERIOD COVERED BY THIS REPORT (DATE) _____

B. CHECK APPLICABLE BOX

- Fewer than five full-time employees in employment unit during the selected payroll period (Complete page one only and certification statement and return to FCC)
- Five or more full-time employees in employment unit during the selected payroll period (Complete all sections of form and certification statement and return to FCC)

SECTION IV CERTIFICATION

This report must be certified, as follows: (a) By licensee, if an individual; (b) By a partner, if a partnership (general partner, if a limited partnership); (c) By an officer, if a corporation or an association; or (d) By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Print Name
Title	Telephone No. (include area code)
Date	

SECTION V - EMPLOYEE DATA

A. FULL-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL (a-j)	MALE					FEMALE				
		WHITE (NOT HISPANIC) (a)	BLACK (NOT HISPANIC) (b)	HISPANIC (c)	ASIAN OR PACIFIC ISLANDER (d)	AMERICAN INDIAN, ALASKAN NATIVE (e)	WHITE (NOT HISPANIC) (f)	BLACK (NOT HISPANIC) (g)	HISPANIC (h)	ASIAN OR PACIFIC ISLANDER (i)	AMERICAN INDIAN, ALASKAN NATIVE (j)
OFFICIALS & MANAGERS											
PROFESSIONALS											
TECHNICIANS											
SALES WORKERS											
OFFICE & CLERICAL											
CRAFT WORKERS (SKILLED)											
OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL											

**B. PART-TIME PAID
EMPLOYEE DATA**

JOB CATEGORIES	TOTAL (a-j)	MALE					FEMALE				
		WHITE (NOT HISPANIC) (a)	BLACK (NOT HISPANIC) (b)	HISPANIC (c)	ASIAN OR PACIFIC ISLANDER (d)	AMERICAN INDIAN, ALASKAN NATIVE (e)	WHITE (NOT HISPANIC) (f)	BLACK (NOT HISPANIC) (g)	HISPANIC (h)	ASIAN OR PACIFIC ISLANDER (i)	AMERICAN INDIAN, ALASKAN NATIVE (j)
OFFICIALS & MANAGERS											
PROFESSIONALS											
TECHNICIANS											
SALES WORKERS											
OFFICE & CLERICAL											
CRAFT WORKERS (SKILLED)											
OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL											

INSTRUCTIONS FOR COMPLETION OF FCC FORM 395-B BROADCAST STATION ANNUAL EMPLOYMENT REPORT

1. Who Must File

All licensees and permittees of commercial and noncommercial AM, FM, LPTV, TV and international BROADCAST stations.

2. What Information Must Be Filed

- a. If the filing concerns a particular reporting unit (see item 5 below) which had fewer than 5 full-time employees during the selected payroll period (see item 4 below), (a) so indicate in Section III of the form; (b) provide the pertinent identifying information asked for in Sections I and II; and (c) complete and sign the certification statement in Section IV of the form. Do not provide the substantive information (statistical data) asked for in Sections V-A and V-B.
- b. If the filing concerns a particular reporting unit which had 5 or more full-time employees during the selected payroll period, (a) provide the pertinent identifying information asked for in Sections I and II, and all information asked for in Sections III, V-A, and V-B; and (b) complete and sign the certification statement in Section IV.

3. When and Where to File

Send TWO copies of each Annual Employment Report required under these instructions to the Federal Communications Commission, 445 12th Street, S.W., Room TW-B204, Washington, D. C. 20554, no later than September 30 of each year.

4. Reporting Period

The employment data filed on FCC Form 395-B must reflect the employment figures from any one payroll period in July, August or September. The same payroll period should be used in each year's report.

5. Reporting Units

The employment data filed on FCC Form 395-B may be filed in duplicate:

For each combined report. Licensees must file employment data on FCC Form 395-B on a combined report. Specifically, licensees must file one Form 395-B for all commonly owned stations in the same market that share at least one employee.

For each Headquarters Office of a multiple station owner. Report on a separate Form 395-B, those employees whose primary duties lie in the operation of the individual stations. (A separate Form 395-B need not be filed to cover headquarters employees whose duties relate to the operation of a station covered in a combined Report, described above, if all such employees are included in such combined Report).

6. **Facility ID Number.** Radio and TV Facility ID Numbers can be obtained at the FCC's Internet Website at www.fcc.gov/mmb/asd/seacall.html or by calling: Radio - 202-418-2730, TV - 202-418-1600. Further, the Facility ID Number is now included on all Radio and TV authorizations and postcards.

7. Race/Ethnic Categories

- a. White, not of Hispanic Origin - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- b. Black, not of Hispanic Origin - A person having origins in any of the black racial groups of Africa.
- c. Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.
- d. Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.
- e. American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

8. Job Categories

The following "job category definitions" are provided for your guidance and may be used in completing FCC Form 395-B. A person is to be listed in the job category which represents the work primarily done by that person; a person is to be listed only once. Specific job titles below are not all inclusive or rigid. The proper categorization of any employee depends on the kind and level of the employee's responsibilities.

- a. **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: presidents and other corporate officers, general managers, station managers, controllers, chief accountants, general counsels, chief engineers, facilities managers, sales managers, business managers, promotion directors, research directors, personnel managers, news directors, operations managers, and production managers.
- b. **Professionals** - Occupations requiring either college graduation or experience of such a kind and amount as to provide a comparable background. Includes: on-air personnel, correspondents, producers, writers, editors, researchers, designers, artists, musicians, dancers, accountants, attorneys, nurses, publicists, film buyers, rating and research analysts, systems analysts and programmers, financial analysts, stage

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managers, cinema photographers, senior staff assistants, personnel interviewers, and continuity directors.

- c. **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: engineers, technicians and engineering aides, including: transmitter, studio maintenance and master control engineers, and news camera, news sound, film lab and drafting technicians. Also film editors, projectionists, and software specialists.
- d. **Sales** - Occupations engaging wholly or primarily in direct selling. Includes: sales account executives, sales analysts, account representatives and sales trainees.
- e. **Office and Clerical** - Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes: secretaries, production assistants, traffic managers, traffic department employees, telephone operators, junior rating and research analysts, assistant camera technicians, news and feature assistants, billing clerks, mail clerks, messengers, cashiers, typists, key punch operators, bookkeepers, photo lab assistants, librarians, (music, film or other) readers, administrative assistants, tab operators, TWX operators, PBX operators, printing and duplicating operations, production coordinators, ledger clerks, operations assistants, pages and guides, stock clerks, office machine operators, including computer console operators. (The positions of traffic managers and administrative assistants have been included in the office and clerical category because in most instances they are not truly managerial positions. However, those stations that require managerial functions of either position (director of a full department or special phase of the film's operation) may include them in the officials and managers category.)
- f. **Craftsperson (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 receive an extensive period of training. Includes: electricians, machinists, building construction workers, hair stylists, carpenters, painters, make-up artists, wardrobe person, heating and air conditioning mechanics.
- g. **Operatives (semiskilled)** - Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: chauffeurs, mobile messengers, drivers, apprentice carpenters and painters, scenic artists, film department assistants, material handlers. (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.)
- h. **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 application of little or no independent judgment. Includes: studio grips, property persons, laborers performing lifting, pulling, piling, loading, etc., carwashers, set up helpers.

- i. **Service Workers** - Workers in both protective and nonprotective service occupations. Includes: cooks, counter and fountain workers, elevator operators, guards and watchpersons, doorkeepers, stewards, janitors, waiters and waitresses.

9. Total

Include in this column all employees in the Reporting Unit covered in the individual FCC Form 395-B. Consider as "full-time" employees all those working 30 or more hours a week.

10. Minority Group Identification

- a. Minority group information necessary for this section may be obtained either by visual surveys of the work force, or from post employment records as to the identity of employees. An employee may be included in the minority group to which she or he 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 the 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.
- d. FCC Form 395-B provides for reporting American Indians or Alaskan Natives; Asians or Pacific Islanders; Black, not of Hispanic origin; Hispanics, Whites, not of Hispanic origin; whenever such persons are employed. The category which most closely reflects the individual's recognition in his community should be used to report persons of mixed racial and/or ethnic origins.

11. Networks & Group Owners

Broadcast networks will file employment data in their role as group owners and report employees whose primary duties lie in the operation and/or management of the individual broadcast station.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your report may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this

form will be available for public inspection.

If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information.

We have estimated that each response to this collection of information will vary from 10 minutes to 1 hour. Our estimate includes the time to read the instructions, look through existing

records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0390), Washington, DC 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Please **DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS**. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0390.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L.104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

BROADCAST STATION ANNUAL EMPLOYMENT REPORT

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Mailing Address		
City	State or Country (if foreign address)	ZIP Code
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Commercial Broadcast Station

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SECTION III

A. PAYROLL PERIOD COVERED BY THIS REPORT (DATE) _____

B. CHECK APPLICABLE BOX

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I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Print Name
Title	Telephone No. (include area code)
Date	

SECTION V - EMPLOYEE DATA

A. FULL-TIME PAID EMPLOYEE DATA

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OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL											

**B. PART-TIME PAID
EMPLOYEE DATA**

JOB CATEGORIES	TOTAL (a-j)	MALE					FEMALE				
		WHITE (NOT HISPANIC) (a)	BLACK (NOT HISPANIC) (b)	HISPANIC (c)	ASIAN OR PACIFIC ISLANDER (d)	AMERICAN INDIAN, ALASKAN NATIVE (e)	WHITE (NOT HISPANIC) (f)	BLACK (NOT HISPANIC) (g)	HISPANIC (h)	ASIAN OR PACIFIC ISLANDER (i)	AMERICAN INDIAN, ALASKAN NATIVE (j)
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TECHNICIANS											
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CRAFT WORKERS (SKILLED)											
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LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL											