

purpose of certifying whether the licensee's station employment unit complied with the EEO rule during the preceding two years. In the *2NPRM*, we proposed to use the Form 397 only for the purpose of filing mid-term reviews, renaming it the "Broadcast Mid-term Report." We will adopt this proposal. Form 397 will be filed by licensees subject to mid-term review. We will modify Form 397 to eliminate the reference to an election. In addition, consistent with our discussion concerning Form 396, we will eliminate the compliance certification requirement and instead require submission of EEO public file reports for the two years preceding the filing (unless the earlier report does not pertain to the current licensee because of a sale). Two groups of television stations would be required by our new rules to file mid-term reports in 2003: New Jersey and New York filings would be due by February 1, 2003, and Delaware and Pennsylvania filings would be due by April 1, 2003. Because of the extremely short time between the anticipated effective date of the rules and the filing dates, we will not require stations in these groups to file mid-term reports in 2003.

102. *Provisions for Small Stations and Small Markets.* The rule adopted by the *R&O* exempted from the outreach provisions (but not the nondiscrimination provisions) station employment units that had fewer than five full-time (30 hours per week or more) employees. As noted, a "station employment unit" referred to a station or group of commonly owned stations in the same market that shared at least one employee. We will include this exemption in our new rule. We also provided in the *R&O* that station employment units with five to ten full-time employees would be required to perform only two, rather than four, Prong 3 menu options every two years. We will incorporate this requirement in our new rule. In addition, we will extend it to certain small market stations. We further provided in the *R&O* that radio station employment units with five to ten full-time employees would be exempt from the mid-term review requirement. We did not extend this relief to television stations because of the requirements of section 334 of the Communications Act. We will include this exemption for radio in our new rule.

103. In the *2NPRM*, we asked whether we should expand the exemption for small stations to include employment units with ten or fewer employees. We also asked whether we should modify the requirement that stations with more

than 10 full-time employees complete four menu options every two years. Smaller stations with five to 10 or fewer full-time employees are required to complete two menu options every two years. We further asked whether we should treat all stations with five or more full-time employees that are located in smaller markets like smaller stations. Having reviewed the record, we find no basis for increasing the pertinent exemptions, except that we find some modification warranted with respect to the menu option requirements applicable to stations in smaller markets.

104. With one exception, we find no basis in the record to provide additional exemptions from our rule beyond those referenced. First, we reject as unsupported in the record any suggestion that the rule we adopt today imposes unreasonable burdens on small broadcasters. As a general matter, the rule imposes minimal burdens. In addition, small broadcasters are permitted to perform fewer menu options, and most likely will have fewer hires, resulting in fewer records to keep and fewer job vacancies requiring recruitment under the rule. Further, as we found in the *R&O*, small stations provide entry-level opportunities in the broadcast industries and make up approximately $\frac{1}{3}$ of the broadcast industry. If we were to exempt such a large number of stations from the EEO rule—stations that may provide entry level opportunities for people new to broadcasting—we would undermine the central purpose of our EEO rule. We decline to do so.

105. We find that it would be appropriate, to modify our Prong 3 menu option requirement for stations in smaller markets. We recognize that smaller markets may not have the resources in the community to support some of the activities contemplated in Prong 3. We did not address this problem in the *R&O* because small market stations that found the menu option requirement burdensome could elect to proceed under Option B. That alternative will not be available under our new rule. We will accordingly provide that small market stations will be required to perform only two, rather than four, menu options during a two year period.

106. We will define the scope of this exemption as extending to any station employment unit consisting solely of a station or stations licensed to a community that is located in a county that is outside of all metropolitan areas, as defined by OMB, or is located in a metropolitan area that has a population of fewer than 250,000 persons. This will

operate to reduce requirements for stations in most markets below the 100 largest markets using definitional criteria that are readily ascertainable from government sources. (The most recent OMB definition of metropolitan areas is contained in OMB Bulletin No. 99-04 (June 30, 1999). See <http://www.whitehouse.gov/omb/inforeg/msa-bull99-04.html>. Metropolitan areas with a population of fewer than 250,000 are defined as Level C and D MSAs or primary MSAs (PMSAs). OMB Bulletin No. 99-04 may be used initially to define areas subject to this provision. OMB has adopted new metropolitan area standards and will announce definitions of areas based on the new standards and Census 2000 data in 2003. *Standards for Defining Metropolitan and Micropolitan Statistical Areas*, (65 FR 82228, December 27, 2000).)

107. In the *Recon*, we adopted a policy pursuant to which an owner who has a controlling interest (50 percent or greater voting control) in a licensee would not be considered a station employee for purposes of the EEO rule, even if he or she worked at the station. We concluded that such an owner's employment at the station would be more an incident of ownership rather than a normal employment relationship because the owner could not be in any normal sense hired or fired. We declined to extend this policy to lesser ownership interests because the circumstances pertaining to their employment might vary widely and we could not assume that the employment was primarily an incident of ownership. Fletcher, Heald & Hildreth, P.L.C. ("FHH"), on behalf of its clients, filed a petition for reconsideration, urging that owners with 20 percent or greater interests should not be treated as "employees" for purposes of the EEO rule. We will not consider owners holding a 20 percent or greater voting interest in a licensee as station "employees" for EEO purposes. This will be subject to the proviso, however, that no single owner has positive control (greater than 50 percent voting control) of the licensee. In that circumstance, the principal enjoying positive control would be in a position to determine whether other stockholders could be employed at the station, and only he or she could properly claim employment as an incident of ownership. Absent that circumstance, it is reasonable to believe that a 20 percent or greater owner's employment position is an incident of ownership. Someone who owns a 20 percent interest in a licensee company is not truly an