

regulatory burdens and ease and clarity of administration.

143. The *2NPRM* proposed to exempt small staff stations from specific EEO recordkeeping and reporting requirements as had been the case under our previous EEO rule. Under our former EEO rule, station employment units with fewer than five full-time employees were exempt from the rule's outreach provisions; station employment units with five to ten full-time employees performed only two, rather than four, menu options every two years; and radio station employment units with five to ten full-time employees were exempt from the mid-term review requirement. In addition, MVPD employment units employing six to ten full-time employees performed only one menu option each year as opposed to the two options required otherwise. MVPDs with fewer than six full-time employees were not required to demonstrate compliance with the EEO program requirements. The *2R&O* adopts this same relief. Thus, the EEO rule does not impose unreasonable burdens on small broadcasters or MVPDs.

144. We provide this relief because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. The exception for small businesses provides them with some relief of any recordkeeping and reporting costs. We believe that the relief to small broadcasters and MVPDs balances the importance of deterring discrimination and achieving broad outreach in broadcast and MVPD employment practices against the need to maintain minimal regulatory burdens.

145. The *2NPRM* asked whether the Commission should increase the number of employees below which broadcasters would be exempt from the EEO outreach requirements to include employment units with ten or fewer employees. We also asked whether to increase the threshold for the lesser number of menu options, or permit the lesser number for stations in smaller markets. As noted, we received one comment directly in response to the IRFA. In addition, we received a few general comments that are pertinent. As discussed in the *2R&O*, the National Association of Broadcasters (NAB) supports exempting stations with fewer than ten full-time employees. NAB explains that such stations face unique obstacles in complying with our rule because of a lack of personnel and resources, difficulties in competing with larger stations, and a lack of access to resources necessary to implement menu options. NAB also contends that stations

in smaller markets face difficulties similar to those facing stations with fewer than ten full-time employees. The Association of Public Television Stations supports an exemption from the EEO rule for stations with ten or fewer employees because of the funding problems of small public television stations, especially those outside of top 100 markets, and difficulties experienced in attracting and retaining minority employees. The Local Television Group (LTVG) asks the Commission to exempt stations with fewer than 100 employees, in order to parallel Equal Employment Opportunity Commission rules. Minority Media and Telecommunications Council (MMTC), the National Organization for Women (NOW), American Women in Radio and Television (AWRT), the National Association for the Advancement of Colored People (NAACP), and the Lawyers' Committee for Civil Rights Under Law oppose an increase in the exemptions, citing primarily the opportunity for entry into the industry provided by small stations.

146. The ACA asks for an exemption from the EEO outreach requirements, streamlined recordkeeping and reporting requirements, and a streamlined FCC Form 395-A (Cable Television Annual Employment Report) for cable systems with fewer than 15,000 subscribers or, in the alternative, employing ten or fewer employees. ACA explains that the Commission previously provided relief to systems with fewer than 15,000 subscribers in the context of rate regulation, and that compliance with EEO outreach and recordkeeping imposes substantial administrative burdens for smaller cable companies.

147. Fletcher Heald & Hildreth, P.L.C. (FH&H) requests that the Commission adopt a policy that when an owner has a controlling interest (20% or greater voting control) in a licensee, he or she would not be considered a station employee for purposes of the EEO rule, even if he or she in fact worked at the station.

148. We recognize that smaller markets may not have the resources in the community to support many of the required menu options. Accordingly, the EEO rule adopted in the *2R&O* provides that small market systems will be permitted to perform only two, rather than four, menu options during a two-year period.

149. The EEO rule also will not consider owners holding a 20% or greater voting interest in a licensee as station employees for EEO purposes. This policy could assist small operators by reducing the number of full-time

employees an entity would have when assessing its eligibility for a small entity exemption or other small business relief.

150. We find no basis in the record to provide any additional exemptions from our rule. Generalized claims as to the alleged burdens by commenters are unsupported by evidence. The rule we are adopting today does not impose unreasonable burdens on small entities. Nor does the rule impose hardships comparable to those involved in rate regulation. Further, as we found in the *R&O*, small entities provide much needed entry-level employment opportunities in the industry.

151. With respect to streamlining reporting/recordkeeping requirements, we will replace Form 395-A with a new form, the FCC Form 396-C. MVPD compliance with the EEO rule's requirements is monitored pursuant to annual reports filed by MVPDs which must be placed in an entity's public file. The Form 396-C requires information concerning the entity's EEO outreach program and not its workforce. We will consider the adoption of a new form eliciting workforce data in a future *R&O*.

152. In order to lessen any burdens, the *2R&O* does not require the retention of records of the recruitment sources of applicants as this may require additional efforts to contact applicants who did not provide the information in the application. Also, records may be conveniently maintained in an electronic format, e.g., by scanning pertinent documents into a computer format.

Report to Congress

153. The Commission will send a copy of the *2R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *2R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *2R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clause

154. Pursuant to the authority contained in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554, *2R&O* is adopted, and part 73 and part 76 of the Commission's rules are amended. It is our intention in adopting these rule