

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.624(g) of the)	MB Docket No. 17-264
Commission's Rules Regarding Submission of)	
FCC Form 2100, Schedule G, Used to Report TV)	
Stations' Ancillary or Supplementary Services)	
)	
Amendment of Section 73.3580 of the)	
Commission's Rules Regarding Public Notice of)	
the Filing of Broadcast Applications)	
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
)	
Revision of the Public Notice Requirements of)	MB Docket No. 05-6
Section 73.3580)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

1771 N Street, NW
Washington, DC 20036
(202) 429-5430
Rick Kaplan
Erin Dozier
Jerianne Timmerman
Antrell Tyson

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Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services)	MB Docket No. 17-264
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Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Broadcast Applications)	
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Modernization of Media Regulation Initiative)	MB Docket No. 17-105
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Revision of the Public Notice Requirements of Section 73.3580)	MB Docket No. 05-6
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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby responds to the above-captioned Notice concerning the Commission's proposals to amend its rules governing ancillary and supplementary services reports and update its public notice requirements associated with broadcaster application filings.² NAB appreciates the Commission's commitment to initiating at least one rulemaking each month to modify or eliminate

¹ NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Notice of Proposed Rulemaking, FCC 17-138, MB Docket Nos. 17-264, 17-105 and 05-6 (*rel.* Oct. 24, 2017) (Notice).

unnecessary or unduly burdensome regulations in an effort to modernize regulations to reflect today's broadcast industry. In particular, NAB supports the Commission's proposal to amend Section 73.624(g) of its rules to relieve television broadcasters from unnecessary reporting requirements for ancillary or supplementary services. As the Commission tentatively concludes in its Notice, eliminating this reporting obligation for digital television (DTV) stations that have not received feeable revenues from ancillary and supplementary services during the relevant reporting period would serve the public interest by reducing regulatory burdens that can impede competition and innovation.³ NAB also supports elimination of Section 73.3580 of the Commission's rules, which requires broadcast licensees to provide public notice of the filing of various license applications. The current requirement places undue burdens on broadcasters without any corresponding public interest benefit. At a minimum, the Commission should update the requirement by replacing the outdated newspaper notice requirements in Section 73.3580 with online notices.

II. NAB SUPPORTS THE COMMISSION'S PROPOSED MODIFICATIONS TO THE ANCILLARY AND SUPPLEMENTARY SERVICES FILING REQUIREMENTS

The Commission has tentatively concluded "that the costs imposed by applying [this reporting requirement] to all DTV stations far outweigh any associated public interest benefits" and further noted that no commenters provided rationale for imposing this reporting obligation on all DTV licensees.⁴ It proposed to limit the reporting obligation to those DTV licensees that derive revenue from feeable services.⁵ NAB agrees with these

³ Notice at ¶ 6.

⁴ *Id.*

⁵ *Id.*

conclusions and supports the Commission’s proposal to modify this blanket reporting requirement.

Currently, 47 C.F.R. § 73.624(g) requires every commercial and noncommercial full power DTV licensee, as well as low power TV, TV translator and Class A station DTV licensees, to annually report whether they provide ancillary and supplementary services (e.g., datacasting, Teletext, audio signals, subscription video, etc.), and, if so, describe these services, report the gross revenues received from all such feeable services and pay five percent of those revenues.⁶ In 2016 fewer than 15 stations – or less than one percent of all stations – reported receiving revenues from their provision of ancillary or supplementary services.⁷ Despite that, the rule requires thousands of licensees to file Form 2100, Schedule G every year, even if they did not provide relevant services during the applicable reporting period.⁸

As the D.C. Circuit Court of Appeals previously emphasized, “cost-benefit analyses epitomize the types of decisions that are most appropriately entrusted to the expertise of an

⁶ 47 C.F.R. § 73.624(g).

⁷ See Notice at ¶ 6, n. 28. Fifteen stations represents less than one percent of all full power DTV stations in 2016. Because the filing requirement extends beyond full power DTV stations, the percentage of stations reporting feeable services is likely only a fraction of a percent of total forms filed. See, *Broadcast Station Totals as of December 2016*, available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-342889A1.pdf (reporting 7,950 total full power, Class A, LPTV and TV Translator stations).

⁸ See, e.g., Comments of the NAB, MB Docket No. 17-105, at 19 (Jul. 5, 2017) (NAB Media Modernization Comments); Comments of CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc. and Univision Communications, Inc., MB Docket No. 17-105, at 12-13 (Jul. 5, 2017) (“Not all stations have reportable service revenue . . . and in such cases completion of an [FCC Form 2100, Schedule G] serves no legitimate regulatory end.”); Comments of Nextstar Broadcasting, Inc., MB 17-105, at 18 (the Commission should “only require the filing of annual [FCC Form 2100, Schedule G] by stations that are required to pay a fee”).

agency.”⁹ The court also held that the Commission is “statutorily authorized to reduce the regulatory burden on licensees.”¹⁰ The Commission is correct to determine that the burden imposed on thousands of television licensees is not justified. The current requirement results in a tremendous cost without any indication of a corresponding public interest benefit. NAB supports the Commission’s decision to modify this requirement.

III. THE FCC SHOULD ELIMINATE – OR AT LEAST MODERNIZE – THE PUBLIC NOTICE REQUIREMENTS APPLICABLE TO BROADCAST APPLICATIONS

The Notice seeks comment on whether it should provide broadcast licensees with more flexibility to provide public notice of certain applications, and “whether there is a need to impose any public notice obligations on certain applicants, given the ready availability of license applications on the Commission’s and stations’ websites today.”¹¹ NAB supports the elimination of the public notice requirements in Section 73.3580 of the Commission’s rules. As discussed further below, the current rule unduly and unfairly burdens broadcast licensees – and only broadcast licensees – without any corresponding public interest benefits. To the extent that the Commission determines that local broadcasters should continue providing public notice of broadcast applications, NAB urges the Commission to significantly streamline and modernize its public notice requirements.

A. The Existing Rule is Complex, Outdated and Inconsistent With How Americans Access Information Today

As NAB and others have observed, Section 73.3580 is a complex rule that requires different public notices depending on the type of broadcast licensee and the type of

⁹ *Office of Commc’n Of United Church of Christ v. FCC*, 707 F.2d 1413, 1440 (D.C Cir. 1983).

¹⁰ *Black Citizens for a Fair Media v. FCC*, 719 F.2d 407, 418 (D.C. Cir. 1983).

¹¹ Notice at ¶¶ 8-10.

application.¹² As a general matter, the rule requires television and radio licensees¹³ to provide public notice of all applications – except renewal applications – through newspaper publication.¹⁴ The rule, however, has varying requirements about how frequently the notice must be provided, depending upon on the types of newspapers published in, or near, the community in which the station is or will be located.¹⁵ In addition to providing notice through newspaper publication, current AM, FM, full power TV and Class A TV licensees filing for modification, assignment or transfer of an existing license must also broadcast the same notice over the air.¹⁶ Further complicating matters, the rule also stipulates the times of day at which a licensee must make these announcements, but the times vary based on whether the station is commercial or noncommercial and its hours of operation.¹⁷ As previously mentioned, licensees filing or amending an application to renew a full-power TV, Class A TV, low-power TV or radio license are exempt from newspaper notice requirements; however,

¹² NAB Media Modernization Comments at 20. See also Comments of America’s Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service, MB Docket No. 17-105, at 13 (Jul. 5, 2017) (the public notice requirements are “extraordinarily complex and burdensome”).

¹³ This includes licensees of low power TV, TV and radio translators, TV and radio boosters and foreign stations.

¹⁴ Section 47 C.F.R § 73.3580(c).

¹⁵ 47 C.F.R. § 73.3580(c)(1) (Notice must be provided in a daily newspaper of general circulation published in the community in which the station is located, or proposed to be located, at least twice a week for 2 consecutive weeks in a 3-week period; or if there is not such daily newspaper, in a weekly newspaper of general circulation published in that community, once a week for 3 consecutive weeks in a 4-week period; or if there is no daily or weekly newspaper published in that community, in the daily newspaper from wherever published, which has the greatest general circulation in that community, twice a week for 2 consecutive weeks within a 3-week period).

¹⁶ 47 C.F.R. 73.3580(d)(3).

¹⁷ 47 C.F.R. 73.3580(d)(3)(i).

these licensees must broadcast a pre- and post-filing announcement during specific times of day, depending on the type of license they are seeking to renew.¹⁸

Not only is this rule needlessly complex, but also it is unnecessary in the first instance. The information required to be disclosed is already widely available on the Internet. As the Notice correctly observes, “when the Commission adopted its public notice requirements decades ago, Americans obtained information in ways that are vastly different from how they do today.”¹⁹ Multiple Commission decisions reflect this transformation in how Americans obtain information and how they interact with both their local broadcast stations and the FCC. Notably, the Commission has ordered the transition of broadcasters’ public files from paper to online,²⁰ afforded broadcasters the ability to make material contest

¹⁸ 47 C.F.R. 73.3580(d)(4).

¹⁹ Notice at ¶ 8.

²⁰ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 ¶ 1 (2012) (updating FCC rules to require television stations to place their public files online “harnesses current technology to make information concerning broadcast service more accessible to the public”); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (adopting online public file requirements for cable, satellite and radio).

disclosures online²¹ and eliminated the requirement that broadcasters retain paper copies of correspondence from the public.²²

Updating the notice requirements associated with broadcast applications would be consistent with the Commission's modernization of its rules to reflect consumers' use of the Internet to access information generally, as well as its recognition that consumers now expect to be able to use the Internet to learn about their local stations. In the Notice, the Commission observes that license applications and related materials already are accessible in the Commission-hosted online public file databases, and that the Commission routinely provides public notice of the filing of broadcast applications.²³ The notices are available to the public on the Commission's website and can be obtained by subscribing to the FCC's Daily Digest or the FCC's RSS feeds.²⁴ These forms of notice will continue to enable meaningful public comment on broadcast applications.

²¹ *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, 30 FCC Rcd 10468, 10472 ¶¶ 1, 8 (2015) (Broadcast Contest Order) (observing that the rule changes are "consistent with consumer expectations about how to obtain contest information" because the public today accesses information in ways that are dramatically different from how they did when the Contest Rule was adopted" and the Internet "has become a fundamental part of consumers' daily lives and now represents the medium used most by the public to obtain information instantaneously.").

²² *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, Report and Order, 32 FCC Rcd 1565, 1569 ¶ 11 (2017) (paper correspondence file requirement is not necessary to ensure that broadcasters comply with their public interest obligations, particularly given that community members "communicate directly with stations by letter, email, social media, telephone, or other means.").

²³ Notice at ¶ 10.

²⁴ *Id.* See also FCC, *RSS Feeds and Email Updates from the FCC*, available at: <https://www.fcc.gov/news-events/rss-feeds-and-email-updates-fcc>.

Even with today’s aggressive notice requirements, very few petitions or comments are filed in response. For example, NAB reviewed the 389 full power television license renewal applications filed in 2012 using the FCC’s Consolidated Database System (CDBS).²⁵ Our review indicates that only six applications – or 1.5 percent – were the subject of any public comment, drawing seven total filings.²⁶ Moreover, those who did file likely did not rely on broadcaster-generated notices to learn of the applications. For example, a Washington, D.C.–based watchdog group that states it “uses aggressive legal action” to accomplish its goals filed a petition to deny the license renewal applications for three stations owned by the same parent company.²⁷ Another informal objection was filed (and later withdrawn) by a cable operator apparently displeased with the status of its retransmission consent negotiations with the affected broadcaster.²⁸ It is unlikely that either of these organizations relied on broadcaster public notices to learn of the pending renewal applications.

Even comments filed by the general public suggest that filers rely on Internet sources of information. Of the four comments filed by the general public in the 389 TV renewal applications from 2012, two included references to the FCC file numbers associated with the

²⁵ The most recent television station renewal cycle began in 2012. Applications filed that year represent nearly one-quarter of all TV renewals filed during that cycle.

²⁶ The Commission ultimately granted all of the renewal applications, dismissing or denying the petitions and informal objections.

²⁷ See Citizens for Responsibility and Ethics in Washington (CREW), *About Us*, available at: <https://www.citizensforethics.org/who-we-are/> (viewed Dec. 20, 2017); Petition to Deny License Renewals of CREW, FCC File Nos. BRC DT–20120531AKE/AKK/AJL (Aug. 22, 2012).

²⁸ See Informal Objection of Bright House Networks, FCC File No. BRC DT-20120927AKV (Sept. 23, 2013). Another comment was filed by an elected official concerning the same renewal application (and raising the same issues discussed by the cable operator). Letter from Bob Campell, Mayor fo DuFuniak Springs, FL to William T. Lake, Chief, Media Bureau, FCC, FCC File No. BRC DT-20120927AKV (Sept. 30, 2013).

applications, rather than merely identifying the stations' call letters,²⁹ and one included a printed page from the FCC's website within instructions on how to file petitions to deny, informal objections and comments.³⁰ Thus, to the extent that filers are not either corporations or non-profit organizations with Washington, D.C. offices staffed by attorneys/lobbyists who frequently appear before the FCC and other government entities, such filers also are comfortable using the FCC's website to access and address broadcast applications.

NAB agrees that because "Americans today are accustomed to using the Internet to obtain a wide array of information," local viewers and listeners are "more likely to expect to obtain information about broadcast applications online."³¹ Accordingly, the Commission should rely on its own public notices of the filing of broadcast applications, rather than requiring broadcaster-generated notices. The FCC-generated notices will continue to allow individuals or entities who wish to comment on broadcast applications a meaningful opportunity to do so.

B. The Current Notice Requirements Place Undue and Unfair Burdens Only on Local Broadcasters

In addition to the fact that the current notice requirements have little public utility, they also unfairly place burdens on broadcasters that are not imposed on any other FCC-regulated entity. Transactions involving cable, satellite, wireless, telecom and broadband providers do not trigger any obligation to make public announcements. Licensee-generated

²⁹ Snow Letter; Terpstra Letter.

³⁰ Letter from Herbert Max Bradley re: FCC File No. BRCDT-20120730AFS (Aug. 5, 2012).

³¹ Notice at ¶ 10.

public notices are also not required when such entities renew their licenses. Instead, these applications are placed on public notice by the Commission, and that is deemed an adequate means of providing the public with an opportunity to comment on applications under the Commission's rules.³² Local broadcast stations are the only licensees required to provide public notice for virtually every license application they file. This disparity in burden between FCC licensees cannot be justified. NAB urges the Commission to eliminate the public notice requirement in the interest of establishing greater regulatory parity among various Commission licensees and across communications platforms and outlets – many of which are competing directly with broadcast stations for viewers and listeners.

C. If the Commission Identifies a Compelling Reason to Retain Some Public Notice Requirements, the Commission Should Modernize Those Requirements by Using On-Air Announcements to Direct Listeners and Viewers to Online Information Sources

If the Commission finds that there is a compelling reason to retain some public notice requirements for application filings, then at the very least the newspaper notices required by the current rule should be eliminated,³³ and licensees should be permitted to make a brief

³² See, e.g., 47 C.F.R. § 1.948 (substantial assignments and transfers of control of wireless licenses require prior FCC approval; applications to assign or transfer such licenses must be filed on FCC Form 603, are placed on public notice by the FCC, and are subject to comment and petitions to deny); 47 C.F.R. § 1.939 (wireless renewal applications are placed on public notice for comment and are subject to petitions to deny).

³³ Several commenters observe that newspaper publication is costly and that online notifications would be more effective. See, e.g., Comments of the Multicultural Media, Telecom and Internet Council in MB Docket No. 17-105, at 2-3 (Jul. 5, 2017) (in spite of increasing broadband access and declining newspaper circulation, broadcasters “are forced to set money aside to post filing notices in publications that the majority of the population no longer consume. Posting notices in newspapers is expensive, time consuming and inefficient relative to posting online.”); NAB Media Modernization Comments at 20-21; Comments of the Named State Broadcasters Associations, MB Docket No. 17-105 at 4 (Jul. 5, 2017).

on-air announcement alerting listeners or viewers that they can access the particular filing on the station's or the FCC's website.³⁴ This approach would permit the public to access the information they need about the application without a lengthy recitation of detailed information over the air.³⁵ Additionally, such an approach would reduce unnecessary burdens on broadcasters and provide information to the public in a manner that is more easily consumed and understood.³⁶

As noted in our previous comments, such an approach would also be consistent with the FCC's past modernization efforts to reflect the public's increasing reliance on the Internet.³⁷ When the FCC updated its contest rules to allow broadcasters to disclose the material terms of contests on their stations' websites, the FCC found that this method would inform consumers more effectively than periodic and often very quick recitations of those terms over the air.³⁸ Because the "Internet has become a fundamental part of consumers' daily lives and now represents the medium used most by the public to obtain information instantaneously," the FCC similarly should bring its public notice rules into alignment with current consumer expectations.³⁹

³⁴ Notice at ¶ 13.

³⁵ NAB Media Modernization Comments at 20. See also Comments of Nexstar Broadcasting, Inc., MB Docket No. 17-105, at 16 (Jul. 5, 2017) ("in the case of a license assignment or transfer of control, announcing the names of all officers and directors of the applicant can take several minutes and turn off viewers and listeners rather than educating them.").

³⁶ See, e.g., Comments of Joint Radio Commenters at 2-3 ("[i]t would be far more helpful to listeners to have this information available online rather than in newspapers or in quickly read on-air announcements.").

³⁷ NAB Media Modernization Comments at 21, *citing* Broadcast Contest Order.

³⁸ Broadcast Contest Order at ¶ 3 (stating that the updated rule would advance the public interest by giving consumers "improved access" to contest information).

³⁹ *Id.* at ¶ 8.

IV. CONCLUSION

NAB strongly supports the Commission's proposal to amend reporting requirements relating to ancillary or supplementary services, and urges the Commission to eliminate all notices required under Section 73.3580, or at minimum, modernize them. The notice requirements are grossly outdated and inconsistent with how listeners and viewers obtain information today. Additionally, the notice requirements place undue regulatory burdens solely on broadcast licensees, while offering no corresponding benefit to the general public.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**
1771 N Street, NW
Washington, DC 20036
(202) 429-5430



Rick Kaplan
Erin Dozier
Jerianne Timmerman
Antrell Tyson

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