

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

In the Matter of)	
)	
Amendment of Section 73.3580 of the Commission’s Rules Regarding Public Notice of the Filing of Applications)	MB Docket No. 17-264
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
)	
Revision of the Public Notice Requirements of Section 73.3580)	MB Docket No. 05-6
)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby files these replies to comments concerning the Further Notice of Proposed Rulemaking in the above-referenced proceedings.² The record reflects the need for the Commission to modernize its rules governing public notice of the filing of applications in a manner that will be more informative for consumers and reduce burdens on both broadcasters and members of the public. To accomplish this goal, the Commission should adopt its proposed online and on-air notice scripts, rather than adding extensive language that would double (or even triple) the length of the notices, as proposed by UCC.³ Similarly, the Commission should adopt the proposals

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 Amendment of Section 73.3580 of the Commission’s Rules Regarding Public Notice of the Filing of Applications, FCC No. 19-97, MB Docket Nos. 17-264, 17-105 and 05-6 (rel. Sept. 26, 2019) (Notice).

³ Comments of the Office of Communication of the United Church of Christ, Inc., Benton Institute, Common Cause, Free Press and the Open Technology Institute at New America (UCC), MB Docket Nos. 17-264, 17-105 and 05-6 (Nov. 18, 2019) (UCC Comments).

of NAB and the Joint Commenters⁴ to allow applicants to place online notices at an appropriately labeled link on their home pages, rather than placing the full text of the notice on an applicant's home page. Finally, the Commission should allow broadcasters the flexibility to air notices once per week at any time between 7 AM and 11 PM as proposed in the Notice, rather than the six notices during shorter windows proposed by UCC.

II. UCC'S PROPOSED ADDITIONS WILL SIGNIFICANTLY LENGTHEN NOTICES, PLACING UNDUE BURDENS ON APPLICANTS AND OVERWHELMING VIEWERS AND LISTENERS

NAB opposes UCC's proposals to modify the online and on-air notice scripts because they would significantly lengthen the notices, placing undue burdens on applicants while failing to better inform the public.⁵ First, most of the information UCC seeks to add—a further description of what the application proposes and information on whether a waiver is sought—is already available by reviewing the application or other sources referenced in the proposed notice scripts. Thus, UCC's additions would not enhance consumers' understanding of proposed applications or their ability to file comments and petitions on the applications.⁶

⁴ Comments of American General Media, Beasley Media Group Licenses, LLC, Connecticut Public, Cumulus Media, Inc., Entercom License, LLC, Galaxy Communications, LLC, Good Karma Broadcasting LLC, Good Karma Milkwaukee, LLC, Meruelo Media, LLC, Sarkes Tarzian, Inc. and WNET (the Joint Commenters), MB Docket Nos. 17-264, 17-105 and 05-6 (Nov. 18, 2019) (Joint Commenters Comments).

⁵ UCC Comments at 2-6 and Appendix. UCC proposes to add language to the online and on-air notice including a further description of the application, whether a waiver is sought, broadcasters' public interest obligations, the filing of comments and petitions to deny; language in the on-air announcement directing the public to station's online notices rather than their online public files; and language in online notices directing the public to a page on the station's website with instructions on filing comments or petitions. *Id.*

⁶ UCC Comments at 2-6 and Appendix. UCC also proposes to add language to notices that they say will "aid members of the public in . . . getting involved in the application process." *Id.* However, the FCC's proposed script already notifies the public that they can file comments or petitions and directs them to information on how to file. Notice at ¶ 29 ("Members of the public wishing to view this application *or obtain information about how to*

Second, as discussed by both NAB and the Joint Commenters, an overly lengthy notice is unlikely to engage the public whether it is delivered on air or online.⁷ UCC's proposed online notice script would double the length of the notice (from approximately 40 to 80 words), and nearly triple it if an applicant is seeking a waiver of the Commission's rules (approximately 104 words). It would change on-air notices from the FCC's proposed script of approximately 60 words (which can generally be read during a 30-second spot) to as many as 130 words depending on whether a waiver is sought—requiring a full minute-long spot. To capture the attention of today's audiences, advertisers are moving away from longer spots, preferring ads of shorter duration. For example, at one time, 60-second spots were considered the industry standard for television advertisements, representing 77 percent of all network television ads.⁸ But recent data show that television commercials have become much shorter, with 48 percent of spots at 30 seconds, 44 percent of spots at 15 seconds, and the once-dominant 60-second spot accounting for only five percent of

file comments and petitions on the application can visit publicfiles.fcc.gov") (emphasis added). Information on the legal standards applicable to broadcast operations and applications can be placed on the FCC's site.

⁷ See Comments of NAB in MB Docket Nos. 17-264, 17-105 and 05-6 (Nov. 18, 2019)(NAB Comments) at 7-8 (discussing how users scan, rather than read websites); *id.* at 12 (research on advertising and communication recognizes the limits of a consumer's ability to process information); Joint Commenters Comments at 5-6 ("due to the length and content of current announcements, listeners and viewers may tune out the announcements, or even switch stations when the announcements occur"). The proposed lengthy online notice will be especially problematic if the Commission opts to require the entire text of online notice to appear on a station's home page, rather than at an appropriately labeled link.

⁸ See *TV Dimensions 2018*, TV Media Dynamics, Inc. at 65 (60 second spots represented 77 percent of network television ads in 1965).

spots by 2017,⁹ a year that also marked the debut of the six-second television spot.¹⁰ For online and on-air notices to hold the public's attention and convey the relevant information, the Commission should keep them brief and succinct.

III. ONLINE NOTICES SHOULD APPEAR AT AN APPROPRIATELY LABELED LINK ON AN APPLICANT'S HOME PAGE

Commenters generally support the Commission's proposal to transition the current newspaper notification requirement to an online notice, with some proposed modifications.¹¹ Broadcast commenters share NAB's concern that posting the entire text of the online notice on a station's home page will be problematic, explaining that station home pages, "contain a substantial amount of content including news and entertainment stories and information about programming and community events" which "often rotates quickly."¹² An online notice about a pending application is "likely to get lost in these content rich home pages."¹³ The Joint Commenters propose that including a conspicuous link on the home page in the same section where stations already include links to their online public inspection files and other FCC-related materials "makes more sense and would be easier for

⁹ *Id.* (discussing length of network TV spots in 2017). The data are similar for sales of local TV advertisements, with 60-second spots accounting for 64 percent of local TV spots in 1965, but only 6 percent of spots in 2017, 30 second spots rising from 6 percent of spots in 1965 to 61 percent of spots in 2017 and 15 second spots, which were non-existent in 1965, rising to 29 percent of spots in 2017).

¹⁰ John Ourand, *Fox's six-second ad decision: How many to run?*, Sports Business Journal (Dec. 18, 2017) (discussing Fox's sale of six-second ads commencing in August 2017).

¹¹ See, e.g., NAB Comments at 2-10; Joint Commenters Comments at 3-5; UCC Comments at 6; Comments of Americas Public Television Stations, the Public Broadcasting Service, National Public Radio, Inc. and the Corporation for Public Broadcasting (Public Broadcasters), MB Docket Nos. 17-264, 17-105 and 05-6 (Nov. 18, 2019) (Public Broadcasters Comments) at 2.

¹² Joint Commenters Comments at 4. See also Public Broadcasters Comments at 3-4, Footnote 8.

¹³ Joint Commenters Comments at 4.

the public to navigate.”¹⁴ NAB again urges the Commission to adopt proposals in the record for placement of online notices at an appropriately labeled link that would appear together with other FCC-related information.

UCC, on the other hand, supports the Commission’s proposal for the full text of the notice to appear on a station’s home page (including its proposed expansion of that text discussed above).¹⁵ UCC also urges the Commission to clarify that notice is not conspicuously posted if it appears at the bottom of the home page. The Commission should reject this proposal. Whether the Commission ultimately requires the full text of the online notice or a link to the notice to appear on the home page, there should be no requirement that the notice appear in a particular place on the home page in order to be considered sufficiently conspicuous, so long as the notice text is “apparent to the average Internet user, with a reasonably large font in a contrasting color from the background.”¹⁶ As commenters have observed, the bottom of *any* home page is where users are accustomed to finding required notices and disclosures, and this especially true for finding FCC-related information on station websites.¹⁷ Once again, UCC is out to lunch, having no care or concern for how stations operate their websites and what consumers actually want.

Only one commenter opposes the transition from newspaper to online notice, apparently because this will interfere with the company’s business model.¹⁸ Enotice provides no explanation for its claim that notice delivered “by way of the distribution channel

¹⁴ *Id.* See also Public Broadcasters Comments at 3-4, Footnote 8.

¹⁵ UCC Comments at 6.

¹⁶ Notice at ¶ 18.

¹⁷ NAB Comments at 7-10 and Exhibit A (links to required notices appear at the bottom of the FCC’s website); Joint Commenters Comments at 4-5.

¹⁸ Comments of enotice, Inc. (enotice), MB Docket Nos. 17-264, et al. (Nov. 18, 2019).

shared and operated by journalistic institutions” is any better or more effective than notice delivered via on-air announcements or applicant websites. It is certainly true that there is a value to journalistic institutions, their “narrative stories about what matters in a community” and the “systematic check by the fourth estate” that they provide¹⁹—indeed, many local broadcast stations serve these very same important functions in their local communities. But there is no connection between newspapers functioning in these journalistic capacities and their distribution of public notices bought and paid for by broadcasters containing specific language mandated by the FCC. The newspaper does not make an editorial judgment about where the ad appears, what it says, or whether the public should focus on it. Moreover, as shown in the record, the declining number of newspapers and newspaper readers calls for modernization of the notice requirement in order to better satisfy the statutory notice obligation.²⁰ enotice’s claims are unmeritorious.²¹

IV. NOTICE TIMING PROPOSALS AND OTHER ISSUES

NAB urges the Commission to retain the flexible on-air announcement schedule proposed in the Notice (i.e., one announcement per week for four weeks between the hours of 7 AM and 11 PM), rather than adopting UCC’s proposal to limit television announcements to 7 PM - 10 PM and radio announcements to 7 AM - 6 PM and expand the number of

¹⁹ *Id.* at 2.

²⁰ NAB Comments at 2-7; Joint Commenters Comments at 3-5.

²¹ enotice also attempts to analogize the Commission’s notice proposals to, for example, an energy company notifying the public of its application for drilling rights via its website. But this example is inapposite. Broadcasting itself is an information delivery system, with each station’s existence depending upon its ability to attract viewers and listeners to its on-air and online platforms. Notification via broadcast stations over the air and/or their websites constitutes affirmative notice. NAB also questions how many of the declining numbers of newspaper readers actually read the legal notices posted in those papers, which are not, to put it mildly, headline material.

announcements. As the Joint Commenters explained, giving stations greater flexibility with on-air announcement schedules permits stations to use that time for programming or revenue-generating advertisements.²² Moreover, the times proposed for television exclude the windows when many stations air local news, which is some of the highest rated programming available on local television stations.²³

Public Broadcasters urge the Commission to allow stations to commence on-air and/or online notices within five days of the filing of an application, rather than five days of the publication of the FCC's public notice of the acceptance of an application for filing, noting that some stations could overlook the publication of the public notice and then miss the deadline to begin airing announcements.²⁴ NAB supports this proposal and believes that it will reduce burdens on broadcasters while still ensuring that the public is aware of applications and has the opportunity to comment or file petitions.

Broadcast commenters also urge the Commission to clarify that if a renewal application for an FM or TV translator station is filed on the same form as the renewal

²² Joint Commenters Comments at 7.

²³ One study showed that in an average week, local news reaches 46% of adults. *The Nielsen Local Watch Report, Q1 2017* at 7. Data on individual local markets demonstrates that local news programs are frequently among the highest rated programs stations air. See, e.g., VidLytics, *Weekly Television Performance Metrics, 2018/19 Season – Week 51* (in Albuquerque, NM, eight of the top twenty programs in terms of ratings were local news programs, including news aired at 6 AM, 5 PM, 6 PM and 10 PM, outperforming prime time shows like *Entertainment Tonight* and *American's Funniest Home Videos*); VidLytics, *Weekly Television Performance Metrics, 2019/20 Season – Week 1* (in Grand Rapids, MI, six of the top twenty programs in terms of ratings were local news programs, outperforming prime time shows such as *America's Got Talent* and *NCIS*); VidLytics, *Weekly Television Performance Metrics, 2019/20 Season – Week 4* (even during football season when the NFL tops all TV programming in ratings, local news in Memphis, TN maintains a strong audience, with two local news programs ranking among the top 20 programs in terms of ratings, including 10 PM news).

²⁴ Public Broadcasters Comments at 4-5. See also Joint Commenters Comments at 7, Footnote 25.

application for a full power station, separate public notice announcements are not required for the translators.²⁵ NAB agrees. As Public Broadcasters observe, in those situations, there are no separate applications by the TV or FM translators triggering the local public notice requirements of Section 311(a), 47 U.S.C. § 311(a).²⁶ Moreover, as a practical matter, the translator's rebroadcast of the on-air notice provided by the primary station fully suffices as notice to viewers and listeners.

V. CONCLUSION

The record reflects broad support for the Commission's proposals to update its application notice requirements. With a minor modification to allow applicants to place online notice text at an appropriately labeled link, the proposed new rules will better effectuate applicants' statutory obligation to make the public aware of pending applications and will be simpler and less costly for both audiences and applicants. The Commission should avoid expanding its proposed online or on-air notice texts, because making them too long and unwieldy will unduly burden broadcasters without better informing the public.

Respectfully submitted,

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



Rick Kaplan
Jerianne Timmerman
Erin Dozier

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²⁵ Public Broadcasters Comments at 4; Joint Broadcasters Comments at 7.

²⁶ Public Broadcasters Comments at 4.