

**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)	

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

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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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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby files these reply comments in the above-captioned proceedings to support the FCC's proposals to modernize its public notice requirements for broadcast applications and to amend its ancillary and supplementary services filing requirements.² The FCC should continue its strong momentum to update its long list of media-specific rules and regulations.

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, *et al.* (Oct. 24, 2017) (Notice).

The Commission should act expeditiously to adopt its proposal to limit the ancillary and supplementary services reporting obligation to those DTV licensees that derive revenue from feeable services. No commenter opposed this change.

As NAB and a number of other commenters stated in their initial comments, the Commission should also modernize its rules about informing the public of applications filed by local broadcasters. Given all the information broadcasters are now required to place online, the Commission can both inform the public and reduce burdens on broadcast licensees, especially smaller ones, by eliminating unnecessary and outdated notice requirements.

Evidence in the record supports a Commission decision to eliminate all notice requirements under Section 73.3580 or, at the very least, the newspaper notice requirements. First, all broadcast commenters support eliminating or at least modernizing the newspaper notice requirements, and make clear and convincing arguments as to why the current notice regime is unnecessary and burdensome. Second, commenters opposing the Commission's proposals fail to make a case for why such notice requirements are effective and necessary in today's media market. Notably, the only two commenters supporting retention of the newspaper notice requirement have vested corporate interests in a rule requiring newspaper publication. As discussed below, the Commission, therefore, should move forward to modernize its broadcast application notice requirements.

II. ALL BROADCAST COMMENTERS SUPPORT ELIMINATION OR MODERNIZATION OF THE PUBLIC NOTICE REQUIREMENTS FOR BROADCAST APPLICATIONS

All broadcast commenters agree that existing application notice requirements are outdated and should be eliminated – or at least significantly reformed.³ The commenters highlight, just as the FCC has acknowledged in previous proceedings,⁴ that Americans obtain information far differently today than they did when the notice requirements were initially adopted, with reliance on the Internet transforming how consumers access information.⁵ At the same time, commenters note that newspaper readership and circulation have significantly declined.⁶ Clearly, newspapers are not as effective as they once were in reaching the public, and the Internet “has become a fundamental part of consumers’ daily lives” and is “the medium used most by the public to obtain information instantaneously.”⁷ These changes dictate that the FCC reform its application notice rules.

³ Comments of the National Association of Broadcasters, MB Docket No. 17-264, at 2 (Dec. 29, 2017) (NAB Comments); Comments of Nexstar Broadcasting, Inc., MB Docket No. 17-264, at 1 (Dec. 29, 2017) (Nextstar Comments); Comments of America’s Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service, MB Docket No. 17-264, at 4 (Dec. 29, 2017) (Public Broadcast Comments); Comments of the Multicultural Media, Telecom and Internet Council on the Revision of the Public Notice Requirements of Section 73.3580, MB Docket 17-264, at 1-3 (Dec. 29, 2017) (MMTC Comments); Comments of Meredith Corporation, Raycom Media, Inc. and Graham Media Group Inc., MB Docket 17-264 (Dec. 29, 2017) (Meredith Comments).

⁴ NAB Comments at 6-7.

⁵ Notice at ¶¶ 4 & 8; NAB Comments at 6-7; Nexstar Comments at 2.

⁶ Nextstar Comments at 5 (stating that between 2004 and 2016, 56 daily newspapers were closed or merged, with another 109 newspapers shifting to weekly rather than daily publications.”); Meredith Comments at 2 (stating that “[t]he modern media consumer most likely does not read a paper newspaper, and if they do, would not be expected to check the fine print of a legal notice in the classified section”).

⁷ *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, 30 FCC Rcd 10468, 10472 (2015).

The record also demonstrates how outdated and antiquated notice requirements place undue burdens on the broadcast industry.⁸ As explained in NAB’s initial comments, the broadcast industry is the only media, telecommunications, or spectrum-based service required to provide public notice of nearly every application it files with the Commission.⁹ We urge the FCC in this and in its other media modernization proceedings to take special notice of disparate regulatory burdens between the broadcast and other industries and aim to eliminate or reduce them. Apart from the burdens themselves, the notice requirements are also duplicative, given that the Commission routinely gives public notice of broadcaster application filings and that broadcast applications are available via stations’ online public files.¹⁰

Furthermore, newspaper notice requirements unduly burden small and non-commercial broadcasters.¹¹ As MMTC explained, the fixed costs associated with newspaper notice requirements disproportionately impact small businesses.¹² Posting notices in newspapers are, according to MMTC, “expensive, time-consuming, and ineffective relative to posting online.”¹³ NAB strongly urges the Commission to consider the adverse impact that these unnecessary requirements have on small and non-commercial broadcasters and eliminate or reduce these dictates.

⁸ NAB Comments at 9-10; Nexstar Comments at 4-6.

⁹ NAB Comments at 9-10.

¹⁰ 47 C.F.R. § 73.3526(b)(2), (e)(2); NAB Comments at 7.

¹¹ MMTC Comments at 1; Public Broadcast Comments at 4.

¹² MMTC Comments at 1-2 (attaching Statement of John Oxendine, President and CEO of Blackstar Management). See *also* Public Broadcast Comments at 4 (noting the opportunity costs and out-of-pocket costs of broadcast and newspaper notices).

¹³ MMTC Comments at 1.

III. COMMENTERS SUPPORTING RETENTION OF THE EXISTING PUBLIC NOTICE REQUIREMENTS FOR BROADCAST APPLICATIONS FAIL TO MAKE THEIR CASE

In contrast, commenters supporting retention of public notice requirements fail to make a case for why these requirements are necessary and effective. The only two commenters arguing to keep the existing newspaper notice requirements have a vested business interest in maintaining rules mandating newspaper publications that have nothing to do with the public interest.¹⁴ Unsurprisingly, LNP and PNRC both overstate the effectiveness of publishing legal notices in newspapers and understate the accessibility and effectiveness of online notices. For example, LNP bases its comments on an unsupported and dubious claim that “[c]itizens do not expect to see important government information online.”¹⁵ LNP’s flawed argument rests on its assertion that, since newspaper websites allegedly attract greater reader traffic than government websites, the public does not search for “important government information” on government sites.¹⁶ That claim is specious on its face. There is simply no supported connection between how many readers one attracts and the kinds of information those readers are seeking.

PNRC also overstates the effectiveness of newspaper notices. For example, PNRC argues that a notice by a state environmental quality department posted online would have been more widely viewed by the public if the notice had been published in a local

¹⁴ Comments of LNP Media Group, Inc., MB Docket 17-264 (Dec. 29, 2017) (LNP Comments); Comments of Public Notice Resource Center, MB Docket 17-264 (Dec. 29, 2017) (PNRC Comments). LNP is a group of print publications, and PNRC is a nonprofit organization “supported by contributions from newspapers and journalism organizations.” PNRC Comments at 1.

¹⁵ LNP Comments at 2.

¹⁶ *Id.*

newspaper.¹⁷ PNRC bases this assertion on the public reaction that followed a news article subsequently published in the local paper and posted on the paper's website, which detailed the proposal before the state environmental department. PNRC cannot, however, assume that a legal public notice, even if published in a newspaper, would receive the same readership as news articles and stories in the main portion of a newspaper. Beyond saying nothing about the effectiveness of online publication of notices, this claim falls flat because newspapers do not feature or analyze public notices. Rather, they are often buried in the newspaper, and thus hard to find. Stories on the front page are undoubtedly going to attract more attention.¹⁸

The newspaper interests also overstate challenges with Internet accessibility and usage and exaggerate newspaper reach and usage. For example, LNP argues that many citizens lack Internet access.¹⁹ The data cited by LNP, however, considerably underestimate Internet usage. A recent study by the Center for the Digital Future at USC Annenberg found that 92 percent of Americans use the Internet.²⁰ Similarly, the Pew Research Center reports that about 90% of American adults use the Internet, up from about 50% in 2000.²¹ In sharp contrast, newspaper circulation, readership and revenues have suffered precipitous

¹⁷ PNRC Comments at 2-3 (discussing the specific case of a notice by the Michigan Department of Environmental Quality).

¹⁸ Another anecdote PNRC cites to purportedly show the ineffectiveness of online notices simply assumes that, if the state government's notice had been published in a local newspaper, citizens would have seen it and would have weighed in on the permit proposal. PNRC Comments at 3.

¹⁹ LNP Comments at 3-4 (stating that as of July 2015 28% of Pennsylvania households had no Internet, while 26% of US households had no Internet.).

²⁰ Jeffery I. Cole, *2017 Digital Future Project: Surveying the Digital Future*, Center for the Digital Future (2017), <http://www.digitalcenter.org/wp-content/uploads/2013/10/2017-Digital-Future-Report.pdf>

²¹ *Internet/Broadband Fact Sheet*, Pew Research Center (Jan. 12, 2017).

declines in recent years.²² In fact, the Pew Research Center reported in 2016 that accelerating declines in circulation and ad revenues “suggests the [newspaper] industry may be past its point of no return.”²³

PNRC’s data about newspaper usage do not show that newspapers remain an effective means of providing public notices today. It states that “more than 169 million people in the U.S. read a newspaper *at least once a month* in print, on a website or via mobile app.”²⁴ These data points do not warrant maintaining newspaper notice requirements. Most people would miss broadcast application notices if they read newspapers only once or a few times a month, even assuming that in their occasional newspaper reading they look at the legal notices.²⁵ Regular newspaper readers, moreover, are a clear minority today. According to the Pew Research Center, only 18% of U.S. adults

²² From 1975 to 2014 the number of daily newspapers declined by 24.2% and total daily circulation dropped by 33.4%, even while the U.S. population rose by about 100 million people. Newspaper ad revenues have fallen off a cliff, declining from \$65.8 billion (on an inflation-adjusted basis) in the early 2000s to only \$23.6 billion in 2013. Total newsroom employment declined by 42.2% from 1990 to 2014. And these declines have continued, with newspapers losing yet more circulation in 2015 and 2016. See NAB Ex Parte Communication, MB Docket Nos. 14-50, 09-182 at 2-4 (July 7, 2016).

²³ Michael Barthel, *5 key takeaways about the State of the News Media in 2016*, Pew Research Center (June 15, 2016).

²⁴ PNRC Comments at 4 (emphasis added). PNRC also cites total U.S. daily newspaper circulation in 2016 as 35 million on weekdays and 38 million on Sundays, but fails to note those figures are print and digital combined and that these circulation totals fell 8% over the previous year alone. *Newspapers Fact Sheet: State of the News Media*, Pew Research Center (June 1, 2017).

²⁵ Even according to a survey cited by PNRC to show that “many people” read public notices published in local newspapers, over 75% of those surveyed reported “never” or only “occasionally” reading legal notices. PNRC Comments at 4, citing Pulse of America, National Survey Report – February 2017.

often get news from print newspapers.²⁶ Thus, even if some regular newspaper readers look at legal public notices some of the time, that does not mean those notices are effectively communicated to the public at large.

Notably, UCC does not call for maintaining newspaper notices, although it opposes repeal of the public notice requirements and supports both on-air and online notices.²⁷ UCC fails to show, however, that such requirements are effective or necessary. As discussed in NAB's initial comments, very few comments or petitions are filed on broadcast applications, and the ones filed likely did not rely on broadcaster-generated notices to learn of the applications.²⁸ In light of NAB's information, UCC has not established that on-air and online notices by broadcasters – in addition to the public notices given by the Commission and the posting of applications in stations' online public files – are needed to provide adequate public notice of broadcast applications.

The Commission should disregard UCC's unmeritorious claim that repealing the broadcaster public notice rules would violate the Communications Act.²⁹ While the Act requires the FCC to determine whether broadcast and other types of applications serve the public interest, and provides that any party in interest may file a petition to deny broadcast

²⁶ Jeffrey Gottfried and Elisa Shearer, *Americans' online news use is closing in on TV news use*, Pew Research Center (Sept. 7, 2017).

²⁷ Comments of Office of Communication of the United Church of Christ, Inc., et al., MB Docket No. 17-264 (Dec. 29, 2017) (UCC Comments).

²⁸ NAB Comments at 8-9 (stating that of the 389 full power television license renewal applications filed in 2012, only six applications – or 1.5 percent – were subject to any public comments).

²⁹ UCC Comments at 6.

and other applications,³⁰ these statutory provisions cannot be read to require the Commission to impose any notice requirements on broadcasters specifically. Moreover, the FCC itself provides public notice of broadcast applications. Section 309's provisions regarding granting applications found to serve the public interest and filing petitions to deny also apply to applications in other services using the radio waves,³¹ but the Commission mandates that only broadcasters provide additional notice.³² Clearly, the extra broadcaster-provided public notices are not statutorily mandated and, thus, their elimination would not violate the Communications Act.³³

UCC also argues that online only notice is insufficient and that broadcasters should also provide on-air notice. UCC fails, however, to provide a meaningful rationale or any relevant data to back up this request. The fact that “many members” of the public “receive news via broadcast” TV in no way suggests that on-air public notices are effective or that online notices are insufficient.³⁴ Certainly, the outdated and inapposite statistics cited by UCC do not prove either point.³⁵ Given the realities of how people access news and

³⁰ 47 U.S.C. §§ 309(a), (b) & (d); § 310(d). See UCC Comments at 4 (pointing out that these statutory requirements apply to broadcast applications, but failing to mention they also apply to other, non-broadcast applications).

³¹ 47 U.S.C. §§ 309(a), (b) & (d).

³² See NAB Comments at 10-11.

³³ UCC's discussion of a separate distinct issue – the FCC's elimination of program logging rules and adoption of the issues/programs list requirement for broadcasters in the 1980s – does not alter the fact that the existing, specific requirements for broadcasters to provide public notice of applications are not statutorily mandated. See UCC Comments at 4-6.

³⁴ UCC Comments at 7.

³⁵ While UCC cites an older Pew Research Center report showing that 57% of U.S. adults often watch TV news, a more recent Pew study found that only 50% often get news on TV – and that counts those getting news from national cable networks, national broadcast networks and local TV stations. Jeffrey Gottfried and Elisa Shearer, *Americans' online news use is closing in on TV news use*, Pew Research Center (Sept. 7, 2017). Obviously, national networks, whether cable or broadcast, do not air TV station application notices. Moreover,

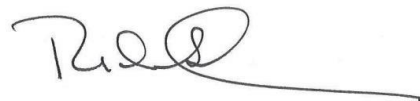
information today, UCC claims are at best assumptions, and if ever accurate, are out of date. The Commission should, therefore, reform its application notice rules to reflect current realities.

IV. CONCLUSION

NAB strongly urges the Commission to reform its ancillary and supplementary services reporting obligations as proposed and to eliminate, or at least reform, the broadcast application notices required under Section 73.3580. The notice requirements are grossly outdated and inconsistent with how listeners and viewers obtain information today. They also impose unnecessary and disparate regulatory burdens, particularly on small and noncommercial broadcast licensees.

Respectfully submitted,

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according to the Pew Research Center, 93% of adults now get at least some news online, 43% of Americans “often” obtain news online, 67% of Americans report getting at least some news on social media, and 85% of U.S. adults get news via a mobile device. *Id.*; Elisa Shearer and Jeffrey Gottfried, *News Use Across Social Media Platforms 2017*, Pew Research Center (Sept. 7, 2017); Kristine Lu, *Growth in mobile news use driven by older adults*, Pew Research Center (June 12, 2017); *Digital News Fact Sheet*, State of the News Media, Pew Research Center (Aug. 7, 2017).