

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

In the Matter of)	
)	
Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2))	MB Docket No. 18-23
)	
Modernization of Media Regulation Incentive)	MB Docket No. 17-105

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION

The National Association of Broadcasters (NAB)¹ hereby submits comments on the above-captioned Notice of Proposed Rulemaking,² in which the Commission proposes to eliminate the requirement that certain television and radio stations file the equal employment opportunity (EEO) Broadcast Mid-Term Report (Form 397).³ NAB supports the Commission's conclusion that certain procedural changes would obviate the need for Form 397, without reducing the Commission's ability to monitor broadcasters' EEO efforts or affecting broadcasters' compliance with the substantive EEO rules.⁴

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 *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2), Modernization of Media Regulation Incentive*, Notice of Proposed Rulemaking, MB Docket Nos. 18-23, 17-105 (Feb. 22, 2018) (Notice).

³ 47 C.F.R. § 73.2080(f)(2); FCC Form 397, available at <https://transition.fcc.gov/Forms/Form397/397.pdf>.

⁴ Notice at ¶ 5.

II. THE EEO BROADCAST MID-TERM REPORT IS UNNECESSARY

At the outset, as the Commission found in the Notice, eliminating the Mid-Term Report is consistent with the Communications Act.⁵ Nothing in the Communications Act refers to, let alone requires, the Mid-Term Report. Section 334 requires only that the Commission conduct a mid-term review; it did not specify the manner or the method through which it must gather information for that review. The Communications Act simply does not specify the use of Form 397 or any other particular form or procedure for collecting this information.⁶ It is of no moment that Section 334(a) prohibits changes to the Commission's EEO rules and pertinent forms, as this provision covers only those rules and forms in effect on September 1, 1992.⁷ Form 397 was not adopted until 2000.⁸ Accordingly, there is no statutory bar to deleting Form 397 or otherwise changing the process for collecting the information requested on the Form.

Eliminating Form 397 would advance the Commission's goal of reducing unnecessary regulatory burdens.⁹ The only piece of information collected in the Mid-Term Report that is not already available to the Commission in its online public file database is whether a station has the requisite number of employees to be subject to a mid-term

⁵ *Id.* at ¶¶ 6-7.

⁶ *Id.* at ¶ 7 citing 47 C.F.R. § 334(b).

⁷ 47 C.F.R. § 334(a).

⁸ *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Report and Order, MM Dkt. Nos. 98-204, 96-16, 15 FCC Rcd 2329, 2385 (2000).

⁹ Notice at ¶¶ 1 and 5 citing *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, MB Docket No. 17-105, 32 FCC Rcd 4406 (MB 2017) (Media Modernization PN).

review.¹⁰ However, as discussed in greater detail below, this information easily can be provided through other means. Commissioner O’Rielly has stated that, given the Commission’s transition to electronic public files, Form 397 is now “duplicative.”¹¹ Virtually all parties commenting on the matter agree.¹²

Only Common Cause opposes the Commission’s proposal to eliminate the FCC Form 397 filing requirement, claiming that the proposal “sends a bad message the agency is abandoning its public interest responsibilities.”¹³ Common Cause’s knee-jerk opposition to this non-substantive modernization of the Commission’s rules should be rejected. There is simply no reason that the Commission’s use of existing data to perform its periodic EEO reviews would “send a bad message” or otherwise interfere with the FCC’s ability to promote diverse hiring in the broadcast industry. The information needed for the EEO mid-term review is already available to the FCC and the public in stations’ online public files, and the stations that are subject to review can be identified without use of the Form. Eliminating the Form 397 filing requirement will have no impact whatsoever on the Commission’s performance of mid-term reviews or broadcasters’ compliance with the substantive EEO rules.

The Commission sought comment on two possible approaches to identifying stations subject to a mid-term review in the absence of Form 397.¹⁴ NAB believes that the best

¹⁰ 47 C.F.R. § 73.2080(f)(2) (imposing a mid-term EEO review on television stations with five or more full-time employees and radio stations with 11 or more employees).

¹¹ Media Modernization PN, Statement of Commissioner Michael O’Rielly.

¹² See, e.g., Reply Comments of the Multicultural Media, Telecom and Internet Council, MB Docket No. 17-105, at 1 (Aug. 4, 2017); Comments of Nexstar Broadcasting, Inc., MB Docket No. 17-105, at 13-14 (July 5, 2017).

¹³ Letter from Yosef Getachew, Director of Media and Democracy Program, Common Cause, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 18-23, 17-105 (filed Feb. 16, 2018).

¹⁴ Notice at ¶¶ 8-9.

course is for the Commission to require all stations to indicate whether they are subject to the mid-term review on their annual EEO public file reports.¹⁵ Broadcasters would indicate on their annual EEO public file report whether they have the requisite number of employees to be subject to a mid-term review. While some additional staff resources will be required to implement this commonsense solution, they will certainly be less than any meaningful attempt to modify the online public file database and manage the submission process going forward. It will also reduce today's unnecessary burdens on broadcasters in filing Form 397.¹⁶

III. CONCLUSION

For the reasons described, NAB supports the Commission's proposal to eliminate the EEO Mid-Term Report. The benefits and efficiency of eliminating this Form outweigh any perceived costs because doing so will have no impact on the Commission's ability to monitor

¹⁵ Letter from Erin L. Dozier, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, at 1 (Jan. 18, 2018).

¹⁶ The Notice also asks whether the Commission should require stations to identify an EEO point of contact more frequently if the Mid-Term Report is eliminated because this information will only be provided once every eight years on another form in the absence of the Mid-Term Report. *Notice* at ¶ 10. NAB would have no objection to the Commission collecting this information through other means, such as on the annual EEO public file report.

stations' EEO efforts or broadcasters' compliance with the substantive EEO rules.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
Erin L. Dozier
Larry Walke

April 30, 2018