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

In the Matter of:	)	
	)	
Delete, Delete, Delete	)	GN Docket No. 25-133
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	)	

COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS

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I. INTRODUCTION AND SUMMARY

If there was ever a proceeding tailor-made for broadcasters, this is it. Due to history – broadcast stations were the first regulated entities placed under the FCC's purview – and a general lack of will, to date, the Commission has consistently failed to modernize, let alone *delete, delete, delete*, the myriad antiquated and ineffective rules that apply only to the nation's free, over-the-air broadcasters. Simply because the Commission has jurisdiction over many aspects of broadcasting but not over the nation's Big Tech and streaming giants, the Commission has traditionally donned blinders and addressed nearly every purported communications-related public concern by regulating broadcasters alone. This is a major policy failure that NAB[1] has long urged the FCC to correct.

But now, with Delete, Delete, Delete,[2] the Commission has an historic opportunity to

[1] The National Association of Broadcasters (NAB) is the 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] FCC Public Notice, *Delete, Delete, Delete*, GN Docket No. 25-133, DA 25-219 (Mar. 12, 2025) (Public Notice or Notice).

correct course, bring rationality to its regulatory regime, and make television and radio broadcasting stronger and more competitive with unregulated national and global companies that gobble up content and advertising dollars, while ignoring the needs of local communities. To be successful in this critical endeavor, however, the FCC's *first* step must be eliminating the national TV ownership rule and local TV rules and adopting NAB's comprehensive proposal for local radio ownership modernization.[3]

There is no issue riper for, or more deserving of, reform than the broadcast-only structural ownership rules. Of all the asymmetric rules imposed on broadcasters but not their competitors in today's digital media and advertising markets, the ownership rules are the most harmful to the competitiveness and viability of local radio and TV stations and the free services they provide to local communities across the country. Originally adopted when Franklin D. Roosevelt occupied the White House and last meaningfully revised when broadcasting was an analog service, the FCC cannot continue to retain those rules, consistent with the Communications Act of 1934 (Act), the Administrative Procedure Act (APA), and Section 202(h) of the 1996 Telecommunications Act (1996 Act). These woefully outdated restrictions only serve to increase Big Tech and streaming dominance, while making broadcasters' service to their local communities increasingly and unnecessarily challenging by the day. Although NAB below details the many rules and regulations hampering broadcasters from maximizing the benefits they provide to the public, eliminating or reforming those rules will not ultimately bear significant fruit unless the Commission immediately addresses its

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[3] In the last ownership quadrennial review, NAB urged the FCC, if it retains any broadcast radio-specific ownership caps at all, to reform those limits as follows: (1) in Nielsen Audio markets 1-75, a single entity could own or control up to eight commercial FM stations, with no cap on AM ownership; and (2) in Nielsen markets outside of the top 75 and in unrated markets, there would be no restrictions on the number of commercial FM or AM stations a single entity could own. *See* Comments of NAB, MB Docket No. 18-349, at 68 (Sept. 2, 2021).

farcical restrictions on broadcasters' local and national scale.

Fortunately, Chairman Carr understands the industry's predicament and has termed this a "break glass moment" for America's television and radio broadcasters.[4] He correctly observed that the Commission has "many legacy regulations on the books" preventing capital flowing to broadcasters, artificially raising their costs of doing business, and "forcing them to compete against unregulated Big Tech companies with one hand tied behind their backs,"[5] and that the FCC should be reducing regulation on broadcasters to make it easier for them "to invest, compete, and serve their local communities."[6] NAB could not agree more. Accordingly, we strongly support this proceeding to alleviate unnecessary – and outright detrimental -- regulatory burdens, especially the overtly harmful broadcast ownership rules.[7]

Indeed, in the FCC's recent examination of competition in the communications marketplace, NAB called out the Commission for ignoring the fundamental marketplace and technological changes severely impacting the competitive position of advertising-supported free over-the-air (OTA) radio and TV stations and for refusing to admit that those transformative changes require a complete overhaul of its asymmetric broadcast regulatory regime.[8] NAB urges the FCC to use this and related proceedings to modernize its antiquated

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[4] *See, e.g.*, Carr Statement on FCC's Denial of WADL TV's Application, at 2 (Apr. 23, 2024) (Carr Statement); Dissenting Statement of Commissioner Brendan Carr, *Political Programming and Online Public File Requirements for Low Power Television Stations,* Notice of Proposed Rulemaking, 39 FCC Rcd 6318, 6396 (2024) (Carr Dissent).

[5] Carr Dissent, 39 FCC Rcd at 6396.

[6] Carr Statement at 2.

[7] *See* Dissenting Statement of Commissioner Brendan Carr, *2018 Quadrennial Regulatory Review*, Report and Order, 38 FCC Rcd 12782, 12873 (2023) (Carr 2018 Quadrennial Dissent) (dissenting from the FCC's failure to update or eliminate its ownership rules, and stating it was "past time for the FCC to confront the harms that its own media ownership policies have caused").

[8] *See* Comments of NAB, GN Docket No. 24-199, at 1-4, 21-43 (June 6, 2024).

approach to broadcast regulation, which dates from a time when broadcasting was the only electronic medium and far fewer radio and TV stations were licensed. No longer can broadcasting remain the Mount Everest of communications services that the Commission – akin to mountaineers – regulates because it is there.

While quickly removing outdated ownership rules must be the FCC's top priority, the remainder of its outmoded broadcast regulatory regime also needs significant pruning. These myriad rules impose oppressive and unnecessary costs and burdens – especially in the aggregate[9] – without providing remotely commensurate public benefits. No other industry endures the avalanche of rules and regulations that confront America's broadcasters and that lack discernible benefits to the public. That does not mean supposed benefits have not been identified; but rather, the Commission routinely enacts new requirements for broadcasters (and retains old ones) without any inquiry into whether the rules will actually achieve the FCC's identified policy goals. For far too long, including perhaps most notably over the last four years, the Commission has had a penchant for tacking one regulation after another onto broadcasters – and only broadcasters – simply *because it can*.

In the last few years alone, broadcasters witnessed this phenomenon with attempts to regulate artificial intelligence (AI) used in political advertisements on broadcast TV and radio, back-to-back orders on foreign-sponsored content that impacts only broadcasters, and the resurrection of a decades-old Equal Employment Opportunity (EEO) form that would impose make-work on broadcasters but few others. The FCC's attempt to regulate AI is a prime example of adding burdens to broadcasters at a time when misleading content is almost exclusively on social media. The same rings true for the FCC's double-shot of foreign

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[9] *See* Public Notice at 4 (inquiring about the "aggregate cost" of FCC rules and requirements).

sponsorship regulation, which used *online* attempts to influence the 2016 Presidential election to justify regulating not social media giants, but broadcasters instead. And finally, the Commission re-adopted EEO Form 395-B ostensibly to develop policy recommendations for Congress, despite the FCC's complete lack of labor expertise and the exceedingly low odds of it ever producing a meaningful report.

The most unconscionable part of the broadcast regulatory regime, however, is that the Commission has continued to impose obligations on radio and TV stations simply because it (arguably) can. It has not seemed to matter to certain prior Commissions that imposing regulations on broadcasters may harm them vis-à-vis their competitors. The Commission often takes the tack that it needs to do *something* in the marketplace and thus imposes more burdens on broadcasters alone – even if that action does not effectively address the perceived problem -- simply because it cannot regulate anyone else. That is bad government, and this flawed approach has made broadcast regulation the single biggest candidate for Delete, Delete, Delete.

The FCC has been so busy regulating broadcasters over the years that it even has severely hampered their ability to innovate. For example, some rules, unless modified, will continue to prevent broadcasters from staying on the cutting edge of technology. A simple way to make headway here would be to eliminate the substantially similar requirement and establish a firm deadline to end the ATSC 1.0 simulcast requirements. As described in NAB's recent petition for rulemaking regarding the industry transition to ATSC 3.0, the dual-track system will only breed hesitancy that will undermine the much-needed industry transition to Next Gen TV. The FCC also should update its emergency alert system (EAS) rules to allow for software-based operations, amend certain EAS rules, and terminate consideration of certain pending proposals that would unnecessarily burden broadcasters' efforts to keep the public

safe during emergencies.

The FCC maintains many rules that require broadcast stations to comply with make-work paperwork requirements that offer no benefit to the public. NAB exhorts the Commission to eliminate, where possible, online public inspection file (OPIF) obligations, to drop expanded foreign-sponsorship identification rules, to lighten ownership report filing requirements, and to remove license renewal and assignment/transfer announcement requirements. These requirements force broadcasters to generate a deluge of paper that the public very rarely looks at or, at a minimum, can easily access in other ways that would lessen the burden on resource-starved broadcast stations. The bottom line is that almost no members of the public engage with the online public file, and the FCC's rules just create more busy work for stations while serving as a launching pad for the Enforcement Bureau to pursue broadcasters for noncompliance (with many silly and pointless regulations whose technical violation in no way harms the public).

The FCC also imposes compliance obligations that have become obsolete because the marketplace has changed, experience has demonstrated the inefficacy of the rules, or other statutes are either duplicative or better serve the public than the FCC's rules. The EEO rules, Children's Programming Rules, rules requiring consent for airing telephone interviews, rules setting minimum AM efficiency standards, rules requiring broadcasters to post contest terms, the rule prohibiting stations from duplicating a certain amount of FM radio content in the same market, and certain accessibility rules all create compliance obligations that have been found unjustifiably burdensome. We therefore ask the Commission to consider deleting these compliance obligations.

Finally, we encourage the FCC to end certain informal policies and proposals that are standardless. In particular, the FCC should formally eliminate its news distortion policy and

close the pending proceeding on regulating the use of AI in political ads. These policies and proposals are overbroad, unfounded, violate the First Amendment, and should be expunged from the FCC's toolkit.

NAB appreciates the Commission opening this opportunity to provide much-needed relief to an industry that remains shackled by a matrix of regulations – most significantly, ownership rules – that choke off revenue and investment. Swift FCC action is needed to encourage rather than thwart broadcast innovation and secure the economic viability of the industry so local radio and TV stations can serve the public.

II. THE COMMISSION'S TOP PRIORITY MUST BE JETTISONING ITS ANTIQUATED OWNERSHIP RULES THAT INHIBIT THE GROWTH AND VITALITY – AND THREATEN THE VERY SURVIVAL – OF BROADCAST TV AND RADIO STATIONS

Far and away the most important step the Commission can take in this entire docket – not just with respect to broadcasting – is to eliminate the TV national audience reach cap and the local TV rule, and, at the least, significantly reform and relax the local radio rule. No need is more pressing across the board, and the ownership rules unfairly skew the market in favor of Big Tech, streaming platforms, and MVPDs more than any other. These asymmetric rules prevent broadcasters from effectively competing for audiences, vital advertising dollars, and high-quality programming in today's marketplace; discourage desperately needed investment in the broadcast industry; reduce the resources necessary for broadcasters to innovate; and threaten the economic viability of broadcast services provided OTA and free to audiences in local communities across the nation. Although removing the many other unnecessary rules and compliance burdens in the FCC's broadcast regulatory regime is important, their repeal will not address the industry's existential challenge – that TV and radio broadcasters cannot even hope to compete in the 21st century marketplace against exponentially larger digital media and advertising platforms without gaining greater national and local scale.

In innumerable previous submissions, NAB has documented the transformation of the media and advertising markets due to internet ubiquity; the widespread adoption of digital devices for accessing almost infinite sources of online audio and video content available 24-7-365; the remarkable growth of the giant technology platforms to dominate the advertising market; and the profound effects these fundamental changes have had on the competitiveness – and even the continued survival – of advertising-reliant broadcast stations, especially in smaller markets.[10] Indeed, if there are any FCC rules now "unnecessary or inappropriate" due to "marketplace and technological changes," it would be the broadcast ownership rules.[11] At long last, the Commission must stop taking for granted the services broadcasters provide, at their own expense, directly and without charge to the public through local outlets, and eliminate the ownership rules that make provision of local and national news, popular entertainment programming, costly-to-acquire sports programming, and weather and emergency information increasingly difficult and potentially impossible on a free OTA basis. Simultaneously asserting that it values and wants to promote broadcast services such as local journalism while simultaneously maintaining – and even tightening – ownership rules undercutting the economic bases for such services is regulatory hypocrisy in action.

A. FCC Must Eliminate the National TV Ownership Rule

The Commission has maintained rules strictly limiting the ownership of broadcast television stations nationally for nearly 85 years. For more than two decades, the national TV rule has prohibited any entity from owning local commercial TV stations reaching, in the

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[10] *See, e.g.*, Comments of NAB, GN Docket No. 24-119, (June 6, 2024); Comments of NAB, MB Docket No. 22-459 (Mar. 3, 2023); Comments of NAB, GN Docket No. 22-203 (July 1, 2022); NAB Written *Ex Parte* Communication, MB Docket No. 17-318, (May 13, 2022); Comments of NAB, MB Docket No. 18-349 (Sept. 2, 2021); Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019).

[11] Public Notice at 3.

aggregate, more than 39 percent of the total number of TV households in the nation.[12] The time to repeal this harmful rule is now.

In 2017, the FCC sought comment on modifying or eliminating the national audience reach limit and its associated calculation methodology, but this proceeding remains stalled.[13] At that time, then-Commissioner Carr observed that the FCC has had "rules on the books" limiting TV station ownership since the 1940s, and that, due to accelerating advances in technology and the advent of new offerings, broadcasters "now compete for eyeballs with YouTube stars, social media platforms, and streaming services like Hulu and Netflix – not to mention traditional cable and satellite offerings."[14] Given further dramatic changes in the video and advertising markets since 2017, NAB recently urged the FCC to expeditiously conclude its pending rulemaking and eliminate the outdated and harmful national TV ownership rule that prevents station groups from attaining national scale to compete against other media and ad platforms with national or even international scale.[15]

As NAB's recent filing showed in exhaustive detail, the national TV cap does not serve any public interest goals and in fact hinders them. The Commission first concluded in 1984 and reaffirmed in 2003 that a national rule at any level is not needed to promote its competition or viewpoint diversity goals.[16] A rule unnecessary for preserving competition and

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[12] 47 C.F.R. § 73.3555(e). For purposes of calculating reach under the cap, the rule discounts the reach of UHF stations by 50 percent.

[13] *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 10785 (2017).

[14] *Id*. at 10810, Statement of Commissioner Brendan Carr.

[15] NAB, Written *Ex Parte* Communication, MB Docket No. 17-318 (Apr. 2, 2025) (NAB 2025 National TV Rule *Ex Parte*).

[16] Report and Order, 100 FCC 2d 17, 30-31, 38-39, 46 (1984), *modified on recon. on other grounds*, Memorandum Opinion and Order, 100 FCC 2d 74 (1985); *2002 Biennial Regulatory Review*, Report and Order, 18 FCC Rcd 13620, 13815, 13818, 13826 (2003).

diversity in the last century is not needed now. Nor does a national cap promote localism, and in fact, empirical evidence indicates the exact opposite.[17] A rule that promotes no public interest goals but reduces TV broadcasters' ability to compete for viewers and advertising dollars, and thus their ability to attract investment and to acquire/produce programming to better serve their local communities, by definition fails any cost-benefit analysis[18] and violates the APA and the Act. The FCC must DELETE this rule now.

Recommendation:

- The Commission must DELETE its national TV ownership rule.[19]

B. FCC Must Repeal its Analog-Era Local Broadcast Ownership Rules

Nothing epitomizes the perennial over-regulation of the broadcast industry more than the FCC's retention of outdated local TV and radio ownership restrictions with World War II-era origins, despite Congress' adoption in 1996 of a deregulatory statute requiring the Commission to review its ownership rules every four years to determine whether any of them are necessary in the public interest "as the result of competition" and to repeal or modify those that are not.[20] Beyond "consistently ignor[ing] Congress's deregulatory mandate" under Section 202(h),[21] the FCC has repeatedly failed even to conduct its statutorily required quadrennial reviews as Congress directed. After failing to ever finish the 2010 quadrennial

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[17] *See, e.g.*, NAB 2025 National TV Rule *Ex Parte* at 29-35.

[18] *See* Public Notice at 2-3 (seeking comment on cost-benefit considerations).

[19] *See infra*. Appendix, Section I.

[20] § 202(h), 1996 Act. This requirement does not apply to the national TV ownership rule.

[21] Carr 2018 Quadrennial Dissent, 38 FCC Rcd at 12873. The text, structure, purpose, and history of Section 202 show that Congress intended Section 202(h) "to continue the process of deregulation" it began in the 1996 Act. *Fox TV Stations, Inc. v. FCC*, 280 F.3d 1027, 1033 (D.C. Cir. 2002). *See* Comments of NAB, MB Docket No. 18-349, at 38-55 (Sept. 2, 2021).

review and unlawfully rolling it into the 2014 review,[22] the Commission did not complete its 2018 review until December 26, 2023 – and only finished it then because NAB had obtained a D.C. Circuit Court of Appeals order requiring the FCC to complete that review by December 27 or show cause why it had not.[23] Now the time is approaching for the FCC to undertake the required **2026** review, but it has not yet conducted the **2022** review *or even released a rulemaking notice in that proceeding*. The FCC's decades-long noncompliance with Section 202(h)'s mandate – even after Congress extended the time for conducting the required ownership reviews from every two years to every four – represents an abject failure to "unleash prosperity through deregulation" and to "facilitate and encourage American firms' investment" in and their offering of valued and innovative services.[24]

Although the Commission cannot cure its past derelictions, it now must release a notice of proposed rulemaking for the very belated 2022 review as soon as possible and quickly conduct that review in accordance with Section 202(h)'s terms – with "competition" as the driver of the FCC's analysis and the lens through which the public interest need for the ownership rules must be viewed. Continuing to deny Section 202(h)'s deregulatory mandate and its focus on competition is not the "best reading" of the statute.[25] For the reasons NAB has explained in detail, and supported with extensive data and empirical studies, in earlier quadrennial reviews, a properly conducted 2022 review will lead inevitably to the conclusion

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[22] *See Prometheus Radio Project v. FCC*, 824 F.3d 33, 50-51 (3d Cir. 2016).

[23] *See* Order, Case No. 23-1120 (D.C. Cir. Sept. 28, 2023).

[24] Public Notice at 1.

[25] *Loper Bright Ent. v. Raimondo*, 144 S. Ct. 2244, 2266 (2024). *See* Public Notice at 4 (inquiring about FCC interpretation of statutory language and effect of *Loper Bright*).

that no basis exists for retaining the outdated local TV and radio ownership rules.[26]

The local TV rule still imposes a top-four restriction dating from 1999, which bans common ownership of more than one of the top-four rated stations in any local market, and still prevents ownership of more than two TV stations in all markets, regardless of those stations' audience or advertising shares, local competitive conditions, or the ascendance of non-broadcast video competitors.[27] Because a competition-based local TV rule cannot rationally ignore actual competitive conditions in a range of local markets, the FCC must repeal its across-the-board restrictions that ban combinations among top-four rated stations and prohibit ownership of more than two stations in all 210 Designated Market Areas in the country. *Per se* rules applicable to all stations in all markets from New York City to Glendive, Montana do not reflect competitive reality, prevent stations from achieving the local scale needed to better support their local services, and fail to serve the public interest, contrary to Section 202(h), the APA, and the Act. The FCC must DELETE its rigid *per se* local TV rules.

The local radio ownership rules have been frozen in time for nearly 30 years. They still impose the identical numerical caps on common ownership of radio stations overall, as well as the same subcaps on common ownership of AM and FM stations specifically, as in 1996.[28] While the FCC's analog-era radio rules have remained unchanged for decades, technological changes have revolutionized the creation and distribution of audio content and the

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[26] *See, e.g.*, Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019); Reply Comments of NAB, MB Docket No. 18-349 (May 29, 2019); Comments of NAB, MB Docket No. 18-349 (Sept. 2, 2021); Reply Comments of NAB, MB Docket No. 18-349 (Oct. 1, 2021); NAB Written *Ex Parte* Communication, MB Docket No. 18-349 (Feb. 16, 2022).

[27] *See* 47 C.F.R. § 73.3555(b).

[28] *See* 47 C.F.R. § 73.3555(a). This section sets forth a sliding scale, under which a single entity can own relatively larger numbers of commercial radio stations overall, and relatively larger numbers of AM or FM stations, in local radio markets with greater total numbers of full-power commercial and noncommercial radio stations.

advertising marketplace.[29] It does not even pass the laugh test to assert that competitive conditions remain the same – and thus the radio caps should remain the same – as they were before broadband, smart phones and speakers, satellite radio, Pandora, Spotify, YouTube, Apple Music, Amazon Music, Google, and Facebook. And as Chairman Carr previously recognized, the FCC's radio caps do not "promote competition, a diversity of viewpoints, and localism" as intended but in fact "prevent[] actual investment" in local stations, their live and local programming, and newsgathering.[30] These 20th century radio limits therefore are contrary to Section 202(h), the APA, and the Act, as well as failing any conceivable cost-benefits analysis,[31] and they must be DELETED.

Recommendations:

- The Commission must immediately issue a notice of proposed rulemaking for – and then expeditiously conclude – the 2022 quadrennial review. In that review, the FCC must DELETE its *per se* local TV ownership rules;[32]
- The Commission also must DELETE its three-decade-old local radio ownership subcaps in all markets and its *per se* rules constraining radio ownership in Nielsen Audio markets outside of the top 75 and in all unrated markets;[33]
- The Commission should DELETE all restrictions on AM ownership; and
- In Nielsen Audio markets 1-75, the Commission should modify the local radio ownership rules to permit a single entity to own or control up to eight commercial FM stations.

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[29] *See* Public Notice at 3 (requesting information about marketplace and technological changes).

[30] Carr 2018 Quadrennial Dissent, 38 FCC Rcd at 12874.

[31] *See* Public Notice at 2-3 (seeking comment on cost-benefit considerations).

[32] *See infra*. Appendix, Section II.

[33] *See infra*. Appendix, Section III.

Despite the insightful ideas that follow…

THE FCC SHOULD NOT PROCEED
UNTIL IT ELIMINATES THE
NATIONAL TV AUDIENCE REACH CAP
AND THE LOCAL TV OWNERSHIP RULES
AND SIGNIFICANTLY MODERNIZES
THE LOCAL RADIO OWNERSHIP RULES

III. THE COMMISSION SHOULD ELIMINATE ATSC 1.0 SIMULCAST AND SUBSTANTIALLY SIMILAR REQUIREMENTS

Broadcasters are in the middle of a transition to a revolutionary new standard, ATSC 3.0 (also known as Next Gen TV), which enables broadcasters to provide viewers with significantly improved audio and video quality, new interactive features, enhanced emergency information, and hyperlocal news content. This standard also has enabled broadcasters to perform groundbreaking tests of the Broadcast Positioning System (BPS), which could provide a powerful backup to GPS, addressing critical vulnerabilities in national security and infrastructure. Unlike previous transitions, broadcasters are migrating to this new standard without any additional spectrum, but during this transition period, broadcasters must provide service in both ATSC 1.0 and ATSC 3.0 simultaneously. This means that broadcasters are operating with a fraction of the capacity they would otherwise have and are required to enter into complicated hosting agreements with other stations in their markets to transmit in both standards simultaneously.[34] As broadcasters approach a decade of transition, the simulcasting rule weighs heavily on their ability to offer a compelling service to viewers in ATSC 3.0. Beyond that, broadcasters are prevented from providing a meaningfully different experience for viewers due to the outdated "substantially similar" rule, which was unnecessary from the start.[35]

Eliminating these rules expeditiously and completing the transition will allow broadcasters to better compete with other industries that do not face any regulatory obstacles to offering new and improved services. Television sets with Next Gen TV reception capability, as well as low-cost converter devices, are already available and will continue to increase in

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[34] *See* Public Notice at 4 (inviting feedback on whether rules create barriers to entry).

[35] *See id*. at 3 (seeking information about the experience gained in implementing rules).

number and variety as the industry approaches a transition deadline. Prolonging the transition longer than necessary imposes costs on viewers in the form of reduced variety and quality of programming, which outweighs any benefits viewers may gain from delay.[36]

Recommendations:

- NAB has filed a petition asking the FCC to facilitate a nationwide transition to Next Gen TV.[37] In that petition, NAB asks the FCC to adopt several rule changes to ensure a successful transition. Among them are several critical rule deletions, including:
    - First, the FCC should immediately DELETE the "substantially similar" rule,[38] which is scheduled to sunset in July 2027. This rule provides no value to viewers beyond that already provided by the simulcasting rule; and
    - Second, the FCC should DELETE the simulcasting rule[39] in its entirety in February 2028, along with the beginning of the full two-phase transition to nationwide Next Gen TV broadcasting, to allow broadcasters to use spectrum as efficiently as possible.

IV. THE COMMISSION SHOULD ELIMINATE OR AT THE VERY LEAST MINIMIZE REPORTING OBLIGATIONS THAT IMPOSE EXTRAORDINARY PAPERWORK BURDENS ON BROADCASTERS WHILE GENERATING LITTLE-TO-NO BENEFIT TO THE PUBLIC

A. FCC Should Minimize the Burden of the Online Public File and Public File Requirements

The FCC compels broadcast radio and TV stations to maintain a public file for inspection and upload electronic versions of the public file to a Commission-hosted database.[40] The public file rules require broadcasters to maintain and upload an extraordinary amount of information, or at a minimum, ensure such information has been uploaded,

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[36] *See id*. at 2-3 (soliciting evaluation of cost-benefit considerations of rules).

[37] Petition for Rulemaking of NAB, GN Docket No. 16-142 (Feb. 26, 2025).

[38] 47 C.F.R. § 73.3801(b)(1)-(3); *see infra.* Appendix, Section IV.

[39] Specifically, the FCC should delete 47 C.F.R. §§ 73.3801(b)-(h) and 73.6029(b)-(h). The final clause in § 73.682(f)(1) should also be deleted. *See infra*. Appendix, Sections V-VI.

[40] 47 C.F.R. § 73.3526(b)(2).

including: the station's license; any application filed with the FCC, including related materials and copies of Initial and Final Decisions by the FCC; a copy of every written citizen agreement; contour maps; ownership reports and related materials; the political file; the Equal Employment Opportunity file; the most recent version of the FCC manual entitled "The Public and Broadcasting"; material relating to FCC investigations or complaints; TV issues/program lists; records concerning commercial limits on children's programming; completed Children's Television Programming Reports; radio issues/programs lists; local public notices of announcements of license renewals and assignments/transfers; radio and TV time brokerage agreements; statements of a TV station's election of must-carry or retransmission consent; all relevant radio and TV joint sales agreements; where relevant, documentation of meeting Class A TV station eligibility requirements; a copy of every shared service agreement for the station; and foreign-sponsorship disclosures.[41] Congratulations if you made it all the way to the end. The list is long.

As explained in previous NAB filings, these filing obligations place hefty burdens on individual stations, risk exposing stations to frivolous complaints that can demand substantial financial sums to resolve, and provide little demonstrable benefit to the public.[42] For all these reasons, the FCC should eliminate all OPIF requirements that are not statutorily required, and overall, should streamline the public file to minimize needless encumbrances on stations.

Based on broadcasters' experience with implementation of OPIF requirements, these rules have resulted in administrative burdens and high fines without almost *any*

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[41] 47 C.F.R. § 73.3526(e).

[42] *E.g.*, Comments of NAB, *Political Programming and Online Public File Requirements for Low Power Television Stations*, MB Docket No. 24-147 (July 29, 2024).

corresponding benefit.[43] When it originally created the public file requirements, the Commission sought to make it easier for third parties within a station's service area to participate in renewal proceedings.[44] The Commission explained that it wanted to "make [its] pre-grant and hearing procedures more effective, and to effectuate the mandate of Congress to permit greater public participation in such proceedings."[45] In 2011, the Commission opened a proceeding to compel stations to move their physical files online to facilitate easier access to those files.[46] And ever since, the Commission has in one proceeding after another expanded the OPIF obligations.[47] But the Commission essentially has assumed that ever-expanding OPIF requirements serve the public without pausing to consider: Is the public actually using the OPIF?

The answer is no.

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[43] *See* Public Notice at 3 (seeking information about the experience gained in implementing rules).

[44] *New Section 0.417 and Amendment of Sections 1.526 (Formerly in 0.406), and 1.594 (Formerly in 1.362) of the Commission's Rules Relating to Inspection of Records, to Pre-grant Procedures, and to Local Notice of Filing or of Designation for Hearing of Broadcast Applications*, Report and Order, 1965 F.C.C. Lexis 946 at ¶ 2 (1965) ("The purpose of this proposal is to enable local inspection to be made of broadcast applications, reports, and related documents that are filed with the Commission by applicants, permittees, and licensees and that are already available for public inspection at the Commission's offices in Washington, D.C."); *id*. at ¶ 3 ("It is our desire to make our pre-grant and hearing procedures more effective, and to effectuate the mandate of Congress to permit greater public participation in such proceedings, and we were of the opinion that such a proposal would implement effectively attainment of this goal.").

[45] *Id*. ¶ 3.

[46] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, 76 Fed. Reg. 72144 (Nov. 22, 2011).

[47] *Political Programming and Online Public File Requirements for Low Power Television Stations*, Notice of Proposed Rulemaking, MB Docket No. 24-147 and *Amendment of the Commission's Rules to Advance the Low Power Television, TV Translator and Class A Television Stations*, MB Docket No. 24-148, 89 Fed. Reg. 53537 at ¶ 14 (June 27, 2024).

In its latest rulemaking notice seeking to expand OPIF requirements to low-power television (LPTV) stations, the Commission cited two data points to illustrate the utility of the online file. First, it noted that over 19,875,413 documents had been uploaded since 2012, which, of course, says nothing about whether those uploaded documents were useful to or even seen by the public. (If anything, it only proves the futility of this exercise; we don't think the public has benefitted from having even 20 of these disclosures in the file, let alone 20 million.) Second, the Commission claimed that 108,583 unique visitors visited the site every two weeks, but it provided zero corroboration for that estimate and, indeed, declined to provide such corroboration in response to an NAB FOIA request.[48] By contrast, **in 2022, NAB made a FOIA Request which revealed that only 0.060 percent of the estimated U.S. population viewed broadcast stations' online public files in 2021.**[49] Put simply, OPIF engagement has been miniscule.

On the other hand, OPIF requirements impose a massive compliance burden that disproportionately affects broadcasters. As listed at the beginning of the section, broadcasters have several categories of documents to upload to the OPIF system, and those different files

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[48] *Id*.

[49] According to the FCC's response to a 2022 NAB FOIA request, in 2021, the FCC Public Inspection File website had only 199,431 unique views (and just 248,032 total views). Letter from Sima Nilsson, Media Bureau, FCC, to Patrick McFadden, NAB, FOIA Control No. 2022-000374 (Apr. 28, 2022). That averages 11.38 unique views per station in an entire year. *See Public Notice, Broadcast Station Totals as of Dec. 31, 2021*, DA 22-2 (Jan. 4, 2022) (reporting a total of 17,529 full power AM, FM and TV commercial and noncommercial stations and Class A TV stations, which are the types of stations required to maintain online public files). NAB assumes that these numbers included views by FCC staff and by broadcasters themselves to check their stations' files. So even overestimating (likely substantially) the number of views by the *public*, that still would mean only .060 percent of the estimated U.S. population viewed broadcast stations' online public files in 2021. *See* https://www.census.gov/popclock/ (estimating U.S. population to be 332,048,977, as of July 1, 2021) (visited May 22, 2024).

must be uploaded at different times. Issues/programs lists must be uploaded quarterly;[50] local public notice announcements must be uploaded within seven days of the last day of the broadcast of the renewal license announcement;[51] and political files must be uploaded "as soon as possible" or "immediately absent unusual circumstances."[52] The burdens of uploading the required information to the political file on such a tight deadline alone can be impossible. These various filings create a Byzantine set of reporting obligations that all stations must follow. And if a station misses a filing or even a single document, it opens itself up to severe penalties.

In recent years, broadcasters that have made harmless mistakes in uploading documents to the OPIF or failing to upload documents to the OPIF have been battered with substantial fines. A prime example is the FCC's forfeiture order of $26,000 against Cumulus Licensing LLC because EEO reports had not been uploaded to the OPIF and the company's website for five Cumulus radio stations in Georgia.[53] In the same year that the FCC implemented new requirements to upload EEO reports to the FCC-hosted database, a Cumulus employee created the required reports, attempted to upload the reports to OPIF, unknowingly failed to do so, and then soon after left the company.[54] Quite understandably, the mistaken failure to upload the file – which no one had any reason to suspect was not correctly uploaded – went undetected for nine months. The Commission, however, not only found that Cumulus should be punished for failing to upload the files, but it also drew the

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[50] 47 C.F.R. § 73.3526(e)(11)(i), (12).

[51] *Id*. § 73.3526(e)(13).

[52] *Id*. at § 73.1943(d).

[53] *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 39 FCC Rcd 513 (Jan. 16, 2024) (Cumulus NAL).

[54] *Id*. at 520-21.

astonishing – and forfeiture-magnifying -- conclusion that Cumulus had abandoned its obligation to analyze its stations' EEO program just because the paperwork had not been uploaded correctly.[55] That was not one of the FCC's finer moments. The Commission claimed that it was unpersuaded by the fact that Cumulus actually *had* prepared the EEO report and thus *had* analyzed its EEO program.[56] Of course, if the error cost the public crucial access to these files, that might be a reason to take a stringent enforcement stance on OPIF requirements. But no complaints were raised, nor did any concrete harm arise out of Cumulus's mistaken failure to file.[57] Indeed, the Commission **never would have known** had it not been for Cumulus being a good actor and drawing the FCC's attention to the oversight. There is no evidence that the public lost anything because a few files were not uploaded. This is just one example of how OPIF requirements can expose broadcasters to the risk of exorbitant fines for small infractions.[58]

It is abundantly clear that the costs of the OPIF requirements far outweigh the benefits.[59] Those benefits include an amorphous informational benefit to the public. But there is scant evidence that the public actually uses OPIF, and in fact, according to NAB's previously referenced analysis of an earlier FOIA request of how many people access OPIF, the public has very little interest in OPIF at all.[60] On the other hand, broadcasters face an extraordinary compliance burden of maintaining and uploading reams of materials to the FCC OPIF site and

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[55] *Id*. at 517.

[56] *Id*. at 517-18.

[57] *Id*. at 516, n. 27, 518, n.48.

[58] *See, e.g.*, Nexstar Media Inc., Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 13591 (2021) (fining station $9,000 for failing to timely file some issues/programs lists).

[59] *See* Public Notice at 2-3 (soliciting evaluation of cost-benefit considerations for rules).

[60] *See supra* n. 49.

the station's site at varying intervals. Worse yet, if the broadcaster makes a mistake and fails to upload required materials to OPIF, it opens itself up to fines.

Recommendations:

- Except for those portions relating to the political file (which are statutorily required), the Commission should DELETE all portions of the public file requirements that require broadcasters to upload documents to the online public file online;[61]

- Those documents that the Commission has in its possession, such as FCC authorizations, applications and related materials, contour maps, and other documents, may be uploaded by the Commission, but broadcasters should not be required to ensure such documents are uploaded;

- Regarding the political file, the Commission should extend the deadline for uploading documents to the political file from 24 hours to 72 hours. Such an approach will help alleviate the burdens on broadcasters of rapidly uploading these files -- burdens that crescendo dramatically as elections approach. If, however, someone contacts the station requesting access to the political file, the station can provide that information upon request; and

- Finally, in other parts of this Comment, NAB identifies other requirements that should be eliminated or lessened, such as EEO reports and audits, ownership reports, announcements for license renewals or transfers, and foreign sponsorship identification disclosures, and to the extent those reports generate requirements to maintain documents in the public file (whether online or hard copies located at the station), we also recommend deleting those requirements.

B. FCC's Expanded Foreign Sponsorship Identification Rules are Burdensome, Unwarranted, *Ultra Vires*, and Unconstitutional and Therefore Should be Eliminated

The FCC's foreign sponsorship identification rules (FSID Rules or Rules),[62] first adopted in 2021, required broadcasters to provide standardized on-air and online public inspection file disclosures if they ever air programming sponsored by foreign governmental entities under a

[61] *See infra*. Appendix, Section VII.

[62] 47 C.F.R. § 73.1212(j).

lease agreement and imposed certain diligence requirements.[63] In June 2024, the Commission issued a Second Report and Order expanding the Rules beyond their original scope.[64] For the first time, the FCC extended the FSID Rules to apply not just to leases of airtime but also to certain types of advertising, including political issue advertisements by non-candidates and paid public service announcements (PSAs). Additionally, the new Rules require broadcasters to complete written certifications that they have taken the diligence steps mandated in the Rules, including requesting that the innumerable entities regarded as "lessees" provide written certifications or otherwise document their status by providing screenshots of certain federal databases upon which the FSID rules rely.[65]

NAB has challenged the Rules in court and their implementation remains pending approval by the Office of Management and Budget under the Paperwork Reduction Act. The Commission, however, should not wait for a court ruling to abandon this unlawful regulatory overreach. As NAB has made clear in other filings, the FCC's expansion of the FSID Rules to include political issue advertisements and paid PSAs violates the APA, lacks any factual justification, and is arbitrary and capricious.[66] Due to the lack of evidence of any foreign governmental entity covertly sponsoring political issue ads or PSAs on broadcast stations, the new Rules also raise serious First Amendment concerns as content-based regulations without

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[63] The D.C. Circuit vacated a portion of the FCC's original FSID rules insofar as they imposed *ultra vires* requirements that broadcast licensees investigate the veracity of lessees' representations. *See Nat'l Ass'n of Broad. v. FCC*, 39 F.4th 817, 820 (D.C. Cir. 2022) (*NAB*).

[64] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Second Report and Order, 39 FCC Rcd 6049 (2024) (Second Report and Order).

[65] *Id*. at App'x A, modifying 47 C.F.R. § 73.1212(f)(3)(iv).

[66] *See, e.g.*, *NAB v. FCC*, Brief of Petitioner, Case No. 24-1296 (D.C. Cir. Dec. 10, 2024) (NAB Brief); Comments of NAB, MB Docket No. 20-299, OMB Control No. 3060-0174, at 3-6 (Nov. 4, 2024) (NAB PRA Comments); *see also* Public Notice at 4 (inquiring about how rules comport with the governing legal framework).

a compelling governmental interest.[67]

The FCC's new diligence requirements, as applied to all leases, are *ultra vires*. Section 317 of the Act only imposes upon broadcast licensees a duty of inquiry regarding the information needed for a sponsorship announcement, and "[n]othing more."[68] The Commission therefore cannot require broadcasters to demand corroboration from lessees in the form of self-certifications or screenshots proving that the lessees are not listed in government databases as foreign governmental entities or impose affirmative inquire-and-corroborate requirements regarding possible foreign governmental involvement in the production and distribution chain. The FCC also has no authority whatsoever over entities leasing airtime or advertising on broadcast stations and cannot impose certification or other corroboration requirements on lessees. Moreover, the Commission should not mandate any specific diligence steps for FSID, just as it does not do so for other sponsored programming.[69]

Not only are they unlawful, the costs of the expanded FSID Rules also outweigh the benefits.[70] The expanded rules radically increase the burdens on lessees, advertisers, and broadcasters by sweeping in hundreds of thousands of new transactions, including advertising spots, under the FSID Rules with virtually no benefit to the public.[71] The overwhelming majority of lessees leasing airtime on broadcast stations are not foreign governmental entities, but churches seeking to air their services, schools wanting to air sporting events, local businesses with programming related to their specific lines of business,

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[67] *Id*.

[68] *NAB*, 39 F.4th at 820.

[69] *See* 47 C.F.R. § 73.1212(b).

[70] *See* Public Notice at 2-3 (soliciting evaluation of cost-benefit considerations of rules).

[71] *See id.*; NAB PRA Comments at 7-10 (explaining the costs and burdens on broadcast licensees and lessee partners).

and – under the new rules – those seeking to air advertisements on political issues.[72] Leases also enable broadcasters to provide niche programming to underserved audiences where it would not otherwise be economically feasible to do so, and many involve very little remuneration to stations.[73] Imposing burdensome inquiry and corroboration requirements on broadcasters and lessees is not only unlawful but also will discourage broadcasters from entering into such arrangements. The result will be less speech, fewer public service messages, and a chilling effect on political discourse, all in the service of solving a problem that very likely does not exist (at least on broadcast stations).

Recommendations:

- The expansion of the FSID Rules to non-candidate political advertising and paid PSAs was adopted without proper notice, without evidence, and in violation of the APA and the First Amendment, and this expansion should be DELETED; and
- The diligence requirements also exceed the FCC's statutory authority and impose needless burdens on broadcasters and advertisers. The Commission should DELETE the specified diligence requirements in 47 C.F.R. § 73.1212(j)(3)(i)-(v) and the modifications thereto specified in the Second Report and Order.[74] As in almost every other context, the Commission should allow experience to help define broadcasters' reasonable diligence obligations, rather than *ex ante* prescriptions that force broadcasters that do not air any foreign propaganda (which is nearly all of them) to take pointless steps.

C. FCC Should Eliminate the Biennial Ownership Report Requirement, or in the Alternative, Should Only Require Ownership Report Filings When There Is a Material Change in Ownership

The FCC requires commercial broadcast stations to file ownership reports, as set forth in the FCC Form 323, every two years by each licensee of a commercial AM, FM, or TV broadcast station.[75] These reports do not provide material public benefit, as much of the

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[72] *See* Public Notice at 3 (seeking comment on the experience gained in implementing a rule).

[73] *Id*.

[74] *See infra*. Appendix, Section VIII.

[75] 47 C.F.R. § 73.3615(a).

information about the station owner is tracked elsewhere, such as on the station's license.[76] Indeed, very little information collected in these ownership reports is uniquely important to the public. Even if they provide some marginal benefit, requiring biennial ownership reports – particularly when there has been no change to a station's ownership structure – generates make-work for broadcast stations.[77] And of course, given the FCC's stale ownership rules, this ownership-report filing requirement all but guarantees that many stations will essentially have to cue up their photocopier every two years and reproduce essentially the same ownership report. What could the public possibly gain from having a station reproduce a carbon copy of the report it filed just two years earlier? Weighing the costs against the benefits, the station's time and expense in preparing and filing these reports is not worth the non-existent benefit to filing a report that contains no new information.[78]

Recommendations:

- The requirement to file ownership reports should be DELETED;[79] or
- If the Commission wants to retain some form of the ownership reporting requirement, it should modernize the biennial requirement to only require stations to file ownership reports following relevant ownership changes.

D. FCC Should Drop Antiquated Requirements that Compel Broadcasters to Announce Renewals or Transfers of Broadcast Licenses

The FCC requires broadcast stations to provide public notice (hereinafter "Local Public Notice Rule") when there is:

- an application or a major amendment to an application for a construction permit

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[76] *See* Public Notice at 3 (seeking information about the experience gained in implementing a rule).

[77] *See id*. at 3 (seeking information about the experience with a rule).

[78] *Id*. at 2-3 (soliciting evaluation of the cost-benefit considerations of rules).

[79] *See infra*. Appendix, Section IX.

for a new station;[80]

- a major amendment to a construction permit for an unbuilt station;[81]
- applications for a major change to the facilities of an operating station or major amendments to such application;[82]
- applications for a license renewal;[83]
- applications for assignment or transfers of control of a construction permit or license or major amendments to such application;[84]
- applications for a minor modification to change a station's community of license or major amendments to such application;[85]
- applications for a permit under Section 325(c) of the Communications Act;[86] or
- applications by LPTV stations to convert to Class A status.[87]

Stations are required to announce such changes on-air and on the station's website,[88] and they must certify that they complied with the various notice requirements under the Local Public Notice Rule in the OPIF.[89]

Although the Rule ostensibly was designed to promote public participation relating to applications for material changes to broadcast stations (e.g., station construction, expansion,

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[80] 47 C.F.R. § 73.3580(c)(1).

[81] *Id*.

[82] *Id*. § 73.3580(c)(2).

[83] *Id*. § 73.3580(c)(3).

[84] *Id*. § 73.3580(c)(4).

[85] *Id*. § 73.3580(c)(5).

[86] *Id*. § 73.3580(c)(6).

[87] *Id*. § 73.3580(c)(7).

[88] *Id*. § 73.3580(b).

[89] *Id*. § 73.3580(e).

transfer, etc.), the Local Public Notice Rule fails to generate much public participation.[90] Indeed, the public rarely comments in these application proceedings. To the extent there is participation, it undoubtedly involves those who have a long-standing interest in the station and can check the FCC's public site or Daily Digest for any notices of material changes to stations. For them, the Local Public Notice Rule does not aid their ability to participate in the proceeding. On the other hand, broadcasters must provide costly airtime to make these announcements instead of providing more programming or airing a revenue-generating ad that could help support an already resource-strapped broadcast station.

Comparing the costs and benefits of the Local Public Notice Rule, it would serve the public interest to eliminate it.[91] The Rule imposes yet another compliance burden on broadcasters to air the notification, to place the notification on their stations' website, and to upload certification of the notification to their stations' public file. The opportunity cost of reserving airtime impinges on station profits; the public rarely avails itself of these opportunities to provide feedback on station applications. If anything, these on-air announcements are a nuisance to most viewers or listeners who have no interest in participating in application proceedings. Finally, the Commission has less costly ways to provide this information to the public – it can centrally host these notices on its website without requiring broadcasters to file them. In virtually every case where a party will participate in a proceeding involving a broadcaster's application, that party would be knowledgeable and motivated to check the FCC's website or subscribe to receive the FCC's Daily Digest, which reports any applications that have been accepted for review.

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[90] *See* Public Notice at 3 (seeking information about the experience gained in implementing a rule).

[91] *See id.* at 2-3 (soliciting evaluation of cost-benefit considerations of rules).

Recommendations:

- DELETE the notification requirements for license applications;[92] and
- At a minimum and consistent with our recommendations on eliminating OPIF requirements, DELETE the requirement to post a certification of compliance with the Local Public Notice Rule in the OPIF.[93]

V. THE EEO RULE IS RIPE FOR REEXAMINATION UNDER THE NOTICE

A. The EEO Rule Should be Substantially Cutback to a General Prohibition Against Discrimination

Section 73.2080 of the rules governing EEO in broadcasting[94] is ripe for substantial changes under the policy factors in the Public Notice.[95] The first part of the rule should certainly be retained, as it mandates equal opportunity and forbids discrimination in employment against any person because of race, color, religion, national origin, or sex.[96] The remainder of the rule, however, requires stations to have a continuing program ostensibly aimed at ensuring equal employment opportunity by prescribing a plethora of hiring practices and recordkeeping obligations that far exceed what is reasonably needed to fulfill the purpose of the rule. Stations must follow a three-pronged approach to ensure broad recruitment:

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[92] *See infra*. Appendix, Section X.

[93] *See* 47 C.F.R. § 73.3580(e).

[94] 47 C.F.R. § 73.2080.

[95] For the sake of brevity, NAB will not rehash the legislative and legal history of the EEO rule here, as it has been detailed numerous times in FCC decisions and other comments. *See, e.g., Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Further Notice of Proposed Rulemaking, 36 FCC Rcd 12055 (2021); Joint Reply Comments of the Named State Broadcasters Associations, MB Docket No. 17-105, at 18-22 (Aug. 4, 2017) (State Associations); Comments of NAB, MB Docket No. 98-204, at 11-14 (Sept. 30, 2021).

[96] 47 C.F.R. § 73.2080(a).

(1) widely disseminate job vacancy announcements;[97] (2) provide notices of job vacancies to requesting organizations;[98] and (3) perform a certain number of non-job-specific outreach initiatives, such as hosting a job fair or running an intern program.[99]

To facilitate FCC enforcement, the rule requires stations to maintain documents of every step of their recruitment process, including: dated copies of all vacancy announcements; a list of every recruitment source used to find job candidate; the total number of interviewees for every vacancy; the recruitment source for every person interviewed and hired; completion of the required outreach initiatives; how the station informs employees and job applicants about its EEO policies; and the station's efforts to self-assess its EEO program and address any problems found, among other things.[100]

All this paperwork must then be processed and reproduced into even more paperwork, including annual EEO reports and a special report due at license renewal time.[101] The FCC examines these reports at least twice during a station's license term, once midterm and again when a station applies for license renewal. Stations also must submit some of these annual reports and extensive backup documentation when demanded as part of the FCC's annual random EEO audits of five percent of all radio and television stations.[102]

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[97] *Id*. at § 73.2080(c)(1)(i). As of 2017, this prong may be satisfied through online job postings. *Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirement*, Declaratory Ruling, 32 FCC Rcd 3685 (2017) (2017 Internet Recruitment Ruling).

[98] 47 C.F.R § 73.2080(c)(1)(ii).

[99] *Id*. at § 73.2080(c)(2).

[100] *Id*. at § 73.2080(c)(5)-(6).

[101] *Id*. at § 73.2080(c)(6).

[102] *Id*. at § 73.2080(f)(4).

Despite all this recordkeeping and vigorous oversight by a dedicated EEO team in the Enforcement Bureau, **the Commission has never found a broadcaster to have engaged in unlawful discrimination since the current rule was implemented in 2002.**[103] Without a real beat to police, FCC enforcement has focused on whether broadcasters are following the FCC-prescribed recruitment steps and can produce paperwork to document their efforts.[104] This is a complete waste of the government's and broadcasters' time as well as the taxpayers' money.

Thus, it is unsurprising that the EEO rule has never undergone a thorough cost-benefit analysis, as called for in the Public Notice,[105] to determine whether it is reasonable and effective, or if equal employment opportunities could be ensured through less burdensome means.[106] The costs are apparent. Broadcasters must devote significant resources to outreach activities, even if they have no job vacancies.[107] They must send vacancy announcements to requesting organizations, even if an organization has never referred a job candidate. Even more maddening, broadcasters must collect and file mountains of paper documenting their EEO efforts, which can sometimes be more time-consuming than the hiring process itself, which ultimately can disincentivize hiring more staff.[108] In addition, to comply

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[103] *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018 (2002) (2002 EEO Order).

[104] *See* State Associations Reply Comments at 15.

[105] *See* Public Notice at 2-3 (soliciting evaluation of cost-benefit considerations of rules).

[106] Comments of Gleiser Communications, LLC, MB Docket No. 17-105, at 2 (July 5, 2017).

[107] Gleiser previously explained that his station must participate in four job fairs in a two-year period to receive one credit towards the outreach mandate, but doing so is frustrating and counterproductive when his station had no job opening for years, and everyone else at the fairs had live opportunities to offer. *Id*. at 4.

[108] *Id*. at 1; *see* Public Notice at 4 (seeking comment on rules that may raise barriers to entry).

with all of these vigorously enforced make-work steps, most broadcasters hire outside attorneys to review their EEO records because the FCC has fined stations for even one-off, self-disclosed, unintentional recordkeeping mistakes.[109] And of course, the FCC devotes manpower to reviewing all this information, which could be better spent on more effective initiatives.[110] And so, the EEO rules create an intricate Rube Goldberg machine that prolifically produces paper while fecklessly failing to promote EEO hiring.

The benefits of the EEO rule are uncertain and speculative. First, there is absolutely no evidence that the EEO rule has improved employment diversity across broadcasting, led a particular person to apply for a particular job, or moved a station to hire a specific individual. Second, relevant to the Public Notice's inquiries,[111] the intended benefits have been overcome by marketplace changes since the rule was adopted that have completely changed the hiring equation for broadcasters.[112] Compared to 2002, broadcasters now compete in a fundamentally different world against a myriad of unregulated and less regulated audio and video content providers and digital ad platforms that collectively have captured ever-greater shares of audiences and advertising.[113] Broadcasters face tremendous challenges trying to attract *any* qualified job applicants, never mind a diverse pool of qualified candidates. Many

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[109] *See, e.g., Cumulus NAL* at 2-3 (broadcaster fined for self-disclosed failure to upload one annual EEO report in a timely manner and provide a webpage link to the report, with no FCC finding concerning the station's recruitment efforts).

[110] NAB has previously urged the Commission to devote fewer resources to enforcing the unproductive EEO rule and more resources on initiatives that might actually boost the appeal of working in the radio or television industries. Comments of NAB, MB Docket No. 98-204, at 3-4 (Sept. 20, 2019) (2019 NAB Comments).

[111] *See* Public Notice at 3 (requesting information about marketplace and technological changes).

[112] *Id*. at 3 (requesting information about marketplace and technological changes).

[113] *See* Comments of NAB, GN Docket No. 24-119, at 5-20 (June 6, 2024).

job seekers – regardless of race, ethnicity, or gender – are simply more interested in working for Big Tech or another unregulated outlet viewed as more cutting-edge and that typically can afford to pay higher salaries than broadcasters.[114] Decades of experience gained since the EEO rule was adopted demonstrates that broadcasters already do everything in their power to attract and retain any qualified talent, and it is unnecessary and inappropriate to force stations to jump through the rule's recruitment and outreach hoops in today's media marketplace.[115]

Substantial reduction of the EEO rule also is consistent with recent Presidential Executive Orders (EOs) rolling back diversity, equity, and inclusion (DEI) programs. On January 20, 2025, the President issued an EO requiring the Office of Management and Budget to "coordinate the termination of all discriminatory programs, including illegal DEI and 'diversity, equity, inclusion, and accessibility' (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear. . . ."[116] On January 21, 2025, the President issued an EO instructing all federal agencies to "take all appropriate action . . . to advance in the private sector the policy of individual initiative, excellence, and hard work." This EO directs the Attorney General (AG) to issue a report that contains "recommendations for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI." The AG's report must contain an enforcement plan that covers, among other

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[114] Letter from Rick Kaplan, NAB, to Ms. Marlene H. Dortch, Secretary, FCC, MB Docket No. 98-204, *et al*. (Mar. 3, 2022).

[115] *See* Public Notice at 3 (seeking comment on experience gained with a rule).

[116] EO 14151, *Ending Radical And Wasteful Government DEI Programs And Preferencing,* 90 Fed. Reg. 8339 (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/.

things, strategies to encourage the private sector to end illegal DEI discrimination and preferences, and potential regulatory action.[117] One or both of these orders support, or even demand, that the FCC reconsider the EEO rules regarding broadcasters' obligations to perform outreach initiatives that reach a diverse population and interview a pool of diverse candidates to avoid potential FCC enforcement.

Putting aside the question of whether the rule is efficacious, the FCC's prior view that Congress mandated the rules remain in place for radio is simply wrong.[118] Section 334 of the Communications Act, as adopted in the 1992 Cable Act, states: "Except as specifically provided in this section, the Commission shall not revise. . . (1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to ***television broadcast station*** licensees and permittees; or (2) the forms used by such licensees and permittees to report pertinent employment data to the Commission."[119] The Act also mentions only television with respect to midterm EEO reviews: "The Commission shall revise the regulations described in subsection (a) to require a midterm review of ***television broadcast station*** licensees' employment practices and to require the Commission to inform such licensees of necessary improvements in recruitment practices identified as a consequence of such review."[120]

To extend its purview to radio, the FCC has relied on a clumsy argument that it would have been illogical for Congress to grant the Commission authority in the 1992 Cable Act to

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[117] EO 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity,* 90 Fed. Reg. 8633 (Jan. 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/.

[118] *See* Public Notice at 4 (inquiring about the applicability of the governing legal framework).

[119] 47 U.S.C. § 334(a) (emphasis added).

[120] *Id*. at § 334(b) (emphasis added).

regulate the EEO practices of television broadcasters, cable operators, and all other MVPDs, but not radio broadcasters.[121] The FCC also stated that there is no indication in the legislative history of the Cable Act that Congress intended such an anomalous situation and relied on Supreme Court holdings that courts should interpret a statute "'as a symmetrical and coherent regulatory scheme' and 'fit, if possible, all parts into an harmonious whole.'"[122] Seriously, that's the claim.

The FCC's painfully strained effort to infer statutory authority to regulate EEO in radio ignores the plain language of Section 334, which does not reference radio,[123] even though the FCC had regulated the EEO practices of radio stations before the Cable Act was adopted. Thus, it is more logical to infer that Congress purposely excluded the EEO practices of radio from the FCC's regulatory authority than it is to infer Congressional intent to (silently) grant the Commission so-called symmetrical authority. We further note that there is no indication in the legislative history that Congress meant something different than the plain language in the Cable Act, which should generally govern an agency's interpretation of a statute.[124] "[O]ne, cardinal canon" of statutory interpretation instructs that "a legislature says in a statute what it

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[121] 2002 EEO Order, 17 FCC Rcd at 24033-034.

[122] *Id*. at 24033 citing *Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (other citations omitted).

[123] 47 U.S.C. § 334(b).

[124] In determining the scope of a statute, courts look "first to its language," *United States* v. *Turkette*, 452 U.S. 576, 580 (1981), giving the "words used" their "ordinary meaning," *Richards* v. *United States*, 369 U.S. 1, 9 (1962). Relying on the plain language of the statute instead of crafting a finding that has no clear basis in a statute also aligns with recent Supreme Court jurisprudence. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

means and means in a statute what it says there."[125] And Section 334 says nothing about radio.

Moreover, the EEO regime for broadcasters should be substantially reduced to the core prohibition against discrimination because, like other private businesses, stations' employment practices are already subject to oversight and enforcement in other venues, including the federal Equal Employment Opportunity Commission (EEOC), state and local agencies, and federal and state courts.[126] These other entities have much more experience than the FCC in reviewing and resolving discrimination complaints, whether a claim involves discrimination against an individual or systemic, industry-wide discrimination. Under this approach, the FCC could eliminate the bulk of the EEO rule that mandates specific hiring and paperwork obligations and defer discrimination complaints to these other more expert entities to determine the validity of a complaint and any appropriate remedies.

Recommendations:

- The FCC should ELIMINATE all of Section 73.2080 except for subsection (a), which contains a general prohibition against discrimination[127] and perhaps subsection (g),[128] under which the FCC could decide if a finding of discrimination in another venue warrants enforcement within the FCC's purview, such as license revocation, denial of license renewal, or some other action.[129]

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[125] *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

[126] *See* Public Notice at 4 (noting that FCC rules may operate "against a backdrop of other . . . federal rules and requirements, relevant state and local laws. . . ").

[127] 47 C.F.R. § 73.2080(a).

[128] *Id*. at § 73.2080(g). The FCC must likely retain 47 C.F.R. § 73.2080(f)(2) because it specifically requires the FCC to conduct a midterm review of television stations' employment practices. *See also infra*. Appendix, Section XI.

[129] Comments of America's Public Television Stations, *et al*., MB Docket No. 17-105, at 11 (July 5, 2017); *see also* Instructions, Form 2100, Schedule 303S at 7-8, (disclosure of adverse findings), https://www.fcc.gov/sites/default/files/form303s.pdf_.

B. FCC Should Eliminate the EEO Audit Process

NAB has previously described the tremendous burdens on stations of responding to an EEO audit,[130] especially for smaller stations.[131] First, stations must collect and submit all the paperwork described above regarding communications about job vacancies, interviewees and persons hired for every position, and the required outreach initiatives, as well as copies of the station's two most recent EEO public file reports and other information.[132] Given the FCC's penchant for imposing fines for missing documents, small stations routinely pay outside attorneys upwards of $3,000 to review their records before filing, while larger stations that employ more people may pay many multiples of that amount.

Second, NAB estimates that the FCC has conducted EEO audits of approximately 20,000 broadcast stations since the audits started 20 years ago and likely far more because stations must respond on behalf of all stations in their station employment unit. But to our knowledge, all of this legwork and paperwork has led to fewer than 20 Notices of Apparent Liability (NALs) or Admonishments for violations of the EEO rules,[133] most of which involved recordkeeping mistakes like failing to track recruitment sources or interviewees or failing to send vacancy notices to requesting organizations.[134] Thus, the costs of responding to an

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[130] 47 C.F.R. § 73.2080(f)(4).

[131] 2019 NAB Comments at 7-9.

[132] FCC Public Notice, *Enforcement Bureau Commences 2024 EEO Audits*, DA 24-179 (Mar. 22, 2024).

[133] We note that the number of NALs has slowed to a trickle during the past decade with the last one apparently issued in 2017.

[134] About one-third involved announcing vacancies only online, which has been allowed since 2017. *2017 Internet Recruitment Ruling*, 32 FCC Rcd at 3688.

EEO audit clearly outweigh the benefits, and experience gained during the past two decades shows that the EEO audit process is remarkably unproductive.[135]

Finally, **EEO is the only broadcast rule NAB can identify that the FCC randomly audits for compliance**. All other broadcast rules have the expectation that licensees will comply, and rule violations are driven by complaints or considered during the license renewal process. EEO audits were initially imposed because broadcast license terms had been extended to eight years, and the FCC decided it should review compliance on an on-going basis during this longer license term.[136] But this finding was made long before much of the information submitted during an audit became readily available in a station's online public inspection file. Thus, relevant to the Public Notice, technological change since the audit process was implemented further supports eliminating this obligation.[137]

Recommendation:

- The FCC should DELETE 47 C.F.R. § 73.2080(f)(4), under which the Commission annually selects at random approximately five percent of radio and television stations for an audit of their EEO compliance.[138]

C. FCC Should Eliminate Certain Other Unnecessary EEO Compliance Burdens

As mentioned above, the EEO rule requires broadcasters to disseminate job vacancy notifications to requesting organizations (entitled sources).[139] But the recruitment "safety

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[135] *See* Public Notice at 2-3.

[136] *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding*, Notice of Proposed Rulemaking, 13 FCC Rcd 23004, 23030 (1998).

[137] *See* Public Notice at 3. Even if the online public file was eliminated or dramatically reduced, stations still would maintain this information in the public inspection file.

[138] *See infra*. Appendix, Section XI.

[139] 47 C.F.R. § 73.2080(c)(1)(ii) and (c)(2).

valve" that this obligation was intended to provide when adopted in 2002[140] has proven ineffective. First, many job postings are hosted online.[141] The Commission itself has recognized this transition, stating that "online job banks are well-established, well-known and generally available to employers and job-seekers alike."[142] In addition, entitled sources rarely, if ever, refer qualified candidates.[143] Turnover at entitled sources also is so frequent that, when asked by stations to update their contact information, many sources have no recollection of asking to be notified of vacancies.[144] And yet, they remain on stations' recruitment lists for years.[145] Accordingly, the EEO obligation to send vacancy announcements to requesting organizations is clearly unable to withstand a cost-benefits analysis.[146]

NAB also supports Nexstar's previous call for elimination of 47 C.F.R. §73.2080(c)(2), which requires stations to perform a specific number of recruitment initiatives every two years.[147] Although we understand that most broadcasters exceed the minimum requirements, Nexstar rightly pointed out that a one-size-fits-all approach does not account for the characteristics of a station's local community. For example, the economics or density of a market may not enable most of the initiatives on the FCC's menu, such as job fairs, visits to local colleges, or student internships. Instead, the FCC should provide broadcasters the

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[140] 2002 EEO Order, 17 FCC Rcd at 24053.

[141] *See* Public Notice at 3 (seeking comment on technological changes that may affect the usefulness of rules); Comments of Alpha Media LLC, *et al*., MB Docket No. 17-105, at 13 (July 5, 2017); Comments of Nexstar Broad., Inc., MB Docket No. 17-105, at 14 (July 5, 2017).

[142] *2017 Internet Recruitment Ruling*, 32 FCC Rcd at 3688.

[143] See Public Notice at 3 (seeking comment on how experience gained may render a rule unnecessary).

[144] *Id*. at 13; Nexstar Comments at 15.

[145] Alpha Media Comments at 13.

[146] See Public Notice at 2-4.

[147] Nexstar Comments at 15.

flexibility to determine how best to perform initiatives that provide "outreach to persons who may not be aware of the opportunities available in broadcasting or . . . have not yet acquired the experience to compete for current vacancies."[148]

Recommendation:

- The FCC should DELETE the requirements in 47 C.F.R. § 73.2080(c)(1)(ii) and (c)(2).[149]

D. The Notice Further Supports Eliminating the Form 395-B Filing Requirement

Section 73.3612 requires all broadcast licensees with five or more full-time employees to file an annual employment report with the FCC by September 30 of each year on Form 395-B.[150] The form collects race, ethnicity, and gender information about a broadcaster's employees within specified job categories.[151] The FCC suspended the form in 2001 following a D.C. Circuit Court decision that vacated and remanded the EEO rules in place at the time,[152] and continued the suspension for two decades while it decided whether the data should remain confidential.[153] In 2024, the Commission reinstated the mandate to file the form, claiming that collecting the data will facilitate its analysis of the broadcast industry's

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[148] 2002 EEO Order, 17 FCC Rcd at 24055.

[149] *See infra*. Appendix, Section XI.

[150] 47 C.F.R. § 73.3612.

[151] *See* Office of Management and Budget, *Form FCC Form 395-B FCC Form 395-B Broadcast Station Annual Employment Report*, OMB 3060-0390 (accessed Apr. 11, 2025), https://omb.report/icr/202004-3060-047/doc/100723701.

[152] *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13 (2001) (MD/DC/DE Broadcasters), *pet. for reh'g denied*, 253 F.3d 732 (D.C. Cir. 2001), *cert. denied*, 534 U.S. 1113 (2002); *Suspension of the Broadcast and Cable Equal Employment Opportunity Outreach Program Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 2872 (2001).

[153] *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Procedures*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 19 FCC Rcd 9973, 9978 (2004).

workforce composition and preparation of reports to Congress.[154] The Commission also decided to make the filings publicly available, claiming that doing so will help ensure accuracy of the data and promote other aims.[155] Although the FCC's decision to reinstate Form 395-B and publish the data is under review in a court challenge brought by religious broadcasters and a state broadcasters association,[156] as well as in reconsideration petitions filed by NAB and a group of Catholic radio broadcasters,[157] NAB takes this opportunity to briefly amplify its opposition to reinstating the form in light of the Public Notice.

First, the costs of collecting and publishing the form data dwarf any potential benefits.[158] Making the data public on a station-specific basis will unlawfully unleash pressure on stations to engage in preferential hiring from activist groups,[159] many of which have previously announced their intentions to use the data to hold broadcasters accountable for allegedly supposedly insufficient employment diversity.[160] The employment data will also lack

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[154] *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Procedures*, Fourth Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 39 FCC Rcd 1791, 1792 (2024) (2024 EEO Order).

[154] *Id*. at 1792-93.

[155] *Id*.

[156] *National Religious Broadcasters, American Family Foundation v. FCC*, Case No. 24-60219 (5th Cir. filed May 8, 2024), consolidated with *Texas Ass'n of Broad. v. FCC*, Case No. 24-60226 (5th Cir. filed May 10, 2024) (*Religious Broadcasters et al. v. FCC*).

[157] Petition for Partial Reconsideration, NAB, MB Docket No. 98-204 (filed June 3, 2024) (NAB Recon Petition); Joint Petition for Reconsideration and Motion for Stay, Catholic Radio Association, *et al*., MB Docket No. 98-204 (filed June 3, 2024).

[158] See Public Notice at 2 (seeking comment on relevant cost-benefits analyses).

[159] *See* 2024 EEO Order, Dissenting Statement of Commissioner Brendan Carr, 39 FCC Rcd at 1842 ("The record makes clear that the FCC is choosing to publish these scorecards for one and only one reason: to ensure that individual businesses are targeted and pressured into making decisions based on race and gender.").

[160] NAB Recon Petition at 20-21.

context, such as the resources, needs, location, and format of a station, which could lead to any number of unforeseen problems.

On the other hand, the FCC's asserted benefits are hollow and pretextual. The FCC stated that it will use the workforce data only for purposes of analyzing industry hiring trends and making reports to Congress,[161] but that seems to be the end as nothing more concrete is suggested. In any event, both purposes could be achieved just as well with anonymous, aggregated data. The Commission also argued that publishing the data will facilitate the discovery and correction of incorrect data, but as then-Commissioner Carr pointed out, the FCC provided no evidence that publishing the data will increase reliability.[162] The Commission further contended that publishing the data will help prevent accidental disclosure of specific-station data, which, according to Commissioner Carr, "is like deciding to sink a ship to avoid the risk that it might spring a leak."[163] The FCC's planned use of the data and pretenses for making it public are simply not worth the substantial risks of facilitating activist campaigns against stations for having a workforce they perceive to be insufficient.

Second, the public, the Commission, and industry have lived without collection of Form 395-B for more than 20 years, without evidence of harm to any stakeholders.[164] True, the FCC has not been able to use the data to analyze hiring trends in broadcasting or create reports for Congress while the Form was suspended. But to our knowledge, the FCC rarely, if ever, used the data for either of these purposes during the many years before the Form was suspended. Thus, experience gained – and the fact that the rule requiring submission of Form

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[161] 2024 EEO Order, 17 FCC Rcd at 1798.

[162] *Id*. at 1845.

[163] *Id*. at 1845-46.

[164] *See* Public Notice at 3 (seeking information about the experience gained in implementing a rule).

395-B has been essentially waived for more than 20 years – demonstrate that the rule is unnecessary.

Third, as noted above regarding the EEO rule, marketplace changes also have rendered collection of the Form unnecessary and inappropriate because broadcasters already have every incentive to broadly recruit and ensure equal opportunity in hiring, given the intense competition for qualified employees in today's marketplace.[165]

Fourth, the obligation to file Form 395-B overlaps with the requirement of broadcast companies with 100 or more employees to file the nearly identical EEO-1 form with the Equal Employment Opportunity Commission.[166] Although the FCC has previously rejected the EEO-1 as a substitute for Form 395-B,[167] the workforce data on EEO-1 forms undeniably would allow the Commission to analyze hiring and employment trends in broadcasting and prepare meaningful reports for Congress[168] – even if the EEO-1 data does not collect broadcast industry data in the same exact format as Form 395-B.

Finally, the Commission asserts in the 2024 EEO Order that it is statutorily authorized to reinstate Form 395-B.[169] But as the Public Notice observes, *Loper Bright* held that courts should not defer to an agency's "interpretation of a law simply because a statute is ambiguous."[170] The FCC's claimed authority may be less certain than when the 2024 EEO Order was adopted, especially since it relied heavily on the general "public interest provisions"

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[165] *Id*. (seeking comment on marketplace changes that may render a rule unnecessary).

[166] *Id*. at 4 (noting that rules operate against a backdrop of other federal requirements).

[167] 2024 EEO Order, 17 FCC Rcd at 1802 (stating that, unlike Form 395-B, the EEO-1 is only collected from companies with 100 or more employees, includes data on part-time employees, and is not filed on a station employment unit basis).

[168] Comments of Center for Workplace Compliance, MB Docket 98-204, at 6 (Sept. 30, 2021).

[169] 2024 EEO Order, 17 FCC Rcd at 1818-20 (citing 47 U.S.C. § 334).

[170] Public Notice at 4, citing *Loper Bright*, 144 S. Ct. at 2273.

of the Act to justify its decision.[171] There may also be less clarity regarding the FCC's authority to reinstate Form 395-B pursuant to Section 334 of the Act, given the long debate over whether this provision, adopted in 1992, was a grant of EEO authority, as the Commission claims,[172] or a limitation on the FCC's authority to revise the EEO rules and forms, as others believe.[173]

Recommendation:

- If the court upholds reinstatement of Form 395-B, NAB respectfully requests that the Commission promptly grant the pending Petitions for Reconsideration seeking to overturn the FCC's decision and DELETE or WAIVE Section 73.3612 requiring stations to submit data on their workforce composition.[174]

VI. THE COMMISSION SHOULD ELIMINATE OUTDATED AND UNCONSTITUTIONAL CHILDREN'S TELEVISION PROGRAMMING RULES

The Children's Television Act of 1990 (CTA) obligates the FCC to consider how television broadcasters address the educational and informational needs of children "through the licensee's overall programming, including programming specifically designed to serve such needs" when reviewing stations' license renewal applications.[175] The CTA also imposes restrictions on the amount of advertising permitted during children's programming. But the CTA does not dictate the quantity or nature of the programming that broadcasters must provide to serve the educational needs of children in their community.[176]

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[171] Opening Brief for Petitioners, *National Religious Broadcasters*, Nos. 24-60219 and 24-60226 (5th Cir.), ECF No. 49, at 22-24 (Petitioners' Opening Brief).

[172] 2024 EEO Order, 17 FCC Rcd at 1819, citing 47 U.S.C. § 554.

[173] Petitioners Opening Brief at 24; Joint Reply Comments of the State Broadcasters Associations, MB Docket No. 98-204, at 3-4 (Nov. 1, 2021).

[174] *See infra*. Appendix, Section XII.

[175] 47 U.S.C. § 303b.

[176] Indeed, the FCC's initial children's programming rules did not impose any minimum programming requirements, stating that the CTA "imposes no quantitative standards and the

Over the years, however, the FCC has introduced additional rules that define what qualifies as educational programming, set minimum requirements for the amount of children's programming that broadcasters must provide, and dictate the streams on which this programming must air.[177] The FCC's rules also limit commercial content during children's shows and prohibits certain practices, such as "host selling" and displaying websites that do not meet specific criteria.[178] Broadcasters are required to file detailed annual reports to demonstrate compliance with the FCC's rules.

Broadcasters remain deeply committed to serving their local communities, including children in those communities. Local stations play an essential role in providing content that is responsive to the needs and interests of their viewers. But in today's digital age, children have access to a vast array of educational content across multiple platforms – including streaming services, educational apps, and on-demand content and prefer to view such content on other platforms. With the emergence of these new media platforms and devices through which to access them, the relevance, necessity, and legality of the children's programming rules should be reexamined. Bluntly, the rules should be deleted.

Eliminating these rules would allow broadcasters to allocate resources more effectively, improve competitiveness, and better serve their local audiences. At a minimum, the FCC should give broadcasters more flexibility by further expanding the definition of core programming and allowing broadcasters to meet their obligations by airing children's programming on any of their programming streams. The Commission should also further

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legislative history suggests that Congress meant no minimum amount criterion be imposed." *Policies and Rules Concerning Children's Television Programming, et al.*, Report and Order, 6 FCC Rcd 2111, 2115 (1991).

[177] See 47 C.F.R. § 73.671(c)-(e).

[178] *Id*. at § 73.670(b)-(d).

reduce the administrative burden on broadcasters by eliminating the annual reporting requirement and permitting broadcasters to certify their compliance at renewal.

A. Marketplace and Technological Changes Have Made Children's Programming Rules Unnecessary

Marketplace and technological changes have rendered the prescriptive mandates outlined in the children's programming rules outdated and unnecessary.[179] The CTA was adopted at a time when broadcast television was the primary medium through which children accessed content. As NAB has explained previously, the media consumption habits of children have undergone a seismic shift since the CTA's enactment.[180] Today, children have access to an expansive array of educational and entertainment options through streaming platforms, mobile applications, and on-demand services. Platforms like YouTube, Netflix, Disney+, and PBS Kids offer a vast selection of high-quality children's programming, often tailored to individual preferences and available on-demand.[181]

The wealth of digital and streaming options continues to fundamentally reshape how children access educational content. Since the Commission last examined the children's programming rules in 2019,[182] the amount of children's content on other platforms, including

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[179] *See* Public Notice at 3 (requesting information about marketplace and technological changes).

[180] *See, e.g.*, Comments of NAB, MB Docket Nos., 18-202, 17-105, at 6-12 (Sept. 24, 2018) (NAB Children's Programming Comments) (explaining how the video marketplace has been transformed since passage of the CTA and how traditional TV is losing young viewers to OTT providers).

[181] *Id*.

[182] In 2019, the FCC recognized the need for reform due to changes in the media marketplace and modified its children's programming rules to provide broadcasters with greater flexibility. These changes included allowing stations to air a portion of their required children's programming on multicast streams, eliminating the requirement that educational programming be regularly scheduled on a weekly basis, and streamlining reporting requirements.

free platforms such as YouTube, has only grown. For example, since her debut in 2019, Ms. Rachel, a YouTube-based children's educator, has become one of the most popular sources of educational content for preschool-aged children, exemplifying the shift towards digital-first content consumption among children.[183]

Experience with the rules demonstrates that they do not serve their intended purpose of serving the educational needs of children.[184] Studies consistently show that children would rather watch shows on digital and on-demand platforms than on traditional linear television.[185] As content continues to explode in the digital media ecosystem, the FCC's children's programming rules rapidly have become utterly useless in ensuring kids have educational programming; rather, the rules impose an unnecessary cost on broadcasters. Compliance with the children's programming requirements necessitates that broadcasters air content that garners minimal viewership in lieu of programming that would be desired by a broader swathe of the community, leading to potential losses in revenue. Additionally,

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[183] *See* Katie Knibbs, *The Future of Children's Television Isn't Television*, Wired (Jul. 10, 2023), https://www.wired.com/story/future-of-childrens-television-youtube-roblox/ (explaining the rise of Ms. Rachel and noting that "the YouTube Era of children's programming represents a marked shift in what and how young kids watch video" and that "as spending time on YouTube and Roblox supplants sitting in front of an old-fashioned TV set, the very idea of 'kids tv' becomes as antiquated as Saturday morning cartoons.").

[184] *See* Public Notice at 3 (seeking information about the experience gained in implementing rules).

[185] *Id.*; *see also* NAB Children's Programming Comments at 7-12 (explaining the loss of young viewers to other platforms); Tony Maglio, *A New Report Confirms It: Your Kids Have Pretty Much Stopped Watching Linear TV*, IndieWire (Mar. 24, 2022), https://www.indiewire.com/features/general/report-kids-stop-watching-linear-tv-1234710698/ (citing MoffettNathanson report finding that time spent viewing children's programming on linear television collapsed by 53 percent from 2019 to 2021); Kayla Cobb, *Kids TV is Dead, Long Live Kids TV*, TheWrap (Oct. 21, 2024), https://www.yahoo.com/entertainment/kids-tv-dead-long-live-130000641.html (noting that linear ratings for traditional children's television have plummeted over the last decade while YouTube has become a major platform for children's viewership).

broadcasters must invest significant resources to ensure compliance with the recordkeeping aspects of the rules, further straining operational resources. In contrast, the intended benefits of these regulations – ensuring children's access to educational content – have been substantially diminished by the proliferation of alternative media platforms. Given this shift in the media landscape, the rigid obligations imposed on broadcasters are increasingly disproportionate, with the financial and compliance burdens outweighing the benefit.[186] These regulations also place broadcasters at a competitive disadvantage, as streaming services and digital content providers are not subjected to similar mandates.[187]

B. The CTA and the FCC's Children's Programming Rules Do Not Withstand First Amendment Review

The Supreme Court has made clear that "the FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations" and "may not impose upon them its private notions of what the public ought to hear."[188] Since their inception, the CTA and the FCC's prescriptive children's programming rules have raised serious First Amendment concerns. Indeed, upon allowing the CTA to become law without his signature, former President George H.W. Bush articulated his reservations about its content-based restrictions, emphasizing that the First Amendment does not envision government dictating the quality or quantity of content Americans should

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[186] *See* Public Notice at 2-3 (soliciting evaluation of the cost-benefit considerations of rules).

[187] For similar reasons, the Commission should consider whether marketplace and technological changes warrant eliminating its rules restricting the display of website addresses during children's programming. *See* Public Notice at 3. These rules impose restrictions that can dissuade broadcasters from investing in educational and informational websites that could be valuable to children and can also put them at a competitive disadvantage relative to their unregulated competitors.

[188] *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 650 (1994).

consume.[189]

While the CTA and the children's programming rules have never been challenged in court, today they would likely fail First Amendment review, regardless of the standard applied. Content-based regulations are presumptively invalid under the First Amendment and are subject to strict scrutiny.[190] To pass strict scrutiny, a regulation must "further[] a compelling interest" and be "narrowly tailored," *i.e.*, the regulation must employ the "least restrictive means"[191] to achieve that compelling interest.[192] Even under intermediate scrutiny,[193] which requires that regulations directly and materially alleviate a real harm[194] and not burden substantially more speech than necessary,[195] the children's programming rules are highly problematic. The rules would fail First Amendment review under either standard because they

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[189] *See* George Bush, *Statement on the Children's Television Act of 1990* (Oct. 17, 1990), https://www.presidency.ucsb.edu/documents/statement-the-childrens-television-act-1990.

[190] Importantly, a regulation may be an unconstitutional content-based speech restriction even if it does not discriminate among viewpoints. *Reed v. Town of Gilbert*, 576 U.S. 155, 168-69 (2015).

[191] *Reed*, 576 U.S. at 171 (citation omitted).

[192] *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 452 (2015).

[193] While in certain proceedings, such as the rulemaking notice on AI-generated content in political advertisements, the FCC assumed that intermediate scrutiny would apply to broadcast regulations because, under precedent dating back over half a century, broadcasters receive lesser First Amendment protections due to alleged spectrum scarcity, NAB questions the continuing validity of those cases premised on spectrum scarcity, especially given the FCC's and congressional disavowal of the purported scarcity decades ago in a far less abundant media marketplace. Courts, moreover, have subjected certain content-based FCC restrictions to strict scrutiny even when imposed on broadcasters. *See Action for Children's Television v. FCC*, 58 F.3d 654, 660 (D.C. Cir. 1995) (en banc) (applying "strict scrutiny to [content-based] regulations . . . regardless of the medium affected by them").

[194] *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. at 664.

[195] *Turner Broad Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997).

do not prevent or address real harm, let alone in a direct or material way.[196]

As discussed above, when the rules were first adopted, broadcast television was one of the few ways children could access educational programming. The CTA and the FCC's rules therefore sought to increase the amount and quality of children's television programming available to families. But the media landscape has transformed dramatically since then. Children now have access to a plethora of high-quality child-oriented content across a wide variety of platforms. Quite simply, the justification for the rules has vanished with time, and the rules now purport to address a problem that no longer exists. Thus, by definition, the children's TV rules burden far more speech than is necessary to advance the government's interest. Their outmoded solutions plainly violate the First Amendment, and no justification remains for retaining these broadcast-only programming requirements.

C. At a Minimum, FCC Should Provide Broadcasters with Greater Flexibility to Meet Children's Programming Requirements and Reduce Administrative Compliance Burdens

Even if the Commission does not eliminate the children's programming rules entirely, changes in the media marketplace and First Amendment concerns warrant further expansion of the definition of core educational and informational programming and granting broadcasters more flexibility to meet their obligations.

The current definition of core programming is overly restrictive and does not account for various programs that, while not traditionally categorized as children's educational content, serve an essential informational role for children and the CTA's goals of promoting television programming that helps children learn important information, skills, values, and

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[196] When defending a restriction on speech as necessary to prevent an actual harm, the government cannot "simply posit the existence of the disease sought to be cured," but must point to "record evidence" demonstrating "the need to address a special problem." *Federal Election Commission v. Ted Cruz for Senate*, 596 U.S. 289, 307 (2022).

behavior. For example, local news programming provides valuable educational content by informing young viewers about important community issues, public safety, and civic engagement. Special events, such as the Olympics, also expose children to different cultures and important values, such as perseverance and teamwork, which are educational. Broadcasters should have the latitude to include such content in meeting their core programming requirements.

Additionally, the FCC should remove the requirement mandating that most core programming must air on a station's primary channel. The 2019 rule changes permitted some flexibility by allowing a portion of this programming to be aired on multicast streams. But maintaining the requirement that most educational content air on a station's main channel is an arbitrary limitation. Granting broadcasters the freedom to utilize multicast streams more extensively would not in any way disenfranchise households dependent only on over-the-air TV and would affirmatively promote the public interest by enabling broadcasters to air additional news and other programming of local community interest on their primary channels.[197] To the extent the Commission does not delete the rules entirely, it also should relax the preemption rules to give broadcasters greater flexibility in their scheduling.

The Commission additionally should eliminate its annual reporting requirement and instead require broadcasters to certify their compliance with the children's programming rules at license renewal. The current annual reporting obligations are burdensome and time-consuming, especially considering the minimal public benefit the rules provide. A certification at renewal would streamline compliance, reduce administrative overhead, and minimize the

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[197] *See* NAB Children's Programming Comments at 19-26 (explaining how broadcasters would air additional news and other programming of local community interest on their primary channels if given the option to air the required core programming on their multicast streams).

risk of enforcement actions stemming from minor reporting errors.

Recommendations:

- The Commission should DELETE 47 C.F.R. § 671(d) and (e);
- The Commission should revise 47 C.F.R. § 73.671(c) to DELETE the specific parameters for content to qualify as core programming and state that licensees shall certify on their license renewal applications that they have met their obligations;[198]
- The Commission should DELETE the Annual Children's Programming Report online public file requirement;[199] and
- The Commission should consider whether it should DELETE the restrictions on the display of websites in 47 C.F.R. § 73.670(b)-(d) considering marketplace and technological changes.

VII. THE COMMISSION SHOULD SCALE BACK RULES THAT MICROMANAGE RADIO BROADCASTS

A. FCC Should Eliminate the Telephone Broadcast Rule, Which Unnecessarily Disadvantages Broadcast Journalism

The FCC generally requires broadcast stations to inform any party to a telephone conversation for broadcast that the station intends to broadcast the call (hereinafter the "Telephone Broadcast Rule").[200] However well-meaning in trying to protect the public's privacy rights, the Telephone Broadcast Rule places broadcast journalists at a disadvantage in covering the news.[201] **The Telephone Broadcast Rule only applies to broadcast journalists.** It prevents them from catching an impromptu story by recording a telephone conversation with a source. Journalists who operate on non-broadcast media sources are not subject to the same

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[198] *See infra*. Appendix, Section XIII.

[199] *Id*.

[200] 47 C.F.R. § 73.1206.

[201] *See* Public Notice at 3 (seeking information about the experience gained in implementing rules).

limitation. This asymmetry is only exacerbated by the emergence of new technologies and media sources.[202] Imagine, for example, a TV broadcast journalist, a radio broadcast journalist, a podcaster, and a Tik Tok content creator all jointly conducting an interview via telephone with a public official. Perplexingly, the podcaster and Tik Tok creator could air the conversation nationally – perhaps even internationally – without informing the official that the conversation will be subsequently aired while local TV and radio broadcasters would have to inform the official of their intent to air the interview.

The Telephone Broadcast Rule overlaps with other privacy protections.[203] As NAB and the Radio Television Digital News Association (RTDNA) noted in response to the FCC's 2017 *Modernization of Media Regulation Initiative*, there are other state privacy laws, state tort laws, and federal wiretapping laws that may protect interviewees as well.

As is evident, the Telephone Broadcast Rule's costs outweigh its benefits.[204] The Rule ultimately places broadcast journalists at a competitive disadvantage. To the extent less reliable media sources, such as social media platforms, can more easily air recorded telephone conversations, the Rule gives news on less trusted platforms an edge over the most trusted news sources, local broadcast stations. The benefits of increased privacy protections are lessened by other laws and regulations that help protect telephone interviewees. As a result, any benefit would be incremental and small.

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[202] *Id*. at 3 (requesting information about marketplace and technological changes).

[203] *Id*. at 4 (seeking information as to whether changes to the broader regulatory context merit reconsideration of rules).

[204] *Id*. at 2-3 (soliciting evaluation of the cost-benefit considerations of rules).

Recommendation:

- The FCC should DELETE 47 C.F.R. § 73.1206.[205]

B. FCC Should Delete the FM Radio Duplication Rule. Again.

Section 73.3556 of the rules prohibits commercial radio stations from devoting more than 25 percent of their average total broadcast hours per week to programs that duplicate the programming of any commonly owned station in the same service (AM or FM) if the principal community contours of the stations overlap by more than 50 percent.[206] In August 2020, the FCC eliminated the rule for both the AM and FM services, finding with respect to FM that doing so would provide FM broadcasters greater flexibility to address issues of local concern in a timely manner, particularly in times of crisis.[207] The FCC also found no evidence that the FM duplication limit produced any public interest benefits and that retaining the rule was unnecessary because FM broadcasters have no incentive to limit their appeal and ratings by simulcasting programming on multiple stations for long periods of time.[208]

In June 2024, the FCC granted a nearly four-year-old petition for reconsideration of the 2020 Duplication Order filed by musician advocates[209] seeking reinstatement of the rule for FM radio.[210] In August 2024, NAB filed a petition requesting reconsideration of that decision,

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[205] *See infra*. Appendix, Section XIV.

[206] 47 C.F.R. § 73.3556(a).

[207] *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Station*s, Report and Order, 35 FCC Rcd 8383, 8389 (2020 Duplication Order).

[208] *Id*. at 8390-91.

[209] Petition for Reconsideration, REC Networks, musicFIRST Coalition, and Future of Music Coalition, MB Docket Nos. 19-310 and 17-105 (Nov. 20, 2020) (Musician Recon Petition).

[210] *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Station*s, Order on Reconsideration, 39 FCC Rcd 6399 (2024 Duplication Recon Order).

which remains pending today.[211] The policy factors in the Public Notice further support prompt approval of NAB's petition to again delete the radio duplication rule for FM.

First, the Notice states that the Commission has a duty to examine its policies over time to determine whether they worked as originally predicted.[212] But the FCC cited no evidence in the 2024 Duplication Recon Order that eliminating the rule four years earlier led to any of the negative consequences predicted by the musician advocates in their 2020 Recon Petition. The advocates speculated that deleting the rule would reduce both viewpoint and programming diversity on the FM dial, reduce localism, and increase spectrum hoarding – none of which came to pass based on the record.[213] Even more improperly and contrary to the Public Notice, the FCC *did not even try* to discover whether any of these doomsday claims had occurred. The FCC could have made a simple request to refresh the record that would have allowed it to consider any "experience gained" during the absence of the rule limit and make an informed decision whether to reinstate the limit.[214] No such luck.

Second, the Notice seeks comment on marketplace changes that may render a rule inappropriate.[215] The tremendous ongoing growth of competition from digital platforms and other audio alternatives already incentivizes stations to maximize their reach and revenues by providing distinct, community-responsive content.[216] Even without the rule, broadcasters will continue to try to boost listenership as much as possible, and numerous studies, including

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[211] Petition for Reconsideration, National Association of Broadcasters, MB Docket Nos. 19-310 and 17-105 (filed Aug. 2, 2024) (NAB Recon Petition).

[212] Public Notice at 3.

[213] Musician Recon Petition at 4-5.

[214] Public Notice at 3.

[215] *Id*.

[216] Comments of NAB, MB Docket No. 22-459, at 15-25 (Mar. 3, 2023).

those commissioned by the FCC, show that providing diverse programming on different stations is the best way to do so.[217] It simply makes no sense for stations to limit their appeal by simulcasting the same content on multiple stations.

Rather, NAB agrees with the FCC's finding in the 2020 Duplication Order that stations are most likely to use the ability to duplicate programming in the absence of the rule in an effort to provide *any* programming for listeners, instead of none.[218] This was demonstrated in a recently granted waiver of the rule to allow two stations with overlapping signals to simulcast programming.[219] The waiver request explained that it would not have been economically feasible for the two stations to support multiple music formats due to the characteristics of the market, which covers a relatively impoverished, small, and dispersed population, and is split by the Allegheny Mountains.[220] The request also made it clear that, without a waiver, it would have been forced to take the stations off the air.[221]

Accordingly, deleting the FM duplication rule passes a cost-benefit analysis,[222] as there are no actual harms to observe. In the 2024 Duplication Recon Order, the FCC relied on bare assertions about harm that could result in the absence of the rule, but neither the FCC nor the musician advocates could point to any actual harm that had resulted from eliminating

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[217] Comments of NAB, MB Docket No. 19-310 and 17-105, at 3-4 (Jan. 22, 2020) (2020 NAB Comments).

[218] 2020 Duplication Order, 35 FCC Rcd at 8392 (FCC stating that "stations will likely use the ability to duplicate programming . . . in an effort to preserve broadcasting").

[219] Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Disrupter Radio, LLC, c/o Davina S. Sashkin, and LHTC Media of West Virginia, Inc., c/o Aaron Shanis, *Disrupter Radio, LLC*, Facility ID No. 20461, Lead File No. 0000258552, Application for Assignment (dated Feb. 14, 2025).

[220] *Id*. at 2.

[221] *Id*. Thus the rule may also impede broadcasters' ability to serve certain markets. Public Notice at 4 (seeking comment on whether a rule may be a barrier to entry).

[222] Notice at 2 (seeking comment on cost-benefit analysis of a rule).

the rule four years earlier. On the other hand, the benefits of eliminating the rule have already been demonstrated in the *Disruptor Radio* case, in which waiving the rule enabled a station to preserve some radio service in a rural community.

Recommendations:

- The Commission should promptly grant NAB's petition for reconsideration of the 2024 Duplication Recon Order; and
- The Commission should DELETE 47 C.F.R. § 73.3556 for radio once again.[223]

C. FCC Should Eliminate Minimum Efficiency Standards that Hamper AM Stations from Choosing Antennas and Locations that Would Optimize Reach and Lower Station Costs

The FCC maintains certain "minimum efficiency" standards (hereinafter Minimum Efficiency Standards) for AM radio station antennas.[224] These Standards require AM stations to produce a minimum signal level at one kilometer or its equivalent.[225] Based on AM stations' experience, these Minimum Efficiency Standards for non-directional stations require large antennas, which in some sites, can be impractical or expensive.[226] With technological improvements, other AM antenna designs have emerged that are not as large and provide sufficient coverage[227]; unfortunately, these new designs do not meet these Minimum Efficiency Standards. Minimum Efficiency Standards also may create a barrier to entry for AM stations.[228] In particular, these Standards limit stations' ability to acquire and operate from smaller parcels of land closer to a station's audience and may cost less. As a result, AM

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[223] *See infra*. Appendix, Section XV.

[224] 47 C.F.R. §§ 73.45, 73.186, 73.189.

[225] *Id*. § 73.186.

[226] *See* Public Notice at 3 (seeking information about the experience gained in implementing rules).

[227] *See id*. at 3 (requesting information about marketplace and technological changes).

[228] *See id.* at 4 (inviting feedback on whether rules create barriers to entry).

stations are limited in their ability to take actions that would lower overall fixed or sunk costs.

When balancing the costs against the benefits of these Minimum Efficiency Standards, the costs of the standards outweigh the benefits.[229] As noted above, these Standards limit AM station flexibility in choosing antenna designs; prevent AM stations from locating their antennas closer to their audiences; and prevent stations from locating on smaller, cheaper lots. On the other hand, minimum efficiency standards may promote better allocation of AM spectrum. But AM spectrum is not particularly in high demand, which means the benefit of Minimum Efficiency Standards is small. Weighing the costs against the benefits, granting greater flexibility to non-directional AM stations would outweigh any meager benefits from maintaining the Standards.

Recommendations:

- The Commission should DELETE Minimum Efficiency Standards found in 47 C.F.R. §§ 73.45(b)(2), 73.186(b), and 73.189.
- The existing requirements for community of license coverage [47 C.F.R. 73.24] are sufficient for the public interest, convenience, and necessity. Primary and secondary coverage areas and interfering signal levels can be determined without specifying any minimum antenna efficiency.[230]

D. FCC Should Eliminate Rules That Complicate Authorization to Access the 1605-1705 kHz Band for New AM Stations

For parties interested in operating an AM station, eligible stations can file a petition for the 1605-1705 kHz band during an FCC-set filing window. Eligible stations that file a petition are ranked based on improvement factors that are set forth by the Commission.[231]

Based on broadcasters' experiences with the current rule, it is unduly restrictive in

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[229] *See id.* at 2-3 (soliciting evaluation of cost-benefit considerations to the rule).

[230] *See infra*. Appendix, Sections XVI-XX.

[231] 47 C.F.R. §§ 73.30(b), 73.35.

creating opportunities for accessing the 1605-1705 kHz band. Unfortunately, the present rules require the prospective AM stations to file a petition during a filing period set by the Commission.[232] The FCC has not announced any such filing windows in over 20 years.[233] If the FCC eliminated some of these restrictions, it may open up "green field" opportunities, as the United States only has 53 stations presently authorized to use this "expanded band."[234]

The FCC's current rules create barriers to new entrants seeking to operate an AM station.[235] They artificially limit the window in which a station can petition to access the spectrum. The improvement-factor-allocation methodology also creates a restrictive process for applying to access spectrum. As noted in the section on Minimum Efficiency Standards, the AM Band, including the 1605-1705 kHz "expanded band," is not in high demand and therefore does not require an elaborate allocation scheme beyond interference protection.

Weighing the costs against the benefits, the benefits of micromanaging AM band spectrum are small as the demand for such spectrum is light and certainly do not outweigh the costs of making it more difficult to access this spectrum band.[236]

Recommendations:

- The FCC should DELETE the current scheme that limits petitioning for access to the 1605-1705 kHz band to a set time window, as found in 47 C.F.R. § 73.30(a), and is allocated by FCC-set improvement factors, as found in 47 C.F.R. §§ 73.30(b) and 73.35;[237]

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[232] 47 C.F.R. § 73.30(a).

[233] FCC Public Notice, *AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze*, 18 FCC Rcd 23016 (Nov. 6, 2003).

[234] FCC AM Query Search, 1610-1700 kHz, Daytime License Records (accessed April 9, 2025) (showing only 53 records), https://www.fcc.gov/media/radio/am-query.

[235] *See* Public Notice at 4 (inviting feedback on whether rules create barriers to entry).

[236] *See id*. at 2-3 (soliciting evaluation of the cost-benefit considerations of rules).

[237] *See infra*. Appendix, Section XXI.

- The Commission should entertain applications at any time and on a first-come, first-served basis. In the event of mutually exclusive applications (filed on the same day), preference would be given to existing licensees in the legacy AM band seeking to cease operation in that band (as the current rules stipulate) and relocate to the expanded band. The Commission can then allocate channels based on the longstanding interference-based protocol; and

- At a later date, the Commission might consider a preference for stations proposing to operate in a digital mode, either hybrid IBOC or fully digital, but NAB is not proposing that qualification at this time.

VIII. THE COMMISSION SHOULD UPDATE THE EAS RULES TO PERMIT SOFTWARE-BASED OPERATIONS AND RIGHT-SIZE ENFORCEMENT AND TERMINATE CERTAIN PENDING EAS AND SECURITY-RELATED INQUIRIES

A. EAS Participants Should Have the Option to Use a Software-based ENDEC Solution

NAB recently filed a rulemaking petition asking the FCC to update its rules to allow Emergency Alert System (EAS) participants to use software-based EAS encoder/decoder (ENDEC) technology instead of a legacy physical hardware device to process EAS messages.[238] NAB explained that the current rules require use of a legacy hardware ENDEC device, presumably due to the implementation of historical policies that pre-date the use of software.[239] NAB submits that granting our request to delete the requirement to only use a physical device will facilitate development of an equally effective, if not more efficient and reliable, software-based solution.

Consistent with the inquiry in the Notice,[240] NAB demonstrated that the benefits of freeing EAS Participants from the constraints of a hardware device would outweigh any potential costs. For example, routine maintenance, repairing a malfunction, and implementing

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[238] Petition for Rulemaking, NAB, PS Docket Nos. 15-94 and 22-329 (filed Mar. 31, 2025) (NAB EAS Petition).

[239] *Id*. at 7.

[240] Public Notice at 2.

upgrades would all be workable through a software update or other remote fix, instead of having to visit devices on-site or ship devices to a manufacturer and pause their EAS operations while doing so. Broadcasters' experience under the current rules shows that having to visit or ship ENDEC devices out for repair and upgrades is costly, time-consuming, and can disrupt their EAS for uncertain periods of time.[241] A software-based solution would also further EAS resiliency by enabling an immediate fail-over of ENDEC functionality using multiple instances of EAS software at redundant, remotely-operated systems in various locations.[242] On the other hand, the costs of allowing this approach would be minimal because EAS functionality would be ensured by the development of an EAS solution that would include appropriate testing and certification, similar to the successful experience of stations with other software-based systems used in modern broadcasting systems. There would be minimal costs associated with using software because such an approach would be no more vulnerable to hacking and other internet disruptions than current hardware devices.[243]

As set forth in NAB's petition, this proposed approach could be implemented through a minor global update to the definitions section in Part 11 of the rules to accommodate the optional use of a software-based approach.[244]

Recommendation:

- The FCC should DELETE the requirement in 47 C.F.R. § 11.2 that EAS Participants must use a physical hardware ENDEC device to carry out the functions of

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[241] *Id*. at 3 (seeking comment on whether experience gained supports a rule change).

[242] NAB EAS Petition at 6-7.

[243] *Id*. at 5-6.

[244] *Id*. at 7.

monitoring for, receiving and/or acquiring, decoding and encoding EAS messages, and permit the use of a software-based system to carry out these functions.[245]

B. The Rule Governing "False EAS Alerts" Is Overly Broad and Ambiguous

Section 325(a) of the Act states that "no person . . . shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto. . ."[246] In 1994, the FCC adopted 47 C.F.R. § 11.45 to "more directly address the proper use EAS tones and codes."[247] Section 11.45(a) states that no person may transmit "the EAS codes or Attention Signal, or a recording or simulation thereof," except during an actual emergency or authorized test of the EAS. Section 11.45(b) requires an EAS Participant to inform the FCC that it has "transmitted or otherwise sent a false alert to the public" within 24 hours of discovering the event.[248]

First, Section 11.45 is internally vague, as paragraph (a) refers to "the EAS codes or Attention Signal, or a recording or simulation thereof," while paragraph (b) refers to a "false alert." It is unclear if everything listed in paragraph (a) constitutes a "false alert" that must be reported under paragraph (b). If so, paragraph (b) should explicitly reference paragraph (a). If not, broadcasters are left to guess whether there is some difference between a "simulation" of the codes and signal in paragraph (a) and the "false alert" mentioned in paragraph (b).

Second, FCC interpretations of Section 11.45 over the past three decades have made determining what kinds of sounds in content constitute an unlawful simulation an ambiguous,

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[245] *See infra*. Appendix, Section XXI.

[246] 47 U.S.C. § 325(a).

[247] *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcasting System*, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1815 (1994) (1994 EAS Order).

[248] 47 C.F.R. § 11.45(b).

subjective exercise.[249] For instance, the FCC has found that programming that does not contain any part of the actual EAS codes or signal still constitutes an unlawful simulation of an EAS alert if "an average audience member would reasonably mistake the sounds for the sounds made by actual EAS codes."[250] Broadcasters therefore must guess whether claxons, bells, or some other sound mimics the real thing enough to be mistaken by "an average audience member" for the EAS tones or attention signal.[251] Given the lack of clear guidance from the FCC, sometimes broadcasters guess correctly, and sometimes they do not, even after carefully reviewing the content before airing.

As a result, the FCC's false alert rule can inhibit broadcasters' airing of content that may well be permissible, especially given the FCC's practice of multiplying fines based on the revenues of a violator and whether the same, singular mistake affected multiple stations.[252] For example, NAB understands that some stations refrained from including a brief simulation of an EAS alert in news segments about the last nationwide test, diminishing the quality of information they felt comfortable providing to the public. Similarly, stations are wary of producing well-intentioned news reports about Amber Alerts or explaining why local residents heard some kind of alarm that clearly serves the public interest, and reject promos for disaster movies that no one would reasonably confuse with an actual emergency, all to avoid an unexpected hefty FCC fine.

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[249] Kathleen A. Kirby and Ari S. Meltzer, *Feature, Beware the Long Arm of the FCC: Enforcement of "False" Emergency Alert Tones Extends Beyond FCC Licensees*, 32 Ent. & Sports Law. 11, 23 (2015).

[250] *Turner Broadcasting System, Inc.*, 28 FCC Rcd 15455, 15458 (2013).

[251] Kirby and Meltzer at 24.

[252] *See, e.g., Fox Corporation et al.*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 777, 784 (2023).

In addition, to NAB's knowledge, Section 11.45(b) is the only regulation related to broadcast content that triggers an affirmative obligation to self-report within such a short time frame. A station could literally broadcast unequivocally indecent programming instead of its regular news, and it would not have to inform the agency. The FCC would not even investigate unless it receives a consumer complaint. But if a reporter produces a legitimate news story about an EAS test and accidentally includes a snippet of the EAS tones to inform viewers what the test will sound like but which cannot trigger an actual alert, the station must notify the FCC within 24 hours or incur a forfeiture. This practice makes little sense, and moreover, impermissibly intrudes on a licensee's constitutionally protected editorial process.[253]

Accordingly, NAB believes that the FCC has strayed beyond the plain language of the Act regarding the transmission of false signals of distress into unpredictable and inappropriate enforcement. To remedy this frustrating issue, the FCC should better tailor Section 11.45 to Section 325 and focus enforcement of Section 11.45 on situations that trigger a false EAS alert and remove the unclear subjectivity that surrounds alleged simulations of the EAS codes or Attention Signal.

Recommendation:

- The FCC should DELETE the part of 47 C.F.R. § 11.45(a) that prohibits the transmission of a simulation of the EAS codes or Attention Signal and narrow application of the rule to the transmission of any false or fraudulent signal of distress that triggers an actual EAS alert.[254]

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[253] *See Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

[254] *See infra*. Appendix, Section XXII.

C. FCC Should Terminate Consideration of Certain Unnecessary EAS and Public Safety-Related Proposals

1. Mandatory Filing in the Disaster Information Reporting System

In January 2024, the FCC proposed a requirement that all broadcast stations file reports in the Disaster Information Reporting System (DIRS) when that system is activated, and the Network Outage Reporting System (NORS), when service is disrupted by a problem caused by circumstances other than a disaster.[255] The FCC asserted that, under the existing voluntary DIRS system, too many stations choose not to file DIRS reports, leaving a gap in the FCC's awareness that could impede emergency response efforts of the Commission and other agencies.[256] The FCC also argued that this supposed information gap could affect the ability of emergency response officials to widely disseminate information.[257]

Broadcasters explained that some stations choose not to file DIRS reports because doing so rarely, if ever, leads to government actions that help them maintain or restore service.[258] We also noted that many stations have small staffs who do not have the bandwidth during a disaster to log in and file a DIRS report, such that mandating DIRS could undercut public safety by distracting station staff from their core duties.[259] Further, most large broadcasters do file voluntary reports that provide a sufficient picture of broadcasting status in an area, so mandatory reporting will be of limited value. Finally, the proposal would not

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[255] *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 39 FCC Rcd 623, 642-49 (2024) (Second Further Notice).

[256] *Id*. at 643-44.

[257] *Id*. at 644.

[258] Comments of NAB, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35, at 6-8 (May 13, 2024) (NAB DIRS Comments).

[259] *Id*. at 10-11.

change the distribution of EAS warnings or how emergency officials disseminate information because they already distribute such information as widely as possible.[260]

Consistent with the Notice,[261] NAB has explained that the FCC's cost-benefits analysis of mandating DIRS and NORS reporting in the Second Further Notice, which rested largely on enhancing the FCC's "situational awareness," did not justify the proposed mandate. The FCC offered no evidence to counter broadcasters' experience that the longstanding, successful voluntary DIRS process is adequate,[262] or that making it mandatory will produce tangible benefits for broadcasters or the public. Also relevant to the Public Notice,[263] NAB explained that the proposal was unnecessary because stations already have every incentive to try to maintain operations and reach out to the FCC or emergency response officials for help if needed.[264]

Recommendation:

- The Commission should TERMINATE its inquiry into whether all broadcasters should be required to file reports in DIRS and NORS during a disaster.

2. Multilingual EAS

In February 2024, the Commission proposed a mechanism to improve the accessibility of EAS messages for persons who speak a primary language other than English.[265] The FCC's plan would require broadcasters (and other EAS Participants) to transmit alerts in the primary

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[260] *Id*. at 11-12.

[261] See Public Notice at 2-3.

[262] *Id*. at 3 (seeking comment on experience gained from implementation of a rule).

[263] *Id*. at 4 (seeking comment on industry best practices and self-regulatory practices that may render a rule unnecessary).

[264] NAB DIRS Comments at 18.

[265] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Notice of Proposed Rulemaking, 39 FCC Rcd 1949 (2024) (Multilingual EAS NPRM).

language of their station's content using pre-loaded scripts that would be pre-translated by the FCC. However well-intentioned, this proposal was under-developed and left open too many questions about how it would work, or could work, in practice.[266]

The proposal would fail the cost-benefit analysis called for in the Public Notice.[267] The costs include public confusion that would be caused by EAS alerts in a language mandated by the FCC. For example, it is common for English speakers who do not understand Spanish to listen to radio stations that broadcast a Spanish music format. Such listeners may not be able to understand EAS alerts in Spanish. Instead, broadcasting alerts in other languages should remain voluntary and based on a station's familiarity with its local community. Broadcasters are in the business of knowing their audiences and serving their needs, and inserting the FCC into this relationship is unnecessary.

In addition, most stations have a single EAS device that transmits EAS across all their channels at the same time. Thus, the FCC's approach could force stations that broadcast in one language on their main channel and another language on their multicast HD radio channels or video streams to purchase additional EAS devices to support the various multilingual multicasts.[268] NAB reminds the Commission that EAS is an unfunded public mandate, so the FCC should be extremely cautious in considering rules that could disincentivize broadcasters from participating in local alerting.[269] We also agreed with FEMA

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[266] Comments of NAB, PS Docket No. 15-94, at 2 (Apr. 8, 2024) (NAB Multilingual EAS Comments).

[267] Notice at 2-3.

[268] Cable operators also identified significant technical and practical hurdles that would complicate their implementation of the FCC's proposal. Reply Comments of NTCA–The Rural Broadband Association and ACA Connects – America's Communications Association, PS Docket No. 15-94 (May 6, 2024).

[269] NAB Multilingual EAS Comments at 2.

that using pre-translated EAS scripts will dilute the usefulness of information that can be included in an EAS alert. Finally, this FCC proposal is seemingly trying to fix something that isn't broken, because no broadcaster that NAB has contacted about this issue can recall ever receiving a complaint that a viewer or listener could not understand an EAS alert.

Regarding benefits, the FCC claimed a lack of voluntary efforts to relay multilingual alerts[270] and stated that mandating the broadcast of alerts in other languages will make alerts more comprehensible and helpful in some communities.[271] But the FCC itself characterized these ends as mere "general benefits,"[272] and provided no evidence that members of the public have been disadvantaged under the existing voluntary system.

Recommendation:

- The Commission should TERMINATE consideration of its proposal to require EAS Participants to provide multilingual EAS alerts.

IX. THE COMMISSION SHOULD MODIFY CERTAIN UNNECESSARILY BURDENSOME ACCESSIBILITY REQUIREMENTS

A. NAB's Request to Update the Audible Crawl Rule Should be Promptly Granted

Section 79.2(b)(2)(ii) of the FCC's rules requires that visual, non-textual emergency information (*e.g.*, weather radar maps) that are displayed during non-newscast video programming be made aurally accessible to persons who are blind or low vision (audible crawl rule).[273] The rule was adopted on April 8, 2013, with an original effective date of May 26,

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[270] Multilingual EAS NPRM, 39 FCC Rcd at 1956.

[271] *Id*. at 1963.

[272] *Id*. at 1964.

[273] 47 C.F.R. § 79.2(b)(2)(ii).

2015.[274] But the rule has been waived to the present day because a technical solution for automatically creating aural translations of the emergency information in such images does not exist.[275] Broadcasters have explained that the software used to create weather maps and similar graphics does not contain metadata text files that can be converted into text and then used to create aurally accessible text crawls.[276] NAB also stated that an approach based on AI, while potentially conceivable, would need to overcome a variety of obstacles that will delay a solution for an unknown period of time, if not prevent a solution entirely.[277]

To provide both stations and viewers certainty, NAB filed a rulemaking petition in November 2024, asking the FCC to modify the audible crawl rule to clarify and confirm that, if a station displays an image covered by the rule, compliance can be met if the station runs aurally accessible text crawls that convey emergency information equivalent to the

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[274] *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013) (2013 Emergency Information Order).

[275] *See, e.g.*, *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, 30 FCC Rcd 5012 (2015); *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, 33 FCC Rcd 5059 (2018) (2018 Waiver); *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, 38 FCC Rcd 4982 (2023) (2023 Waiver Order).

[276] Petition for Rulemaking and Extension of Waiver of NAB, MB Docket No. 12-107, at 5-6 (filed Nov. 15, 2024) (NAB Petition).

[277] *Id*. at 6-7.

information conveyed by the image.[278] Such a change would be consistent with Commission findings in various waivers of the rule because the text crawls ensure accessibility to emergency information.[279] But the text of the rule does not provide sufficiently clear guidance to allow stations to display the images without fear of violating the rule. Absent approval of NAB's request, or another waiver of the rule, stations would be forced to cease providing weather maps and similar images, reducing access to emergency information for all.[280]

Granting NAB's petition would be squarely consistent with the policy factors in the Notice. For example, the audible crawl rule was adopted over a decade ago, and experience gained since that time demonstrates that it not only would be unduly burdensome to comply with the rule – it would be impossible.[281] The FCC's repeated waivers of the rule further underscore the limited usefulness of effectuating the rule.[282] Indeed, broadcasters continue to provide emergency information in accessible text crawls in the absence of a solution for compliance by converting the images to speech. Certainly, the rule has not produced the benefits the Commission originally predicted it would, given the long period of non-enforcement of the rule without any negative consequences.[283] Technological changes further support amending the audible crawl rule, given advances during the past decade in

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[278] *Id*. at 1-2.

[279] *See, e.g.*, 2018 Waiver, 33 FCC Rcd at 5065.

[280] Petition at 5-6.

[281] Notice at 3 (seeking comment on experience gained with a rule).

[282] *Id*. (FCC asking if there have been repeated waivers that suggest a rule is unnecessary or ill-suited).

[283] *Id*.

automated mechanisms for creating and translating text crawls about an emergency into accessible speech.[284]

The audible crawl rule, as written, is not critical because television stations have both a public interest and business incentive to make their emergency information as widely available as possible. Weather reporting is a hallmark of local broadcasting, as stations invest substantial sums in systems and personnel. They view coverage of local emergencies to be a unique advantage over national cable outlets and online sources, and a critical asset for cementing loyalty among viewers.[285] Broadcasters' performance and profits are ultimately measured through audience ratings; to grow and maintain viewer loyalty, stations strive to provide programming that audiences can relate to and trust. Indeed, television station ratings routinely soar during local emergencies.[286] It would be counter-productive for a station not to make its emergency programming accessible to persons who are blind or low vision. Thus, NAB submits that the costs of the existing audible crawl rule far outweigh any benefits because compliance with the current rule remains impracticable, and viewers continue to be served with accessible emergency information.[287]

Recommendations:

- The Commission should promptly grant NAB's pending rulemaking petition; and

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[284] *Id*. (seeking comments on technological changes that may render a rule unnecessary).

[285] *Broadcast radio: The most reliable medium for disaster update*s, International Telecommunications Union (Feb. 13, 2023), https://www.itu.int/hub/2023/ 02/broadcast-radio-the-most-reliable-medium-for-disaster-updates/.

[286] *See* Michael Schneider, *Local News Audiences Doubled and Even Tripled During L.A. Fire Coverage*, Variety (Jan. 14, 2025), https://variety.com/2025/tv/news/la-fire-local-news-ratings-audiences-double-triple-coverage-1236273532/.

[287] Notice at 2-3 (seeking comment on cost-benefits analysis of rules).

- The Commission should DELETE the audible crawl rule as written so as to specifically allow compliance through accessible text crawls that provide emergency information equivalent to that conveyed by a visual image.[288]

B. The Requirement to Publish a Station Employee's Contact Information to Receive Closed Captioning Complaints Is Unnecessarily Burdensome

Under 47 C.F.R. § 79.1(i), video programming distributors (VPDs) must make certain information publicly available for the receipt and handling of written closed captioning complaints. The information must include the name of the specific employee with primary responsibility for captioning, the person's title or office, telephone number, email address, fax number, and postal mailing address. Typically, this is the station's chief engineer. VPDs must include this information on their websites, in telephone directories, and in billing statements (if appropriate), and keep this information current and updated within ten business days of a change.[289] VPDs must also provide this information to the Commission, which makes it publicly available on the FCC's website or through telephone inquiries.[290]

The requirement to make an individual's contact information publicly available is unnecessary and often counter-productive. Broadcasters' experience with the rule demonstrates that publishing a specific person's contact information allows consumers to send irrelevant complaints and information to the publicly identified individual person.[291] For example, it is not uncommon for viewers to email or call the identified person's phone with complaints about the content of the station's programming or even send unsolicited TV show scripts (none of which, to our knowledge, has been greenlit). In some cases, consumers have repeatedly badgered the captioning contact with belligerent or hostile voicemails and emails.

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[288] *See infra*. Appendix, Section XXIV.

[289] 47 C.F.R. § 79.1(i)(2).

[290] *Id*. at § 79.1(3).

[291] Notice at 3 (seeking comment on experience gained with a rule).

Ultimately, the consumer's concerns are misdirected, and the station employee's time is wasted. This rule should be modified for failing the cost-benefit analysis called for in the Notice.[292]

The problem can be fixed by a simple change to the rule. Instead of contact information for a specific, identifiable person, allow stations to designate a telephone number, email address, fax number, and postal address for purposes of receiving and responding to any closed captioning complaints. This approach will allow stations to direct complaints to the person primarily responsible for resolving captioning complaints, or anyone else available and knowledgeable about and able to address closed captioning concerns. This is the process set forth in the preceding rule section governing immediate closed captioning concerns (*i.e.*, currently airing programming),[293] and it should be equally effective for less timely captioning complaints, while preventing consumers from targeting irrelevant or unwelcome grievances to an identified station individual.

Recommendation:

- The Commission should DELETE the current construction of 47 C.F.R. § 79.1 and amend the rule to allow stations to designate contact information for purposes of handling captioning complaints that are not linked to a specific, identifiable station employee.[294]

X. THE COMMISSION SHOULD ELIMINATE RULES THAT ARE DUPLICATIVE OF OTHER LAWS OR OTHERWISE ARE OBSOLETE

A. FCC Should Eliminate the Contest Rule, Which Is Duplicative of Other Laws that Protect the Public from Deceptive Contests

The FCC requires a broadcast station that hosts a contest to disclose the material

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[292] *Id*. at 2.

[293] 47 C.F.R. § 79.1(i)(1).

[294] *See infra*. Appendix, Section XXV.

terms of the contest either over the air or on the internet (hereinafter, Contest Rules).[295] The Rules prohibit any contest description from being "false, misleading[,] or deceptive with respect to any material term."[296] While NAB recognizes the value in ensuring contests are administered fairly, the Contest Rule, in practice, is overbroad and duplicative of Federal Trade Commission (FTC) and state enforcement activities.[297] As a result, it should be DELETED.

While seemingly a benign effort at creating transparency for contests hosted on broadcast TV and radio stations, the Contest Rule has been a hobgoblin of minor contest infractions.[298] For instance, an Audacy station was fined $14,000 because a part-time employee had neglected to pick a winner of the contest in up to 16.8 percent of instances and

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[295] 47 C.F.R. § 73.1216(a). The Content Rules define a "contest" as "a scheme in which a prize is offered or awarded, based on change, diligence, knowledge or skill, to members of the public." *Id*. at § 73.1216(a)(1). "Material terms" define how the contest operates and how to participate in the contest. Material terms may include: "How to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie-breaking procedures." *Id*. at § 73.1216(a)(2).

[296] *Id*.

[297] The FCC's Broadcast Hoax Rule is yet another instance of a law that is, at least partially, duplicative of another agency's jurisdiction. The Broadcast Hoax Rule prohibits station licensees from broadcasting false information concerning a crime or a catastrophe if: (1) the licensee knows the information is false; (2) it is foreseeable that the information will cause substantial public harm; and (3) the broadcast does, in fact, cause substantial public harm. 47 C.F.R. § 73.1217(a). "Public harm" must start immediately, cause direct and actual damages to property or to the health or safety of the public or cause the diversion of law enforcement or other public health and safety authorities from their duties, and be foreseeable enough so the station could expect with a significant degree of certainty that public harm would occur. 47 C.F.R. § 73.1217(c). Like in the case of the Contest Rule, the FTC has jurisdiction to prosecute any unfair or deceptive acts or practices that mislead consumers. 15 U.S.C. § 45(a)(1) (declaring it unlawful for a company to engage in "unfair or deceptive acts or practices"). If a TV or radio station broadcasts a "hoax" that misleads consumers, the FTC likely would have jurisdiction to prosecute.

[298] *See* Public Notice at 3 (seeking information about the experience gained in implementing rules).

that employee's manager had failed to adequately supervise.[299] Once it was notified of the failure to pick certain winners, the station promptly picked the winners according to the rules and remitted prizes as promised.[300] Despite these mistakes arising from the failure of one part-time employee and that employee's supervising manager, the FCC found that the station's actions were "willful," merited a forfeiture, and, indeed, even warranted an upward enhancement of the forfeiture amount.[301] In another instance, a station had missed its own deadline to provide an award, and disruptive intervening events, such as the Covid-19 pandemic, a ransomware attack, and employee shortages, exacerbated the station's tardiness in remitting the payment.[302] Despite those intervening events, the FCC sought a forfeiture award – also with an enhancement.[303] Far from engaging in fraud or deception, these stations made minor mistakes in administering contests; those mistakes, however, were answered with enhanced punishments. By contrast, other agencies possess responsibility to prosecute deceptive or unfair lotteries, sweepstakes, or other such contests that cause material harm to consumers.

The FTC maintains authority to prosecute lotteries, sweepstakes, and other such contests that are deceptive or unfair.[304] Indeed, the FTC recently prosecuted an individual for running a sweepstakes that cost consumers – both in the United States and abroad – millions

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[299] *Audacy License, LLC*, Notice of Apparent Liability for Forfeiture, Docket No. EB-IHD-21-00032600 (Aug. 9, 2024).

[300] *Id*. at 3, 8.

[301] *Id*. at 3.

[302] *KXOL Licensing, Inc.*, Notice of Apparent Liability for Forfeiture, Docket No. EB-IHD-21-00032418 (Apr. 12, 2024).

[303] *Id*. at 3.

[304] Fed. Trade Comm'n, Tag: Lottery & Sweepstakes (accessed March 25, 2025); *see also* Public Notice at 4 (inquiring about changes in the governing legal framework).

of dollars,[305] and a company that, among other things, misled consumers into believing that making purchases would enhance chances of winning sweepstakes.[306] States also regulate contests.[307] For example, certain states have general sweepstakes or contest laws that largely must adhere to certain disclosure requirements, such as clearly disclosed eligibility requirements, odds of winning, specification of the type(s) and number(s) of prizes to be awarded, and the start and end date of the sweepstakes, and a requirement allowing consumers to participate without forcing them to pay to enter.[308] In addition to those basic requirements, some states also have additional protections. New York and Florida require proprietors of sweepstakes that exceed $5,000 over the contest term to provide a filing with the state and to provide a bond to secure the sweepstakes.[309] Put together, stations that run deceptive contests on air face the prospect of enforcement by the FTC and by state authorities.

Given that the FTC and states already have concurrent jurisdiction to prosecute deceptive contests, the cost of the FCC's Contest Rule does not outweigh the scant benefits that the Rule purports to offer.[310] FTC enforcement has targeted truly deceptive contests that have had a material effect on consumers; recent FCC enforcement actions, however, have policed and punished minor mistakes by stations. In addition, state laws that require contest

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[305] FTC Press Release, *FTC Action Leads to Sweepstakes Ban for Individual Who Helped Run Massive Scheme that Cost Consumers Millions* (Aug. 8, 2024).

[306] *FTC v. Publishers Clearing House, LLC (PCH)*, No. 182-3145 (FTC June 26, 2023).

[307] *See, e.g.*, Realtime Media, *Contests and Sweepstakes Laws by State* (Dec. 18, 2024), https://www.rtm.com/blog/contests-and-sweepstakes-laws-by-state/.

[308] *See, e.g.*, Color. Rev. St. § 6-1-803 (2022); R.I. Gen. Laws § 42-61.1-1-3 (2024); Fla. Stat. § 849.094 (2024); NY Gen. Bus. L. Art. 24-A, § 369-e (2024).

[309] Fla. Stat. § 849.094 (2024); NY Gen. Bus. L. Art. 24-A, § 369-e (2024).

[310] *See* Public Notice at 2-3 (soliciting evaluation to rules' cost-benefit considerations).

entities to publish their rules overlap with the FCC's Contest Rule and therefore render the Contest Rule duplicative. On the other hand, the Contest Rule adds yet another regulatory compliance burden to already stretched TV and radio stations. And to the extent stations face compliance costs because of minor mistakes, enforcement of the Contest Rule only increases station costs and decreases incentives to offer contests to audiences. Considering both sides of the cost/benefit ledger, the Contest Rule costs far more than it provides.

Recommendation:

- The Commission should DELETE 47 C.F.R. § 73.1216, which codifies the Broadcast Contest Rule.[311]

B. FCC Should Eliminate Technical Definitions That No Longer Are Used or Relied Upon in the Rules

The FCC defines technical terms that are relied upon in other parts of the rules.[312] Over time, however, some of those definitions have become unnecessary as there are no longer any rules to which they apply. In particular:

- Combined audio harmonics
- Incidental phase modulation
- Stereophonic crosstalk
- Stereophonic separation

These definitions are no longer relied upon in the rules, and indeed, the definition of "stereophonic separation" conflicts with the definition used in 47 C.F.R. § 73.312 for FM stations. To the extent the stereo definitions apply to AM stations, the existing reference to the NRSC standard is sufficient.

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[311] *See infra*. Appendix, Section XXVI.

[312] 47 C.F.R. § 73.14.

Recommendation:

- The Commission should DELETE the above-referenced definitions.[313]

XI. THE COMMISSION SHOULD CEASE ENFORCEMENT OF INFORMAL POLICIES OR PROCEDURES THAT IMPOSE STANDARDLESS OVERREGULATION OF BROADCASTERS

A. FCC Should Formally Purge Itself of the News Distortion Policy

The FCC's informal news distortion policy provides the Commission narrow authority "to take action on complaints about the accuracy or bias of news networks, stations, reporters or commentators" in their coverage of events if they meet certain evidentiary standards.[314]

As NAB recently explained in another proceeding, the news distortion policy does not pass legal and constitutional muster for several reasons.[315] First, the policy is not based on any explicit statutory mandate and therefore it is questionable whether the FCC has authority to enforce it.[316] Second, the policy is contrary to the public interest and the First Amendment.[317] The news distortion policy impermissibly chills speech and discourages coverage of important public issues.[318] It also places the Commission into the intrusive and constitutionally suspect role of scrutinizing program content and the editorial choices of broadcasters.[319] Moreover, because the FCC has never clearly defined what constitutes "news

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[313] *See infra*. Appendix, Section XXVII.

[314] *See* FCC Consumer Guide, *Broadcast News Distortion*, https://www.fcc.gov/broadcast-news-distortion.

[315] *See* Comments of NAB, MB Docket No. 25-73, at 8-20 (Mar. 7, 2025).

[316] *See id*. at 8-10 (explaining that given First Amendment concerns and the "no censorship" provision of the Act, the FCC's general authority to determine whether a licensee has served the public interest "does not mean the FCC has the requisite specific authority to regulate and make judgments about the content and presentation of specific programs, as claimed under the news distortion policy").

[317] *See id*. at 10-20.

[318] *See id*. at 13-14.

[319] *See id*. at 14-15.

distortion," it is unconstitutionally vague and contrary to Supreme Court precedent insisting on rigorous adherence to the requirement of clarity in regulations involving speech.[320]

In addition, the news distortion policy is unnecessary to ensure that the public receives a range of views on controversial issues in the modern media environment. Just as the FCC found the Fairness Doctrine unnecessary nearly 40 years ago due to increases in the number and types of information sources available, the news distortion policy is even more unnecessary in today's media marketplace where consumers possess nearly unlimited access to a vast array of views and opinions about nearly any issue.[321] Moreover, in an era of widespread fact-checking, media watchdog organizations, and audience engagement through social media, there are multiple mechanisms to hold news organizations accountable for their reporting without government intervention.

Recommendation:

- Given that the FCC's news distortion policy is legally dubious, constitutionally problematic, and redundant in today's media ecosystem, it should be DELETED. The FCC should issue a public notice formally rescinding the policy.

B. FCC Should Close Its Pending Proceeding Mandating Disclosures of the Use of Artificial Intelligence in Political Ads

On July 25, 2024, the FCC issued a rulemaking notice that would require broadcasters to include disclosures if artificial intelligence is used in a political ad.[322] As NAB explained, the FCC's proposed rule would fail to provide meaningful information to the public, was unworkable, would be extremely difficult and taxing to comply with, would not address the

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[320] *See id*. at 16-20.

[321] *See id*. at 15-16.

[322] *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211, FCC No. 24-74 (rel. July 25, 2024).

core problem with deceptive uses of artificial intelligence to generate ads, was not authorized by statute, and violated the First Amendment.[323] For all those reasons, the proposed rule's costs would certainly outweigh the benefits.[324]

Recommendation:

- The FCC should CLOSE this proceeding without taking any further action and hopefully forget this was even a thing.

XII. CONCLUSION

As NAB described in page after page, TV and radio broadcasters face layer upon layer upon tedious, onerous, oppressive layer of regulation. But we cannot emphasize enough: No broadcast regulations are more devastating to the viability and future vitality of TV and radio broadcasters than the national TV ownership restriction and the local radio and TV ownership rules. Nor is there a more consequential regulatory deletion than the elimination of these ownership regulations. If the Commission does not DELETE, **DELETE,** ***DELETE*** its radio and TV station ownership restrictions, no other regulatory action will enable broadcasters to vigorously compete against other exponentially larger, better capitalized competitors in the broader media ecosystem.

If NAB's comments demonstrate anything, it is that behind the scenes of providing the local news, playing hit music on the radio, or airing live sports, engaging hit shows, or other major events, broadcast stations face an unrelenting struggle of uploading thousands of documents, complying with hundreds of pages of rules, or taking on a myriad of obligations. Far from serving the public, these requirements often strain already resource-constrained

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[323] Comments of NAB, MB Docket No. 24-211 (Sept. 19, 2024); Reply Comments of NAB, MB Docket No. 24-211 (Oct. 11, 2024).

[324] *See* Public Notice at 2-3 (soliciting evaluation of cost-benefit considerations of rules).

local stations. We commend the Commission for looking for ways to relieve the broadcast industry of its asymmetric regulatory burdens.

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APPENDIX
Proposed Revisions to the Code of Federal Regulations

Where possible, we provide revisions to the Code of Federal Regulations that memorialize our proposed deletions to the FCC rules. Deletions are in red and are crossed out, and additions are in blue. Certain policies or proposed policies, such as the News Distortion Policy, Disclosure of Artificial Intelligence in Political Ads proceeding, as well as other proposed deletions are not included below because they have not been formally added to the Code of Federal Regulations. In such situations, we provide recommendations above for how the Commission may expedite eliminating the rule or policy.

I. National Ownership Cap and 50 percent UHF discount (47 C.F.R. § 73.3555(e))

....

~~***(e) National television multiple ownership rule.***~~

~~(1) No license for a commercial television broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors having a cognizable interest in television stations which have an aggregate national audience reach exceeding thirty-nine (39) percent.~~

~~(2) ***For purposes of this paragraph (e):***~~

~~(i) ***National audience reach means*** the total number of television households in the Nielsen Designated Market Areas (DMAs) in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their DMA market.~~

~~(ii) No market shall be counted more than once in making this calculation.~~

~~(3) ***Divestiture.*** A person or entity that exceeds the thirty-nine (39) percent national audience reach limitation for television stations in paragraph (e)(1) of this section through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation. This divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth.~~

II. Local Television Ownership Rule (47 C.F.R. § 73.3555(b))

....

~~(b) *Local television multiple ownership rule.*~~

~~(1) An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) if:~~

> ~~(i) The digital noise limited service contours of the stations (computed in accordance with § 73.619(c)) do not overlap; or~~
>
> ~~(ii) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the Sunday to Saturday, 7AM to 1AM daypart audience share from ratings averaged over a 12-month period immediately preceding the date of application, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service. For any station broadcasting multiple programming streams, the audience share of all free-to-consumer non-simulcast multicast programming airing on streams owned, operated, or controlled by a single station shall be aggregated to determine the station's audience share and ranking in a DMA (to the extent that such streams are ranked by Nielsen or a comparable professional, accepted audience ratings service).~~

~~(2) Paragraph (b)(1)(ii) of this section (Top Four Prohibition) shall not apply in cases where, at the request of the applicant, the Commission makes a finding that permitting an entity to directly or indirectly own, operate, or control two television stations licensed in the same DMA would serve the public interest, convenience, and necessity. The Commission will consider showings that the Top Four Prohibition, including note 11 to this section, should not apply due to specific circumstances in a local market or with respect to a specific transaction on a case-by-case basis.~~

III. Local Radio Ownership Rule (47 C.F.R. § 73.3555(a))

(1) ***Local radio ownership rule.*** A person or single entity (or entities under common control) may have a cognizable interest in licenses for no more than 8 full-power commercial FM radio stations in any single Nielsen Audio market ranked 1-75. ~~A person or single entity (or entities under common control) may have a cognizable interest in licenses for AM or FM radio broadcast stations in accordance with the following limits:~~

~~(i) In a radio market with 45 or more full power, commercial and noncommercial radio stations, not more than 8 commercial radio stations in total and not more than 5 commercial stations in the same service (AM or FM);~~

~~(ii) In a radio market with between 30 and 44 (inclusive) full power, commercial and noncommercial radio stations, not more than 7 commercial radio stations in total and not more than 4 commercial stations in the same service (AM or FM);~~

~~(iii) In a radio market with between 15 and 29 (inclusive) full-power, commercial and noncommercial radio stations, not more than 6 commercial radio stations in total and not more than 4 commercial stations in the same service (AM or FM); and~~

~~(iv) In a radio market with 14 or fewer full-power, commercial and noncommercial radio stations, not more than 5 commercial radio stations in total and not more than 3 commercial stations in the same service (AM or FM); provided, however, that no person or single entity (or entities under common control) may have a cognizable interest in more than 50% of the full power, commercial and noncommercial radio stations in such market unless the combination of stations comprises not more than one AM and one FM station.~~

~~(2) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.~~

IV. Eliminate ATSC 1.0 Simulcast and Substantially Similar Requirements (47 C.F.R. § 73.3801)[325]

....

~~(b) ***Simulcasting requirement.*** A full power television station that chooses to air an ATSC 3.0 signal must simulcast the primary video programming stream of that signal in an ATSC 1.0 format. This requirement does not apply to any multicast streams aired on the ATSC 3.0 channel.~~

~~(1) The programming aired on the ATSC 1.0 simulcast signal must be "substantially similar" to that aired on the ATSC 3.0 primary video programming stream. For purposes of this section, "substantially similar" means that the programming must be the same except for advertisements, promotions for upcoming programs, and programming features that are based on the enhanced capabilities of ATSC 3.0. These enhanced capabilities include:~~

~~(i) Hyper-localized content (e.g., geo-targeted weather, targeted emergency alerts, and hyper local news);~~

~~(ii) Programming features or improvements created for the ATSC 3.0 service (e.g., emergency alert "wake up" ability and interactive program features);~~

~~(iii) Enhanced formats made possible by ATSC 3.0 technology (e.g., 4K or HDR); and~~

~~(iv) Personalization of programming performed by the viewer and at the viewer's discretion.~~

~~(2) For purposes of paragraph (b)(1) of this section, programming that airs at a different time on the ATSC 1.0 simulcast signal than on the primary video programming stream of the ATSC 3.0 signal is not considered "substantially similar."~~

~~(3) The "substantially similar" requirement in paragraph (b)(1) of this section will sunset on July 17, 2027.~~

~~(c) ***Coverage requirements for the ATSC 1.0 simulcast signal.*** For full power broadcasters that elect temporarily to relocate their ATSC 1.0 signal to the facilities of a host station for purposes of deploying ATSC 3.0 service (and that convert their existing facilities to ATSC 3.0), the ATSC 1.0 simulcast signal must continue to cover the station's entire community of license (*i.e.*, the station must choose a host from whose transmitter site the Next Gen TV station will continue to meet the community of license signal requirement over its current community of~~

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[325] The Commission should delete the substantially similar rule immediately and delete the simulcasting rules in February 2028 along with the beginning of the full two-phase transition to nationwide Next Gen TV broadcasting, as set forth in NAB's Petition.

license, as required by § 73.625) and the host station must be assigned to the same Designated Market Area (DMA) as the originating station (*i.e.*, the station whose programming is being transmitted on the host station).

(d) ***Coverage requirements for ATSC 3.0 signals.*** For full power broadcasters that elect to continue broadcasting in ATSC 1.0 on the station's existing facilities and transmit an ATSC 3.0 signal on the facilities of a host station, the ATSC 3.0 signal must be established on a host station assigned to the same DMA as the originating station.

(e) ***Simulcasting agreements.***

(1) Simulcasting agreements must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the host station's transmission facilities;

(ii) Allocation of bandwidth within the host station's channel;

(iii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions;

(iv) Conditions under which the simulcast agreement may be terminated, assigned or transferred; and

(v) How a guest station's (*i.e.*, a station originating programming that is being transmitted using the facilities of another station) signal may be transitioned off the host station.

(2) Broadcasters must maintain a written copy of any simulcasting agreement and provide it to the Commission upon request.

(f) ***Licensing of simulcasting stations and stations converting to ATSC 3.0 operation.***

(1) Each station participating in a simulcasting arrangement pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all applicable Commission obligations, rules, and policies. ATSC 1.0 and ATSC 3.0 signals aired on the facilities of a host station will be licensed as temporary second channels of the originating station. The Commission will include a note on the originating station's license identifying any ATSC 1.0 or ATSC 3.0 signal being aired on the facilities of a host station. The Commission will also include a note on a host station's license identifying any ATSC 1.0 or ATSC 3.0 guest signal(s) being aired on the facilities of the host station.

(2) ***Application required.*** A full power broadcaster must file an application (FCC Form 2100) with the Commission, and receive Commission approval, before:

(i) Moving its ATSC 1.0 signal to the facilities of a host station, moving that signal from the facilities of an existing host station to the facilities of a different host station, or discontinuing an ATSC 1.0 guest signal;

(ii) Commencing the airing of an ATSC 3.0 signal on the facilities of a host station (that has already converted to ATSC 3.0 operation), moving its ATSC 3.0 signal to the facilities of a different host station, or discontinuing an ATSC 3.0 guest signal; or

(iii) Converting its existing station to transmit an ATSC 3.0 signal or converting the station from ATSC 3.0 back to ATSC 1.0 transmissions.

(3) ***Streamlined process.*** With respect to any application in paragraph (f)(2) of this section, a full power broadcaster may file only an application for modification of license, provided no other changes are being requested in such application that would require the filing of an application for a construction permit as otherwise required by the rules (*see, e.g.,* § 73.1690).

(4) ***Host station.*** A host station must first make any necessary changes to its facilities before a guest station may file an application to air a 1.0 or 3.0 signal on such host.

(5) ***Expedited processing.*** An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 signal on the facilities of a host station, the station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

(6) ***Required information.***

(i) An application in paragraph (f)(2) of this section must include the following information:

(A) The station serving as the host, if applicable;

(B) The technical facilities of the host station, if applicable;

(C) The DMA of the originating broadcaster's facility and the DMA of the host station, if applicable; and

(D) Any other information deemed necessary by the Commission to process the application.

(ii) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station, the broadcaster must, in addition to the information in paragraph (f)(6)(i), also indicate on the application:

(A) The predicted population within the noise limited service contour served by the station's original ATSC 1.0 signal;

(B) The predicted population within the noise limited service contour served by the station's original ATSC 1.0 signal that will lose the station's ATSC 1.0 service as a result of the simulcasting arrangement, including identifying areas of service loss by providing a contour overlap map; and

(C) Whether the ATSC 1.0 simulcast signal aired on the host station will serve at least 95 percent of the population in paragraph (f)(6)(ii)(A) of this section.

(iii)

(A) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station and does not meet the 95 percent standard in paragraph (f)(6)(ii) of this section, the application must contain, in addition to the information in paragraphs (f)(6)(i) and (ii) of this section, the following information:

(*1*) Whether there is another possible host station(s) in the market that would result in less service loss to existing viewers and, if so, why the Next Gen TV broadcaster chose to partner with a host station creating a larger service loss;

(*2*) What steps, if any, the station plans to take to minimize the impact of the service loss (e.g., providing ATSC 3.0 dongles, set-top boxes, or gateway devices to viewers in the loss area); and

(*3*) The public interest benefits of the simulcasting arrangement and a showing of why the benefit(s) of granting the application would outweigh the harm(s).

(B) These applications will be considered on a case by case basis.

(g) ***Consumer education for Next Gen TV stations.***

(1) Commercial and noncommercial educational stations that relocate their ATSC 1.0 signals (e.g., moving to a host station's facility, subsequently moving to a different host, or returning to its original facility) are required to air daily Public Service Announcements (PSAs) or crawls every day for 30 days prior to the date that the stations will terminate ATSC 1.0 operations on their existing facilities. Stations that transition directly to ATSC 3.0 will be required to air daily PSAs or crawls every day for 30 days prior to the date that the stations will terminate ATSC 1.0 operations.

(2) ***PSAs.*** Each PSA must be provided in the same language as a majority of the programming carried by the transitioning station and be closed-captioned.

(3) ***Crawls.*** Each crawl must be provided in the same language as a majority of the programming carried by the transitioning station.

(4) ***Content of PSAs or crawls.*** For stations relocating their ATSC 1.0 signals or transitioning directly to ATSC 3.0, each PSA or crawl must provide all pertinent information to consumers.

(h) ***Notice to MVPDs.***

(1) Next Gen TV stations relocating their ATSC 1.0 signals (e.g., moving to a temporary host station's facilities, subsequently moving to a different host, or returning to its original facility) must provide notice to MVPDs that:

(i) No longer will be required to carry the station's ATSC 1.0 signal due to the relocation; or

(ii) Carry and will continue to be obligated to carry the station's ATSC 1.0 signal from the new location.

(2) The notice required by this section must contain the following information:

(i) Date and time of any ATSC 1.0 channel changes;

(ii) The ATSC 1.0 channel occupied by the station before and after commencement of local simulcasting;

(iii) Modification, if any, to antenna position, location, or power levels;

(iv) Stream identification information; and

(v) Engineering staff contact information.

(3) If any of the information in paragraph (h)(2) of this section changes, an amended notification must be sent.

(4)

(i) Next Gen TV stations must provide notice as required by this section:

(A) At least 120 days in advance of relocating their ATSC 1.0 signals if the relocation occurs during the post incentive auction transition period; or

(B) At least 90 days in advance of relocating their ATSC 1.0 signals if the relocation occurs after the post incentive auction transition period (see 47 CFR 27.4).

(ii) If the anticipated date of the ATSC 1.0 signal relocation changes, the station must send a further notice to affected MVPDs informing them of the new anticipated date.

~~(5) Next Gen TV stations may choose whether to provide notice as required by this section either by a letter notification or electronically via email if the relevant MVPD agrees to receive such notices by email. Letter notifications to MVPDs must be sent by certified mail, return receipt requested to the MVPD's address in the FCC's Online Public Inspection File (OPIF), if the MVPD has an online file. For cable systems that do not have an online file, notices must be sent to the cable system's official address of record provided in the system's most recent filing in the FCC's Cable Operations and Licensing System (COALS). For MVPDs with no official address in OPIF or COALS, the letter must be sent to the MVPD's official corporate address registered with their State of incorporation.~~

V. Eliminate ATSC 1.0 Simulcast and Substantially Similar Requirements (cont. – 47 C.F.R. § 73.6029)

....

~~(b) ***Simulcasting requirement.*** A Class A television station that chooses to air an ATSC 3.0 signal must simulcast the primary video programming stream of that signal in an ATSC 1.0 format. This requirement does not apply to any multicast streams aired on the ATSC 3.0 channel.~~

~~(1) The programming aired on the ATSC 1.0 simulcast signal must be "substantially similar" to that aired on the ATSC 3.0 primary video programming stream. For purposes of this section, "substantially similar" means that the programming must be the same except for advertisements, promotions for upcoming programs, and programming features that are based on the enhanced capabilities of ATSC 3.0. These enhanced capabilities include:~~

~~(i) Hyper-localized content (e.g., geo-targeted weather, targeted emergency alerts, and hyper local news);~~

~~(ii) Programming features or improvements created for the ATSC 3.0 service (e.g., emergency alert "wake up" ability and interactive program features);~~

~~(iii) Enhanced formats made possible by ATSC 3.0 technology (e.g., 4K or HDR); and~~

~~(iv) Personalization of programming performed by the viewer and at the viewer's discretion.~~

~~(2) For purposes of paragraph (b)(1) of this section, programming that airs at a different time on the ATSC 1.0 simulcast signal than on the primary video programming stream of the ATSC 3.0 signal is not considered "substantially similar."~~

~~(3) The "substantially similar" requirement in paragraph (b)(1) of this section will sunset on July 17, 2027.~~

~~(c) ***Coverage requirements for the ATSC 1.0 simulcast signal.*** For Class A broadcasters that elect temporarily to relocate their ATSC 1.0 signal to the facilities of a host station for purposes of deploying ATSC 3.0 service (and that convert their existing facilities to ATSC 3.0), the station:~~

~~(1) Must maintain overlap between the protected contour (§ 73.6010(c)) of its existing signal and its ATSC 1.0 simulcast signal;~~

~~(2) May not relocate its ATSC 1.0 simulcast signal more than 30 miles from the reference coordinates of the relocating station's existing antenna location; and~~

(3) Must select a host station assigned to the same DMA as the originating station (*i.e.,* the station whose programming is being transmitted on the host station).

(d) ***Coverage requirements for ATSC 3.0 signals.*** For Class A broadcasters that elect to continue broadcasting in ATSC 1.0 from the station's existing facilities and transmit an ATSC 3.0 signal on the facilities of a host station, the ATSC 3.0 signal must be established on a host station assigned to the same DMA as the originating station.

(e) ***Simulcasting agreements.***

(1) Simulcasting agreements must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the host station's transmission facilities;

(ii) Allocation of bandwidth within the host station's channel;

(iii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions;

(iv) Conditions under which the simulcast agreement may be terminated, assigned or transferred; and

(v) How a guest station's (*i.e.,* a station originating programming that is being transmitted using the facilities of a host station) signal may be transitioned off the host station.

(2) Broadcasters must maintain a written copy of any simulcasting agreement and provide it to the Commission upon request.

(f) ***Licensing of simulcasting stations and stations converting to ATSC 3.0 operation.***

(1) Each station participating in a simulcasting arrangement pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all applicable Commission obligations, rules, and policies. ATSC 1.0 and ATSC 3.0 signals aired on the facilities of a host station will be licensed as temporary second channels of the originating station. The Commission will include a note on the originating station's license identifying any ATSC 1.0 or ATSC 3.0 signal being aired on the facilities of a host station. The Commission will also include a note on a host station's license identifying any ATSC 1.0 or ATSC 3.0 guest signal(s) being aired on the facilities of the host station.

(2) ***Application required.*** A Class A broadcaster must file an application (FCC Form 2100) with the Commission, and receive Commission approval, before:

(i) Moving its ATSC 1.0 signal to the facilities of a host station, moving that signal from the facilities of an existing host station to the facilities of a different host station, or discontinuing an ATSC 1.0 guest signal;

(ii) Commencing the airing of an ATSC 3.0 signal on the facilities of a host station (that has already converted to ATSC 3.0 operation), moving its ATSC 3.0 signal to the facilities of a different host station, or discontinuing an ATSC 3.0 guest signal; or

(iii) Converting its existing station to transmit an ATSC 3.0 signal or converting the station from ATSC 3.0 back to ATSC 1.0 transmissions.

(3) ***Streamlined process.*** With respect to an application in paragraph (f)(2) of this section, a Class A broadcaster may file only an application for modification of license provided no other changes are being requested in such application that would require the filing of an application for a construction permit as otherwise required by the rules (*see, e.g.,* § 73.1690).

(4) ***Host station.*** A host station must first make any necessary changes to its facilities before a guest station may file an application to air a 1.0 or 3.0 signal on such host.

(5) ***Expedited processing.*** An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC signal on the facilities of a host station, the station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

(6) ***Required information.***

(i) An application in paragraph (f)(2) of this section must include the following information:

(A) The station serving as the host, if applicable;

(B) The technical facilities of the host station, if applicable;

(C) The DMA of the originating broadcaster's facility and the DMA of the host station, if applicable; and

(D) Any other information deemed necessary by the Commission to process the application.

(ii) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station, the broadcaster must, in addition to the information in paragraph (f)(6)(i), also indicate on the application:

(A) The predicted population within the protected contour served by the station's original ATSC 1.0 signal;

(B) The predicted population within the protected contour served by the station's original ATSC 1.0 signal that will lose the station's ATSC 1.0 service as a result of the simulcasting arrangement, including identifying areas of service loss by providing a contour overlap map; and

(C) Whether the ATSC 1.0 simulcast signal aired on the host station will serve at least 95 percent of the population in paragraph (f)(6)(ii)(A) of this section.

(iii)

(A) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station and does not meet the 95 percent standard in paragraph (f)(6)(ii) of this section, the application must contain, in addition to the information in paragraphs (f)(6)(i) and (ii) of this section, the following information:

(1) Whether there is another possible host station(s) in the market that would result in less service loss to existing viewers and, if so, why the Next Gen TV broadcaster chose to partner with a host station creating a larger service loss;

(2) What steps, if any, the station plans to take to minimize the impact of the service loss (e.g., providing ATSC 3.0 dongles, set-top boxes, or gateway devices to viewers in the loss area); and

(3) The public interest benefits of the simulcasting arrangement and a showing of why the benefit(s) of granting the application would outweigh the harm(s).

(B) These applications will be considered on a case by case basis.

(g) ***Consumer education for Next Gen TV stations.***

(1) Class A stations that relocate their ATSC 1.0 signals (e.g., moving to a host station's facilities, subsequently moving to a different host, or returning to its original facility) will be required to air daily Public Service Announcements (PSAs) or crawls every day for 30 days prior to the date that the stations will terminate ATSC 1.0 operations on their existing facilities. Stations that transition directly to ATSC 3.0 will be required to air daily PSAs or crawls every day for 30 days prior to the date that the stations will terminate ATSC 1.0 operations.

(2) ***PSAs.*** Each PSA must be provided in the same language as a majority of the programming carried by the transitioning station and be closed-captioned.

(3) ***Crawls.*** Each crawl must be provided in the same language as a majority of the programming carried by the transitioning station.

(4) ***Content of PSAs or crawls.*** For stations relocating their ATSC 1.0 signals or transitioning directly to ATSC 3.0, each PSA or crawl must provide all pertinent information to consumers.

(h) ***Notice to MVPDs.***

(1) Next Gen TV stations relocating their ATSC 1.0 signals (e.g., moving to a temporary host station's facilities, subsequently moving to a different host, or returning to its original facility) must provide notice to MVPDs that:

(i) No longer will be required to carry the station's ATSC 1.0 signal due to the relocation; or

(ii) Carry and will continue to be obligated to carry the station's ATSC 1.0 signal from the new location.

(2) The notice required by this section must contain the following information:

(i) Date and time of any ATSC 1.0 channel changes;

(ii) The ATSC 1.0 channel occupied by the station before and after commencement of local simulcasting;

(iii) Modification, if any, to antenna position, location, or power levels;

(iv) Stream identification information; and

(v) Engineering staff contact information.

(3) If any of the information in paragraph (h)(2) of this section changes, an amended notification must be sent.

(4)

(i) Next Gen TV stations must provide notice as required by this section:

(A) At least 120 days in advance of relocating their ATSC 1.0 signals if the relocation occurs during the post incentive auction transition period; or

(B) At least 90 days in advance of relocating their ATSC 1.0 signals if the relocation occurs after the post incentive auction transition period.

(ii) If the anticipated date of the ATSC 1.0 signal relocation changes, the station must send a further notice to affected MVPDs informing them of the new anticipated date.

~~(5) Next Gen TV stations may choose whether to provide notice as required by this section either by a letter notification or electronically via email if the relevant MVPD agrees to receive such notices by email. Letter notifications to MVPDs must be sent by certified mail, return receipt requested to the MVPD's address in the FCC's Online Public Inspection File (OPIF), if the MVPD has an online file. For cable systems that do not have an online file, notices may be sent to the cable system's official address of record provided in the system's most recent filing in the FCC's Cable Operations and Licensing System (COALS). For MVPDs with no official address in OPIF or COALS, the letter must be sent to the MVPD's official corporate address registered with their State of incorporation.~~

VI. Eliminate ATSC 1.0 Simulcast and Substantially Similar Requirements (cont. – 47 C.F.R. § 73.682)

(f) Next Gen TV broadcast television transmission standard authorized.

(1) As an alternative to broadcasting only an ATSC 1.0 signal using the DTV transmission standard set forth in paragraph (d) of this section, DTV licensees or permittees may choose to broadcast an ATSC 3.0 signal using the Next Gen TV transmission standard set forth in this paragraph (f)~~, provided it also broadcasts a simulcast signal in ATSC 1.0 (using the DTV transmission standard in § 73.682(d))~~.

(2)

(i) Effective March 5, 2018, transmission of Next Gen TV broadcast television (ATSC 3.0) signals shall comply with the standards for such transmissions set forth in ATSC A/321:2016, "System Discovery and Signaling" (March 23, 2016) (incorporated by reference, see § 73.8000). To the extent that virtual channels (specified in the DTV transmission standard referenced in ATSC A/65C:2006 in paragraph (d) of this section) are used in the transmission of Next Gen TV broadcasting, major channel numbers shall be assigned as required by ATSC A/65C:2006 Annex B (incorporated by reference, see § 73.8000).

(ii) In addition, such signals shall also comply with the standards set forth in ATSC A/322:2017 "Physical Layer Protocol" (June 6, 2017) (incorporated by reference, see § 73.8000) with respect to the transmission of at least one free over the air primary video programming stream.

(iii) Paragraph (f)(2)(ii) of this section will sunset on July 17, 2027.

VII. Eliminate or Minimize Online Public File Requirements (47 C.F.R. § 73.3526)[326]

....

(b) ***Location of the file.*** The public inspection file shall be located as follows:

(1) An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license.

~~(2)~~

~~(i) A television or radio station licensee or applicant shall place the contents required by paragraph (e) of this section of its public inspection file in the online public file hosted by the Commission.~~

~~(ii) A station must provide a link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website, and provide contact information on its website for a station representative that can assist any person with disabilities with issues related to the content of the public files. A station also is required to include in the online public file the station's address and telephone number, and the email address of the station's designated contact for questions about the public file.~~

(3) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; "The Public and Broadcasting"; Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself; Children's television programming reports; and DTV transition education reports. ~~In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.~~

(c) ***Access to material in the file.*** For any applicant described in paragraph (b)(1) of this section ~~that does not include all material described in paragraph (e) of this section in the online public file hosted by the Commission~~, the ~~portion of the file that is not included in the online~~ public file shall be available for public inspection at any time during regular business hours at an accessible place in the community of license. The applicant must provide information regarding the location of the file, or the applicable portion of the file, within one

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[326] Although we do not propose any formal changes to the political file requirement, we recommend that the Commission interpret the requirement to place all documents required under this section "as soon as possible" in the online public file, *see* 47 C.F.R. § 73.1943(e), as permitting submission within 72 hours. If, however, someone contacts the station requesting access to the political file, the station can provide that information upon request.

business day of a request for such information. All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file. Material in the public inspection file shall be made available for printing or machine reproduction upon request made in person. The applicant may specify the location for printing or reproduction, require the requesting party to pay the reasonable cost thereof, and may require guarantee of payment in advance (e.g., by requiring a deposit, obtaining credit card information, or any other reasonable method). Requests for copies shall be fulfilled within a reasonable period of time, which generally should not exceed 7 days.

(e) *Contents of the file.* A station shall only be required to maintain material from paragraph (7) in the online public file. The remaining material to be retained in the public inspection file is as follows:

....

~~(7) ***Equal Employment Opportunity file.*** Such information as is required by § 73.2080 to be kept in the public inspection file. These materials shall be retained until final action has been taken on the station's next license renewal application.~~

~~(8) ***The public and broadcasting.*** At all times, a copy of the most recent version of the manual entitled "The Public and Broadcasting."~~

~~(10) ***Material relating to FCC investigation or complaint.*** Material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant, permittee, or licensee has been advised. This material shall be retained until the applicant, permittee, or licensee is notified in writing that the material may be discarded.~~

(11)

(i) ***TV issues/programs lists.*** For commercial TV and Class A broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be maintained starting ~~filed by~~ the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.) The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

~~(ii) ***Records concerning commercial limits.*** For commercial TV and Class A TV broadcast stations, records sufficient to permit substantiation of the station's~~

~~certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and § 73.670. The records for each calendar year must be filed by the thirtieth day of the succeeding calendar year. These records shall be retained until final action has been taken on the station's next license renewal application.~~

~~(iii) ***Children's television programming reports.*** For commercial TV broadcast stations on an annual basis, a completed Children's Television Programming Report ("Report"), on FCC Form 2100 Schedule H, reflecting efforts made by the licensee during the preceding year to serve the educational and informational needs of children. The Report is to be electronically filed with the Commission by the thirtieth (30) day of the succeeding calendar year. A copy of the Report will also be linked to the station's online public inspection file by the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children. The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.~~

(12) ***Radio issues/programs lists.*** For commercial AM and FM broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be maintained starting ~~filed by~~ the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

~~(13) ***Local public notice announcements.*** Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(c)(3), place in the station's online public inspection file a statement certifying compliance with this paragraph (c)(13). The dates and times that the on-air announcements were broadcast shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period specified in § 73.3580(c)(2) (for as long as the application to which it refers).~~

VIII. Eliminate Foreign Sponsorship Identification Rules (47 C.F.R. § 73.1212)[327]

....

(j)

(1)

(i) Where the material broadcast consistent with paragraph (a) or (d) of this section has been aired pursuant to the lease of time on the station and has been provided by a foreign governmental entity, the station, at the time of the broadcast, shall include the following disclosure:

The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].

(ii) If the material broadcast contains a "conspicuous statement" pursuant to the Foreign Agents Registration Act of 1938 (FARA) (22 U.S.C. 614(b)), such conspicuous statement will suffice for purposes of this paragraph (j)(1) if the conspicuous statement also contains a disclosure about the foreign country associated with the individual/entity that has sponsored, paid for, or furnished the material being broadcast.

(2) The term "foreign governmental entity" shall include governments of foreign countries, foreign political parties, agents of foreign principals, and United States-based foreign media outlets.

(i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(e)).

(ii) The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(f)).

(iii) The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined in paragraphs (j)(2)(i) and (ii) of this section, and that is acting in its capacity as an agent of such "foreign principal".

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[327] We also recommend that the Commission clarify that the rules do not apply to non-candidate political advertisements and paid PSAs as discussed in Section IV.B.

(iv) The term “United States-based foreign media outlet” has the meaning given such term in section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) The licensee of each broadcast station shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements in paragraph (j)(1) of this section apply at the time of the lease agreement and at any renewal thereof, ~~including:~~

~~(i) Informing the lessee of the foreign sponsorship disclosure requirement in paragraph (j)(1) of this section;~~

~~(ii) Inquiring of the lessee whether the lessee falls into any of the categories in paragraph (j)(2) of this section that qualify the lessee as a foreign governmental entity;~~

~~(iii) Inquiring of the lessee whether the lessee knows if anyone involved in the production or distribution of the programming that will be aired pursuant to the lease agreement, or a sub lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;~~

~~(iv) Independently confirming the lessee's status, by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports, if the lessee states that it does not fall within the definition of “foreign governmental entity” and that there is no separate need for a disclosure because no one further back in the chain of producing/transmitting the programming falls within the definition of “foreign governmental entity” and has provided an inducement to air the programming; and~~

~~(v) Memorializing the inquiries in paragraphs (j)(3)(i) through (iv) of this section to track compliance therewith and retaining such documentation in the licensee's records for either the remainder of the then-current license term or one year, whichever is longer, so as to respond to any future Commission inquiry.~~

(4) In the case of any video programming, the foreign governmental entity and the country represented shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

(5) At a minimum, the announcement required by paragraph (j)(1) of this section shall be made at both the beginning and conclusion of the programming. For programming of greater than sixty minutes in duration, an announcement shall be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes.

(6) Where the primary language of the programming is other than English, the disclosure statement shall be made in the primary language of the programming. If the programming contains a "conspicuous statement" pursuant to the Foreign Agents Registration Act of 1938 (22 U.S.C. 614(b)), and such conspicuous statement is in a language other than English so as to conform to the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 *et seq.*), an additional disclosure in English is not needed.

~~(7) A station shall place copies of the disclosures required by this paragraph (j) and the name of the program to which the disclosures were appended in its online public inspection file on a quarterly basis in a standalone folder marked as "Foreign Government Provided Programming Disclosures." The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the online public inspection file in the same manner.~~

(8) The requirements contained in this paragraph (j) shall not apply to "uses" of broadcast stations by legally qualified candidates pursuant to 47 U.S.C. 315.

IX. Eliminate or Modify Term for Ownership Reports (47 C.F.R. § 73.3615)

Either delete all of 47 C.F.R. § 73.3615 or modify as follows:

(a) The Ownership Report for Commercial Broadcast Stations (FCC Form 323) must be filed electronically ~~every two years~~ on FCC Form 323 within 30 days of the date of grant by the FCC of an application by the permittee for original construction permit or on the date in which the permittee applies for a station license by each licensee of a commercial AM, FM, or TV broadcast station and any entity that holds an interest in the licensee that is attributable pursuant to § 73.3555 (each a "Respondent"). ~~The ownership report shall be filed by December 1 in all odd-numbered years.~~ Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 323 (including all instructions for the form and schedule) that is current on the date on ~~on October 1 of the year in~~ which the ownership report is filed. ~~The information provided on each ownership report shall be current as of October 1 of the year in which the ownership report is filed. A Respondent with a current and unamended biennial ownership report (*i.e.*, an ownership report that was filed pursuant to this subsection) on file with the Commission that is still accurate and which was filed using the version of FCC Form 323 that is current on October 1 of the year in which its biennial ownership report is due may electronically validate and resubmit its previously filed biennial ownership report.~~

(b)

(1) Each permittee of a commercial AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to § 73.3555 (each a "Respondent") shall file an ownership report on FCC Form 323 within 30 days of the date of grant by the FCC of an application by the permittee for original construction permit. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 323 (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed.

(2) Except as specifically noted below, each permittee of a commercial AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to § 73.3555 (each a "Respondent") shall file an ownership report on FCC Form 323 on the date that the permittee applies for a station license. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 323 (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed. If a Respondent has a current and unamended ownership report on file with the Commission that was filed pursuant to paragraphs (b)(1) or (c) of this section, was submitted using the version of FCC Form 323 that is current on the date on which the ownership report due pursuant to paragraph(b)(2) is filed, and is still accurate, the

Respondent may certify that it has reviewed such ownership report and that it is accurate, in lieu of filing a new ownership report.

(c) Each permittee or licensee of a commercial AM, FM or TV broadcast station and any entity that holds an interest in the permittee or licensee that is attributable pursuant to § 73.3555 (each a "Respondent"), shall file an ownership report on FCC Form 323 within 30 days of consummating authorized assignments or transfers of permits and licenses. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 323 (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed.

(d) The Ownership Report for Noncommercial Broadcast Stations (FCC Form 323-E) must be filed electronically on FCC Form 323-E within 30 days of the date of grant by the FCC of an application by the permittee for original construction permit or on the date in which the permittee applies for a station license ~~every two years~~ by each licensee of a noncommercial educational AM, FM or TV broadcast station and any entity that holds an interest in the licensee that is attributable pursuant to § 73.3555 (each a "Respondent"). ~~The ownership report shall be filed by December 1 in all odd-numbered years.~~ Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 323-E (including all instructions for the form and schedule) that is current on the date on ~~October 1 of the year in~~ which the ownership report is filed. The information provided won each ownership report shall be current as of October 1 of the year in which the ownership report is filed. ~~A Respondent with a current and unamended biennial ownership report (*i.e.*, an ownership report that was filed pursuant to this subsection) on file with the Commission that is still accurate and which was filed using the version of FCC Form 323-E that is current on October 1 of the year in which its biennial ownership report is due may electronically validate and resubmit its previously filed biennial ownership report.~~

(e)

(1) Each permittee of a noncommercial educational AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to § 73.3555 (each a "Respondent") shall file an ownership report on FCC Form 323-E within 30 days of the date of grant by the FCC of an application by the permittee for original construction permit. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 323-E (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed.

(2) Except as specifically noted below, each permittee of a noncommercial educational AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to § 73.3555 (each a "Respondent") shall file an ownership report on FCC Form 323-E on the date that the permittee applies for a station license. Each ownership report shall provide all information required by, and

comply with all requirements set forth in, the version of FCC Form 323-E (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed. If a Respondent has a current and unamended ownership report on file with the Commission that was filed pursuant to paragraphs (e)(1) or (f) of this section, was submitted using the version of FCC Form 323-E that is current on the date on which the ownership report due pursuant to this subsection is filed, and is still accurate, the Respondent may certify that it has reviewed such ownership report and that it is accurate, in lieu of filing a new ownership report.

(f) Each permittee or licensee of a noncommercial educational AM, FM or TV broadcast station, and any entity that holds an interest in the permittee or licensee that is attributable pursuant to § 73.3555 (each a "Respondent"), shall file an ownership report on FCC Form 323-E within 30 days of consummating authorized assignments or transfers of permits and licenses. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 323-E (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed.

(g) A copy of all ownership and supplemental ownership reports and related materials filed pursuant to this section shall be maintained and made available for public inspection in the ~~online~~ public inspection file ~~as required by §§ 73.3526 and 73.3527~~.

X. Eliminate Local Public Notice Requirements of Filing Broadcast Applications (47 C.F.R. § 73.3580)

(a) ***Definitions.*** The following definitions shall apply to this section:

(1) ***Acceptance public notice.*** A Commission public notice announcing that an application has been accepted for filing.

(2) ***Applicant affiliated website.***

(i) Any of the following internet websites, to the extent they are maintained, in order of priority:

(A) The applicant station's internet website;

(B) The applicant's internet website; or

(C) The applicant's parent entity's internet website.

(ii) An applicant maintaining or having access to more than one of the internet websites in paragraphs (a)(2)(i)(A) through (C) of this section shall post a link or tab to a web page containing the online notice text on the website with the highest priority.

(3) ***Locally originating programming.*** Programming from a low power television (LPTV) or television translator station as defined in § 74.701(h) of this chapter.

(4) ***Major amendment.*** A major amendment to an application is that defined in §§ 73.3571(b), 73.3572(c), 73.3573(b), and 73.3578, and 74.787(b) of this chapter.

(5) ***Publicly accessible website.*** An internet website:

(i) That is accessible to members of the public without registration or payment requirements, or any other requirement that the user provide information, or response to a survey or questionnaire in exchange for being able to access information on the website; and

(ii) That is locally targeted to the area served and/or to be served by the applicant station (e.g., local government internet website, local community bulletin board internet website, state broadcasters' association internet website). For international broadcast station applications filed pursuant to § 73.3574, the internet website must locally target the community in which the International broadcast station's transmission facilities are located or are proposed to be located (e.g., local government internet website, local community bulletin board internet website).

(b) ***Types of public notice.*** Public notice is required of applicants for certain broadcast authorizations in the manner set forth in paragraphs (b)(1) and (2) of this section:

(1) ***On-air announcement.*** An applicant shall broadcast on-air announcements of the filing of certain applications for authorization, if required as set forth in paragraph (c) of this section, over its station as follows:

(i) ***Content.*** The on-air announcement shall be in the following form:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit *publicfiles.fcc.gov,* and search in [STATION CALL SIGN'S] public file.

An applicant station without an online public inspection file shall instead broadcast the following on-air announcement:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions can visit *www.fcc.gov/stationsearch,* and search in the list of [STATION CALL SIGN'S] filed applications.

Television broadcast stations, in presenting on-air announcements, must use visuals with the full text of the on-air announcement when this information is being orally presented by the announcer.

(ii) ***Frequency of broadcast.*** The applicant shall broadcast the on-air announcements at least once per week (Monday through Friday) for four consecutive weeks, for a total of six (6) broadcasts, with no more than two broadcasts in a week. Broadcasts made in the same week shall not air on the same day.

(iii) ***Commencement of broadcast.*** The applicant may air the first broadcast of the on-air announcement as early as the date of release of the acceptance public notice for the application, but not later than the fifth business day following release of the acceptance public notice for the application.

(iv) ***Time of broadcast.*** The applicant shall broadcast all on-air announcements between the hours of 7:00 a.m. and 11:00 p.m. local time at the applicant station's community of license, Monday through Friday.

(v) ***Language of broadcast.*** A station broadcasting primarily in a foreign language should broadcast the announcements in that language.

(vi) ***Silent stations or stations not broadcasting.*** Any station required to broadcast on-air announcements that is not broadcasting during all or a portion of the period during which on-air announcements are required to be broadcast, including silent stations

and noncommercial educational broadcast stations that are not scheduled to broadcast during the portion of the year during which on-air announcements are required to be broadcast, must comply with the provisions of paragraph (b)(2) of this section during the time period in which it is unable to broadcast required on-air announcements, and must broadcast required on-air announcements during the time period it is able to do so.

(2) ***Online notice.*** An applicant shall conspicuously post on an internet website notice of the filing of certain applications for authorization, if required as set forth in paragraph (c) of this section, as follows:

(i) ***Content.*** The online notice shall be in the following form:

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LINK oN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS DATABASE].

An applicant for a proposed but not authorized station shall post the following online notice:

On [DATE], [APPLICANT NAME], applicant for [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE TO BE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS DATABASE].

An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) shall post the following online notice:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE].

[DESCRIPTION OF THE PROGRAMS TO BE TRANSMITTED OVER THE STATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS DATABASE].

(ii) ***Site.*** The applicant shall post online notice by posting a conspicuous link or tab labeled "FCC Applications" on an applicant affiliated website, as defined in paragraph (a)(2) of this section. The link or tab will link directly to a page containing only the online notice text referenced in paragraph (b)(2)(i) of this section. To the extent that there are no pending applications requiring online public notice, the link or tab should link to a page indicating that there are no pending applications subject to the posting requirement. This page must include the date when it was last updated. If the applicant does not maintain or have access to an applicant affiliated website, the applicant may post the online notice on a publicly accessible website, as defined in paragraph (a)(5) of this section. An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) shall post online notice on a publicly accessible website that is locally targeted to the principal area to be served in the United States by the foreign broadcast station.

(iii) ***Duration of posting.*** If the online notice is posted on an applicant-affiliated website or on a publicly accessible website for which the applicant is not required to compensate the website owner in exchange for posting the online notice, then the applicant must post the online notice for a minimum of 30 consecutive days. If the applicant does not maintain an applicant-affiliated website, and the applicant is required to compensate a website owner in exchange for posting on a publicly accessible website, the applicant must pos

the online notice for a period of not less than 24 consecutive hours, once per week (Monday through Friday), for four consecutive weeks.

(iv) ***Commencement of posting.*** The applicant must post the online notice no earlier than the date of release of the acceptance public notice for the application, and not later than five business days following release of the acceptance public notice for the application.

(c) ***Applications requiring local public notice.*** The following applications filed by licensees or permittees of the following types of stations must provide public notice in the manner set forth in paragraphs (c)(1) through (7) of this section:

(1) ***Applications for a construction permit for a new station, a major amendment thereto, or a major modification to a construction permit for a new unbuilt station.***

(i) For a commercial or noncommercial educational full power television; commercial or noncommercial educational full service AM or FM radio station; Class A television station; low power television (LPTV) or television translator

station; low-power FM (LPFM) station; or commercial or noncommercial FM translator or FM booster station, the applicant shall give online notice.

(ii) For an international broadcast station, the applicant shall give online notice on a publicly accessible website, locally targeted to the community in which the station's transmission facilities are to be located.

(2) ***Applications for a major change to the facilities of an operating station, or major amendments thereto.***

(i) For a noncommercial educational full power television; noncommercial full-service AM or FM radio station; or for an LPFM station, the applicant shall broadcast on air announcements.

(ii) For a commercial full power television; commercial full service AM or FM radio station; or a Class A television station, the applicant shall both broadcast on-air announcements and give online notice.

(iii) For an LPTV or television translator station; or an FM translator or FM booster station, the applicant shall give online notice.

(iv) For an international broadcast station, the applicant shall give online notice on a publicly accessible website, locally targeted to the community in which the station's transmission facilities are located.

(3) ***Applications for renewal of license.***

(i) For a full power television; full service AM or FM radio station; Class A television station; LPTV station locally originating programming; or LPFM station, the applicant shall broadcast on air announcements.

(ii) For an LPTV station that does not locally originate programming; or for a TV or FM translator station, the applicant shall give online notice.

(iii) For an international broadcast station, the applicant shall give online notice on a publicly accessible website, locally targeted to the community in which the station's transmission facilities are located.

(4) ***Applications for assignment or transfer of control of a construction permit or license, or major amendments thereto.***

(i) For a noncommercial educational full power television; noncommercial educational full-service AM or FM radio station; or an LPFM station, the applicant shall broadcast on-air announcements.

(ii) For a commercial full power television; commercial full service AM or FM radio station; Class A television station; or an LPTV station that locally originates

programming, the applicant shall both broadcast on-air announcements and give online notice.

(iii) For an LPTV station that does not locally originate programming, or a TV or FM translator station, the applicant shall give online notice.

(iv) For an international broadcast station, the applicant shall give online notice on a publicly accessible website, locally targeted to the community in which the station's transmission facilities are located.

(v) For any application for assignment or transfer of control of a construction permit or license, for a station that is not operating, the applicant shall give online notice.

(5) ***Applications for a minor modification to change a station's community of license, or major amendments thereto.***

(i) For a noncommercial educational full-service AM or FM radio station, the applicant shall broadcast on-air announcements.

(ii) For a commercial full service AM or FM radio station, the applicant shall both broadcast on air announcements and give online notice. In addition to the online notice set forth in paragraph (b)(2) of this section locally targeted to the applicant station's current community of license, the applicant shall also give online notice on a publicly accessible website locally targeted to the community that the applicant proposes to designate as its new community of license, for the same time periods and in the same manner as set forth in paragraph (b)(2) of this section.

(6) ***Applications for a permit pursuant to section 325(c) of the Communications Act (studio delivering programming to a foreign station).*** The applicant shall give online notice.

(7) Applications by LPTV stations to convert to Class A status pursuant to the Low Power Protection Act. The applicant shall both broadcast on air announcements and give online notice.

(d) ***Applications for which local public notice is not required.*** The following types of applications are not subject to the local public notice provisions of this section:

(1) A minor change in the facilities of an authorized station, as indicated in §§ 73.3571, 73.3572, 73.3573, and 73.3574, and 74.787(b) of this chapter, except a minor change to designate a different community of license for an AM or FM radio broadcast station, pursuant to the provisions of §§ 73.3571(j) and 73.3573(g).

(2) Consent to an involuntary assignment or transfer or to a voluntary assignment or transfer which does not result in a change of control and which may be applied for on

FCC Form 316, or any successor form released in the future, pursuant to the provisions of § 73.3540(b).

(3) A license under section 319(c) of the Communications Act or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license.

(4) Extension of time to complete construction of authorized facilities.

(5) An authorization of facilities for remote pickup or studio links for use in the operation of a broadcast station.

(6) Authorization pursuant to section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) where the programs to be transmitted are special events not of a continuing nature.

(7) An authorization under any of the proviso clauses of section 308(a) of the Communications Act concerning applications for and conditions in licenses.

(e) ***Certification of local public notice.***

(1) The applicant must certify in the appropriate application that it will comply with the public notice requirements set forth in paragraph (c) of this section.

(2) An applicant for renewal of a license that is required to maintain an online public inspection file shall, within seven (7) days of the last day of broadcast of the required on air announcements, place in its online public inspection file a statement certifying compliance with this section, along with the dates and times that the on air announcements were broadcast. An applicant for renewal of a license that is required to maintain an online public inspection file, and that is not broadcasting during all or a portion of the period during which on air announcements are required to be broadcast, as set forth in paragraph (b)(1)(vi) of this section, shall, within seven (7) days of the last on air announcement or last day of posting online notice, whichever occurs last, place in its online public inspection file a statement certifying compliance with this section, along with the dates and times that any on air announcements were broadcast, along with the dates and times that online notice was posted and the Universal Resource Locator (URL) of the internet website on which online notice was posted. This certification need not be filed with the Commission but shall be retained in the online public inspection file for as long as the application to which it refers.

(f) ***Time for acting on applications.*** Applications (as originally filed or amended) will be acted upon by the FCC no sooner than 30 days following release of the acceptance public notice, except as otherwise permitted in § 73.3542 or § 73.1635.

XI. Eliminate or Modify EEO Rules (47 C.F.R. § 73.2080)

Eliminate 47 C.F.R. § 73.2080 or modify as follows:

(a) ***General EEO policy.*** Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

~~(b) ***General EEO program requirements.*** Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. Under the terms of its program, a station shall:~~

> ~~(1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;~~
>
> ~~(2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;~~
>
> ~~(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;~~
>
> ~~(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and~~
>
> ~~(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.~~

~~(c) ***Specific EEO program requirements.*** Under the terms of its program, a station employment unit must:~~

> ~~(1) Recruit for every full time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job~~

~~position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.~~

~~(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.~~

~~(ii) In addition to such recruitment sources, a station employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).~~

~~(2) Engage in at least four (if the station employment unit has more than ten full time employees and is not located in a smaller market) or two (if it has five to ten full time employees and/or is located entirely in a smaller market) of the following initiatives during each two year period beginning with the date stations in the station employment unit are required to file renewal applications, or the second, fourth or sixth anniversaries of that date.~~

~~(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;~~

~~(ii) Hosting of at least one job fair;~~

~~(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;~~

~~(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;~~

~~(v) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;~~

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for station personnel;

(x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) Listing of each upper level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;

(xvi) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c)(1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

(i) Listings of all full time job vacancies filled by the station employment unit, identified by job title;

(ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) Documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) The date each vacancy was filled and the recruitment source that referred the hiree.

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its website, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

(i) A list of all full time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year.

(d) ***Small station exemption.*** The provisions of paragraphs (b) and (c) of this section shall not apply to station employment units that have fewer than five full time employees.

(e) ***Definitions.*** For the purposes of this rule:

(1) A *full-time employee* is a permanent employee whose regular work schedule is 30 hours per week or more.

(2) A *station employment unit* is a station or a group of commonly owned stations in the same market that share at least one employee.

(3) A *smaller market* includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

(f) ***Enforcement.*** The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing five or more persons in full-time positions, except where noted.

~~(1) All broadcast stations, including those that are part of an employment unit with fewer than five full time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 2100 Schedule 396) with their renewal application. Form 2100 Schedule 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the period that is to form the basis for the Form 2100 Schedule 396, information provided on its Form 2100 Schedule 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 2100 Schedule 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.~~

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station that is part of an employment unit of five or more full-time employees and each radio station that is part of an employment unit of eleven or more full-time employees, four years following the station's most recent license expiration date as specified in § 73.1020. If a broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the period that is to form the basis for the mid-term review, that review will cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

~~(3) If a station is subject to a time brokerage agreement, the licensee shall file Form 2100 Schedule 396 and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Form 2100 Schedule 396 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Form 2100 Schedule 396 and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Form 2100 Schedule 396 and EEO public file reports filed for its own station that is geographically closest to the brokered station.~~

~~(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Form 2100 Schedule 396 and EEO public file reports. To determine compliance with the EEO rule, the Commission may conduct inquiries of~~

~~licensees at random or if it has evidence of a possible violation of the EEO rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.~~

(5) The public may file complaints throughout the license term based on the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587-3589 of the Commission's rules.

(g) ***Sanctions and remedies.*** The Commission may issue appropriate sanctions and remedies for any violation of this rule.

XII. Eliminate or Revise EEO Rules (cont. – 47 C.F.R. § 73.3612)

~~Each licensee or permittee of a commercially or noncommercially operated AM, FM, TV, Class A TV or International Broadcast station with five or more full time employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395-B. Data concerning the gender, race and ethnicity of a broadcast station's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual broadcast licensee's or permittee's compliance with the nondiscrimination or equal employment opportunity requirements of § 73.2080. Compliance with this section will not be required until this sentence is removed or contains a compliance date, which will not occur until after the Office of Management and Budget completes review of any information collection requirements pursuant to the Paperwork Reduction Act or until after the Office of Management and Budget determines that such review is not required.~~

XIII. Eliminate and Modify Children's Programming Rules and Reporting Obligations (47 C.F.R. § 73.671)[328]

(a) Each commercial and noncommercial educational television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through both the licensee's overall programming and programming specifically designed to serve such needs.

(b) Any special nonbroadcast efforts which enhance the value of children's educational and informational television programming, and any special effort to produce or support educational and informational television programming by another station in the licensee's marketplace, may also contribute to meeting the licensee's obligation to serve, over the term of its license, the educational and informational needs of children.

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Television Broadcast Licensees shall certify on their license renewal applications that they have satisfied their obligation to air such programming. ~~Programming specifically designed to serve the educational and informational needs of children ("Core Programming") is educational and informational programming that satisfies the following additional criteria:~~

> ~~(1) It has serving the educational and informational needs of children ages 16 and under as a significant purpose;~~
>
> ~~(2) It is aired between the hours of 6:00 a.m. and 10:00 p.m.;~~
>
> ~~(3) It is a regularly scheduled weekly program, except that a licensee may air a limited amount of programming that is not regularly scheduled on a weekly basis, including educational specials and regularly scheduled non-weekly programming, and have that programming count as Core Programming, as described in paragraph (d) of this section;~~
>
> ~~(4) It is at least 30 minutes in length, except that a licensee may air a limited amount of short form programming, including public service announcements and interstitials, and have that programming count as Core Programming, as described in paragraph (d) of this section;~~

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[328] The Commission should also consider whether it should DELETE the restrictions on the display of websites in 47 C.F.R. § 73.670(b)-(d) in light of marketplace and technological changes.

(5) For commercial broadcast stations only, the program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I;

(6) The target child audience is specified in writing in the licensee's Children's Television Programming Report, as described in § 73.3526(e)(11)(iii); and

(7) Instructions for listing the program as educational/informational are provided by the licensee to publishers of program guides, as described in § 73.673.

(d) The Commission will apply the processing guideline in this paragraph (d) to digital stations in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA") on its digital channel(s). A digital television licensee will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff if it has aired: At least three hours per week of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period), or a total of 156 hours of Core Programming annually, including at least 26 hours per quarter of regularly scheduled weekly programming and up to 52 hours annually of Core Programming of at least 30 minutes in length that is not regularly scheduled weekly programming, such as educational specials and regularly scheduled non weekly programming. A licensee will also been deemed to have satisfied the obligation in this paragraph (d) and be eligible for such staff approval if it has aired a total of 156 hours of Core Programming annually, including at least 26 hours per quarter of regularly scheduled weekly programming and up to 52 hours of Core Programming that is not regularly scheduled on a weekly basis, such as educational specials and regularly scheduled non-weekly programming, and short form programs of less than 30 minutes in length, including public service announcements and interstitials. Licensees that multicast are permitted to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream. The remainder of a station's Core Programming must be aired on the station's primary stream. Licensees that do not meet the processing guidelines in this paragraph (d) will be referred to the Commission, where they will have full opportunity to demonstrate compliance with the CTA by relying in part on sponsorship of Core educational/informational programs on other stations in the market that increases the amount of Core educational and informational programming on the station airing the sponsored program and/or on special non-broadcast efforts which enhance the value of children's educational and informational television programming.

(e) A station that preempts an episode of a regularly scheduled weekly Core Program will be permitted to count the episode toward the processing guidelines set forth in paragraph (d) of this section as follows:

(1) A station that preempts an episode of a regularly scheduled weekly Core Program on its primary stream will be permitted to air the rescheduled episode on its primary stream at any time during Core Programming hours within seven days before or seven

~~days after the date the episode was originally scheduled to air. The broadcast station must make an on-air notification of the schedule change during the same time slot as the preempted episode. If a station intends to air the rescheduled episode within the seven days before the date the episode was originally scheduled to air, the station must make the on-air notification during the same timeslot as the preceding week's episode of that program. If the station intends to air the rescheduled episode within the seven days after the date the preempted episode was originally scheduled to air, the station must make the on-air notification during the timeslot when the preempted episode was originally scheduled to air. The on air notification must include the alternate date and time when the program will air.~~

~~(2) A station that preempts an episode of a regularly scheduled weekly Core Program on a multicast stream will be permitted to air the rescheduled episode on that same multicast stream at any time during Core Programming hours within seven days before or seven days after the date the episode was originally scheduled to air. The broadcast station must make an on air notification of the schedule change during the same time slot as the preempted episode. If a station intends to air the rescheduled episode within the seven days before the date the episode was originally scheduled to air, the station must make the on-air notification during the same timeslot as the preceding week's episode of that program. If the station intends to air the rescheduled episode within the seven days after the date the preempted episode was originally scheduled to air, the station must make the on-air notification during the timeslot when the preempted episode was originally scheduled to air. The on-air notification must include the alternate date and time when the program will air.~~

~~(3) A station that preempts an episode of a regularly scheduled weekly Core Program to air non regularly scheduled live programming produced locally by the station will not be required to reschedule the episode.~~

XIV. Eliminate the Telephone Broadcast Rule (47 C.F.R. § 73.1206)

~~Before recording a telephone conversation for broadcast, or broadcasting such a conversation simultaneously with its occurrence, a licensee shall inform any party to the call of the licensee's intention to broadcast the conversation, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast. Such awareness is presumed to exist only when the other party to the call is associated with the station (such as employee or part time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.~~

XV. Eliminate the FM Duplication Rule (47 C.F.R. § 73.3556)

~~(a) No commercial FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted 3.16 mV/m) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.~~

~~(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24-hour period.~~

~~(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on September 16, 1992, shall bring that arrangement into compliance within one year thereafter.~~

XVI. Eliminate AM Efficiency Standards (47 C.F.R. § 73.30)

(a) Any party interested in operating an AM broadcast station on one of the ten channels in the 1605-1705 kHz band must file a petition for the establishment of an allotment to its community of license. Each petition must include the following information:

(1) Name of community for which allotment is sought;

(2) Frequency and call letters of the petitioner's existing AM operation, if applicable; and

~~(3) Statement as to whether or not AM stereo operation is proposed for the operation in the 1605-1705 kHz band.~~

~~(b) Petitions are to be filed during a filing period to be determined by the Commission. For each filing period, eligible stations will be allotted channels based on the following steps:~~

~~(1) Stations are ranked in descending order according to the calculated improvement factor.~~

~~(2) The station with the highest improvement factor is initially allotted the lowest available channel.~~

~~(3) Successively, each station with the next lowest improvement factor, is allotted an available channel taking into account the possible frequency and location combinations and relationship to previously selected allotments. If a channel is not available for the subject station, previous allotments are examined with respect to an alternate channel, the use of which would make a channel available for the subject station.~~

~~(4) When it has been determined that, in accordance with the above steps, no channel is available for the subject station, that station is no longer considered and the process continues to the station with the next lowest improvement factor.~~

(c) If awarded an allotment, a petitioner will have sixty (60) days from the date of public notice of selection to file an application for construction permit on FCC Form 301. (See §§ 73.24 and 73.37(e) for filing requirements). Unless instructed by the Commission to do otherwise, the application shall specify Model I facilities. (See § 73.14). Upon grant of the application and subsequent construction of the authorized facility, the applicant must file a license application on FCC Form 302.

~~Note 1:~~

~~Until further notice by the Commission, the filing of these petitions is limited to licensees of existing AM stations (excluding Class C stations) operating in the 535-1605 kHz band. First priority will be assigned to Class D stations located within the primary service contours of U.S.~~

~~Class A stations that are licensed to serve communities of 100,000 or more for which there exists no local fulltime aural service.~~

~~Note 2:~~

~~Selection among competing petitions will be based on interference reduction. Notwithstanding the exception contained in Note 5 of this section, within each operational category, the station demonstrating the highest value of improvement factor will be afforded the highest priority for an allotment, with the next priority assigned to the station with next lowest value, and so on, until available allotments are filled.~~

~~Note 3:~~

~~The Commission will periodically evaluate the progress of the movement of stations from the 535-1605 kHz band to the 1605-1705 kHz band to determine whether the 1605-1705 kHz band should continue to be administered on an allotment basis or modified to an assignment method. If appropriate, the Commission will later develop further procedures for use of the 1605-1705 kHz band by existing station licensees and others.~~

Note 14:

~~Other than the exception specified in note 1 of this section,~~ Existing fulltime stations are considered first for selection ~~as described in note 2 of this section~~. In the event that an allotment availability exists for which no fulltime station has filed a relevant petition, such allotment may be awarded in accordance with ~~to a licensed Class D station. If more than one Class D station applies for this migration opportunity,~~ the following priorities ~~will be used in the selection process~~: First priority—a Class D station located within the 0.5 mV/m-50% contour of a U.S. Class A station and licensed proposing to serve a community of 100,000 or more, for which there exists no local fulltime aural service; Second priority—any other applicant. ~~Class D stations ranked in order of improvement factor, from highest to lowest, considering only those stations with improvement factors greater than zero.~~

~~Note 5:~~

~~XVII. The preference for AM stereo in the expanded band will be administered as follows: when an allotment under consideration (candidate allotment) conflicts with one or more previously selected allotments (established allotments) and cannot be accommodated in the expanded band, the candidate allotment will be substituted for the previously established allotment provided that: the petitioner for the candidate allotment has made a written commitment to the use of AM stereo and the petitioner for the established allotment has not; the difference between the ranking factors associated with the candidate and established allotments does not exceed 10% of the ranking factor of the candidate allotment; the substitution will not require the displacement of more than one established allotment; and both the candidate allotment and the established allotment are within the same priority group.~~

XVIII. Eliminate AM Efficiency Standards (47 C.F.R. § 73.45)

(a) All applicants for new, additional, or different AM station facilities and all licensees requesting authority to change the transmitting system site of an existing station must specify an antenna system, ~~the efficiency of~~ which complies with the requirements for the class and power of station. (See §§ 73.186 and 73.189.)

(1) An application for authority to install an AM broadcast antenna must specify a definite site and include full details of the antenna system design and expected performance.

(2) All data necessary to show compliance with the terms and conditions of the construction permit must be filed with the application for the station license to cover the construction. If the station has constructed a directional antenna, a directional proof of performance must be filed. See §§ 73.150 through 73.157.

(b) The simultaneous use of a common antenna or antenna structure by more than one AM station or by a station of any other type or service may be authorized provided:

(1) Engineering data are submitted showing that satisfactory operation of each station will be obtained without adversely affecting the operation of the other station(s).

~~(2) The minimum field strength for each AM station complies with § 73.189(b).~~

(c) Should any changes be made or otherwise occur which would possibly alter the resistance of the antenna system, the licensee must commence the determination of the operating power by a method described in § 73.51(a)(1) or

(d) . (If the changes are due to the addition of antennas to the AM tower, see § 1.30003.) Upon completion of any necessary repairs or adjustments, or upon completion of authorized construction or modifications, the licensee must make a new determination of the antenna resistance using the procedures described in § 73.54. Operating power should then be determined by a direct method as described in § 73.51. Notification of the value of resistance of the antenna system must be filed with the FCC in Washington, DC as follows:

(1) Whenever the measurements show that the antenna or common point resistance differs from that shown on the station authorization by more than 2%, FCC Form 302 must be filed with the information and measurement data specified in § 73.54(d).

(2) Whenever AM stations use direct reading power meters pursuant to § 73.51, a letter notification to the FCC in Washington, DC, Attention: Audio Division, Media Bureau, must be filed in accordance with § 73.54(e).

XIX. Eliminate AM Efficiency Standards (cont. – 47 C.F.R. § 73.186)

(a) ~~Section 73.189 provides that certain minimum field strengths are acceptable in lieu of the required minimum physical heights of the antennas proper. Also, in other situations, it may be necessary to determine the effective field.~~ The following requirements shall govern the taking and submission of data on the field strength produced:

(1) Beginning as near to the antenna as possible without including the induction field and to provide for the fact that a broadcast antenna is not a point source of radiation (not less than one wave length or 5 times the vertical height in the case of a single element, *i.e.*, nondirectional antenna or 10 times the spacing between the elements of a directional antenna), measurements shall be made on six or more radials, at intervals of approximately 0.2 kilometer up to 3 kilometers from the antenna, at intervals of approximately one kilometer from 3 kilometers to 5 kilometers from the antenna, at intervals of approximately 2 kilometers from 5 kilometers to 15 kilometers from the antenna, and a few additional measurements if needed at greater distances from the antenna. Where the antenna is rurally located and unobstructed measurements can be made, there shall be at least 15 measurements on each radial. These shall include at least 7 measurements within 3 kilometers of the antenna. However, where the antenna is located in a city where unobstructed measurements are difficult to make, measurements shall be made on each radial at as many unobstructed locations as possible, even though the intervals are considerably less than stated above, particularly within 3 kilometers of the antenna. In cases where it is not possible to obtain accurate measurements at the closer distances (even out to 8 or 10 kilometers due to the character of the intervening terrain), the measurements at greater distances should be made at closer intervals.

(2) The data required by paragraph (a)(1) of this section should be plotted for each radial in accordance with either of the two methods set forth below:

(i) Using log-log coordinate paper, plot field strengths as ordinate and distance as abscissa.

(ii) Using semi-log coordinate paper, plot field strength times distance as ordinate on the log scale and distance as abscissa on the linear scale.

(3) However, regardless of which of the methods in paragraph (a)(2) of this section is employed, the proper curve to be drawn through the points plotted shall be determined by comparison with the curves in § 73.184 as follows: Place the sheet on which the actual points have been plotted over the appropriate Graph in § 73.184, hold to the light if necessary and adjust until the curve most closely matching the points is found. This curve should then be drawn on the sheet on which the points were plotted, together with the inverse distance curve corresponding to that curve. The field at 1 kilometer for the radial concerned shall be the ordinate on the inverse distance curve at 1 kilometer.

(4) When all radials have been analyzed in accordance with paragraph (a)(3) of this section, a curve shall be plotted on polar coordinate paper from the fields obtained, which gives the inverse distance field pattern at 1 kilometer. The radius of a circle, the area of which is equal to the area bounded by this pattern, is the effective field. (See § 73.14.)

(5) The antenna power of the station shall be maintained at the authorized level during all field measurements. The power determination will be made using the direct method as described in § 73.51(a) with instruments of acceptable accuracy specified in § 73.1215.

(b) Complete data taken in conjunction with the field strength measurements shall be submitted to the Commission in affidavit form including the following:

(1) Tabulation by number of each point of measurement to agree with the maps required in paragraph (c) of this section, the date and time of each measurement, the field strength (E), the distance from the antenna (D) and the product of the field strength and distance (ED) (if data for each radial are plotted on semilogarithmic paper, see paragraph (a)(2)(ii) of this section) for each point of measurement.

(2) Description of method used to take field strength measurements.

(3) The family of theoretical curves used in determining the curve for each radial properly identified by conductivity and dielectric constants.

(4) The curves drawn for each radial and the field strength pattern.

(5) The antenna resistance at the operating frequency.

(6) Antenna current or currents maintained during field strength measurements.

(c) Maps showing each measurement point numbered to agree with the required tabulation shall be retained in the station records and shall be available to the FCC upon request.

XX. Eliminate AM Efficiency Standards (cont. – 47 C.F.R. § 73.189)

(a) Section 73.45 requires that all applicants for new, additional, or different broadcast facilities and all licensees requesting authority to move ~~O~~the transmitter of an existing station, shall specify a radiating system, ~~the efficiency of~~ which complies with the requirements of good engineering practice for the class and power of the station.

(b) The specifications deemed necessary to meet the requirements of good engineering practice at the present state of the art are set out in detail below.

(1) The licensee of a AM broadcast station requesting a change in power, time of operation, frequency, or transmitter location must also request authority to install a new antenna system or to make changes in the existing antenna system which will meet the minimum height requirements, or submit evidence that the present antenna system meets the minimum requirements with respect to field strength, before favorable consideration will be given thereto. (See § 73.186.) In the event it is proposed to make substantial changes in an existing antenna system, the changes shall be such as to meet the minimum height requirements or will be permitted subject to the submission of field strength measurements showing that it meets the minimum requirements with respect to effective field strength.

(2) These minimum actual physical vertical heights of antennas permitted to be installed are shown by curves A, B, and C of Figure 7 of § 73.190 as follows:

(i) Class C stations, and stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450 and 1490 kHz that were formerly Class C and were redesignated as Class B pursuant to § 73.26(b), 45 meters or a minimum effective field strength of 180 mV/m for 1 kW at 1 kilometer (90 mV/m for 0.25 kW at 1 kilometer). (This height applies to a Class C station on a local channel only. Curve A shall apply to any Class C stations in the 48 conterminous States that are assigned to Regional channels.)

~~(ii) Class A (Alaska), Class B and Class D stations other than those covered in § 73.189(b)(2)(i), a minimum effective field strength of 215 mV/m for 1 kW at 1 kilometer.~~

~~(iii) Class A stations, a minimum effective field strength of 275 mV/m for 1 kW at 1 kilometer.~~

(3) The heights given on the graph for the antenna apply regardless of whether the antenna is located on the ground or on a building. Except for the reduction of shadows, locating the antenna on a building does not necessarily increase the efficiency and where the height of the building is in the order of a quarter wave the efficiency may be materially reduced.

(4) At the present development of the art, it is considered that where a vertical radiator is employed with its base on the ground, the ground system should consist of buried radial wires at least one-fourth wave length long. ~~There should be as many of these radials evenly spaced as practicable and in no event less than 90.~~ (120 radials of 0.35 to 0.4 of a wave length in length and spaced 3° is considered an excellent ground system and in case of high base voltage, a base screen of suitable dimensions should be employed.)

~~(5) In case it is contended that the required antenna efficiency can be obtained with an antenna of height or ground system less than the minimum specified, a complete field strength survey must be supplied to the Commission showing that the field strength at a mile without absorption fulfills the minimum requirements. (See § 73.186.) This field survey must be made by a qualified engineer using equipment of acceptable accuracy.~~

~~(6) The main element or elements of a directional antenna system shall meet the above minimum requirements with respect to height or effective field strength. No directional antenna system will be approved which is so designed that the effective field of the array is less than the minimum prescribed for the class of station concerned, or in case of a Class A station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of § 73.190 for operation on frequencies below 1000 kHz, and in the case of a Class B or Class D station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of § 73.190 for operation on frequencies below 750 kHz.~~

XXI. Expand Use of 1605-1705 kHz Band for New AM Stations (47 C.F.R. § 73.35)[329]

~~A petition for an allotment (See § 73.30) in the 1605-1705 kHz band filed by an existing fulltime AM station licensed in the 535-1605 kHz band will be ranked according to the station's calculated improvement factor. (See § 73.30). Improvement factors relate to both nighttime and daytime interference conditions and are based on two distinct considerations: (a) Service area lost by other stations due to interference caused by the subject station, and (b) service area of the subject station. These considerations are represented by a ratio. The ratio consists, where applicable, of two separate additive components, one for nighttime and one for daytime. For the nighttime component, to determine the numerator of the ratio (first consideration), calculate the RSS and associated service area of the stations (co- and adjacent channel) to which the subject station causes nighttime interference. Next, repeat the RSS and service area calculations excluding the subject station. The cumulative gain in the above service area is the numerator of the ratio. The denominator (second consideration) is the subject station's interference-free service area. For the daytime component, the composite amount of service lost by co channel and adjacent channel stations, each taken individually, that are affected by the subject station, excluding the effects of other assignments during each study, will be used as the numerator of the daytime improvement factor. The denominator will consist of the actual daytime service area (0.5 mV/m contour) less any area lost to interference from other assignments. The value of this combined ratio will constitute the petitioner's improvement factor. Notwithstanding the requirements of § 73.153, for uniform comparisons and simplicity, measurement data will not be used for determining improvement factors and FCC figure M-3 ground conductivity values are to be used exclusively in accordance with the pertinent provisions of § 73.183(c)(1).~~

[329] At a later date, the Commission might consider a preference for stations proposing to operate in a digital mode, either hybrid IBOC or fully digital, but NAB is not proposing that qualification at this time.

XXII. Permit Use of Software-based EAS Encoder/Decoder (47 C.F.R. § 11.2)

Definitions

The definitions of terms used in part 11 are:

(a) ***National Emergency Message (EAN).*** The National Emergency Message (formerly called the Emergency Action Notification or Presidential alert message) is the notice to all EAS Participants and to the general public that the EAS has been activated for a national emergency. EAN messages that are formatted in the EAS Protocol (specified in § 11.31) are sent from a government origination point to broadcast stations and other entities participating in the National Public Warning System, and are subsequently disseminated via EAS Participants. Dissemination arrangements for EAN messages that are formatted in the EAS Protocol (specified in § 11.31) at the State and local levels are specified in the State and Local Area plans (defined at § 11.21). A national activation of the EAS for a Presidential National Emergency Message with the Event code EAN as specified in § 11.31 must take priority over any other message and preempt it if it is in progress.

(b) ***EAS Participants.*** Entities required under the Commission's rules to comply with EAS rules, e.g., analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems.

(c) ***Wireline Video System.*** The system of a wireline common carrier used to provide video programming service.

(d) ***Intermediary Device.*** An intermediary device is a stand-alone device that carries out the functions of monitoring for, receiving and/or acquiring, and decoding EAS messages formatted in the Common Alerting Protocol (CAP) in accordance with § 11.56, and converting such messages into a format that can be inputted into a separate EAS decoder, EAS encoder, or unit combining such decoder and encoder functions, so that the EAS message outputted by such separate EAS decoder, EAS encoder, or unit combining such decoder and encoder functions, and all other functions attendant to processing such EAS message, comply with the requirements in this part.

(e) ***EAS Equipment***. EAS equipment, and equipment capable of generating the EAS codes, as those terms may be used in this part, may refer to a physical, hardware device or a virtualized, software-based system that carries out the functions of monitoring for, receiving and/or acquiring , decoding and encoding EAS messages.

XXIII. Modify the "False EAS Alert" Rule (47 C.F.R. § 11.45)

(a) No person may transmit or cause to transmit any false or fraudulant signal of distress, i.e., the EAS codes or Attention Signal, that trigger an actual EAS alert, ~~or a recording or simulation thereof,~~ in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS; or as specified in §§ 10.520(d), 11.46, and 11.61 of this chapter.

(b) No later than twenty-four (24) hours of an EAS Participant's discovery (*i.e.,* actual knowledge) that it has transmitted or otherwise sent a false ~~alert~~ or fraudulent signal of distress to the public, the EAS Participant shall send an email to the Commission at the FCC Ops Center at *FCCOPS@fcc.gov*, informing the Commission of the event and of any details that the EAS Participant may have concerning the event.

. . .

XXIV. Modify the "Audible Crawl Rule" (47 C.F.R. § 79.2)

. . . .

(b) Requirements for accessibility of programming providing emergency information.

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in § 79.1.

(2) Video programming distributors and video programming providers must make emergency information, as defined in paragraph (a) of this section, accessible as follows:

(i) Emergency information that is provided visually during a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to individuals who are blind or visually impaired; and

(ii) Emergency information that is provided visually during programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming, must be accompanied with an aural tone, and beginning May 26, 2015 except as provided in paragraph (b)(6) of this section, must be made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream to provide the emergency information aurally. Emergency information provided aurally on the secondary audio stream must be preceded by an aural tone and must be conveyed in full at least twice. Compliance with this section may be met through the provision of aurally accessible textual crawls that provide emergency information that is duplicative or equivalent to the emergency information conveyed by the visual, non-textual graphic or image provided during programming that is neither a regular scheduled newscast, nor a newscast that interrupts regular programming. Emergency information provided through use of text-to-speech ("TTS") technologies must be intelligible and must use the correct pronunciation of relevant information to allow consumers to learn about and respond to the emergency, including, but not limited to, the names of shelters, school districts, streets, districts, and proper names noted in the visual information. The video programming distributor or video programming provider that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone. Video programming distributors are responsible for ensuring that the aural representation of the emergency information (including the accompanying aural tone) gets passed through to consumers.

. . .

XXV. Eliminate Requirement to Publish a Station Employee's Contact Information for Receiving Closed Captioning Complaints (47 C.F.R. § 79.1)

. . . .

(i) *Contact information.*

. . . .

(2) ***Complaints.*** Video programming distributors shall make contact information publicly available for the receipt and handling of written closed captioning complaints that do not raise the type of immediate issues that are addressed in paragraph (i)(1) of this section. The contact information required for written complaints shall include a designated telephone number, fax number (if the video programming distributor has a fax number), email address, and postal mailing address for purposes of receiving and responding to closed captioning complaints. ~~the name of a person with primary responsibility for captioning issues and who can ensure compliance with the Commission's rules. In addition, this contact information shall include the person's title or office, telephone number, fax number (if the video programming distributor has a fax number), postal mailing address, and email address.~~ Video programming distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Video programming distributors shall keep this information current and update it within ten (10) business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

(3) *Providing contact information to the Commission.*

. . . .

(ii) As of the compliance date of paragraph (m) of this section, video programming distributors and video programmers shall file contact information with the Commission through a web form located on the Commission's website. Such contact information shall include a designated telephone number, fax number (if the video programming distributor has a fax number), email address, and postal mailing address for purposes of receiving and responding to closed captioning complaints. ~~the name of a person with primary responsibility for captioning issues and ensuring compliance with the Commission's rules. In addition, such contact information shall include the person's title or office, telephone number, fax number (if the video programming distributor or video programmer has a fax number), postal mailing address, and email address.~~ Contact information shall be available to consumers on the Commission's website or by telephone inquiry to the Commission's Consumer Center. Video programming distributors and video programmers shall notify the Commission each time there is a change in any of this required information within ten (10) business days.

. . .

XXVI. Eliminate the Contest Rule (47 C.F.R. § 73.1216)

(a) A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised over the air or on the Internet. No contest description shall be fals

, misleading or deceptive with respect to any material term.

(1) A contest is a scheme in which a prize is offered or awarded, based upon chance, diligence, knowledge or skill, to members of the public;

(2) Material terms include those factors which define the operation of the contest and which affect participation therein. Although the material terms may vary widely depending upon the exact nature of the contest, they will generally include: How to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie breaking procedures.

(3) In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter.

(b) The disclosure of material terms shall be made by the station conducting the contest by either:

(1) Periodic disclosures broadcast on the station; or

(2) Written disclosures on the station's Internet Web site, the licensee's Web site, or if neither the individual station nor the licensee has its own Web site, any Internet Web site that is publicly accessible.

(c) In the case of disclosure under paragraph (b)(1) of this section, a reasonable number of periodic broadcast disclosures is sufficient. In the case of disclosure under paragraph (b)(2) of this section, the station shall:

(1) Establish a conspicuous link or tab to material contest terms on the home page of the Internet Web site;

(2) Announce over the air periodically the availability of material contest terms on the Web site and identify the Web site address where the terms are posted with information sufficient for a consumer to find such terms easily; and

(3) Maintain material contest terms on the Web site for at least thirty days after the contest has concluded. Any changes to the material terms during the course of the contest must be fully disclosed on air within 24 hours of the change on the Web site and periodically thereafter or the fact that such changes have been made must be announced on air within 24 hours of the change, and periodically thereafter, and such

~~announcements must direct participants to the written disclosures on the Web site. Material contest terms that are disclosed on an Internet Web site must be consistent in all substantive respects with those mentioned over the air.~~

~~(d) This section is not applicable to licensee conducted contests not broadcast or advertised to the general public or to a substantial segment thereof, to contests in which the general public is not requested or permitted to participate, to the commercial advertisement of non-licensee conducted contests, or to a contest conducted by a non broadcast division of the licensee or by a non-broadcast company related to the licensee.~~

XXVII. Eliminate Obsolete Technical Definitions (47 C.F.R. § 73.14)

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~~*Combined audio harmonics.* The arithmetical sum of the amplitudes of all the separate harmonic components. Root sum square harmonic readings may be accepted under conditions prescribed by the FCC.~~

....

~~*Incidental phase modulation.* The peak phase deviation (in radians) resulting from the process of amplitude modulation.~~

....

~~*Stereophonic crosstalk.* An undesired signal occurring in the main channel from modulation of the stereophonic channel or that occurring in the stereophonic channel from modulation of the main channel.~~

....

~~*Stereophonic separation.* The ratio of the electrical signal caused in the right (or left) stereophonic channel to the electrical signal caused in the left (or right) stereophonic channel by the transmission of only a right (or left) signal.~~