

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

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

NOTICE OF PROPOSED RULEMAKING

Adopted: October 24, 2017

Released: October 24, 2017

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairman Pai and Commissioners O'Rielly and Carr issuing separate statements;
Commissioner Clyburn approving in part, concurring in part, and issuing a statement.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on how to modernize
two provisions in Part 73 of the Commission's rules governing broadcast licensees: Section 73.624(g),
which establishes certain reporting obligations relating to the provision of ancillary or supplementary
services, and Section 73.3580, which sets forth requirements concerning public notice of the filing of
broadcast applications. First, we propose amendments to Section 73.624(g)(2) that would relieve certain
television broadcasters of the obligation to submit FCC Form 2100, Schedule G,¹ which is used to report
information about the provision of ancillary or supplementary services.² Second, we seek comment on
whether to update or repeal Section 73.3580 of our rules, which requires broadcast applicants to provide
public notice of the filing of various license applications, to afford such applicants more flexibility in how
they provide that notice. As part of this inquiry, we seek comment on whether to permit broadcast
applicants that currently provide written notice in a local newspaper, instead to provide that notice online.

¹ This form previously was known as FCC Form 317. The Commission changed the name of this form with the
introduction of its Licensing and Management System (LMS) in 2015. Although some commenters in MB Docket
No. 17-105 have referred to this form as Form 317, we will refer to the relevant form as Form 2100, Schedule G.

² 47 CFR § 73.624(g)(2). See also Fees for Ancillary or Supplementary Use of Digital Television Spectrum
Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996, Report and Order, 14 FCC Rcd 3259, 3269,
paras. 31-43 (1998) (Ancillary or Supplementary Services Report and Order), recon. denied, Fees for Ancillary or
Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of
1996, Memorandum Opinion and Order, 14 FCC Rcd 19931 (1999).

Similarly, in cases where an applicant is required to broadcast announcements regarding the filing of a broadcast application, we seek comment on whether to permit the applicant to refer the public to an Internet website that contains the text of such announcements. We also seek comment on whether there is a comparable way for broadcasters to inform consumers of various license applications, if not done through on-air announcements. With this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.³

II. BACKGROUND

2. *Ancillary or Supplementary Services Reporting Form.* In the 1990s, the advent of digital television technology led Congress, as part of the Telecommunications Act of 1996, to adopt Section 336 of the Communications Act (Act) governing the provision of advanced television services, also known as digital television (DTV).⁴ The technological advancements in broadcast transmissions brought about by the analog-to-digital transition gave broadcasters the capacity to use their existing spectrum to offer a range of new services to consumers.⁵ In recognition of this potential, Congress in Section 336 established a framework for authorizing broadcast licensees to offer certain services in addition to their free, over the air television service, consistent with the public interest.⁶ Section 336 refers to such services as “ancillary or supplementary services.”⁷

³ In response to a recent Public Notice launching the Commission’s Modernization of Media Regulation Initiative, see *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (MB 2017) (*Modernization Initiative Public Notice*), several commenters have asked the Commission to amend Sections 73.624(g) and 73.3580 of our Rules because these provisions impose unnecessary burdens on a substantial number of broadcasters.

⁴ “Advanced television services” are defined in the Act as “television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled ‘Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,’ MM Docket 87-268, adopted September 17, 1992, and successor proceedings.” 47 U.S.C. § 336(i).

⁵ S. Rep. No. 23, 104th Cong., 1st Sess. 9 (1995) (“Advanced television, digital compression and other technological service innovations hold the potential to bring a variety of new services to consumers. Broadcasters seek to pursue these opportunities within existing broadcast radio spectrum . . . in a manner which will assure the continued availability of top quality broadcast service to all Americans.”); H.R. Rep. No. 204, 104th Cong., 1st Sess. 116 (1995) (“[P]ermitting broadcasters more flexibility in using their spectrum assignments is consistent with the public policy goal of providing additional services to the public.”).

⁶ 47 U.S.C. § 336(a)(2).

⁷ *Id.* In implementing Section 336, the Commission defined ancillary or supplementary services to include, among other things:

computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations’ obligations. . . . Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

47 CFR § 73.624(c). Section 336(e) of the Act directs the Commission to establish a fee program for any ancillary or supplementary services for which the payment of a subscription fee is required, or for which the licensee receives compensation from a third party in return for transmitting material furnished by that party (feeable ancillary or supplementary services). 47 U.S.C. § 336(e). Section 336(e) provides, in pertinent part:

(e) Fees

(1) Services to which fees apply -- If the regulations prescribed pursuant to [Section 336(a)] permit a licensee to offer ancillary or supplementary services on a designated frequency--

(continued...)

3. Pursuant to Congress's directives in Section 336, the Commission in 1998 developed a program to assess fees on revenues derived from the provision of ancillary or supplementary services by DTV licensees.⁸ The Commission adopted Section 73.624(g) of its rules, which set the fee for feeable ancillary or supplementary services at five percent of the gross revenues received from the provision of such services.⁹ And consistent with Section 336(e)(4),¹⁰ it required all commercial full power DTV licensees to file annual reports regarding their use of the DTV bitstream to provide such services.¹¹ The following year, the Commission created a new form (currently Form 2100, Schedule G) for the purpose of reporting information about the provision of ancillary or supplementary services.¹² Under Section 73.624(g), DTV stations¹³ are required to report, among other things, "whether they provided ancillary or

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(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in [Section 336(e)(2)(A) and (B)].

Id.

⁸ See generally *Ancillary or Supplementary Services Report and Order*, 47 CFR § 73.624(g).

⁹ 47 CFR § 73.624(g)(1); *Ancillary or Supplementary Services Report and Order*, 14 FCC Rcd at 3267, para. 20.

¹⁰ 47 U.S.C. § 336(e)(4) ("Within 5 years after February 8, 1996, the Commission shall report to the Congress on the implementation of the program required by [Section 336(e)], and shall annually thereafter advise the Congress on the amounts collected pursuant to such program").

¹¹ 47 CFR § 73.624(g)(2); *Ancillary or Supplementary Services Report and Order*, 14 FCC Rcd at 3275, para. 54. In applying the reporting obligation to such licensees, the Commission reasoned that "requir[ing] all commercial DTV licensees to report . . . on their use of the DTV bitstream" was needed in order for the agency "to report to Congress on the [fee] program established. . . and in order that [it] have the information necessary to adjust the fee program as appropriate consistent with the use of the spectrum." *Id.* at 3275, para. 54.

¹² *Id.* at 3275, para. 56; *New FCC Form 317 Available for Use*, Public Notice, 1999 WL 997127 (1999). For the first report due on December 1, 1999, the Commission required DTV licensees to report on services provided from the effective date of the *Ancillary or Supplementary Services Report and Order* through September 30, 1999. The Commission thereafter required licensees to report such information (for the twelve-month period ending on September 30) by December 1 every year. *Ancillary or Supplementary Services Report and Order*, 14 FCC Rcd at 3275, paras. 54-56. The Commission further required that licensees providing feeable ancillary or supplementary services during the relevant twelve-month period submit, on an annual basis, a standard remittance form (FCC Form 159) certifying the amount of gross revenues received from such services and remitting payment of the required fee. *Id.* at 3276, para. 57; 47 CFR § 73.624(g)(2)(ii).

¹³ Since the Commission adopted Section 73.624(g), it has expanded the category of DTV stations required to file these reports to include Class A television, low power television (LPTV) and television translator stations. 47 CFR § 73.624(g)(2)(i). See *Establishment of Class A Television Service*, Memorandum Opinion and Order on Reconsideration, MM Docket No. 00-10, 16 FCC Rcd 8244, 8258, para. 36 (2001) (applying Section 73.624(g) to Class A television licensees); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, MB Docket No. 03-185, 19 FCC Rcd 19331, 19390-91, paras. 178-81 (2004) (imposing fees for ancillary and supplementary services provided by digital LPTV and TV translator stations); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, MB Docket No. 03-185, 26 FCC Rcd 10732, 10757-59, paras. 55-57 (2011) (applying Section 73.624(g) to LPTV permittees operating pursuant to a digital Special Temporary Authorization (STA)).

supplementary services in the twelve-month period ending on the preceding September 30.”¹⁴ Such stations must submit Form 2100, Schedule G, by December 1 every year even if they did not provide ancillary or supplementary services during the relevant reporting period.¹⁵ Failure to file the form “regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.”¹⁶

4. *Public Notice of Filing of Broadcast Applications.* Section 73.3580 of the Commission’s rules requires applicants for broadcast licenses and other authorizations to provide public notice of the filing of broadcast applications, with certain exceptions.¹⁷ Section 73.3580 covers a broad range of applications, including applications for a new construction permit; applications to transfer or assign broadcast licenses; applications to renew licenses; and applications for major modification of licenses, among others. The public notice requirements set forth in Section 73.3580 differ depending on the nature of the broadcast application or the kind of service for which authorization is sought.¹⁸ Various provisions in Section 73.3580 obligate applicants to provide written public notice in a local newspaper, and establish requirements governing the frequency, duration, and content of that notice, and the type of newspaper in which such notice must be published.¹⁹ In certain circumstances, Section 73.3580 requires applicants to broadcast messages that announce the filing of an application in addition to, or in lieu of, publication of notice in a local newspaper.²⁰ Similar to the provisions requiring public notice in a newspaper, the provisions in Section 73.3580 requiring public notice through broadcast announcements prescribe the timing, frequency, duration, and content of such announcements.²¹ The Commission adopted its public notice requirements over half a century ago to ensure that members of the public were made aware of

¹⁴ 47 CFR § 73.624(g)(2)(i).

¹⁵ *Annual DTV Ancillary/Supplementary Use Services Report for Digital Television Stations (Form 2100 – Schedule G) Due December 1, 2016*, Public Notice, DA 16-1274 (MB Nov. 14, 2016).

¹⁶ 47 CFR § 73.624(g)(2)(i)(E).

¹⁷ *Id.* § 73.3580(a).

¹⁸ *See, e.g., id.* § 73.3580(c)(1) (requiring applicants for certain new broadcast licenses to give public notice of the application in a newspaper that meets specified requirements); *id.* § 73.3580(c)(2) (requiring applicants for a permit pursuant to Section 325(b) of the Act to give public notice of the application in a newspaper that meets specified requirements); *id.* § 73.3580(d)(1), (d)(4) (requiring applicants for renewal of certain broadcast licenses to give public notice of the application through specified pre-filing and post-filing broadcast announcements); *id.* § 73.3580(d)(3) (requiring certain applicants for modification, assignment, or transfer of a broadcast station license to give public notice of the application through newspaper and broadcast announcements that meet specified requirements); *id.* § 73.3580(d)(5) (requiring applicants for Class A television licenses to give public notice of the Class A license application through specified pre-filing and post-filing broadcast announcements); *id.* § 73.3580(e) (applying specified public notice requirements to noncommercial educational stations and stations that are “the only operating station in its broadcast service which is located in the community involved”); *id.* § 73.3580(g) (applying specified public notice requirements to applicants for low power TV, TV translator, TV booster, FM translator, or FM booster stations).

¹⁹ *See, e.g., id.* § 73.3580(c), (f).

²⁰ *See, e.g., id.* § 73.3580(d)(1) (providing that certain applicants for renewal of a broadcast license must give notice of the application through broadcast announcements, and that publication of such notice in a newspaper is not required); *id.* § 73.3580(d)(3) (providing that certain applicants for modification, assignment, or transfer of a broadcast station license must give notice of such application in a newspaper and through broadcast announcements).

²¹ *See, e.g., id.* § 73.3580(d)(3), (d)(4), (d)(5), (f).

broadcast applications, thereby affording them a meaningful opportunity to participate in the broadcast licensing process.²²

5. *Modernization of Media Regulation Initiative.* In May 2017, the Commission issued a Public Notice launching a review of its media regulations to eliminate or modify those that are outdated, unnecessary or unduly burdensome.²³ In response to that Public Notice, a number of commenters in the media modernization proceeding have asserted that the Commission should amend Section 73.624(g) of its rules to require the filing of Form 2100, Schedule G, only by DTV stations that have provided feeable ancillary or supplementary services during the relevant reporting period and thus must pay the five percent fee on gross revenues derived from such services.²⁴ In addition, a number of commenters have urged the Commission to update Section 73.3580 of its rules by giving broadcast license applicants the flexibility to provide public notice of the filing of broadcast applications through the Internet.²⁵

III. DISCUSSION

6. *Ancillary or Supplementary Services Reporting Form.* We propose to modify Section 73.624(g)(2) of our rules to require only those DTV stations that actually provide feeable ancillary or supplementary services to submit Form 2100, Schedule G, on an annual basis.²⁶ As noted above, Section 73.624(g)(2) currently requires all DTV stations to file Form 2100, Schedule G, with the Commission regardless of whether they have provided ancillary or supplementary services or received revenue from those services during the relevant reporting period.²⁷ We tentatively conclude that eliminating this reporting obligation for DTV stations that have received no feeable revenues from ancillary or supplementary services during the reporting period would serve the public interest by reducing unnecessary regulation and regulatory burdens that can impede competition and innovation in the video marketplace. Affiliates Associations contends that “[b]ecause only a small fraction of television stations actually offer DTV ancillary or supplementary services, filing these annual reports requires the expenditure of resources for nearly every television station in the country with no countervailing benefit to the Commission or public.”²⁸ Regardless of how many stations provide feeable ancillary or

²² See *Revision of the Public Notice Requirements of Section 73.3580*, Notice of Proposed Rulemaking, MB Docket No. 05-6, 20 FCC Rcd 5420, 5421, para. 3 (2005) (*2005 Public Notice NPRM*).

²³ *Modernization Initiative Public Notice*, 32 FCC Rcd at 4406.

²⁴ Comments of America’s Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service at 8-9 (Public Broadcasting Comments); Comments of CBS Corporation, the Walt Disney Company, 21st Century Fox, Inc., and Univision Communications, Inc. at 12-13 (Content Companies Comments); Comments of the National Association of Broadcasters at 19 (NAB Comments); Comments of Nexstar Broadcasting, Inc. at 18 (Nexstar Comments); Reply Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association at 5, 9-10 (Affiliates Associations Reply); Reply Comments of the Named State Broadcasters Associations at 8-10 (NSBA Reply); Reply Comments of the San Bernardino Community College at 3-4 (SBCCD Reply).

²⁵ See *infra* notes 36, 37.

²⁶ We also propose to revise Form 2100, Schedule G, to conform to the rule amendments proposed herein. In particular, we propose to revise the form to eliminate the question “whether a fee was charged for the provision of [ancillary or supplementary] service” and the subsequent question “[f]eeable – yes or no?”.

²⁷ 47 CFR § 73.624(g).

²⁸ Affiliates Associations Reply at 9. See also NAB Comments at 19 (“Because very few stations provide ancillary/supplementary services, the rule needlessly requires thousands of licensees to file [Form 2100, Schedule G] every year merely to state that fact. This requirement is an obvious waste of virtually all licensees’ time and resources”); Public Broadcasting Comments at 9 (“There is no reason why stations should have to file forms every year if they have nothing to report and are not required to remit any fee.”); Content Companies Comments at 12 (“Not all stations have reportable service revenue . . . and in such cases completion of an [FCC Form 2100, Schedule G] serves no legitimate regulatory end.”); Nexstar Comments at 18 (“[G]iven that the majority of broadcasters do

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supplementary services, we tentatively conclude, based on the comments filed to date in MB Docket No. 17-105, that the costs imposed by applying Section 73.624(g)(2) to all DTV stations outweigh any associated public interest benefits.²⁹ No commenter has articulated a compelling rationale for imposing the reporting obligation on all DTV licensees, and we tentatively find no such rationale. Indeed, we note that no commenter in the media modernization proceeding has asserted that the Commission should continue to apply the Section 73.624(g)(2) reporting obligation to all DTV stations irrespective of whether they provide feeable ancillary or supplementary services.

7. To the extent the Commission applied the annual reporting obligation to all DTV licensees so that it could “report to Congress on the [fee] program . . . and [give the agency] the information necessary to adjust the fee program as appropriate consistent with the use of the spectrum,”³⁰ we tentatively conclude that such a broad application of the reporting obligation no longer is needed to carry out these objectives because the obligation would continue to apply to DTV stations that derive revenue from feeable services. We seek comment on our proposal and tentative conclusions.³¹ Parties opposing the proposed amendments to Section 73.624(g)(2) should explain how the benefits derived from such rules, if any, outweigh the costs.

8. *Public Notice of Filing of Broadcast Applications.* We seek comment on whether to update Section 73.3580 of our rules to provide broadcast licensees with more flexibility as to how they inform the public about the filing of certain applications.³² When the Commission adopted its public notice requirements decades ago, Americans obtained information in ways that are vastly different from how they do today.³³ The Internet has become a major part of consumers’ daily lives and now represents a widely used medium to obtain information.³⁴ Given that Americans today are accustomed to using the

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not use their spectrum for non-broadcast services, the Commission should amend the . . . filing requirement so that only those broadcasters required to pay a fee need to go through the effort of filing a report.”). Based on a Media Bureau staff review of Forms 2100, Schedule G, fewer than 15 stations reported receiving revenues from their provision of ancillary or supplementary services in 2016. Relative to other revenue sources, revenues from ancillary or supplementary services are an insignificant portion of total station revenues. In 2016, total revenues from such services were roughly \$260,000, and the Commission collected roughly \$13,000 in fees from those revenues.

²⁹ We note that Section 73.624(g) will apply to DTV stations transmitting “Next Generation” TV signals if the Commission adopts the proposals in our recent *Notice of Proposed Rulemaking* proposing to authorize television broadcasters to use the Next Generation broadcast television transmission standard on a voluntary, market-driven basis. *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Notice of Proposed Rulemaking, GN Docket No. 16-142, 32 FCC Rcd 1670 (2017) (*ATSC 3.0 NPRM*). The Next Generation TV standard is associated with the work of the Advanced Television Systems Committee (ATSC), and is also known as ATSC 3.0. It is a successor standard to the current DTV, or ATSC 1.0, transmission standard. The Commission has proposed in the *ATSC 3.0 NPRM* to “apply all of our broadcast rules to Next Gen TV stations.” *Id.* at 1699-1700, para 68. Thus, if the Commission adopts that proposal, the rule we ultimately adopt here will apply to such stations.

³⁰ *Ancillary or Supplementary Services Report and Order*, 14 FCC Rcd at 3275, para. 54. See also 47 U.S.C. § 336(e)(4) (directing the Commission to “advise the Congress on the amounts [of fees] collected”).

³¹ Pending final action on our proposal, we direct the Media Bureau to consider whether to waive the December 1, 2017 deadline for the submission of FCC Form 2100, Schedule G, by stations that have provided no feeable ancillary or supplementary services during the reporting period ending September 30, 2017.

³² Although the Commission in 2005 proposed to expand the Section 73.3580 newspaper notice requirements by eliminating the exemption applicable to certain stations, see 2005 *Public Notice NPRM*, *supra* note 22, we tentatively find that expanding those requirements would be unreasonable in the current media environment, and propose to terminate that proceeding.

³³ See 27 FR 9947 (rel. Oct. 5, 1962) (amending the rule that became Section 73.3580).

³⁴ *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, MB Docket No. 14-226, 30 FCC Rcd 10468 (2015) (*Contest Rule Report and Order*).

Internet to obtain a wide array of information, we believe that viewers and listeners may be more likely to expect to obtain information about broadcast applications online.

9. We therefore seek comment on whether we should update Section 73.3580 to permit applicants to provide public notice of the filing of broadcast applications either by publishing such notice in a newspaper, or by posting such notice on an Internet website, as some commenters have suggested.³⁵ In particular, we seek comment on whether to allow applicants that currently are required under Section 73.3580 to publish notice of the filing of an application in a local newspaper, to provide such notice instead on an Internet website.³⁶ We also seek comment on whether, in cases where an applicant is required to provide notice of the filing of an application through broadcast announcements (whether or not in conjunction with written notice in a local newspaper), the applicant should be permitted instead to post at least a portion of the content of those announcements online, together with a link to the applicant's online public file containing the relevant application, and to broadcast the address of the Internet website containing such information.³⁷ We also ask for comment on whether there is a comparable way for broadcasters to inform consumers of various license applications, if not done through on-air announcements.

10. In the alternative, we seek comment on whether there is a need to impose any public notice obligations on certain applicants, given the ready availability of many license applications on the Commission's and stations' websites today. In particular, we note that the Commission's rules generally require that broadcast applicants place their license applications and related materials in the Commission-hosted online public inspection file and provide a link to that file on the home page of their websites, if they have websites.³⁸ In addition, pursuant to Section 309 of the Act and its implementing rules, the Commission routinely gives public notice of the filing of broadcast applications.³⁹ Members of the public also can be notified of the filing of broadcast applications by signing up to receive Commission-generated

³⁵ See *infra* notes 36, 37.

³⁶ See, e.g., Comments of the Multicultural Media, Telecom and Internet Council at 3-4 (urging the Commission to “replac[e] the requirements of public notice in a local newspaper with a requirement that public notices be posted online on the station’s website”) (MMTC Comments). See also Affiliates Associations Reply at 6; Nexstar Comments at 15-16.

³⁷ NAB Comments at 20-21 (asserting that the Commission “should permit broadcasters to place any requisite notices that today must be published in a local newspaper on their station websites” and “consider reducing the length and text of required on-air notices about various types of applications . . . by referring listeners/viewers to station websites, where the requisite text could be posted along with a link to the stations’ online public file containing the relevant application”). See also Comments of Alpha Media, LLC, *et al.* at 2-3 (arguing that the Commission should modify its public notice requirements by “substitut[ing] an online posting requirement for newspaper publication and . . . revising the on-air requirement so that a broadcaster can comply by announcing the type of application that has been filed and directing listeners to its website to obtain further information about the application”) (Joint Radio Comments); Comments of the Named State Broadcasters Associations at 4 (contending that “the Commission should allow broadcasters to (1) satisfy the notice requirement by posting on their website any notices that the rules currently require to be published in a local newspaper and (2) direct viewers and listeners to a website in lieu of broadcasting the entire notice over the air”) (NSBA Comments); Nexstar Comments at 16 (asserting that the Commission “should modify Section 73.3580 . . . so that newspaper publication is not a requirement, but an option of last resort” and “should permit broadcasters to direct viewers to a website when broadcasting an entire announcement over-the-air would be cumbersome and difficult for the viewer to comprehend”).

³⁸ See, e.g., 47 CFR § 73.3526(b)(2)(i)-(ii), (e)(2).

³⁹ 47 U.S.C. § 309(b)(2). See also 47 CFR § 73.3564; https://apps.fcc.gov/edocs_public/attachmatch/DOC-346857A1.pdf.

RSS feeds.⁴⁰ In light of these various means of receiving notice of pending broadcast applications, we seek comment on whether the public interest would be served by repealing Section 73.3580 in its entirety.

11. Given the questions above regarding updating or repealing the rule, we tentatively conclude not to move forward with the proposals in the *2005 Public Notice NPRM* regarding this rule. Specifically, twelve years ago, the Commission proposed: (1) to eliminate the exemption of certain stations from the newspaper publication requirement; and (2) to establish specific text for the required broadcast and newspaper notifications in cases of assignments and transfers of control, based on concerns that such notice is often confusing.⁴¹ Instead of expanding the public notice requirements in the manner discussed in 2005, we now seek to streamline them in a manner consistent with how the public currently accesses and consumes information. We seek comment on our tentative conclusion.

12. Based on the record, we tentatively find that, at a minimum, updating Section 73.3580 would advance the public interest by affording applicants more flexibility in the means by which they provide notice of prospective and pending broadcast applications, while giving consumers improved access to information enabling them to participate in the licensing process.⁴² We seek comment on this tentative finding. We seek to modernize our rules to better reflect how broadcast audiences consume information today.⁴³

13. We seek comment on whether we should continue to impose different notice obligations based on the kind of service for which an applicant is seeking authorization (*e.g.*, Class A, low power, booster, translator, etc.) or the nature of the application at issue (*e.g.*, construction permit, modification, renewal, assignment, transfer of control, etc.). Are there justifications for applying different public notice requirements to these kinds of applicants and applications that remain valid today? Are there certain types of applications that merit broader announcement than others, such as transfers of control or renewals? If we were to deem online posting of notifications regarding the filing of broadcast applications an adequate form of public notice, how should we treat applications for a new construction permit?

14. As suggested by some commenters,⁴⁴ should we craft requirements similar to those we adopted in updating Section 73.1216 of our rules (otherwise known as the Contest Rule), which similarly contemplate that public notice of certain information will be provided by broadcasters through both the Internet and broadcast announcements?⁴⁵ If so, what aspects of the Contest Rule should guide our revisions to Section 73.3580? Parties urging us to adopt rules that deviate from, or are similar to, the rules governing contest disclosures should explain the basis for their assertions.

15. How, if at all, could the Commission streamline or simplify the public notice requirements of Section 73.3580 further to reduce costs and regulatory burdens for broadcasters, while ensuring that notice of pending or prospective applications is sufficient to enable robust public participation in the licensing process? Several commenters have asserted, for example, that Section 73.3580 as written is needlessly complex and confusing.⁴⁶ As noted above, could the online public

⁴⁰ See <https://www.fcc.gov/news-events/rss-feeds-and-email-updates-fcc>.

⁴¹ See *2005 Public Notice NPRM*, 20 FCC Rcd at 5420, para. 1.

⁴² See, *e.g.*, MMTTC Comments at 3-4; NSBA Reply at 5-6.

⁴³ See, *e.g.*, Reply Comments of the Multicultural Media, Telecom and Internet Council at 12 (MMTC Reply); Nexstar Comments at 16.

⁴⁴ See, *e.g.*, Comments of the Named State Broadcasters Associations at 5-6 (NSBA Comments); NAB Comments at 21; Joint Radio Comments at 4.

⁴⁵ *Contest Rule Report and Order*, 30 FCC Rcd at 10472, para. 8.

⁴⁶ See, *e.g.*, Comments of Jack Goodman at 1 (“[L]ook at Section 73.3580 of the rules and see if you can understand it. The rule is a morass of rules, exceptions to those rules and exceptions to the exceptions.”); NSBA Reply at 4

inspection file, which contains information about pending broadcast license applications, serve as an adequate substitute for newspaper publication (or other forms of notice) in certain cases, and thereby permit elimination of Section 73.3580 in its entirety? If so, would it be necessary to require stations to broadcast announcements regarding the filing of applications and the location of the online public file?

16. Finally, we note that Part 73 of the Commission's rules contains other provisions that require public notice through newspaper publication, broadcast announcements, or a combination of the two.⁴⁷ Although no party in the media modernization proceeding has asserted that we should update these provisions, we seek comment on whether any revisions to these rules are justified. To the extent parties support revising Section 73.3580, we seek comment on whether we should make similar revisions to these other rules. We also seek comment on what, if any, other Commission rules would be affected by potential rule amendments discussed herein and what, if any, additional conforming edits to other rule sections would be necessary.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴⁸ the Commission has prepared an Initial Regulatory Flexibility Act Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix B.

B. Initial Paperwork Reduction Act Analysis

18. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Ex Parte Rules

19. Permit-But-Disclose. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments

(Continued from previous page) _____

("The needless complexity inherent in the rule, combined with the fact that it has existed in substantially the same form since the 1960s, make the local notice requirement a prime candidate for review and modernization"); NAB Comments at 20 ("Section 73.3580 is a complicated and confusing rule requiring different types of public notice to be given for different FCC applications filed by different types of broadcast licensees.").

⁴⁷ 47 CFR §§ 73.3594(a)-(c) (requiring public notice, through newspaper publication or broadcast announcements that meet specified requirements, of the designation for hearing of certain broadcast applications); 73.3525(b)(2) (requiring that a broadcast applicant who withdraws its application pursuant to an agreement with a competing applicant must give public notice of such withdrawal in a newspaper that meets specified requirements).

⁴⁸ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁴⁹ 47 CFR §§ 1.1200 *et seq.*

already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

20. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

21. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

22. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

E. Additional Information

23. For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau, at raelynn.remy@fcc.gov or (202) 418-2120.

V. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309, and 336, this Notice of Proposed Rulemaking **IS ADOPTED**.

25. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rule Changes

Note: For ease of review, the proposed rule changes are noted below with additions in bold text.

The Federal Communications Commission proposes to amend Part 73 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

2. Amend § 73.624 to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(g)(2)(i) Each December 1, all commercial and noncommercial DTV licensees and permittees ~~will electronically report whether they~~ **that** provided **feeable** ancillary or supplementary services **as defined in this section** in the 12-month period ending on the preceding September 30. ~~Licensees and permittees will electronically further report, for the applicable period:~~

(A) A brief description of the **feeable ancillary or supplementary** services provided;

~~(B) Which services were feeable ancillary or supplementary services;~~

~~(C) Whether any ancillary or supplementary services provided were not subject to a fee;~~

~~(B)(D)~~ Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

~~(C)(E)~~ The amount of bitstream used to provide **feeable** ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file **information required by this section** ~~regardless of revenues from ancillary or supplementary services or provision of such services~~ may result in appropriate sanctions.

(g)(2)(ii) ~~If a commercial or noncommercial~~ A DTV licensee or permittee **that** has provided feeable ancillary or supplementary services at any point during a 12-month period ending on September 30, ~~the licensee or permittee~~ must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12-month period and will remit the payment of the required fee.

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) concerning the possible significant economic impact on small entities by the rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rule Changes

2. The potential rule changes discussed in the NPRM stem from a Public Notice issued by the Commission in May 2017 launching an initiative to modernize the Commission's media regulations.⁴ Several commenters in the proceeding have argued that the Commission should amend Section 73.624(g) of its rules to require the filing of Form 2100, Schedule G, only by digital television (DTV) stations that have provided feeable ancillary or supplementary services during the relevant reporting period and thus must pay the five percent fee on gross revenues derived from those services.⁵ In addition, a number of commenters have urged the Commission to update Section 73.3580 of its rules by giving broadcast license applicants the flexibility to provide public notice of the filing of broadcast applications through the Internet.⁶

3. The NPRM proposes amendments to Section 73.624(g)(2) that would relieve DTV stations that have provided no feeable ancillary or supplementary services of the obligation to file Form 2100, Schedule G, annually.⁷ The NPRM also seeks comment on whether to amend or repeal Section 73.3580 of its rules to give broadcast applicants flexibility to provide public notice of the filing of a license application through the Internet.⁸ The rule revisions on which the NPRM seeks comment are

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, FCC 17-58 (MB May 18, 2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

⁵ Comments of America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service at 8-9; Comments of CBS Corporation, the Walt Disney Company, 21st Century Fox, Inc., and Univision Communications, Inc. at 12-13; Comments of the National Association of Broadcasters at 19; Reply Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association at 5, 9-10; Reply Comments of the Named State Broadcasters Associations at 8-10; Reply Comments of the San Bernardino Community College at 3-4.

⁶ *See supra* notes 36, 37.

⁷ Under the current rule, all DTV stations must file this form annually regardless of whether they have provided ancillary or supplementary services or received revenue from those services during the relevant reporting period. The failure to file the form could subject a DTV station to enforcement sanctions.

⁸ The public notice requirements in the current rule differ depending on the nature of the broadcast application or the kind of service for which authorization is sought. In some cases, broadcast applicants must provide written public notice in a local newspaper. In other cases, the rule requires applicants to broadcast messages that announce the filing of an application in addition to, or in lieu of, publication of notice in a local newspaper.

intended to reduce unnecessary regulation and regulatory burdens that can impede competition and innovation in the media marketplace.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j), 303(r), 309, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309, and 336.

C. Description and Estimates of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹² The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”¹³ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁴ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.¹⁵ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more.¹⁶ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ *Id.* § 601(6).

¹¹ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” *Id.* § 601(3).

¹² *Id.* § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹³ U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁴ *Id.*

¹⁵ 13 CFR § 121.201; 2012 NAICS Code 515120.

¹⁶ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

7. The Commission has estimated the number of licensed commercial television stations to be 1,384.¹⁷ Of this total, 1,264 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.¹⁸ The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹⁹ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

9. There are also 417 Class A stations.²⁰ Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations thus restricting their ability to generate similar levels of revenue, we will presume that these licensees qualify as small entities under the SBA definition. In addition, there are 1,968 LPTV stations and 3,776 TV translator stations. Given the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

10. *Radio Stations.* This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”²¹ The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.²² Census data for 2012 show that 2,849 firms in this category operated in that year.²³ Of this number, 2,806 firms had annual receipts of less than \$25 million, and 43 firms had annual receipts of \$25 million or more.²⁴ Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

¹⁷ *Broadcast Station Totals as of December 31, 2016*, FCC News Release (rel. Jan. 5, 2017), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

¹⁸ *Id.*

¹⁹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

²⁰ *Broadcast Station Totals as of June 30, 2017*, FCC News Release (rel. July 11, 2017).

²¹ U.S. Census Bureau, 2012 NAICS Definitions, “515112 Radio Stations,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues: “Programming may originate in their own studio, from an affiliated network, or from external sources.”

²² 13 CFR § 121.201; NAICS code 515112.

²³ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

²⁴ *Id.*

11. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,486 stations²⁵ and the number of commercial FM radio stations to be 6,755, for a total number of 11,241.²⁶ As of October 2014, 9,898 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,111.²⁷ NCE stations are non-profit, and therefore considered to be small entities.²⁸ Therefore, we estimate that the majority of radio broadcast stations are small entities.

12. *Low Power FM Stations.* The same SBA definition that applies to radio stations applies to low power FM stations. As noted, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.²⁹ While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 1,966.³⁰ In addition, as of June 30, 2017, there were a total of 7,453 FM translator and FM booster stations.³¹ Given the fact that low power FM stations may only be licensed to not-for-profit organizations or institutions that must be based in their community and are typically small, volunteer-run groups, we will presume that these licensees qualify as small entities under the SBA definition.

13. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³² must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the rule revisions discussed in the NPRM includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the NPRM and consider whether small entities are affected disproportionately by any such requirements.

15. *Reporting Requirements.* The NPRM does not propose to adopt reporting requirements.

²⁵ This number is derived from subtracting the total number of noncommercial educational stations (204) from the total number of licensed AM stations (4690). See <https://transition.fcc.gov/fcc-bin/amq?freq=530&fre2=1700&type=2&edu=1&list=1&ThisTab=Results+to+This+Page%2FTab&size=9;https://transition.fcc.gov/fcc-bin/amq?freq=530&fre2=1700&type=2&edu=0&list=1&country=US&ThisTab=Results+to+This+Page%2FTab&size=9> (visited on Aug. 30, 2017).

²⁶ *Broadcast Station Totals as of June 30, 2017*, FCC News Release (July 11, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf. (*2017 Broadcast Station Totals*)

²⁷ *Id.*

²⁸ 5 U.S.C. § 601(4), (6).

²⁹ 13 CFR § 121.201, NAICS Code 515112.

³⁰ *2017 Broadcast Station Totals*.

³¹ *Id.*

³² “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

16. *Recordkeeping Requirements.* The NPRM does not propose to adopt recordkeeping requirements.

17. *Other Compliance Requirements.* The NPRM does not propose to adopt other compliance requirements. The NPRM, however, seeks public input on commenters' proposals to modify Section 73.3580 to permit public notice of the filing of broadcast applications through the Internet. The NPRM also seeks comment on whether to repeal Section 73.3580 in its entirety, which could affect how broadcasters provide public notice of broadcast applications.

18. Because no commenter provided information specifically quantifying the costs and administrative burdens of complying with the existing Section 73.624(g) reporting requirements, we cannot precisely estimate the impact on small entities of eliminating those requirements for certain broadcast stations. The proposed revisions to Section 73.624(g) would relieve affected digital broadcast stations, including smaller stations, of the obligation to file certain information with the Commission on an annual basis. These revisions, if adopted, would require only those few stations that provide feeable ancillary or supplementary services to submit Form 2100, Schedule G, annually. We note similarly that no commenter has provided information specifically quantifying the costs and burdens of complying with the existing Section 73.3580 public notice requirements. Therefore, we cannot precisely estimate the impact on small entities of eliminating or changing those requirements. No party in the Media Modernization proceeding, including smaller entities, has opposed the proposals discussed in the NPRM. We thus find it reasonable to conclude that the benefits of adopting the proposals discussed therein would outweigh any costs.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³³

20. The NPRM proposes to amend Section 73.624(g) to require only those DTV stations that receive feeable revenues from their provision of ancillary or supplementary services to submit Form 2100, Schedule G, on an annual basis. The record reflects that only a small number of DTV stations actually offer ancillary or supplementary services. Accordingly, if adopted, this proposal would eliminate an annual reporting obligation and the expenditure of resources associated with filing the annual reports for a substantial number of broadcast stations, including small entities. Because the revisions to Section 73.624(g) proposed by commenters are unopposed, we anticipate that DTV stations, including affected small entities, would benefit from such revisions.

21. The NPRM also seeks input on whether to adopt commenters' proposals to modify Section 73.3580 to permit public notice of the filing of broadcast applications through online postings on the Internet, as an alternative to publishing such notice in a newspaper, or to repeal Section 73.3580 in its entirety. Commenters' proposals, if adopted, would give all broadcast license applicants, including small entities, more flexibility in how they meet their obligation to notify the public of pending or prospective license applications, while improving the public's access to information enabling it to participate in the licensing process. Commenters assert that permitting public notice through the Internet would be less costly and administratively burdensome than the existing requirement and thus the proposal would provide a less burdensome compliance option for all applicants, including small entities. Because the

³³ 5 U.S.C. § 603(c)(1)-(c)(4).

revisions to Section 73.3580 proposed by commenters are unopposed, we anticipate that affected broadcasters, including small entities, would benefit from them.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

22. None.

**STATEMENT OF
CHAIRMAN AJIT PAI**

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

The important task of modernizing our media regulations proceeds apace. Here, we agree to take a hard look at two broadcast rules to determine whether to modify or eliminate them, consistent with the public interest.

The first involves broadcasters' obligation to file annual reports regarding their provision of ancillary or supplementary services. This obligation makes sense for those broadcasters that actually provide such services, and thus have relevant fees to report. But for the countless broadcasters that don't, filing the functional equivalent of blank reports with the Commission every year makes little sense and is unnecessarily burdensome.

The second relates to our public notice requirements for broadcast applications. Beginning five decades ago and continuing until today, we've often required notice of these applications to be published in legacy media. But in 2017, Americans access and consume information in dramatically different ways (Google it if you don't believe me). We hope that the public will tell us whether we should update these requirements to match the modern age or, alternatively, whether we should repeal them.

Thank you to Michelle Carey, Martha Heller, Mary Beth Murphy, and Raelynn Remy from the Media Bureau, and Susan Aaron and David Konczal from the Office of General Counsel, for your efforts on this *Notice*.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART/CONCURRING IN PART**

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

Today we are faced with a simple question: Do we proceed down a path, to eliminate or relax a broadcaster's responsibility, to notify the public when it files various license applications? My answer is likewise a simple one: Doing so is a horrible idea, with no discernable benefit to consumers.

So, one might ask: Why am I taking such a strong stand, about making the public aware over multiple platforms, of information that some may view as trivial? For one thing, how can this Commission claim, that it is able to determine whether a station is operating in the "public interest, convenience and necessity," without key input from the viewing public? Permitting notification or quote, unquote, referring "the public to an Internet website that contains the text of such announcements", would signal to the American people that when it comes to a broadcaster's license application, it is simply "move along, nothing to see here" or it is okay to keep the digitally unconnected in the dark.

Quite honestly, the very notion that the public's first instinct is to check a station's website to find out if they have filed a license application is absurd. Even more ridiculous, is the suggestion that members of the public can "sign[] up to receive Commission-generated RSS feeds" to alert them of such a filing. These alternatives sound like Washington-geek-speak and is another example why government officials are repeatedly accused of being out of touch with mainstream America.

It seems sometimes this Commission forgets that these are the public airwaves and that comes with a series of obligations on broadcasters, including to serve and be responsive to the local needs and interests of their community. It is already disheartening, that the Commission does not have a more robust license renewal process in the first place, to ensure that a station is truly meeting its obligations to the community. Making it more difficult for viewers to know when their local station's license is up for renewal or is even changing hands to a new station owner, is a disservice to the viewing public.

We need greater transparency, not less, among those given the responsibility to utilize the public airwaves. While I initially approached this NPRM ready to dissent, I am grateful to Commissioner O'Rielly for hearing my concerns and working with my office to address the tone of the item and the need to ask whether there is a comparable means to notify the public, if not done through on-air announcements.

And although I continue to believe this NPRM is just another example of a deregulatory fishing expedition with less than transparent bait on the line, because of the tonal changes made, I will vote to approve in part and concur in part, so that a robust record can be built. My thanks to the Media Bureau staff for your work on this item.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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

When the Commission's modernization initiative launched in May, I had high expectations that it could generate quick results eliminating burdensome Commission requirements that no longer serve the public interest. This item does just that. I am also pleased to see that the two outdated regulations the Commission will address today are issues I originally raised when the modernization initiative first circulated: the elimination of FCC form submissions relating to ancillary or supplementary digital television income for parties that do not owe a fee, and updates to public notice requirements for certain broadcast applications.

First, the item addresses the requirement for nearly all television stations to file a form regarding a five percent DTV ancillary fee. As I have noted before, the report must be filed even if the answer is simply "no fee due." To put this in perspective, in 2016, of the more than 6,600 broadcasters who were required to file this form, the media bureau identified less than 15 stations that reported receiving revenue from their ancillary or supplemental service last year. I stated in May that this form can and should be eliminated for parties that do not owe a fee. I am pleased to see that this rulemaking tentatively concludes just that.

Second, the item examines the requirement for broadcasters to give public notice of certain applications in local newspapers. The item highlights that these requirements were adopted over half a century ago and that today there are many other ways the public can obtain this information, including in a broadcaster's public inspection file or through standard notices provided by the Commission. For these reasons, I support the full elimination of this reporting requirement. The item today also contemplates that if the public notice is maintained for some reason, whether to permit referral to an Internet website or to provide via on-air broadcasts. While I would prefer full elimination, if we do update the public notice requirement we should do so in a manner that is as flexible as possible. It took us over a half century to update this once, how much time will go by before we take another look?

Finally, the item raises other provisions in Part 73 of our rules with public notice requirements that also appear outdated. The Commission seeks comment on whether to revise these rules. I absolutely support such an endeavor.

I thank the Chairman for his leadership on this issue. I support this item and look forward to the additional reforms that will result from this larger modernization proceeding.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

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

On October 5, 1962, the Commission amended its public notice requirements for broadcasters. For the pop culture enthusiasts here today, that date is probably better known as the day the Beatles released their first single and the first James Bond movie, *Dr. No*, premiered. While those two are now classics, the FCC's broadcast public notice rules have not aged as well.

The days of requiring broadcasters to publish a notice in a local newspaper or make an on-air announcement about the applications they've filed with the Commission should be long gone. These types of requirements simply don't make sense in the digital age. So I am pleased that we're seeking comment on whether to allow broadcasters to post these notices online or whether to eliminate these rules entirely.

In today's Notice, we also propose to reduce reporting obligations for digital broadcasters. Congress directs us to assess fees on the revenues these broadcasters generate from providing certain ancillary or supplementary services. But instead of collecting information from the few stations that actually have such revenues—that's less than 15 stations at last count—the Commission currently requires *all* DTV stations to file an annual form. In other words, we've been forcing thousands of licensees to spend time and money each year to tell us that they didn't make any money from providing these services. We should eliminate these kinds of pointless paperwork burdens. I therefore support the proposal to require only those broadcasters with reportable revenues to file this form. I hope that we will move quickly to adopt this commonsense proposal.