

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

In the Matter of )
)
Amendment of Section 73.3580 of the ) MB Docket No. 17-264
Commission's Rules Regarding Public Notice of )
the Filing of 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 )

SECOND REPORT AND ORDER

Adopted: May 12, 2020

Released: May 13, 2020

By the Commission: Commissioner O'Rielly issuing a statement.

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I. INTRODUCTION

1. In this, the Second Report and Order in this proceeding (Second R&O),<sup>1</sup> we revise the broadcast local public notice rule, section 73.3580 of our rules,<sup>2</sup> along with other associated rules. These

<sup>1</sup> Media Bureau Docket No. 17-264 originally included a proposal to amend 47 CFR § 73.624(g), regarding submission of FCC Form 2100, Schedule G, used to report television stations' ancillary or supplementary services. Section 73.624(g) was amended in the Report and Order in this proceeding, with the Commission stating that the local public notice aspect of the proceeding would be addressed at a later date. Amendment of Section 73.624(g) of the Commission's Rules Regarding the Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services, Report and Order, 33 FCC Rcd 3702, 3702 n.1 (2018).

<sup>2</sup> 47 CFR § 73.3580.

rule amendments were proposed in the *Further Notice of Proposed Rulemaking* in this proceeding,<sup>3</sup> which expanded upon the initial *Notice of Proposed Rulemaking*.<sup>4</sup> Based upon comments received in response to both the *NPRM* and the *FNPRM*,<sup>5</sup> we adopt, in some cases with modifications, our proposals to update, clarify, and streamline section 73.3580 and the local public notice obligations contained in that and other related rule sections. Specifically, we adopt our proposal to eliminate the obligation to publish public notices in print newspapers, and to require instead that applicants provide public notice through online notices that link directly to the Commission-hosted online public inspection file or application databases, and/or through on-air announcements that direct viewers and listeners to those application resources. As stated in the *FNPRM*, we adopt these new rules in order to simplify broadcasters' local public notice obligations in a manner that reduces costs and burdens on applicants, while facilitating robust public participation in the broadcast licensing process. Additionally, through this *Second R&O* we continue our efforts to modernize our media regulations.<sup>6</sup>

## II. BACKGROUND

2. Section 311 of the Communications Act of 1934, as amended (the Act), provides that applicants for certain broadcast authorizations “shall give notice of such filing in the principal area which is served or is to be served by the station.”<sup>7</sup> The purpose of the statute, and of the implementing section 73.3580,<sup>8</sup> is to ensure that relevant communities are made aware of applications and are afforded the opportunity to participate in the broadcast licensing process.<sup>9</sup> We noted in the *FNPRM*, however, that

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<sup>3</sup> *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*, Further Notice of Proposed Rulemaking, 34 FCC Rcd 9251 (2019) (*FNPRM*).

<sup>4</sup> *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 Applications*, Notice of Proposed Rulemaking, 32 FCC Rcd 8203 (2017) (*NPRM*).

<sup>5</sup> We note that 15 years ago, the Commission opened a much more narrow proceeding in which it proposed only to modify the local public notice requirements that broadcast station buyers and sellers are required to provide to the public in connection with proposed assignments and transfers of control, and also sought comment on whether to eliminate the newspaper publication exemption for noncommercial educational (NCE) stations and stations that are the only operating station in their broadcast service in their community of license. *Revision of the Public Notice Requirements of Section 73.3580*, Notice of Proposed Rulemaking, 20 FCC Rcd 5420, 5421, para. 3 (2005) (*2005 Public Notice NPRM*). In the 2017 *NPRM*, the Commission tentatively concluded not to move forward with the proposals in the *2005 Public Notice NPRM* and sought comment on that tentative conclusion. *NPRM*, 32 FCC Rcd at 8210, para. 11. While some commenters objected to the streamlining proposals in the 2017 *NPRM*, no commenter argued for the Commission to move forward with the proposals in the *2005 Public Notice NPRM*. See, e.g., UCC Comments (dated Dec. 29, 2017); LNP Comments (dated Dec. 29, 2017). We therefore adopt our tentative conclusion and terminate the 2005 proceeding. We further note that the 2019 *FNPRM* mentioned the proposal in the *2005 Public Notice NPRM* to eliminate the NCE exception and asked whether NCE stations should continue to be exempt from the written notice requirement (i.e., the online notice requirement). *FNPRM*, 34 FCC Rcd at 9262, para. 22. No commenters to the 2019 *FNPRM* supported requiring NCE stations to post online notice requirements.

<sup>6</sup> See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (MB 2017) (*Modernization Initiative Public Notice*).

<sup>7</sup> 47 U.S.C. § 311(a). Section 311(a) provides, in pertinent part: “When there is filed with the Commission any application to which section 309(b)(1) applies, for an instrument of authorization for a station in the broadcasting service, the applicant . . . shall give notice of such filing in the principal area which is served or is to be served by the station . . . The Commission shall by rule prescribe the form and content of the notices to be given in compliance with this subsection, and the manner and frequency with which such notices shall be given.”

<sup>8</sup> 47 CFR § 73.3580.

<sup>9</sup> See generally 47 CFR § 73.3580(c) – (d). See also *2005 Public Notice NPRM*.

over the last 50-plus years section 73.3580 and its predecessors have become unnecessarily complicated and confusing. Under the current rule, notices break down broadly into giving on-air notice of application filings and/or publishing such notice in newspapers, yet the details of those requirements (number and timing of on-air announcements, frequency of publication, etc.) are different based on the type of application being filed and the type of applicant submitting the filing. The result, we concluded, is a rule that “has become increasingly complex, creating compliance difficulties.”<sup>10</sup>

3. Several parties, in response to the Commission’s Modernization of Media Regulation Initiative,<sup>11</sup> recommended that section 73.3580 be updated, in particular by simplifying the rule and eliminating the newspaper publication requirement in favor of Internet publication.<sup>12</sup> In October 2017, the Commission issued the *NPRM* to seek comment generally on whether to update or even eliminate section 73.3580.<sup>13</sup> Based on comments filed in response to the *NPRM*,<sup>14</sup> we proposed in the *FNPRM* to eliminate the requirement to publish written public notice in newspapers, replacing newspaper publication with online written notice. We also sought comment on whether to require use of mobile apps as a means of providing local public notice.<sup>15</sup> We further proposed to streamline both on-air and online written public notices.<sup>16</sup> Specifically, we proposed that broadcasters currently required to give public notice by on-air announcements should make simpler and less frequent announcements that emphasize referring viewers and listeners to the Commission-hosted Online Public Inspection File (OPIF),<sup>17</sup> and that the schedule of such announcements be made uniform for all applicants, broadcast services, and application types.<sup>18</sup>

4. As discussed below, commenters to the *FNPRM* generally agreed with our proposals, differing only as to some of the details, with some of the comments pointing to improvements that, we believe, will further increase access to application information needed for meaningful public participation in the process.<sup>19</sup>

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<sup>10</sup> *FNPRM*, 34 FCC Rcd at 9253, para. 3.

<sup>11</sup> *See supra* note 6.

<sup>12</sup> *FNPRM*, 34 FCC Rcd at 9254 n.18, 9256-57, para. 11.

<sup>13</sup> *NPRM*, *supra* note 4.

<sup>14</sup> Several broadcasters and other commenters to the original *NPRM* in this proceeding supported eliminating the newspaper notice requirement, either replacing it with online notice or with on-air announcements directing viewers and listeners to online information. These commenters are listed in the *FNPRM*, 34 FCC Rcd at 9254 n.18.

<sup>15</sup> *See FNPRM*, 34 FCC Rcd at 9255, para. 7.

<sup>16</sup> *Id.* At 9259-67, paras. 14-30.

<sup>17</sup> Although most broadcasters are required to maintain an OPIF, 47 CFR § § 73.3526, 73.3527, applicants for a new construction permit, and permittees and licensees of LPTV, TV translator, TV booster, LPFM, FM translator and FM booster stations are not. Broadcasters that are not required to maintain an OPIF should instead reference the Commission’s electronic application filing databases, such as the Media Bureau’s Licensing and Management System (LMS), in their online or on-air public notice. The Media Bureau is currently transitioning from use of its CDBS database to LMS. Although it currently appears that the transition to LMS may not be complete prior to adoption of any proposed rules in this proceeding, we find that either CDBS or LMS will be available as a substitute for OPIF where an applicant or licensee is not required to maintain an OPIF. To the extent that we reference LMS in this *Second R&O*, it should be read as including CDBS if that system is still being used for filing certain applications.

<sup>18</sup> *FNPRM*, 34 FCC Rcd at 9254-55, paras. 5-6.

<sup>19</sup> *See, e.g.*, Comments of American General Media, Beasley Media Group Licenses, LLC, Connecticut Public, Cumulus Media Inc., Entercom License, LLC, Galaxy Communications, LLC, Good Karma Broadcasting, LLC, Good Karma Milwaukee, LLC, Meruelo Media, LLC, Sarkes Tarzian, Inc., and WNET (AGM Parties Comments) at 3-6; Comments of National Ass’n of Broadcasters (NAB Comments) at 2-5, 10-12; Comments of America’s Public

(continued....)

### III. DISCUSSION

#### A. Proposed Elimination of Public Notice Requirements

5. As a threshold matter, we adopt our tentative conclusion that we are obliged under section 311(a)(1) of the Act to require broadcast station applicants to provide notice of application filing in the principal area which is served or is to be served by the station.<sup>20</sup> None of the commenters responding to the *FNPRM* challenged our statutory obligation to require local public notice for most application filings.

#### B. Substitution of Online Written Public Notice for Newspaper Publication

6. We also adopt our proposal to discontinue requiring broadcast station applicants to publish local public notice in newspapers, and to require instead that applicants required to give “written” (as opposed to on-air) notice do so by posting notices on a publicly accessible website for 30 days, beginning within five days of the acceptance of the application for filing.<sup>21</sup>

7. In the *FNPRM*, we stated that application notice by newspaper publication was costly to the applicant and potentially the consumer, was published only intermittently, and provided at best an abridged version of the application. On the other hand, online notice is less expensive, especially when provided on an applicant-owned or affiliated website, can be viewable for a continuous period of time, and can link to the full application.<sup>22</sup> Several commenters support the proposal to substitute online notice for newspaper publication.<sup>23</sup> Only two commenters to the *FNPRM* raised objections to online versus newspaper publication.<sup>24</sup> Common Frequency, Inc. (CF), while not rejecting outright the idea of online local public notice, points out that it is more efficient for the public to scan no more than five newspapers in a market than to have to search dozens of broadcast station websites in order to locate a given applicant’s public notice.<sup>25</sup> CF further states that broadcast station websites generally receive far fewer

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Television Stations, the Public Broadcasting Service, National Public Radio, Inc., and the Corporation for Public Broadcasting (APTS Comments) at 1-2 (all generally supporting online over newspaper notice and shorter on-air announcements); Comments of The Office of Communication of the United Church of Christ, Inc., the Benton Institute, Common Cause, Free Press, and the Open Technology Institute at New America (UCC Parties Comments) at 2-3 (generally supporting online notice and streamlined on-air announcements, but suggesting additional notice requirements to provide meaningful notice to viewers and listeners).

<sup>20</sup> *FNPRM*, 34 FCC Rcd at 9256, para. 8.

<sup>21</sup> As discussed *infra*, our implementation of online public notice is subject to some modifications of the initial proposal, based on comments received. *See infra* paras. 17-21.

<sup>22</sup> *FNPRM*, 34 FCC Rcd at 9254, para. 5. *See, e.g.*, AGM Parties Comments at 3-4 (newspaper publication can be costly, with disproportionate impact on smaller broadcasters; increased costs do not yield increased information to viewers/listeners); NAB Comments at 2-5 (eliminating newspaper publication requirement reduces costs to broadcasters and, given decrease in number of newspapers and readership levels, results in better notice).

<sup>23</sup> *See, e.g.*, NAB Comments at 5; UCC Parties Comments at 2-3, 6; Comments of Robert Lee – QXZ MediaWorks LLC (Lee Comments) at 1.

<sup>24</sup> Comments of Jake Seaton/enotice, Inc. (Seaton Comments); Reply Comments of Common Frequency, Inc. (CF Reply). Additionally, two commenters to the *NPRM* opposed the proposed change from newspaper publication to online notice. *See* Comments of Public Notice Resource Center and State Newspaper Ass’ns at 1-6; Comments of LNP Media Group at 2-5. As noted in the *FNPRM*, these commenters “have an economic interest in maintaining the requirement that broadcasters purchase ads in newspapers to provide public notice.” *FNPRM*, 34 FCC Rcd at 9254 n.18. Neither of these commenters renewed their opposition in response to the *FNPRM*. In any event, we note our analysis below and in the *FNPRM* adequately addresses their concerns. *See infra* paras 8-10; *FNPRM* 34 FCC Rcd at 9256-59, paras.11-13.

<sup>25</sup> CF Reply at 2-3.

page views than local newspaper sites,<sup>26</sup> additionally noting that consumers often interact with broadcast stations through apps on a mobile phone rather than through websites.<sup>27</sup>

8. We reject the idea that it is necessarily less efficient for the public to discover a broadcast notice on websites than in newspapers merely because there are more websites than newspapers in a given local area. CF does not consider that members of the public can search for web content either by using commonly available search engines or by employing “bots” that can crawl the web for specific content.<sup>28</sup> Moreover, these search engines do not charge consumers. In contrast, requiring members of the public to scan multiple newspapers—in the few cities that are still served by multiple newspapers—is costly, as consumers would have to purchase multiple newspapers daily. Additionally, CF’s critique rests on the assumption that most consumers are generally interested in commenting on all broadcast applications, rather than seeking out applications filed by specific stations of interest to them.<sup>29</sup> Given these factors – ease of Internet search and specificity to stations of interest – we find that the cost savings and increased information yielded by online notice with links to the application outweigh the minimal benefit of publishing occasional notices in one local newspaper.

9. Jake Seaton, the founder and CEO of enotice, Inc., argues for the direct involvement of local journalistic institutions. First, Seaton claims that “affirmative notification of a concerned public” is necessary, rather than what he terms the “passive availability” of the notice to viewers of a website who, he argues, might not be inclined to comment on an application.<sup>30</sup> Second, Seaton believes there is an “innate benefit” in using journalistic channels to provide public notice, noting that according to one study newspapers account for nearly half of the original news reporting in a community.<sup>31</sup> While we may agree with Seaton regarding the contributions of certain local newspapers to community journalism,<sup>32</sup> we do not believe this observation establishes that newspapers are the best way to inform consumers about broadcast

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<sup>26</sup> *Id.* at 3. CF also objects to online notice because there would be no “historical record” of posting the notice after the 30-day period ends. CF Reply at 3-4. In the unlikely event that a petitioner or objector challenges the provision of online notice of a contested application, a station can provide a certification from the staff member(s) responsible for posting the notice that the task had been completed or can provide other relevant information, such as a screen shot. To guard against such eventualities, applicants should consider maintaining appropriate records of online notices.

<sup>27</sup> *Id.* at 5-7 (citing to, *inter alia*, articles and posts from *Wired* and *Forbes* magazines; *see, e.g.*, Ron Palmeri, *Why We Don’t Surf The Web Anymore And Why That Matters* (Feb. 22, 2016) <https://www.forbes.com/sites/valleyvoices/2016/02/22/why-we-dont-surf-the-web-anymore-%C2%ADand-why-that-matters/#53c2b10d7ac2>).

<sup>28</sup> For example, a 2012 study by the Pew Research Center found that 91 percent of adult Internet users used search engines to find information on the World Wide Web. Search Engine User 2012, Pew Research Center, found at <https://www.pewresearch.org/internet/2012/03/09/main-findings-11/>.

<sup>29</sup> In other words, a viewer specifically interested in station WAAA would find it easier to check WAAA’s website periodically for applications filed, rather than review all local newspaper classified ads daily, where the public notices of all station applications would be published.

<sup>30</sup> Seaton Comments at 1-2. Seaton describes enotice as “a technology company that is working on modernizing public notice.” *Id.* at 1.

<sup>31</sup> *Id.* at 2.

<sup>32</sup> Seaton Comments at 2 (citing to <https://www.niemanlab.org/2019/09/local-newspapers-are-suffering-but-theyre-still-by-far-the-most-significant-journalism-producers-in-their-communities/>).

notices.<sup>33</sup> We note that it is equally likely that the journalistic content of a newspaper or its associated website is entirely separate from the public notice or classified advertising services provided by that newspaper.<sup>34</sup> The mere fact that many more people might visit a newspaper's website does not, in and of itself, demonstrate that all are searching for public notices or similar content, as opposed to news, opinions, or sports. Moreover, Seaton does not consider that interested journalists themselves can find public notice of application filings online and can report on these in a publication's news sections.

10. Any potential deficiencies noted by Seaton and CF are, in our view, offset by the benefits of online notice to both broadcasters and the public. As discussed above, Seaton and CF advocate for the newspaper as a sort of one-stop shopping destination for application information. Additionally, REC posits that members of the public are required actively to seek out online notice, whereas they might "stumble upon" such notices in the newspaper, suggesting that online notice is inferior to newspaper publication.<sup>35</sup> As we have noted, the benefits of online notice include substantial cost savings to broadcasters,<sup>36</sup> as well as the aforementioned ability of consumers to use web search tools to locate public notices online and the ability of online notices to link directly to applications.<sup>37</sup> We thus adopt our proposal to replace newspaper publishing of local public notice with online notice.<sup>38</sup> The details of the proposal as adopted, which include several commenter-suggested modifications, are discussed below.

### C. Online Notice Requirements

11. Based upon comments received, we adopt modifications to our online notice proposals. While we find support for our *FNPRM* proposals regarding the type of websites to be used, we modify the

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<sup>33</sup> In this regard, we note that even before the global pandemic associated with the novel coronavirus (COVID-19), there were reports predicting the demise of local newspapers. *See* [https://www.washingtonpost.com/lifestyle/style/the-death-knell-for-local-newspapers-its-perilously-close/2019/11/21/e82bafbc-ff12-11e9-9518-1e76abc088b6\\_story.html](https://www.washingtonpost.com/lifestyle/style/the-death-knell-for-local-newspapers-its-perilously-close/2019/11/21/e82bafbc-ff12-11e9-9518-1e76abc088b6_story.html). Such reports have only increased given declining ad revenues and massive layoffs resulting from increased financial struggles due to the coronavirus. *See* <https://www.nytimes.com/aponline/2020/04/03/business/bc-us-virus-outbreak-local-news-struggles.html>; [https://www.huffpost.com/entry/journalism-layoffs-coronavirus\\_n\\_5e73bc6cc5b63c3b648cb74b](https://www.huffpost.com/entry/journalism-layoffs-coronavirus_n_5e73bc6cc5b63c3b648cb74b).

<sup>34</sup> *See also* Reply Comments of National Ass'n of Broadcasters (NAB Reply) at 5-6.

<sup>35</sup> REC Comments at 14.

<sup>36</sup> *See, e.g.*, AGM Parties Comments at 3-4; Comments of REC Networks (REC Comments) at 4. *See also FNPRM*, 34 FCC Rcd at 9257, n. 36 (noting a per-application cost to the applicant of from \$113.25 to \$453.00 to complete newspaper publication). Although APTS asserts that the cost of allocating staff to create, update, and remove hyperlinks on a website carries costs and burdens, especially for smaller NCE stations (APTS Comments at 3), they do not quantify these costs. We anticipate that the majority of online notices will be posted on applicant-affiliated websites, which are typically maintained by in-house staff and do not involve materials such as paper or ink. Therefore, the cost of online notice should be minimal.

<sup>37</sup> *See also* Lee Comments at 1, in which the commenter contends that most newspapers now are essentially hybrid print-online publications.

<sup>38</sup> The Broadcast Maximization Committee, Guest Technology, Anderson Associates, and Horizon Broadcast Solutions, LLC, while supporting the move from newspaper publication to online notice, request further that we accelerate the publishing of radio community of license change applications in the *Federal Register*, as required by *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, MB Docket No. 05-210, 21 FCC Rcd 14212, 14220, para. 20 (2006) (*Community of License R&O*), and to shorten the post-publication comment period from 60 to 30 days. The statutorily based section 73.3580 local public notice requirement and the *Federal Register* notice adopted by the Commission in the *Community of License R&O* are separate requirements, and we find that the *Federal Register* component is beyond the scope of the current proceeding. However, we update 47 CFR §§ 73.3571(j)(3) and 73.3573(g)(3), which cross-references 47 CFR § 73.3580(c)(3), (d)(3), (e), and (f), concerning public notice to be provided by a radio station seeking to change its community of license. We update the rules' cross-references to reflect the revised notice rule, 47 CFR § 73.3580(c)(5), adopted in this Order. *See* Appendix A.

manner in which such notices should be posted on a broadcaster's own site. Instead of posting the entire notice text on its home page, we are persuaded that a broadcaster should be required to include a conspicuous "FCC Applications" link or tab on the home page that will link to a separate page containing the full notice text.<sup>39</sup> Next, we modify the proposed text of online notices to mirror on-air announcements and to indicate where members of the public may obtain information regarding filing comments on applications.<sup>40</sup> We also, based on commenter input, commit to provide links in OPIF and the LMS landing page to a separate page detailing how a member of the public can comment on an application. We adopt our proposal that online notice be posted continuously for 30 days immediately following acceptance of the application for filing and clarify that the 30-day period can begin as soon as the application is accepted, but not later than five days following acceptance for filing. With regard to noncommercial educational (NCE) stations, we retain the current practice of exempting them from providing written public notice, except in cases where the NCE station has not commenced program operations or is off the air.<sup>41</sup> Likewise, we find that silent stations must provide online notice in lieu of on-air announcements. Finally, we adopt our proposal to require applicants for authorization under section 325(c) of the Act to provide notice by online posting, using the same sites as specified for other broadcast stations.

12. *Websites for posting online notice.* We adopt our proposal to require online public notice to be published, in order of availability, on (1) the website of the applicant station; (2) the website of the applicant station's licensee; (3) the website of the applicant station's parent entity or, if there is no applicant-affiliated website (4) on a locally targeted, publicly accessible website, defined as an Internet website (a) that members of the public can access without payment, registration, or any other requirement that the user provide information or respond to a survey or questionnaire in exchange for being able to access the online notice, and (b) that is locally targeted to the area served and/or to be served by the applicant station (e.g., local government website, local community bulletin board website, local newspaper website, state broadcasters' association website). In response to comments, however, we supplement and modify our proposal. At the suggestion of broadcast commenters, we will require that "posting" on the applicant station website be accomplished by inserting a tab or link on the home page conspicuously labeled "FCC Applications," that will link to a separate page containing the text of the notice(s).<sup>42</sup>

13. As noted above, most commenters agreed with the proposal to replace newspaper publication with online local public notice. In the *FNPRM*, we proposed that in instances where an applicant station has a website, the notice should be conspicuously posted on that website's home page.<sup>43</sup> There was, however, marked disagreement regarding where exactly the online public notice should appear in order to be most useful. NAB, AGM Parties, and America's Public Television Stations, along with their joint commenters (APTS), assert that the full notice would be lost on a "content-rich" web

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<sup>39</sup> See *infra* paras. 12-16.

<sup>40</sup> *FNPRM*, 34 FCC Rcd at 9266, para. 29.

<sup>41</sup> See *infra* para. 23.

<sup>42</sup> NAB, while stating it still supports its proposal for a link or tab, has further stated it would not object to providing stations with the option of placing the public notice text on their home page, citing some broadcasters' concerns about the difficulty of incorporating a tab or link into their website schemes. Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, Legal and Regulatory Affairs, National Ass'n of Broadcasters, to Marlene H. Dortch, Esq., Secretary, FCC, MB Docket Nos. 17-264 et al., at 2 (filed Feb. 10, 2020) (NAB February Ex Parte). We acknowledge this concern but believe that the benefit of providing uniformity to consumers outweighs the burdens of requiring a tab or link. While a tab might be difficult for some stations to incorporate into their website design, a simple hyperlink to the notice page should not disrupt a station's website, and any station no matter what size should be able to add a link at minimal cost.

<sup>43</sup> *FNPRM* at 9260-61, para. 18.

page, and that viewers of station websites are used to “short snippets” of information rather than longer, narrative notices as proposed in the *FNPRM*.<sup>44</sup> AGM Parties and NAB also believe that the link to the online notice should be allowed anywhere on the station’s main page, including the bottom where links to contest rules currently are displayed.<sup>45</sup> On the other hand, the Office of Communication of the United Church of Christ, and its joint commenters (UCC Parties), believe that posting at the bottom of the page would not be “conspicuous.”<sup>46</sup> CF similarly disagrees with the broadcasters’ proposal to provide only a link on the main page, believing this to be an attempt to bury the online announcement.<sup>47</sup>

14. Upon consideration of the comments we agree that having a separate web page for the written notice would avoid consuming too much space on the home page in the event that there were multiple applications pending.<sup>48</sup> In recognition of comments that point out that the design of websites can vary widely among broadcasters, we do not dictate the exact placement of the link or the tab on the home page of the website. Several comments point out that what may be optimal placement of a link or tab on one station’s website may be inappropriate on another’s.<sup>49</sup> We thus disagree with the UCC Parties and CF that “conspicuous” display of such a link or tab on a station’s home page requires that it must be placed at the top of the station’s home page. Other Commission rules mandating links on broadcaster websites do not impose such specific placement, but instead only require that the link be on the home page.<sup>50</sup> Therefore, we will require, as with the contest rules, that the link or tab must be conspicuously displayed on the station’s home page, and further define “conspicuous,” as we have in other contexts, as meaning that the link or tab must be displayed in such size, color, contrast, and/or location on the home page that it is readily readable, understandable, and locatable by visitors to that page,<sup>51</sup> and thus may be quickly found

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<sup>44</sup> NAB Comments at 6-10; AGM Parties Comments at 4-5; APTS Comments at 3 n.8.

<sup>45</sup> NAB Reply at 4; AGM Parties Reply at 3.

<sup>46</sup> UCC Parties Comments at 6.

<sup>47</sup> CF Reply at 9-10.

<sup>48</sup> AGM Parties, in their comments, request that separate public notice not be required for an FM translator station renewal application filed on the same form as a full-service station’s renewal application. AGM Parties Comments at 7. *See also* APTS Comments at 4. We reject the premise of AGM Parties’ request. First, the full-service station’s public notice will be limited to the full-service station’s making on-air announcements regarding its renewal application, while the translator will give online notice only. Second, because in such situations the full-power station licensee will also be the translator’s licensee, it is highly unlikely that the translator will have its own separate website, thus the co-owned translator’s online notice can be placed on the full-power primary station’s web page, accessed through the “FCC Applications” link on the primary station’s home page. In the event that a co-owned translator station has its own unique website, we do not think that requiring a separate public notice on that website is unduly burdensome.

<sup>49</sup> *See* Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, Legal and Regulatory Affairs, National Ass’n of Broadcasters, to Marlene H. Dortch, Esq., Secretary, FCC, MB Docket Nos. 17-264 et al., at 1-2 (filed May 1, 2020) (NAB May Ex Parte); Letter from Sally A. Buckman, Esq., Counsel to AGM Parties, to Marlene H. Dortch, Esq., Secretary, FCC, MB Docket Nos. 17-264 et al., at 1-2 (filed May 1, 2020); Letter from Michelle Bradley, Founder, REC Networks, to Marlene H. Dortch, Esq., Secretary, FCC, MB Docket Nos. 17-264 et al., at 2-4 (filed May 4, 2020) (REC Second Ex Parte); Letter from Joe DiScipio, Senior Vice President, Fox Television Stations, LLC; Susan Fox, Vice President, The Walt Disney Company; Keith Murphy, Senior Vice President, ViacomCBS; Margaret Tobey, Senior Vice President, NBCUniversal; and Chris Wood, Senior Vice President, Univision, to Marlene H. Dortch, Esq., Secretary, FCC, MB Docket Nos. 17-264 et al., at 1 (filed May 5, 2020) (Network Ex Parte).

<sup>50</sup> *See, e.g.*, 47 CFR § 73.3526(b)(ii) (link to a commercial station’s OPIF must be on station’s website home page); 47 CFR § 73.1216(c)(1) (link to contest rules on station’s website home page must be “conspicuous”).

<sup>51</sup> *Cf. Technology Transitions*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9401, para. 48 (2015) (mandatory statement in notice to retail customers of copper retirement defined as being “clear and conspicuous” if “disclosed in such size, color, contrast, and/or location that it

(continued....)



among other web content.<sup>52</sup> Thus, online public notice on an applicant-affiliated website shall require a tab or link, conspicuously and appropriately labeled, on the website home page, which links to a permanent, dedicated page containing only required online local public notice(s). 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. The page must indicate when it was last updated.<sup>53</sup>

15. Next, REC takes issue with our proposal to require publication, absent an applicant-affiliated site, on a locally targeted, publicly accessible site. It argues that such sites either do not exist or would be hostile toward broadcasters, especially smaller stations, low-power FM (LPFM), and NCE stations. For example, REC posits that a “community bulletin board” website might be run by a local chamber of commerce, which might not make space available to a non-member entity. Likewise, REC believes that a state broadcasters’ association might be similarly closed to a non-member station. It proposes instead that we allow publication on a dedicated website that lists only public notices posted by broadcast stations across the country, and that is searchable by community and state, even volunteering to host such a site and provide access at nominal cost.<sup>54</sup> We reject REC’s suggestion of a dedicated notice-only website, primarily because there is no guarantee that REC or another third party maintaining such a site would be able to support the site in perpetuity, nor does the Commission have the authority to require REC or any other entity to maintain such a site at its own cost. Moreover, we find that REC provides no evidence to support its concerns about access to local non-applicant affiliated websites. Thus, its concerns in this regard are merely speculative. In any event, we note that, as a practical matter, NCE and LPFM stations for the most part are not required to post online notice, as discussed below.<sup>55</sup>

16. CF, as discussed above, notes that use of the World Wide Web is on the decline, especially among users of mobile devices. Those users, it contends, are more apt to use a station’s application (app) on a mobile device than they are to view the station’s web page. CF suggests that rather

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is readily noticeable, readable, and understandable.”). *See also Review of the Emergency Alert System*, Sixth Report and Order, 30 FCC Rcd 6250, 6539, para. 39 (2015) (requiring that visual EAS messages must be “displayed in a size, color, contrast, location, and speed that is readily readable and understandable.”).

<sup>52</sup> As the Commission stated when adopting an online posting requirement for station contest rules, “the burden is on the broadcaster to inform the public, not on the public to discern the message.” *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, 30 FCC Rcd 10468, 10474, para. 12 (2015).

<sup>53</sup> Certain commenters oppose this requirement, finding it to be unduly burdensome, creating an unnecessary compliance risk, and serving no apparent purpose. *See* NAB May Ex Parte at 2; Network Ex Parte at 1; REC Second Ex Parte at 4. We disagree. We believe that requiring broadcasters to maintain a link in a consistent location on the station’s home page will help the public readily find that link when needed. By contrast, we are concerned that having an “FCC Applications” link that appears and disappears depending upon whether there is currently an application pending could confuse consumers, who would be less likely to know where to look for such a link when an application is pending. We also believe that requiring that the link be permanently maintained will facilitate compliance with the public notice rule rather than making compliance more difficult and costly, as broadcasters will not have to periodically add and remove the link. We further believe that noting when the page was last updated will help the applicant to defend against any petitions challenging whether a notice was posted. Finally, no commenter has persuasively explained how maintaining this permanent link even when no application is pending could create a compliance risk. Indeed, as stated above, we believe that maintaining a permanent link will facilitate compliance with the rule.

<sup>54</sup> REC Comments at 6-10. CF supports a similar public notice-only site but believes it should be hosted by the Commission. CF Reply at 7.

<sup>55</sup> *See infra* para. 23. We also note that to the extent a station lacking an affiliated website is able to document its inability to publish its information on a locally targeted, publicly available website, it may submit a waiver request under section 1.3 of our Rules to use an alternative means of providing local public notice.

than require online notice on a station's web page, we require it to post notice "via the station's internet outlet of greatest traffic, whether website, app, social media page, etc.," thus following the newest technologies as they become current and discouraging stations from posting notice in a little-viewed area of the Internet.<sup>56</sup> We acknowledge that some mobile users rely on apps, but we note that consumers using their mobile devices for Internet access will use devices that have web browsers that will allow them to access broadcaster information. Moreover, we note that not all stations currently have apps, and those that do can vary widely in terms of their design, layout, and capabilities.<sup>57</sup> Thus, we will retain the World Wide Web as the locus of online public notice. We believe that adopting CF's proposed "internet outlet of greatest traffic" would lead to issues regarding how best to measure Internet traffic and uncertainty about where the notice can be found. In our view, the World Wide Web will be available for the foreseeable future, and will be universally accessible.

17. *Online notice texts.* We adopt our proposed online notice texts, with slight modification to bring the online text more in line with the proposed on-air announcement, which contains a reference directed to consumers wishing to obtain information regarding filing comments or petitions on the application.<sup>58</sup> In that regard, we also plan to provide links on the OPIF and LMS landing pages to information concerning how members of the public can comment on pending applications.

18. In the *FNPRM*, we proposed a script for the online notice that was shorter than existing newspaper publications requirements, and a direct link requirement to the application at issue.<sup>59</sup> In general, commenters support the online notice texts proposed in the *FNPRM*.<sup>60</sup> The UCC Parties propose that the text be augmented in several respects, to include the following: (1) both the technical name of the application and a one-to-two sentence, jargon-free brief description of the application's purpose, to make notice more meaningful; (2) specific language indicating whether the applicant is seeking a waiver of the Commission's rules, and the type of waiver sought; and (3) statements that broadcast stations must operate in the public interest and the public has the right to comment or file petitions to deny.<sup>61</sup> REC agrees with the suggested waiver language, but believes it should be limited to requests for waiver of the multiple- and cross-ownership rules, rather than of technical rules.<sup>62</sup>

19. We agree with some, but not all, of the UCC Parties' suggestions regarding additional online notice text. For example, in the *FNPRM* we provided examples of the "type of application" to be

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<sup>56</sup> CF Reply at 6-7. Although we recognize that broadcasters commonly use social media platforms such as Facebook and Twitter, given the rapidly changing usage patterns of social media outlets we feel it is more appropriate to limit broadcasters' notice obligations to the Web, which has demonstrated longevity.

<sup>57</sup> See REC Second Ex Parte at 2-4 (noting that many smaller broadcasters with limited budgets rely on programs that create apps based on templates with limited ability to customize). See also Letter from Dan Dukes, Senior Director, Government Affairs, iHeartMedia, to Marlene H. Dortch, Esq., Secretary, FCC, MB Docket Nos. 17-264 et al., at 1-2 (filed May 4, 2020) (noting that iHeartMedia stations do not have individual apps, but are all grouped under a single iHeartRadio app, which also streams 1,400 stations not owned by iHeartMedia); Network Ex Parte at 1-2.

<sup>58</sup> See new 47 CFR § 73.3580(b)(1), Appendix A.

<sup>59</sup> *FNPRM*, 34 FCC Rcd at 9261, para. 20.

<sup>60</sup> See, e.g., NAB Comments at 5-6; REC Comments at 10.

<sup>61</sup> UCC Parties Comments at 3-5.

<sup>62</sup> REC Comments at 11. REC also points to an anomaly in LMS that did not exist in CDBS, namely, that links to applications in LMS are not necessarily static but can change, making direct linking from an online notice inaccurate. Id. at 4-6. The staff has ascertained that, with regard to application links in LMS, the link remains the same unless the applicant files a minor amendment to the application, which then generates a new link (a major amendment requires its own, separate public notice – see new 47 CFR § 73.3580(c) in Appendix A). It is incumbent on an applicant, which would be aware that it has filed a minor amendment to an application, to keep its required online notice up-to-date, and thus to correct any link to the pending application in its posted online notice.

used in on-air announcements,<sup>63</sup> and we clarify here that the same definition applies to “type of application” in online notices. Although UCC believes that these are not clear enough,<sup>64</sup> we disagree. Even absent knowledge of Commission terminology, viewers and listeners should be able to understand the purpose of the application in context.<sup>65</sup> Moreover, the examples we gave in the *FNPRM* were designed to match the application description to the application title in Commission databases and assist the user in locating the application. We further note that this terminology has been used for years and that changing such longstanding language carries the potential for confusion. Finally, we are concerned that replacing our examples with an inherently subjective “jargon-free” description could lead to dubious challenges based upon semantics. We therefore believe that the short application types set forth in the *FNPRM* represent a sufficient description of the application’s function for purposes of an online notice. With respect to the public interest statement, we agree with NAB and the AGM Parties that such a statement would needlessly lengthen the online notice without providing any commensurate benefit.<sup>66</sup> At the same time, however, we are persuaded by the UCC Parties that it would be useful to include language in the online notice text regarding how the public can file comments and petitions concerning the application, as we have in the on-air announcement text. We do not agree that the online public notice should include language announcing that a rule waiver has been sought. We note that one of the benefits of moving the notice online is that we can require a direct link to the application. Thus, interested members of the public can readily ascertain whether a waiver has been filed. Specifically, LMS applications include a box to be checked when a waiver is sought, which any member of the public can view themselves. Moreover, the Commission-generated public notice will reflect certain waiver information. Specifically, as discussed below,<sup>67</sup> the public notices generated by LMS for assignment and transfer applications include an indication whether a waiver is sought.<sup>68</sup> Given this, we do not believe it is necessary in the online local public notice and could complicate the notice.

20. UCC Parties also suggest that the online notice link to a dedicated page on the Commission’s website containing instructions on filing comments or petitions.<sup>69</sup> We agree that this suggestion would be useful to those not experienced in filing comments, and we plan to provide advisory language, both in the OPIF header and the LMS search page, regarding filing comments and petitions on pending applications.

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<sup>63</sup> *FNPRM*, 34 FCC Rcd at 9266 n.94. See *infra* note 71.

<sup>64</sup> UCC Parties Comments at 3.

<sup>65</sup> For example, if a station announces that it has filed an application “to assign its broadcast license to X Broadcasting Corporation,” the common meaning of “assign” is to allocate or give, and thus the average viewer or listener should understand that the station’s license is moving to another entity.

<sup>66</sup> See NAB Reply at 2-3; AGM Parties Reply at 2-3 (opining that such statements are unnecessary and likely to cause listeners and viewers to “tune out” and ignore the announcements). We concur with these commenters that the proposed online notice text directs viewers and listeners to the Commission’s online resources, which will include information relating to broadcasters’ public interest obligations.

<sup>67</sup> See *infra* para. 39.

<sup>68</sup> See REC Reply at 3 (contending that announced waivers should be limited to “administrative” waivers such as ownership caps, rather than technical rule waivers).

<sup>69</sup> *Id.* at 6.

21. We therefore adopt the following texts for online local public notices. For authorized stations (with a granted construction permit or license):<sup>70</sup>

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].<sup>71</sup> 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 IN 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 INTERNATIONAL BUREAU'S MYIBFS DATABASE].<sup>72</sup>

For proposed stations that have not been authorized, we propose the following text:

On [DATE], [APPLICANT NAME], [APPLICANT FOR] [A NEW (STATION TYPE)<sup>73</sup> 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 INTERNATIONAL BUREAU'S MYIBFS DATABASE].

22. *Duration of posting for online notice.* We adopt our proposal to require 30-day continuous posting of online local public notice. No commenter opposed this, but some commenters disagree on when the posting should begin. APTS requests that the 30-day period begin five business days rather than five calendar days after application acceptance, so that the notice period does not commence on a weekend.<sup>74</sup> Additionally, APTS states that the 30-day period should commence with the date of application filing rather than public notice of application acceptance.<sup>75</sup> APTS states that this would reduce the burden on broadcasters of having to monitor Commission public notices. AGM Parties, on the other hand, support our proposal to commence online notice after the application is accepted for filing.<sup>76</sup> The Media Bureau releases public notices of application acceptance in order to keep applicants

<sup>70</sup> To correct an oversight from the *FNPRM*, we add to the text a notation that, if the online notice is for an international broadcast station, the link should be to the application location in the International Bureau's MyIBFS database.

<sup>71</sup> "Type of Application" should be a brief but complete statement of the purpose of the application, for example: "for renewal of its broadcast license"; "to assign its broadcast license to X Broadcasting Corporation"; "to change its community of license from Florin to Guilder, Michigan." See *FNPRM*, 34 FCC Rcd at 9266 n.94.

<sup>72</sup> See *infra* para. 44, in which we adopt our proposal to require international broadcast stations regulated under Subpart F of Part 73 of our rules to provide local public notice by online notice only.

<sup>73</sup> For example, "television," "radio," "low power television," "low-power FM," "Class A television," "FM translator."

<sup>74</sup> APTS Comments at 5 n.10.

<sup>75</sup> APTS Comments at 4-5. See also NAB Reply at 7, concurring with APTS.

<sup>76</sup> AGM Parties Comments at 7.

informed of the progress of their applications, as well as of the commencement of time periods for filing petitions to deny. Neither APTS nor NAB quantifies the “burden” of monitoring public notices, and it is our understanding that applicants, their counsel, and/or their consulting engineers routinely monitor these public notices, sometimes using tools to electronically track a particular application. Because the time period for filing petitions to deny—and therefore, public participation in the application process—commences on the date of acceptance, and because the time period between application filing and acceptance may in some instances be substantially delayed, we believe that tying posting to acceptance outweighs the minimal burden of tracking applications.<sup>77</sup> We further adopt a requirement of five business days so that posting will take place within a reasonable amount of time after public notice of acceptance, but will not require posting to commence on a weekend or holiday. We find that this requirement will afford sufficient time for composition and coding of the required online notice, or in some cases time to locate a suitable third-party website. We therefore adopt our proposal to commence the 30-day online notice period no earlier than the date of acceptance of the application for filing, and not later than five business days thereafter.<sup>78</sup>

23. *NCE online requirements.* We uphold our existing practice of allowing NCE stations to fulfill their local notice requirements solely through on-air announcements, where possible. No commenters to the *FNPRM* supported requiring operating NCE stations to post online notice of pending applications, with APTS and REC opposing this idea.<sup>79</sup> Given that operating NCE stations are currently exempt from publishing local public notice in newspapers, and that due to the nonprofit nature of such stations we exempt them from other requirements such as the payment of application filing fees,<sup>80</sup> we see no reason to impose even the minimal costs of the online notice requirement on such stations. Accordingly, we exempt NCE stations from the requirement to post online notice of applications, unless they are not broadcasting during the part of the year when on-air announcements are required, as discussed in the following paragraph. We further adopt our proposal that applicants for initial construction permits for new NCE broadcast stations comply only with the online notice requirements, as they are unable to broadcast on-air announcements.<sup>81</sup> Finally, we adopt our proposal to eliminate the provision in paragraph (e) of current section 73.3580 exempting “the only operating station in its broadcast service which is located in the community involved” from having to provide written notice.<sup>82</sup> As we stated in the *FNPRM*, the proliferation of outlets in today’s media landscape no longer guarantees that a notice will be viewed or heard merely because it airs over the only station licensed at a given community.<sup>83</sup>

24. *Silent stations.* We adopt our *FNPRM* proposal that any station required to make on-air announcements that is not broadcasting during all or a portion of the period during which the on-air

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<sup>77</sup> *FNPRM*, 34 FCC Rcd at 9265, para. 27.

<sup>78</sup> *FNPRM*, 34 FCC Rcd at 9262, para. 21.

<sup>79</sup> APTS Comments at 3; REC Reply at 5-6. UCC and other commenters opposed or otherwise submitted suggestions in response to a similar proposal in comments to the *2005 Public Notice NPRM*. See UCC Comments (dated Aug. 1, 2005), at 13; Station Resource Group Comments (dated Aug. 1, 2005), at 4. However, UCC did not renew its objection in its comments to the instant *FNPRM*. See UCC Comments (Nov. 18, 2019). Moreover, the other commenters did not submit comments at all on the *FNPRM*.

<sup>80</sup> See 47 CFR § 1.1116(c).

<sup>81</sup> *FNPRM*, 34 FCC Rcd at 9263, para. 22.

<sup>82</sup> Current 47 CFR § 73.3580(e). See *FNPRM*, 34 FCC Rcd at 9263, para. 22. UCC Parties, in comments filed August 1, 2005, at page 13, supported eliminating the exemption for what it termed “sole source” stations. They did not address the issue in comments responding to the *FNPRM*.

<sup>83</sup> *FNPRM*, 34 FCC Rcd at 9263, para. 22 (“Given that the number of media choices today is far greater than when this exemption was adopted, we are no longer confident that the fact that a station is the sole AM, FM, or TV station licensed at a community will guarantee listenership or viewership as may once have been the case.”).

announcements are required to be broadcast must comply with the online notice requirements during the time period it is not broadcasting.<sup>84</sup> We further adopt our proposal that if such a station returns to the air during the period that on-air announcements are required, the station must resume on-air announcements.<sup>85</sup> We received no comments on these proposals, and thus we adopt these rules as proposed.

25. *Authorizations pursuant to Section 325(c) of the Act.* We adopt our *FNPRM* proposal to require applicants for authorization under section 325(c) of the Act to provide online notice only, rather than newspaper publication, with the online notice posted on a website locally targeted to the principal area to be served in the United States by the foreign broadcast station.<sup>86</sup> Section 325(c) applicants propose to locate, use, or maintain a studio supplying programming to a foreign broadcast station whose signals are consistently received in the United States.<sup>87</sup> Only REC commented on this proposal, and it agreed with us that applicants for section 325(c) authorization should provide online notice rather than newspaper notice.<sup>88</sup> We are convinced, as we suggested in the *FNPRM*, that the online notice of a station providing programming to a foreign station rebroadcasting into the United States should be posted on a website locally targeted to the area where viewers or listeners of the foreign station reside.<sup>89</sup> We therefore adopt this rule as proposed in the *FNPRM*, along with the notice text proposed, except that we will add the language, adopted for online notice of broadcast applications, indicating that the public can obtain information regarding how to comment on applications in IBFS.<sup>90</sup> We further find that it would serve the public interest to retain the current requirement that the notice include a description of the programs to be transmitted over the station.<sup>91</sup> The nature of the programming is a key component of a section 325 (c) permit and our public interest analysis. Such programming usually targets a specific segment or sub-set of population residing in the principal area to be served in the United States. Accordingly, providing a description of the programs to be transmitted over a foreign station would ensure that the relevant population is targeted for local public notice for purposes of these section 325(c) authorizations. We also proposed to retain the exemption from local public notice for stations applying for section 325(c)

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<sup>84</sup> See *FNPRM*, 34 FCC Rcd at 9263, para. 23. We further proposed that a station required to provide both online notice and on-air announcements, for example, a commercial assignment or transfer applicant, would be expected to provide online notice for the entire 30-day period notwithstanding whether it was currently broadcasting. *Id.* We adopt this proposal as well.

<sup>85</sup> See Proposed section 73.3580(b)(1)(vi) in Appendix A to the *FNPRM*, *id.* at 9275.

<sup>86</sup> 47 CFR § 73.3580(c)(2). See Proposed section 73.3580(b)(2)(ii).

<sup>87</sup> Such applicants file FCC Form 308 – Application for Permit to Deliver Programs to Foreign Broadcast Stations, in the Commission’s Electronic Comment Filing System, pursuant to 47 CFR § 73.3545. After initial filing, the application is assigned a file number in the International Bureau’s IBFS database and is posted to MyIBFS.

<sup>88</sup> REC Comments at 15.

<sup>89</sup> *FNPRM*, 34 FCC Rcd at 9263-64, para. 24.

<sup>90</sup> *Id.* The online notice text will be as follows:

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 INTERNATIONAL BUREAU MYIBFS DATABASE].

<sup>91</sup> See current 47 CFR § 73.3580(f)(8).

authorization for special event programming only.<sup>92</sup> Given that we received no comment on this proposal, we adopt it as proposed.

#### D. Streamlining Content of On-Air Announcements

26. We adopt with some modifications our *FNPRM* proposals for on-air announcements. In contrast to the above-discussed change from newspaper publication to online notice, in the *FNPRM* we proposed to retain on-air announcements as local public notice of certain applications, but to standardize and simplify those on-air announcements. Commenters generally did not object to our proposals, although there were suggestions regarding the details of our proposals, which are discussed below. Therefore, we adopt our proposed streamlined script, which directs viewers and listeners to the application in OPIF or Commission databases; we adopt our proposal to allow broadcasters to air public notice announcements at any time from 7 a.m. to 11 p.m. local time, Monday through Friday; and we increase the number of proposed on-air announcements from four to six, at least once per week for four consecutive weeks, with no more than one announcement per day. By directing viewers and listeners to applicants' online public inspection files or online applications, on-air notices will be made shorter while directing interested viewers and listeners to the proper location to review the subject applications in their entirety.

27. *Number of Announcements.* For all applicants required to provide on-air notice, we amend our proposal to now require a total of six on-air announcements, to be aired at least once per week, for four consecutive weeks, commencing no later than five business days after release of the Commission public notice announcing that the application was accepted for filing. On-air announcements aired in the same week shall not air on the same day. We also adopt our proposal to eliminate all pre-filing announcements, which no commenter discussed.<sup>93</sup>

28. Commenters disagree on the number of required on-air announcements in our proposed rule change. The UCC Parties oppose our original proposal of a total of four on-air announcements, arguing that the Commission should require at least six on-air announcements in order to reach the most viewers and listeners.<sup>94</sup> REC disagrees with UCC Parties' suggestion and urges the Commission against adopting their proposal, particularly if implementation would extend the notice period, stating that "[a]dding two additional weeks to the public notice requirements would unnecessarily delay broadcast applications."<sup>95</sup> NAB, AGM Parties, and APTS support reducing burdens on stations by requiring four total on-air announcements, regardless of applicant, service, or application type, as proposed in the *FNPRM*.<sup>96</sup>

29. We are persuaded to adopt UCC Parties' recommendation of six total on-air announcements over a four-week period, although as discussed below we adopt our original proposal to allow the announcements to be broadcast at any time from 7:00 a.m. to 11:00 p.m. local time. The adopted rule dispenses with pre-filing requirements and results in a reduction from ten to six required on-air announcements for renewal applications.<sup>97</sup> Although the amended rule will establish additional on-air

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<sup>92</sup> See *FNPRM*, 34 FCC Rcd at 9264, para. 24; 47 CFR § 73.3580(c)(6), (d)(6).

<sup>93</sup> *FNPRM*, 34 FCC Rcd at 9265, para. 27.

<sup>94</sup> UCC Parties Comments at 7. UCC Parties assert that renewal applicants are currently required to air more than six announcements and maintain that, while some applicants "are only required to air at least four announcements, six announcements represent a modest increase that is designed to raise public awareness." *Id.*

<sup>95</sup> See REC Reply at 2.

<sup>96</sup> See NAB Comments at 11; AGM Parties Comments at 6; APTS Comments at 2. NAB did not object to the additional two announcements provided we adopted the proposed flexible 7:00 a.m. to 11:00 p.m. time period. NAB February Ex Parte at 1.

<sup>97</sup> See current 47 CFR § 73.3580(d)(4)(i) and (d)(5)(i).

announcements for certain applicants, we determine the increase is minimally burdensome and balances the need to simplify broadcaster obligations with facilitating public participation. Additionally, the minimal burden of two added announcements is offset by the amended rule's greater flexibility with regard to the times during the broadcast day that on-air announcements may be aired. Adoption of this amendment will also reduce burdens on broadcasters by eliminating complexity in the current rule. To allay the concerns raised by REC, we retain the once per week for four weeks notice period as proposed and will require the additional two announcements to be aired within the four week notice period, but those additional announcements may not air during the same week. We will also require that in any week in which two announcements are aired, they may not be broadcast on the same day.

30. *Start of Notice Period.* We also modify our *FNPRM* proposal to commence the notice period no later than five business days after release of the Commission's public notice accepting filing of the application.<sup>98</sup> As discussed in the online notice section above, APTS and NAB propose that the notice period begin within five days of application submission, rather than the Commission's acceptance of the application for filing.<sup>99</sup> Specifically, APTS maintains that tracking a public notice release increases broadcasters' burden because they must monitor for release of the public notice and could fall out of compliance by missing the public notice.<sup>100</sup> AGM Parties, on the other hand, support our proposal to require on-air announcements to start within five days of the date that the FCC provides public notice that an application is accepted for filing.<sup>101</sup> As we stated above, neither APTS nor NAB quantifies the alleged burden of monitoring public notices, and it is our understanding that applicants and their representatives regularly monitor these public notices, sometimes using tools to electronically track a particular application. We reiterate that the time period for filing petitions to deny commences on the date of acceptance, and that the time period between application filing and acceptance may in some instances be substantially delayed. The public would therefore not benefit from public notice given prior to the date commencing the period for filing comments and petitions. Thus, we believe that tying posting to acceptance outweighs the minimal burden of tracking applications.<sup>102</sup> We do, however, change the commencement of the notice period from no more than five calendar days to no more than five business days following release of notice of acceptance, in order to be more consistent with the rule for online notice,<sup>103</sup> and also because on-air announcements will not be made on weekends. Consequently, we implement the rule as modified herein.

31. *Timing of on-air announcements.* As proposed in the *FNPRM*, we modify section 73.3580(d)<sup>104</sup> to permit on-air announcements for all applicants, services, and application types to air at any time from 7:00 a.m. to 11:00 p.m. local time at the community of license, from Monday through Friday.<sup>105</sup> This will bring uniformity to the current rule, under which applicants must air announcements during varying time windows based on applicant, application, and service type.

32. Commenters disagree on the time windows for required on-air announcements. UCC Parties suggest time windows specific to the service type, with radio on-air announcements broadcast between 7 a.m. to 6 p.m. and television on-air announcements broadcast between 7 p.m. and 10 p.m. local

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<sup>98</sup> *FNPRM*, 34 FCC Rcd at 9265, para. 27.

<sup>99</sup> See APTS Comments at 4; NAB Reply at 7.

<sup>100</sup> APTS Comments at 4-5.

<sup>101</sup> AGM Parties Comments at 7.

<sup>102</sup> Moreover, the staff does not review comments or pleadings until the application has been accepted for filing.

<sup>103</sup> See *supra* para. 22.

<sup>104</sup> 47 CFR § 73.3580(d).

<sup>105</sup> See *FNPRM*, 34 FCC Rcd at 9265, para. 28.



time.<sup>106</sup> Along with CF, they maintain that the proposed windows will reach the maximum number of people, because they occur during peak listenership and viewership times for each medium.<sup>107</sup> REC proposes the on-air announcements for AM stations be limited to a period between the local sunrise and sunset times reflected in the station license, or as determined by the Commission's Local Sunrise and Sunset Calculations tool.<sup>108</sup> NAB favors the proposed flexible schedule, stating that the larger window gives stations more flexibility in scheduling revenue-generating advertisements and other programming. It also opposes UCC Parties' suggestion of a 7 p.m. to 10 p.m. window for television because this window excludes the times when many stations air highly rated local news.<sup>109</sup>

33. While we understand UCC Parties' and CF's concerns with regard to differing listenership and viewership patterns between media, we must balance the goal of providing notice to the public so as to foster participation in the broadcast licensing process with the goal of simplifying the public notice process to help ensure compliance and, thus, facilitate consistent notice to the public. We believe that increasing the required number of on-air announcements will help to offset any additional scheduling flexibility afforded to broadcasters. Additionally, allowing notices to be aired at non-peak viewership/listenership times may reach viewers and listeners who might otherwise be unable to view or listen during peak times. We therefore adopt this proposal.

34. *On-air announcement scripts.* We adopt the on-air announcement scripts as proposed in the *FNPRM* with one minor change.<sup>110</sup> Additionally, we will not require program crawls containing on-air announcement text, but do adopt our proposal to require that the entire text of the on-air announcement for television stations be displayed on screen while being read by an announcer.

35. In the *FNPRM*, we proposed shorter on-air announcement scripts that identify the station and application type, and direct viewers and listeners to online resources for more information on the filed applications.<sup>111</sup> Under the current rule, stations that have complex ownership structures or large boards of

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<sup>106</sup> UCC Comments at 6-7.

<sup>107</sup> *Id.*; CF Reply at 9.

<sup>108</sup> REC Reply at 2.

<sup>109</sup> See NAB Comments at 11-12; NAB Reply at 6-7.

<sup>110</sup> As set forth in the *FNPRM*, 34 FCC Rcd at 9266, para. 29, the proposed on-air announcement scripts were as follows:

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](http://publicfiles.fcc.gov) and search in [STATION CALL SIGN'S] public file.

For stations without an OPIF:

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/searchlms](http://www.fcc.gov/searchlms), and search in the list of [STATION CALL SIGN'S] filed applications.

Consistent with the views of commenter REC, we will modify the on-air script to reference "[www.fcc.gov/stationsearch](http://www.fcc.gov/stationsearch)," which we believe will be easier for listeners to understand. Also in response to REC's input, the new URL will redirect to the LMS Application Search page. See Letter from Michelle Bradley, Founder, REC Networks, to Marlene H. Dortch, Esq., Secretary, FCC, MB Docket Nos. 17-264 et al., at 3-4 (filed Apr. 28, 2020) (REC First Ex Parte).

<sup>111</sup> See *FNPRM*, 34 FCC Rcd at 9266, para. 29. In the *2005 Public Notice NPRM*, the Commission proposed specific text for newspaper and on-air notice of assignment and transfer applications. 20 FCC Rcd at 5422, para. 5.

(continued...)

directors must list all relevant individuals in the on-air announcements.<sup>112</sup> This makes certain required on-air announcements lengthy and confusing to viewers and listeners. AGM Parties assert that the current announcements cause viewers and listeners to tune out the announcements or switch stations.<sup>113</sup> They argue that “[s]horter, more pertinent announcements which direct viewers and listeners to the online announcements or public inspection files would be more effective.”<sup>114</sup> NAB echoes these concerns, stating that the lengthy announcements proposed by other commenters will detract from the informational value of the announcement and confuse viewers and listeners.<sup>115</sup> Rather, NAB suggests the goal should be to direct viewers and listeners to the pending application and the station’s online public file, as they are searchable online and contain the applications’ pertinent information.<sup>116</sup> REC agrees with commenters advocating for shorter on-air announcements, but suggests that viewers and listeners should be directed to the station website and online notice rather than the online public file or LMS.<sup>117</sup> UCC Parties contend that the on-air announcement should direct the public to the online notice and contend that “[t]he Commission should not favor shorter scripts at the expense of providing the public with meaningful notice.”<sup>118</sup> UCC Parties also maintain that members of the public may find it difficult to navigate the Commission’s online databases.<sup>119</sup>

36. We agree with the majority of commenters that shorter on-air announcement scripts that direct viewers and listeners to the filed applications will reduce burdens on broadcasters, especially smaller broadcasters and those in smaller markets, and better inform the public by directing viewers and listeners to the filed applications, as opposed to on-air announcements freighted with excessive detail. The applications filed in the Commission’s databases contain comprehensive, detailed information that

(Continued from previous page) \_\_\_\_\_

In the *NPRM*, the Commission tentatively concluded not to move forward with that proposal. 32 FCC Rcd at 8210, para. 11. As stated herein and in the *FNPRM*, we conclude that uniform public notice texts and scripts for all application types will aid viewer and listener comprehension, and will simplify the process for applicants, thus ensuring compliance. As indicated above, we adopt the tentative conclusion not to move forward with the proposed 2005 text/script for notice of assignment and transfer applications and terminate the 2005 proceeding. *See supra* note 5.

<sup>112</sup> 47 CFR § 73.3580(f)(1). In the *2005 Public Notice NPRM*, the Commission asked for comment on whether to limit the ownership information broadcast to the name of the controlling corporate or partnership entity. 20 FCC Rcd at 5422, para. 5. UCC Parties at that time sought in comments to include the names of licensees and corporate entities in the ownership chain, and to give notice that more detailed information about the parties’ corporate structure is contained on the station sale application. UCC Parties Comments filed August 1, 2005, at 9-10. As noted above, in the 2017 *NPRM*, the Commission tentatively concluded not to move forward with the proposals in the *2005 Public Notice NPRM* and no commenter objected to the tentative conclusion. *See supra* note 5. Accordingly, we adopt our tentative conclusion and terminate the 2005 proceeding. Our proposals in the *FNPRM* focused on the uniform on-air announcement that directs viewers and listeners to the station OPIF page, from which they could link to the actual application and its detailed ownership information. 34 FCC Rcd at 9264, para. 25. The UCC Parties did not renew their comments on these 2005 proposals, thus their 2005 comments are no longer responsive to the most recent proposal.

<sup>113</sup> *See* AGM Parties Comments at 5.

<sup>114</sup> *Id.*

<sup>115</sup> NAB Comments at 12. NAB notes in its Reply that shorter announcements are more likely to engage the public, as evidenced by advertisers moving away from longer spots, instead opting for shorter ads. NAB Reply at 3.

<sup>116</sup> *See* NAB Comments at 12; Reply at 6-7.

<sup>117</sup> REC Comments at 11-13.

<sup>118</sup> UCC Parties Comments at 5.

<sup>119</sup> *Id.*

broadcasters would otherwise be unable to include in the on-air announcements.<sup>120</sup> We disagree with commenters that applications are difficult to find.<sup>121</sup> Stations announce call signs hourly, and applications are easily searchable using call signs in the Commission's OPIF and other databases.<sup>122</sup>

37. As discussed in the online section above, we are not persuaded that we should amend our proposed on-air announcement script to require what the UCC Parties term a jargon-free "layman's" description of the application's purpose.<sup>123</sup> We agree that announcements must be understood by the public, but we must weigh airtime dedicated to announcements and ease of compliance against these concerns. We believe that the script we adopt herein is comprehensible by the public. As discussed above, we addressed this in the *FNPRM*, which clarified that "[t]ype of Application' should be a brief but complete statement of the purpose of the application," providing examples.<sup>124</sup> We reiterate our belief that viewers and listeners can understand and will benefit from the uniformity of the terms used by the Commission and its applicants.<sup>125</sup> Adopting UCC's proposal not only contravenes our goal of simplifying and streamlining broadcaster requirements, but inconsistent announcements may confuse viewers and listeners, and could invite disputes over whether a particular broadcaster's chosen description accurately summarizes an application. Accordingly, we adopt the short description of "type of application" as proposed in the *FNPRM*.

38. In the *FNPRM*, we requested comment as to whether we should require additional language in on-air announcement scripts regarding requests to waive Commission rules and the nature of the waiver sought.<sup>126</sup> AGM Parties oppose adding waiver language to the on-air notices, stating that listeners will "tune out" longer announcements.<sup>127</sup> REC suggests that announcing requests for waiver of administrative rules such as ownership limits may be appropriate, but disagrees with inclusion of technical rule waivers.<sup>128</sup> UCC Parties propose adding specific language indicating whether applicant is seeking a waiver of the rules, and the type of waiver sought. CF agrees with UCC and adds that the on-

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<sup>120</sup> Also, to the extent that some commenters suggest that the on-air announcement direct the public to an online notice, we determined above that NCE applicants are not required to provide online notice, except when the station is unbuild, off the air, or silent.

<sup>121</sup> See, e.g., REC Comments at 12, arguing that viewers and listeners would find it easier to search for a station's website rather than using the station's call sign.

<sup>122</sup> For example, a member of the public can go to [www.fcc.gov/stationsearch](http://www.fcc.gov/stationsearch), and enter the community, state, and service (e.g., "Full Power FM") to find a station(s) licensed to that community.

<sup>123</sup> UCC Parties Comments at 3-4. See also CF Reply at 8. AGM Parties do not oppose substituting a very short description of the purpose of an application for the formal name of the application. AGM Parties Reply at 3.

<sup>124</sup> *FNPRM*, 34 FCC Rcd at 9266 n.94. The examples included "'for renewal of its broadcast license'; 'to assign its broadcast license to X Broadcasting Corporation'; 'to change its community of license from Florin to Guilder, Michigan.'" *Id.*

<sup>125</sup> See *supra* para. 19. We note that the Commission in the 2005 *Public Notice NPRM* also opined that the viewing and listening public would be unfamiliar with the terminology used in connection with assignments and transfers of station authorizations. 20 FCC Rcd at 5421-22, paras. 3, 5. In the *NPRM* and *FNPRM*, on the other hand, the Commission opted instead for a simplified and uniform approach to public notice for all types of applications, with commenters stating that such an approach would simplify compliance compared with the current, complex system of public notices. See, e.g., NAB Comments at 10. We further believe that the approach proposed in the *FNPRM*, with its emphasis on providing members of the public with instant access to the application in an easier-to-view form than was available in 2005, obviates the Commission's earlier concerns. We thus reject UCC Parties' implication that notice will be meaningless without further clarification.

<sup>126</sup> *FNPRM*, 34 FCC Rcd at 9266, para. 29.

<sup>127</sup> AGM Parties Comments at 5; AGM Parties Reply at 3.

<sup>128</sup> REC Comments at 11; Reply at 3.

air announcement should specify when a waiver is sought.<sup>129</sup> NAB counters that “most of the information UCC seeks to add—a further description of what the application proposes and information on whether a waiver is sought—is already available by reviewing the application or other sources referenced in the proposed notice scripts.”<sup>130</sup>

39. We conclude that adopting waiver-specific language in the on-air script is not warranted. We agree with REC that disclosure of technical rule waivers in this particular context is unnecessary. In our experience, the public is most interested in whether a station is seeking a waiver of media ownership limits and is unlikely to comment on technical waivers. As discussed in the online notice section above,<sup>131</sup> Commission-generated public notices of assignment and transfer application filings and actions in LMS will henceforth indicate whether the applicant has indicated that it is seeking a media ownership waiver.<sup>132</sup> The on-air scripts and online notices will direct viewers and listeners to applicants’ online public inspection files or applications, which contain all relevant station information and the entire pending application, including the specific waiver sought. We thus believe that it is not necessary for applicants to give further notice of a waiver request, whether on-air or online.

40. Similarly, we decline UCC Parties’ and CF’s suggestion to require on-air announcements to include additional language related to broadcast stations’ duty to operate in the public interest.<sup>133</sup> As discussed above, we find that the benefits of short, standardized announcement texts facilitates viewer and listener attention, outweighing the minimal benefit of reminding viewers and listeners of broadcasters’ public interest obligations.<sup>134</sup> The on-air notice will direct viewers and listeners to the application and Commission databases, that will in turn include links to information relating to public participation in the application process.<sup>135</sup> We find that this information is more critical to viewers than a repetition of the broadcasters’ obligations under the Communications Act.

41. We also adopt our *FNPRM* proposal to require television broadcasters to display on screen the full text of the on-air announcement during the verbal broadcast of the announcement.<sup>136</sup> We believe the public interest will be enhanced by requiring television broadcasters to display the text of the new, abbreviated on-air script, and that benefit outweighs any minimal burden this requirement will impose.<sup>137</sup> Commenters did not object to this proposal. We will not require visual text beyond the announcement and will not require television text crawls containing the text of the on-air notice. NAB and the AGM Parties oppose requiring crawls,<sup>138</sup> while no commenter favored them. Because crawls are

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<sup>129</sup> CF Reply at 8.

<sup>130</sup> NAB Reply at 2.

<sup>131</sup> See *supra* para. 19.

<sup>132</sup> LMS applications include a button that an applicant selects to indicate whether it is seeking a waiver.

<sup>133</sup> See UCC Comments at 4; CF Reply at 8

<sup>134</sup> See NAB Reply at 2-3; AGM Parties Reply at 2-3 (opining that such statements are unnecessary and likely to cause listeners and viewers to “tune out” and ignore the announcements). We note that language related to stations’ duty to operate in the public interest is currently required only in the script for on-air announcements of renewal applications. 47 CFR § 73.3580(d)(4)(ii) (“Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).”).

<sup>135</sup> See NAB Reply at 2-3; AGM Parties Reply at 2-3.

<sup>136</sup> See new 47 CFR § 73.3580(b)(1)(i) in Appendix A.

<sup>137</sup> Due to the potential length of the on-air script under our current rules, we require television broadcasters only to display licensee’s and Commission’s addresses rather than the full text of the script. Current 47 CFR § 73.3580(d)(4)(iii).

<sup>138</sup> NAB Comments at 13; AGM Parties Comments at 7.

most often used to deliver urgent and, in some cases, emergency information to viewers, use of text crawls for local public notice will at best confuse viewers, and at worst their overuse might result in viewers ignoring text crawls that convey information vital to public safety.<sup>139</sup> We believe that requiring displayed written text simultaneously with reading on-air announcements will provide adequate notice to viewers.

42. *Channel Sharing and Multicasting.* We clarify that each television station in a channel sharing arrangement must broadcast appropriate on-air announcements on its program stream. Under a channel-sharing arrangement, the Commission has stated that each licensee has an independent obligation to comply with all pertinent statutory requirements and our rules.<sup>140</sup> Thus, under our current rules, each separately licensed station engaged in a channel sharing arrangement must broadcast any on-air announcements required of it on its program stream.

43. Radio or television stations may also engage in multicasting, which involves transmission of multiple streams of programming by a single licensee. For such multicasting stations, we interpret section 311 of the Act and our rules to require on-air notice only on the digital TV or digital radio station's primary over-the-air programming stream as defined in sections 73.403(a) and 73.624(b) of the rules.<sup>141</sup> Section 311 provides that an "applicant" must "give notice" of the filing of a covered application in the principal area served.<sup>142</sup> Nothing in section 311 or elsewhere in the Act requires that notice be provided over each and every individual stream broadcast by the applicant. We believe that on-air notice provided over the primary stream, which is the stream with the most viewers or listeners, is sufficient to meet the goal of section 311 to inform the public.

#### **E. International Broadcast Station Applications**

44. We adopt our *FNPRM* proposal to require international broadcast stations, governed by Subpart F of Part 73 of our rules, to give local public notice by publishing notice of the application on a website that targets the local 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).<sup>143</sup> We noted in the *FNPRM* that because such stations are regulated under Part 73, an international broadcast station would be considered "a station in the broadcasting . . . service" under section 311(a)(1) of the Act;<sup>144</sup> at the same time, because such stations under our rules "are intended to be received directly by the general public in foreign countries,"<sup>145</sup> public

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<sup>139</sup> See NAB Comments at 13.

<sup>140</sup> See *Expanding Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268, 29 FCC Rcd 6567, 6853, para. 700 (2014); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14940, para. 27 (2015); *Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd 2637, 2653-54, para. 30 (2017).

<sup>141</sup> 47 CFR §§ 73.403(a), 73.624(b) ("DTV broadcast station permittees or licensees must transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel.").

<sup>142</sup> 47 U.S.C. § 311.

<sup>143</sup> *FNPRM*, 34 FCC Rcd at 9267, para. 32. We explained that our current rules provide that applications for renewal of an international broadcast station license, and for modification, assignment, or transfer of such licenses, are exempt from the newspaper publication requirements, and that adoption of the proposed rule would eliminate the need for this exemption. *Id.* at 9267 n.103; see 47 CFR § 73.3580(c), (d)(3). Our proposal to substitute online public notice for newspaper publication, if adopted, would eliminate any need to continue this exemption.

<sup>144</sup> 47 U.S.C. § 311(a)(1).

<sup>145</sup> 47 CFR § 73.701(a).

notice by on-air announcement would not strictly be considered local.<sup>146</sup> Only REC commented on this proposal, agreeing that online rather than on-air notice was appropriate for such stations, but that posting notice on a station's website would be ineffective, as the station's programming is not received in the community where its facilities are situated and thus members of that community would not think to look for the station's website.<sup>147</sup> We agree with REC that residents of the area in which an international broadcast station's transmitter is located are not listeners of that station, and thus are not likely to seek out the station's web page. We therefore adopt a rule requiring international broadcast stations to give online notice on a website that is locally targeted to the community where the station's transmission facilities are located, as set forth in new rule section 73.3580(a)(5),<sup>148</sup> and as set forth in paragraph 21, above.

## F. Other Provisions and Rules

45. Having received no opposition in the comments, we adopt the following proposals as set forth in the *FNPRM*:<sup>149</sup>

- Retention of the categories of applicants, broadcast services, and application types for which local public notice is not required, as currently listed in section 73.3580(a)(1)-(7).<sup>150</sup>
- Retention of the requirement that applicants certify in any application for which public notice is required that they will comply with the applicable requirements of the local public notice rule;<sup>151</sup>
- Retention of the requirement that those license renewal applicants that are obliged to provide public notice only through on-air announcements must add to their OPIF the list of dates and times the required on-air announcements were broadcast;<sup>152</sup>

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<sup>146</sup> *FNPRM*, 34 FCC Rcd at 9267-68, para. 33.

<sup>147</sup> REC Comments at 14-15. For the same reason, on-air notice would be ineffective when the station cannot be received in the community where the transmitter is located. *Id.* In its First Ex Parte, REC revised its position, concluding that there is no reason an International Broadcast station should not be able to post online notice on its parent organization's website, because in REC's view the licensee organizations are well known in the communities where the station facilities are located. REC First Ex Parte at 2. We continue to agree with REC's original position. While REC now argues that such stations "are likely to be known to the local community because of the presence of the towers," *id.*, the mere fact that the towers are visible does not guarantee that their owner is locally known. Similarly, while REC states that many International Broadcast station licensees are "well established" prior to application filing, *id.*, they may be established at some distance from the transmitter site. We believe the better course is to post online notice on a website locally targeted to the community where the transmission facilities are located.

<sup>148</sup> See Appendix A hereto.

<sup>149</sup> *FNPRM*, 34 FCC Rcd at 9268-70, paras. 34-40.

<sup>150</sup> 47 CFR § 73.3580(a)(1)-(7). See new 47 CFR § 73.3580(d) in Appendix A. Such stations and applications are exempt from the provisions of 47 U.S.C. § 309(b), and thus exempt from the provisions of 47 U.S.C. § 311(a).

<sup>151</sup> 47 CFR § 73.3580(h). See new 47 CFR § 73.3580(e) in Appendix A. While our goal is to ensure compliance through uniform and streamlined notice requirements, we believe it is still important that applicants certify compliance.

<sup>152</sup> 47 CFR § 73.3580(d)(1), (h). See new section 73.3580(e) in Appendix A hereto. We believe that applicants should continue to demonstrate compliance and that the public should be able to confirm that applicants are in compliance with their local public notice obligations. For applicants for a new construction permit and permittees and licensees of LPTV, TV translator, TV booster, LPFM, FM translator and FM booster stations, which do not have Commission-hosted OPIFs, we recommend those entities retain a record of the dates and times of public notice to demonstrate compliance with section 73.3580.

- Elimination of the requirement that the on-air license renewal announcement script be added to an applicant's OPIF, due to the use of mandatory language contained in the new rules;<sup>153</sup> and
- Clarification that LPFM stations will continue to have the same local public notice obligations as other NCE radio stations, i.e., on-air announcements only, except when the station is unbuilt, off the air, or silent.

46. Concerning the last adopted proposal, we agree with commenter REC that, for the sake of clarity, section 73.3580 of the rules should be added to section 73.801, which sets forth the rule sections applicable to LPFM stations.<sup>154</sup> No other commenters objected to REC's proposal, and we concur that cross-referencing section 73.3580 in section 73.801 will eliminate any confusion regarding the obligations of LPFM stations. We will thus amend section 73.801 accordingly.

47. We further adopt our proposal to apply the same updated public notice requirements to public notice of hearing designation orders under section 73.3594<sup>155</sup> and to eliminate the public notice requirement for the withdrawal of an application pursuant to an agreement to resolve mutual exclusivity under section 73.3525.<sup>156</sup> Only REC commented on these proposals. It agreed with our proposal to delete section 73.3525(b) as being no longer necessary.<sup>157</sup> However, as for section 73.3594, REC contends that the language in the notice describing the hearing issues should be as generic as possible, and that a licensee or permittee with an application designated for hearing should not be allowed to provide a brief description of the issues specified for hearing. In REC's view this "would give the licensee or applicant the opportunity to 'twist' the language in the favor of the licensee or applicant in order to garner public support in the proceeding."<sup>158</sup> While we understand REC's concerns, we do not believe a change is necessary. The new section 73.3594 uses the same language as the current rule, yet REC has not provided any evidence that licensees subject to hearing designation orders have provided inappropriate public notice in the past.<sup>159</sup> As is the case with public notice of applications under section 73.3580, section 73.3594 requires that the licensee includes a hyperlink to the hearing designation order giving the public instant access to the hearing designation order to verify whether the designated party has accurately listed the issues designated against it. Additionally, any attempt by a party to a hearing to "whitewash" the issues in a local notice is subject to disclosure to the Administrative Law Judge by the Enforcement Bureau or other parties to the hearing designation order. REC additionally contends that the online notice of a hearing designation order should be posted both on the designated party's website and on a locally targeted third-party website.<sup>160</sup> We conclude that the public benefit in requiring additional notice beyond the on-air and online notice already specified in section 73.3594 does not justify the burden and potential expense, even if minimal, of locating a locally targeted third-party website and posting on that website in addition to an applicant-affiliated site. We believe the notice provisions as proposed in the *FNPRM*, including both on-air announcements and online notice, will suffice to advise the public of the

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<sup>153</sup> These requirements currently appear in 47 CFR §§ 73.3526(e)(13), 73.3527(e)(10), and 73.3580(h). Because all applicants will be using a uniform script, we do not believe it is necessary that the script be repeated in OPIF.

<sup>154</sup> REC Comments at 2-4.

<sup>155</sup> 47 CFR § 73.3594.

<sup>156</sup> *Id.* § 73.3525. See *FNPRM*, 34 FCC Rcd at 9269-70, 9273, 9279-80, paras. 37-40 and Appendix A.

<sup>157</sup> REC Comments at 16.

<sup>158</sup> *Id.* at 15.

<sup>159</sup> The current version of section 73.3594 mandates that licensee's public notice must include, "The issues in the hearing as listed in the FCC's order or summary of designation for hearing." 47 CFR § 73.3594(d)(4). The updated rule retains this exact language.

<sup>160</sup> REC Comments at 15.

particulars of a hearing designation order, and will give consumers ample opportunity to investigate those issues themselves.

#### IV. PROCEDURAL MATTERS

48. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980 (RFA), as amended,<sup>161</sup> an Initial Regulatory Flexibility Certification was incorporated into the *FNPRM*.<sup>162</sup> Pursuant to the RFA,<sup>163</sup> the Commission's Final Regulatory Flexibility Certification relating to this Report and Order is attached as Appendix C.

49. *Paperwork Reduction Act.* This *Second R&O* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

50. In this *Second R&O*, we adopt modified rules for applicants required to provide local public notice of application filings and other notices. We have assessed the effects of the new rules on small business concerns. We find that the streamlined rules and procedures adopted here will minimize the information collection burden on affected applicants, permittees, and licensees, including small businesses.

51. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Second R&O* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

#### V. ORDERING CLAUSES

52. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this *Second Report and Order* **IS ADOPTED** and **WILL BECOME EFFECTIVE** 30 days after publication in the *Federal Register*.

53. **IT IS FURTHER ORDERED** that Part 73 of the Commission's Rules **IS AMENDED** as set forth in Appendix A, and the rule change to section 73.801 adopted herein will become effective 30 days after the date of publication in the *Federal Register*.

54. **IT IS FURTHER ORDERED** that Part 73 of the Commission's Rules **IS AMENDED** as set forth in Appendix A, and the rule changes to sections 73.3525, 73.3526, 73.3527, 73.3571, 73.3573, 73.3580, and 73.3594 adopted herein, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, **WILL BECOME EFFECTIVE** on the date specified in a notice published in the *Federal Register* announcing such approval.

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<sup>161</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. 601, *et seq* has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Publ. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>162</sup> *FNPRM*, 34 FCC Rcd at 9270, 9281, para. 41, Appendix B.

<sup>163</sup> See 5 U.S.C. § 604.



55. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket Nos. 05-6 and 17-264 **SHALL BE TERMINATED**, and their dockets **CLOSED**.

56. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

57. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Second Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**  
**Rule Changes**

**Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:**

1. The authority citation for part 73 continues to read as follows:  
Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.
2. Amend Section 73.801 by adding “Section 73.3580 Local public notice of filing broadcast applications.” below “Section 73.3568 Dismissal of applications.” and above “Section 73.3584 Procedure for filing petitions to deny,” as follows:

**§73.801 Broadcast regulations applicable to LPFM stations.**

\* \* \* \* \*

Section 73.3568	Dismissal of applications.
Section 73.3580	Local public notice of filing of broadcast applications.
Section 73.3584	Procedure for filing petitions to deny.

\* \* \* \* \*

3. Amend Section 73.3525 by removing paragraph (b) and re-designating paragraphs (c) through (l) as paragraphs (b) through (k).
4. Amend Section 73.3526 by revising paragraph (e)(13) to read as follows:

**§73.3526 Local public inspection file of commercial stations**

\* \* \* \* \*

(e) \* \* \* \*

(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 requirement. 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(e)(2) (for as long as the application to which it refers).

\* \* \* \* \*

5. Amend Section 73.3527 by revising paragraph (e)(10) to read as follows:

**§73.3527 Local public inspection file of noncommercial educational stations**

\* \* \* \* \*

(e) \* \* \* \*

(10) *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 requirement. 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(e)(2) (for as long as the application to which it refers).

\* \* \* \* \*

6. Amend Section 73.3571 by revising paragraph (j)(3) to read as follows:

**§73.3571 Processing of AM broadcast station applications.**

\* \* \* \* \*

(j) \* \* \*

(3) The applicant must comply with the local public notice provisions of §73.3580(c)(5).

\* \* \* \* \*

7. Amend Section 73.3573 by revising paragraph (g)(3) to read as follows:

**§73.3573 Processing FM broadcast station applications.**

\* \* \* \* \*

(g) \* \* \*

(3) The applicant must comply with the local public notice provisions of §73.3580(c)(5).

\* \* \* \* \*

8. Amend Section 73.3580 to read as follows:

**§ 73.3580 Local public notice of filing of broadcast applications.**

(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:* Any of the following Internet websites, to the extent they are maintained, in order of priority:

(i) the applicant station's Internet website;

(ii) the applicant's Internet website; or

(iii) the applicant's parent entity's Internet website.

An applicant maintaining or having access to more than one of the above-listed Internet websites 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 section 74.701(h).

(4) *Major amendment:* A major amendment to an application is that defined in sections

73.3571(b), 73.3572(c), 73.3573(b), 73.3578, and 74.787(b).

- (5) *Publicly accessible website*: An Internet website (a) 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 (b) 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 section 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 below:

- (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](http://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](http://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 IN 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 INTERNATIONAL BUREAU'S MYIBFS 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 INTERNATIONAL BUREAU'S MYIBFS 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 INTERNATIONAL BUREAU'S MYIBFS 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 post 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 below:
- (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.
- (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 sections 73.3571, 73.3572, 73.3573, 73.3574, and 74.787(b), except a minor change to designate a different community of license for an AM or FM radio broadcast station, pursuant to the provisions of sections 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 section 73.3580, 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)(v) 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 section 73.3580, 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, “Application for emergency authorization,” or in § 73.1635, “Special temporary authorizations (STA).”

9. Amend Section 73.3594 to read as follows:

**§ 73.3594 Local public notice of designation for hearing.**

- (a) When an application subject to the provisions of §73.3580 is designated for hearing, the applicant shall give notice of such designation as follows:
  - (1) *On-Air Announcement:* The applicant (except an applicant filing an application for an International broadcast, low power TV, TV translator, FM translator, and FM booster station) shall broadcast an on-air announcement of the designation of an application for hearing over its radio or television 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]. On [DATE], the Commission designated the



application for an evidentiary hearing on certain issues. Members of the public wishing to view the Hearing Designation Order and list of issues can visit [URL OF INTERNET WEBSITE MAINTAINED BY THE STATION, THE LICENSEE/PERMITTEE, OR THE LICENSEE/PERMITTEE'S PARENT ENTITY, OR OTHER PUBLICLY ACCESSIBLE WEBSITE], and click the link in the "Hearing Designation Order" notice.

Television broadcast stations (commercial and noncommercial educational), 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 on-air announcements shall be broadcast a total of six (6) times, once per week for four consecutive weeks.
- (iii) Commencement of broadcast: The first broadcast of the on-air announcement shall occur no earlier than the date of release of the Hearing Designation Order, Order to Show Cause, or other order designating issues for hearing, and no later than the fifth business day following release of said order.
- (iv) Time of broadcast: The on-air announcements shall be broadcast 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 shall broadcast the announcements in that language.

(2) *Online Notice:* The applicant shall also post an online notice of the designation of an application for hearing conspicuously on an Internet website as follows:

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

**HEARING DESIGNATION ORDER**

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]. On [DATE], the Commission designated the application for an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC'S ORDER OR SUMMARY OF DESIGNATION FOR HEARING]. Members of the public wishing to view the Hearing Designation Order or to file comments can visit [INSERT HYPERLINK TO THE HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, OR OTHER ORDER DESIGNATING THE APPLICATION FOR HEARING, ON THE FCC'S INTERNET WEBSITE].

- (ii) Site: The applicant shall post online notice by posting a conspicuous link or tab labeled "FCC Hearing" 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. The applicant shall post online notice on one of the following Internet websites, to the extent such websites 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.

If the applicant does not maintain an Internet website for the station or itself, or if the applicant's parent entity does not maintain an Internet website, the applicant shall post online notice on an Internet website (a) 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 (b) 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).
- (iii) Commencement of posting: The online notice shall be posted no earlier than the date of release of the Hearing Designation Order, Order to Show Cause, or other order designating issues for hearing, and no later than the fifth business day following release of said order.
  - (iv) Length of posting: The online notice must be posted for a minimum of 30 consecutive days.
- (b) Within seven (7) days of the last day of broadcast of the notice required by paragraph (a)(1) of this section, the applicant shall file an original statement and one copy with the Secretary of the Commission setting forth the dates and times on which the on-air announcements were made, the date the online notice was first posted, and the Universal Resource Locator (URL) address of the Internet Website on which online notice is posted.
- The failure to comply with the provisions of this section is cause for dismissal of an application with prejudice. However, upon a finding that applicant has complied (or proposes to comply) with the provisions of section 311(a)(2) of the Communications Act, and that the public interest, convenience, and necessity will be served thereby, the presiding officer may authorize an applicant, upon a showing of special circumstances, to give notice in a manner other than that prescribed by this section; may accept notice that is given in a manner which does not conform strictly in all respects with the provisions of this section; or may extend the time for giving notice.

**APPENDIX B****Commenters****Commenters to Further Notice of Proposed Rule Making in MB Docket 17-264**

American General Media, Beasley Media Group Licenses, LLC, Connecticut Public, Cumulus Media Inc., Entercom License, LLC, Galaxy Communications, LLC, Good Karma Broadcasting, LLC, Good Karma Milwaukee, LLC, Meruelo Media, LLC, Sarkes Tarzian, Inc., and WNET \*

America's Public Television Stations, the Public Broadcasting Service, National Public Radio, Inc., and the Corporation for Public Broadcasting

Broadcast Maximization Committee, Guest Technology, Anderson Associates, and Horizon Broadcast Solutions, LLC

Common Frequency, Inc. \*\*

Jake Seaton – e-notice, Inc.

National Association of Broadcasters \*

Office of Communication of the United Church of Christ, Inc., the Benton Institute, Common Cause, Free Press, and the Open Technology Institute at New America

REC Networks \*

Robert Lee – QXZ MediaWorks LLC

\* Filed comments and reply comments

\*\* Filed reply comments only

**Commenters to Notice of Proposed Rule Making in MB Docket No. 17-264**

America's Public Television Stations, Corporation for Public Broadcasting, Public Broadcasting Service

LNP Media Group, Inc.

Multicultural Media, Telecom, and Internet Council

National Association of Broadcasters\*

Nexstar Broadcasting, Inc.

Office of Communication of the United Church of Christ, Benton Foundation, Common Cause, Free Press, National Hispanic Media Coalition, Open Technology Institute at New America

Public Notice Resource Center

REC Networks

Supporting Broadcasters - Meredith Corp., Raycom Media Inc., Graham Media Group, Inc.

\* Filed comments and reply comments

**Commenters to Notice of Proposed Rule Making in MB Docket No. 05-6**

National Association of Broadcasters\*

Office of Communication of the United Church of Christ, Inc., et al.

Public Notice Resource Center

Station Resource Group and Public Radio Capital\*

\* Filed comments and reply comments

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (NPRM)* and the *Further Notice of Proposed Rule Making (FNPRM)* to this proceeding, and the *Notice of Proposed Rule Making* in MB Docket No. 05-6. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>2</sup>

**A. Need For, and Objectives of, the Second Report and Order**

2. This *Second Report and Order (Second R&O)* adopts several rule changes that are intended (a) to clarify and simplify the rules and procedures to be followed by certain applicants for broadcast authorizations in order to give local public notice of those applications; and (b) to give local public notice of the designation of certain applications for evidentiary hearing. The Commission replaces the current rules,<sup>3</sup> which had been characterized as being difficult to follow, and which contain varying local public notice requirements based on the type of application and the type of station to which the application pertains. The rules adopted in the *Second R&O* constitute a more uniform, and thus more convenient, set of procedures for providing notice through on-air announcements and by online posting of links to applications, rather than publication in local newspapers. Additionally, by eliminating the need to publish some public notices in local newspapers and allowing a broadcaster instead to post notices on its website or an affiliated website, the new rules eliminate a sometimes substantial expense currently borne by broadcasters. The Commission also eliminates the current rule requiring public notice of the withdrawal of an application pursuant to an agreement with another applicant to resolve mutual exclusivity.<sup>4</sup> Additionally, the Commission amends certain other rules to the extent that they reference the substantive rule changes.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. There were no comments to the IRFAs filed.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>5</sup> The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules 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.<sup>6</sup> The RFA generally

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 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. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

<sup>2</sup> See 5 U.S.C. § 604.

<sup>3</sup> See generally 47 CFR §§ 73.3580, 73.3594.

<sup>4</sup> *Id.* § 73.3525(b).

<sup>5</sup> 5 U.S.C. § 604(a)(3).

<sup>6</sup> 5 U.S.C. § 603(b)(3).

defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> 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.<sup>9</sup>

6. The rule changes adopted 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.

7. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>10</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>11</sup> 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 \$41.5 million or less in annual receipts.<sup>12</sup> 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.<sup>13</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

8. The Commission has estimated the number of licensed commercial television stations to be 1,374.<sup>14</sup> Of this total, 1,261 stations had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on March 6, 2020, 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 388.<sup>15</sup> The Commission, however, does not compile and otherwise does not have access to information on the

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<sup>7</sup> *Id.* § 601(6).

<sup>8</sup> *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).

<sup>9</sup> *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.

<sup>10</sup> U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>11</sup> *Id.*

<sup>12</sup> 13 CFR § 121.201; 2012 NAICS Code 515120.

<sup>13</sup> 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](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>14</sup> *Broadcast Station Totals as of December 31, 2019*, FCC News Release (rel. Jan. 3, 2020) (*Broadcast Station Totals*), <https://docs.fcc.gov/public/attachments/DOC-361678A1.pdf>.

<sup>15</sup> *Id.*

revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

9. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>16</sup> 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.

10. There are also 387 Class A stations.<sup>17</sup> 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 1,897 LPTV stations and 3,648 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.

11. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”<sup>18</sup> The SBA has created the following small business size standard for this category: those having \$41.5 million or less in annual receipts.<sup>19</sup> Census data for 2012 show that 2,849 firms in this category operated in that year.<sup>20</sup> 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.<sup>21</sup> Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

12. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,389<sup>22</sup> and the number of commercial FM radio stations to be 6,772 for a total number of 11,161, along with 8,182 FM translator and booster stations.<sup>23</sup> As of March 2020, 4,389 AM stations and 6,767 FM stations had revenues of \$41.5 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 4,135.<sup>24</sup>

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<sup>16</sup> “[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).

<sup>17</sup> *Broadcast Station Totals*, *supra* note 14.

<sup>18</sup> 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.”

<sup>19</sup> 13 CFR § 121.201; NAICS code 515112.

<sup>20</sup> 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](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table).

<sup>21</sup> *Id.*

<sup>22</sup> This number is derived from subtracting the total number of noncommercial educational AM stations (204) from the total number of licensed AM stations (4593).

<sup>23</sup> *Broadcast Station Totals*, *supra* note 14.

NCE stations are non-profit, and therefore considered to be small entities.<sup>25</sup> Therefore, we estimate that the majority of radio broadcast stations are small entities.

13. *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 \$41.5 million or less in annual receipts.<sup>26</sup> 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 2,169.<sup>27</sup> 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.

14. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>28</sup> 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.

#### **E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements**

15. In this section, we identify the reporting, recordkeeping, and other compliance requirements adopted in the *Second R&O*, and consider whether small entities are affected disproportionately by any such requirements.

16. *Reporting Requirements.* The *Second R&O* does not adopt reporting requirements.

17. *Recordkeeping Requirements.* The *Second R&O* adopts recordkeeping requirements insofar as it amends sections 73.3526(e) and 73.3527(e) of the rules to reflect the nature of the proposed new on-air announcement requirements for which licensees must certify compliance and retain the certification in the online public inspection file (OPIF). The new requirements are no more extensive than the current certification and retention requirements, and in fact are less onerous in that there are fewer announcements requiring certification, and OPIF is online rather than a physical file. Thus, the impact on small entities will be no greater than it is currently, and in most cases the new rules will be less burdensome.

#### **F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.**

18. 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,

(Continued from previous page) \_\_\_\_\_

<sup>24</sup> *Id.*

<sup>25</sup> 5 U.S.C. § 601(4), (6).

<sup>26</sup> 13 CFR § 121.201, NAICS Code 515112.

<sup>27</sup> *Broadcast Station Totals*, *supra* note 14.

<sup>28</sup> “[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).



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.<sup>29</sup>

19. The *Second R&O* amends section 73.3580 to reorganize, simplify, and clarify broadcasters' public notice obligations when filing certain applications, such as license renewal applications and applications to assign or transfer broadcast authorizations. In addition to streamlining and making uniform the requirement of some stations to provide public notice through on-air announcements, the *Second R&O* requires public notice of the filing of certain broadcast applications through online postings on the Internet, instead of publishing such notice in a newspaper. These proposals will reduce burdens on all broadcast applicants, including small entities, when meeting their obligation to notify the public of pending or prospective applications, while improving the public's access to information enabling it to participate in the licensing process. The majority of commenters agreed that permitting public notice through the Internet would be less costly and administratively burdensome than the existing requirement of newspaper publication, and thus the new rule will provide a less burdensome compliance option for all applicants, including small entities. With regard to just one category of applicants, those applying for consent to assign a broadcast authorization or to transfer control of the entity holding a broadcast authorization, the Commission has estimated that there are 4,020 annual applicants, each of which must publish public notice in a local newspaper four times at a cost of \$113.25 per publication, for a total annual burden of \$1,820,256, for applicants in this category alone.<sup>30</sup> Given that the majority of online notices will be posted on applicant-affiliated websites, which are typically maintained by in-house staff and do not involve materials such as paper or ink, the cost of online notice should be minimal. Thus, replacing newspaper publication with online notices can result in considerable cost savings to broadcasters and broadcast applicants.

20. Any changes to the rules originally proposed in this proceeding are based on commenter suggestions, and do not significantly increase burdens on applicants vis-à-vis the current rules. For example, the Commission originally proposed that certain applicants be required to make four on-air announcements once per week over a four-week period; the adopted rule, suggested by commenters, requires six announcements, at least once per week over a four-week period. Under the current rules applicants for license renewal, which includes all licensees once every eight years, must make a minimum of ten on-air announcements. Thus, even with the modest increase over the proposed number of on-air announcements, the overall burden on applicants has been decreased, especially considering that on-air announcements under the rule adopted in the *Second R&O* are shorter and more uniform than those under the rules being replaced. Similarly, based on comments the Commission modified the proposed online notice rule to allow stations to post online notice on a separate page rather than on their home page, with a tab or link to the separate page on the home page to facilitate the public's access to the information. This modification was designed to save space on broadcasters' websites while making links more accessible to the public. Again, the modified rules still represent a substantial burden decrease to broadcasters compared to the rules being replaced.

21. **Report to Congress:** The Commission will send a copy of this *Second R&O*, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>31</sup> In addition, the Commission will send a copy of the *Second R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business

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<sup>29</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>30</sup> See Notice of Office of Management and Budget Action, ICR Ref. No. 201905-3060-002, "No Material or Nonsubstantive Change to a Currently Approved Collection" (for Application for Consent to Assignment or Transfer of Broadcast Authorizations, OMB Control No. 3060-0031) (rel. May 16, 2019), "Supporting Statement" at 7.

<sup>31</sup> See 5 U.S.C. § 801(a)(1)(A).

Administration. A copy of the *Second R&O* and FRFA (or summaries thereof) will also be published in the *Federal Register*.<sup>32</sup>

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<sup>32</sup> See *id.* § 604(b).

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*, MB Docket No. 17-264; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105; *Revision of the Public Notice Requirement of Section 73.3580*, MB Docket No. 05-6.

In my previous statement on this matter, I noted that I would oppose any attempts to increase burdensome disclosures, set litigation traps, or muzzle the First Amendment rights of broadcasters, and I am pleased to say that the Report and Order before us today by-and-large finds the right landing spot on all three points. Additionally, while the draft item circulated three weeks ago was unnecessarily regulatory and would have imposed costly burdens, calling into question the value of the effort, I thank the Chairman and staff for working with my office to fix these issues. The item is now a simpler, fairer media modernization item, and one that literally brings disclosures into the digital age.

While many believe the underlying law to be constitutionally suspect, this item fulfills our statutory mandate and defines acceptable digital disclosures in a way that is analogous to the existing rules. Instead of taking up print space in competing local newspapers—to the extent that such papers even still exist—the new rules will simply require publication on a station website, or an alternative website in certain cases. The Commission's determination that the website may serve as the digital equivalent of the newspaper for purposes of fulfilling application notice requirements is a very reasonable and text-based reading of the law. Having already expressed suspicion on First Amendment grounds of a prescriptive formula specifying how stations must comply with notice rules, I was taken aback by suggestions by certain commenters that the Commission pinpoint exactly *where* on the webpage the disclosures are to be posted. In addition to being far too prescriptive as a matter of public policy, this proposal raised clear constitutional problems.

I thank the Chairman for including my proposed edits that provide greater flexibility for digital disclosures, keeping the application notification rules in line with other disclosure obligations, such as those pertaining to contest rules, online public inspection files, Equal Employment Opportunity public files, and closed caption contact obligations. While I remain skeptical of the requirement to maintain permanent links on websites even when no applications are pending, I would firmly note that this is not in any way intended to create a new source of liability. Any attempts to turn this feature into a compliance trap would be contrary to this Commission's decision, completely wrongheaded, and based on constitutional quicksand.

Some commenters also sought to extend application notice requirements to station apps, but this approach was faulty for several reasons. First, as a practical matter, many stations that utilize apps actually do so through third parties such as iHeartRadio or TuneIn and Radio.com, and the complexity of placing and maintaining disclosures on such apps would be extraordinarily cumbersome at best. But, it is also important to note that the current market for mobile apps is very fluid in terms of design and functionality, and building app requirements into the regulation would be shortsighted and likely outdated in short order. Further, it would be counter-productive for the Commission, in seeking to modernize its regulations and reduce unnecessary burdens on financially challenged broadcasters, to ultimately *increase* compliance burdens. Moreover, the burden of compelling broadcaster speech in this way would far outweigh any benefits that could possibly result.

All in all, this item should ease burdens on broadcasters, even if I would have preferred a far, far less prescriptive item. I thank the Chairman for bringing this item to order and look forward to further actions to reduce regulatory hurdles in the coming months.