

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)

FURTHER NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek comment on revisions to the broadcast local public notice rule. Codified in section 73.3580, this rule requires certain applicants for broadcast authorizations to provide local public notice of the filing of broadcast applications.¹ In October 2017, the Commission released a Notice of Proposed Rulemaking (NPRM) that, among other

¹ 47 CFR § 73.3580.

things, sought general comment on whether to update section 73.3580.² Based upon comments received in response to the NPRM, we now offer specific proposals to update, clarify, and streamline section 73.3580 and the local public notice obligations contained in that and other related rule sections. In particular, we propose to eliminate the obligation to publish public notices in print newspapers. Instead, we propose to require applicants to 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.³ Through these proposals, we seek 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. We also continue our efforts to modernize media regulations.⁴

II. BACKGROUND

2. Section 311(a) of the Communications Act of 1934, as amended (the Act) provides, in pertinent part, that:

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.⁵

3. The Commission implemented this statute over 50 years ago, through section 73.3580 of its rules,⁶ which requires applicants for broadcast authorizations to notify the public of the filing of applications, with certain exceptions.⁷ Section 73.3580 applies to a broad range of applications—such as applications for a new construction permit, applications to transfer or assign a broadcast license, applications to renew a license, and applications for major modification of a license—thus ensuring that the

² *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).

³ We likewise propose to revise or delete analogous Commission rules that require public notice through newspaper publication, broadcast announcements, or a combination of these methods, or that cross-reference rules that we propose to amend as a result of this *FNPRM*. See *infra* paras. 37-40.

⁴ See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (MB 2017) (*Modernization Initiative Public Notice*).

⁵ 47 U.S.C. § 311(a). Section 311(a) was enacted in 1960. Pub. L. 86-752, § 5(a) (Sept. 13, 1960). Section 309 of the Act establishes requirements governing the Commission's action on applications and the form of, and conditions attached to, licenses granted by it. 47 U.S.C. § 309. Section 309(b)(1) identifies a variety of applications that may not be granted by the Commission before thirty days following the Commission's issuance of public notice of their acceptance for filing, including, among others, "instrument[s] of authorization in the . . . broadcasting . . . services." *Id.* § 309(b)(1).

⁶ The original version of the public notice rule, adopted shortly after section 311(a) of the Act was enacted, was 47 CFR § 1.359. See FCC 60-1381 (Nov. 19, 1960); 25 Fed. Reg. 11153, 11155 (Nov. 24, 1960). The legislative and administrative history underlying section 311(a) and the predecessor to section 73.3580 does not provide a rationale that would undermine the proposals we make herein. See *Communications Act Amendments, 1960, PL 86-752, 74 Stat. 889; 1960 US Code Cong & Ad News pp. 3522-23; 25 Fed. Reg. 11153, 11156 (Nov. 21, 1960) (regarding 47 CFR § 1.362, predecessor to section 73.3580)*.

⁷ 47 CFR § 73.3580(a). The exceptions in this paragraph track those listed in 47 U.S.C. § 309(c), applications to which 47 U.S.C. § 309(b) does not apply. See *also* 27 Fed. Reg. 9947 (Oct. 10, 1962) (amending former 47 CFR § 1.359, predecessor to section 73.3580).

relevant communities to be served are made aware of applications and are given the opportunity to participate in the broadcast licensing process.⁸ Section 73.3580 and its predecessors have been revised several times,⁹ resulting in requirements that differ depending on the kind of service for which an applicant is seeking authorization and the nature of the application. Generally, stations that are able to provide on-air public notice are required to do so.¹⁰ In many cases, but not all, these stations also must provide written public notice in a newspaper.¹¹ In other cases where stations cannot provide on-air public notice, the station is required to provide only written public notice in a newspaper.¹² The rule also prescribes the timing, frequency, duration, and content of both the on-air and written public notice and the type of newspaper in which the written notice must be published.¹³ As a result of the varying notice requirements imposed over the years, the rule has become increasingly complex, creating compliance difficulties.¹⁴

4. In May 2017, the Commission issued a Public Notice initiating a review of its media regulations to eliminate or revise those that are outdated, unnecessary, or unduly burdensome.¹⁵ In response to that Public Notice, several parties urged the Commission to update section 73.3580 to allow

⁸ See generally 47 CFR § 73.3580(c) – (d). See also *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).

⁹ See, e.g., *Commission Organization of Radio Broadcast Services; Revised Procedures for the Processing of Broadcast Applications*, Gen. Docket No. 79-137, Report and Order, FCC 81-276 (1981); *Low Power Television and Television Translator Service*, Report and Order, 102 F.C.C.2d 295 (1984) (minor changes to 47 CFR § 73.3580(d)(1) distinguishing the local public notice and station identification requirements for low power television licensees that are locally originating programming as defined by 47 CFR § 74.701(h)); Federal Communications Commission, *Oversight of the Radio and TV Broadcast Rules*, 49 Fed. Reg. 4208-02 (Feb. 3, 1984) (correcting language in pre- and post-filing on-air announcements of renewal application filing to reflect extended license terms); *Broadcast Services; License Renewal Announcement Requirements for Low Power Television, Television Translator, Television Booster, FM Translator, and FM Booster Stations*, Report and Order, 7 FCC Rcd 2284 (1992) (amending renewal notification requirements for LPTV, TV translator, and FM translator licensees); *Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355 (2000); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, Second Report and Order, 27 FCC Rcd 4535 (2012) (amending section 73.3580 to reflect change to Online Public Inspection File for television stations).

¹⁰ 47 CFR § 73.3580(c). Stations that are not yet on air (e.g., applications for new construction permits), that are silent, or that do not originate programming (e.g., FM and TV translator stations, certain LPTV stations) are not required to provide on-air notice.

¹¹ See, e.g., 47 CFR § 73.3580(c), (d)(3) (providing that certain applicants for modification, assignment, or transfer of a broadcast station license must give notice of such application in a newspaper and through broadcast announcements). *But see* 47 CFR § 73.3580(d)(1) (providing that certain applicants for renewal of a broadcast license must give notice of the application through broadcast announcements, and that publication of such notice in a newspaper is not required); 47 CFR § 73.3580(e) (providing that applicants for noncommercial educational (NCE) stations are generally exempt from newspaper publication requirements, except during periods when they are not broadcasting).

¹² See *supra* note 10.

¹³ 47 CFR § 73.3580(c), (d), (g).

¹⁴ See, e.g., Jack N. Goodman Comments in MB Docket No. 17-105, Attach. 1, at 2; Comments of National Association of Broadcasters (NAB) at 4, 6; Comments of Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting System (Public Broadcasters) at 3 (all asserting that section 73.3580 is confusing and/or should be streamlined). References to comments in this footnote and hereafter are to comments filed in MB Docket No. 17-264 unless otherwise noted.

¹⁵ *Modernization Initiative Public Notice*, *supra* note 4.

applicants to notify the public of applications through the Internet, in conjunction with broadcast announcements, and to consider simplifying the rule.¹⁶ In October 2017, the Commission issued the *NPRM* to seek comment generally on whether to update or even eliminate section 73.3580.¹⁷

III. DISCUSSION

5. After considering the comments filed in response to the *NPRM*¹⁸, we propose to eliminate the requirement to publish written public notice in newspapers, replacing newspaper publication with online written notice. As discussed below, we believe that placing the written notice in the newspaper is costly to the applicant, appears in the newspaper only intermittently, and at best provides the reader with an abridged version of the filed application. On the other hand, online notice would reduce the cost burden to the applicant, in most cases would remain online continuously for a longer period of time than newspaper publication, and more importantly would link directly to the filed application itself, giving the reader direct access to the primary source material rather than the summary in current newspaper public notices. We believe, therefore, that given the transition to electronically filed applications and online public inspection files, online notice more effectively informs members of the public as to the elements of, and the parties filing, a given application. Moreover, we note that such online notice is provided at no cost to consumers. At the same time, we also propose to streamline both on-air and online written public

¹⁶ See, e.g., Alpha Media, LLC, *et al.* (Joint Radio Commenters) Comments in MB Docket No. 17-105, at 2-3 (urging the Commission to substitute an online posting requirement for newspaper publication and to revise the on-air requirement so that a broadcaster may comply simply by announcing the type of application and directing the public to its website for further information); NAB Comments in MB Docket No. 17-105, at 20-21 (asserting that the Commission “should permit broadcasters to place any requisite notices that today must be published in a local newspaper on their station websites” and “consider reducing the length and text of required on-air notices about various types of applications . . . by referring listeners/viewers to station websites, where the requisite text could be posted along with a link to the stations’ online public file containing the relevant application”); Named State Broadcasters Associations Comments in MB Docket No. 17-105, at 4 (arguing that the Commission “should allow broadcasters to (1) satisfy the notice requirement by posting on their website any notices that the rules currently require to be published in a local newspaper and (2) direct viewers and listeners to a website in lieu of broadcasting the entire notice over the air”). See also Multicultural Media, Telecom and Internet Council (MMTC) Comments in MB Docket No. 17-105, at 3-4 (urging the Commission to “replac[e] the requirements of public notice in a local newspaper with a requirement that public notices be posted online on the station’s website”); ABC Television Affiliates Association, *et al.* (Affiliates Associations) Reply in MB Docket No. 17-105, at 6 (urging the Commission to give stations the option to replace 20th Century protocols with more accessible and efficient 21st Century, Internet-based notifications).

¹⁷ *NPRM*, *supra* note 2. In this two-part *NPRM*, the Commission also proposed to revise another rule section relating to the provision of ancillary or supplementary services by digital television broadcast stations. *Id.* at 8207-8208, paras. 6-7. The Commission adopted that digital television station proposal in a subsequent order, but deferred action on local public notice issues relating to section 73.3580. *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*, Report and Order, 33 FCC Rcd 3702 (2018).

¹⁸ Broadcasters and other commenters support eliminating the newspaper notice requirement, either replacing it with online notice or with on-air announcements directing viewers and listeners to online information. See, e.g., Comments of Meredith Corporation, Raycom Media, Inc., and Graham Media Group, Inc. (Meredith) at 1; MMTC Comments at 1; NAB Comments at 4, 10-11; Comments of Nexstar Broadcasting, Inc. (Nexstar) at 4-5; Public Broadcasters Comments at 4; Comments of United Church of Christ, Inc.; Benton Foundation; Common Cause; Free Press; National Hispanic Media Coalition; and the Open Technology Institute (UCC Parties) at 2, 7-9. Newspaper publishers and their trade associations, which have an economic interest in maintaining the requirement that broadcasters purchase ads in newspapers to provide public notice, oppose this proposed change. See, e.g., Comments of Public Notice Resource Center and State Newspaper Associations (PNRC) at 1-7; Comments of LNP Media Group (LNP) at 2-5. The comments received to date generally lack specificity about many other aspects of section 73.3580, thus prompting us to seek further comment on the specific proposals made herein.

notices.¹⁹ We further propose to replace detailed application descriptions with directions on how viewers and listeners can review applications in Commission databases.²⁰ Thus, we propose to retain the basic structure of applicants' public notice obligations, but to modernize and streamline the process by substituting online notices for newspaper publication and by standardizing and simplifying those notices.

6. We therefore propose that those broadcasters currently required to provide newspaper notice of a filed application should instead provide notice online, and that online notice should link to the actual online application available in the Commission-hosted Online Public Inspection File (OPIF).²¹ We further propose 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 OPIF.²² We propose that the schedule of such announcements be the same for all applicants, broadcast services, and application types.²³ Our goal is to reduce burdens on broadcasters while providing the public with better and more accurate information, as reflected in the proposed revision to section 73.3580 set forth in Appendix A.

7. Except as noted below, we propose that applicants that currently provide written public notice only by newspaper publication would only be required to provide written notice online under our proposal; applicants that currently only provide on-air notice would continue to do so except as noted below;²⁴ and applicants currently providing both on-air notice and written notice by newspaper publication would continue to provide both on-air and written notice, but would substitute online written notice for newspaper notice under our proposed new rule. We solicit comment as to this proposal and invite commenters to take this opportunity to opine as to whether some or all applicants should have different types of public notice obligations under new local public notice rules. We also invite comment as to whether we should allow or require other means of public outreach, for example, social media accounts or mobile apps, as means of providing local public notice, and what the costs and benefits of such alternate means would be. Would use of these methods allow greater repetition of public outreach announcements without imposing significant additional burdens on broadcasters? Would it present challenges? Further, we tentatively conclude that the proposed rules would be less costly to applicants, would provide more effective public notice by improving the public's access to applications, and would satisfy the statutory notice requirement. We seek comment on these tentative conclusions. With regard to

¹⁹ See *infra* paras. 18-21, 27-30.

²⁰ See *infra* paras. 20, 24, 29.

²¹ Once the applicant has submitted its application to the Commission and it has been accepted for filing, the Media Bureau will place the application on an "accepted for filing" public notice. It is then the applicant's responsibility, in the case of certain applications, to provide local public notice of the application's filing pursuant to 47 CFR § 73.3580.

²² Although most broadcasters are required to participate in 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 do not. Those broadcasters that are not required to participate in OPIF, whether giving local public notice on-air or online, would reference the Commission's electronic application filing databases, such as the Media Bureau's Licensing and Management System (LMS), rather than OPIF. The Media Bureau is currently transitioning from use of its CDBS database to LMS. It is anticipated that transition will be complete prior to adoption of any proposed rules in this proceeding. Consequently, we expect that LMS will be available as a substitute for OPIF where OPIF is not an option.

²³ Section 73.3580 does not provide a rationale for the different schedules of on-air announcements. Nothing in the legislative and administrative history indicates a rationale that would undermine the proposals herein. See *supra* note 6.

²⁴ See *infra* para. 22, discussing the need for applicants for new NCE stations to provide online notice rather than on-air announcements.

these rule proposals, commenters should describe and, if possible, quantify the costs and benefits of the proposal(s) to broadcasters and the public.

A. Proposed Elimination of Public Notice Requirements

8. We tentatively conclude that we are statutorily required to retain some form of local public notice. Despite the Commission's suggestion in the *NPRM* to repeal section 73.3580 in its entirety,²⁵ and some commenters' concurrence,²⁶ section 311 of the Act directs that the applicant "shall give notice of such filing in the principal area which is served or is to be served by the station,"²⁷ and thus imposes a local public notice obligation on an applicant's part. We therefore propose not to repeal the rule.

9. However, while commenters differ on the details and methods of applicant public notice, none appear to argue for retention of section 73.3580 in its present form, which tends to be confusing and difficult to follow, comprising as it does an amalgamation of decades' worth of differing ideas on what local public notice should entail. Thus, while we tentatively find that we cannot, consistent with the statute, eliminate an applicant's obligation to provide public notice because of the mandate in section 311(a)(1) of the Act, we believe that the existing notice requirements can and should be streamlined. We propose below a shorter version of the required public notice that directs the public to the Commission's online resources rather than recites lengthy summaries of applications.

B. Substitution of Online Written Public Notice for Newspaper Publication

10. We propose to substitute online written public notice for the requirement that applicants publish notice of broadcast applications in a local newspaper. Under our proposed rule, the goal would be to direct viewers and listeners to the application itself in the applicant's OPIF. We believe this would provide the public with more effective notice of filed applications, would reduce costs for the applicants and the public, and would provide the public with greater opportunities to discover applications that are relevant to the communities where they live. We therefore propose that those applicants currently required to give written public notice by newspaper publication should instead post notice of the filing of an application on an Internet website and include a hyperlink to the actual application in OPIF.²⁸

11. Broadcasters favor elimination of the newspaper publication requirements;²⁹ whereas newspapers and their trade organizations argue in favor of retaining the newspaper publication requirements.³⁰ Broadcasters contend that newspaper publication is expensive and increasingly ineffective for giving public notice.³¹ Newspapers and affiliated trade groups, on the other hand, insist

²⁵ *NPRM*, 32 FCC Rcd at 8209-8210, para. 10.

²⁶ *See, e.g.*, Meredith Comments at 1; NAB Comments at 4, 10-11; Nexstar Comments at 5-6; Public Broadcasters Comments at 3-4.

²⁷ 47 U.S.C. § 311(a)(1).

²⁸ Where the applicant does not have, or yet have, an OPIF, the online notice will link to the applicant's filed application in LMS. Applicants that are currently required to provide on-air notice would still be required to provide on-air notice, but we propose to streamline the required notice substantially. *See infra* paras. 25-30.

²⁹ *See, e.g.*, NAB Comments at 4-9; *see also supra* note 18.

³⁰ *See, e.g.*, PNR Comments at 1-7; LNP Comments at 2-5.

³¹ *See, e.g.*, MMT Comments at 1 ("Posting notices in newspapers is expensive, time consuming, and ineffective relative to posting online."); Meredith Comments at 2; NAB Reply at 5. *See also* Nexstar Comments at 5, noting that from 2004 through 2016, 56 daily newspapers closed or merged, and another 109 shifted from daily to weekly publication. MMT also contends that requiring newspaper publication disadvantages small broadcasters, which are less able to bear the expense of newspaper publication. MMT Comments at 1-2.

that newspaper notice continues to be superior to online notice.³² These commenters point to the fact that most Americans read a newspaper at least once a month in print, online, or via a mobile app, with 80 percent of those reading the print version.³³ They also note that a sizable percentage of Americans lack Internet access, especially older people and those living in rural areas.³⁴ Newspaper commenters also make a number of more subjective claims—that newspaper readers are more civically engaged, or that the experience of reading a physical newspaper encourages discovery of information in its pages.³⁵ These commenters, however, do not provide any evidence that people without ready access to broadband connections, such as low-income citizens or people in rural areas, have greater access to newspapers.

12. We tentatively conclude adopting online written notice as a substitute for newspaper publication would provide more effective notice for the public. Newspaper public notice imposes costs on both the applicant and the public. Applicants must buy ads,³⁶ and members of the public must buy newspapers. Online written notice has the advantage of eliminating costs for applicants and consumers, except in the limited number of cases when an applicant may have to pay to post written notice on a third-party site. Our proposed rule for online written notice would result in written notice being available for longer periods of time. Section 73.3580 currently requires newspaper publication for no more than four days. Our proposed rule would require online notice for thirty days in most cases. Online written notice would also link interested members of the public directly to the relevant application in the Commission’s electronic databases, eliminating the need for the public to rely on the accuracy of summaries of applications published in the newspaper. Online publication also allows the public to take advantage of online search tools to automate tracking and discovering new applications in a manner that is not possible with newspaper written notice.³⁷

³² See PNRC Comments at 2-5; LNP Comments at 2-3. Among other things, PNRC claims that elimination of newspaper notice will *reduce* the availability of broadcast notices online because they will no longer be available to aggregators that compile legal notices published by newspapers; PNRC claims that inclusion of legal notices by aggregators “increases their accessibility via the tools most people use to find information on the Internet – search engines.” PNRC Comments at 5. Further, PNRC claims that elimination of newspaper public notice will result in less reporting on broadcast applications and will make it less likely that community members will learn of applications because journalists “are significant consumers of public notice advertisements.” *Id.* at 5-6. PNRC’s comments do not take into account the significant costs to the applicant of newspaper publication, or that publication on a newspaper’s website only occurs in conjunction with publication in the print edition. Additionally, PNRC ignores the fact that online search tools allow the public to discover application notices without the need for aggregators, which are themselves online tools.

³³ PNRC Comments at 4.

³⁴ LNP Comments at 3-4; PNRC Comments at 5. See also UCC Parties Comments at 7.

³⁵ LNP Comments at 3; PNRC Comments at 2-4.

³⁶ In 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. 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. Under the current rules, then, certain applicants must spend anywhere from \$113.25 to \$453.00 to publish an abridged version of an application for one to four days, versus posting notice continuously online with a direct link to the application itself at little to no cost in the majority of cases.

³⁷ For example, some Internet search engines allow the user to create custom searches designed to retrieve specific information. In addition, private entities have created “bots” that seek out selected content.

13. Although certain commenters insist that newspaper readership remains strong, the fact remains that Internet usage has greatly surpassed printed newspaper readership.³⁸ As the Commission noted in another decision updating its rules for the Internet age, Internet use has increased since 2001, when only half of U.S. households had an Internet connection.³⁹ Today, approximately 90% of American adults use the Internet,⁴⁰ and the amount of time spent online continues to increase.⁴¹ Similarly, data reported by Pew Research Center reflect that Internet usage has increased (or remained constant) every year since 2000, and that almost one quarter of U.S. adults are “almost constantly” online.⁴² By contrast, print daily newspaper circulation has declined significantly in the last few decades.⁴³ NAB references data indicating that from 1975 to 2014, the number of daily newspapers declined by 24.2% and total daily circulation dropped by 33.4%, while the U.S. population increased by approximately 100 million.⁴⁴ Sources cited by Nexstar indicate that between 2004 and 2016, 56 daily newspapers were closed or merged, more than 100 other newspapers shifted from daily to weekly publication, and weekday and Sunday print circulation decreased ten percent and nine percent, respectively, in 2016.⁴⁵ Thus, we

³⁸ For example, in December 2018 the Pew Research Center reported for the first time that more Americans obtained their news from social media than from print newspapers. See <https://www.pewresearch.org/fact-tank/2018/12/10/social-media-outpaces-print-newspapers-in-the-u-s-as-a-news-source/>.

³⁹ *Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, Declaratory Ruling, 32 FCC Rcd 3685, 3687, para. 6 (2017) (*EEO Declaratory Ruling*) (observing that: (i) 85 percent of American adults in 2017 either subscribed to broadband Internet access service at home or used smartphones; (ii) as of June 2015, the number of Internet connections in the U.S. (nearly 342 million) had surpassed the U.S. population (nearly 321 million); and (iii) approximately half of American adults owned a tablet device (as compared to three percent in May 2010)). See also *Internet Access Services: Status as of June 30, 2017*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Nov. 2018, at 7, Fig. 5, found at <https://docs.fcc.gov/public/attachments/DOC-355166A1.pdf> (indicating that Internet access subscribership via fixed broadband connections has grown by approximately 600 percent from June 2002 to June 2017).

⁴⁰ Internet/Broadband Fact Sheet, Pew Research Center (as of Feb. 5, 2018), <http://www.pewinternet.org/fact-sheet/internet-broadband> (visited Feb. 11, 2019). This Pew Fact Sheet updates data set forth in the January 2017 Pew Fact Sheet cited by NAB. NAB Reply at 8. Pew Research Center is a “nonpartisan fact tank that informs the public about the issues, attitudes and trends shaping the world.” Pew has documented the Internet’s growth and distribution in the United States since 2000. <http://www.pewinternet.org/fact-sheet/internet-broadband>.

⁴¹ NAB Reply at 8, citing Jeffery I. Cole, 2017 Digital Future Project: Surveying the Digital Future, Center for the Digital Future (2017), <http://www.digitalcenter.org/wp-content/uploads/2013/10/2017-Digital-Future-Report.pdf> (*Surveying the Digital Future*). The Center for the Digital Future in the Annenberg School for Communication and Journalism at the University of Southern California is a forum for the discussion and development of policy alternatives addressing the leading issues in media and communication. *Id.*

⁴² Internet/Broadband Fact Sheet, Pew Research Center (as of June 12, 2019), <http://www.pewinternet.org/fact-sheet/internet-broadband> (visited July 25, 2019). See also, e.g., *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9813, para. 20 (2017) *vacated and remanded*, *Prometheus Radio Project v. FCC*, Nos. 17-1107, 17-1109, 17-1110, 17-1111, 2019 WL 4593318 (3d Cir. Sept. 23, 2019) (Commission’s prior conclusion that online outlets do not serve as a substitute for newspapers and broadcasters providing local news and information “does not appear to reflect the record evidence as to ‘how the Internet has transformed the American people’s consumption of news and information,’ (citation omitted) the direction of current trends in this regard, (citation omitted) and in particular how those trends have affected younger adults.”).

⁴³ *EEO Declaratory Ruling*, 32 FCC Rcd at 3689, para. 9 (noting that there were 126 fewer daily newspapers in 2014 than in 2004).

⁴⁴ NAB Reply at 9, n. 22.

⁴⁵ Nexstar Comments at 5.

tentatively conclude that posting written public notice online, in the manner described in detail below,⁴⁶ would be more effective in reaching viewers than publishing in a print newspaper. We invite comment on this tentative conclusion.⁴⁷ Commenters should describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

C. Online Notice Requirements

14. Given our tentative conclusion that online public notice of application filing is more effective than and should replace newspaper publication, we propose that in the majority of cases such public notice should be posted on the applicant station's, licensee's, or affiliated website; should remain posted continuously (24 hours a day, seven days a week); and should link directly to the noticed application in OPIF or, if the station has no OPIF, in Commission licensing databases.⁴⁸ We believe that this will effectively provide public notice that is available to viewers and listeners at any time, compared to printed summaries published occasionally in newspapers.

15. We observe that the current version of section 73.3580 was written at a time when public review of a broadcast application involved physically traveling to either Commission headquarters or the broadcaster's main studio to view a copy of the application. Thus, applicant public notice of an application currently consists of a summary of the filed application and, where relevant, the parties involved, along with a description of where a physical copy of the application can be viewed.⁴⁹ Broadcasters are required to provide the public with sufficient information in order to inform the decision whether to expend the (sometimes considerable) effort required to review an actual application.

16. Physical review of filed applications, however, has essentially become a thing of the past. Since 1999, all but one type of broadcast application has been subject to mandatory electronic filing.⁵⁰ Consequently, the Commission's licensing databases make those applications available to the public online at all times.⁵¹ Additionally, broadcasters are no longer required to maintain physical public files, which are now uploaded to the Commission-hosted OPIF,⁵² and partly as a result of this we have eliminated the requirement that broadcasters maintain publicly accessible main studios.⁵³ Using these

⁴⁶ See *infra* paras. 18-21.

⁴⁷ Current 47 CFR § 73.3580 requires certain applicants to substitute newspaper publication for on-air announcements, such as those that are silent for technical reasons or are school-affiliated noncommercial educational stations that are not on the air when school is not in session. We would propose to apply our online announcement requirement in these cases as well. See *infra* paras. 22-23.

⁴⁸ See *infra* paras. 18-21.

⁴⁹ See, e.g., 47 CFR § 73.3580(c)(1) (newspaper notice for certain application types); (g)(1) (separate newspaper notice requirement for major amendments to LPTV, TV translator, TV booster, FM translator, and FM booster stations); (d)(3) (on-air notice requirements for modification, assignment, or transfer applications for certain stations); (d)(4) (on-air notice requirements for renewal applications).

⁵⁰ See, e.g., *Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314, and 315*, Public Notice, 16 FCC Rcd 3989 (MMB 2001); *Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301-CA, 346, 349, and 350*, Public Notice, 17 FCC Rcd 8575 (MB 2002); *Media Bureau Implements Mandatory Electronic Filing of FCC Forms 302-TV and 302-DTV*, Public Notice, 17 FCC Rcd 19691 (MB 2002); *Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314, and 315*, Public Notice, 17 FCC Rcd 23806 (MB 2002). As part of the Media Bureau's transition to LMS, we anticipate that all applications will soon be subject to mandatory electronic filing in LMS. See *supra* note 22.

⁵¹ LMS is searchable at <http://www.fcc.gov/searchlms> .

⁵² See <https://www.fcc.gov/media/online-public-inspection-file-access-and-information> .

⁵³ *Elimination of Main Studio Rule*, Report and Order, 32 FCC Rcd 8158, 8163 (2017) (“Once broadcasters fully transition to the online public file in early 2018 . . . requiring stations to maintain a fully staffed main studio for purposes of providing access to the file will no longer be practical or justifiable.”).

databases, the public is able to access actual filed broadcast applications at any time, day or night, in seconds merely by entering station information and clicking on links to applications filed by broadcast stations.

17. Quite simply, online access to broadcast applications filed with the Commission has become all but ubiquitous to the majority of viewers and listeners.⁵⁴ Accordingly, we believe that the goal of our local public notice rules should be to enable viewer and listener access to filed applications, rather than the current practice of summarizing applications and facilitating physical inspection. In particular, online notice that contains a hyperlink to a filed application puts interested parties no more than a click away from the actual application, at any time.

18. *Sites for posting online notice.* In order to make online public notice meaningful to the local communities served by broadcast stations, we propose that an applicant post online notice on its own website or one as closely affiliated with the station as possible, as that would be the first place listeners or viewers would be expected to turn. We believe the online public notice should be posted in a manner designed to promote discovery by the public in the principal area that is served or to be served by the station that is the subject of an application. We thus believe that the most logical and effective site on which to post online public notice is that belonging to the applicant station, as this is where interested parties are most likely to seek station information.⁵⁵ Therefore, if the station to which the application pertains has a website, the notice should be conspicuously posted on that website's home page.⁵⁶ In addition, the text of the notice should be apparent to the average Internet user, with a reasonably large font in a contrasting color from the background. If the station does not have its own website but the station licensee has a website, the notice should be posted on the licensee's website's home page. If neither the station nor the station licensee maintain a website but the licensee's parent entity has a website, online notice must be posted on the home page of the parent entity website.⁵⁷ In each case, the applicant-affiliated website must be publicly accessible, that is, able to be accessed 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. We tentatively conclude that posting on such applicant-affiliated websites will be feasible in the vast majority of cases, and seek comment on our conclusion, as well as on the details of our proposal. Do commenters believe that there are more effective sites on which to post online notice of application filings? Are there third-party local websites that would be just as effective as applicant-affiliated websites? What costs, if any, would the applicant incur by posting on such a website? In particular, how expensive would postings be for broadcasters on such sites compared to print newspapers required under the current rule? To the extent that commenters disagree with our proposal and maintain that newspaper publication is more effective than online notice, we ask that they detail their claim with specificity and provide data regarding the costs and benefits of

⁵⁴ While certain commenters have expressed concern about members of the public who lack Internet access (*see, e.g.*, LNP Comments at 3-4), we note that this concern applies equally to members of the public who do not subscribe to a local newspaper. Moreover, just as it is possible that members of the public may be able to access a local newspaper (to the extent one exists) without subscribing – by, for example, finding it at a public library – those lacking Internet access can likewise obtain access in locations such as libraries. We therefore do not believe that lack of Internet access presents any greater difficulties than does lack of a newspaper subscription. We seek comment on this analysis.

⁵⁵ *See, e.g.*, 47 CFR §§ 73.3526(b)(2)(ii), 73.3527(b)(2)(ii), directing stations to post a link to the OPIF on the home page of the station's own website.

⁵⁶ *But see* Letter from Erin L. Dozier, Esq., Senior Vice President and Deputy General Counsel, NAB, to Marlene H. Dortch, Esq., Secretary, FCC, MB Docket Nos. 17-264, 17-105, 05-6, at 1 (filed Sept. 17, 2019) (observing that it might be more appropriate and consistent with consumer expectations for online notices to appear at a tab or link labeled “Pending FCC Applications” or similar, rather than placing the full text of the notice on a station's home page).

⁵⁷ *See* Appendix A, proposed revised section 73.3580(a)(2) and (b)(2)(ii) (Proposed section 73.3580).

continuing such an approach. Whether they agree or disagree with the proposal, we ask that commenters describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

19. If an applicant does not maintain a station or other applicant-affiliated website, which may be true especially for FM translator and TV translator or low-power television (LPTV) stations that do not originate programming, we propose that online notice should be posted on a locally targeted, publicly accessible website. We propose to define that 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).⁵⁸ We seek comment on this proposal, as well as on other alternative non-applicant affiliated websites that commenters believe would provide adequate and accessible notice.

20. *Online notice texts.* We propose that the content of the online notice be shorter than that required to be in newspaper publications under the current rule and that it contain a direct link to the application for which notice is being given. We believe that requiring less information is justified because a detailed summary or list of parties to the application is unnecessary when the actual application is a click away for the user. Thus, we propose the following text for the required online notice for authorized stations (with a granted construction permit or license):⁵⁹

On [DATE], [APPLICANT NAME], [PERMITTEE / 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 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].

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

On [DATE], [APPLICANT NAME], [APPLICANT FOR] [A NEW (STATION TYPE)⁶⁰ STATION ON] [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 can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].⁶¹

We seek comment on this proposed text, and any suggested amendments along with reasons for such proposed changes. For example, in addition to the link to the application, should the notice include a link to the public notice publishing the pleading cycle for the application, or a statement of the purpose of the application together with pertinent details such as those specified in our existing rules, to facilitate viewer/listener comments or objections? Should the controlling shareholder of a licensee also be required in the notice? Should the online notice include specific language regarding whether the applicant is

⁵⁸ *Id.* § 73.3580(a)(5).

⁵⁹ See also *infra* para. 24, in which we propose a variant on the following online notice texts for applicants for authorizations under 47 U.S.C. § 325(c).

⁶⁰ For example, "television," "radio," "low power television," "low-power FM," "Class A television," "FM translator."

⁶¹ See Proposed section 73.3580(b)(2)(i). An entity applying for an initial construction permit for a new broadcast station will not yet have an OPIF. See *supra* note 22.

seeking a waiver of Commission rules and the nature of the waiver sought, e.g., a media ownership waiver?

21. *Duration of posting for online notice.* We propose that the online notice, if posted on an applicant-affiliated site or other third-party site for which the applicant does not have to compensate the website owner for publication, be posted continuously for a minimum of 30 days,⁶² starting no earlier than the release date of the Commission's public notice of acceptance of the application for filing, and no later than five days following release of that public notice.⁶³ We seek comment on the length of continuous posting. In particular, we ask commenters to state whether the proposed switch from newspaper publication to online posting on an applicant-controlled or affiliated website should increase or decrease the frequency or duration of such notice, especially given that in most cases online notice would be posted 24/7 as opposed to being published in a newspaper on discrete days over a certain time period. Where an applicant must post its online notice on a website that requires the applicant to pay for posting, we further propose that such notice be posted for a period of not less than 24 consecutive hours, once a week for four consecutive weeks, starting no earlier than the release date of the Commission's public notice of acceptance of the application for filing, and no later than five days following release of that public notice.⁶⁴ A four-week schedule of paid postings is consistent with both the current schedule of newspaper publication and the proposed schedule of on-air announcements, below.⁶⁵ What would be the costs associated with a continuous 30-day posting on a website requiring payment, such as a local newspaper? Would such expense outweigh the benefits of extended notice? We seek comment on this proposal, and in particular whether commenters believe that a substantial number of applicants would need to avail themselves of the pay-to-post option. Commenters may also wish to address whether applicants needing to pay for online notice posting should be required to post more or less frequently, or for a greater or lesser number of consecutive weeks, and to what extent this option affects the costs and benefits of the proposal.

22. *Non-commercial online announcements.* Under our current rule, noncommercial educational (NCE) stations may fulfill their local notice requirements solely through on-air announcements, where possible.⁶⁶ Paragraph (e) of current section 73.3580, among other things, exempts NCE stations from the rule's newspaper publication requirements, unless they are not broadcasting during the part of the year when on-air announcements are required.⁶⁷ The Commission, in the *2005 Public Notice NPRM*, questioned whether NCE applicants should be exempt from the newspaper publication requirement, at least in the assignment and transfer application context.⁶⁸ Imposing greater burdens on NCE applicants than under the current rules may not comport with our goal of modernizing and streamlining local public notice obligations. At the same time, we recognize that eliminating the

⁶² "Continuously," in this context, means the posted notice is available for viewing 24 hours a day, seven days a week.

⁶³ See Proposed section 73.3580(b)(2)(iii)-(iv). Public notice of acceptance for filing means that the application has been deemed complete and technically correct. This public notice should be distinguished from other public notices, for example, those that merely acknowledge that the application has been received by the Commission staff but not yet studied for acceptability.

⁶⁴ *Id.*

⁶⁵ See *infra* para. 27.

⁶⁶ See *infra* paras. 25-30, detailing our proposals regarding on-air announcements.

⁶⁷ 47 CFR § 73.3580(e).

⁶⁸ *2005 Public Notice NPRM*, 20 FCC Rcd at 5423, para. 7. We note that no further action has been taken in the 2005 proceeding, MB Docket No. 05-06, although the Commission declined to terminate the proceeding as dormant. *Termination of Certain Proceedings as Dormant*, Order, 27 FCC Rcd 11284, 11285-86 and n.7 (2012). In the *NPRM*, the Commission tentatively concluded that it would not move forward with the proposals in the *2005 Public Notice NPRM*. *NPRM*, 32 FCC Rcd at 8210, para. 11.

newspaper publication requirement in favor of online notices would substantially reduce burdens on broadcast applicants. We therefore seek comment as to whether, consistent with the current rule, we should continue to exempt NCE stations generally from the proposed obligation to post online notice of applications.⁶⁹ Additionally, in order to clarify the public notice obligations of entities applying for initial construction permits for new NCE stations, which are not yet on the air, we propose that applicants for initial construction permits for new NCE broadcast stations comply with the online notice requirements only, as they are unable to broadcast on-air announcements. We also propose to eliminate the notification exemption in paragraph (e) of current section 73.3580 for “the only operating station in its broadcast service which is located in the community involved.”⁷⁰ 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. We seek comment on these proposals.

23. *Silent stations.* As with NCE stations discussed above, we also propose that any station required to make on-air announcements⁷¹ that is not broadcasting or that is unable to broadcast during all or a portion of the period during which the on-air announcements are required to be broadcast, such as a silent station, must comply with the online notice requirements during the time period in which it is not broadcasting or is unable to broadcast.⁷² However, if the station returns to the air during the period that on-air announcements are required, the station must resume on-air announcements.⁷³ We request comment on this proposal.

24. *Authorizations pursuant to Section 325(c) of the Act.* We propose, consistent with our other proposals herein, to require applicants for authorization under section 325(c) of the Act—applicants that propose to locate, use, or maintain a studio supplying programming to a foreign broadcast station whose signals are consistently received in the United States⁷⁴— 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.⁷⁵ What types of websites would meet this requirement? Would this comport with the statutory requirement to provide “notice” in the principal area the broadcaster serves or would serve? Current section 73.3580 requires applicants for authorization under section 325(c) to give public notice via newspaper publication,⁷⁶ unless the programs to be

⁶⁹ Consistent with our move from newspaper publication to online notice, we propose that an NCE station that is not scheduled to broadcast at a time when on-air announcements are required should post online notices during any period of time when on-air announcements would otherwise have to be broadcast. So, for example, if a station is required to broadcast on-air announcements once a week during the last two weeks of May and the first two weeks of June, but is not scheduled to or is unable to broadcast during the month of June, the station must broadcast required on-air announcements during the last two weeks of May, and must provide online notice during the first two weeks of June. If the station is not broadcasting during the entire period that on-air announcements are required, it would have to provide online notice instead. We request comment on this proposal.

⁷⁰ 47 CFR § 73.3580(e).

⁷¹ See *infra* paras. 25-30, detailing our proposals regarding on-air announcements.

⁷² See *supra* paras. 18-21, detailing our proposed requirements regarding online notice. To the extent that a station must provide both online notice and on-air announcements, for example, in the case of a commercial assignment or transfer application, the applicant would be expected to provide online notice for the entire 30-day period notwithstanding whether it was currently broadcasting.

⁷³ See Proposed section 73.3580(b)(1)(vi).

⁷⁴ 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.

⁷⁵ 47 CFR § 73.3580(c)(2). See Proposed section 73.3580(b)(2)(ii).

⁷⁶ *Id.* See also paragraph D to Instructions to FCC Form 308, referencing 47 CFR § 73.3580.

transmitted are special events not of a continuing nature, in which case local public notice is not required.⁷⁷ We propose the following text for such applicants' 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]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU MYIBFS DATABASE].

We further propose to retain the exemption from local public notice for stations applying for section 325(c) authorization for special event programming only.⁷⁸ We seek comment on these proposals.

D. Streamlining Content of On-Air Announcements

25. We propose to continue requiring on-air announcements for those applicants currently required to make such announcements, but to standardize and simplify the requirements. We further propose to make the schedule of on-air announcements, basic content of such announcements, and timing of broadcast uniform for all applicants, broadcast services, and application types, rather than the current system that has different broadcast schedules for different application types.⁷⁹ Specifically, we propose that all on-air announcements commence with acceptance of an application for filing, which would eliminate pre-filing announcements currently broadcast by license renewal applicants.⁸⁰ Also, as emphasized above, under our proposed rule the goal of the on-air announcements is to direct viewers and listeners to either the applicant's OPIF or, if it does not have an OPIF, toward the application itself in the LMS database.

26. Some commenters maintain that on-air announcements remain an important connection between the broadcaster and the listener or viewer.⁸¹ Therefore, the UCC Parties caution us not to emphasize flexibility to broadcasters at the expense of transparency.⁸² They contend that at a minimum broadcasters should be required to give both over-the-air and online notice of applications, because not all viewers and listeners have Internet access but even those who do not have Internet access will have access to broadcasts.⁸³ Additionally, the UCC Parties urge that such announcements be clear and free of technical jargon, and should contain "meaningful instructions" on how to find the application and file objections.⁸⁴ Broadcaster commenters, on the other hand, maintain that over-the-air announcements should be streamlined and focused on directing viewers and listeners to the actual applications as they appear online, as opposed to lengthy summaries and recitations.⁸⁵ All of these commenters make valid points. On the one hand, we agree that on-air announcements, in cases where the station has the ability to provide them, remain important to local notice. On the other hand, we agree that over-the-air announcements should be streamlined and direct people to actual online applications so that interested viewers and listeners can review applications themselves.

⁷⁷ 47 CFR § 73.3580(a)(6).

⁷⁸ *See id.* § 73.3580(c)(6), (d)(6).

⁷⁹ *See* 47 CFR § 73.3580(d).

⁸⁰ *See infra* para. 27, discussing elimination of pre-filing announcements for renewal applications.

⁸¹ UCC Parties Comments at 8.

⁸² *Id.* at 3.

⁸³ *Id.* at 7-9.

⁸⁴ *Id.* at 9-10.

⁸⁵ *See, e.g.,* Meredith Comments at 2; NAB Comments at 11; Nexstar Comments at 6.

27. *Number of on-air announcements.* We propose to require on-air announcements for all applicants, broadcast services, and application types mandated to make on-air announcements to be aired a total of four times, once per week, for four consecutive weeks, commencing no earlier than the release date of the Commission public notice announcing that the application has been accepted for filing, and not later than five days after release of the Commission public notice.⁸⁶ We seek comment on this proposal. The current rule requires four on-air announcements during the second week following tendering of an application for filing, in the case of applications for modification, assignment, or transfer of an authorization;⁸⁷ in the case of license renewal applications, up to ten on-air announcements (four pre-filing and six post-filing) are required.⁸⁸ Do commenters believe that the revised rule should require more or fewer on-air announcements than proposed? Should the on-air announcements commence with the applicant's submission of the application, rather than release of the Commission public notice of acceptance for filing? We note in this regard that the date of the Commission public notice triggers the time period in which petitions to deny may be filed, and for certain application types (e.g., applications for initial construction permits) there can be a substantial delay between application submission and its acceptance for filing, as Commission staff performs core technical review.⁸⁹ With regard to license renewal applications specifically, our proposal for uniform on-air announcement schedules would eliminate the "pre-filing" announcements currently broadcast by television and radio stations filing such applications.⁹⁰ Unlike in 1969, when the *Renewal Notice R&O* was adopted, public notices and applications themselves are available instantly online, and petitions to deny are prepared and filed electronically. Thus, the long lead times of the days when pleadings were typed and mailed or messengered are no longer necessary.⁹¹ Moreover, pre-filing announcements would not be able to direct viewers and listeners to an application that they could review. We therefore tentatively conclude that pre-filing announcements are no longer necessary and seek comment on this conclusion.

28. *Timing of on-air announcements.* In the interest of further simplifying the public notice process and making it uniform for all applicants, services, and application types, we propose that on-air announcements may be aired at any time from 7:00 a.m. to 11:00 p.m. local time at the community of license, from Monday through Friday.⁹² We seek comment as to this proposal. The current rule dictates specific times of airing based on the type of applicant and application type. We believe these requirements are overly complex, given trends in radio listenership and especially television viewership, such as time-shifting and streaming. Do commenters believe that we should establish separate time windows based on differing usage patterns between radio and television, for example, between 7:00 a.m. and 7:00 p.m. for radio, but between 6:00 p.m. and 11:00 p.m. for television? Would other time periods better maximize the number of viewers/listeners exposed to on-air announcements, while reducing the complexity of the current rule? Should the rule specify, for example, that a certain number of announcements be made during local television news, or during radio morning or evening drive time?

⁸⁶ See Proposed section 73.3580(b)(1)(ii).

⁸⁷ 47 CFR § 73.3580(d)(3).

⁸⁸ *Id.* § 73.3580(d)(4).

⁸⁹ See *id.* § 73.3564. Because the staff does not review pleadings until the application has been accepted for filing, the public would not be impacted by the lack of public notice prior to that date.

⁹⁰ 47 CFR § 73.3580(d)(4)(i) and (d)(5)(i). Pre-filing announcements, which were originally published in a newspaper, were introduced to give a longer period of notice to the public and to afford additional time for republication of defective notices, in order to expedite processing and allow timely action on renewal applications. *Amendment of Section 1.580 of the Rules, Governing Public Notice of Broadcast License Renewal Applications, and Sections 1.227, 1.516, 1.571, and 1.591, Relating to Applications Mutually Exclusive Therewith*, Report and Order, 20 F.C.C.2d 191, 191, para. 2 (1969) (*Renewal Notice R&O*).

⁹¹ See *Renewal Notice R&O*, 20 F.C.C.2d at 191, para. 2.

⁹² See Proposed section 73.3580(b)(1)(iv).

Commenters proposing different time windows for radio and television should support their proposals with specific listenership/viewer data.

29. *On-air announcement scripts.* We tentatively conclude that the content of notices should be updated and streamlined to direct listeners and viewers to online resources, where the details of the filed applications may easily be found. The current version of section 73.3580 contains scripts that broadcasters must follow for on-air announcements. Some commenters have stated that these consume too much airtime and ask that they be shortened.⁹³ We therefore propose to update scripts to the following for both radio and television on-air announcements:

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].⁹⁴ Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit publicfiles.fcc.gov and search in [STATION CALL SIGN'S] public file.

For stations without an OPIF, the following script is proposed:

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, and search in the list of [STATION CALL SIGN'S] filed applications.⁹⁵

We seek comment on these scripts, as well as to any additional information that commenters believe should be required. For example, should the on-air announcement include specific language regarding whether the applicant is seeking a waiver of Commission rules and the nature of the waiver sought, e.g. a media ownership waiver?

30. We further propose to require a television station to use visuals of the full text of the on-air announcement along with the spoken text of the on-air announcement.⁹⁶ Because of the reduced length of the on-air announcement, we believe it is in the public interest and minimally burdensome to require that the entire text be displayed visually.⁹⁷ Would requiring additional text “crawls” over television programming containing the text of the announcement effectively convey notice to viewers, or would text crawls present unanticipated challenges in this context? Could text “crawls” be used to achieve additional repetition of the notice without burdening broadcasters?⁹⁸ Are they necessary? We also propose to retain the rule recommending that foreign language stations broadcast on-air announcements in the primary language used for broadcast. We seek comment on these scripts and proposals. For example, should the deadline for filing comments and petitions to deny be included in the on-air announcement? Do commenters believe it is necessary or desirable to include language in on-air announcements advising viewers and listeners of the applicant or licensee’s duty to operate a broadcast

⁹³ See, e.g., Meredith Comments at 2; NAB Comments at 11.

⁹⁴ “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.”

⁹⁵ See Proposed section 73.3580(b)(1)(i).

⁹⁶ 47 CFR § 73.3580(d)(4)(iii).

⁹⁷ See Proposed section 73.3580(b)(1)(i).

⁹⁸ We note that text “crawls” are used in other contexts to convey information to viewers. See 47 CFR § 73.3700(c)(3).

station in the public interest?⁹⁹ We also invite commenters to discuss whether there may be better ways of verbally describing how to access applications from OPIF or LMS, without being overly or confusingly detailed.

E. International Broadcast Station Applications

31. Our rules state that applications for international broadcast station facilities, also known as HF or shortwave stations, are subject to the local notice provisions.¹⁰⁰ These stations are governed by Subpart F of Part 73 of our rules,¹⁰¹ and thus would be considered a “station in the broadcasting . . . services” under the terms of section 311(a)(1) of the Act. We propose to streamline the local public notice provisions and seek comment on whether it would serve the public interest to eliminate any on-air notice obligations for these broadcasters.

32. With respect to the requirement for local public notice through newspaper publication, our current rules state that this local public notice must be published in a community in which a station is located or proposed to be located.¹⁰² Consistent with the proposals above, we propose to allow applicants for international broadcast stations to publish the notice on a website that targets the local community in which the international broadcast station is proposed to be located (e.g., local government Internet website, local community bulletin board Internet website).¹⁰³ We seek comment on these proposals.

33. With respect to on-air notice requirements, as distinct from the local notice newspaper publication, we seek comment on whether it would serve the public interest to replace any on-air announcement obligations for these international broadcast stations with online notice requirements. Under our rules, although international broadcast stations are located in the United States, they “are intended to be received directly by the general public in foreign countries.”¹⁰⁴ Thus, unlike other broadcast stations with an on-air announcement obligation, on-air announcements of an international broadcast station primarily give notice to people in multiple foreign countries. Accordingly, we seek comment on whether to replace on-air announcement obligations for these international broadcast stations with notices on applicant-affiliated websites. An applicant-affiliated website would be accessible by all communities in which the station is either located or received. Any commenters favoring the complete

⁹⁹ Such language is currently required only in the text for on-air announcements of renewal applications: “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).” 47 CFR § 73.3580(d)((4)(ii). Should the announcement text highlight the licensee’s public interest obligation, consistent with the existing text of on-air announcements of renewal applications? If so, should such language apply only to renewal applications or to on-air announcements of all application filings? We also seek comment as to whether uniform announcement language across all application types, as opposed to language applying only to specific applications such as those for renewals, would aid in overall compliance with the public notice requirements.

¹⁰⁰ See e.g., 47 CFR § 73.3580(a) (stating that all applications for instruments of authorization in the broadcast service (and major amendments thereto, as indicated in § 73.3574) are subject to the local public notice provisions of this section); and 47 CFR § 73.3574 (b) (stating that § 73.3580 will apply to amended applications to effect major changes or result in an assignment or transfer of control).

¹⁰¹ 47 CFR §§ 73.701-73.788. We currently license 17 international broadcast stations. See <https://www.fcc.gov/general/fcc-high-frequency-stations>.

¹⁰² 47 CFR § 73.3580(c)(1).

¹⁰³ 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. 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.

¹⁰⁴ 47 CFR § 73.701(a).

elimination of on-air notices, without replacing them with any other form of notice, should discuss how such elimination would be consistent with section 311 of the Act.¹⁰⁵

F. Other Provisions

34. We propose to retain 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).¹⁰⁶ Such stations are exempt from the provisions of section 309(b) of the Act, and thus from the provisions of section 311(a).¹⁰⁷

35. We propose to retain the requirement that applicants certify in any application for which public notice is required that it will comply with the applicable requirements of the local public notice rule.¹⁰⁸ We also propose to retain the requirement that applicants for license renewal, which are obliged to provide public notice only through on-air announcements, add to OPIF the list of dates and times the required on-air announcements were broadcast.¹⁰⁹ However, based on our proposals in this FNPRM, we propose to eliminate the requirement that the script of the on-air announcements be added to the OPIF, as we would expect broadcasters to follow the mandatory language proposed above.¹¹⁰ We seek comment on this proposal. What costs are associated with posting this information? Commenters that urge us to retain the requirement that renewal applicants list the dates and times of on-air announcements in their OPIF should specifically describe what benefits justify retention.

36. Lastly, we propose to continue to apply the local public notice rules to LPFM stations. Although current section 73.3580 does not specifically reference LPFM stations' local public notice obligations, we note that other noncommercial educational FM and TV stations have such obligations,¹¹¹ and further observe that there is nothing in section 311 of the Act that could be read as exempting LPFM stations from its requirements. To eliminate any potential for confusion, we propose to make the local public notice requirements of LPFM stations explicit in section 73.3580.¹¹² Because LPFM stations are licensed as noncommercial educational stations and locally originate programming, we propose in the revised rule to apply the public notice requirements that are applied to other noncommercial educational stations; specifically, we seek comment as to whether LPFM stations should be required to give public notice through on-air announcements only, except in the case of applications for new LPFM construction permits and during time periods when the LPFM station may be off the air.¹¹³ Also, because the Commission does not host OPIFs for LPFM stations, their on-air announcements should direct listeners to the application in LMS. We seek comment on this proposal.

¹⁰⁵ 47 U.S.C. § 311(a).

¹⁰⁶ 47 CFR § 73.3580(a)(1)-(7). *See* Proposed section 73.3580(d).

¹⁰⁷ 47 U.S.C. §§ 309(c), 311(a).

¹⁰⁸ 47 CFR § 73.3580(h). *See* Proposed section 73.3580(e).

¹⁰⁹ 47 CFR § 73.3580(d)(1), (h). *See* Proposed section 73.3580(e). 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.

¹¹⁰ These requirements appear in 47 CFR §§ 73.3526(e)(13), 73.3527(e)(10), and 73.3580(h).

¹¹¹ LPFM stations are licensed to provide noncommercial educational service in all cases. 47 CFR § 73.853.

¹¹² *See* Proposed section 73.3580(c)(2)(i), (c)(3)(i), and (c)(4)(i).

¹¹³ *Id.* § 73.3580(c)(1).

G. Other Rules

37. We propose to update rules related to 73.3580. Specifically, in the *NPRM*, the Commission noted that two other rules also provide for public notice by on-air announcements and/or newspaper publication. In particular, section 73.3594 requires that when an application that is subject to section 73.3580 is designated for hearing, the applicant must give separate public notice of the hearing designation. With the advent of competitive bidding and point system procedures for awarding initial construction permits,¹¹⁴ as well as renewal expectations for existing broadcast licensees,¹¹⁵ hearings are required far less frequently than used to be the case.

38. We propose to amend section 73.3594 consistent with our revisions above, by streamlining on-air announcements and requiring online notice with links to the hearing designation order or other Commission order (e.g., order to show cause) designating issues for evidentiary hearing. We tentatively conclude that applicants so designated should provide notice by on-air announcements, if the station is on air, and by online notice in all cases. Proposed on-air announcements would follow the same rules regarding commencement, timing, and frequency as we proposed for section 73.3580: they would be broadcast once a week for four consecutive weeks, between the hours of 7:00 a.m. and 11:00 p.m. Monday through Friday, commencing no earlier than the release date of the hearing designation order or other order setting forth issues for hearing, and no later than the fifth day following release of such order. The on-air announcement would consist of the following script:

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.

We seek comment on this proposal. Commenters should describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

39. We further propose that an applicant whose application is designated for hearing should also provide online notice generally following our proposal for section 73.3580: notice would be posted continuously (24/7) for not less than 30 consecutive days, commencing no earlier than the release date of the hearing designation order or other order setting forth issues for hearing, and no later than the fifth day following release of such order. The online notice would consist of the following text:

HEARING DESIGNATION ORDER

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal

¹¹⁴ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920 (1999) (*Broadcast First Report and Order*); *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995), *further rules proposed*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167 (1998) (*NCE FNPRM*), *rules adopted*, Report and Order, 15 FCC Rcd 7386 (2000) (*NCE Report and Order*), *vacated in part on other grounds sub nom.*, *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*NCE MO&O*), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) (*NCE Reconsideration Order*), *aff'd sub nom.*, *American Family Ass'n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004), *cert. denied*, 543 U.S. 1000 (2004).

¹¹⁵ 47 U.S.C. § 309(k)(4) (eliminating comparative renewal proceedings for broadcast licensees).

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].

We seek comment on this proposal, and on the costs and benefits of the proposal to broadcasters and the public. With regard to both the online notice and on-air announcement proposals, we invite commenters to address whether notice should be for a shorter or longer period of time (e.g., until the hearing has concluded), whether there should be more frequent on-air announcements, or whether we should allow or require online notice to be posted on publicly accessible third-party websites. Additionally, do commenters believe that, given the rarity of hearings on broadcast licenses and the significant questions often raised in the context of a hearing designation order, any on-air announcements and/or online notices should include a brief description of the issues specified for hearing? If not, why not? We further propose to retain the provisions of current paragraphs (g) and (h) of section 73.3594,¹¹⁶ which address, respectively, the applicant's obligation to file a certification that public notice was given as required, and the presiding officer's discretion to modify the manner in which public notice is given upon a showing of special circumstances. We seek comment on the retention of these provisions.

40. Finally, current section 73.3525(b) of our rules requires local public notice of the withdrawal of an application pursuant to an agreement with another applicant to resolve mutual exclusivity.¹¹⁷ As with section 73.3594, these requirements were adopted at a time when procedures for awarding new construction permits were very different than they are today. Under our current window filing procedures for broadcast auctions and point system evaluations of NCE station applications, the occasions for such inter-applicant agreements rarely if ever arise.¹¹⁸ We therefore propose to delete the publication requirement from section 73.3525 and seek comment on this proposal. Commenters arguing for retention of this requirement should address both the consumer benefit of publication and the annual number of applicants they believe would be affected by retention of this portion of the rule.

IV. PROCEDURAL MATTERS

41. *Initial Regulatory Flexibility Act Analysis.* With respect to this *FNPRM*, an Initial Regulatory Flexibility Analysis (IRFA) is contained in Appendix B. As required by section 603 of the Regulatory Flexibility Act of 1980, as amended,¹¹⁹ the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in the *FNPRM*. Written public comments are required on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹²⁰

42. *Paperwork Reduction Act.* This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the

¹¹⁶ 47 CFR § 73.3594(g)-(h).

¹¹⁷ This provision pertains to conflicting applications for initial construction permits that involve a determination of fair, efficient, and equitable distribution of service under section 307(b) of the Act. 47 U.S.C. § 307(b).

¹¹⁸ See, e.g., *Broadcast First Report and Order*, *supra* note 114, 13 FCC Red at 15963-65, paras. 115-120 (1999) (setting forth pre-auction section 307(b) procedures for AM, FM, and TV new station applications); 47 CFR § 73.7002 (setting forth procedures for threshold determination of fair distribution of reserved-band noncommercial educational FM service, when evaluating competing new proposals for such service).

¹¹⁹ See 5 U.S.C. § 603.

¹²⁰ 44 U.S.C. § 3506(c)(4).

general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,¹²¹ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”¹²²

43. *Ex Parte Rules. – Permit-But-Disclose.* In the *NPRM* in this proceeding, the Commission stated that the proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹²³ This proceeding shall continue to be so treated. Persons making *ex parte* presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppl, searchable .ppl). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

44. *Filing Requirements – Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules,¹²⁴ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed.Reg. 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together

¹²¹ Pub. L. No. 107-198.

¹²² 44 U.S.C. § 3506(c)(4).

¹²³ 47 CFR §§ 1.1200 *et seq.* See *NPRM*, 32 FCC Rcd at 8211, para. 19.

¹²⁴ 47 CFR §§ 1.415, 1.419.

with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20743.
- U.S. postal first class service, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

45. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

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

47. *Additional Information.* For additional information on this proceeding, please contact Thomas Nessinger, Thomas.Nessinger@fcc.gov, of the Media Bureau, Audio Division.

V. ORDERING CLAUSES

48. Accordingly, **IT IS ORDERED** that, pursuant to sections 1, 4(i), 4(j), 303(r), 309, 311, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309, 311, and 336, this *Further Notice of Proposed Rule Making* **IS ADOPTED**.

49. **IT IS FURTHER ORDERED** that the Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Proposed 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. Revise Section 73.3525 by deleting paragraph (b) and re-designating paragraphs (c) through (l) as paragraphs (b) through (k).
3. Revise Section 73.3526 by amending 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).

* * * * *

4. Revise Section 73.3527 by amending 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).

* * * * *

5. Revise 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 online notice on the website with the highest priority.

3. *Locally originating programming:* A low power television (LPTV) or television translator station broadcasting programming 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 stations application filed pursuant to section 73.3574, the Internet website must locally target the community in which the International broadcast station is 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, 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/searchlms, 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 once per week (Monday through Friday) for four consecutive weeks, for a total of four (4) broadcasts.
 - iii. Commencement of broadcast: The applicant shall air the first broadcast of the on-air announcement no earlier than the date of release of the acceptance public notice for the application, and no later than the fifth 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], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this 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].

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], filed an application with the Federal

Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

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]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU'S MYIBFS DATABASE].

- ii. Site: The applicant shall post online notice on an applicant-affiliated website, as defined in paragraph (a)(2) of this section. 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 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 new construction permit authorization or major amendments thereto:*
 - i. For a commercial or noncommercial educational full power television; 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 only.

- ii. For an international broadcast station, the applicant shall give online notice in a publicly accessible website, locally targeted to the community in which the station is to be located.
2. *Applications for a major modification to a construction permit or license, 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 only.
 - 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 only.
 - iv. For an international broadcast station, the applicant shall give online notice only.
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 only.
 - 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 only.
 - iii. For an international broadcast station, the applicant shall give online notice only.
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 full-service AM or FM radio station; or an LPFM station, the applicant shall broadcast on-air announcements only.
 - 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 translator station, the applicant shall give online notice only.
 - iv. For an international broadcast station, the applicant shall give online notice only.
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 only.
 - 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 only.
- (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).”

6. Revise 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 four (4) 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 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 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 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 a 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.
- (c) 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**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Further Notice of Proposed Rulemaking (FNPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided in paragraph 41. The Commission will send a copy of this entire *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *FNPRM* and the IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need For, and Objectives of, the Proposed Rules.

2. The Commission initiates this rulemaking proceeding to obtain comments concerning proposals designed (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 proposes to replace the current rules,⁴ which are 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, with 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 proposal would eliminate an expense currently borne by broadcasters. The Commission also proposes to eliminate the current rule requiring public notice of the withdrawal of an application pursuant to an agreement with another applicant to resolve mutual exclusivity.⁵

B. Legal Basis.

3. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 303(r), 309, 311, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309, 311, and 336.

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

4. 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.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the

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

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See generally 47 CFR §§ 73.3580, 73.3594.

⁵ *Id.* § 73.3525(b).

⁶ 5 U.S.C. § 603(b)(3).

⁷ *Id.* § 601(6).

same meaning as the term “small business concern” under the Small Business Act.⁸ 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.⁹ The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

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

6. The Commission has estimated the number of licensed commercial television stations to be 1,371.¹⁴ Of this total, 1,263 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 June 5, 2019, 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 386.¹⁵ The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

⁸ *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).

⁹ *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.

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

¹¹ *Id.*

¹² 13 CFR § 121.201; 2012 NAICS Code 515120.

¹³ 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.

¹⁴ *Broadcast Station Totals as of June 30, 2019*, FCC News Release (rel. July 9, 2019) (*Broadcast Station Totals*), <https://docs.fcc.gov/public/attachments/DOC-358350A1.pdf>.

¹⁵ *Id.*

7. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹⁶ 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.

8. There are also 387 Class A stations.¹⁷ 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.

9. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”¹⁸ The SBA has created the following small business size standard for this category: those having \$41.5 million or less in annual receipts.¹⁹ Census data for 2012 show that 2,849 firms in this category operated in that year.²⁰ 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.²¹ 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.

10. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,406²² and the number of commercial FM radio stations to be 6,726 for a total number of 11,132, along with 8,126 FM translator and booster stations.²³ As of September 2019, 4,294 AM stations and 6,739 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

¹⁶ “[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).

¹⁷ *Broadcast Station Totals*, *supra* note 14.

¹⁸ 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.”

¹⁹ 13 CFR § 121.201; NAICS code 515112.

²⁰ 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.

²¹ *Id.*

²² This number is derived from subtracting the total number of noncommercial educational AM stations (204) from the total number of licensed AM stations (4610).

²³ *Broadcast Station Totals*, *supra* note 14.

be 4,179.²⁴ NCE stations are non-profit, and therefore considered to be small entities.²⁵ Therefore, we estimate that the majority of radio broadcast stations are small entities.

11. *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.²⁶ 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 2,178.²⁷ In addition, as of June 30, 2019, there were a total of 8,126 FM translator and FM booster stations.²⁸ 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.

12. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations²⁹ must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the rule revisions discussed in the NPRM includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

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

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

14. *Reporting Requirements.* The *FNPRM* does not propose to adopt reporting requirements.

15. *Recordkeeping Requirements.* The *FNPRM* proposes to adopt 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 proposed 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 the 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.

16. *Other Compliance Requirements.* The *FNPRM* proposes to adopt new rules amending, streamlining, and standardizing the local public notice requirements for television and radio stations, including small entities. These proposed new rules prescribe the content, number, frequency, and times of day that on-air announcements must be made, and the proposed rules require fewer and shorter

²⁴ *Id.*

²⁵ 5 U.S.C. § 601(4), (6).

²⁶ 13 CFR § 121.201, NAICS Code 515112.

²⁷ *Broadcast Station Totals*, *supra* note 14.

²⁸ *Id.*

²⁹ “[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).

announcements than the current rules, with greater flexibility as to time of broadcast. The proposed new rules would also replace newspaper publication of certain public notice with online notice, either on an applicant-affiliated website or another publicly accessible, locally targeted website. The new online notice rule also provides for shorter notices than the current newspaper publication requirement, and would result in substantial cost savings to applicants in most cases. Thus, the proposed rules would significantly reduce burdens on broadcast applicants, most of whom are small entities.

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

17. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁰

18. The *FNPRM* proposes to amend 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 *FNPRM* proposes to require 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, if adopted, would 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. Some commenters assert that permitting public notice through the Internet would be less costly and administratively burdensome than the existing requirement of newspaper publication, and thus the proposal would 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.³¹ Thus, it can be seen that replacing newspaper publication with online notices can result in considerable cost savings to broadcasters and broadcast applicants.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.

19. None.

³⁰ 5 U.S.C. § 603(c)(1)-(c)(4).

³¹ 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.

**STATEMENT OF
CHAIRMAN AJIT PAI**

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 Requirements of Section 73.3580*, MB Docket No. 05-6.

Our broadcast application notice requirements are meant to inform the public when certain applications are filed with the FCC regarding stations serving their communities. When these rules were first adopted more than 50 years ago, the notion was that viewers and listeners would read a notice in the newspaper that, for example, a license renewal application had been filed for a local TV or radio station. They would then go to the station's main studio and ask for a printed copy of that application, which was kept in the station's public inspection file. Finally, they would send the FCC comments about that application through the U.S. Postal Service. Every aspect of this idea is now anachronistic.

For one, in 2019, it strains credulity that TV and radio audiences would turn to a printed newspaper instead of the Internet as their first source for information about their local broadcasters. Second, the FCC has long since transitioned to electronic filing for most applications, copies of which are accessible through the FCC-hosted online public inspection file and other databases. And our website makes it easier than ever for the public to electronically file comments on applications. Finally, the FCC has in recent years eliminated the requirements to maintain a physical public inspection file and a main studio. In short, if the goal of the newspaper notice rule is to encourage public participation in the broadcast licensing process, the current rule fails on every count and indeed probably *discourages* public participation.

The *Further Notice* we are issuing today sets forth proposals that reflect reality. Replacing newspaper notice requirements with online notice requirements and streamlining on-air notices would benefit consumers and broadcasters. For example, consumers would benefit by being provided clear information on how to access and review broadcast applications online instantly. Indeed, these online notices would provide a direct link to the application in question. And broadcasters would benefit from simplified and clearer notification requirements.

I'm pleased that the Media Bureau has conducted extensive outreach to stakeholders and developed a proposal that balances all parties' interests. My thanks go to the dedicated staff that worked on this *Further Notice*: Michelle Carey, Shaun Maher, Thomas Nessinger, Holly Saurer, Lisa Scanlan, and Albert Shuldiner. Additional thanks to Nese Guendelsberger and Brandon Moss from the International Bureau, and Susan Aaron, David Konczal, and Royce Sherlock from the Office of General Counsel.

**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 Requirements of Section 73.3580*, MB Docket No. 05-6.

At the risk of sounding like a broken record, I genuinely believe we have reached an urgent moment in our media modernization efforts. Those of us who study the marketplace analyses and listen to feedback from industry leaders about how they run their businesses continue to receive a common message: the FCC needs to eliminate or modify any and all unnecessary government burdens so traditional broadcasters can fully compete against their completely unregulated rivals who are taking a larger share of scarce advertising revenues within the markets served. Refusal to provide even a modest amount of breathing room risks suffocating the regulated industry.

As for the item before us today, I remain strongly supportive of the merits of removing the newspaper publication requirement and other reforms and seek to move the item to final order expeditiously. In terms of specifics, I have always considered it constitutionally suspect to require stations to conform their speech to a government-mandated formula and continue to have reservations over adopting script text within our rules. However, if our goal is to modernize existing disclosure requirements, at least the bright line rules we propose today may ease compliance. The broadcasting community finds these proposed scripts to be much, much better than existing ones and is grateful for the Media Bureau's significant efforts to eliminate grossly outdated rules and truly streamline those that remain. For example, my understanding is that, in test runs by stations, the scripts happen to track a 30 second spot, a standard format for broadcast programming. I appreciate this attention to an important goal: conforming regulations to a format that makes sense in the real world.

This leads me to my last point. Any proposal submitted in the comment process supporting burdensome information disclosures, additional script language, or litigation traps for stations in the form of compliance burdens will find me in opposition, and I would hope that such efforts do not make it into the final Order. With that, I once again thank the Chairman for bringing forward modernization items every month, and I look forward to continuing to work with him on further ideas in the future.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

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 Requirements of Section 73.3580*, MB Docket No. 05-6.

As I've noted in the past, without public input this agency would have a hard time doing its job. We rely on the expertise and experience of folks across this country to make rules, consider transactions, and determine whether our licensees are meeting their obligations. Making sure the public is adequately aware of opportunities to share their experiences with us is a critical part of this process. I fully support today's item, which will allow us to further develop a record on how to best exercise our statutory mandate to ensure that the public has notice of proceedings involving our consideration of broadcast licenses.

I am pleased that this item recognizes that local public notice of licensing activity is required by statute, and searches for ways to use modern tools to make it more effective. Specifically, I support the item's proposals to continue to require both on-air and written notice of certain licensing proceedings, and questions on the best way to offer such notice online. I am hopeful that a robust record will develop on these issues.

To that end, I successfully proposed a number of questions in today's item pertaining to whether we can also harness additional tools that are used in other contexts to make sure that these notices are reaching as many people as possible in local communities. Namely, I hope to hear from commenters on whether tools that have been deployed in the repacking context, such as social media posts, mobile app notifications, and television text "crawls," can help make sure that local audiences are fully aware of opportunities to share their experiences with the Commission. I am particularly intrigued by the possibility of using social media posts or mobile apps as these platforms are typically more accessible for those who rely on mobile devices rather than a home broadband connection. As these notices move out of newspapers and onto websites, we need to do all that we can to make sure that we continue to reach communities that may not be fully connected.

Further, I successfully proposed questions about whether to retain information about our public interest standard in certain on-air scripts, whether to require broadcasters to disclose any rule waivers they are seeking in these notices, and whether to retain some description of the issues at stake when an application is designated for hearing. In my view, all of this information would add much needed context for viewers and listeners and help them better understand the nature of our proceedings.

With these additional questions, and robust public input on the other proposals in this item, I am hopeful that we will develop a record that will help us bring these rules into the 21st century while remaining true to the directives in our statute. I appreciate the Chairman's engagement and willingness to include my revisions, and the support of my colleagues. I also appreciate the hard work of the Media Bureau in preparing this item and advancing this proceeding.