



PUBLIC NOTICE

Federal Communications Commission
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FCC 17-58

Released: May 18, 2017

COMMISSION LAUNCHES MODERNIZATION OF MEDIA REGULATION INITIATIVE

MB Docket No. 17-105

Comment Date: July 5, 2017

Reply Comment Date: August 4, 2017

With this Public Notice, the Commission initiates a review of its rules applicable to media entities, including television and radio broadcasters, cable operators, and satellite television providers. The objective of this proceeding is to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome. By initiating this review, the Commission takes another step to advance the public interest by reducing unnecessary regulations and undue regulatory burdens that can stand in the way of competition and innovation in media markets. Pursuant to Section 1.430 of the Commission's rules, 47 CFR § 1.430, we seek input from the public as to what rules should be modified or repealed as part of this review. We also seek input regarding specific rules from which small businesses should receive regulatory relief. We will take such comments into consideration in determining whether to propose modifying or eliminating the rules brought to our attention. Submissions should identify with specificity the rule or rules that the commenting party believes should be modified or repealed, and explain why and how the rule or rules should be modified or repealed. Commenters whose comments raise issues related to other open dockets should file their comments in all relevant dockets.¹ A list of the principal rule parts that pertain to media entities and that are the subject of this review² is attached.

¹ We note that the Commission, pursuant to the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. § 610 *et seq.*, recently issued a Public Notice seeking comment on possible revision or elimination of ten-year-old rules that have, or might have, a significant economic impact on a substantial number of small entities. *Possible Revision or Elimination of Rules*, Public Notice, 31 FCC Rcd 13053 (2016). Comments in that proceeding were due May 4. Federal Communications Commission, Possible Revision or Elimination of Rules, 82 Fed. Reg. 9282 (Feb. 3, 2017).

² Because the Commission is required by statute to review its media ownership rules every four years, we are excluding those rules (47 CFR §§ 73.3555 and 73.658) from the instant review. Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) (1996 Act); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (Appropriations Act) (amending Sections 202(c) and 202(h) of the 1996 Act to make the then-biennial review requirement a quadrennial review requirement). We are also not including in this review the Commission's video accessibility rules, given that many of those rules were recently adopted pursuant to a complex scheme set out in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010), and certain of the rules have only recently gone into effect or have yet to go into effect for smaller entities.

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 FR 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 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 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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 & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Public Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt,

³ 47 C.F.R. §§ 1.1200 *et seq.*

searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information about this proceeding, contact Raelynn Remy, Policy Division, Media Bureau, at (202) 418-2936 or raelynn.remy@fcc.gov.

Action by the Commission on May 18, 2017: Chairman Pai and Commissioner O'Rielly issuing separate statements, Commissioner Clyburn dissenting and issuing a statement.

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ATTACHMENT

PRINCIPAL RULE PARTS CONTAINING REGULATIONS PERTAINING TO THE AUDIO AND VIDEO PROGRAMMING MARKETS

Part 1 – Practice and Procedure – In addition to containing procedural rules of general applicability to all Commission licensees, contains certain rules that address license renewal and other applications (Subpart A); hearing proceedings (Subpart B); procedures in certain broadcast rulemaking proceedings (Subpart C); random selection procedures for mass media services (Subpart L); the Cable Operations and Licensing System (COALS) (Subpart M); competitive bidding proceedings (Subpart Q); restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services (Subpart S); foreign ownership of broadcast licensees (Subpart T); spectrum leasing (Subpart X); and disturbance of AM broadcast station antenna patterns (Subpart BB).

Part 15 – Radio Frequency Devices – Contains rules that apply to devices that receive broadcast and cable signals.

Part 17 – Construction, Marking and Lighting of Antenna Structures – Prescribes certain procedures for antenna structure registration and standards with respect to the Commission's consideration of proposed antenna structures.

Part 25 – Satellite Communications – Contains rules applicable to direct broadcast satellite service, including equal employment opportunity requirements (Subpart I) and public interest obligations (Subpart J).

Part 73 – Radio Broadcast Services – Prescribes rules governing AM broadcast stations (Subpart A); FM broadcast stations (Subpart B); digital audio broadcasting (Subpart C); noncommercial educational FM broadcast stations (Subpart D); television broadcast stations (Subpart E); international broadcast stations (Subpart F); low power FM broadcast stations (Subpart G); all broadcast stations (Subpart H); procedures for competitive bidding and for applications for noncommercial educational broadcast stations on non-reserved channels (Subpart I); Class A television broadcast stations (Subpart J); and application and selection procedures for reserved noncommercial educational channels, and for certain applications for noncommercial educational stations on non-reserved channels (Subpart K).

Part 74 – Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services – Contains rules governing remote pickup broadcast stations (Subpart D); aural broadcast auxiliary stations (Subpart E); television broadcast auxiliary stations (Subpart F); low power TV, TV translator, and TV booster stations (Subpart G); low power auxiliary stations (Subpart H); and FM broadcast translator stations and FM broadcast booster stations (Subpart L).

Part 76 – Multichannel Video and Cable Television Service – Contains general requirements for procedures and pleadings (Subpart A); registration statements (Subpart B); cable franchise applications (Subpart C); carriage of television broadcast signals (Subpart D); equal employment opportunity requirements (Subpart E); network non-duplication protection, syndicated exclusivity (Subpart F); cablecasting (Subpart G); general operating requirements (Subpart H); forms and reports (Subpart I); ownership of cable systems (Subpart J); technical standards (Subpart K); cable television access (Subpart L); cable inside wiring (Subpart M); cable rate regulation (Subpart N); competitive access to cable programming (Subpart O); competitive availability of navigation devices (Subpart P); regulation of carriage agreements (Subpart Q); Telecommunications Act implementation (Subpart R); open video systems (Subpart S); notices (Subpart T); documents to be maintained for inspection (Subpart U); reports and filings (Subpart V); encoding rules (Subpart W); and access to MDUs (Subpart X).

Part 78 – Cable Television Relay Service – Contains rules governing the licensing and operation of fixed or mobile cable television relay service stations (Subpart A); applications and licenses (Subpart B); general operating requirements (Subpart C); and technical regulations (Subpart D).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105.

A few years ago, early in my tenure at the Commission, we voted to forbear from enforcing a regulation first adopted by the FCC's Telegraph Division in 1936.⁴ That rule was originally intended to address issues with claims against telegraph carriers arising from errors in, or delayed delivery or non-delivery of, messages and money orders. I marveled that 77 years later, the rule remained on the books.

That proceeding made me keenly aware of a fundamental truth: One of the most powerful forces in government is regulatory inertia. A rule that might have been necessary at one time can become yellowed and obsolete with age. In some cases, repeal of such a rule is just a matter of good housekeeping; the conduct covered by the rule simply doesn't happen anymore, so the rule is literally irrelevant. In other cases, repeal is a necessity; the rule stands in the way of innovation and investment that would benefit consumers.

This analysis applies to the FCC's media regulations. Or at least it should. By comparison, every two years, the Commission undertakes what is known as a biennial review. In section 11 of the Communications Act, Congress told us to consider all regulations that apply to telecommunications services. If we determine that any such regulation "is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service," we then must repeal or modify it.

Now, the Act doesn't require us to review similarly our media rules. But that doesn't mean we can't. Hence, this *Public Notice*.

The goal here is the same as it is with our biennial review—but for our media regulations. That is, we want to figure out whether and how to update our rules to match the realities of today's marketplace. We aim to get public input on which rules are still necessary and which should be modified or eliminated. We want to modernize our rules in order to better promote the public interest and clear a path for more competition, innovation, and investment in the media sector. This is simply good government.

In order for this effort to be successful, we'll need your help. I encourage all interested parties to file comments in this proceeding and bring to our attention rules that deserve the Commission's consideration.

My thanks to the Media Bureau's terrific staff for their work on this *Public Notice*: Michelle Carey, Martha Heller, Mary Beth Murphy, and Raelynn Remy. In your efforts to come, you may not dig up a dictate as dated as a Telegraph Division rule, but your work is critically important nonetheless.

⁴ *United States Telecom Association Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Order, 28 FCC Rcd 2605, 2609, para. 9 (2013).

**DISSENTING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105

The purpose of a Public Notice (PN) should be to gather information and build a record before drawing conclusions. Yet it seems in the case of this PN, the FCC's majority starts with a premise that advancing the public interest can only be achieved by clearing the books of rules for the benefit of industry.

To be clear, I have no objection to reviewing the Commission's rules, making a determination if a valid objective remains for a given regulation, and concluding that there is a better, more efficient way to achieve a particular goal for the benefit of stakeholders, consumers, and the Commission. This is in fact what the Commission is required to do as part of its Biennial Review. Section 11 of the Communications Act of 1934 specifically instructs the Commission to "determine whether any such regulation is no longer necessary in the public interest, as the result of meaningful economic competition between providers of such service."

Today's PN turns that similar mandate on its head, by ignoring the basic question of whether the regulations subject to this review remain in the public interest. It assumes that to advance the public interest, we must "reduc[e] unnecessary regulations and undue regulatory burdens." Thus it seems the word "modernization" as this proceeding has been ironically named, is really just code for "deregulation" at the expense of the American consumer.

Let me explain what I mean by sharing a few examples of Commission rules that pertain to the audio and video marketplaces, and why they remain important today. Our Equal Employment Opportunity (EEO) rules require broadcasters and MVPDs of a certain size, to maintain an EEO recruitment program. These rules also prohibit discrimination in hiring. As the Multicultural Media, Telecom and Internet Council (MMTC) recently noted, "EEO compliance is essentially the only public service the Commission requests of radio stations, and one of very few public services required of television stations and MVPDs." Perhaps some stations or MVPDs find the record-keeping and reporting requirements burdensome, but that does not negate the importance of these rules to the public interest.

Similarly, one industry insider recently suggested that as part of this review, the Commission should make broadcast ownership reporting every four years, rather than every two years. Not only is the information contained in these reports vital to enhancing viewpoint diversity, the Third Circuit has explicitly told us we need better data on minority and female ownership. Less frequent data collection would do absolutely nothing, to further these objectives.

Yet another example, is the Commission's rules governing competitive access to cable programming, and the regulation of carriage agreements. As someone who has heard from countless independent programmers about the challenges they face in gaining carriage, we should be strengthening our rules, not eliminating or weakening those protections that are currently on the books.

Now some may claim that I am over-reacting, and the Commission's majority will ultimately conclude that many of these critical rules further the public interest, and should be preserved. But I believe it is important to sound the alarm, and remind my colleagues that our job is to protect the public interest, not give perpetual hall passes to big broadcast and cable companies.

Finally, where the majority concludes that regulations should be eliminated, it is my sincere hope that this will result in the freeing up of agency resources to actually enforce those rules that remain on the books. This could include program access and carriage complaints, compliance with the children's

educational television reporting, and allegations of redlining.

While I disagree with the premise of this PN, and will therefore respectfully dissent, I thank the staff of the Media Bureau for hearing my concerns, as well as for your tireless efforts over the years to promote localism, competition, and viewpoint diversity.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105

This item exemplifies the Commission's newfound openness to stakeholder input and its shift toward reality-based decision making. As has been often noted by myself and others, our regulations in the media space are strewn with anachronisms more appropriate for a different set of circumstances. A wholesale review is necessary and, indeed, long overdue. So, I support this initiative and fully expect that it will generate some quick results to follow on to our previous successes in this space, including updating the dissemination requirements for employment openings, and eliminating the main studio rule, as proposed today.

Broadcasters, cable operators, and other media stakeholders I have spoken with are familiar with my frequent calls for ideas about specific regulations that are outdated or no longer necessary. In the previous Commission, I was often able to champion these changes that were suggested to me, and get them moving in one form or another. Now that we are opening this proceeding, the entire Commission stands ready to hear your ideas and act on them, which is a refreshing change of pace. The Commission should not be in the business of generating busywork or collecting reams of data no one ever looks at.

Since the beginning of the year, I have already heard a number of ideas that I am hopeful could be implemented as part of this process, including updates of many of our reporting requirements. For example, all TV stations are required to file an Ancillary DTV Report annually regarding the 5% DTV ancillary fee. The report must be filed even if the answer, as is often the case, is simply "no fee due." This form can and should be eliminated for parties that do not owe a fee. Similarly, form 397 requires simply a name and a copy of the annual EEO reports for the last two years. But now that EEO reports are filed with the Commission in the parties' online public files, this form is duplicative.

Notification requirements are another area where many updates should be made, now that so much communication has gone digital. For example, our rules often require broadcasters to give public notice of certain applications in local newspapers. But with newspaper circulation often dwarfed by the broadcaster's own audience, or nonexistent in some localities, these notices would be much more effectively provided on a station's website. Our rules also require broadcasters to send notice of their decisions to opt into retransmission consent versus must-carry to cable operators via snail mail, a process that could be more easily accomplished online.

These and other ideas now will have an effective fast track to consideration and, if appropriate, action. I certainly will do my part to help obtain consensus and move as many as possible.