

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Elimination of Obligation to File)	
Broadcast Mid-Term Report (Form 397))	MB Docket No. 18-23
Under Section 73.2080(f)(2))	
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

COMMENTS OF NEXSTAR BROADCASTING, INC.

Nexstar Broadcasting, Inc. (“Nexstar”), the licensee of 159 full-power and Class A television stations, respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking seeking comment with respect to the proposed elimination of the Broadcast Mid-Term Report (“Form 397”).¹ Nexstar commends the Commission’s efforts to modernize its rules to “reduc[e] unnecessary regulatory burdens without undermining [its] statutorily-required ...rules.”² And, Nexstar agrees with the Commission that eliminating this outdated filing requirement will reduce the burden on licensees and the unnecessary waste of administrative and material resources.

As detailed in the *NPRM*, the Commission, pursuant to Section 334(b) of the Communications Act of 1934, as amended (the Act)³, established the process of “a mid-term review of broadcast stations’ employment practices.”⁴ Almost a decade later, and as a means to assist the Commission with this review process, it established Section 73.2080(f)(2)⁵, which required all broadcast licensees, with five (5) or more full-time employees for television or eleven (11) or more full-time employees for

¹ *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2); Modernization of Media Initiative*, Notice of Proposed Rulemaking, FCC 18-20, MB Dockets 18-23 and 17-105(rel. Feb. 22, 2018) (“*NPRM*”).

² *NPRM* at ¶ 5.

³ 47 U.S.C. § 334.

⁴ *NPRM* at ¶ 2.

⁵ 47 C.F.R. § 73.2080(f)(2).

radio, to submit a Form 397. Unlike other EEO forms, such as FCC Forms 395-B and 396,⁶ the Form 397 was not contemplated in congressional mandate to undertake the mid-term review.

The Mid-Term Reporting obligation served three purposes including 1) confirmation if the station or station employment unit⁷, based solely on the number of full-time employees, was subject to an equal employment opportunity (“EEO) practice review, 2) identification of the individual responsible for dissemination of EEO compliance at the station and 3) provision of the necessary documentation, more specifically, the station’s last two Annual EEO Public File Report.⁸ The Form 397, and its requisite attachments,⁹ were required to be maintained in the station’s public inspection file.¹⁰ Until the institution of the online public inspection file in 2012¹¹, the Form 397 was the only vehicle available to the FCC by which it could readily access the requisite documentation to complete its congressionally mandated task of review.

I. THE SUBMISSION OF THE MID-TERM REPORT IS DUPLICATIVE, UNNECESSARY AND BURDENSOME.

The establishment of the online public file has completely eradicated the need for the physical submission of the Form 397. As a consequence of the online public file requirement, the Commission (and the public) has ready access to 1) onsite/main studio station contact information, 2) confirmation if the station is subject to the mid-term reporting obligation based on 3) the presence (or absence) of Annual EEO Public File Reports in the EEO Folder of the Public Inspection File. Under the

⁶ *NPRM* at ¶ 6.

⁷ 47 C.F.R. § 73.2080(d)(2): A station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

⁸ *NPRM* at ¶ 3.

⁹ 47 C.F.R. § 73.2080(c)(6); Annual summary reporting obligation for certain stations detailing a list of vacancies, recruiting sources and non-vacancy efforts undertaken during the reporting term. Pursuant to 47 C.F.R. § 73.3526(e)(7), copies of all Annual EEO Reports must be maintained in a station’s public inspection file for the current license term.

¹⁰ 47 C.F.R. § 73.3526(e)(7).

¹¹ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012); and *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016).

Commission's "Small Station Exemption",¹² stations with less than the minimum number of full-time employees (5-TV/11-Radio) are exempt from the Annual Public File Reporting obligation *and* submission of the Form 397.

The submission of the Form 397 unnecessarily duplicates documentation¹³ and information already available in a station's online public file. Moreover, the act of submitting the Form 397 is burdensome for licensees through the consumption of internal administrative efforts to prepare and file the form in the system or pay the fees associated with having outside FCC counsel prepare and/or submit the form online on behalf of the licensee. Additionally, once filed, the Commission is then forced to warehouse each copy of the Form 397, and its attachments, until a station's next renewal is granted. Since the relevant EEO information, documentation and contact information is already present in the station's online public file, submission of the Form 397 wastes licensee and Commission resources without any public interest benefit. Thus, elimination of the Form 397 is consistent with the Commission's goals to modernize its rules and reduce burden and waste.

II. THE ELIMINATION OF THE MID-TERM REPORT WILL NOT PREJUDICE THE COMMISSION'S ABILITY TO INFORM LICENSEES OF NECESSARY RECRUITING IMPROVEMENTS.

The elimination of the Form 397 will not result in the loss of communication with the stations with regard to EEO practice improvements issued by the Commission. A separate and singular requirement to provide a station specific EEO contact beyond the context of the Form 397 is unnecessary and, more importantly, not specifically required by the Act. The Commission has established policies regarding the provision and maintenance of accurate licensee information for purposes of receiving FCC and public correspondence. Like all other official Commission correspondence, communications regarding Commission compliance, including all EEO matters, should be directed to the official licensee contact, which may, in some instances, be FCC counsel. The

¹² 47 C.F.R. § 73.2080(d).

¹³ 47 C.F.R. § 73.3526(e)(7).

provision of correspondence at the station level may be problematic given attrition and other issues. In the alternative, if the Commission institutes the requirement that stations provide an onsite EEO contact following the proposed elimination of the Form 397, this information should be included in the Annual EEO Report or on the station's website. Accordingly, the elimination of the Form 397 would not foreclose the Commission from communicating the relevant EEO improvement information to the licensee.

III. CONCLUSION

The elimination of the Form 397 will not negatively impact the public interest because the public will continue to be able to access a station's requisite EEO materials through its online public inspection file. Additionally, the proposed elimination of the Section 73.2080(f)(2) Mid-Term Reporting obligation will eradicate redundancies within the Commission's procedures without any adverse effect on its obligation to undertake the mid-term EEO review as mandated by the Act. Further, the elimination of Form 397 will dispense with the unnecessary burden borne by those licensees required to file the duplicative Form 397. Accordingly, Nexstar urges the Commission to continue its elimination of outdated rules and policies which unnecessarily impede competition and innovation to the detriment of the public interest and eliminate Section 73.2080(f)(2) from its rules.

Respectfully submitted,

By: /s/ Elizabeth Ryder
Elizabeth Ryder
Executive Vice President & General Counsel
Christine Reilly
Associate Counsel

Nexstar Broadcasting, Inc.
545 E. John Carpenter Freeway
Suite 700
Irving, TX 75062

April 30, 2018