

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC

In the matter of:)	
)	
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)	
)	MB Docket 17-264
Amendment of Section 73.3580 of the)	
Commission's Rules Regarding Public Notice of)	
the Filing of Broadcast Applications)	
)	
Media Modernization Initiative)	MB Docket 17-105
)	
Revision of the Public Notice Requirements of)	MB Docket 05-6
Section 73.3580)	

COMMENTS OF REC NETWORKS

A. Introduction

1. REC Networks ("REC") is a leading advocate for a citizen's access to spectrum with a heavy focus on the Low Power FM (LPFM) broadcast stations as well as full-service noncommercial educational (NCE) broadcast stations. We are making these late-filed comments in this proceeding as a result of the scope of Section 73.3580 now being reinterpreted to also include LPFM stations thus bringing the LPFM service into a proceeding that originally did not pertain to it.¹

2. In the *Notice of Proposed Rulemaking* in the above captioned proceeding (NPRM), the Commission is soliciting comments on whether to update Section 73.3580 of the Commission's Rules (Rules) in order to provide broadcast licensees with more flexibility as to how they inform the public about the filing of certain applications.² Specifically, the Commission is seeking comments on whether to allow licensees the option to posting public notice information on an internet website instead of advertising in a local newspaper.³ Further, the Commission seeks comments on whether there is a need to

¹ - See emails from Albert Shuldiner, Division Chief, Audio Division, Media Bureau to Michelle Bradley, received May 17, 2019 at 10:26AM, 10:58AM, 11:48AM, and 4:49PM, all Eastern Daylight Time ("Shuldiner Letter"). See also separately filed *Motion for Leave to File Late Comments*.

² - NPRM at ¶ 8.

³ - Id. at ¶9.

impose any public notice obligations on certain applicants, given the ready availability of many license applications on the Commission's and station's websites today.⁴

B. Section 311 of the Communications Act and the "LPFM revelation"

3. In the Shuldiner Letter, Audio Division staff had advised REC that Section 311(a)(1) of the Communications Act (Act) pertained to the public notice requirement and that LPFM stations were subject to the public notice requirements of Section 73.3580, despite the lack of reference to the rule in Section 73.801.⁵ While not even cited in the instant NPRM, Section 311(a)(1) of the Act states that when there is any application filed with the Commission where 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 and that 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 such notices shall be given.⁶

4. The current language of Section 311 comes from the late 1950s.⁷ We note that the same Public Law also amended the Act in response to the "payola" and "quiz show" scandals of that time.⁸ It was written at a time when the growing broadcast industry was "testing the waters" on what can be done on radio and TV and licenses were under greater scrutiny in order to assure that broadcast licensees were acting in the public interest as a public trustee. This was also a time when the daily newspaper was the dominant method of communicating to the masses and the one method that would nearly guarantee that your message would be seen by the most set of eyes as possible.

5. Section 311 did give the Commission the flexibility to determine the method of which public notice could be delivered. At the time, this may have acknowledged that not all communities had a daily or even a weekly newspaper. Since the enactment of Public Law 86-752 and with the growth of

⁴ - *Id.* at ¶10.

⁵ - See *Shuldiner Letter*, 47 U.S.C §311(a)(1), 47 C.F.R. §73.801 and 47 C.F.R. §73.3580.

⁶ - See 47 U.S.C. §311(a)(1). Subparagraph (2) pertains to hearings and is not relevant to this discussion.

⁷ - See *Communications Act Amendments, 1960*, Pub. L. 86-752, 74 Stat. 889, et seq. (1960) ("Amendments") at 892-893. See also 25 F.R. 11153, 11155. (In 1960, §73.3580 was in the rules as §1.359 and would eventually move to §1.1580 and eventually moved to §73.3580 in 1979, see 44 F.R. 38481, 38485, 38504-38506).

⁸ - See *Id.* at 895-897 amending 47 U.S.C. §317 (sponsorship identification), adding 47 U.S.C. §508 (payola) and 47 U.S.C. §509 (rigged quiz-shows).

other means of communications including multichannel video program distributors and the growth of the internet as a method of mass communication, the number of newspapers being published in the United States has dropped sharply and other local papers are consolidating to cover wider areas. Despite the decline in actual circulation, the ability for these surviving newspapers to reach wider areas as opposed to a smaller community does raise the costs for the placement of legal notices such as those that are required under Section 73.3580.

6. Since Section 311 is a congressional mandate, it is very clear that there still needs to be some form of public notice. As mentioned, Section 311 specifically does not state the medium for which the public notice must be delivered nor does it specify “how far” or to how many people the message must be delivered to other than “in the principal area which is served or is to be served by the station”. It can be argued that a notice placed on a sign outside of the proposed station location providing the public notice information could be sufficient public notice to satisfy section 311. Since the internet can reach the community where the station is located, it can also be argued that a placement of the application information on a non-government internet website, even ones that are not in direct control of the applicant, such as REC’s **FCC.today** site as well as other competing sites such as Radio Locator could be sufficient enough to satisfy Section 311 in this information age. By the Commission continuing to provide the raw data from CDBS and LMS, they are facilitating this ability to derive the equivalent of public notices.

C. Public notice requirements for LPFM new-entrants

7. LPFM stations operate in a manner that on average, they provide service to about 3.5 miles around the transmitter site. LPFM stations are not subject to any Section 307(b) community allocation or community coverage requirements. LPFM stations are in a unique situation where they can provide service over an entire small community or in a small section of a large urbanized area. In many cases, those small communities may no longer have a local newspaper and in the urbanized area, the newspaper covers the entire “market”, not just the local community within that “market”. In the *LPFM Report and Order*, while not specifically citing Section 73.3580, the Commission did conclude that putting certain administrative restrictions on LPFM stations such as ownership reports and public inspection file requirements, would place “an undue burden on such small noncommercial educational stations”.⁹ With that said, it is REC’s position that it would be an undue burden for small noncommercial educational LPFM stations to be required to place advertising in a city or region-wide newspaper in order

⁹ - See *Creation of a Low Power Radio Service*, Report and Order, 15 F.C.C. Rcd. 2205 (2000) at ¶ 185.

to achieve the statutory public notice requirement. However, at the same time, placing the public notice on a website operated by the applicant may not suffice as no one would know where to look for it. Also, the wording of Section 311 would suggest that the applicant and not an unaffiliated third-party reacting to Commission filing activity would have to initiate the placement of the public notice, even if it is on a non-government website operated by a third-party for the purpose of posting such notices.

8. For new LPFM stations filing their original construction permit applications, it is REC's position that stations should be permitted to use one of three methods of making the required public notice in accordance with Section 311 of the Act:

a. *Traditional daily or weekly newspaper.* Since Section 311 does not require any specific schedule or number of impressions that a public notice must be served, providing only a single notice should suffice as providing public notice. We note that Section 73.3580(g)(1)(i) of the Rules permits low-power TV (LPTV) stations, which are also secondary and can originate programming to only make one public notice in order to satisfy the requirements.¹⁰

b. *Physical public notice.* For LPTV stations, Section 73.3580(g)(1)(ii) states that if there is no newspaper in the community or area to be served, that a notice can be posted in a local post office or "other public place".¹¹ Of course, for LPFM stations, especially those in larger "markets", placing an ad in the newspaper of general circulation in the area, even for only one impression can be expensive and burdensome and exclusionary to new entrants with only enough budget for station construction and operation. It is REC's position that for LPFM stations, a physical public notice *in lieu of* a newspaper public notice, even within a community or area that has a general circulation newspaper is warranted. Such public notice can be made at any location that is accessible to the general public including the local post office, library or even on a sign posted at the proposed station location that is visible to members of the general public.

c. *Third-party non-government website.* LPFM applicants seeking their original construction permits should have to option of providing public notice to a website that either has a known reach into the community to be served or a website that was been designed for the sole purpose of presenting public notices from LPFM applicants for the purpose of meeting the Section 311 requirements.

¹⁰ - 47 C.F.R. §73.3580(g)(1)(i).

¹¹ - 47 C.F.R. §73.3580(g)(1)(ii).

REC has obtained the domain name **RadioPublicNotice.com** for this purpose in preparation for future NCE and LPFM filing windows.

9. Since LPFM new-entrants do not have an operating station or a website that is well known by the public, we must continue these “physical” methods of providing public notice until these new-entrants have their stations in operation.

D. Public Notice requirements for existing LPFM stations

10. Currently, the Commission permits operational noncommercial educational stations to forego the requirement of publishing their public notice in the newspaper in favor of publication by broadcast.¹² Therefore, the rules already have a foundation for which operational LPFM stations can place public notices. REC does agree with the Commission that broadcast licenses should only be required to broadcast a short message on air to refer them to the station website where there can be a link to the substance of the public notice. As LPFM stations do not have a public inspection file requirement, they would have to host their own public notice text or they would have to link to a site such as REC’s Voluntary Public Inspection File System (lpfm.ws) or the concept site, RadioPublicNotice.com.¹³ Like with new-entrants, existing LPFM stations that only cover a 3.5 mile radius of a community do not need their public notices in a print publication that reaches people dozens of miles away. This is a cost that could be better spent on developing their on-air service to the general public.

¹² - See 47 C.F.R. §73.3580(e) (“When the station in question is the only operating station in its broadcast service which is located in the community involved, *or if it is a noncommercial educational station*, publication of the notice in a newspaper, as provided in paragraph (c) of this section is not required, and publication by broadcast over that station as provided in paragraph (d) of this section shall be deemed sufficient to meet the notice requirements of this section.” *emphasis added*). We note that MB Docket 05-6, which is captioned in this proceeding originally called for the elimination of this rule thus requiring noncommercial educational stations to provide public notice in a newspaper. In the instant NPRM, the Commission is proposing to terminate MB Docket 05-6. REC supports that termination.

¹³ - REC strongly recommends that the Commission make provisions in the Commission operated Public Inspection File system to permit LPFM stations to use that system on a *voluntary* basis.

E. Conclusion

11. Since the interpretation of §311(a)(1) made in the Shuldiner Letter, LPFM has been blindsided by a sudden policy change that has not been formally implemented nor has any consideration been made to the special circumstances for which the LPFM service has been originally established, it is REC's position that before there is another filing window for new LPFM stations in which the newspaper or other non-broadcast public notice requirement may apply, there needs to be a full and complete record on the "official" implementation of §311(a)(1) into the LPFM service. This issue was never brought up 20 years ago and has not been an issue until now. REC recognizes that a statutory requirement does exist, but the statute specifically gives the Commission the latitude to determine the proper method of making such public notice. Statute does not require the use of newspapers nor does it set a minimum number of advertisements. It would only seem appropriate that this issue be brought up as either a *Further Notice of Proposed Rulemaking* in this proceeding or as part of a future *Notice of Proposed Rulemaking*, such as one that may consider technical changes to the LPFM service proposed by REC in the past. No matter what, we need to have this issue settled in time for the next LPFM filing window.

Respectfully submitted,

/S/

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Founder

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