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

In the Matter of	)	
	)	
Commission Launches Modernization of Media Regulation Initiative	)	MB Docket No. 17-105
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COMMENTS OF NEXSTAR BROADCASTING, INC.

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Nexstar Broadcasting, Inc. ("Nexstar") submits these comments in response to the Commission's Public Notice initiating a review of its rules applicable to media entities.[1] As one of the nation's leading diversified media companies, Nexstar owns, operates, programs, or provides sales and other services to 170 television stations and their related low power and digital multicast signals reaching 100 television markets. Nexstar has a long tradition of serving the communities in which its stations are located through extensive investments in superior local news and public affairs programming, notwithstanding its need to comply with many burdensome and outdated regulations that divert resources from activities that truly benefit viewers.

I. INTRODUCTION AND SUMMARY

Nexstar commends the FCC for taking a fresh look at its regulations that apply to television stations—some of which have been on the books for decades and date back to a time when most television programming was provided by just three local network affiliates. In the meantime, the growth of cable, satellite, and now online video distributors along with the advent of smartphones and tablets have changed the ways in which consumers digest video programming. At the same time, the ubiquity of the Internet and e-mail, and the migration to online public inspection files

[1] *See Commission Launches Modernization of Media Regulation Initiative*, Public Notice, FCC 17-58, MB Docket No. 17-105 (rel. May 18, 2017) (the "*Public Notice*").

have changed the ways in which viewers interact with their local television stations. Many of the regulations applicable to television stations, however, have not changed with the times and are appropriately described as analog rules in a digital world.

Below, Nexstar identifies several changes the Commission can make to its regulations applicable to broadcast licensees that will allow station personnel to devote their resources to better serve the public interest rather than complying with rules that offer limited or no public benefit. In particular, the Commission should simplify its media ownership reporting requirements, remove certain programming and related filing obligations, modernize its equal employment opportunity ("EEO") rules, and take a number of additional steps to update and reform the regulatory regime applicable to local television broadcasters.

II. THE COMMISSION SHOULD SIMPLIFY ITS MEDIA OWNERSHIP REPORTING REQUIREMENTS.

Nexstar supports the FCC's goal of collecting reliable data regarding the ownership of broadcast stations, including information regarding the race, gender, and ethnicity of the owners and other interest holders. Unfortunately, the methods that the Commission currently utilizes to assemble this data are needlessly cumbersome and require broadcasters and media investors to devote a disproportionate amount of time to ownership reporting. For example, Nexstar, with its relatively flat two level ownership structure spent approximately 120 hours (or 15 days) preparing its 2015 biennial ownership reports for submission (and that does not include the time its investors spent preparing and submitting their separate reports).

Further, the information provided through this exercise is counterintuitive to even the most seasoned members of the communications bar, much less to the members of the public for whom this information is intended. The FCC can better serve its objective of providing data in a format that can easily be studied and analyzed while, at the same time, reducing the burden on

broadcasters by: (1) streamlining the awkward and unwieldy ownership reporting process and forms; (2) altering the existing process for reporting and filing network affiliation agreements, credit agreements, and other contracts with the Commission; and (3) modifying the FCC's broadcast attribution rules so they are consistent among the Commission's various programs and services.

A. Ownership Reporting

The Commission should revisit its current procedures for broadcasters and broadcast investors to report information about broadcast ownership to the FCC, which provide a disservice to the public and broadcasters alike. Under the existing rules, broadcasters, as well as any attributable interest holders, must file an ownership report for broadcast stations by December 1 in all odd-numbered years.[2] Currently, each entity with an attributable interest in the licensee must file a separate ownership report for each licensee in which it has an ownership interest.[3] In addition to basic information about the licensee or attributable interest holder, the form requires respondents to identify: (i) all contracts or instruments relating to the ownership of the stations covered by the report; (ii) all officers, directors, stockholders, non-insulated partners, non-insulated members, and other persons or entities with a direct or indirect attributable interest in the respondent and their attributable broadcast interests; (iii) any daily newspapers in which the interest holders have an

[2] *See* 47 C.F.R. §§ 73.3615(a) & (d); *see also* FCC Form 2100, Schedule 323 (commercial) or 323-E (noncommercial).

[3] *See* Draft Form 2100, Schedule 323, available as Appendix D to *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Report and Order, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd. 398 (2016) ("In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate FCC Form 2100, Schedule 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee.").

attributable interest; and (iv) information about interest holders exempt from attribution.[4] Licensees and attributable interest holders must file a new version of this form every two years even if there have been no changes to their ownership or if any changes since the last filing were *de minimis*.

As an initial matter, the Commission should reduce the frequency of these periodic ownership filings. In its 1998 *Streamlining NPRM*, the Commission proposed to replace the then-annual ownership reporting requirement to a quadrennial requirement, explaining that requiring ownership reporting every four years "would ease the paperwork burden on licensees and permittees without impairing the public's ability to ascertain the identities of broadcast station owners."[5] Ultimately, the FCC settled on a biennial reporting requirement, explaining that "the current trend toward consolidation in the broadcast industry and the frequency with which both major and minor ownership changes [we]re occurring" justified a "more conservative approach."[6] At that time, of course, the Commission also conducted a biennial review of its broadcast ownership rules—arguably justifying the collection of ownership information on the same cycle.

Nexstar supports the Commission's desire to obtain updated information when a station's ownership changes. Whatever benefits there are to maintaining a biennial snapshot of broadcast ownership, however, cannot justify the burden of the biennial reporting requirement. Broadcasters already must obtain FCC consent for both arms-length transactions and pro forma transfers of

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[4] *See id.*

[5] *In the Matter of 1998 Biennial Regulatory Review-Streamlining of Mass Media Applications, Rules, & Processes*, Notice of Proposed Rulemaking, 13 FCC Rcd. 11349 ¶ 86 (1998).

[6] *In the Matter of 1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules, & Processes*, Report & Order, 13 FCC Rcd. 23056 ¶ 94 (1998).

control and file updated ownership reports within 30 days of consummation thereof.[7] This requirement provides the Commission with ample data about changes in broadcast ownership that occur between periodic filings. To the extent the FCC believes that maintaining a fixed reporting date is necessary, a biennial requirement no longer is justified. Rather, the Commission should alter the reporting obligation to every four years to align with the quadrennial review of its broadcast ownership rules (just as it adopted a biennial requirement in 1998 to correspond to the biennial ownership review that was in place at the time).[8]

Assuming that the FCC does not alter the upcoming December 1, 2017 ownership reporting deadline, it should take additional steps to ensure that the first reporting cycle using the Licensing and Management System ("LMS") is successful. Although Nexstar appreciates the FCC's efforts to ensure a smooth transition to LMS, broadcasters have not had an opportunity to test the system. Providing broadcasters with a chance to familiarize themselves with the system and report any programming or design flaws is critical. If the Media Bureau is unable to provide broadcasters with this type of access, it should postpone the reporting deadline until such an opportunity is possible. Using an untested system or, worse yet, resorting back to the FCC's Consolidated Database System, would be a recipe for disaster and add needless complication and delay to an already tedious process.

Finally, the Commission should ease the burden on broadcasters and the public alike by permitting the filing of information about all entities in a licensee's ownership chain in a single

[7] 47 C.F.R. §§ 73.3615(c) & (f). Broadcasters also are required to pre-clear these same ownership changes in their applications for consent to assignment or transfer the FCC licenses.

[8] 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 and revising the then-biennial review requirement to require such reviews quadrennially).

report, with searchable attachments. Under the current system, to identify all attributable owners of a single television station, an interested party may need to review dozens of ownership reports —a different one for each link of the ownership chain. Not only is this approach confusing for persons studying a station's ownership, it is extremely burdensome for station owners and attributable interest holders. The use of searchable attachments, meanwhile, will greatly reduce the burden of ownership reporting by removing the current requirement to enter the same information on a wide variety of forms using the FCC's proprietary system. Broadcasters currently benefit from the ability to use a spreadsheet to report their other broadcast interests, which can be easily sorted and aggregated by interested parties. Nexstar believes both the public and the industry will be better served by expanding the use of searchable attachments to report ownership information, including to report attributable interest holders.

B. Section 73.7613 Contracts

The Commission should modify Section 73.3613 of the FCC's Rules to require licensees to make available upon request, rather than file, network affiliation agreements, credit agreements, and other contracts. The requirement to file contracts with the FCC is a vestige of an era when the only way to learn about a station was to visit the station in person and review its public inspection file or to review the FCC's files in Washington, D.C. By requiring stations to file their contracts at the Commission, the agency intended to create a central depository of information that the public might desire about a broadcast station. In practice, however, the FCC's individual station records are poorly maintained, and obtaining filed information requires sending a researcher to the Commission's records room to dig through paper files in hopes that the documents were properly filed upon receipt and have not been misplaced in the intervening months or years. This approach is time consuming and, most often, futile.

With the FCC's adoption of online public inspection files and electronic ownership reports, maintaining a central contract depository at the agency is no longer necessary. Broadcasters already are required to identify on their ownership reports and in their public inspection files all of the contracts they are required to file with the Commission under Section 73.7613.[9] The FCC should remove the requirement to file contracts with the FCC and instead simply require broadcasters to provide the underlying contracts upon request. This approach will remove an unnecessary and outdated burden for broadcasters while providing members of the public with faster, easier access to the contract information they seek. It will also eliminate the FCC's responsibility to maintain voluminous paper files.

C. Broadcast Attribution

The Commission should reduce the reporting burden on broadcast stations and interest holders so they are consistent with the FCC's approach in other contexts.

First, the Commission should amend its ownership rules to clarify that non-corporate officers of licensees with multi-layer ownership structures are not attributable. Nexstar has one hundred non-corporate officers with titles such as "Vice President-General Manager" who are responsible for the day-to-day management of individual stations or markets. Although these non-corporate officers play an important role in Nexstar's operations and contribute to Nexstar's efforts to serve the communities in which it owns stations, they serve at the pleasure of corporate parent Nexstar Media Group, Inc. and its officers and directors and lack any control (whether affirmative or negative) over the licensee. The reality is that these individuals are not officers for the purpose of attribution. Accordingly, the Commission should clarify that the mere fact that an individual

[9] *See* 47 C.F.R. § 73.3526(e)(5).

has a title of "Vice President" does not make him or her attributable under Note 2(g) to Section 73.3555 of the Commission's Rules.

Second, the Commission should raise the threshold for attribution in a broadcast licensee consistent with its approach to other regulated entities. The broadcast attribution rules "seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."[10] The Commission currently applies a 5% voting threshold for attribution in broadcast licensees,[11] but the reality is that a shareholder with a greater than 5%—but still relatively small—voting interest cannot realistically influence corporate decision-making. Indeed, the FCC's rules applicable to other services recognize this fact by incorporating far higher attribution thresholds.[12] Nexstar commends the FCC for its recent efforts to make its foreign ownership rules and procedures more consistent across services,[13] and

[10] *Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Regulation and Policies Affecting Investment in the Broadcast Industry and Reexamination of the Commission's Cross Interest Policy*, Report and Order, 14 FCC Rcd. 12559 ¶ 1 (1999), *recon. granted in part*, *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd. 1097 ¶¶ 40-44, *stayed in part*, 16 FCC Rcd. 22310 (2001).

[11] *See* Note 2(a) to 47 C.F.R. § 73.3555.

[12] The FCC applies a 10% attribution threshold for spectrum holdings and designated entity bidding credits and a 20% attribution threshold for broadband PCS, cellular, or SMR licensees (increased to 40% if held by a small business or rural telephone company). *See* 47 C.F.R. §§ 20.6, 20.22(b)(3); Note J to 47 C.F.R. § 1.2110(c)(2)(ii).

[13] *See Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd. 11272 (2016).

encourages it to do the same with ownership attribution. Accordingly, the Commission should raise the voting threshold for broadcast attribution to at least 10%.

Finally, the FCC should relax its equity-debt plus ("EDP") rule so that it is consistent with the attribution threshold for eligible entities. Under the current EDP rule, the holder of a debt interest is attributable if the equity and debt interest exceed 33% of the total asset value and the interest holder either holds an interest in a broadcast licensee, cable television system newspaper or other media outlet in the same market or supplies over 15% of the weekly broadcast programming hours of the station in which the interest is held.[14] In the *2008 Diversity Order*, however, the Commission altered the EDP rule to allow an eligible entity to acquire a broadcast station or obtain a new entrant bidding credit in an auction. Under the new standard, the EDP holder's interests are non-attributable unless they exceed: (1) combined equity and debt of at least 50%; or (2) total debt of at least 80% if the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the winning bidder or any related entity.[15] The Commission explained that the time that this approach was consistent with the intent of the EDP rule because "the holder of the debt would have limited ability to influence the eligible entity."[16]

The Commission should take this opportunity to go further and extend the relaxed EDP attribution thresholds applicable to eligible entities to all broadcasters. Just as the 50/80 thresholds do not provide a debt holder with substantial ability to influence the eligible entity, so too are they insufficient to provide a debt holder with influence over any other broadcast licensee. If anything,

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[14] *See* Note 2(i) to 47 C.F.R. § 73.3555.

[15] *In the Matter of Promoting Diversification of Ownership in the Broadcast Services 2006 Quadrennial Regulatory Review et al.*, Report and Order, 23 FCC Rcd. 5922 ¶ 31 (2008)

[16] *Id.* ¶ 32.

an eligible entity is likely to be more dependent on debt—and therefore more beholden to its lenders—than another broadcaster. Nevertheless, the FCC properly found that the 50/80 threshold did not provide lenders with undue influence over eligible entities, and it should expand that finding to all broadcasters. By extending the same limits to all broadcasters, the FCC will create a more consistent regulatory regime and facilitate increased and more diverse investment in broadcast licensees.

III. THE COMMISSION SHOULD REMOVE BURDENSOME PROGRAMMING AND REPORTING REQUIREMENTS THAT OFFER MINIMAL CONSUMER BENEFITS.

As part of the modernization of media regulation initiative, the Commission should also eliminate programming and reporting requirements that no longer serve the public interest. In particular, the FCC should remove the requirement for broadcasters to file quarterly issues/programs lists, children's programming (KidVid) reports, and children's commercial programming certifications. The Commission also should revise its weekly core programming requirement to apply only to a station's primary broadcast channel and not to its digital multicast channels and/or expand the definition of educational and informational programming to include public interest programming that does not specifically target children ages 16 and under.

First, the Commission should remove the requirement that commercial television and Class A broadcast stations place in their public interest files every three months "a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period."[17] As the Media Bureau has recognized, "Section 326 of the Act and the First Amendment to the Constitution prohibit any Commission actions that would improperly interfere

[17] 47 C.F.R. § 73.3526(e)(11)(i).

with the programming decisions of licensees."[18] Companies like Nexstar devote substantial resources toward preparing and maintaining meaningful issues/programs lists—sometimes to the detriment of their other efforts to serve the public. Although Nexstar takes very seriously its obligation to use the public airwaves to address issues that are important to the communities that its stations serve, documenting those efforts on a quarterly basis is not a good use of station resources. The FCC should allow broadcasters to focus their efforts on actually serving the public interest rather than expending scarce resources to reporting for the sake of reporting.

Similarly, the Commission should eliminate the requirement that broadcasters file quarterly reports regarding their compliance with the commercial limits on children's television programming[19] and their efforts during the preceding quarter and planned for the next quarter "to serve the educational and informational needs of children."[20] As with the issues/programs lists, these reports do not affect a broadcaster's substantive compliance with the commercial limits or core programming requirements, but rather impose unnecessary burdens on station personnel whose efforts would be better spent engaging with the community, developing local public interest programming, or otherwise serving the station's viewers. If the FCC elects to preserve these filing requirements, it should lessen the burden on broadcasters by streamlining the respective forms to reduce the time they take station personnel to complete and requiring compliance certifications rather than detailed information.

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[18] *Chicago Media Action & Milwaukee Pub. Interest Media Coal. c/o Andrew Jay Schwartzman, Esq.*, Letter Opinion, 22 FCC Rcd. 10877 (MB 2007).

[19] *See* 47 C.F.R. § 73.3526(e)(11)(ii).

[20] *See id.* § 73.3526(e)(11)(iii).

Substantively, the FCC should amend Section 73.671 to clarify that either: (1) the requirement does not apply to a station's digital multicast channels; and/or (2) a station can satisfy the educational and informational programming requirement with public affairs programming not targeted to children under the age of 16. Although Nexstar is committed to providing programming that serves the needs of children, the existing core programming requirement is a relic of a single screen world that does not account for the way children consume media today. Children increasingly view media content "on demand"—whether the content is pre-recorded on a digital video recorder, available through an MVPD VOD service, or on mobile phones, tablets, and other portable devices. A core programming requirement for a station's primary station may still make sense to provide families with a free over-the-air alternative curated by the broadcast stations they trust. But requiring additional core programming on digital subchannels is unnecessary and diverts from unique niche programming provided by networks such as Bounce TV, Cozi TV, Estrella, Me-TV, LATV, RTV, and This TV, as well as locally-targeted news, weather, and cultural channels. Moreover, there is no statutory requirement to provide core programming on digital multicast channels. Although the Commission determined in 2004 that increasing the amount of core programming was "consistent with the objective of the CTA," it did not find that the CTA mandated such an approach.[21]

If the Commission elects to maintain a core programming requirement for digital subchannels, it should provide broadcasters with additional flexibility to satisfy this requirement by broadcasting a combination of children's programming and local public interest programming. While broadcasters can satisfy the core programming requirement on their main channel by

[21] *In the Matter of Childrens Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd. 22943 ¶ 26 (2004).

broadcasting programming directed to an audience of children who are 16 years of age or younger, a more flexible standard for digital subchannels will allow broadcasters to exercise discretion to provide a programming mix appropriate for their audience. This approach will allow broadcasters to provide a balance of programming targeted to children and more general programming that will encourage civic engagement among children, and therefore is "consistent with the objective of the CTA" as it applies in a rapidly evolving media ecosphere.

IV. THE COMMISSION SHOULD MODERNIZE ITS EEO RULES.

The Commission's equal employment opportunity ("EEO") rules serve an important objective of ensuring that broadcasters reach out to all sectors of their communities when recruiting new employees. Nexstar supports the central requirement of the Commission's EEO rules—that broadcasters must engage in broad outreach as part of their recruitment efforts. However, the FCC should eliminate certain aspects of its EEO rules that are outdated and/or whose usefulness empirically has not justified the burden they impose.

First, the Commission should eliminate the midterm Form 397 filing requirement. In 1993, the FCC adopted a mid-term filing requirement to fulfill the Cable Act's directive that the Commission conduct "a midterm review of television broadcast station licensees' employment practices and . . . inform such licensee of necessary improvements in recruitment practices identified as a consequence of such review."[22] At the same time, the FCC recognized that "the Act was silent as to the criteria to be used for the mid-term review,"[23] and the mid-term review requirement has evolved over the years. Now, however, television broadcasters must maintain

[22] *See In the Matter of Implementation of Section 22 of the Cable Television Consumer Prot. & Competition Act of 1992*, Report and Order, 8 FCC Rcd. 5389 (1993).

[23] *Id.* ¶ 7.

online public files, which must include EEO public file reports.[24] Requiring broadcasters to file a Form 397 attaching reports already available in the online public file is redundant and unnecessarily burdensome, as Commissioner O'Rielly has recognized.[25] The Commission has ample information to conduct its midterm review without requiring the filing of this same information on an additional form, and should reduce the burden on broadcasters accordingly.

Second, the FCC should eliminate the requirement that broadcasters send vacancy notifications to "entitled sources" or engage in a specific number of recruitment initiatives. While the requirement to send notification of each full time vacancy to organizations that request such information is well-intentioned, it is inconsistent with the discretion provided to broadcasters to use "reasonable, good faith judgment to widely disseminate information" concerning each vacancy.[26] It is also inconsistent with the Commission's recent recognition that online job banks are widely available and widely used,[27] thereby obviating the need for a "safety valve" to protect against the risk that a station might neglect a potential source of employment referrals, which was the initial purpose of the entitled source requirement.[28] In practice, most entitled sources do not realize they are entitled—particularly after the original requestor has left the organization—forcing

[24] *See* 47 C.F.R. § 73.3526(b)(2)(i).

[25] Statement of Commissioner Michael O'Rielly, *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, FCC 17-58, MB Docket No. 17-105 (rel. May 18, 2017).

[26] *See* 47 C.F.R. § 73.2080(c)(1)(i).

[27] *Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, Declaratory Ruling, MB Docket No. 16-410, FCC 17-47, ¶ 7 (rel. April 21, 2017).

[28] *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018, 24053 (¶ 106).

broadcasters to allocate resources to tracking down new contacts and explaining any discrepancies caused by the failure of the entitled sources to advise the licensee of changes to the source's contact information. In lieu of a mandatory notification rule, the Commission could allow entitled sources to be included on a station's recruitment source list for consideration in connection with each vacancy. This approach would balance the FCC's desire to expand recruitment with the reasonable discretion provided to broadcasters under the Commission's rules.

The FCC also should eliminate the requirement to engage in a specific number of "recruitment initiatives" every two years. Although most Nexstar stations greatly exceed the Commission's requirement, a one-size-fits-all approach fails to account for the specific needs of a community, such as its economic makeup, its density, and any state or local rules that affect the ability to conduct certain initiatives (such as restrictions on internships). Consistent with the FCC's localism objective, individual stations should have the discretion to determine the most appropriate tactics for their communities.

V. THE COMMISSION SHOULD AMEND A NUMBER OF ADDITIONAL REGULATIONS TO INCREASE EFFICIENCY AND CONSUMER WELFARE.

Finally, Nexstar encourages the FCC to review and amend or eliminate a number of additional rules and regulations that no longer serve their original purpose and are now more burdensome than they are beneficial.

Local Newspaper Publication Requirements. The Commission should streamline local public notice requirements to better account for how viewers consume information in 2017 and beyond. First, the FCC should modify Section 73.3580 of its rules so that newspaper publication is not a requirement, but an option of a last resort. While newspaper publication may have been the most efficient way to reach a large population when the Commission adopted this rule, today, a licensee can reach more people more effectively through some combination of over-the-air

broadcast, online, and social media.[29] The FCC appears to have recognized as much in its recently adopted consumer education rules for the post-incentive auction transition, which rely entirely on over-the-air broadcast notices.[30] Consistent with this approach, the Commission should modify its other public notice requirements to rely primarily on over-the-air broadcast, with newspaper publication only as an option of last resort (such as where the station is silent).

Additionally, the Commission should permit broadcasters to direct viewers to a website when broadcasting an entire announcement over-the-air would be cumbersome and difficult for the viewer to comprehend. For instance, in the case of a license assignment or transfer of control, announcing the names of all officers and directors of the applicant can take several minutes and turn off viewers and listeners rather than educating them. Broadcasters and the public would be better served by a streamlined announcement that provides the basic details of the proposed transaction and directs interested parties to a website for additional information.

Must Carry and Retransmission Consent Elections. The FCC should modify its rules for must carry and retransmission consent elections to: (1) allow broadcasters to make their triennial elections by e-mail or other electronic means; and (2) amend the default election for cable to retransmission consent instead of must carry.

First, the Commission should update its rules to permit (if not require) retransmission consent elections by electronic means. In the *Retransmission Consent Implementation Order*, the Commission determined, with no discussion, that election statements should be sent "by certified

[29] In fact, many broadcast stations no longer have a daily newspaper in their community of license in which to publish public notices.

[30] *See* 47 C.F.R. § 73.3700(c).

mail."[31] In 1993, of course, the Internet was in its infancy, and certified mail provided the most reliable means of notifying a cable system of a station's election. Today, e-mail is ubiquitous—particularly in the business world. Elections by e-mail would be faster, more efficient, and more easily verifiable (with near immediate bounce backs if an e-mail address is incorrect). The Commission recently modified its rules to permit cable operators to provide notices to subscribers via electronic distribution and, as Commissioner O'Rielly noted, it should do the same for retransmission consent elections.[32]

Second, the Commission should make retransmission consent, not must carry, the default election for cable. The current cable default rules date back to the 1992 Cable Act, which altered the status quo rules providing must carry rights to many broadcasters. Because an election of retransmission consent reflected a departure from the status quo, it made sense at the time for must carry to serve as the default if no election was made. By 2012, however, the FCC estimated that more than 60 percent of stations elected retransmission consent rather than must carry—a number that likely increased in the current cycle.[33] Accordingly, the Commission would simplify retransmission consent elections (and make them consistent with the regime for satellite must carry) by making retransmission consent, not must carry, the default if no election is made. As an alternative, the FCC can amend the rule so a station defaults to its prior election if no new election

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[31] *In the Matter of Implementation of the Cable Television Consumer Prot. & Competition Act of 1992 et al.*, Report and Order, 8 FCC Rcd. 2965 (1993); 47 C.F.R. § 76.64(h).

[32] *See* Statement of Commissioner Michael O'Rielly, *National Cable & Telecommunications Association and American Cable Association*, Declaratory Ruling, DCC 17-73, MB Docket No. 16-126 (rel. June 21, 2017).

[33] *See In the Matter of Carriage of Digital Television Broad. Signals: Amendment to Part 76 of the Commission's Rules*, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, 27 FCC Rcd. 1713 ¶ 10 (2012) (explaining that "almost 40 percent of all broadcast stations elected or defaulted to must carry rather than electing retransmission consent").

is made. Either approach would substantially reduce the number of election letters that broadcasters would need send and cable operators would need to process.

Ancillary and Supplementary Services. The FCC should lower the fee for ancillary and supplementary services from five percent (5%) to one percent (1%) and only require the filing of an annual Form 317 by stations that are required to pay a fee. Few stations today take advantage of the opportunity to provide ancillary and supplementary services—in part because the current 5% fee discourages innovation. A reduced fee will encourage broadcasters to experiment with new and innovative ways to use their spectrum, which could have the result of providing public service benefits unimaginable today and ultimately increasing aggregate ancillary and supplementary service revenues. At the same time, given that the majority of broadcasters do not use their spectrum for non-broadcast services, the Commission should amend the Form 317 filing requirement so that only those broadcasters required to pay a fee need to go through the effort of filing a report.

Assignment of Satellite Waivers. Finally, Nexstar supports Gray Television's call for the Commission to undertake procedures to facilitate the transfer and assignment of uncompetitive full-power television satellite stations without a reassessment of the station's satellite eligibility.[34] As Gray has demonstrated, the Commission's policy is unnecessary and creates a perverse incentive for the owner of a licensed satellite station to withhold investment from that station. By permitting the assignor and assignee to certify that the underlying circumstances have not materially changed, the FCC would achieve the objectives of its satellite rules without imposing

[34] *See* Letter form Kevin P. Latek, Executive Vice President, Gray Television, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105 (June 26, 2017).

unnecessary costs and delays on the parties to the application. This is the very type of logical reform that the Commission envisioned when it commenced this proceeding.

VI. CONCLUSION

For the foregoing reasons, the Commission should eliminate or amend a number of its media regulations that are needlessly burdensome and hinder the ability of broadcasters to most effectively serve their communities.

Respectfully submitted,

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