

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

In the Matter of)	
)	
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
)	

REPLY COMMENTS OF COMMON FREQUENCY

I. INTRODUCTION

Common Frequency, Inc. ("CFI") is a 501(c)(3) nonprofit corporation dedicated non-commercial broadcast information and avocation in the public interest. CFI also has been a non-commercial, educational radio licensee. Commission seeks comments on changes to the public notice rules through this Further Notice of Proposed Rulemaking ("FNPRM"). CFI here supplies reply comments.

CFI is in agreement with the concept of updating the public notice rules to be relevant in the current internet era, allowing for publishing efficiencies as long as the public interest aspects of the rules are not weakened. But a precipitous judgment should not be rendered on new rules without contemplation of technology and information consumption methods of the near future.

II. REGARDING INTERNET PUBLIC NOTICE METHODS

The majority of commenters are broadcasters that want to save as much money as possible. Although unspoken, it is their interest to curtail the extent of their public notice distribution requirements as much as possible to minimize scrutiny concerning their use of the public's airwaves. The FCC should be aware when updating the rules that it needs to advocate for the widest distribution of notice, fully cognizant of changing technology trends, while also taking into consideration efficiency and cost savings that broadcasters desire.

The Commission and commenters are in favor of an internet approach to public notice. It has been echoed by commenters that station websites are the most efficient method of posting local public notice, that newspaper legal notices are expensive, and the newspaper print circulation is decreasing (although excluded is that newspapers, still very relevant on the internet, also publish public notices online). But unconsidered is:

A. Will station websites really perform an equivalent public notice than is currently performed now and in the past by print public notice?

For example, if a member of the public really wanted to monitor public notices for radio and television stations, they would simply look in the legal notices section of the local daily paper and the notices would all be conveniently be located there. With the proposed rules, for example, someone in the Los Angeles metro scanning legal notices would need to go to websites of 96 FM, 47 AM, and 33 television stations daily to check for public notices. By design, the system works against efficient notice for alerting a member of the public to a point of exorbitant dysfunctionality. Should the FCC be concerned that the individual-website public notice regime vastly decreases efficient accessibility, hence reducing transparency of submitted applications, for a typical member of the public by distributing accessibility? In the example

above, a member of the public would need to check 176 websites daily with the proposed rules instead of maybe five newspapers currently.

B. Broadcasters emphasize the irrelevance of newspapers for public notification completely excluding newspapers online presence. But how does traffic to a station website compare to traffic of newspaper websites?

CFI did a sample check on website visit popularity for a popular radio station and the popular newspaper in three markets:

<u>Market</u>	<u>Entity</u>	<u>Site</u>	<u>Popularity Ranking</u> ¹
Los Angeles:	KLOS 95.5 FM	955klos.com	986,836
	<i>Los Angeles Times</i>	LATimes.org	1,749
Portland	Live 95.5 FM	Live955.com	848,838
	<i>The Oregonian</i>	Oregonlive.com	7,416
Sacramento	Mix 96	mix96sac.com	1,389,273
	<i>The Sacramento Bee</i>	sacbee.com	12,151

Broadcasters claim newspapers are irrelevant -- so does it mean anything that station websites are literally light years away from traffic that newspaper sites receive? In other words, *you get what you pay for* in public notice quality between radio websites and newspapers. §73.3580 (c)(1) of the rules currently strive from the widest public circulation (e.g., “daily” published paper, paper that “has the greatest general circulation”). Should the FCC be concerned that the public notice dissemination is nowhere near equivalent to the previous execution of the rule by a large factor?

C. Is there a historical record of the website public notice posting?

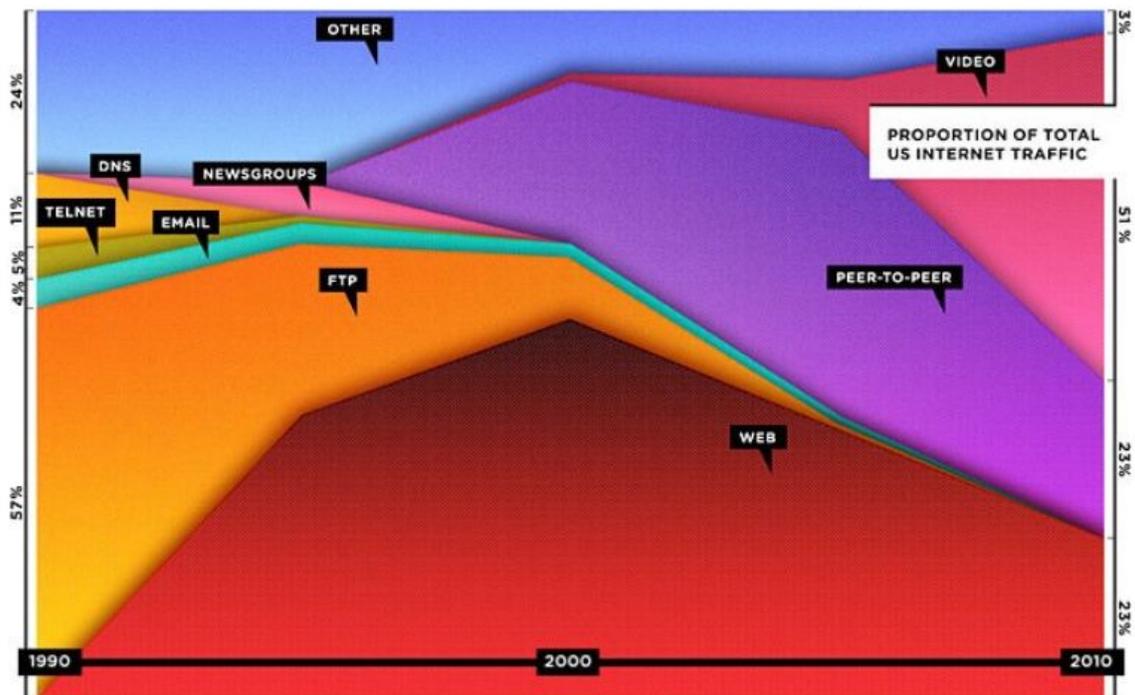
With newspapers, there is cullable public notice record (newspaper archives) to view if broadcasters are following the rules. Within the proposed system of posting on a website, there

¹ Smaller ranking number implies more visits to website.

is no historical record. This means broadcasters police themselves concerning the rules. If a member of the public or another broadcaster wants to see if the broadcaster posted public notice after it was supposed to occur, there is no accurate independent record of when the notice was posted. Should the FCC be concerned of the reduced accuracy and lack of independent historical record of public notice announcements?

D. Are station websites a suitable technology to be relevant outlets of public notice into the future?

In other words, will there be a new technology that supplants websites within the near future that everyone will migrate to, and like newspapers, make website public notices old technology? The answer is “yes”. It already started happening a decade ago. In fact, *Wired* magazine featured an article about it a decade ago, supplying the following graphic concerning data modalities on the internet.



Website usage is in overall decline against other forms of data communication on the internet. The lead-in to the article is “the World Wide Web is in decline, as simpler, sleeker services — think apps...”² It is plain to see that *apps* have taken over in terms of general daily public usage. Apps are the new communicator of information. In fact, WARC points to a new study that demonstrates website ads are amazingly in decline outside of Google and Facebook: “Total internet advertising spend – including desktop, mobile, and tablet – will decline by 7.2% this year, if you take the Google and Facebook ‘duopoly’ out of the equation.”³ From 2016, *Forbes* documented the trend of migration from websites to apps:

So reviewing the timeline so far: Web surfing [websites] was the defining framework in the commercial Internet’s first decade, Facebook led the transition from the browser to messaging apps, and now messaging and notifications will remake all categories of applications going forward.⁴

In the above, “messaging and notification” is in reference to mobile communication *apps*. See **Appendix** for two graphs outlining this topic from the *Forbes* article. This is pertinent here chiefly because of this reason: Posting on the website is admittedly directed *specific listeners or television viewers of a station* (i.e., the general public is not visiting the station’s website for other purposes, such as a concerned citizen reading a newspaper to be informed about general local happenings). But regardless, if 90% of the station listeners/viewers are hypothetically using the station’s *app*, they are unlikely to redundantly visit the station’s website. Hence, in this case, the station’s website would actually be an ineffective place for the announcement compared to the app. FCC should be concerned with maximizing the dissemination of public

² “The Web Is Dead. Long Live the Internet” Chris Anderson and Michael Wolff. August 2010. *Wired Magazine*.

³ “Internet in decline beyond Google and Facebook” February 21, 2019, WARC.com, https://www.warc.com/newsandopinion/news/internet_in_decline_beyond_google_and_facebook/41716

⁴ “Why We Don’t Surf the Web Anymore And Why That Matters” Ron Palmeri. Feb 22, 2016. *Forbes* <https://www.forbes.com/sites/valleyvoices/2016/02/22/why-we-dont-surf-the-web-anymore-%C2%ADand-why-that-matters/#2e0722337ac2>

notice as much as feasibly possible for the broadcaster, and not have public notice **relegated to a nominal ritual** of the “old days of public interest” to merely fulfill the mandate of 47 U.S.C § 311. Should it be a concern of the FCC that websites themselves might be as irrelevant as printed newspapers in a few years?

CFI believes the aforementioned concepts need to be taken into consideration in determining what kind of method will best convey public notices online in a two-pronged manner: (1) The station’s most popular internet outlet should be used to publish the public notice, and (2) there really needs to be a centralized spot for all public notices, like a newspaper provides, so the general public can view them all without visiting dozens of websites for a local area on a daily basis. CFI believes the FCC *station website public notice* proposal needs to be augmented within a “double duty” regime:

(1) It is obvious most web information is moving to *apps*. All or most radio and television stations that want to remain relevant in the post-website age need to have them to survive. When someone is a frequent listener to a radio station nowadays it is less and less common to sit down at the desktop PC and open up a web browser bookmark for the station. They simply use something like *Radio.com* app or *iHeart Radio* app (both sites affiliated with specific large broadcasters within this example). Apps will dominate all media consumption in the near future. Like the current rule that strives for notice for the “greatest general circulation”, the proposed rule should also strive for this on the internet. **Thus, the public notice rule should be crafted with language akin to “stations should post public notice on the internet via the *station’s internet outlet of greatest traffic, whether website, app, social media page page, etc.*”** This stipulation, thus, will follow the newest technology for the media outlet as technologies

progress, preventing the FCC rule from becoming obsolete, discouraging entities from “hiding” the notice, say, within the web portal with their least internet traffic. Furthermore, broadcasters should produce a screenshot of this public notice, and the station General Manager or equivalent **should produce a sworn declaration of the dates that this public notice ran within their FCC Public Inspection File.**

(2) Because members of the public cannot scour dozens of websites daily looking for public notices, there should also be a centralized place to check for them. CFI proposes that all public notices should *also* be consolidated into a single web location for members of the public and other industry people to be able to track them. It would be extremely easy for the FCC to simply have a link at the top of the Public Inspection File website that says “Daily Local Application Public Notices.” Such a page on the FCC Public Inspection File webpage would create automated public notices from particular LMS-submitted applications. Below each public notice, a button could be placed for members of the public to “comment” on the application. That comment would create a PDF in the FCC LMS database, much like a simplified FCC ECFS filing. Furthermore, people can also sign up for public notice email alerts by the FCC simply creating a form that asks the city and email address of a person. The FCC’s server could then simply send out an automated message to those people of any public notice “x” kilometers from their city of origin. This would be very inexpensive to implement.

The above “double duty” approach attempts to maximize internet announcement dissemination, provides a clear universal outlet for centralized public notices, is cost effective for

the broadcaster, follows in the precedent of the *online* Public Inspection File, and is resistant to the eventual obsolescence of *individual station web pages*.

III. FURTHER REPLIES ON COMMENTS

CFI agrees with comment of REC Networks, concerning public notice for facilities that do not have websites. REC comments that the “Commission’s expectation of a ‘publicly accessible website’ is not viable.” (p. 6). REC explains why these alternative third party sites are not functional or standardized for public notice messages. CFI believes broadcasters should be at the very least given a choice to either start a website with the domain of their call sign to post their public notice, or use newspapers to publish public notices. This would be in addition to the aforementioned automatic posting of public notice on an FCC Public Inspection File “local public notice” web page.

CFI also agrees with and would like to emphasize the following comments of *Office of Communication of the United Church of Christ, Inc., Benton Institute, Common Cause, Free Press, Open Technology Institute at New America* (“OCC et al.”):

“...both online and on-air notice scripts should contain a one-to-two sentence, jargon-free description of the purpose of the application, in addition to the technical name of the application.” (p. 3)

“A brief, layman’s summary of the application would make notice more meaningful” (p. 3)

“...Commission asks whether notices should include ‘specific language regarding whether the applicant is seeking a waiver of Commission rules and the nature of the waiver sought.’ Yes, this should also be included in both online and on-air notices.” (p. 4)

“The Commission should not favor shorter scripts at the expense of providing the public with meaningful public notice” (p. 5)

“We urge the Commission to include in both online and on-air notices statements informing the public that broadcast stations must operate in the public interest and

members of the public have the right to comment on and file petitions to deny a broadcast application.” (p. 4)

“...online notices should contain a hyperlink to a page on the Commission’s website with instructions on filing comments or petitions.” (p. 6)

CFI emphasizes the statements above because it is often useless to provide public notice without explaining to the public what it means, and how they can participate in the process. The general public is not privy to the byzantine regulatory processes and legal procedures associated with each governmental permitting process. For that reason **public notices should contain a hyperlink (one of the foundations of the world wide web in the first place) to the application itself. The FCC site should explain the significance of public notice, and how (instructions) the public can comment on these applications. These is a simple automated procedures on the web that do not require any ongoing cost to the broadcaster or FCC, and is done by other federal agencies.** OCC *et.al.* also states:

The Commission seeks comment on a proposed 7AM to 11PM time window for airing of on-air notices.FNPRM at ¶ 28.... On-air notices should be broadcast between 7AM and 6PM for radio and 7PM and 10PM for television. Television and radio usage patterns vary throughout the day. (p. 6)

CFI agrees. Radio has differing peak listenership times than television broadcasters.

7AM to 6PM is a superior announcement period for radio.

Regarding comments of National Association of Broadcasters (“NAB”):

NAB is concerned about the proposal that the full text of the online notice be conspicuously posted on a station website’s home page. As discussed further below, this proposal would be inconsistent with well-established standards for website design and user expectations and would detract from important editorial content on station home pages and the user experience. Accordingly, the Commission should permit applicants to

create a link labeled “Pending FCC Applications” that takes users to the online notice text (p. 7)

NAB arguing that public notices not be clearly visible is an obvious attempt to bury the announcements. The argument that the proposal would be “inconsistent with well-established standard for website design” is purely an invention of lawyers. They are no website design standards relating to announcements on a website. NAB also states:

Similarly, NAB believes that it is not necessary or appropriate to require stations to share information about application filings via social media or apps. These platforms are quickly evolving, and broadcasters are constantly experimenting with the best ways to engage with their audiences in what is still a relatively new way. The popularity of the platforms changes rapidly, as do user expectations and styles of communication. The extent of broadcasters’ experience with social media and apps varies greatly, with some having a longstanding presence on multiple platforms and others having more recently launched a social media presence or mobile app. In this fast-changing environment, rules requiring the sharing of notices concerning pending FCC applications will impede broadcasters’ innovative use of these platforms. (p 14)

This is a creative-writing smokescreen to lead the FCC away from where the broadcaster’s listeners or viewers actually congregate -- their consolidated apps (www.iheart.com has an Alexa ranking of 2,083, www.radio.com has a rank of 5,614). As current trends extrapolate, most listeners/viewers will entirely migrate to apps in the upcoming years. The FCC needs to contemplate migrating public notice to the actual location that people will see them.

CONCLUSION

CFI supports updating the public notice regime, but urges the Commission to keep in mind the purpose of public notices -- to find the widest distribution within the community to alert people of pending decisions regarding the airwaves they own. An internet approach is the next

step in updating this process, but station websites are not necessarily equivalent to newspaper and newspaper websites -- one has specific listeners and viewers drawn towards them, and the other has a significantly more broad sampling of local people reading them. There is additionally (in the current proposal) no *common location* proposed for all broadcast public notices, like newspapers currently facilitate, leaving people to hunt for individual notices. Furthermore, CFI believes that with the constant change of technology, the FCC should not anchor public notices to a web technology that will be supplanted in a few years. ***Individual website use was the dominant technology of the last decade.*** In total, CFI recommends:

1. Broadcasters should at the very least place public notices on their **internet outlet of greatest traffic**. This would be equivalent to precedent of posting public notice in the newspaper of “greatest general circulation.”⁵
2. Because there is no comprehensive historical archive of internet postings, broadcasters should make a “screenshot” of that public notice, along with a sworn statement from the station manager validating the dates/times that public notice was run, and place that document in their FCC Public Inspection File.
3. Online public notices should contain **hyperlinks** to the application and a **comment button** for the application on the FCC website (like FCC ECFS). The FCC should also supplement that application with educational passage on the significance of public notices (at the FCC website).
4. CFI also believes it would be very simple and feasible to **additionally** post public notices on its FCC Public Inspection File website in an automated fashion (from filing information in LMS), additionally providing a comment button to streamline

⁵ §73.3580 (c)(1)(iii)

the outdated process of *submitting paper filings and typing-up MS Word documents to transfer into PDF comments.*

5. Citizens should be able to **subscribe to local public notice alerts from the FCC Public Inspection File website.** This is an efficient and effective means for updating members of the public who are interested in public notices.

None of the above measures would require any further cost for the broadcaster in comparison to the measures already proposed in the FNPRM.

Respectfully Submitted by,



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APPENDIX

Excerpt from Forbes article “Why We Don’t Surf the Web Anymore And Why That Matters”

