

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.624(g) of the)	MB Docket No. 17-264
Commission’s Rules Regarding Submission of)	
FCC Form 2100, Schedule G, Used to Report TV)	
Stations’ Ancillary or Supplementary Services)	
)	
Amendment of Section 73.3580 of the)	MB Docket No. 17-105
Commission’s Rules Regarding Public Notice of)	
the Filing of Broadcast Applications)	
Modernization of Media Regulation Initiative)	
)	
Revision of the Public Notice Requirements of)	MB Docket No. 05-6
Section 73.3580)	

To The Commission

**COMMENTS OF THE MULTICULTURAL MEDIA,
TELECOM AND INTERNET COUNCIL ON THE REVISION
OF THE PUBLIC NOTICE REQUIREMENTS OF SECTION 73.3580**

Summary and Introduction

The Multicultural Media, Telecom, and Internet Council (“MMTC”) respectfully submits these Comments in response to the Revision of the Public Notice Requirements of Section 73.3580 Notice of Proposed Rulemaking (“NPRM”).¹

The current publication rule is outdated and incompatible with modern methods of communication. Its enforcement especially disadvantages small broadcasters. Through the elimination of this rule, the Commission can remove a barrier to small businesses’ access to capital.

¹ *Notice of Proposed Rulemaking*, Public Notice, MB Docket No. 05-6, FCC 17-138 (“NPRM”) (released October 24, 2017).

The Local Newspaper Publication Requirement Can Be Repealed

Instead of requiring stations to submit notices to a newspaper,² the Commission should allow stations to use primarily on-air notices or, depending on the length of the notice, to direct listeners and viewers to the station's website. Through the elimination of this rule, the Commission can help provide smaller companies with greater access to capital. Although the number of internet connections has surpassed the total population of the United States, and 85% of Americans have access to broadband internet service at home through their smartphones,³ broadcasters are forced to set money aside to post filing notices in publications that the majority of the population no longer consume. Posting notices in newspapers is expensive, time consuming, and ineffective relative to posting online.⁴ As stated in Nexstar's July 5, 2017 Comments, "[W]hile 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 effectively through some combination of over-the-air broadcast, online, and social media."⁵

Furthermore, the current rule is regressive and exacerbates the built-in advantages for the larger broadcast stations. Investors are likely to finance companies with good net returns. The rule has a disproportionate impact on the net returns of small broadcast companies, making it more likely for investors to go elsewhere with their money.

² Codified at 47 C.F.R. 73.3580(c).

³ *Petition for Rulemaking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, MB Docket No. 16-410, Declaratory Ruling, 17 FCC Rcd 3685, 3687 ¶6 (2017) (*Sole Use of Internet Sources*).

⁴ *See id.* at 3689.

⁵ *See* Nexstar Comments at 15-16 (filed July 5, 2017); *see also* NAB Comments at 21 (filed July 5, 2017).

Attached is the expert declaration of John E. Oxendine, who is generally recognized as “the Dean of Minority Broadcast Finance.” Mr. Oxendine has been an entrepreneur, operator, investor, and lender in the communications industry for over 36 years. He is currently Chairman, President and CEO of Blackstar, LLC, and Blackstar LP, both management companies which provide consulting and management services to the communications industry. From 1981-1995, Mr. Oxendine served as President and Chairman of the Board of Directors of Broadcap Capital, Inc. (“Broadcap”) and its then-parent company, Broadcast Capital Fund, Inc. (“BCFI”). Broadcap and BCFI were companies that were mandated by their investors, large publicly held broadcast companies, to invest in minority controlled communications businesses. In his testimony, he encourages the Commission to repeal the outdated rule:

If the Federal Communications Commission wishes to improve access to capital for small and minority owned broadcast companies, it should eliminate the requirement in 47 C.F.R. §73.3580 which mandates the publication of notices of broadcast applications in newspapers. This archaic requirement disproportionately harms small broadcasting companies. The fee to publish seldom-read legal notices in newspapers is a fixed cost imposed on broadcasting companies, regardless of the size of the company. Small broadcasters pay just as much as large broadcasters when they place their notices in the newspapers. Consequently, the rule disproportionately impacts the net return on investment (ROI) for smaller companies.

A company’s ROI is greater when it has lower costs and can deliver a greater net profit for investors. While companies have some control over their variable costs, fixed costs cannot be controlled as easily. The Commission-imposed fixed cost of compliance with §73.3580 leaves smaller companies with lower ROI’s than larger companies have. In this way, Section 73.3580 creates a built-in disadvantage for smaller broadcast companies in capital raising because investors place all of their funds where they receive the highest net return.

To understand why this is so, consider an example: a well-managed small business burdened by relatively high fixed costs generates a 10% ROI, and an equally well-managed large business which, owing to its scale, is better able to absorb the size-equivalent but proportionally lower fixed costs, generates an 11% ROI. When choosing which of these companies to invest in, an institutional investor, accountable to fiduciaries demanding the highest returns on investment, will place 100% of its money in the large business. Indeed, virtually every investor except the small company’s network of “friends and family” will make that decision. That is a major part of the reason why access to capital remains the greatest impediment to greater minority broadcast ownership.

I understand the FCC is considering the repeal of the newspaper publication requirement in §73.3580. Further, I would encourage the Commission to identify other archaic rules

*and policies that serve little or no purpose in the modern media environment while imposing fixed costs of barriers to entry upon minority broadcasters and entrepreneurs, and the capital providers that serve them.*⁶

The Commission should assist small businesses by replacing the requirements of the public notice in a local newspaper with a requirement that public notices be posted online on a station's website. This rule change would be in line with the Commission's recent declaratory ruling allowing broadcasters to place job postings online in order to meet the "wide dissemination" requirement of the broadcast EEO rules.⁷

The elimination of the Publication Rule will improve the net revenues of all stations deemed to be small entities. According to the criteria of the Small Business Association ("SBA"),⁸ approximately 98% of radio stations would benefit from this deregulation.⁹ The Commission should take the necessary action to help 98% of the radio industry gain greater access to capital.

Respectfully submitted,

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⁶ See Exhibit, Statement of John Oxendine (November 10, 2017).

⁷ See *Sole Use of Internet Sources*, 17 FCC Rcd at 3685 ¶1.

⁸ According to the SBA, a firm can be classified as a small business if it has \$38.5 million or less in yearly receipts. See 13 C.F.R. § 121.201 (NAICS code 515112).

⁹ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table (last visited November 6, 2017).

Statement of John E. Oxendine

I, John E. Oxendine, state as follows:

I have been an entrepreneur, operator, investor, and lender in the communications industry for 36 years. Currently I serve as President and CEO of Blackstar Management LLC, a management company that provides consulting and management services to the communications industry. From 1981-1995, I served as President and Chairman of the Board of Directors of Broadcap Capital, Inc. (“Broadcap”) and its then-parent company, Broadcast Capital Fund, Inc. (“BCFI”). Broadcap and BCFI were mandated by their investors, large publicly held broadcast companies, to invest in minority controlled communications businesses. They invested in 47 such businesses, nearly all of which succeeded.

If the Federal Communications Commission wishes to improve access to capital for small and minority owned broadcast companies, it should eliminate the requirement in 47 C.F.R. §73.3580 which mandates the publication of notices of broadcast applications in newspapers. This archaic requirement disproportionately harms small broadcasting companies. The fee to publish seldom-read legal notices in newspapers is a fixed cost imposed on broadcasting companies, regardless of the size of the company. Small broadcasters pay just as much as large broadcasters when they place their notices in the newspapers. Consequently, the rule disproportionately impacts the net return on investment (ROI) for smaller companies.

A company’s ROI is greater when it has lower costs and can deliver a greater net profit for investors. While companies have some control over their variable costs, fixed costs cannot be controlled as easily. The Commission-imposed fixed cost of compliance with §73.3580 leaves smaller companies with lower ROI’s than larger companies have. In this way, Section 73.3580 creates a built-in disadvantage for smaller broadcast companies in capital-raising because investors place all of their funds where they receive the highest net return.

To understand why this is so, consider this example: a well-managed small business burdened by relatively high fixed costs generates a 10% ROI, and an equally well-managed large business which, owing to its scale, is better able to absorb the size-equivalent but proportionally lower fixed costs, generates an 11% ROI. When choosing which of these companies to invest in, an institutional investor, accountable to fiduciaries demanding the highest returns on investment, will place 100% of its money in the large business. Indeed, virtually every investor except the small company's network of "friends and family" will make that decision. That is a major part of the reason why access to capital remains the greatest impediment to greater minority broadcast ownership.

I understand that the FCC is considering the repeal of the newspaper publication requirement in §73.3580. I would encourage the Commission to go forward with this plan. Further, I would encourage the Commission to identify other archaic rules and policies that serve little or no purpose in the modern media environment while imposing fixed costs or barriers to entry upon minority broadcasters and entrepreneurs, and the capital providers that serve them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Statement is true and correct to the best of my knowledge and belief.

Executed November 10, 2017.

/JEO/

John E. Oxendine
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