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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17-264; FCC 18-41]

Obligations Relating to Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) revises of its rules to relieve certain digital television stations of an annual reporting obligation relating to the provision of ancillary or supplementary services.

DATES: These rule revisions are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at Raelynn.Remy@fcc.gov, or (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 18-41, adopted on April 12, 2018. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554.

This document will also be available via ECFS at

<https://ecfsapi.fcc.gov/file/0413667409173/FCC-18-41A1.pdf>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW, Room CY-B402,

Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. In this Report and Order (Order), we adopt our proposal to revise § 73.624(g) of the Commission's rules to require only those digital television (DTV) broadcast stations that actually provided feeable ancillary or supplementary services during the relevant reporting period to submit Form 2100, Schedule G to the Commission.¹

2. Section 336 of the Communications Act of 1934, as amended (Act), authorizes DTV stations to offer ancillary or supplementary services in addition to their free, over-the-air television service.² Section 336(e) of the Act directs the Commission to establish a fee program for any such services for which the payment of a subscription fee is required, or for which the licensee receives compensation from a third party in return for transmitting material furnished by that party,³ otherwise known as "feeable" ancillary or supplementary services. Under § 336(e)(4), the Commission must advise Congress annually on "the amounts collected pursuant to [the fee] program."

3. To carry out its mandate, the Commission in 1998 adopted rules that: (i) set the fee for feeable ancillary or supplementary services at five percent of the gross revenues received from the provision of those services; and (ii) require all DTV licensees and permittees annually to file Schedule G, which is used to report information about their use of the DTV bitstream to

¹ 47 CFR 73.624(g)(2); 82 FR 56574. In addition to proposing the rule revisions adopted in this Order, the NPRM (see 82 FR 56574 (Nov. 29, 2017)) also sought comment on possible revisions to § 73.3580 of the Commission's rules concerning public notice of broadcast applications. We will address issues relating to § 73.3580 at a later date.

² 47 U.S.C. 336.

³ Such compensation excludes advertising revenues used to support broadcasting for which a subscription fee is not required.

provide such services. Such stations must submit Schedule G every year even if they provided no ancillary or supplementary services during the relevant reporting period. Failure to file the form “regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.”

4. In October 2017, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing to modify § 73.624(g)(2) to require only those DTV stations that provide feeable ancillary or supplementary services to submit Schedule G on an annual basis. The following month, the Media Bureau, on its own motion, waived the December 1, 2017 deadline for the filing of Schedule G by DTV stations that received no revenues from such services during the reporting period ending September 30, 2017, pending Commission action on the proposal to eliminate the § 73.264(g)(2) reporting obligation. In response to the NPRM, we received no opposition to the proposed revisions to § 73.624(g).

5. We adopt our proposal to modify § 73.624(g)(2) of the Commission’s rules to require only those DTV stations that provide feeable ancillary or supplementary services during the relevant reporting period to submit Schedule G.⁴ We find persuasive commenters’ unanimous assertions that requiring all DTV stations to file this form, regardless of whether they have provided ancillary or supplementary services or received revenue from those services, imposes unnecessary regulatory burdens and wastes resources. The record has not shown there will be any impact on our ability to discharge our statutory obligations by modifying our rules as proposed. Requiring the submission of Schedule G only by DTV stations that have provided feeable ancillary or supplementary services will continue to provide the Commission with the

⁴ As proposed in the NPRM, we also revise Schedule G to conform to the rule amendments adopted herein.

necessary information to assess and collect the required fees⁵ and to fulfill its reporting obligation to Congress.⁶ Stations that provide feeable ancillary or supplementary services and fail to file the required information will be subject to appropriate sanctions. In addition, as we noted in the NPRM, only a small fraction of all television broadcast stations provide feeable ancillary or supplementary services. Based on a Media Bureau staff review of Schedule G filings, only twelve out of more than 6,000 DTV stations required to file Schedule G received revenues from their provision of ancillary or supplementary services in 2017, and the Commission collected less than \$1,300 in fees from those revenues.⁷ We thus agree with commenters who assert that the costs of applying § 73.624(g)(2) to all DTV stations outweigh any associated public interest benefits.

6. We therefore affirm our tentative conclusion that such a broad application of the reporting requirement is not necessary to fulfill our statutory requirement to “report to Congress on the [fee] program . . . and [give the agency] the information necessary to adjust the fee program as appropriate consistent with the use of the spectrum.” Rather, the form-filing requirement will only continue to apply to DTV stations that actually receive revenue from feeable services. As some parties have noted, waiver of the December 1, 2017 deadline for filing Schedule G spared thousands of DTV stations from expending time and resources to submit such reports, without compromising the Commission’s fulfillment of its obligation to report to Congress under section 336. For these reasons, we conclude that eliminating this reporting obligation for DTV stations that have provided no feeable ancillary or supplementary services

⁵ For example, requiring DTV stations that have provided feeable ancillary or supplementary services to file Schedule G will allow us to continue to assure that a portion of the value of the public spectrum resource made available for commercial use is recovered for the public benefit and to avoid unjust enrichment of the station.

⁶ The Commission fulfills its reporting obligation by providing the required information in the Video Competition Report, which identifies the total reported revenues from ancillary or supplementary services and the amount of fees collected by the Commission.

⁷ These totals are based on a review of all Schedule G filings for the 2017 reporting period. The data underlying these totals are publicly available through the Commission’s LMS database application search, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicAppSearch.html>.

during the reporting period serves the public interest by reducing unnecessary regulatory burdens.

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM). The Commission sought written public comments on proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

8. In the Order, we amend § 73.624(g)(2) to relieve television broadcasters that have received no feeable revenues from the provision of ancillary or supplementary services, and thus are not required to pay fees on those revenues, of the obligation to submit FCC Form 2100, Schedule G annually. No parties filed comments in response to the IRFA or otherwise addressed the impact on smaller entities of the proposed revisions to § 73.624(g). In addition, the Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file comments in response to the proposed rules in this proceeding.

9. The Order is authorized pursuant to sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336. The types of small entities that may be affected by the Order fall within the following category: Television Broadcasting. The Order adopts no reporting, recordkeeping, or other compliance requirements. The Order eliminates an annual reporting obligation and the expenditure of resources associated with filing the annual reports for a substantial number of broadcast stations, including small entities. Because the revisions to § 73.624(g) adopted in the Order are unopposed, we expect that DTV stations, including affected small entities, will benefit from such revisions.

10. This Order eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501 through 3520). In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002.

11. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

12. Accordingly, it is ordered that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336, this Report and Order is adopted, effective as of the date of publication of a summary in the Federal Register.⁸

13. It is further ordered that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336, the Commission’s rules are hereby amended.

14. It is further ordered that the Commission shall send a copy of this Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

List of Subjects in 47 CFR Part 73

Television.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene Dortch,

⁸ These rule changes serve to “reliev[e] a restriction.” 5 U.S.C. 553(d)(1).

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends part 73 of title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

2. Revise § 73.624(g)(2)(i) and (ii) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(g)* * *

(2) * * *

(i) Each December 1, all commercial and noncommercial DTV licensees and permittees that provided feeable ancillary or supplementary services as defined in this section at any point during the 12-month period ending on the preceding September 30 will electronically report, for the applicable period:

(A) A brief description of the feeable ancillary or supplementary services provided;

(B) Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

(C) The amount of bitstream used to provide feeable ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file information required by this section may result in appropriate sanctions.

(ii) A commercial or noncommercial DTV licensee or permittee that has provided feeable ancillary or supplementary services at any point during a 12-month period ending on September 30 must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12-month period and will remit the payment of the required fee.

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