

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)

ORDER

Adopted: November 15, 2017

Released: November 15, 2017

By the Chief, Media Bureau:

1. In this Order, on our own motion, we waive the December 1, 2017 deadline for the filing of FCC Form 2100, Schedule G, by digital television (DTV) stations that have received no revenues from the provision of ancillary or supplementary services during the reporting period ending September 30, 2017. We conclude that, pending final action on the Commission's proposal to eliminate that reporting obligation, waiver of the upcoming deadline for such stations to file the form serves the public interest by temporarily relieving them of a regulatory burden that the Commission has tentatively concluded is unnecessary.

2. Section 336 of the Communications Act, among other things, authorizes broadcast licensees to offer ancillary or supplementary services consistent with the public interest. Section 336(e) requires the Commission to assess fees on revenues derived from the provision of ancillary or

1 See 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown"). Form 2100, Schedule G, is used to report the provision of so-called "ancillary or supplementary services" by DTV stations. These are services that DTV stations can offer using their existing spectrum, in addition to their free, over-the-air television service. This form previously was known as FCC Form 317.

2 See 47 CFR § 73.624(g)(2)(i) (mandating that "each December 1, all commercial and noncommercial DTV licensees and permittees will electronically report whether they provided ancillary or supplementary services in the 12-month period ending on the preceding September 30").

3 See 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 et al., MB Docket No. 17-264 et al., Notice of Proposed Rulemaking, FCC 17-138 (Oct. 24, 2017) (Ancillary or Supplementary Services NPRM).

4 The Commission defined ancillary or supplementary services to include, among other things: computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations. . . . Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

47 CFR § 73.624(c).

5 47 U.S.C. § 336(a)(2).

supplementary services.⁶ To implement this requirement, the Commission adopted Section 73.624(g) of its rules, which sets the rate for feeable ancillary or supplementary services at five percent of the gross revenues received from the provision of such services⁷ and requires all DTV stations to file annual reports regarding their use of the DTV bitstream to provide such services.⁸ Under Section 73.624(g), DTV stations are required to report “whether they provided ancillary or supplementary services in the twelve-month period ending on the preceding September 30.”⁹ Such stations must submit FCC Form 2100, Schedule G, by December 1 every year even if they did not provide ancillary or supplementary services during the relevant reporting period.¹⁰

3. On October 24, 2017, as part of its *Modernization of Media Regulation Initiative*,¹¹ the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing to amend Section 73.624(g) to require the filing of FCC Form 2100, Schedule G, only by DTV stations that have provided feeable ancillary or supplementary services during the relevant reporting period and thus must pay the five percent fee on gross revenues derived from such services.¹² In the NPRM, the Commission directed the Media Bureau to consider “whether to waive the December 1, 2017 deadline for the submission of FCC Form 2100, Schedule G, by stations that have provided no feeable ancillary or supplementary services during the reporting period ending September 30, 2017” pending final action on its proposal.¹³

4. We conclude that there is good cause to waive the December 1, 2017 deadline for the submission of FCC Form 2100, Schedule G, by DTV stations that have received no revenues from the provision of ancillary or supplementary services during the reporting period ending September 30, 2017 and thus are not required to pay the five percent fee on gross revenues derived from such services.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶

⁶ *Id.* § 336(e) (directing the Commission to establish a fee program for “any ancillary or supplementary 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,” referred to as “feeable ancillary or supplementary services”).

⁷ *Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 3259, 3267, para. 20 (1998) (*Ancillary or Supplementary Services Report and Order*); 47 CFR § 73.624(g).

⁸ 47 CFR § 73.624(g)(2); *Ancillary or Supplementary Services Report and Order*, 14 FCC Rcd at 3275, para. 54.

⁹ 47 CFR § 73.624(g)(2)(i).

¹⁰ *Annual DTV Ancillary/Supplementary Use Services Report for Digital Television Stations (Form 2100 – Schedule G) Due December 1, 2016*, Public Notice, 31 FCC Rcd 12474 (MB 2016).

¹¹ *See Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017).

¹² *See Ancillary or Supplementary Services NPRM* at 5, para. 6 (tentatively concluding that the proposed rule revisions would reduce unnecessary regulation and regulatory burdens that can impede competition and innovation in the video marketplace).

¹³ *See id.* at n. 31.

¹⁴ 47 CFR § 1.3. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁵ *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

5. Because the Commission has tentatively concluded that the costs imposed by applying Section 73.624(g)(2) to all DTV stations outweigh any associated public interest benefits,¹⁷ and because the vast majority of stations do not provide feeable ancillary or supplementary services,¹⁸ we find that there is good cause to waive the December 1, 2017 deadline for the submission of FCC Form 2100, Schedule G, by DTV stations that have provided no feeable ancillary or supplementary services during the reporting period ending September 30, 2017. This waiver is effective pending a Commission decision in MB Docket No. 17-264 acting on the Commission's proposal to eliminate this reporting obligation. Pending final action, we find that waiver of the obligation for those stations serves the public interest by temporarily relieving them of a regulatory burden that the Commission tentatively has deemed unnecessary.

6. Accordingly, IT IS ORDERED, pursuant to Sections 0.61, 0.283, and 1.3 of the Commission's Rules, 47 CFR §§ 0.61, 0.283, and 1.3, that this Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

¹⁷ *Ancillary or Supplementary Services NPRM* at para 6.

¹⁸ *See id.* at para. 6, n. 28 (stating “[b]ased on a Media Bureau staff review of Forms 2100, Schedule G, fewer than 15 stations reported receiving revenues from their provision of ancillary or supplementary services in 2016”). Moreover, no commenter in that proceeding thus far has argued that the Commission should continue to apply the Section 73.624(g)(2) reporting obligation to all DTV stations irrespective of whether they provide feeable ancillary or supplementary services. *Id.* at para. 6.