



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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MEDIA BUREAU SEEKS COMMENT ON INDUSTRY PROPOSAL FOR CARRIAGE ELECTION NOTICE MODERNIZATION

MB Docket No. 17-317

Comments Due: January 7, 2019
Reply Comments Due: January 17, 2019

We seek comment on the proposal, attached to this Public Notice, that was submitted by the National Association of Broadcasters (NAB) and NCTA – The Internet and Television Association (NCTA) on December 7, 2018 in the above docket (Joint Proposal).¹ The Joint Proposal responds to a Notice of Proposed Rulemaking (NPRM) that sought comment, in part, on updating the requirement that broadcast television stations send carriage election notices via certified mail.² In response to the NPRM, several parties proposed ways to reduce the burden and costs involved in the carriage election process.³

Currently, Sections 76.64(h) and 76.66(d) of our rules direct each television broadcast station to provide notice every three years, via certified mail, to each cable system or Direct Broadcast Satellite carrier serving its market regarding whether it is electing to demand carriage (“must carry” or “mandatory carriage”), or to withhold carriage pending negotiation (“retransmission consent”).⁴ The NPRM sought comment on revising this requirement to permit broadcast stations to use alternative means of notice.⁵

Under the Joint Proposal,

a commercial broadcast TV station would be required to send notice of its must carry or retransmission consent election to a cable operator only if the station changed its election

¹ Letter from Rick Kaplan, General Counsel and Executive Vice President of National Association of Broadcasters (NAB), and Rick Chessen, Chief Legal Officer of NCTA – The Internet and Television Association, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-317 (filed Dec. 7, 2018).

² Electronic Delivery of MVPD Subscriber Notification Rules, 32 FCC Rcd 10755, 10767-69, paras. 25-27 (2017) (NPRM).

³ See, e.g., NAB Comments, filed Feb. 15, 2018; AT&T Comments, filed Feb. 15, 2018; DISH Network LLC Comments, filed Feb. 15, 2018.

⁴ NPRM, 32 FCC Rcd at 10767, para. 25. If a broadcaster fails to timely deliver its carriage election notice to a cable operator, the station will default to must-carry with respect to that operator. 47 CFR § 76.64(f)(3). If a commercial broadcaster fails to notify a direct broadcast satellite carrier, the station defaults to retransmission consent. 47 CFR § 76.66(d)(1)(v). Non-commercial educational stations may not elect or default to retransmission consent. 47 U.S.C. § 325(b).

⁵ NPRM, 32 FCC Rcd at 10767, para. 25.

status from its previous election. In those cases, the broadcaster would send its notice to an email address listed in the cable operator's online public file or in the FCC's Cable Operations and Licensing System (COALS) database, for cable operators that do not have an online public file.⁶

NAB and NCTA claim that this approach "would alleviate the burdens associated with the current notification process and meet the needs of both broadcasters and cable operators."⁷

We invite the public to comment on the recommended approach in the Joint Proposal. In particular, we seek comment on whether, and to what extent, the Commission should adopt these recommendations or any alternative modifications to the carriage election rules. The Commission will consider the Joint Proposal and the comments filed in response to this Public Notice together with the comments and ex partes previously filed in response to the NPRM in determining what action to take in this proceeding.

Ex Parte Rules.—Permit-But-Disclose. The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.⁸ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Requirements.—Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

⁶ Joint Proposal at 2.

⁷ Id.

⁸ 47 CFR §§ 1.1200 et seq.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- o All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- o Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701
- o U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Additional Information. For additional information on this proceeding, contact Varsha Mangal, of the Media Bureau, Video Division, (202) 418-0073 or varsha.mangal@fcc.gov, or Lyle Elder of the Media Bureau, Policy Division, (202) 418-2365 or lyle.elder@fcc.gov. Press contact: Janice Wise (202-418-8165; janice.wise@fcc.gov).

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December 7, 2018

Michelle Carey
Chief, Media
Bureau
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Written *Ex Parte* Communication, Electronic Delivery of MVPD
Communications; Modernization of Media Regulation Initiative, MB Docket
Nos. 17-317, 17-105

Dear Ms. Carey:

At a meeting with Media Bureau staff in September, the National Association of Broadcasters (NAB) and NCTA - The Internet & Television Association (NCTA) discussed issues relating to the notice that TV broadcasters provide to cable operators as to their stations' elections between must carry or retransmission consent.¹ NAB and NCTA now have agreed on the details of a proposal discussed at that meeting to reform the current election notification process. We outline our proposal herein and urge the Commission to approve it.

Under the FCC's current rules, every commercial broadcast TV station must provide notice every three years, via certified mail, to each cable system and DBS carrier serving its market as to whether it is electing must carry or retransmission consent. As part of its rulemaking on electronic delivery of multichannel video programming distributor (MVPD) communications, the Commission sought comment on modernizing these rules, such as by eliminating the requirement to send election notices by certified mail and replacing it with a mechanism for providing notice of carriage elections online.²

¹ NCTA, Notice of *Ex Parte* Communication, MB Docket Nos. 17-317 & 17-105 (Sept. 17, 2018) (September *Ex Parte*).

² Notice of Proposed Rulemaking, MB Docket Nos. 17-317 & 17-105, FCC 17-168, at ¶¶ 25- 27 (Dec. 14, 2017) (asking if the FCC could modernize its "rules in a way that would minimize the burden on broadcasters, ensure that MVPDs receive the elections in a timely way, and still provide a mechanism by which broadcasters can demonstrate that they met the election deadline with respect to specific operators and DBS carriers").

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In an effort to bridge the gap between broadcasters and cable operators on the election notice issue, NAB and NCTA met with staff of the Media Bureau on September 13 and discussed a possible compromise proposal. Since that time, NAB and NCTA have continued to work to craft a proposal that would alleviate the burdens associated with the current notification process and meet the needs of both broadcasters and cable operators. We now reaffirm the compromise proposal previously discussed and provide further detail as to how our election notice approach would function.³

As set forth in the September *ex parte*, under our joint proposal, a commercial broadcast TV station would be required to send notice of its must carry or retransmission consent election to a cable operator *only if* the station changed its election status from its previous election. In those cases, the broadcaster would send its notice to an email address listed in the cable operator's online public file or in the FCC's Cable Operations and Licensing System (COALS) database, for cable operators that do not have an online public file. NAB and NCTA are not proposing to change the current default election provisions.⁴

NAB and NCTA envision this new framework taking effect in the 2020 election cycle. Beginning at that time, a TV broadcaster would provide notice via email to a cable operator only if the station is changing its carriage election. Commercial TV broadcasters would continue to include copies of their election statements in their online public files.⁵

Under this framework, certain updates to the FCC's online systems and databases would be needed. These updates would include:

- (1) *A new field in cable operators' online public files for carriage election contact information.* Cable operators should be required to provide a general carriage elections email address, where broadcasters will send their election notices, and a phone number for broadcasters to use in the event of questions as to whether cable operators received stations' election notices. A cable operator would include this email address and phone number on the first page of each of its public files.
- (2) *A new field in TV broadcasters' online public files for carriage election contact information.* Broadcasters would include an email address and phone number on the first page of each of their stations' public files.
- (3) *A new field in the COALS database.* Cable operators that do not have an online public file (e.g., cable TV systems with fewer than 1,000 subscribers) will need to provide the same contact information as described in (1) above (a carriage election email address and phone number). These cable operators would add an email address and phone number for each "Legal Name" in COALS, which the database currently

³ While NCTA represents cable operators and not all MVPDs, NAB believes these rules should apply uniformly to all MVPDs.

⁴ See 47 C.F.R. §§ 76.64(f)(3).

⁵ The broadcaster election rules would be satisfied so long as a broadcaster properly follows the procedures outlined herein. Failure to include an election notice in a broadcaster's public file would be governed by the Commission's rules and policies addressing omissions from the broadcast public file.

associates with operators' Physical System ID listings. NAB and NCTA encourage the Commission to update COALS so operators can simultaneously update multiple "Legal Names" with the same email and phone number, if needed.

It is important that carriage election contact information be kept current. If the cable system's contact information changes, operators with online public files will need to update the carriage election contact information in their public files. For small cable systems without an online public file, they will need to update their carriage election contact information in COALS. Because cable operators and systems are required to keep their public files and COALS data up-to-date, broadcasters should be able to satisfy their notice requirement if they rely on the contact information in the public files, or in COALS for systems with fewer than 1,000 subscribers. If a broadcaster is unable to contact an existing cable operator or system by email and then by using the phone number provided by the system or operator, then the broadcaster will only be required to copy the FCC's election notice email address described below and include any change of election notice for such provider in its online public file by the election notice deadline. In the same vein, if the broadcaster's contact information changes, broadcast stations will need to update the carriage election contact information in their public files.

Broadcasters should be able to assume that the contact information provided by cable operators in their online public files or in COALS is up-to-date within 60 days of the next carriage election deadline.

Additional questions may arise when a broadcaster gives email notice of a change in its carriage election, especially with regard to multi-system cable operators. A broadcaster will not need to identify each specific cable system for which a carriage election applies, just the Designated Market Area (DMA), if the broadcaster changes its election for all the systems of the cable operator. In such a case, a broadcaster would send a notice to the cable operator stating that "Station WXYZ now elects retransmission consent [or must carry] for all of the systems in X DMA." Broadcasters would need to identify specific cable systems for which a carriage election applies if the broadcaster changes its election for some systems of the cable operator but not all.⁶ In any notice changing its election, a broadcaster would need to

⁶ For instance, if Station Group X, whose stations all previously elected must carry, changes its election to retransmission consent for some but not all systems of a cable operator in a DMA, it can send a notice to the operator stating that "WXYZ in the New York, NY DMA is changing its election to retransmission consent on the following systems {identify specific systems} and maintains its election of must carry for the remainder of the systems in the DMA." The station group would not need to identify the systems in the New York DMA where it is remaining must carry. Similarly, if a station changes its election from retransmission consent to must carry, it must send a notice to the cable operator saying that "WXYZ in the New York, NY DMA is

changing its election to must carry on the following systems {identify specific systems} and maintains its election of retransmission consent for the remainder of the systems in the DMA.”

identify its station call sign(s), the DMA and the specific change being made in election status.⁷

Finally, to promote certainty for all parties, a way to confirm that cable operators received broadcasters' email notices of their changes in carriage election is essential. The Commission should have an email address that broadcasters will cc: when sending election notices to cable operators. While this will serve as a backup for broadcasters to show that they successfully completed proper notice, broadcasters may not use the FCC email address in lieu of sending an email to a cable operator at the operator's email address provided in its public file or COALS database (or following up with the point of contact if necessary).

In addition, a cable operator's email address should generate a response to the broadcaster's notification email so that the broadcaster knows its election notice was received. In the event the broadcaster does not receive that response, it should be able to call the cable operator's designated phone number to receive assistance and confirmation that the notice was received. However, an email from a cable operator confirming its receipt of an email from a broadcaster changing its election should not be considered the cable operator's affirmation that the broadcast station fully satisfied its notice obligation, as the notice could be defective in other ways. For their part, broadcasters should include an email address and phone number in the notices emailed to cable operators and, as discussed above, should include an email and phone number in their online public files, in case cable operators have additional questions.

NAB, NCTA and our members appreciate the FCC's continuing efforts in its media modernization proceedings. We believe the compromise detailed above will reduce burdens and provide certainty in the carriage election and notification processes and urge the Commission to adopt it.

Respectfully submitted,



Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs

⁷ NAB and NCTA discussed other specific situations and concluded that they should continue to be addressed in the same manner as today. For example, if a cable system is sold and a broadcaster has sent the cable operator a blanket election thinking that

the election covers a system that the operator no longer owns, that situation will be treated as it is today. And if a broadcaster changes ownership, its election status and need to notify cable operators of its election in the next cycle will be treated in the same manner as today.



Rick Chessen
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