

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

In the Matter of
Electronic Delivery of MVPD Communications
Modernization of Media Regulation Initiative
MB Docket No. 17-317
MB Docket No. 17-105

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 2020

Released: September 23, 2020

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider a joint petition filed by America’s Public Television Stations and the Public Broadcasting Service (collectively, Petitioners) requesting that the Media Bureau issue a narrow waiver of the Commission’s recently adopted multichannel video programming distributor (MVPD) carriage election notice requirements as applied to certain noncommercial educational (NCE) television translator stations.1 Among other provisions, those requirements mandate that commercial low power television stations eligible to demand carriage (qualified LPTV stations), as well as NCE translator stations eligible to demand carriage (qualified NCE translators), e-mail a “baseline” carriage notice, no later than October 1, 2020, to any MVPDs on which they will be seeking or expecting carriage in the 2021-2023 carriage cycle.2 Petitioners request a waiver of this baseline requirement only for qualified NCE translators.3 For the reasons set forth below, we grant the unopposed Petition.4

II. BACKGROUND

2. In 2019, the Commission adopted rules modernizing the carriage election notice rules for full power broadcast stations and sought comment on adopting similar rules for qualified LPTV stations and NCE translators.5 These modernized rules require covered stations to send carriage change notices to MVPDs via e-mail and to place carriage election statements into their online public files. The 2020 Report and Order modernized the Commission’s carriage election notice rules for entities that were not

1 Petition for Waiver of America’s Public Television Stations and the Public Broadcasting Service, MB Docket Nos. 17-317 and 17-105 (filed Aug. 25, 2020) (Petition).

2 Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative, MB Docket Nos. 17-317 and 17-105, Report and Order, 35 FCC Rcd 1636, 1641-42, paras. 12-13 (2020) (2020 Report and Order).

3 Petition at 1, 5.

4 Infra section III.

5 Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative, MB Docket Nos. 17-317 and 17-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 5922 (2019) (2019 Report and Order).

covered by the *2019 Report and Order*, including LPTV and NCE translator stations. Explaining that qualified LPTV and NCE translator stations do not currently maintain online public files, the *2020 Report and Order* found that it would be unduly burdensome to require them to begin to do so for carriage notice purposes. As an alternative means of providing baseline information to MVPDs, the Commission directed both qualified LPTV and qualified NCE translator stations to e-mail one-time notifications, no later than October 1, 2020, to all MVPDs on which they expect to be carried in the 2021-2023 program carriage cycle.

3. Petitioners request that the Media Bureau waive this baseline requirement for qualified NCE translators, given their unique characteristics.⁶ NCE television translator stations do not originate any programming but rather rebroadcast the programs and signals of primary NCE full-power television stations where direct reception of those stations is difficult due to distance or intervening terrain barriers.⁷ Petitioners note that, as with primary NCE stations, qualified NCE translator stations may only elect “must carry” under the Communications Act of 1934, as amended, while qualified LPTV stations have the option of electing either “must carry” or retransmission consent.⁸ Accordingly, Petitioners contend, unlike qualified LPTV stations, NCE translators are carried by MVPDs serving millions of Americans without the need for them to provide carriage election information to those MVPDs.⁹ Petitioners assert that NCE translators do not even know, in many cases, which MVPDs are carrying them (as opposed to an NCE’s primary signal), and that no resource exists to easily determine this information.¹⁰ As a result, Petitioners contend, even emailing a one-time notice would impose a substantial burden, while providing no benefit to the public, to MVPDs, or to the translators themselves, and could potentially result in a loss of service should NCE translators fail to provide notice properly.¹¹

4. We evaluate Petitioners’ waiver request pursuant to the general waiver authority in section 1.3 of the Commission’s rules.¹² To be eligible for a waiver, Petitioners must explain the nature of the special circumstances and why deviating from the general requirement serves the public interest.¹³

III. DISCUSSION

5. We find that there is good cause to grant the unopposed Petition. Given the unique characteristics of NCE translators, the public interest would be best served by waiving the baseline e-mail notification requirement for NCE translators adopted in the *2020 Report and Order*.¹⁴ Grant of this

⁶ Petition at 5. The Media Bureau issued a Public Notice seeking comment on the Petition. *Media Bureau Seeks Comment on the APTS and PBS Petition for Waiver of NCE Translator Baseline Carriage Notice Requirements*, MB Docket Nos. 17-317 and 17-105, Public Notice, DA 20-949, 2020 WL 5094571 (MB Aug. 26, 2020). No comments were filed.

⁷ Petition at 2; 47 CFR § 74.731(a).

⁸ 47 U.S.C. §§ 325(b)(1), 534(a), 535(a).

⁹ Petition at 3.

¹⁰ *Id.*

¹¹ *Id.* at 3-4.

¹² 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

¹³ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁴ Qualified LPTV stations must still send election notices via e-mail no later than October 1, 2020 to all MVPDs on which they will be seeking or expecting carriage in the 2021-2023 carriage cycle.

waiver furthers the public policy objectives of this proceeding, which sought to eliminate unnecessary communications between TV broadcast stations and MVPDs and facilitate necessary communications by modernizing the Commission's carriage election notice rules.

6. We agree with Petitioners that compliance with the "baseline" e-mail notification requirement presents distinct difficulties for NCE translator stations. NCE translators, unlike LPTV stations, currently enjoy carriage on cable systems without any carriage election or notification requirement. Along with their parent stations, NCE translators are entitled to mandatory carriage on cable systems¹⁵ and, as a result, are not required to submit triennial election notices to cable operators on which they expect carriage.¹⁶ Consequently, as Petitioners note, cable operators have carried NCE translators' programming and signals for decades without receiving any carriage election notifications from those translator stations.¹⁷ As NCE translators merely repeat a primary NCE station's programming, Petitioners contend that the primary NCE station's communication with an MVPD should suffice for carriage election and notification purposes.¹⁸ Petitioners explain that NCE translators in many cases do not know which cable systems are carrying their stations and would have to compile that information "from scratch, for each NCE translator station and for each MVPD," making compliance by the October 1, 2020 deadline unfeasible.¹⁹ We conclude that these special circumstances support granting the waiver in this instance for qualified NCE translator stations.

7. We also find that grant of this unopposed waiver serves the public interest. We agree with Petitioners that "[n]o Commission policy is harmed by allowing qualified NCE translator stations to continue with the status quo until such time as a change in circumstances affects continued MVPD carriage."²⁰ We likewise find that no MVPD is harmed by grant of this waiver. As cable systems carrying NCE translator stations have never received carriage election notices from those stations, the baseline notices would not convey any information that cable systems would need to rely on to continue carrying the stations. Most important, viewers will not be harmed by grant of this waiver, because we agree with Petitioners that it is the most effective way to preserve the status quo.²¹ Given that there is no readily available resource for NCE translators to determine which cable systems are carrying their stations, we find that the costs of compliance with the baseline e-mail notification for NCE translator stations far outweigh any possible benefits.

8. The baseline notification requirement remains in effect for all qualified LPTV stations. As commercial stations, qualified LPTV stations already engage in regular communication with MVPDs for the purposes of carriage election and notification. Consistent with the requirements adopted in our *2020 Report and Order*, qualified LPTV stations must send a baseline notice via e-mail to all MVPDs on

¹⁵ NCE translators may not choose between "must carry" and retransmission consent because they are noncommercial stations. 47 U.S.C. § 325 (excluding certain categories of stations, including noncommercial television broadcast stations, from participating in retransmission consent negotiations); 47 U.S.C. § 535(a) ("In addition to the carriage requirements set forth in section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial education television stations in accordance with the provisions of this section"); 47 CFR § 76.56(a)(1) (explaining that, subject to certain conditions, cable operators are required to carry every qualified noncommercial educational station "requesting carriage"). See *supra* para. 3.

¹⁶ 47 U.S.C. § 535(1)(1) (defining a qualified NCE television station for purposes of must carry as including certain translator stations).

¹⁷ Petition at 3.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 4.

²¹ *Id.* at 3-4.

which they will be seeking or expecting carriage in the 2021-2023 carriage cycle, even if they are making no change in their election status.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 325, 338, 614, 615, 631, 632, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 325, 338, 534, 535, 551, 552, and 573, and sections 0.61, 0.283, and 1.3 of the Commission's rules, 47 §§ CFR 0.61, 0.283, and 1.3, this Memorandum Opinion and Order **IS ADOPTED**.

10. **IT IS FURTHER ORDERED** that the petition for waiver of the "baseline" e-mail notification requirement for qualified NCE translator stations adopted in the Commission's *2020 Report and Order* **IS GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau