

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

In the Matter of
Implementation of Section 1004 of the Television
Viewer Protection Act of 2019
MB Docket No. 20-61

ORDER

Adopted: April 3, 2020

Released: April 3, 2020

By the Chief, Media Bureau:

1. As the nation tackles the COVID-19 pandemic, multichannel video programming distributors (MVPDs) and providers of fixed broadband Internet access service are among the entities that are integral to the Commission’s ongoing, nationwide effort to keep Americans informed and connected during this national emergency. So that these service providers may focus their resources on this critical effort, we provide appropriate flexibility for MVPDs and providers of fixed broadband Internet access service to fulfill their obligations under the Television Viewer Protection Act of 2019 (TVPA). Specifically, by this Order, we exercise our discretion under the TVPA to grant a blanket extension until December 20, 2020, of the effective date of new truth-in-billing requirements set forth in section 642 of the Communications Act of 1934, as amended (the Act), as added by section 1004 of the TVPA.1

2. Section 642 of the Act requires MVPDs to “give consumers a breakdown of all charges related to the MVPD’s video service” before entering into a contract with a consumer for service2 and also provides consumers 24 hours in which to cancel such service without penalty.3 In addition, section 642 requires greater transparency in electronic bills and prohibits MVPDs and providers of fixed broadband Internet access service from charging consumers for equipment they do not provide.4 Section 642, as added by the TVPA, becomes effective June 20, 2020, six months after the date of enactment of the TVPA; however, the Commission for “good cause” may extend the effective date by six months.5 On February 27, 2020, the Media Bureau issued a Public Notice seeking comment on whether good cause exists for granting a blanket extension of section 642’s effective date by six months, until December 20, 2020.6

1 47 U.S.C. § 562 (as added by section 1004(a) of The Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019)).

2 See H.R. Rep. No. 116-329, 116th Cong., 1st Sess. 2019 at 4 (providing the relevant legislative history of the TVPA) (House Report). Section 642(a) of the Act, as added by section 1004(a) of the TVPA, indicates that information about fees and other charges may be provided by phone, in person, online, or by other reasonable means, and that a copy of this information must be sent to consumers by email, online link, or other reasonably comparable means not later than 24 hours after entering into a contract. TVPA, § 1004(a).

3 See House Report at 4.

4 Id.

5 See TVPA, § 1004(b) (“Section 642 of the [Act] . . . shall apply beginning on the date that is 6 months after the date of the enactment of this Act. The [Commission] may grant an additional 6-month extension if [it] finds that good cause exists for such . . . extension.”).

6 Media Bureau Seeks Comment on Whether to Extend the Effective Date of New Truth-In-Billing Requirements In the Television Viewer Protection Act of 2019, MB Docket No. 20-61, Public Notice, DA 20-203 (MB Feb. 27, 2020) (inviting advocates for an extension to explain the bases for their assertion that the effective date should be so

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3. Pursuant to section 1004(b) of the TVPA,⁷ we find that good cause exists for granting a blanket extension of section 642's effective date until December 20, 2020. We note that on March 13, 2020, approximately two weeks after issuance of the *Public Notice* in this proceeding, the President declared a national emergency concerning the COVID-19 pandemic.⁸ In view of the evolving and unpredictable nature of the pandemic, and the additional demands it is placing on MVPDs and providers of fixed broadband Internet access service, we find that extending section 642's effective date as specified above is both reasonable and justified and will best serve the public interest. Compliance with the new truth-in-billing requirements in section 642 may require that subject entities make changes to existing billing systems, provide employee training, or take other compliance measures, thereby requiring providers to divert resources away from other consumer demands brought on by the pandemic.⁹ Indeed, we note that these service providers are the entities principally responsible for operating and maintaining the infrastructure that Americans increasingly depend on for continued business and interpersonal communications during the national emergency. As such, we believe their foremost obligation at this time is to ensure continuity of service adequate to meet the nation's needs.¹⁰ We also conclude, given the indefinite length of time of the national emergency, that the public interest would be served best by affording subject entities until December 20, 2020—the maximum amount of time permitted by the statute¹¹—to come into compliance with the requirements of section 642.¹² Indeed, we note that industry commenters claimed that an extension was necessary even if the pandemic had not occurred because six months likely would not have provided ample time for subject entities to take the steps needed to implement the relevant TVPA requirements.¹³

4. Moreover, we find that the present national emergency provides “good cause” under the Administrative Procedure Act (APA) for extending section 642's effective date without prior notice and comment.¹⁴ As explained above, we have already independently determined that the national emergency establishes good cause under section 1004(b) of the TVPA to issue a blanket extension of section 642's

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extended, such as the steps needed to update billing systems to provide the required information to consumers, the time needed to implement such updates, and any employee training needed to fulfill the new requirements).

⁷ TVPA, § 1004(b).

⁸ See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

⁹ See Letter from Mary Beth Murphy, NCTA – the Internet and Television Assn. *et al.* to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 20-61, at 2 (Mar. 26, 2020) (NCTA *et al.* March 26 *Ex Parte Letter*) (asserting that to comply with the new requirements, subject entities, among other things, must “develop, lab test, field test, and roll out new billing and other software that can pull the required disclosure data from information housed in various systems and locations across the company and . . . across the country,” which are time consuming measures).

¹⁰ We note that many MVPDs and providers of fixed broadband Internet access service recently pledged to ensure connectivity for Americans affected by pandemic-related disruptions. See <https://www.fcc.gov/keep-americans-connected>. In addition, the Commission has taken steps to ensure that certain such providers have adequate capacity to keep Americans connected during the national emergency. See, e.g., FCC Grants AT&T and Verizon Further Temporary Spectrum Access to Keep Americans Connected During the Coronavirus Pandemic, News Release (Mar. 20, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-363211A1.docx>.

¹¹ See TVPA, § 1004(b).

¹² See NCTA *et al.* March 26 *Ex Parte Letter* at 1 (asserting that although the steps needed to implement the TVPA's billing requirements alone would justify extending section 642's effective date by six months, the pandemic “has now made compliance by the current June 20, 2020 effective date virtually impossible, as resources once

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effective date, rendering notice and comment prior to extending the effective date “unnecessary.”¹⁵ In addition, in light of the disruptive effect of the national emergency on the daily activities of entities subject to section 642 and other interested parties, and the need for MVPDs and providers of fixed broadband Internet access service to focus their resources on the national emergency, we find that delaying relief under the circumstances would not serve the purpose of the extension and would fail to yield the public interest benefits that notice and comment procedures are designed to produce.¹⁶

5. Because this blanket extension does not require notice and comment pursuant to the “good cause” exception of the Administrative Procedure Act, the Regulatory Flexibility Act¹⁷ does not apply.

6. This *Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).¹⁸ In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.¹⁹

7. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the *Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

8. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), section 1004 of the Television Viewer Protection Act of 2019,²⁰ section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. § 553, and sections 0.5(c) and 0.283 of the Commission’s rules, 47 CFR §§ 0.5(c), 0.283, this *Order* **IS ADOPTED**.

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.113(a) of the Commission’s

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thought available for this purpose must now be redirected toward meeting the needs of customers impacted by virus”).

¹³ *Id* at 2 (explaining the reasons why, even if the COVID-19 crisis had not emerged, six months would not have been enough time for the industry to implement the billing requirements of the TVPA).

¹⁴ *See* 5 U.S.C. § 553(b)(3)(B) (providing that an agency may forgo prior public notice and comment in rulemaking proceedings where it “for good cause finds . . . that [such procedures] are impracticable, unnecessary, or contrary to the public interest”). Given the fact that the TVPA expressly anticipates the need for the Commission to grant an additional six-month extension of the compliance date, we believe our doing so for all affected entities is the most efficient use of both agency and industry resources given that all such entities face demands brought on by the COVID-19 pandemic. Indeed, issuing a blanket extension here achieves the same result as granting multiple extensions to individual providers in a more efficient manner, and thereby avoids delay that could otherwise result in an unnecessary diversion of industry and Commission resources during this national crisis.

¹⁵ *Id.*

¹⁶ Although the pleading cycle for the *Public Notice* was scheduled to conclude on April 13, 2020, *see Comment and Reply Comment Dates Set for Public Notice Regarding the Effective Date of New Truth-in-Billing Requirements in the Television Viewer Protection Act of 2019*, MB Docket No. 20-61, Public Notice, DA 20-277 (MB Mar. 16, 2020), given our finding of good cause to dispense with public comment, we hereby rescind the *Public Notice*. *See* 47 CFR § 1.113(a) (providing that any action taken pursuant to delegated authority may be modified or set aside within thirty days after public notice of such action).

¹⁷ 5 U.S.C. § 601 *et seq.* *See id.* § 601(2).

¹⁸ Public Law 104-13.

¹⁹ Public Law 107-198; *see* 44 U.S.C. § 3506(c)(4).

²⁰ Pub. L. No. 116-94, § 1004, 133 Stat. 2534, 3198 (2019).

rules, 47 CFR § 1.113(a), the March 16, 2020 *Public Notice* in MB Docket No. 20-61 is hereby **RESCINDED**.

10. **IT IS FURTHER ORDERED** that this *Order* **SHALL BE EFFECTIVE UPON PUBLICATION IN THE FEDERAL REGISTER**.²¹

11. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration be timely filed, MB Docket No. 20-61 shall be **TERMINATED**, and its docket **CLOSED**.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

²¹ The blanket extension adopted herein serves to “reliev[e] a restriction.” 5 U.S.C. § 553(d)(1). For similar reasons, there is also good cause to make this *Order* effective upon Federal Register publication, in order to provide certainty to affected providers during the current emergency as to the effective date of the new requirements. 5 U.S.C. § 553(d)(3).