



Federal Communications Commission  
Washington, D.C. 20554

January 8, 2021

DA 21-27

**SMALL ENTITY COMPLIANCE GUIDE**

**Cable Service Change Notifications; Modernization of Media Regulation Initiative;  
Amendment of the Commission's Rules Related to Retransmission Consent  
FCC 20-135; MB Docket Nos. 19-347, 17-105, 10-71  
Released October 1, 2020**

**This Guide is prepared in accordance with the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.**

**In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:**

**1-888-CALL-FCC (1-888-225-5322)  
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## I. OBJECTIVES OF THE PROCEEDING

In today's video marketplace, retransmission consent and program carriage negotiations are often concluded within days—if not hours—of the expiration of existing agreements. And in those cases, it is frequently unclear, 30 days prior to a contract's expiration, whether a new agreement will be reached, or whether there will be a short-term extension, or whether programming will be dropped. This uncertainty led to difficult questions regarding what notice cable operators should be required to provide to subscribers and when they should be required to provide it. On the one hand, subscribers must receive meaningful information regarding their programming options so they can make informed decisions about their service. On the other hand, inaccurate or premature notices about theoretical programming disruptions that never come to pass can cause consumer confusion and lead subscribers to change providers unnecessarily.

In the *Report and Order*<sup>1</sup> in MB Docket Nos. 19-347, 17-105, and 10-71, the Commission revised its regulations governing these notices that cable operators must provide subscribers and local franchise authorities (LFAs) regarding rate and service changes. These changes make consumer notices more meaningful and accurate, reduce consumer confusion, better ensure that subscribers receive the information they need to make informed choices about their service options, and reduce unnecessary regulatory burdens.

Specifically, in the *Report and Order* the Commission first amended section 76.1603(b) of its rules to clarify that cable operators must provide notice as soon as possible in the event of service changes that occur due to retransmission consent or program carriage that fail in the final 30 days of a contract, rather than 30 days in advance. The Commission was persuaded that requiring cable operators to provide notice to subscribers that a channel may be dropped anytime a program carriage or retransmission consent renewal negotiation extends into the final 30 days of an existing contract would cause substantial consumer confusion and thus would not further the goal of facilitating informed choices.

Second, the Commission amended section 76.1603(c) of its rules to eliminate the requirement that cable operators not subject to rate regulation provide 30 days' advance notice to LFAs for rate or service changes, and instead retained a narrower requirement that rate-regulated cable systems continue to provide 30 days' advance notice to the relevant LFA of any increase proposed in the price to be charged for the basic service tier.

Finally, the Commission eliminated the requirement in section 76.1603(b) that cable operators provide notice of any significant change to the information required in the annual notices that must be sent to subscribers, and adopted several technical edits to sections 76.1601 and 76.1603 to make the rules more readable and remove duplicative requirements.<sup>2</sup>

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<sup>1</sup> *Cable Service Change Notifications; Modernization of Media Regulation Initiative; Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket Nos. 19-347, 17-105, 10-71, Report and Order, 35 FCC Rcd 11052 (2020).

<sup>2</sup> The technical edits include: (1) amending section 76.1601 to delete the requirement that cable operators provide notice of the deletion or repositioning of a broadcast channel "to subscribers of the cable system," as it is redundant of the subscriber notice requirements in 76.1603; (2) deleting section 76.1603(d), which requires that cable operators notify subscribers about changes in rates for equipment that is provided without charge under section 76.630, because it is duplicative of language in section 76.630(a)(1)(vi); and (3) deleting section 76.1603(e), which provides that a cable operator "may provide such notice using any reasonable written means at its sole discretion" because it is duplicative of language in section 632(c) of the Act and language in section 76.1603(b) of the Commission's rules. None of these changes have any effect on the compliance requirements for any regulated entity, small or large.

## II. COMPLIANCE REQUIREMENTS

### *Service Change Notice Due to Failed Retransmission Consent and Program Carriage Negotiations.*

Under the revised section 76.1603(b), cable operators must provide subscribers notice “as soon as possible” when services changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract, rather than 30 days in advance, as the rules previously required. In all other circumstances, however, the subscriber notice requirements will continue to operate as they have previously. That is, rate and service changes must otherwise be provided 30 days in advance of any change, unless the change is outside the cable operators’ control, in which case it must be provided as soon as possible.

The Commission determined that service changes that occur as a result of failed program carriage or retransmission consent negotiations are not within the control of a cable operator and amended section 76.1603(b) to provide so explicitly. The Commission declined a request by one commenter to list in the text of the rule other specific situations beyond the operator’s control that would not require advance notice, such as a change in control of a broadcaster, programmer bankruptcies, the loss of distribution rights by a programmer, programmer decisions to go off the air, substantial changes to their programming, or a rebrand. Although the Commission recognized that many of these situations are plainly outside of the control of cable operators, it explained that attempting to articulate an exhaustive list of those situations that result in service or rate changes and are outside of a cable operator’s control would inevitably miss some novel situations and would likely result in more confusion than it would eliminate.

The Commission explained that it interpreted “as soon as possible” to require cable operators to provide notice without delay after negotiations have failed such that the cable operator is reasonably certain it will no longer be carrying the programming at issue, and, if possible, before the programming goes dark. It did not adopt any specific time frame that would satisfy the “as soon as possible” standard, because it is a necessarily fact-specific determination.

The Commission also amended the rules to ensure that cable operators have some flexibility as to the means by which they provide written notice to communicate service changes to subscribers when those changes result circumstances outside the cable operator’s control. Specifically, the Commission made clear that in such circumstances, cable operators may rely on a channel slate placed on the vacant channel after programming has been dropped to communicate the service change to viewers in the immediate aftermath of a channel going dark. The Commission defined channel slate in its rules as “[a] written notice that appears on screen in place of a dropped video feed.”<sup>3</sup> Nevertheless, in the *Report and Order*, the Commission also encouraged cable operators relying on channel slates to provide another form of timely notice, such as an email notification, to ensure that subscribers are adequately informed about any changes to their cable service.

Finally, the Commission made clear that newspaper notice is no longer sufficient to satisfy consumer notice requirements and cable operators should not rely on such notice to satisfy their obligations under section 76.1603(b) of the Commission’s rules.

*Notice of Service or Other Changes to Local Franchise Authorities.* Previously, section 76.1603(c) of the Commission’s rules obligated all cable operators to provide LFAs with 30 days’ advance written notice of any rate or service change. But in the *Report and Order* the Commission concluded that in areas that are no longer subject to rate regulation, the substantial costs to cable operators of complying with the LFA

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<sup>3</sup> 47 CFR § 76.5(rr).

rate and service change notice requirements outweigh any potential benefits that could accrue to consumers as a result of these notices. Accordingly, the Commission adopted a narrower requirement applicable only to those cable operators subject to rate regulation.

For cable operators not subject to rate regulation, they no longer need to provide advance notice of any rate or service changes to LFAs ensure compliance with the Commission's rules. As the Commission explained, in the absence of rate regulation, LFAs have little practical use for this information because changes in rates or services are no longer subject to an LFA's authority. And cable operators are in fact better positioned to address subscriber inquiries concerning rate or service changes than LFAs because LFAs receive only the same information that subscribers already receive under the notice requirements in section 76.1603(b).

For cable operators subject to rate regulation, section 76.1603(c) now obligates them to provide LFAs 30 days' advance notice only of any proposed increase in the price to be charged for the basic service tier. However, for all other rate or service changes, cable operators subject to rate regulation are no longer required by the Commission's rules to provide LFAs 30 days' advance notice.

*Notice of Significant Changes to Information in Annual Notices.* The Commission eliminated from section 76.1603(b) the requirement that cable operators provide notice of any significant change to the information required in the section 76.1602 annual notices. This change does not alter the obligations contained in section 76.1602. Cable operators must continue to satisfy all their annual notice requirements in section 76.1602. However, they are no longer required by the Commission's rules to notify subscribers of any significant change to that information that may occur between the dates on which those annual notices are delivered.

### **III. RECORDKEEPING AND REPORTING REQUIREMENTS**

The Commission's actions in the *Report and Order* did not create any new recordkeeping or reporting requirements.

### **IV. IMPLEMENTATION DATE**

The rules as amended in the *Report and Order* are effective as of the date of publication of a summary in the Federal Register. The summary was published in the Federal Register on November 12, 2020.

### **V. INTERNET LINKS**

**A copy of the *Report and Order*, FCC 20-135, MB Docket Nos. 19-347, 17-105, and 10-71, is available at:**

<https://docs.fcc.gov/public/attachments/FCC-20-135A1.pdf>

**A copy of the Federal Register Summary of the *Report and Order* is available at:**

<https://www.federalregister.gov/documents/2020/11/12/2020-23305/cable-service-change-notifications-modernization-of-media-regulation-initiative-retransmission>