

FCC FACT SHEET*

Modernization of Media Regulation Initiative: Electronic Delivery of Notices to Broadcast Television Stations

Report and Order – MB Docket No. 19-165 and 17-105

Background: The Commission requires cable operators and satellite television providers to give written notice to local broadcast television stations before taking certain actions. For example, cable operators must provide notice to television stations before commencing service in a market or deleting or repositioning a station, and satellite television providers must give notice prior to retransmitting certain television stations or launching new services into a market. These notice requirements are found in subparts D and T of Part 76 of the Commission’s rules. The written notices required by these rules help broadcast television stations exercise their rights regarding the rebroadcast of their signals pursuant to mandatory carriage or retransmission consent. Currently, these notices must be provided to stations by paper delivery, such as mail, certified mail, or in some instances, hand delivery.

At the suggestion of small and mid-sized cable operators, in July 2019 the Commission released a Notice of Proposed Rulemaking (NPRM) initiating this proceeding and proposed to transition such notices from paper to electronic delivery via e-mail, consistent with the approach the Commission recently adopted for broadcasters’ carriage election notices. Commenters that filed in response to the NPRM unanimously supported this proposal.

What the Order Would Do:

- Require that after July 31, 2020, covered notices from cable operators and satellite television providers to broadcast television stations (including Class A stations) must be e-mailed to the inbox that the station designates for carriage issues in its online public inspection file (OPIF) under the Commission’s existing carriage election notice procedures.
- Require that notices for low-power television (LPTV) stations that lack Class A status and are not required to have an OPIF be delivered to the e-mail address listed for the licensee of the LPTV station in the Media Bureau’s Licensing and Management System (LMS) already provided under existing procedures.
- Require that notices to qualified noncommercial educational (NCE) translator stations be delivered to either the e-mail address listed for the licensee of the NCE translator station in LMS, or alternatively to the “carriage issues” e-mail address listed in the primary station’s OPIF, if the NCE translator station does not have its own e-mail address listed in LMS.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 19-165, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. *See* 47 CFR § 1.1200 *et seq.*

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

In the Matter of
Electronic Delivery of Notices to Broadcast
Television Stations
Modernization of Media Regulation Initiative
MB Docket No. 19-165
MB Docket No. 17-105

REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

1. In this Report and Order (Order), we modernize our rules regarding certain written notices that cable operators and direct broadcast satellite (DBS) providers are required to provide to broadcast television stations. With our action today, we update our rules, as unanimously supported by commenters,1 to require that these notices be delivered to broadcast television stations electronically, rather than continuing to require operators to deliver notices on paper. Specifically, as discussed below, after July 31, 2020, notice to full-power and Class A television stations will be made via e-mail to the inbox that the station designates for carriage-related questions in its online public inspection file (OPIF) pursuant to the procedures adopted in our related Carriage Election Notice Modernization proceeding.2 Similarly, after July 31, 2020, notice to low-power television (LPTV) stations will be made via e-mail to the e-mail address listed for the licensee in our Licensing and Management System (LMS), and notice to qualified noncommercial educational (NCE) translator stations will be delivered to the e-mail address listed for the licensee in LMS or alternatively the primary station’s carriage-related e-mail address, if the translator station does not have its own e-mail address listed in LMS. Through this Order, we continue our efforts to modernize our rules.3

* This document has been circulated for tentative consideration by the Commission at its January 2020 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 See infra paras. 9-10.

2 Electronic Delivery of MVPD Communications et al., MB Docket Nos. 17-317 et al., Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 5922, 5931-32, para. 17 (2019) (Carriage Election Notice Modernization Order and FNPRM) (requiring that commercial and noncommercial full-power and Class A television stations provide an e-mail address and phone number in their online public files for carriage-related questions no later than July 31, 2020).

3 See Commission Launches Modernization of Media Regulation Initiative, MB Docket No. 17-105, Public Notice, 32 FCC Rcd 4406 (2017) (Media Modernization Initiative Public Notice) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

I. BACKGROUND

2. In 1993 and 1994, the Commission adopted most of the cable notification rules at issue in this proceeding when implementing the statutory mandatory carriage/retransmission consent regime for the carriage of broadcast television stations on cable systems.⁴ The Commission adopted similar notification rules for DBS providers beginning in 2000 when implementing the DBS “carry one, carry all” regime.⁵ Collectively, these rules require cable operators and DBS providers, respectively, to notify a local broadcast television station prior to deleting or repositioning the station, before changing the location of the principal cable headend or local satellite receive facility, and prior to commencing service

⁴ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues et al.*, MM Docket No. 99-259 et al., Report and Order, 8 FCC Rcd 2965, 2968, 2973-74, 2990-92, 3001, 3003, paras. 10, 31, 102-03, 105-10, 155, 163 & nn.31, 322-23 (1993) (adopting the notification requirements currently set forth in sections 76.1601, 76.1607, 76.1608, and 76.1617 of the Commission’s rules); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Memorandum Opinion and Order, 9 FCC Rcd 6723, 6743, para. 95 (1994) (adopting the cable notification requirement currently set forth in section 76.64(k) of the Commission’s rules); *Amendment of Subpart F of Part 76 of the Commission’s Rules and Regulations with respect to Network Program Exclusivity Protection by Cable Television Systems et al.*, Docket No. 19995 et al., First Report and Order, 52 F.C.C.2d 519, 566, para. 9 (1975) (adopting the cable notification requirement currently set forth in section 76.1609). *See also* 47 U.S.C. § 573 (extending carriage rules to open video systems (OVS)). In 1999, the Commission revised and streamlined these, and other requirements contained throughout part 76 of the Commission’s rules, and as part of this reorganization, the Commission created a new subpart T for notice requirements. *See 1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Docket No. 98-132, Report and Order, 14 FCC Rcd 4653, 4655, paras. 7-8 (1999).

The Communications Act of 1934, as amended (Act), prohibits cable operators and other multichannel video programming distributors (MVPDs) from retransmitting broadcast signals without first obtaining the broadcaster’s consent. 47 U.S.C. § 325(b); 47 CFR § 76.64. This permission is commonly referred to as “retransmission consent” and may involve some compensation from the MVPD to the commercial broadcaster for the use of the signal. Alternatively, local commercial and noncommercial broadcast television stations, including certain LPTV stations, may require a cable operator that serves the same market as the station to carry its signal. 47 U.S.C. §§ 325(b), 534, 535; 47 CFR §§ 76.55-76.64. A demand for carriage is commonly referred to as “must carry.” If the broadcast station asserts its must-carry rights, it forgoes the ability to demand compensation from the cable operator. Commercial broadcast stations are required to elect once every three years, on a system-by-system basis, whether they wish to be carried pursuant to must carry or retransmission consent. 47 CFR § 76.64(f); *Carriage Election Notice Modernization Order and FNPRM*, 32 FCC Rcd at 5922-24, para. 2.

⁵ *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues et al.*, CS Docket No. 00-96 et al., Report and Order, 16 FCC Rcd 1918, 1932-33, 1943-44, 1950-51, paras. 31-33, 55-58, 78 (2000) (adopting the notification requirements currently set forth in section 76.66(d)(1)(vi), (2)(i), (v), (3)(iv), (f)(3)-(4), (h)(5) of the Commission’s rules); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Procedural Rules*, Order, 20 FCC Rcd 7780, 7784-86, paras. 10, 13 (2005) (*SHVERA Procedural Rules Order*) (revising section 76.66(d)(2)(i) and adopting section 76.66(d)(2)(ii) and (5)(i)); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, MB Docket No. 05-49, Report and Order, 20 FCC Rcd 17278, 17323-24, paras. 117-18 (2005) (adopting section 76.54(e)); *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communication Act*, MB Docket No. 05-181, Report and Order, 20 FCC Rcd 14242, 14260, para. 39 (2005) (adopting section 76.66(d)(2)(iii)); *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules et al.*, CS Docket No. 00-96 et al., Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5351, 5356, para. 8 (2008) (adopting section 76.66(d)(2)(vi)). “Carry one, carry all” refers to the fact that DBS providers are not required to carry any local broadcast stations in a market, but must carry all of them upon request if any are carried (with certain narrow exceptions).

in a market, among other things.⁶ These notifications help enable local television stations to exercise their signal carriage rights and obtain, or maintain, distribution on cable and DBS systems.⁷

3. As part of the Modernization of Media Regulation Initiative,⁸ the Commission has taken a number of actions to transition various notice requirements contained in Part 76 of the Commission's rules from paper to electronic delivery. For instance, the Commission has modernized the delivery of certain notices that cable operators are required to provide to their subscribers, allowing such notices to be provided electronically via verified e-mail, so long as cable operators comply with certain consumer safeguards.⁹ The Commission has likewise permitted the electronic delivery of subscriber privacy notices that cable operators and other MVPDs are required to provide and authorized cable operators to respond to consumer requests and complaints through e-mail in certain circumstances.¹⁰ The Commission has also modernized its carriage election notice rules by permitting broadcasters to post their carriage elections online and to send notices to covered MVPDs by e-mail only when changing their carriage election status.¹¹

⁶ 47 CFR §§ 76.54(e), 76.64(k), 76.66(d)(1)(vi), (2)(i)-(ii), (v)-(vi), (3)(iv), (5)(i), (f)(3)-(4), (h)(5), 76.1601, 76.1607, 76.1608, 76.1609, 76.1617.

⁷ The notification requirements for cable operators are currently set forth in section 76.64(k) and subpart T of our rules. *Id.* §§ 76.64(k), 76.1601, 76.1607, 76.1608, 76.1609, 76.1617. In addition to the required notices to broadcast television stations, the rules in subpart T also require that cable operators deliver written notices to their subscribers in certain circumstances. *Id.* §§ 76.1601-76.1604, 76.1618, 76.1620. For example, cable operators must provide written notice to customers in the event of changes to the operator's cable service, such as any changes in rates, programming services, or channel positions. *Id.* § 76.1603. The notification requirements for DBS providers are currently set forth in sections 76.54(e) and 76.66 of our rules. 47 CFR §§ 76.54(e), 76.66(d)(1)(vi), (2)(i)-(ii), (v)-(vi), (3)(iv), (5)(i), (f)(3)-(4), (h)(5).

⁸ See *Media Modernization Initiative Public Notice* *supra* note 3.

⁹ *Electronic Delivery of MVPD Communications et al.*, MB Docket No. 17-317 et al., Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 11518, 11520, para. 6 (2018) (*Subscriber Notices Order and FNPRM*).

¹⁰ *Id.* The Commission has also sought comment on whether to allow these general cable subscriber notices, as well as MVPD subscriber privacy notices, to be delivered electronically via means other than verified e-mail. See *id.* at 11529-31, paras. 26-29. That proceeding is ongoing.

¹¹ *Carriage Election Notice Modernization Order and FNPRM*, 34 FCC Rcd at 5922, para. 1.

4. In connection with these actions, ACA Connects—America’s Communication Association (ACA) proposed that the Commission take “comparable steps” with respect to notices that cable operators are required to provide to broadcast television stations pursuant to the following rules: sections 76.64(k) (intent to commence service); 76.1601 (deletion or repositioning of broadcast signals); 76.1607 (changes to principal headend); 76.1608 (system technical integration requiring uniform election of must carry or retransmission consent status); 76.1609 (non-duplication and syndicated exclusivity); and 76.1617 (activation of a cable system).¹² Subsequently, we opened this docket and adopted the *Notice of Proposed Rulemaking (NPRM)* in this proceeding.¹³

5. In the *NPRM*, we proposed to require that cable operators distribute section 76.64(k) and subpart T notices to broadcast television stations electronically via e-mail to an inbox designated by the station in its OPIF.¹⁴ We noted that our proposal was consistent with the approach we adopted in the *Carriage Election Notice Modernization Order and FNPRM*.¹⁵ We sought comment on whether and how our proposal to require electronic delivery of notices could be applied to LPTV stations that lack Class A status and qualified NCE translator stations, neither of which are required to maintain an OPIF.¹⁶ In addition, we sought comment on whether to require that DBS providers similarly use e-mail to deliver notices to broadcast television stations under the following rules: sections 76.54(e) and 76.66(d)(5) (intent to retransmit “significantly viewed” out-of-market station); 76.66(d)(2) (intent to launch new local-into-local or HD carry-one, carry-all service); 76.66(d)(1)(vi) and (d)(3)(iv) (response to carriage requests); 76.66(f)(3)–(4) (location of local receive facility or intent to relocate such facility); and 76.66(h)(5) (deletion of duplicating signal or addition of formerly duplicating signal).¹⁷ While as discussed below, some commenters favor different methods of delivering notices pertaining to qualified NCE translator stations, all commenters in this proceeding support the *NPRM*’s proposal to transition those notices from paper to electronic delivery.¹⁸

II. DISCUSSION

6. We adopt the *NPRM*’s proposal to require electronic delivery of certain notices that cable operators are required to provide to broadcast television stations under our existing rules. To harmonize the rules applicable to cable operators and DBS providers, we extend the same treatment to the notices that DBS providers are required to provide to broadcast television stations under our existing rules. We

¹² Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-317 et al. (filed Oct. 16, 2018); *see also* Letter from Cathy Carpino, Assistant Vice President – Senior Legal Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-317 et al., at 3 (filed June 27, 2019) (stating that if the Commission applies the electronic carriage election notice regime to DBS providers, DIRECTV and DISH “are supportive of the Commission seeking comment on whether MVPDs may send required notices to broadcasters via email”). On March 20, 2019, ACA announced that it had changed its name from “American Cable Association” to “America’s Communications Association.” Press Release, ACA Connects Positions Itself For The Future As Technology And Consumers Change (Mar. 20, 2019), <https://www.americancable.org/american-cable-association-changes-name-to-aca-americas-communications-association/>.

¹³ *Electronic Delivery of Notices to Broadcast Television Stations et al.*, MB Docket No. 19-165 et al., Notice of Proposed Rulemaking, 34 FCC Rcd 5897 (2019) (*NPRM*).

¹⁴ *Id.*, 34 FCC Rcd at 5900-01, paras. 7-8.

¹⁵ *Id.*

¹⁶ *Id.* at 5903-04, para. 12.

¹⁷ *Id.* at 5905-06, para. 15; *see Carriage Election Modernization Order and FNPRM*, 34 FCC Rcd at 5943-44, para. 4 (revising section 76.66(d)(1) of the Commission’s rules and moving the carriage request response notification requirement for DBS providers from paragraph (iv) to paragraph (vi) of section 76.66(d)(1)).

¹⁸ *See infra* paras. 9-12.

conclude that it will serve the public interest and enhance administrative efficiency to harmonize the notification rules discussed herein for cable operators and DBS providers with our modernized carriage election notice procedures for broadcast television stations.

7. As proposed in the *NPRM*, we will require that cable operators use e-mail to deliver notices to broadcast television stations in the following circumstances: informing local broadcast stations that a new cable system intends to commence service (section 76.64(k));¹⁹ sending required information to local broadcast stations when a new cable system is activated (section 76.1617);²⁰ notifying a television station about the deletion or repositioning of its signal (section 76.1601);²¹ informing stations of a change in the designation of the principal headend of a cable operator (section 76.1607);²² informing stations that a cable operator intends to integrate two cable systems, requiring a uniform carriage election (section 76.1608);²³ and notifying stations that a cable system serves 1,000 or more subscribers and is no longer exempt from the Commission's network non-duplication and syndicated exclusivity rules (section 76.1609).²⁴ To ensure that television stations continue to receive these important notices, we will require that cable operators deliver the notices to the e-mail address that the station designates for carriage-related questions in accordance with the procedures adopted in the Carriage Election Notice Modernization proceeding.²⁵ Under those procedures, commercial and noncommercial full-power and Class A television stations are already required to provide a current e-mail address and phone number in their OPIF for carriage-related questions no later than July 31, 2020, and maintain up-to-date contact information at all times thereafter.²⁶ Requiring cable operators to deliver notices to this e-mail address will help ensure that notices are sent to the correct inbox without imposing any new obligations on these stations.²⁷ Because the e-mail address must be kept up-to-date, cable operators will easily be able to identify the e-mail address that is current for purposes of sending notices to a television station. In addition, if questions arise pertaining to the notices, cable operators will be able to call the station at the phone number provided.²⁸

8. We conclude that transitioning the notices from paper to electronic delivery will serve the public interest. As discussed above, the Commission has already taken similar steps with respect to

¹⁹ 47 CFR § 76.64(k).

²⁰ *Id.* § 76.1617.

²¹ *Id.* § 76.1601.

²² *Id.* § 76.1607.

²³ *Id.* § 76.1608.

²⁴ *Id.* § 76.1609.

²⁵ *Carriage Election Notice Modernization Order and FNRPM*, 34 FCC Rcd 5931-32, para. 17. In the *NPRM*, we sought comment on whether and how to require certain LPTV and NCE translator stations to publicize an e-mail address for receiving notices. *NPRM*, 34 FCC Rcd at 5903-04, para. 12. As discussed below, we require that notices to non-Class A LPTV stations be delivered to the e-mail address listed for the licensee in LMS and that notices to NCE translator stations be delivered to the e-mail address listed for the licensee in LMS or alternatively the primary station's carriage-related e-mail address, if the translator station does not have its own e-mail address listed in LMS. *See infra* paras. 11-12.

²⁶ *Carriage Election Notice Modernization Order and FNRPM*, 34 FCC Rcd 5931-32, para. 17.

²⁷ ACA Comments at 4 (“[T]he specific mechanism proposed in the *NPRM* to ensure effective delivery of notices via e-mail would impose no new obligation on those broadcasters that maintain online public files.”).

²⁸ *See id.* at 4 (“The Commission should make clear that the[] phone numbers [stations provide for carriage-related questions in their OPIFs] would also be used in the event that a cable operator or broadcaster has a question for the other regarding the delivery or receipt of a required notice covered by [the *NPRM*].”).

various other notices and filings required by our rules.²⁹ In doing so, the Commission found that the benefits of transitioning the notices from paper to electronic delivery include reducing the costs, administrative burdens, and environmental waste associated with paper notices.³⁰ Consistent with these previous determinations, we conclude that requiring notices under section 76.64(k) and subpart T to be delivered to broadcast television stations via e-mail will reduce burdens on all parties and ensure that notices are still received in a timely manner, while reducing environmental waste.

9. Perhaps not surprisingly, we find unanimous support in the record for transitioning these notices from paper to electronic delivery. Cable operators and broadcasters commenting in this proceeding agree that electronic delivery will reduce the time and money spent on the required notices, enable quicker, more effective communication of necessary information, and decrease the environmental waste generated by paper notices.³¹ As NCTA explains, electronic notices need not be printed, posted, or tracked to ensure they reach their destination, making them far less expensive and much less administratively burdensome than paper notices.³² Because e-mail transmission is nearly instantaneous and paper delivery methods often take up to several days, transitioning from paper notices to e-mail will also help ensure that broadcasters receive notices much faster than they do currently.³³ Further, as ACA and NCTA attest, allowing the notices to be delivered via e-mail is consistent with the way companies do business today.³⁴ Public television broadcasters similarly support the use of e-mail for notices to full-power noncommercial television stations, and the National Association of Broadcasters (NAB) suggests that e-mail would be acceptable for delivering notices to LPTV stations.³⁵ No commenter disputes our authority to require that cable operators deliver notices via e-mail. And we conclude, consistent with our previous finding, that e-mailing television stations the information required by section 76.64(k) and subpart T of our rules satisfies the “written notice” requirement in sections 614(b)(9) and 615(g)(3) of the Act,³⁶ because “it is reasonable to interpret the term ‘written information’ . . . to include information delivered by email.”³⁷

²⁹ See *supra* para. 3.

³⁰ *National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling*, MB Docket No. 16-126, Declaratory Ruling, 32 FCC Rcd 5269, 5272-73, para. 6 (2017) (*2017 Declaratory Ruling*); *Subscriber Notices Order and FNPRM*, 33 FCC Rcd at 11520-21, paras. 7-8.

³¹ ACA Comments at 1-3; NCTA—The Internet & Television Association Comments at 3; America’s Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service Reply Comments at 2 (APTS/CPB/PBS Reply Comments) (suggesting that e-mail delivery of notices will reduce burdens, costs, and environmental waste, while increasing speed and efficiency).

³² NCTA Comments at 3 (also stating that e-mail delivery is less environmentally wasteful than regular and certified mail).

³³ See *id.*

³⁴ ACA Comments at 3-4; NCTA Comments at 3.

³⁵ APTS/CPB/PBS Reply Comments at 2 (citing reduction of regulatory and administrative burdens and expense, decreasing environmental waste, efficiency, speed, consistency, harmonization of FCC rules, and basic fairness as reasons for supporting electronic delivery of the notices); NAB Reply Comments at 2 (stating no objection to requiring LPTV stations that are entitled to receive notices to designate an email address for receiving notices electronically, so long as a similar requirement is applied to small cable operators for purposes of carriage election notices).

³⁶ 47 U.S.C. § 534(b)(9) (“A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station.”); *id.* § 535(g)(3) (adopting similar requirement with respect to qualified local noncommercial educational television stations).

³⁷ See *2017 Declaratory Ruling*, 32 FCC Rcd at 5272-73, para. 6.

10. Given the unanimous support in the record for transitioning from paper to electronic delivery of notices from cable operators to broadcast television stations, we see no reason to retain paper delivery as an option for the notices required by section 76.64(k) and subpart T of our rules. Indeed, no commenter in this proceeding asserts that we should retain such an option. To the contrary, ACA cautions that exempting some broadcasters from receiving the notices electronically would substantially negate the benefits of our decision today to move to electronic distribution of the notices.³⁸ We agree with ACA that requiring cable operators to deliver notices to some broadcast stations via e-mail and other stations via paper delivery would introduce unnecessary complexity and additional costs, which could pose challenges, particularly for small cable operators with limited resources.³⁹ Similarly, we believe that allowing some cable operators to continue using paper delivery to distribute the notices would impose unnecessary burdens and costs on broadcast television stations. To streamline delivery of the notices and reduce the associated costs and burdens for all parties, we adopt e-mail as the required means for delivering notices to broadcast television stations under section 76.64(k) and subpart T of our rules. Accordingly, we will require that after July 31, 2020, cable operators must deliver to broadcast television stations electronically via e-mail the notices required by the rules listed above.⁴⁰

11. For LPTV stations that are entitled to notices but not required to maintain an OPIF, we will require that notices be delivered to the general e-mail address listed for the licensee in LMS.⁴¹ Unlike full-power and Class A television stations, non-Class A LPTV stations are not subject to our OPIF rules and will therefore need to use alternative means other than the OPIF to publicize an e-mail address and phone number for receiving notices from cable operators.⁴² We agree with commenters that cable operators should be able to consult a single Commission website or database to obtain contact information for delivering notices to non-Class A LPTV stations,⁴³ rather than having to attempt to locate this information on each station's website.⁴⁴ While some commenters suggest the Commission should establish a new means to collect and share such contact information,⁴⁵ we find that the information such stations are already required to provide in LMS is sufficient for this purpose. When submitting a broadcast license application in LMS, an applicant is required to provide contact information, including

³⁸ ACA Comments at 5.

³⁹ *Id.*

⁴⁰ *See supra* para. 7.

⁴¹ LMS displays contact information for each station that has filed a broadcast license application in LMS. The contact information includes an e-mail address and phone number for the licensee and its contact representatives (if any). As discussed above, notices to non-Class A LPTV stations must be delivered to the e-mail address listed for the licensee. Delivering notices to the e-mail address listed for the contact representative is not sufficient to satisfy the notice requirements in section 76.64(k) and subpart T.

⁴² 47 CFR §§ 73.3526(a)(2), 73.3527(a)(2). Because Class A television stations, like full-power television stations, are subject to the OPIF rules, including the requirement to provide carriage election contact information in the OPIF, section 76.64(k) and subpart T notices to Class A television stations must be delivered to the designated carriage election e-mail address as discussed above. *See supra* paras. 7-10.

⁴³ ACA Comments at 6; NCTA Comments at 4; *see also* NAB Reply Comments at 2 (“NAB does not object to a rule requiring LPTV stations that are entitled to receive section 76.64(k) and Subpart T notices to designate an e-mail address for receiving such notices electronically on or before July 31, 2020, so long as a similar requirement is applied to small cable operators for purposes of carriage-related communications in the carriage election context.”).

⁴⁴ This was one potential approach we discussed in the *NPRM*, 34 FCC Rcd at 5903-04, para. 12.

⁴⁵ ACA Comments at 6 (“[B]roadcast stations that lack a public file could be required simply to provide their e-mail addresses and phone number directly to the Commission”); NCTA Comments at 4 (“[T]he Commission should establish a means for . . . stations [that lack a public file] to post an e-mail address with the Commission and require them to do so by July 31, 2020.”).

an e-mail address and phone number, for itself and any contact representatives listed on the form.⁴⁶ Thus, each LPTV station that has filed a license application in LMS should already have an e-mail address and phone number listed in LMS.⁴⁷

12. We conclude that notices to non-Class A LPTV stations should be delivered to the licensee's e-mail address, rather than a contact representative's e-mail address (if different from the licensee's e-mail address), to ensure that all such notices are delivered consistently to the same inbox in cases where a station designates a third party as a contact representative or designates multiple types of contact representatives.⁴⁸ Accordingly, we will require that after July 31, 2020, section 76.64(k) and subpart T notices to LPTV stations that are entitled to such notices but that lack Class A status must be delivered to the e-mail address listed for the licensee (not a contact representative, if different from the licensee) in LMS. After July 31, 2020, non-Class A LPTV stations must be prepared to respond to carriage questions directed to the licensee's e-mail address and phone number (not a contact representative's e-mail address and phone number, if different) as displayed publicly in LMS and must ensure that this information is kept up-to-date in LMS.⁴⁹ We conclude that relying on this existing information in LMS will ensure that cable operators are able to identify contact information easily for notices to non-Class A LPTV stations without imposing additional burdens on stations or the Commission.

13. Similarly, with respect to qualified NCE translator stations,⁵⁰ we agree with the public broadcasting organizations that there is no need to adopt a new e-mail posting requirement for such stations.⁵¹ Rather, we will require that after July 31, 2020, section 76.64(k) and subpart T notices to a qualified NCE translator station must be delivered to the e-mail address listed for the licensee (not a contact representative, if different from the licensee) in LMS,⁵² or alternatively to the primary station's carriage-related e-mail address, if the translator station does not have its own e-mail address listed in

⁴⁶ See FCC Form 2100, Application for Media Bureau Video Service Authorization (May 2015), <https://enterpriseefiling.fcc.gov/dataentry/login.html>.

⁴⁷ LPTV stations may add or update this information easily by filing an Administrative Update for a LPTV/Translator Station Application in LMS. After submission, this contact information is publicly available in LMS via the Facility Details page, which may be accessed by doing a Facility Search and then clicking the relevant Facility ID Number in the Facility Search results. See FCC, Licensing and Management System, Facility Search, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilitySearch.html>.

⁴⁸ See FCC Form 2100, Application for Media Bureau Video Service Authorization (May 2015), <https://enterpriseefiling.fcc.gov/dataentry/login.html> (allowing an applicant to designate a legal, technical, and/or other representative).

⁴⁹ See *infra* Appendix A, Final Rules; see also *Carriage Election Modernization Order and FNPRM*, 34 FCC Rcd at 5931-32, para. 17 (requiring that full-power and Class A television stations provide an e-mail address and phone number in their public files for carriage-related questions no later than July 31, 2020, and maintain up-to-date contact information at all times thereafter). LPTV stations are responsible for the accuracy of this contact information, and cable operators may rely on its accuracy at any time after July 31, 2020, for purposes of delivering the notices required by section 76.64(k) and subpart T of the Commission's rules. See *Carriage Election Modernization Order and FNPRM*, 34 FCC Rcd at 5932, n.81.

⁵⁰ See 47 U.S.C. § 535(l)(1) (defining a "qualified NCE television station" for purposes of must carry as including certain translator stations).

⁵¹ APTS/CPB/PBS Reply Comments at 2-3.

⁵² Like LPTV and other broadcast stations, qualified NCE translator stations are already required to provide general contact information, including an e-mail address and phone number, when filing license applications in LMS. See *supra* note 48. While it is possible that some qualified NCE translator stations have yet to submit a filing in LMS, we expect that by the end of the next cycle for television license renewal applications in 2023, all such stations will have submitted an application requiring them to provide an e-mail address and phone number in LMS.

LMS.⁵³ To the extent a qualified NCE translator station and its primary station are not owned by the same party, we expect that the owner of the primary station will inform the translator station promptly upon receiving relevant notices.⁵⁴

14. To effectuate these changes, we add to section 76.1600 of our rules a new subsection requiring that notices provided by cable operators to broadcast television stations under section 76.64(k) and subpart T must be delivered via e-mail as discussed herein. To avoid potential discrepancies with section 76.1600 as revised herein, we also add language to sections 76.64(k), 76.1607, 76.1608, 76.1609, and 76.1617 to reflect our decision to require that cable operators deliver the notices required by these rules electronically to broadcast television stations via e-mail in accordance with revised section 76.1600.⁵⁵ In addition, we codify the requirements discussed above for LPTV and qualified NCE translator stations.⁵⁶ Further, as proposed in the *NPRM*, we make a minor correction to our rules in part 74 by moving our existing channel sharing rule for LPTV and TV translator stations from subpart H (Low Power Auxiliary Stations) to subpart G (Low Power TV, TV Translator, and TV Booster Stations).⁵⁷

15. We adopt the same approach outlined above for the notices that DBS providers currently are required to provide to broadcast television stations pursuant to the following rules: sections 76.54(e) and 76.66(d)(5) (intent to retransmit “significantly viewed” out-of-market station); 76.66(d)(2) (intent to launch new local-into-local or HD carry-one, carry-all service); 76.66(d)(1)(vi) and (d)(3)(iv) (response to carriage requests); 76.66(f)(3)–(4) (location of local receive facility or intent to relocate such facility); and 76.66(h)(5) (deletion of duplicating signal or addition of formerly duplicating signal).⁵⁸ DISH and DIRECTV support the *NPRM*’s proposal to require that DBS providers deliver these notices electronically via e-mail, and no commenter opposes such a requirement.⁵⁹

⁵³ APTS/CPB/PBS Reply Comments at 3 (stating that notices to qualified NCE translator stations can be delivered to “the carriage-election e-mail address designated by the primary station in its OPIF”). Unlike an LPTV station, a qualified NCE translator station is associated with the primary station that authorizes the retransmission of its signal by the translator station. 47 CFR § 74.784(b). We conclude that delivering relevant notices to the primary station’s carriage-related e-mail address is sufficient for providing electronic notices to qualified NCE translator stations that have no e-mail address listed in LMS. By contrast, notices to LPTV stations must be delivered directly to the station, and LPTV stations must provide an e-mail address for delivery of notices on or before July 31, 2020, as discussed above. *See supra* para. 11 and note 47.

⁵⁴ Because the Commission’s rules prohibit a TV translator station from rebroadcasting the programs of a TV broadcast station without obtaining the TV broadcast station’s prior consent, we anticipate that there will be an existing relationship between a qualified NCE translator station and its primary station even where the stations are not owned by the same party. 47 CFR § 74.784(b). Moreover, we believe that the primary station will have every incentive to inform its affiliated translator station of relevant notices quickly in order to maintain or expand the reach of its programming. *See APTS/CPB/PBS Reply Comments* at 3.

⁵⁵ *See infra* Appendix A, Final Rules.

⁵⁶ *See supra* paras. 11-12.

⁵⁷ *See NPRM*, 34 FCC Rcd at 5905, para. 14 & n.51. Our channel sharing rule for LPTV and TV translator stations is set forth in section 74.799. 47 CFR § 74.799. Because the rules in subpart G apply to LPTV stations, TV translator stations, and TV booster stations, subpart G is a more appropriate location for section 74.799 than subpart H, which contains rules for low power auxiliary stations that transmit over distances of approximately 100 meters for uses such as wireless microphones, cue and control communications, and synchronization of TV camera signals. *See* 47 CFR § 74.801.

⁵⁸ 47 CFR §§ 76.54(e), 76.66(d)(1)(vi), (2)(i)-(ii), (v)-(vi), (3)(iv), (5)(i), (f)(3)-(4), (h)(5).

⁵⁹ DISH and DIRECTV Comments at 1 (“DIRECTV and DISH support updates to the Commission’s rules to modernize methods of providing certain communications to broadcasters, including requiring [DBS] providers to deliver the notifications required under Sections 76.54(e) and 76.66 of the Commission’s rules by e-mail.”).

16. No commenter disputes our authority to adopt rules requiring that DBS operators deliver these notices via e-mail. We believe it will serve the public interest and enhance administrative efficiency to have a consistent approach for delivery of notices discussed herein. We agree with DISH and DIRECTV that, given our previous decision to require electronic delivery of carriage election notices, failure to allow e-mail delivery of the notices required by sections 76.54(e) and 76.66 will result in disproportionate burdens on DBS providers and broadcasters, and raise logistical and operational challenges.⁶⁰ Accordingly, we require that after July 31, 2020, DBS providers must deliver to broadcast television stations electronically via e-mail the notices required by the rules listed above.⁶¹ Such notices must be delivered to the same e-mail address the station designates for carriage-related questions, as discussed above for the notices from cable operators.⁶² We revise our rules accordingly.⁶³

III. PROCEDURAL MATTERS

17. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁶⁴ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

18. *Paperwork Reduction Act Analysis.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

19. *Congressional Review Act.* The Commission will submit this draft Report and Order to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether these rules are “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 338, 340, 614, 615, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 338, 340, 534, 535, and 573, this Report and Order **IS ADOPTED**.

21. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 338, 340, 614, 615, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 338, 340, 534, 535, and 573, the Commission’s rules **ARE AMENDED** as set forth in Appendix A. These rules contain new or modified information collection requirements that

⁶⁰ DISH and DIRECTV Comments at 3 (stating that failure to allow DBS providers to e-mail certain notices to broadcasters would “impose burdens on DBS providers that broadcasters no longer face” and “likely lead to a breakdown in communication among the entities involved”).

⁶¹ *See supra* para. 14 & note 58.

⁶² *See supra* para. 7.

⁶³ *See infra* Appendix A, Final Rules.

⁶⁴ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

require approval by the Office of Management and Budget under the Paperwork Reduction Act and **WILL BECOME EFFECTIVE** after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

22. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

23. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

24. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19-165 shall be **TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

Part 76 of the Commission's rules is amended as follows:

Part 74 of the Commission's rules is amended as follows:

PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority for part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

2. Add § 74.779 to read as follows:

§ 74.779 Electronic Delivery of Notices to LPTV stations.

In accordance with section 76.1600 of this title, beginning July 31, 2020, each licensee of a low power television station or noncommercial educational translator station that is entitled to notices under section 76.64(k), 76.1601, 76.1607, or 76.1617 of this title shall receive such notices via e-mail to the licensee's e-mail address (not a contact representative's e-mail address, if different from the licensee's e-mail address) as displayed publicly in the Commission's Licensing and Management System (LMS), or the primary station's carriage-related e-mail address if the noncommercial educational translator station does not have its own e-mail address listed in LMS. Licensees are responsible for the continuing accuracy and completeness of this information.

3. Transfer § 74.799 from subpart H to subpart G.

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

4. The authority for part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

5. Amend § 76.54 by revising the last sentence of paragraph (e) and adding a sentence at the end of paragraph (e) to read as follows:

§ 76.54 Significantly viewed signals; method to be followed for special showings.

* * * * *

(e) * * * Except as provided herein, such written notice must be sent via certified mail, return receipt requested, to the address for such station(s) as listed in the consolidated database maintained by the Federal Communications Commission. After July 31, 2020, such written notice must be delivered to stations electronically in accordance with section 76.66(d)(2)(ii) of this subpart D.

* * * * *

6. Amend § 76.64 by revising the second sentence of paragraph (k) and adding a new sentence before the third sentence of paragraph (k) to read as follows:

§ 76.64 Retransmission consent.

* * * * *

(k) * * * The cable operator must send such notification, by certified mail except as provided herein, at least 60 days prior to commencing cable service. After July 31, 2020, the cable operator must send such notification by electronic delivery in accordance with § 76.1600. * * *

* * * * *

7. Amend Section 76.66 by revising paragraph (d)(1)(vi) introductory text; revising paragraph (d)(2)(ii); adding a second sentence to paragraphs (d)(2)(v), (d)(2)(vi), (d)(3)(iv), (d)(5)(i), (f)(3); adding a sentence at the end of paragraph (f)(4); and adding a second sentence to paragraph (h)(5) to read as follows:

§ 76.66 – Satellite broadcast signal carriage.

* * * * *

(d) * * *

(1) * * *

(vi) Within 30 days of receiving a television station’s carriage request, and subject to paragraph (d)(2)(ii) of this section, a satellite carrier shall notify in writing:

* * * * *

(2) * * *

(ii) * * * Except as provided herein, satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission. After July 31, 2020, the written notices required by paragraphs (d)(1)(vi), (d)(2)(i), (d)(2)(v), (d)(2)(vi), (d)(3)(iv), (d)(5)(i), (f)(3), (f)(4), and (h)(5) of this section shall be delivered electronically via e-mail to the e-mail address for carriage-related questions that the station lists in its public file in accordance with sections 73.3626 and 73.3527 of part 73 of this title.

* * * * *

(v) * * * After July 31, 2020, the written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

(vi) * * * After July 31, 2020, the written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

* * * * *

(3) * * *

(iv) * * * After July 31, 2020, the written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

(5) * * *

(i) * * * After July 31, 2020, the written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

* * * * *

(f) * * *

(3) * * * After July 31, 2020, the written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

(4) * * * After July 31, 2020, the written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

* * * * *

(h) * * *

(5) * * * After July 31, 2020, the required notice to the affected television station shall be delivered to the station electronically in accordance with paragraph (d)(2)(ii) of this section.

* * * * *

8. Amend § 76.1600 by adding paragraph (e) to read as follows:

§ 76.1600 Electronic delivery of notices.

* * * * *

(e) After July 31, 2020, written information provided by cable operators to broadcast stations pursuant to Sections 76.64(k), 76.1601, 76.1607, 76.1608, 76.1609, and 76.1617 of this Part 76 must be delivered electronically to full-power and Class A television stations via e-mail to the e-mail address for carriage-related questions that the station lists in its public file in accordance with Sections 73.3626 and 73.3527 of Part 73 of this title, or in the case of low power television stations and noncommercial educational translator stations that are entitled to such notices, to the licensee’s e-mail address (not a contact representative’s e-mail address, if different from the licensee’s e-mail address) as displayed publicly in the Licensing and Management System (LMS) or the primary station’s carriage-related e-mail address if the noncommercial educational translator station does not have its own e-mail address listed in LMS.

9. Revise § 76.1607 to read as follows:

§ 76.1607 Principal headend.

A cable operator shall provide written notice to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend. Such written notice shall be provided by certified mail, except that after July 31, 2020, notice shall be provided to stations by electronic delivery in accordance with § 76.1600.

10. Revise § 76.1608 by adding a second sentence to read as follows:

§ 76.1608 System technical integration requiring uniform election of must-carry or retransmission consent status.

* * * After July 31, 2020, such notice shall be delivered to stations electronically in accordance with § 76.1600. * * *

11. Revise § 76.1609 to read as follows:

§ 76.1609 Non-duplication and syndicated exclusivity.

Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection or syndicated exclusivity protection against it. After July 31, 2020, in lieu of serving paper copies on stations, the operator shall provide the required copies to stations by electronic delivery in accordance with § 76.1600.

12. Amend § 76.1617 by revising paragraphs (a) and (c) to read as follows:

§ 76.1617 Initial must-carry notice.

(a) Within 60 days of activation of a cable system, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail, except that after July 31, 2020, notice shall be provided by electronic delivery in accordance with § 76.1600.

* * * * *

(c) Within 60 days of activation of a cable system, a cable operator must send a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system. Such written information shall be provided by certified mail, except that after July 31, 2020, such information shall be provided by electronic delivery in accordance with § 76.1600.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* in MB Docket No. 19-165.² The Commission sought written public comments on proposals in the *NPRM*, including comment on the IRFA. The Commission received no direct comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

2. In the Report and Order, the Commission takes additional steps to modernize certain notice provisions in part 76 of the Commission's rules governing multichannel video and cable television service. Currently, these rules require that cable operators and other multichannel video programming distributors (MVPDs) provide certain written notices to broadcast stations by paper delivery, such as mail, certified mail, or, in some instances, hand delivery.³ Section 76.64(k) and subpart T of the Commission's rules contain written notification requirements for cable operators,⁴ and sections 76.54(e) and 76.66 of the Commission's rules contain written notification requirements for direct broadcast satellite (DBS) providers.⁵ The rules require written notice to a local broadcast television station prior to deleting or repositioning the station, changing the location of the principal headend or local receive facility, or commencing service in a market, among other things.

3. The Report and Order revises the Commission's rules to require that cable operators deliver notices electronically to broadcast television stations in the following circumstances: informing local broadcast stations that a new cable system intends to commence service (section 76.64(k)); sending required information to local broadcast stations when a new cable system is activated (section 76.1617); notifying a television station about the deletion or repositioning of its signal (section 76.1601); informing stations of a change in the designation of the principal headend of a cable operator (section 76.1607); informing stations that a cable operator intends to integrate two cable systems, requiring a uniform carriage election (section 76.1608); and notifying stations that a cable system serves 1,000 or more subscribers and is no longer exempt from the Commission's network non-duplication and syndicated exclusivity rules (section 76.1609).⁶ After July 31, 2020, cable operators must deliver required notices to full-power and Class A television stations electronically via e-mail to the inbox that the station designates for carriage-related questions in its online public file (OPIF).⁷ Similarly, notices to LPTV stations must be delivered to the e-mail address listed for the licensee (not a contact representative, if different from the

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

² *Electronic Delivery of Notices to Broadcast Stations et al.*, MB Docket No. 19-165 et al., Notice of Proposed Rulemaking, 34 FCC Rcd 5897, Appx. B (2019).

³ 47 CFR §§ 76.54(e), 76.64(k), 76.66(d)(1)(vi), (2)(i)-(ii), (v)-(vi), (3)(iv), (5)(i), (f)(3)-(4), (h)(5), 76.1601, 76.1607, 76.1608, 76.1609, 76.1609. Sections 76.64(k), 76.1601, 76.1607, 76.1608, 76.1609, and 76.1617 apply to cable operators, while sections 76.54(e) and 76.66(d) apply to direct broadcast satellite providers. Sections 76.54(e), 76.64(k), 76.66(d)(2)(i) through (d)(2)(ii), 76.1607, 76.1617(a), and 76.1617(c) specify that notices be delivered by certified mail. *Id.* §§ 76.54(e), 76.64(k), 76.66(d)(2)(i)-(ii), 76.1607, 76.1617(a), (c). Section 76.1609 requires that specified notices be served by mail or hand delivery. See *id.* §§ 1.47(d), 76.1609.

⁴ *Id.* §§ 76.64(k), 76.1601, 76.1607, 76.1608, 76.1609, 76.1617.

⁵ *Id.* §§ 76.54(e), 76.66(d)(1)(vi), (2)(i)-(ii), (v)-(vi), (3)(iv), (5)(i), (f)(3)-(4), (h)(5).

⁶ *Report and Order*, at 4-5, paras. 6-7.

⁷ *Id.*

licensee) in the Commission's Licensing and Management System (LMS),⁸ and notices to qualified noncommercial educational (NCE) translator stations must be delivered to the e-mail address listed for the licensee in LMS (not a contact representative, if different from the licensee) or alternatively the primary station's carriage-related e-mail address, if the translator station does not have its own e-mail address listed in LMS.⁹

4. The Report and Order also requires that DBS providers similarly use e-mail to deliver to broadcast television stations the notices required by the following rules: sections 76.54(e) and 76.66(d)(5) (intent to retransmit "significantly viewed" out-of-market station); 76.66(d)(2) (intent to launch new local-into-local or HD carry-one, carry-all service); 76.66(d)(1)(vi) and (d)(3)(iv) (response to carriage requests); 76.66(f)(3)–(4) (location of local receive facility or intent to relocate such facility); and 76.66(h)(5) (deletion of duplicating signal or addition of formerly duplicating signal).¹⁰ Through this Report and Order, the Commission continues its efforts to update its rules and eliminate outdated requirements.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. No comments were filed in direct response to the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹¹ The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁴ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁵ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

⁸ *Id.* at 7-8, para. 11.

⁹ *Id.* at 8, para. 12.

¹⁰ *Id.* at 8-10, paras. 14-15.

¹¹ 5 U.S.C. § 604(a)(3).

¹² 5 U.S.C. § 603(b)(3).

¹³ *Id.* § 601(6).

¹⁴ *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

¹⁵ 15 U.S.C. § 632.

8. *Cable Companies and Systems (Rate Regulation Standard)*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹⁶ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁷ Industry data indicate that there are currently 4,300 active cable systems in the United States.¹⁸ Of this total, 3,550 cable systems have fewer than 15,000 subscribers, and 750 systems have 15,000 or more.¹⁹ Thus, we estimate that most cable systems are small entities.

9. *Cable System Operators (Telecommunications Act Standard)*. The Act also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁰ There are approximately 49,011,210 cable video subscribers in the United States today.²¹ Accordingly, an operator serving fewer than 490,112 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²² Based on available data, we find that all but five incumbent cable operators are small entities under this size standard.²³ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

10. We also note that there currently are 182 cable antenna relay service (CARS) licensees.²⁴ The Commission, however, neither requests nor collects information on whether CARS licensees are affiliated with entities whose gross annual revenues exceed \$250 million. Although some CARS licensees may be affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of CARS licensees that would qualify as small cable operators under the definition in the Communications Act.

11. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category "Wired

¹⁶ 47 CFR § 76.901(d). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266 et al., Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

¹⁷ 47 CFR § 76.901(c).

¹⁸ August 24, 2017 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS), www.fcc.gov/coals.

¹⁹ *Id.*

²⁰ 47 U.S.C. § 543(m)(2); *see also* 47 CFR § 76.901(e).

²¹ *See* SNL Kagan, *Multichannel Industry Benchmarks*, <https://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx> (last visited Dec. 9, 2019).

²² *See* 47 CFR § 76.901(e).

²³ *See* SNL Kagan, *Top Cable MSOs*, <https://platform.mi.spglobal.com/web/client?auth=inherit&ignoreIDMContext=1#industry/topCableMSOs> (last visited Dec. 9, 2019).

²⁴ August 24, 2017, report from Media Bureau staff based on data contained in COALS, www.fcc.gov/coals.

Telecommunications Carriers.” The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁵ The SBA determines that a wireline business is small if it has fewer than 1,500 employees.²⁶ Economic census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.²⁷ Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.²⁸ DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that, in general, DBS service is provided only by large firms.

12. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.²⁹ The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.³⁰ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,³¹ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”³² The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.³³ To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small.³⁴ In addition, we note that the Commission has certified some OVS operators, with some now providing service.³⁵ Broadband service providers (“BSPs”) are currently the only significant holders of OVS

²⁵ See U.S. Census Bureau, *2017 North American Industry Classifications System (NAICS) Definitions*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (2012 NAICS Definitions) (NAICS Code 517110).

²⁶ 13 CFR § 121.201 (NAICS Code 517311).

²⁷ See U.S. Census Bureau, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012; 2012 Economic Census of the United States* (Jan. 8, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

²⁸ See *Communications Marketplace Report et al.*, GN Docket No. 18-231 et al., Report, FCC 18-131, 2018 WL 6839365, at *20, paras. 50-51 (Dec. 26, 2018).

²⁹ See 47 U.S.C. § 573.

³⁰ 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, para. 135.

³¹ See 47 U.S.C. § 573.

³² U.S. Census Bureau, 2012 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2012/def/ND517110.HTM#N517110>.

³³ 13 CFR § 201.121 (NAICS code 517311).

³⁴ See U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

³⁵ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

certifications or local OVS franchises.³⁶ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service.³⁷ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

13. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, "Wired Telecommunications Carriers,"³⁸ which was developed for small wireline firms.³⁹ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁴⁰ Census data for 2012 indicate that in that year there were 3,117 firms operating businesses as wired telecommunications carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.⁴¹

14. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."⁴² These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁴³ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts.⁴⁴ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of less than \$25 million, 25 had annual receipts ranging from \$25 million to \$49,999,999, and 70 had annual receipts of \$50 million or more.⁴⁵

³⁶ See *13th Annual Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

³⁷ See <http://www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems> (current as of July 2012).

³⁸ See 13 CFR § 121.201 (NAICS code 517311).

³⁹ Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in section 340's definition of "satellite carrier." See 47 U.S.C. §§ 340(i)(1) and 338(k)(3); 17 U.S.C. § 119(d)(6).

⁴⁰ 13 CFR § 121.201 NAICS code (517311).

⁴¹ U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

⁴² *2012 NAICS Definitions* (NAICS Code 515120).

⁴³ *Id.*

⁴⁴ 13 CFR § 121.201 (NAICS Code 515120).

⁴⁵ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (Jan. 8, 2016),

Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

15. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,380.⁴⁶ Of this total, [1,260] stations (or [91.3]%) had revenues of \$41.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on December 9, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 380.⁴⁷ The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

16. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations⁴⁸ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

17. There are also 387 Class A stations.⁴⁹ Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,900 LPTV stations and 3,631 TV translator stations.⁵⁰ Given the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

E. Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

18. As discussed above, this Report and Order takes additional steps to update certain notice provisions in part 76 of the Commission’s rules governing multichannel video and cable television service. The existing rules require that cable operators and other MVPDs provide certain written notices to broadcast stations by paper delivery, such as mail, certified mail, or, in some instances, hand delivery.⁵¹ The Report and Order revises the Commission’s rules to require that cable operators and DBS providers distribute these notices to broadcast television stations electronically via e-mail. After July 31, 2020, cable operators and DBS providers must deliver required notices to full-power and Class A television stations electronically via e-mail to the inbox that the station designates for carriage-related questions in its OPIF. Similarly, notices to LPTV stations must be delivered to the e-mail address listed for the

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https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

⁴⁶ Press Release, FCC, Broadcast Station Totals as of September 30, 2019 (Oct. 2, 2019), <https://www.fcc.gov/document/broadcast-station-totals-september-30-2019>.

⁴⁷ *Id.*

⁴⁸ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

⁴⁹ *See supra* note 46.

⁵⁰ *See supra* note 46.

⁵¹ *See supra* note 3.

licensee (not a contact representative, if different from the licensee) in LMS, and notices to qualified NCE translator stations must be delivered to the e-mail address listed for the licensee (not a contact representative, if different from the licensee) in LMS or alternatively the primary station's carriage-related e-mail address, if the translator station does not have its own e-mail address listed in LMS.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”⁵²

20. Through this Report and Order, the Commission takes steps to minimize the administrative burden on MVPDs, including small entities, by transitioning from paper to electronic delivery of certain notices to broadcast television stations, which will reduce the costs and burdens of providing such notices. The Commission has found that electronic delivery of notices would greatly ease the burden of complying with notification requirements for cable operators and DBS providers, including small entities. The Commission previously sought comment on other potential alternative means of delivering notices that might better serve the needs of broadcasters and MVPDs, including small entities, but still be less burdensome than sending notices by paper delivery, such as mail, certified mail, or, in some instances, hand delivery. Commenters, including those representing smaller entities,⁵³ unanimously support transitioning the notices from paper to electronic delivery.

G. Report to Congress

21. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁵⁴ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

⁵² 5 U.S.C. § 603(c)(1)-(c)(4).

⁵³ See ACA Comments at 1-2.

⁵⁴ See 5 U.S.C. § 801(a)(1)(A).