

FCC FACT SHEET*

Modernization of Media Regulation Initiative: Electronic Delivery of MVPD Communications
Report and Order – MB Docket Nos. 17-105 and 17-317

Background: Under the Communications Act of 1934, as amended, broadcasters engage in a process through which they notify multichannel video programming distributors (MVPDs) located within their local markets of whether they wish to elect mandatory carriage or negotiate for retransmission consent every three years. In 2019, as part of the Commission's *Modernization of Media Regulation Initiative*, the Commission adopted rules that moved this process online for most broadcasters and MVPDs, but sought comment on how to apply these updated rules to certain small broadcast stations and MVPDs.

What the Report and Order Would Do:

- Require certain small broadcasters – namely qualified low power television (LPTV) and noncommercial education (NCE) translator stations – to send notices to MVPDs by e-mail when changing their carriage election status, in the same manner as full power television broadcasters.
- Require these small broadcasters to e-mail an election notice to MVPDs in 2020 even if they are not changing their election. Because small broadcasters, unlike full power broadcasters, do not have public files, their carriage election statements will not be available for public inspection. The 2020 notice will therefore serve as a baseline for MVPDs carrying these stations.
- Permit MVPDs with carriage-related questions to rely on the contact information provided by small broadcasters in the Commission's Licensing and Management System (LMS) and require small broadcasters to respond as soon as reasonably possible to any questions.
- Affirm that open video system (OVS) operators must abide by the same rules as cable companies, by posting contact information to the Cable Operations and Licensing System (COALS), accepting e-mailed election change notices, and responding as soon as reasonably possible to carriage-related questions from broadcasters.

* 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. 17-317, 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 MVPD Communications
Modernization of Media Regulation Initiative
MB Docket No. 17-317
MB Docket No. 17-105

REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. In this Report and Order, we adopt proposals to modernize the Commission’s carriage election notice rules with respect to certain television broadcast stations and open video system (OVS) operators to enhance administrative efficiency.1 In so doing, we adopt requirements largely consistent with those recently adopted for full power television broadcast stations. First, we conclude that low power television stations (LPTVs) that qualify for mandatory carriage (qualified LPTVs) must send notices to affected multichannel video programming distributors (MVPDs) by e-mail when changing their carriage election status in the same manner as full power television broadcast stations. However, unlike the requirement for full power television broadcast stations, qualified LPTVs and noncommercial educational (NCE) television translator stations that qualify for must carry (qualified NCE translators)2 will not be required to make their carriage election statements available for public inspection.3 Second, we find that MVPDs with carriage-related questions should be able to rely on the contact information provided by qualified LPTV and qualified NCE translator stations in the Commission’s Licensing and Management System (LMS) database. If an MVPD contacts the phone number or e-mail address provided by the station regarding a concern about carriage, those concerns must be addressed as soon as is

* This document has been circulated for tentative consideration by the Commission at its February 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 Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative, MB Docket Nos. 17-105 and 17-317, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 5922 (2019) (2019 Report and Order and 2019 Further Notice).

2 A television broadcast translator station retransmits the programs and signals of a parent television station “without significantly altering any characteristic of the original signal other than its frequency and amplitude.” 47 CFR § 74.701.

3 Although we do not impose a new public file obligation on these small stations, we require that qualified LPTV and NCE translator stations send a single “baseline” notice via e-mail to all MVPDs on which they will be seeking carriage in the 2021-2023 carriage cycle, even if they are making no change in their election status.

reasonably possible. Third, we conclude that, in the same manner as cable operators, OVS operators must post contact information for questions regarding carriage election to the Cable Operations and Licensing System (COALS) database, accept e-mail election change notices, and timely respond to carriage-related questions. Through this Order, we continue our efforts to modernize our rules.⁴

II. BACKGROUND

A. Must Carry/Retransmission Consent

2. Under the Communications Act of 1934, as amended (the Act), full power television broadcast stations, and certain low power stations and translator stations, are entitled to mandatory carriage of their signal (also known as “must carry”)⁵ on any cable system located within their local market.⁶ Alternatively, commercial television broadcast stations with carriage rights may elect “retransmission consent.”⁷ If the broadcaster and MVPD cannot reach an agreement under which the broadcaster gives consent for retransmission of its signal, the MVPD is prohibited from carrying that signal.⁸ Thus, commercial stations are presented with a carriage choice -- elect mandatory carriage and forego compensation while assuring carriage, or elect retransmission consent and forego assured carriage while retaining the possibility of compensation for carriage. NCE stations are entitled to must carry but cannot elect retransmission consent.⁹

3. As discussed more fully in the *2019 Report and Order* in this proceeding,¹⁰ when the Commission implemented the statutory provisions establishing the must carry/retransmission consent regime, it adopted a requirement that each commercial television broadcast station provide notice to every

⁴ See *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

⁵ See 47 U.S.C. § 534(a) (“Each cable operator shall carry on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section.”); 47 U.S.C. § 534(c) (stating that if there are not sufficient signals of full power commercial television stations to fill the cable operator’s channel set aside, the cable operator shall be required to carry one or two qualified low power stations, which may include a Class A television station or a low power television station, depending on the operator’s channel capacity); 47 U.S.C. § 534(h)(2) (defining what constitutes a qualified low power station); 47 U.S.C. § 535 (carriage of qualified NCE television stations); 47 U.S.C. § 535(l)(1) (defining a qualified NCE television station for purposes of must carry as including certain translator stations); *In Re Carriage of Digital Television Broad. Signals Amendments to Part 76 of Commission’s Rules*, CS Docket No. 98-120 et al., First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2601 (2001); *Implementation of the Cable Television Consumer Protection and Competition Act; Broadcast Signal Carriage Issues*, MM Docket No. 92-259 et al., Report and Order, 8 FCC Rcd 2965 (1993). See also 47 U.S.C. § 573 (extending carriage rules to OVS).

⁶ A station’s local market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research. 47 CFR §§ 76.55(e)(2) (cable), 76.66(e)(2) (Direct Broadcast Satellite, or DBS). Full power stations also have carriage rights on any DBS provider providing local service into the market. See 47 U.S.C. § 338(a)(1). Low power stations are not entitled to must carry on DBS providers. See 47 U.S.C. § 338(a)(3) (“No low power station . . . shall be entitled to insist on carriage under this section [on DBS providers].”).

⁷ 47 U.S.C. § 325(b)(1) (“No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except . . . with the express authority of the originating station.”).

⁸ 47 U.S.C. § 325(b)(1)(a).

⁹ 47 U.S.C. § 535(a) (“In addition to the carriage requirements set forth in section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.”); 47 CFR § 76.56(a)(1) (explaining that, subject to certain conditions, cable operators are required to carry every qualified noncommercial educational station “requesting carriage”).

¹⁰ See *2019 Report and Order*, 34 FCC Rcd 5922.

cable operator every three years electing either mandatory carriage or retransmission consent.¹¹ Prior to the adoption of the *2019 Report and Order*, the rules directed each commercial television broadcast station to send a triennial carriage election notice, via certified mail, to each cable system or DBS provider serving its market,¹² and directed each NCE station to send such notices to DBS providers.¹³ The notice must state whether the station has elected mandatory carriage or retransmission consent.¹⁴ In addition, the rules generally also require stations to place triennial carriage election statements in their online public inspection files,¹⁵ to the extent they maintain such files.¹⁶

B. 2019 Report and Order and Further Notice of Proposed Rulemaking

4. The *2019 Report and Order* generally adopted an approach for modernizing the carriage election notice process that was jointly recommended by the National Association of Broadcasters (NAB) and NCTA -- the Internet and Television Association (NCTA).¹⁷ The Commission's revised carriage

¹¹ 47 CFR § 76.64(f) (stating that carriage elections by commercial television stations must be made by October 1, every three years, for the three-year period beginning the following January). This three-year election cycle is required by statute. 47 U.S.C. §§ 325(b)(3)(B), (b)(3)(C)(i). A similar triennial notice requirement, applying to both commercial and noncommercial television broadcast stations, later was adopted as part of the carry one, carry all regime for DBS providers. 47 CFR § 76.66(c). Failure by a broadcaster to provide timely notice of its chosen election results in a default election of must carry with respect to cable operators, but a default of retransmission consent with respect to DBS providers. 47 CFR §§ 76.64(f)(3) (cable), 76.66(d)(1)(v) (DBS).

¹² See former 47 CFR § 76.64(h) (which read, in part: "On or before each must-carry/retransmission consent deadline, each television broadcast station shall ... send via certified mail to each cable system in the station's defined market a copy of the station's election statement with respect to that operator.").

¹³ See 47 CFR § 76.66(a) (defining "television broadcast station" to include commercial and noncommercial stations) and former 47 CFR § 76.66(d) (requiring all "television broadcast stations" to make DBS carriage elections). The old rules applicable to DBS provider notices also required that the certified mail letter be "return receipt requested." 47 CFR § 76.66(d)(1)(ii). As noted above, NCE stations may only request mandatory carriage and are not permitted to "elect" retransmission consent on any MVPD. See *supra* para. 2.

¹⁴ 47 CFR §§ 73.3526(e), 76.64(h), and 76.66(d).

¹⁵ In 2012, the Commission adopted online public inspection file rules for full power and Class A television broadcasters that required them to post public file documents to a central, Commission-hosted online database (the online public file or OPIF) rather than maintaining files locally. See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket Nos. 00-168 and 00-44, Second Report and Order, 27 FCC Rcd 4535 (2012). In 2016, the Commission added cable operators, DBS providers, broadcast radio licensees, and satellite radio licensees to the list of entities required to post their public inspection files to the Commission-hosted OPIF database. See *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-127, Report and Order, 31 FCC Rcd 526 (2016).

¹⁶ See *2019 Report and Order*, 34 FCC Rcd at 5924, para. 3. See also 47 CFR §§ 73.3526(e)(15) (commercial full power and Class A TV stations) and 73.3527(e)(12) (full power noncommercial educational TV stations). Any carriage requests made by NCE stations, including those made at the outset of their or a cable system's operation, must be included in their public file "for the duration of any period to which the request applies." See 47 CFR § 73.3527(e)(12).

¹⁷ See Letter from Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, NAB, and Rick Chessen, Chief Legal Officer, Senior Vice President, Legal and Regulatory Affairs, NCTA, to Michelle Carey, Chief, Media Bureau, FCC, MB Docket Nos. 17-317 and 17-105 (filed Dec. 7, 2018) (Joint Proposal). The *2019 Report and Order* expanded the recommendation of the Joint Proposal in two significant ways: (1) although the Joint Proposal related to commercial television broadcast stations and cable operators, the Order applies certain elements of the rules implementing the proposal to NCE stations, and (2) it applies the new rules to DBS providers. *2019 Report and Order*, 34 FCC Rcd at 5927, para. 10. On December 13, 2018, the Media Bureau issued a Public Notice seeking comment on the Joint Proposal. See *Media Bureau Seeks Comment on Joint Proposal for Carriage Election Notice Modernization*, MB Docket No. 17-317, Public Notice, 33 FCC Rcd 11784 (MB Dec. 13, 2018)

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election rules adopted therein apply to all television broadcast stations with mandatory carriage rights and to all MVPDs responsible for that carriage, except for the relatively few entities that participate in the must carry regime but do not use the online public file or COALS (the Excluded Entities).¹⁸ Under the new carriage election framework, broadcast stations are required to make their carriage elections by uploading those elections to their online public files and by providing a separate electronic notice of those elections to relevant MVPDs only when and if they change their election from the previous election period.¹⁹ Thus, only a limited number of notices will need to be sent to MVPDs and these will be sent via e-mail instead of via paper mail. In addition, the *2019 Report and Order* requires broadcast stations and DBS providers to upload to their online public files both an e-mail address and a phone number for purposes of carriage-related inquiries and requires cable operators to upload the same information in COALS.²⁰

5. The rules adopted in the *2019 Report and Order* require use of the Commission's online public inspection file and/or COALS. In the *Further Notice* accompanying the *2019 Report and Order*, we sought comment on whether and how the modernized framework adopted in the *2019 Report and Order* should extend to the Excluded Entities, which are subject to the must carry regime and do not use these Commission databases.²¹ Among other things, the Commission asked whether we should require the Excluded Entities to establish and maintain a very narrow public file solely for carriage-related information or require them to post any required information on a company website.²² We also sought comment on whether we should, alternatively, simply maintain the status quo with respect to the small number of Excluded Entities.²³

6. The Commission received only three comments in response to the *2019 Further Notice*. All agree that the Excluded Entities should be transitioned to modernized carriage election rules and that any information these entities are required to provide should be posted on a Commission website or Commission-hosted database.²⁴ All commenters support placing carriage election information in a

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(*Joint Proposal PN*). With some exceptions, commenters generally supported the substance of the Joint Proposal. See *2019 Report and Order*, 34 FCC Rcd at 5927, para. 9.

¹⁸ Certain qualified low power TV and NCE translator stations are eligible to demand carriage on local cable systems and OVS systems (though not on DBS providers) but are not required to maintain online public inspection files. See 47 CFR § 73.3526(a)(2) (local public inspection file of commercial stations), 73.3527(a)(2) (local public inspection file of noncommercial educational stations). See also 47 U.S.C. § 534(h)(2) (qualified low power station); 535(l)(1) (defining the term "qualified noncommercial educational television station" to include certain NCE translators); 47 CFR § 76.55(a)(3) (defining qualified NCE television station to include certain NCE translators); 47 CFR § 76.55(d) (qualified low power station).

¹⁹ *2019 Report and Order*, 34 FCC Rcd at 5927-28, para. 11. This includes not only stations that are already being carried on the MVPD, but also stations announcing their intent to be carried by new systems or a new provider under sections 76.64(k) and 76.66(d)(2) of our rules, or new broadcast television stations electing carriage under sections 76.64(f)(4) or 76.66(d)(3)(ii). See 47 CFR §§ 76.64(k); 76.64(f); 76.66(d). NCE stations that are currently being carried will place only a one-time DBS carriage request in their public file. *2019 Report and Order*, 34 FCC Rcd at 5930-31, para. 16.

²⁰ *2019 Report and Order*, 34 FCC Rcd at 5927-28, para. 11.

²¹ *Id.* at 5936-37, paras. 29-30. The Joint Proposal did not address entities that do not use COALS or the online public file.

²² *Id.* at 5937, para. 30.

²³ *Id.* See former 47 CFR § 76.64(h) and 47 CFR § 76.55(d).

²⁴ See ACA Connects Comments at 3 (Sept. 30, 2019) (stating that the Commission should collect contact/carriage election information from broadcaster Excluded Entities and post in a centralized location on its website or in a Commission database that is searchable by MVPDs all information that these broadcasters would otherwise be required to post in OPIF); NAB Comments at 1-2 (Sept. 30, 2019) (stating that NAB "does not object" to requiring

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centralized, Commission-established location rather than on company websites. NCTA contends that many non-Class A LPTV stations and qualified NCE translator stations do not maintain company websites, and a centralized repository would make it easier for MVPDs to locate carriage information for these entities.²⁵ All commenters also agree that the Excluded Entities should make public contact information for use for carriage-related communications,²⁶ and ACA Connects and NCTA also argue that the Excluded Entities should provide any required election statements or notices to the Commission to be made available on a Commission website or database.²⁷

III. DISCUSSION

7. We adopt a carriage election notification approach for the Excluded Entities that is supported by the record in this proceeding and that is, to the greatest extent possible, consistent with that adopted in the *2019 Report and Order*, while recognizing the specific circumstances of these smaller entities.²⁸ Specifically, we will require qualified LPTV stations²⁹ to use the same process as full power television stations to notify MVPDs of any change in carriage election status.³⁰ Rather than imposing a new public file obligation on qualified LPTV and qualified NCE translator stations, however, we require that they send a single “baseline” notice via e-mail to MVPDs on which they will be seeking or expecting carriage in the 2021-2023 carriage cycle, even if they are making no change in their election status. We disagree with NCTA’s and ACA Connects’ contention that we should require the Excluded Entities to post election statements online each cycle in addition to sending election notices by e-mail to MVPDs in the event of an election change.³¹ Qualified LPTV and qualified NCE translator stations are not currently

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Excluded Entities to establish an e-mail address and phone number to use for carriage-related communications and suggesting these entities could be required to provide this information to the Commission, post it to a Commission-hosted site, or establish a very narrow online public file solely to post the contact information); NCTA Comments at 3 (Sept. 30, 2019) (opining that the new election notification framework should be made available to all stations subject to carriage election rules and that entities not required to maintain public files should post any required information with the Commission).

²⁵ See NCTA Comments at 3, note 9.

²⁶ See ACA Connects Comments at 3; NAB Comments at 1; NCTA Comments at 3.

²⁷ See ACA Connects Comments at 3; NCTA Comments at 3.

²⁸ Because certain qualified LPTV and NCE translator stations do not maintain an online public file, we alter our carriage election notification approach for these entities by requiring qualified LPTV stations and encouraging qualified NCE translator stations to maintain current contact information in LMS, rather than the online public file, so that MVPDs can contact the station regarding carriage-related questions as necessary. See *infra* para. 14. We also direct these entities to send a single “baseline” election notice in 2020 rather than requiring them to establish an online repository for carriage election notices. See *infra* paras. 12-13. See also *infra* paras. 15-17 (imposing requirements on OVS operators that are identical to those for cable operators).

²⁹ See *supra* para. 1.

³⁰ NCE translator stations cannot elect retransmission consent and, therefore, mandatory election continues for qualified NCE translator stations absent a change in circumstances. See *2019 Report and Order*, 34 FCC Rcd at 5930, para. 15 and note 62.

³¹ See ACA Connects Comments at 3; NCTA Comments at 3. ACA Connects asserts that posting an election statement online each cycle and sending election notices by e-mail to MVPDs only in the event of an election change should be “less burdensome for any broadcaster – or, at the very least, not significantly more burdensome – than delivering election notices by certified mail to every MVPD each cycle.” *Id.* Despite this assertion, ACA Connects does not specifically propose a way to implement such an online posting process “at minimal cost and with minimal burden.” See *2019 Report and Order*, 34 FCC Rcd at 5937, para. 30. Instead, ACA Connects and NCTA simply presume that the Commission would assume these costs and that small broadcasters would assume these burdens, without regard to how substantial they might be. See ACA Connects Comments at 3 and NCTA Comments at 3. Thus, as discussed in this paragraph, we have determined instead to “simply maintain the status quo.” See *2019 Report and Order*, 34 FCC Rcd at 5937, para. 30.

required to make their election notices available to the public.³² We believe that the better approach is to maintain the status quo rather than impose a new public posting obligation that would increase burdens on these entities. Specifically, we believe that the creation of the proposed new database would impose unnecessary costs and inject unnecessary complexity into the election notice process.

8. In addition, we find that MVPDs with carriage-related questions must be able to rely on the contact information provided by these stations in LMS. We also require both qualified LPTV and qualified NCE translator stations to respond as soon as is reasonably possible to such questions. With respect to OVS, we require that they accept e-mailed election change notices, post contact information in COALS, and respond as soon as is reasonably possible to carriage election notifications and carriage-related questions, all in exactly the same manner as cable systems.

9. We agree with NCTA that the carriage election framework adopted in the *2019 Report and Order* “greatly reduces administrative burdens” for stations and MVPDs by, among other changes, only requiring e-mail notice of changed elections and eliminating redundant election notifications and carriage requests.³³ As we stated in the *2019 Report and Order*, our goal is to have a unified approach for carriage election notices, to the extent possible, to best serve the public interest and enhance administrative efficiency.³⁴ Therefore, today we extend the benefits of the new carriage election framework to the Excluded Entities as well.³⁵

A. Qualified LPTV Stations

10. Consistent with our approach to commercial television broadcast stations, we require a qualified LPTV station that changes its carriage election to send an election change notice to each affected MVPD’s carriage election-specific e-mail address by the carriage election deadline.³⁶ Such change notices must include, with respect to each station covered by the notice: the station’s call sign, the station’s community of license, the DMA where the station is located, the specific change being made in election status, and an e-mail address and phone number for carriage-related questions.³⁷ Consistent with our approach with respect to commercial full power broadcast stations, LPTV notices to cable operators need to identify specific cable systems for which a carriage election applies only if the broadcaster changes its election for some systems of the cable operator but not all.³⁸ In addition, the broadcaster must carbon copy ElectionNotices@FCC.gov, the Commission’s election notice verification e-mail inbox, when sending its carriage elections to MVPDs.³⁹ As noted in the *2019 Report and Order*, this election notice verification e-mail inbox will provide a verification response to assure broadcasters that the e-mail has been received.⁴⁰

³² See *infra* paras. 12-13.

³³ NCTA Comments at 2-3.

³⁴ See *2019 Report and Order*, 34 FCC Rcd at 5927, para. 10.

³⁵ We also agree with NCTA that retaining the current carriage election rules for qualified LPTV stations and qualified NCE translator stations would undermine our goal of reducing regulatory burdens for MVPDs, as MVPDs would be required to maintain two systems for monitoring and responding to carriage election notices and questions. NCTA Comments at 3.

³⁶ *2019 Report and Order*, 34 FCC Rcd at 5929, para. 13.

³⁷ *Id.*

³⁸ *Id.*

³⁹ In the *2019 Report and Order*, the Commission indicated it would create such an inbox for broadcasters to carbon copy when notifying an MVPD of a changed election. *Id.* at 5935, para. 25. In the case of a dispute between a broadcaster and MVPD about an election change notice, the Commission will make available a copy of any e-mail that was received in the inbox. *Id.* See *supra* note 31.

⁴⁰ *Id.*

11. As with commercial full power broadcast stations, if an LPTV station does not receive a response verifying receipt of its change notice by the MVPD,⁴¹ or gets an indication that the message was not delivered, it must contact the MVPD via the provided phone number to confirm that the notice was received or arrange for it to be redelivered.⁴² If the e-mail is timely and properly sent to the MVPD's listed address, but the broadcast station receives no verification and is unable to reach anyone at the provided phone number, the notice still will be considered to have been properly delivered if it was properly copied to the Commission's election verification notice e-mail inbox.⁴³

12. Unlike commercial full power broadcast stations, qualified LPTV stations need not maintain a publicly accessible copy of their carriage election notices or statements.⁴⁴ As noted above,⁴⁵ LPTV stations are not currently required to maintain a public file with copies of their carriage election notices, and we decline to impose a new obligation in that regard in this proceeding.⁴⁶ Rather than imposing a new public file requirement, however, we require all qualified LPTV stations, whether being carried pursuant to must carry or retransmission consent, to send an e-mail notice to all MVPDs that are or will be carrying the station no later than the next carriage election deadline of October 1, 2020. Qualified LPTVs must do so even if they are not changing their carriage status from the current election cycle.⁴⁷ This one-time notification requirement for all qualified LPTV stations will give MVPDs baseline information regarding qualified LPTV stations without imposing a new obligation on qualified LPTVs to make their election status publicly available. In addition, requiring a one-time filing of "baseline information" does not impose any greater burden on LPTV or NCE translator stations given that, under the current rules, such entities would be required to file a paper copy of their election notification with each affected MVPD.⁴⁸

B. Qualified NCE Translator Stations

13. As noted above, qualified NCE stations may only request mandatory carriage and are not permitted to "elect" retransmission consent on any MVPD.⁴⁹ Once an NCE station requests mandatory

⁴¹ See *infra* para. 10.

⁴² The verification e-mail from the MVPD is meant to confirm receipt of the e-mail in a manner similar to a return receipt when sending certified mail. As under the current rules, it is the responsibility of the broadcast station which is sending the notice to ensure that the notice is timely sent and accurately contains all of the required information.

⁴³ Similarly, if an MVPD does not maintain a required COALS account or public file, or fails to provide any carriage contact information at all, an LPTV station's election change notice still will be considered to have been properly delivered if it is timely sent to the Commission's election notice mailbox. See *2019 Report and Order*, 34 FCC Rcd at 5929-30, n.60.

⁴⁴ See *id.* at 5929, paras. 13-14.

⁴⁵ See *supra* para. 4 and note 18.

⁴⁶ See *supra* note 31.

⁴⁷ These notifications must be sent to an MVPD's carriage election-specific e-mail address, must be copied to ElectionNotices@FCC.gov, and must include the same information required for a change notification except that the notification may simply confirm the existing carriage status rather than a change in status. See *supra* para. 10 (describing requirements for change notification).

⁴⁸ ACA Connects proposes that the Commission make carriage information for Excluded Entity broadcasters available in a Commission database "that is accessible and searchable by MVPDs." ACA Connects Comments at 3-4. As discussed below, contact information for these stations is available via LMS, which is publicly accessible via the Commission's website. See *infra* para. 14. We do not believe that the benefits of creating a new Commission database with other carriage-related information regarding these entities, including their carriage notices, would outweigh the costs. See *supra* note 31.

⁴⁹ See *supra* para. 2.

carriage from an MVPD, the carriage request continues, absent a change in circumstances.⁵⁰ We therefore do not require qualified NCE translator stations to send election change notifications.⁵¹ In addition, similar to our approach herein with respect to qualified LPTV stations, rather than impose new public file obligations on qualified NCE translator stations, we require qualified NCE translator stations to provide e-mail notice to all MVPDs that are or will be carrying the translator no later than the next carriage election deadline of October 1, 2020.⁵² As with qualified LPTV stations, this one-time notification requirement for all qualified NCE translators will give MVPDs baseline information regarding these entities without imposing a new obligation on them to make their election status publicly available.

C. LPTV and NCE Translator Contact Information

14. Each licensed broadcast station, including LPTV and translator stations, has a publicly-accessible entry in LMS with a field for contact information which can be updated easily.⁵³ Therefore, in the absence of public file requirements for qualified LPTV and NCE translator stations,⁵⁴ we find that MVPDs with carriage-related concerns must be able to rely upon the contact information that the LPTV or NCE translator station provides in LMS. As all licensed stations already have accounts in LMS, we conclude that it is more efficient and less burdensome to simply require that qualified LPTV and NCE translator stations maintain current contact information in LMS so that MVPDs can contact the station regarding carriage-related questions as necessary. We require qualified LPTV stations and encourage qualified NCE translator stations to review and, if necessary, provide contact information or update the existing contact information in LMS no later than July 31, 2020, approximately 60 days prior to the 2020 carriage election deadline, and to ensure that this information remains current thereafter.⁵⁵ We will not establish a separate field in LMS for carriage-specific contact information for qualified LPTV and NCE translator stations, but require that these stations ensure that the general contact information in LMS can be used by MVPDs as a point of contact for carriage-related questions. If a station has designated a third

⁵⁰ *Id.*

⁵¹ In the *2019 Report and Order*, the Commission determined that full power NCE stations would not be required to repeatedly re-notify DBS providers about their carriage requests but would, instead, be required to upload and retain a carriage request in their online public files consistent with the requirement adopted for commercial full power stations. See *2019 Report and Order*, 34 FCC Rcd at 5930-31, para. 16.

⁵² Similar to qualified LPTVs, these notifications must be sent to an MVPD's carriage election-specific e-mail address, must be copied to ElectionNotices@FCC.gov, and must include the station's call sign, the station's community of license, and the DMA where the station is located and within which it has elected to be carried.

⁵³ The public can access LMS via the Commission's website (<https://enterpriseefiling.fcc.gov/dataentry/login.html>). Stations that wish to update their contact information in LMS may do so by signing in to the LMS database and selecting "Administrative Update."

⁵⁴ In the *2019 Report and Order*, we required all full power broadcast stations to provide an e-mail address and phone number in their public files for carriage-related questions and to maintain up-to-date contact information thereafter, ensuring that MVPDs could easily find this information in the station's online public file. *2019 Report and Order*, 34 FCC Rcd at 5931-32, para. 17; 47 CFR § 76.64(h).

⁵⁵ We anticipate that MVPDs currently carrying an NCE translator will already have contact information for that station. Nonetheless, if an MVPD attempts to contact a qualified NCE translator with a carriage-related question but LMS does not contain contact information for that translator, the MVPD may instead contact the translator's parent station. See *Electronic Delivery of Notices to Broadcast Television Stations; Modernization of Media Regulation Initiative*, Report and Order, MB Docket Nos. 19-165 and 17-105, FCC 20-8 (rel. Jan. 31, 2020) at page 8, para. 13, available online at <https://docs.fcc.gov/public/attachments/FCC-20-8A1.pdf>. Full power stations are also required to maintain up-to date contact information and respond to carriage related questions as soon as reasonably possible. *2019 Report and Order*, 34 FCC Rcd at 5931-32, para. 17; 47 CFR § 76.64(h); see also FCC Form 2100, Schedule 303-S, OMB Control No. 3060-0110 (requiring that broadcasters provide contact information in LMS at the time of renewal).

party as contact representative or designates multiple types of contact representatives in LMS, questions should be directed 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). Qualified LPTV and NCE translator stations must ensure that, if an MVPD contacts the station via the licensee's phone or e-mail address contained in LMS, that this carriage-related concern is addressed as soon as is reasonably possible.

D. Open Video Systems (OVS)

15. In the *2019 Further Notice*, we sought comment on applying the revised carriage election framework to MVPDs that do not use COALS or OPIF, identifying OVS specifically. OVS providers, however, are in fact required to establish and maintain an up-to-date COALS account in the same manner as cable operators.⁵⁶ We therefore impose requirements on OVS operators that are identical to those in the *2019 Report and Order* for cable operators. OVS operators must provide, via COALS, a specific carriage election e-mail address where broadcasters will send election change notices and a phone number for broadcasters to use in the event of questions as to whether the OVS operator received the station's election notice.⁵⁷ OVS operators must post carriage contact information to COALS by July 31, 2020, and maintain up-to-date contact information at all times thereafter.⁵⁸ Each OVS operator must have a single e-mail address and phone number for carriage issues, regardless of the number of markets served. Finally, like other entities subject to the must carry regime, OVS operators are required to respond as soon as is reasonably possible to carriage questions from broadcasters.

16. Again like cable operators, OVS operators must verify receipt of an e-mailed election change notice, via e-mail sent back to the originating address, as soon as is reasonably possible.⁵⁹ As we concluded in the *2019 Report and Order*, this e-mail response will serve only as verification that the notice e-mail was received; it will not constitute a statement that the broadcaster has fully satisfied its notice obligation.⁶⁰ Although we anticipate that these verification e-mails will be generated automatically in most cases, we require only that they be sent as soon as is reasonably possible. A timely and correct notice of a change in election that is sent to the e-mail address provided by the OVS operator, carbon copied to ElectionNotices@FCC.gov, and placed in the station's public file (if the station has a public file obligation) must be honored by the MVPD.⁶¹

17. We find that requiring OVS operators to use their existing COALS accounts is the most efficient and least burdensome way for OVS operators to publicize their contact information for this purpose. Maintaining contact information for carriage-related questions for all OVS operators in the COALS database will also assist broadcasters and others who need information regarding all MVPDs operating in a given geographic area for carriage purposes. We also note that section 76.1506(l) of our

⁵⁶ 47 CFR § 1.1705(b). See also *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System*, MB Docket No. 00-78, Report and Order, 18 FCC Rcd 5162 (2003).

⁵⁷ *2019 Report and Order*, 34 FCC Rcd at 5932-33, para. 18.

⁵⁸ See *supra* para. 8 and *infra* para. 17.

⁵⁹ See *2019 Report and Order*, 34 FCC Rcd at 5933, para. 19.

⁶⁰ *Id.* As discussed more fully above, see *supra* para. 10, a qualified LPTV station that changes its carriage election must send an election change notice to each affected MVPD's carriage election-specific e-mail address by the carriage election deadline. Such change notices must include, with respect to each station covered by the notice: the station's call sign, the station's community of license, the DMA where the station is located, the specific change being made in election status, and an e-mail address and phone number for carriage-related questions. We also require qualified LPTV and qualified NCE translator stations to send a single "baseline" notice via e-mail to MVPDs on which they will be seeking or expecting carriage in the 2021-2023 carriage cycle even if they are making no change in their election status. See *supra* para. 12 and note 47 (qualified LPTV stations) and para. 13 and note 52 (qualified NCE translator stations).

⁶¹ *Id.*

rules provides that the requirements in section 76.64 regarding the delivery of must carry/retransmission consent election notifications apply to OVS operators.⁶² The *2019 Report and Order* revised section 76.64 of our rules to require cable operators to provide an up-to-date e-mail address for carriage election notice submissions no later than July 31, 2020, to ensure that the information remains up-to-date, and to respond to questions from broadcasters as soon as is reasonably possible.⁶³ We conclude that these existing requirements also apply to OVS operators.

E. Timing

18. Similar to our approach in the *2019 Report and Order*, we apply these revised notification requirements to LPTV and NCE translator stations and OVS operators beginning with the 2020 election for the 2021-2023 carriage election cycle.⁶⁴ Therefore, qualified LPTV broadcasters must e-mail required notifications⁶⁵ to MVPDs by October 1, 2020. Qualified LPTV and NCE translator stations must also ensure that the contact information for the station in LMS is accurate no later than July 31, 2020, and OVS operators must ensure that their carriage-related contact information in COALS is up to date by the same deadline.

IV. PROCEDURAL MATTERS

19. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁶⁶ an Initial Regulatory Flexibility Certification was incorporated into the 2019 *Further Notice*.⁶⁷ Pursuant to the Regulatory Flexibility Act of 1980, as amended,⁶⁸ the Commission's Final Regulatory Flexibility Certification relating to this *Report and Order* is attached as Appendix B.

20. *Paperwork Reduction Act Analysis.* This *Report and Order* 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

⁶² Section 76.1506(l) provides: "Retransmission consent. Section 76.64 shall apply to open video systems in accordance with the provisions contained in this paragraph. (1) Any provision of § 76.64 that refers to a "cable system" shall apply to an open video system. Any provision of § 76.64 that refers to a "cable operator" shall apply to an open video system operator." 47 CFR § 76.1506(l).

⁶³ *See 2019 Report and Order*, 34 FCC Rcd at Appendix A (Final Rules). Section 76.64(h)(2) as revised provides: "Each cable operator shall, no later than July 31, 2020, provide an up-to-date e-mail address for carriage election notice submissions with respect to its systems and an up-to-date phone number of carriage-related questions. Each cable operator is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible." Section 76.64(h)(4) provides: "Cable operators must respond via e-mail as soon as reasonably possible, acknowledging receipt of a television station's election notice."

⁶⁴ *Id.* at 5935, para 26. Certain reporting and compliance obligations adopted in this order require approval by the Office of Management and Budget under the Paperwork Reduction Act. *See infra* para. 23. The Media Bureau will issue a public notice when such approval has been received and notice of the approval has been published in the Federal Register to confirm the deadlines established in this order or adjust these deadlines if necessary.

⁶⁵ *See supra* para. 12.

⁶⁶ *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. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁶⁷ *2019 Further Notice* at Appendix B.

⁶⁸ *See* 5 U.S.C. § 604.

further reduce the information collection burden for small business concerns with fewer than 25 employees.

21. *Congressional Review Act.* [The Commission will submit this draft 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 the Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 325, 338, 614, 615, 631, 632, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 325, 338, 534, 535, 551, 552, and 573, this *Report and Order* **IS ADOPTED** and **WILL BECOME EFFECTIVE** 30 days after publication in the Federal Register.

23. **IT IS FURTHER ORDERED** that Part 76 of the Commission’s Rules **ARE AMENDED** as set forth in Appendix A effective 30 days after publication in the Federal Register, except for Section 76.64(h)(5), which contains new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act and shall become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

24. **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 Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

25. **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).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation 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.

2. Revise Section 76.64 to read as follows:

§ 76.64 – Retransmission Consent.

(h)(1) On or before each must carry/retransmission consent election deadline, each television broadcast station shall place a copy of its election statement, and copies of any election change notices applying to the upcoming carriage cycle, in the station's public file **if the station is required to maintain a public file.**

* * * * *

(5) Low power television stations and non-commercial educational translator stations that are qualified under section 76.55 of this part and retransmitted by a multichannel video programming distributor shall, beginning no later than July 31, 2020, respond as soon as is reasonably possible to messages or calls from multichannel video programming distributors that are received via the e-mail address or phone number the station provides in the Commission's Licensing and Management System.

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 2019 *Further Notice of Proposed Rulemaking* in this proceeding.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the 2019 *Further Notice* including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

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

2. In this *Report and Order*, we adopt proposals to modernize the Commission's carriage election notice rules with respect to certain television broadcast stations and open video system (OVS) operators to enhance administrative efficiency.⁴ In so doing, we adopt requirements largely consistent with those recently adopted for full power television broadcast stations. First, we conclude that low power television stations (LPTVs) that qualify for mandatory carriage (qualified LPTVs) must send notices to affected multichannel video programming distributors (MVPDs) by e-mail when changing their carriage election status, in the same manner as full power television broadcast stations. However, unlike the requirement for full power television broadcast stations, qualified LPTVs and noncommercial educational (NCE) television translator stations that qualify for must carry (qualified NCE translators)⁵ will not be required to make their carriage election statements available for public inspection.⁶ Second, we find that MVPDs with carriage-related questions should be able to rely on the contact information provided by qualified LPTV and qualified NCE translator stations in the Commission's Licensing and Management System (LMS) database. If an MVPD contacts the phone number or e-mail address provided by the station regarding a concern about carriage, those concerns must be addressed as soon as is reasonably possible. Third, we conclude that, in the same manner as cable operators, OVS operators must post contact information for questions regarding carriage election to the Cable Operations and Licensing System (COALS) database, accept e-mail election change notices, and timely respond to carriage-related questions. Through this Order, we continue our efforts to modernize our rules.⁷

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 MVPD Communications; Modernization of Media Regulation Initiative*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 5922 (2019) (*2019 Report and Order* and *2019 Further Notice*).

³ See 5 U.S.C. § 604.

⁴ See *2019 Further Notice*.

⁵ A television broadcast translator station retransmits the programs and signals of a parent television station "without significantly altering any characteristic of the original signal other than its frequency and amplitude." 47 CFR § 74.701.

⁶ Although we do not impose a new public file obligation on these small stations, we require that qualified LPTV and NCE translator stations send a single "baseline" notice via e-mail to all MVPDs on which they will be seeking carriage in the 2021-2023 carriage cycle, even if they are making no change in their election status.

⁷ See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

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

3. No comments were filed in response to the IRFAs.

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

4. 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.⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰ 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.¹¹ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.¹² 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.¹³ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹⁴ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”¹⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.¹⁶ 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.¹⁷ In addition, we note that the Commission has certified some OVS operators, with some now providing service.¹⁸ Broadband service providers (“BSPs”) are currently the only significant holders of OVS

⁸ 5 U.S.C. § 603(b)(3).

⁹ *Id.* § 601(6).

¹⁰ *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).

¹¹ 15 U.S.C. § 632.

¹² *See* 47 U.S.C. § 573.

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

¹⁴ *See* 47 U.S.C. § 573.

¹⁵ U.S. Census Bureau, 2012 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2012/def/ND517110.HTM#N517110>.

¹⁶ 13 CFR § 201.121, NAICS code 517110 (2012).

¹⁷ *See* U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

¹⁸ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsцер.html>.

certifications or local OVS franchises.¹⁹ 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.²⁰ 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.

6. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”²¹ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.²² 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 \$38.5 million or less in annual receipts.²³ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more.²⁴ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

7. The Commission estimates that there are 1,900 LPTV stations and 3,631 TV translator stations.²⁵ 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.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. The Commission anticipates that the rule changes adopted in this *Report and Order* will lead to an overall immediate, long-term reduction in reporting, recordkeeping, and other compliance requirements for qualified LPTV stations. Specifically, after the 2020 carriage election, qualified LPTV stations will be required to send carriage election notices only when they are changing their election, will

¹⁹ 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.

²⁰ See <http://www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems> (current as of July 2012).

²¹ U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²² *Id.*

²³ 13 CFR § 121.201; 2012 NAICS Code 515120.

²⁴ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

²⁵ *Broadcast Station Totals as of September 30, 2019*, FCC News Release (rel. Oct. 2, 2019), <https://www.fcc.gov/document/broadcast-station-totals-september-30-2019>.

be permitted to send these notices via e-mail, and will no longer need to produce and mail several letters to MVPDs, many of which are duplicative, to ensure that they are received by the MVPD. LPTV and NCE translator stations are not currently required to maintain a public file with a copy of their carriage election notices, and the *Report and Order* does not impose a new obligation in that regard in this proceeding. In the absence of public file requirements for qualified LPTV and NCE translator stations, the *Report and Order* permits MVPDs with carriage-related concerns to rely upon the contact information provided by the LPTV or NCE translator station in LMS. We require qualified LPTV stations, and encourage qualified NCE translator stations, to review and, if necessary, update this contact information in LMS no later than July 31, 2020, approximately 60 days prior to the 2020 carriage election deadline, and ensure that this information remains current thereafter. Qualified LPTV and NCE translator stations must ensure that, if an MVPD contacts the station via the phone or e-mail address they have provided in LMS because it has concerns regarding carriage, the station will respond to those concerns as soon as is reasonably possible.

9. With respect to OVS operators, the *Report and Order* imposes no burdens beyond those imposed in the *2019 Report and Order*. As with cable operators, broadcasters will send carriage election notifications to OVS operators via e-mail rather than on paper, which will ease the administrative burden of reviewing these notifications, which were previously in letter form and many of which were previously duplicative. In addition, OVS operators must use COALS for purposes of providing a designated carriage election e-mail address, where broadcasters will send election change notices, and a phone number for broadcasters to use in the event of questions as to whether the OVS operator received the station's election notice. This burden is de minimis and is outweighed by the benefits to OVS operators of the new carriage election framework.

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

10. 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.”²⁶

11. The Commission considered establishing a narrow online public file for the purposes of publicizing carriage-related contact information for qualified LPTV and NCE translator stations, but concluded that requiring qualified LPTV stations and encouraging qualified NCE translator stations to instead update their existing contact information in LMS as necessary would be more efficient and less burdensome both for stations and the Commission. In addition, the Commission concluded that requiring OVS operators use COALS to provide contact information for carriage election purposes, as required by the rules adopted in the *2019 Report and Order*, is the most efficient and least burdensome way for OVS operators to publicize their contact information. The Commission also considered retaining the paper-based carriage election notice requirements for qualified LPTV and qualified NCE translator stations, as well as OVS operators, but concluded it would be preferable to allow these entities to benefit from the new carriage election framework and that to retain the previous rules for these entities might undermine our goal of reducing regulatory burdens.

12. Overall, the *Report and Order* appropriately balances the interests of the public against the interests of the entities who are subject to the rules, including those that are small entities.

²⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

13. None.