

**FCC FACT SHEET**<sup>\*</sup>  
**Cable Service Change Notifications**  
**Modernization of Media Regulation Initiative**  
Report and Order – MB Docket Nos. 19-347, 17-105

**Background:** In today’s video marketplace, retransmission consent and program carriage negotiations often come down to the wire. And in those cases, it is frequently unclear, 30 days prior to a contract’s expiration, whether a new agreement will be reached, whether there will be a short-term extension, or whether the programming at issue will be dropped. Sections 76.1601 and 76.1603 of the Commission’s rules govern the notices that cable operators must provide to their subscribers and local franchising authorities (LFAs) in the event of service or rate changes. The current rules require cable operators to provide written notice to their subscribers and LFAs about changes in certain information, including rates, service, and channel positions, as soon as possible and at least 30 days in advance of the change if they are within the cable operators’ control. Notably, these rules only apply to cable operators and not to other multichannel video programming distributors.

In December 2019, the Commission issued a Notice of Proposed Rulemaking (NPRM) in this proceeding as a part of our ongoing Media Modernization Initiative. The NPRM proposed three primary changes to the notice obligations in our rules: (1) making clear that cable operators have no obligation to provide notice to subscribers 30 days in advance of channel lineup changes when the change is due to retransmission consent or program carriage negotiations that fail during the last 30 days of a contract; rather, in such a situation, they would have to provide notice “as soon as possible;” (2) requiring service and rate change notices to LFAs only if required by an LFA; and (3) adopting several technical edits to make the rules more readable and remove duplicative requirements.

**What the Report and Order Would Do:**

- Amend our rules to clarify that when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract, cable operators must provide notice to subscribers “as soon as possible,” rather than 30 days in advance;
- Amend the notice provision requirements in our rules to make clear that in situations where the service or rate change results from circumstances outside a cable operator’s control, notice may be delivered using direct and reliable written means that can reach subscribers quickly, including channel slates;
- Amend our rules to eliminate the requirement that cable operators subject to effective competition provide 30 days’ advance notice to LFAs of rate or service changes but retain a more narrow requirement, specifying that rate regulated systems must provide LFAs with 30 days’ advance notice of any proposed increase in the price to be charged for the basic service tier; and
- Adopt several non-substantive revisions to our rules that clarify the rules and eliminate redundant provisions.

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<sup>\*</sup> 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. 19-347, 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 )
Cable Service Change Notifications ) MB Docket No. 19-347
Modernization of Media Regulation Initiative ) MB Docket No. 17-105
Amendment of the Commission’s Rules Related to ) MB Docket No. 10-71
Retransmission Consent )

REPORT AND ORDER\*

Adopted: []

Released: []

By the Commission

I. INTRODUCTION

1. In this Report and Order, we revise our regulations governing the notices that cable operators must provide subscribers and local franchise authorities (LFAs) regarding rate and service changes. Specifically, we amend section 76.1603 of our rules to clarify that when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract, cable operators must provide notice to subscribers “as soon as possible,” rather than 30 days in advance.1 We also amend section 76.1603(c) to eliminate the requirement that cable operators not subject to rate regulation provide 30 days’ advance notice to LFAs of rate or service changes.2 Finally, we adopt several non-substantive revisions to sections 76.1601 and 76.1603 that clarify the rules and eliminate redundant provisions. We adopt these changes to make consumer notices more meaningful and accurate, reduce consumer confusion, better ensure that subscribers receive the information they need to make informed choices about their service options, and reduce unnecessary regulatory burdens. With this

\* This document has been circulated for tentative consideration by the Commission at its September 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 47 CFR § 76.1603(b)-(c).

2 47 CFR § 76.1603(c). As explained below, we retain a requirement that cable operators not subject to effective competition provide 30 days’ advance notice to LFAs of any proposed increase in the price to be charged for the basic service tier. See infra paras. 15-18.

proceeding, we continue our efforts to modernize our regulations to better reflect today's media marketplace.<sup>3</sup>

## II. BACKGROUND

2. As explained fully in the *NPRM*, several provisions of the Communications Act of 1934, as amended (the Act) – sections 623(b), 624(h), and 632 – address the notices that cable operators must provide to their subscribers and LFAs regarding service or rate changes.<sup>4</sup> The Commission adopted regulations implementing these notice requirements through several decisions in 1993,<sup>5</sup> and consolidated those regulations into a newly created subpart T in 1999.<sup>6</sup> Two sections within that subpart are at issue in this Report and Order. First, section 76.1601 obligates cable operators to provide 30 days' advance notice to broadcast television stations and to subscribers of the deletion or repositioning of any such station.<sup>7</sup> Second, section 76.1603 places several additional notice obligations on cable operators. Subsection (b) requires that cable operators notify subscribers of “any changes in rates, programming services or channel positions” and any significant changes in the information required by section 76.1602 as soon as possible in writing and 30 days in advance if the change is within the control of the cable operator.<sup>8</sup> Subsection (c)

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

<sup>4</sup> See *Cable Service Change Notifications; Modernization of Media Regulation Initiative; Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket Nos. 19-347, 17-105, 10-71, Notice of Proposed Rulemaking, 34 FCC Rcd 12709, 12710, para. 3 (2019) (*Cable Service Change Notifications NPRM* or *NPRM*). Section 623(b) of the Act directs the Commission to require that cable systems not subject to effective competition “provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.” 47 U.S.C. § 543(b)(6). Section 624(h) authorizes LFAs to require a cable operator to “[p]rovide 30 days' advance notice of any change in channel assignment or in the video programming service provided.” 47 U.S.C. § 554(h)(1). Section 632 directs the Commission to “establish standards by which cable operators may fulfill their customer service requirements,” that govern, among other things, “communications between the cable operator and the subscriber,” and specifies that a cable operator may “provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion.” 47 U.S.C. § 552(b)-(c).

<sup>5</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5712-14, paras. 123-24 (1993) (adopting sections 76.932 and 76.964 of our rules to implement section 623(b)(6) of the Act); *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992; Consumer Protection and Customer Service*, MM Docket No. 92-263, Report and Order, 8 FCC Rcd 2892, 2906 (1993) (adopting section 76.309(c)(3)(i)(B) of our rules to implement section 632 of the Act); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues; Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates; Request by TV 14, Inc. to Amend Section 76.51 of the Commission's Rules to Include Rome, Georgia, in the Atlanta, Georgia, Television Market*, MM Docket Nos. 92-259, 90-4, 92-295 and RM-8016, Report and Order, 8 FCC Rcd 2965, 2991-92, paras. 105-10 (1993) (adopting a requirement under section 615(g)(3) of the Act to require cable operators to notify subscribers 30 days in advance before deleting or repositioning a broadcast channel).

<sup>6</sup> 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, 4655-58, paras. 7-11 (1999).

<sup>7</sup> 47 CFR § 76.1601.

<sup>8</sup> 47 CFR § 76.1603(b). Section 76.1602 requires cable operators to notify subscribers at least annually about: (1) the products and services offered; (2) the prices and options for programming services and conditions of subscription to programming and other services; (3) the operator's installation and service maintenance policies; (4) instructions on how to use the cable service; (5) channel positions of programming carried on the system; (6) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office; (7) any assessed fees for rental of navigation devices and single and additional CableCARDS; (8) if the provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to rental of CableCARDS and operator-supplied navigation devices; and (9) the procedures for resolution of complaints

(continued....)

requires that cable operators notify LFAs 30 days “before implementing any rate or service change.”<sup>9</sup> Finally, subsection (d) requires cable operators to “provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective.”<sup>10</sup> These rules, which notably apply only to cable operators and not to other multichannel video programming distributors (MVPDs), have overlapping obligations as a result of the consolidation in 1999.

3. In 2011, the Commission sought comment on whether to revise section 76.1601 “to require that notice of potential deletion of a broadcaster’s signal be given to consumers once a retransmission consent agreement is within 30 days of expiration, unless a renewal or extension has been executed, and regardless of whether the station’s signal is ultimately deleted.”<sup>11</sup> The Commission noted that while adequate advance notice of retransmission consent disputes can allow consumers to prepare for service disruptions, “such notice can be unnecessarily costly and disruptive when it creates a false alarm, *i.e.*, concern about disruption that does not come to pass, and induces subscribers to switch MVPD providers in anticipation [thereof].”<sup>12</sup>

4. In December 2019, we adopted the *NPRM* in this proceeding as a part of our ongoing Media Modernization Initiative.<sup>13</sup> In the *NPRM*, we proposed three primary changes to the notice obligations in sections 76.1601 and 76.1603: (1) clarifying in section 76.1603(b) that cable operators have

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about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority. 47 CFR § 76.1602(b)-(c).

<sup>9</sup> 47 CFR § 76.1603(c).

<sup>10</sup> 47 CFR § 76.1603(d).

<sup>11</sup> *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2738, para. 37 (2011) (*Retrans NPRM*). The 2014 Report and Order issued in that proceeding addressed only issues pertaining to joint negotiation and left the record open regarding additional issues raised in the *NPRM*, including revision of the notice requirement in section 76.1601. *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3352, n.5 (2014).

<sup>12</sup> *Retrans NPRM*, 26 FCC Rcd at 2738, para. 34. Notably, the Commission also stated in the *Retrans NPRM* that it considers “retransmission consent negotiations to be within the control of both parties to the negotiations, and thus, failure to reach retransmission consent agreement would not be an excuse for failing to provide notice” under section 76.1603(b). *Id.* at 2738, n.109. *See also Time Warner Cable, a Division of Time Warner Entertainment Company, L.P.*, MB Docket No. 06-151, Order on Reconsideration, 21 FCC Rcd 9016, 9020-22, paras. 16-21 (MB 2006) (*Time Warner NFL Order on Recon*) (stating that “[t]he undisputed facts . . . demonstrate that the change in programming services was ‘within the control’ of Time Warner,” because Time Warner declined an offer from the NFL to extend the previous contract for 30 days”). This Report and Order reverses that previous interpretation of “within the control” in the context of program carriage and retransmission consent negotiations, as explained fully below. *See infra* para. 7. Although the retransmission consent proceeding focused only on the notice rule applicable to retransmission consent negotiations between cable operators and broadcast television stations, more recently, Charter Communications (Charter) filed a letter urging the Commission not to adopt a similar interpretation of section 76.1603 that would apply to negotiations with all programmers. In particular, Charter argued that cable operators should not be required to provide “30-day advance notice to subscribers *any time* negotiations over the carriage of a channel enter the final month of an agreement solely because the channel *might* be dropped.” Letter from Elizabeth Andron, Senior Vice President, Regulatory Affairs, Charter Communications, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, at 3 (Feb. 6, 2018) (Charter Letter). Accordingly, Charter proposed “that the Commission clarify that the 30-day advance notice requirement does not apply when a cable operator and a programmer or a broadcaster remain in carriage negotiations, even during the final 30 days of an agreement,” and instead require cable operators to provide notice as soon as possible if the negotiations fail and the channel goes dark. *Id.*

<sup>13</sup> *See Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12709, para. 2.

no obligation to provide notice to subscribers 30 days in advance of channel lineup changes when the change is due to retransmission consent or program carriage negotiations that fail during the last 30 days of a contract but that rather, in such a situation, they must provide notice “as soon as possible;” (2) modifying section 76.1603(c) to require service and rate change notices to LFAs only if required by an LFA; and (3) adopting several technical edits to sections 76.1601 and 76.1603 to make the rules more readable and remove duplicative requirements.<sup>14</sup> We received seven comments and three replies in response to the *NPRM*.<sup>15</sup> Cable operators, ACA Connects (ACA) and NCTA – The Internet and Television Association (NCTA) generally supported all of our proposals,<sup>16</sup> while The National Association of Telecommunications Officers and Advisors (NATOA) and various LFAs raised concerns in opposition to the proposals to clarify the service change notice obligations in instances involving failed program carriage or retransmission consent negotiations and to require notice to LFAs only if they specifically request it.<sup>17</sup>

### III. DISCUSSION

5. In this Report and Order, we adopt several revisions to the rules in sections 76.1601 and 76.1603 governing the notices that cable operators must provide to subscribers and LFAs regarding rate

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<sup>14</sup> *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12713, para. 8.

<sup>15</sup> As we indicated in the *NPRM*, we proposed in the *Retrans NPRM* that notice of potential deletions be given to subscribers 30 days in advance of a contract’s expiration, regardless of whether the signal is ultimately deleted. *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12711, para. 5, n.15. We invited commenters to refresh the record on these issues. *Id.* Despite this, no commenters in this proceeding chose to directly address this proposal from the *Retrans NPRM*. Most past commenters on this 2011 proposal raised concerns that it would increase consumer confusion as the inherently fluid nature of retransmission consent negotiations does not lend itself to providing definite notice 30 days in advance. *See, e.g.*, AT&T Comments, MB Docket No. 10-71, at 20-21 (rec. May 27, 2011) (AT&T *Retrans* Comments) (contending that requiring advance notice of potential deletions would “increase consumers [sic] confusion and uncertainty, without any corresponding benefit to consumers”); Charter Communications, Inc. Comments, MB Docket No. 10-71, at 6 (rec. May 27, 2011) (Charter *Retrans* Comments) (asserting that “it is far from clear that heightened notice requirements would actually benefit consumers and may instead simply create more consumer confusion”); Public Knowledge and the New America Foundation Reply, MB Docket No. 10-71, at 2-4 (rec. Jun. 27, 2011) (Public Knowledge *Retrans* Comments) (stating that “[s]imply providing viewers with advance notice of every potential impasse would do nothing to prevent the consumer harms caused by increasingly frequency programming blackouts, and might actually lead to greater consumer frustration and confusion—an ultimately more costly and unnecessary switching among video providers”). Some past commenters, however, suggested that such a rule could benefit consumers and that any confusion caused by notice of *potential* deletions could be alleviated through clearer notices. *See, e.g.*, Fox Entertainment Group, Inc. and Fox Television Stations, Inc. Comments, MB Docket No. 10-71, at 8-11 (rec. May 27, 2011) (Fox *Retrans* Comments) (contending that such a requirement “could benefit consumers” by incentivizing MVPDs and broadcasters to resolve retransmission consent negotiations early and by providing consumers with ample notice of potential deletions); National Association of Broadcasters Reply, MB Docket No. 10-71, at 66-70 (rec. Jun. 27, 2011) (NAB *Retrans* Reply) (responding that “[a]ny potential consumer confusions can be mitigated by the adoption of a requirement that all notifications be clear, concise, and factually accurate”). As we explain below, we are not persuaded that notices in this context could be sufficiently clear and definitive to avoid the confusion that would arise from sending repeated notices about potential service changes that do not ultimately occur. We find that this confusion would make it more likely that subscribers ignore these notices, undermining the purpose of the rules. *See infra* paras. 9-10. Further, there is no evidence in the record that advance notice requirements facilitate early resolution of retransmission consent negotiations.

<sup>16</sup> *See* ACA Connects Comments at 1 (ACA); Altice USA, Inc. Comments at 1 (Altice); NCTA – The Internet & Television Association Comments at 2-3 (NCTA); Verizon Comments at 1.

<sup>17</sup> *See* Jackson, WY Comments at 1 (Jackson); The National Association of Telecommunications Officers and Advisors Comments at 2 (NATOA); Texas Coalition of Cities for Utilities Issues, the Cities of Boston, Massachusetts, Portland, Oregon, and Los Angeles, California, Montgomery and Howard Counties in Maryland, and the Mt. Hood Cable Regulatory Commission Comments at 2 (Joint LFAs).

and service changes. First, we adopt our proposal to clarify that cable operators must provide notice as soon as possible in the event of service changes that occur due to retransmission consent or program carriage negotiations that fail in the final 30 days of a contract, rather than 30 days in advance; we also provide guidance on which means are reasonable to provide that notice. Second, we amend the LFA notice requirements to eliminate the requirement that all cable operators provide 30 days' advance notice to LFAs of any changes in rates or services rather than adopting our initial proposal concerning LFA notice. Instead, we conclude that only cable operators subject to rate regulation will be required to provide 30 days' advance written notice to LFAs of any proposed increase in the price to be charged for the basic service tier. Finally, we adopt several technical edits to make the rules more readable and remove duplicative requirements.

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

6. We adopt our proposal to amend section 76.1603(b) to clarify that cable operators must provide subscribers notice "as soon as possible" when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract, rather than 30 days in advance.<sup>18</sup> In doing so, we reverse our previous view that such negotiations are within the control of cable operators.<sup>19</sup> Instead, we adopt a new rule that failed program carriage or retransmission consent negotiations will be deemed outside of cable operators' control. In all other circumstances, however, the subscriber notice requirements will continue to operate as they have previously. That is, rate and service changes must be provided 30 days in advance of any change, unless the change is outside the cable operators' control, in which case it must be provided as soon as possible. We conclude that this action will make subscriber notices more meaningful and accurate, reduce consumer confusion, and ensure that subscribers receive the information they need to make informed choices about their service options.

7. We reverse the Commission's previous interpretation that program carriage and retransmission consent negotiations are within the control of a cable operator for the purpose of section 76.1603(b).<sup>20</sup> No commenter argued that the Commission should retain its current interpretation that negotiations are within the control of cable operators in this context.<sup>21</sup> We agree with the multiple commenters that contend that retransmission consent and program carriage negotiations are not within the control of the cable operator because cable operators cannot unilaterally control the outcome of such negotiations.<sup>22</sup> Or, as the saying goes, it takes two to tango. Thus, we find that service changes that occur

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<sup>18</sup> *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12713, para. 9.

<sup>19</sup> *See supra* note 12.

<sup>20</sup> *See Time Warner NFL Order on Recon*, 21 FCC Rcd at 9021, para 17. *See also Retrans NPRM*, 26 FCC Rcd at 2738, n.109 ("[W]e [] consider retransmission consent negotiations to be within the control of both parties to the negotiations, and thus, failure to reach retransmission consent agreement would not be an excuse for failing to provide notice."). In the *NPRM*, we stated that while "the Commission correctly acknowledged that there are two parties in 'control' of the retransmission consent negotiations, we question, based on the experience the Commission has gained observing various retransmission consent disputes over the past eight years, whether failure to reach agreement is essentially 'within the control' of the cable operator such that the operator has an advance notice obligation." *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12714, para. 11.

<sup>21</sup> The National Association of Broadcasters (NAB) opposed a tentative conclusion that negotiations are not within the control of cable operators in an *ex parte* filed before the *NPRM* was adopted. Letter from Erin Dozier, Senior Vice President and Deputy General Counsel, National Association of Broadcasters, to Marlene Dortch, Secretary, FCC, MB Docket No. 19-347 et al., at 4 (filed Dec. 6, 2019) (*NAB Ex Parte*). The *NPRM* as adopted did seek comment on this topic instead of making a tentative conclusion. *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12714, para. 11. However, NAB did not file comments following the adoption of the *NPRM*, and no party raised any arguments in support of retaining the current interpretation.

<sup>22</sup> *See* ACA Comments at 3 ("The Commission is thus correct to suggest that the cable operator does not 'control the outcome' of carriage negotiations."); Altice Comments at 7 ("[I]n the relative rare cases where a channel must be

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as a result of failed program carriage or retransmission consent negotiations are not within the control of a cable operator and amend section 76.1603(b) to provide so explicitly. We emphasize that this change applies only in the specific context of program carriage or retransmission consent renewal negotiations that fail within the final 30 days of an existing contract and result in a service change.<sup>23</sup>

8. We find that this change is consistent with the Act. As noted in the *NPRM*, section 632(b) of the Act directs the Commission to adopt “standards by which cable operators may fulfill their customer service requirements,”<sup>24</sup> and section 632(c) affords cable operators the flexibility to “provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion.”<sup>25</sup> These statutory provisions do not explicitly state that all notices must be provided in advance.<sup>26</sup> In fact, section 632(c) refers only to “notice,” whereas various other provisions of the Act specifically require “advance notice.”<sup>27</sup>

9. We are persuaded that requiring cable operators to provide notice to subscribers that a channel may be dropped whenever a program carriage or retransmission consent renewal negotiation extends into the final 30 days of an existing contract would cause substantial consumer confusion and thus would not further the goal of facilitating informed choices.<sup>28</sup> We are not persuaded by LFAs’

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dropped due to failed negotiations, the event is not ‘within the control of a cable operator’ under section 76.1603(b) of the rules.”); NCTA Comments at 5 (“While carriage negotiations are ongoing, cable operators do not and cannot know whether there will ultimately be any change to their services.”); Verizon Comments at 3 (“[O]btaining carriage agreements from broadcasters or other programmers is not solely within our control.”).

<sup>23</sup> We decline NCTA’s request that we list in the text of the rule other specific situations beyond the operator’s control that would not require advance notice, such as a change in control of a broadcaster, programmer bankruptcies, the loss of distribution rights by a programmer, programmer decisions to go off the air, substantial changes to their programming, or a rebrand. NCTA Comments at 6. We find that attempting to articulate an exhaustive list of those situations that result in service or rate changes and are outside of a cable operator’s control would inevitably miss some novel situations and would likely result in more confusion than it would eliminate. We do, however, recognize that many of these situations are plainly outside of the control of cable operators, and, as NCTA noted with regard to the LFA notice requirements that do not currently contain a limitation for circumstances outside a cable operator’s control, a requirement that cable operators provide advance notice of changes outside of their control—something that in many instances may be impossible—could raise serious reasonableness or other legal concerns. *See, e.g., id.* at 7, n.14 (maintaining that a “requirement to provide 30 days’ notice to an LFA of any change in rates or services regardless of the circumstances would raise serious due process and fairness concerns”).

<sup>24</sup> 47 U.S.C. § 552(b).

<sup>25</sup> 47 U.S.C. § 552(c). Section 615(g)(3), which requires cable operators to notify subscribers in advance about the deletion or repositioning of a noncommercial broadcast station, is not implicated by this rule change because noncommercial stations do not negotiate for retransmission consent. 47 U.S.C. § 535(g)(3).

<sup>26</sup> Accordingly, we disagree with LFA commenters who claim that notice provided after a deletion occurs—which could potentially occur under an “as soon as possible” notice regime—does not fulfill the expressed purpose of providing subscribers with the time to make changes to their cable subscription in advance of service changes. *See* NATOA Comments at 6-7; Joint LFA Reply at 7.

<sup>27</sup> 47 U.S.C. § 534(b)(9); 535(g)(3); 543(b)(6); 544(h); 545(c). *See Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 341 (2005) (“We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest.”).

<sup>28</sup> *See* ACA Comments at 4-5; Altice Comments at 7; NCTA Comments at 4; Verizon Comments at 4. *See also* AT&T Retrans Comments at 20-21; Charter Retrans Comments at 6; Public Knowledge Retrans Comments at 2-4. Section 76.1603(b) is violated only if notice is not delivered 30 days in advance of an actual service change, and because most negotiations conclude without a service change occurring, the rule is rarely violated even if cable operators do not send notice 30 days in advance of a potential deletion. However, once the parties enter the final 30 days of an existing contract, the cable operator may be placed in a position where it must either accept whatever terms the programmer demands or violate the 30-days’ advance notice rule because it no longer has any legal rights

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contention that subscribers need advance notice of *potential* deletions so that they can seek alternative sources of the programming that could ultimately be deleted.<sup>29</sup> Although the legislative history of the Telecommunications Act of 1996 indicates that Congress wanted “to ensure that consumers have sufficient warning about rate and service changes so they can choose to disconnect their service prior to the implementation of the change,” we conclude that notices about deletions that may never occur are confusing to consumers and, therefore, do not fulfill this goal.<sup>30</sup> The record provides ample evidence that program carriage and retransmission consent negotiations often come down to the final days—if not hours—of an existing contract and rarely result in a signal deletion. For example, Altice notes that in 2019 at least 90 percent of Altice USA’s programming negotiations were resolved during the final 30 days of an existing contract and that agreements were reached with all its programming partners without any channels going dark.<sup>31</sup> Similarly, ACA contends that “[c]arriage agreements are almost always renewed within days (or even hours) of their expiration, and sometimes following multiple short-term extensions.”<sup>32</sup> Likewise, NCTA asserts that “[t]he vast majority of these negotiations end successfully.”<sup>33</sup>

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to carry the programming once the contract expires. The notice provisions were not intended to tip the scales for any party during program carriage or retransmission consent negotiations, and we conclude that our notice requirements should reflect common practice to ensure that they do not. Accordingly, we find that our approach is preferable to more heavy-handed alternatives that would achieve the same end, such as mandating contract extensions to give cable operators time to provide 30 days’ advance notice when negotiations have failed. *But see* Charter Letter at 3-4 (advocating for a clarification where a cable operator would be compelled to accept a 30-day extension of an existing contract on the same terms so that it may provide 30 days’ advance notice, but could decline a materially different offer during the final 30 days of an existing contract without triggering the 30-day advance notice requirement); *Time Warner NFL Order on Recon*, 21 FCC Rcd at 9020-22, paras. 16-21 (“The undisputed facts in this case demonstrate that the change in programming services was ‘within the control’ of Time Warner. . . . [I]t is undisputed that the NFL Network ‘offered to allow Time Warner to continue to carry the network on pre-existing terms and conditions’ for 30 days and that Time Warner refused this offer.”).

<sup>29</sup> See Jackson Comments at 1; Joint LFA Comments at 8-9; NATOA Comments at 6-7. See also Fox Retrans Comments at 8-11; NAB Retrans Reply at 66-70. One commenter also asserts that broadband-connected consumers’ ready access to video programming services provided over the Internet is not an adequate substitute for the opportunity to switch MVPDs in advance of the loss of any particular signal. Jackson Comments at 1. Specifically, this commenter highlights the hurdles faced by consumers in more rural areas that may only have access to a single cable operator or lack access to high-quality Internet. *Id.* We also note that Joint LFAs do not oppose the addition of an “as soon as possible” notice requirement but suggest it should be *in addition to* the 30 days’ advance notice, not *in lieu of* this advance notice. Joint LFA Comments at 9.

<sup>30</sup> H.R. REP. NO. 104-204(I), at 112 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 79. Relatedly, we are not persuaded by Joint LFAs’ contention that the enactment of new billing disclosure requirements as a part of the Television Viewer Protection Act, which was enacted into law in late 2019, are relevant to our interpretation of Congress’s intent in the Telecommunications Act of 1996. Joint LFA Comments at 13. Specifically, the TVPA codified a consumer’s right to receive transparent information from MVPDs regarding rates and other charges before entering into a contract with that MVPD. 47 U.S.C. § 562. In contrast, the rules at issue in this proceeding concern notices about changes to rates or services for existing subscribers. See 47 CFR §§ 76.1601, 76.1603. Further, section 624 of the Act applies to all MVPDs, while the notice rules at issue here apply only to cable operators. Compare 47 U.S.C. § 562 with 47 CFR §§ 76.1601, 76.1603.

<sup>31</sup> Altice Comments at 6.

<sup>32</sup> ACA Comments at 3.

<sup>33</sup> NCTA Comments at 4. See also Verizon Comments at 2 (agreeing with the Commission’s proposition in the *NPRM* that “[i]n most instances, carriage agreements are renewed”). We are not persuaded by Joint LFAs’ contention that we should continue to require 30 days’ advance notice in the context of program carriage or retransmission consent renewal negotiations that fail during the final 30 days of an existing contract to incentivize the early resolution of negotiations. Joint LFA Comments at 6; Joint LFA Reply at 8-9. As explained above, these rules are not meant to tip the scales of the negotiation in either direction, but rather to ensure that cable operators

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10. The record does not support requiring cable operators to bombard subscribers with notices whenever retransmission consent or program carriage negotiations continue into the last 30 days of a contract. As cable commenters observe, the most contentious negotiations—*i.e.*, those most likely to result in a programming blackout—are often the subject of news reports, advertisements, and social media posts, which provide consumers with information about potential programming disputes and encourage them to “make their voices heard” with their cable operator.<sup>34</sup> Further, we do not agree with LFAs that notices could be sufficiently tailored to avoid causing consumer confusion<sup>35</sup> given the large number of renewal negotiations that extend into the final 30 days of an existing contract and the concomitant volume of potential deletion notices in situations where the channel is not ultimately deleted.<sup>36</sup> Rather, we agree with commenters that caution that providing inherently uncertain notices about potential channel deletions that ultimately do not come to pass could cause some consumers to incur “the burden and expense of switching video providers under the belief that they will soon lose their favorite programming, only later to find (in the vast majority of cases) that a deal was reached that avoided this outcome.”<sup>37</sup> We also find that sending repeated notices about changes that do not ultimately occur would make it more likely that many subscribers would ignore those notices, resulting in their missing information about changes that actually do occur.<sup>38</sup>

11. We interpret “as soon as possible” to require cable operators to provide notice without delay after negotiations have failed such that the cable operator is reasonably certain it will no longer be carrying the programming at issue, and, if possible, before the programming goes dark.<sup>39</sup> The Commission has not previously defined what it means to provide notice “as soon as possible” in section 76.1603(b) when changes occur due to circumstances outside of a cable operator’s control.<sup>40</sup> No commenter offered any arguments in support of adopting a specific timeframe to satisfy the “as soon as possible” standard. We conclude that determining whether a notice was delivered as soon as possible is a necessarily fact-specific determination, and thus we decline to adopt any firm timeframe during which a notice would presumptively satisfy the standard. We disagree with Verizon’s suggestion that a channel’s going dark should be necessary to trigger the delivery of a notice about the service change as soon as possible, because delivery could be triggered earlier if negotiations have reached the point where a cable operator is reasonably certain it will no longer be carrying the programming at issue.<sup>41</sup> We do, however,

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deliver reliable and useful notice to consumers of changes to their service. *See supra* note 28 (explaining how the 30 days’ advance notice obligation in this context can place cable operators in a catch-22).

<sup>34</sup> ACA Comments at 5-6.

<sup>35</sup> *See* Jackson Comments at 1; NATOA Comments at 7.

<sup>36</sup> *See* Altice Comments at 7; ACA Reply at 2-3; NCTA Reply at 3.

<sup>37</sup> ACA Comments at 5. *See also* Altice Comments at 7 (“Thus while it may be possible to warn subscribers about [the possibility of a channel deletion], it is not feasible to definitively notify consumers ‘30 days in advance’ of an actual service change, nor would such warning provided customers with conclusive information about whether to make changes to their service.”); NCTA Reply at 3 (“This would require a cable operator to do the impossible—communicate with certainty the probability of a blackout that the cable operator is actively negotiating to prevent.”).

<sup>38</sup> *See* ACA Comments at 5; Verizon Comments at 4.

<sup>39</sup> In the *NPRM*, we sought comment on how we should define “as soon as possible” in the context of retransmission consent or program carriage negotiations that fail within the last 30 days of a contract. *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12715, para. 12.

<sup>40</sup> Altice argues that “there is no need for the Commission to specifically define ‘as soon as possible’ in a revised version of the rule.” Altice Comments at 7.

<sup>41</sup> Verizon Comments at 4-5.

agree that if the channel has gone dark, negotiations have clearly failed so as to trigger the notice requirement.<sup>42</sup>

12. *Form of Notice.* We revise our rules to clarify that cable operators have some flexibility as to the means by which they provide written notice to communicate service changes to subscribers when those changes result from failed program carriage or retransmission consent negotiations or other changes that are outside the cable operator's control. Section 632(c) of the Act states that a cable operator may use "any reasonable written means at its sole discretion" to deliver notice of service and rate changes to subscribers,<sup>43</sup> and in 2018, the Commission adopted new rules that interpret this section of the Act to permit the electronic delivery of consumer notices by cable operators.<sup>44</sup> In the Order adopting those rules, the Commission indicated that it would address the issue of rate and service change notices in a separate proceeding, given that these notices "provide targeted and immediate information about a single event rather than a comprehensive catalog of information."<sup>45</sup> We conclude that in these cases where service change are due to circumstances outside a cable operator's control, our interpretation of "reasonable notice" must reflect that cable operators need flexibility in giving notice to consumers. Therefore, in these specific cases, we will not require cable operators to follow the electronic notification procedures set forth in section 76.1600 of our rules, but instead we amend sections 76.1600 and 76.1603 of rules to permit them to provide notice through other direct and reliable written means that can reach subscribers more quickly.

13. In this regard, we conclude that a channel slate<sup>46</sup> on the vacant channel that appears after the programming has been dropped is a reasonable means to communicate the service change to viewers in the immediate aftermath of a channel going dark. We agree with those commenters who assert that channel slates are the most direct form of notice to immediately inform interested subscribers about a channel deletion.<sup>47</sup> We reject the Joint LFAs' contention that channel slates are an inadequate form of notice on their own because they only become available after the programming has been dropped.<sup>48</sup> Rather, because these negotiations, by their very nature, often continue until the final minutes of existing contracts, we find that a channel slate could be the most immediate direct form of notice to reach affected subscribers in the event of a last-minute channel deletion. Thus, we conclude that channel slates would satisfy the "any reasonable written means" standard in the specific context of a service change due to retransmission consent or program carriage renewal negotiations that fail near the end of an existing

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<sup>42</sup> See, e.g., *Time Warner NFL Order on Recon*, 21 FCC Rcd at 9017, para 3 (detailing how Time Warner rejected the NFL's offer to extend an existing carriage agreement on July 27, 2006, a full four days before Time Warner discontinued carriage of the NFL Network on August 1, 2006).

<sup>43</sup> 47 U.S.C. § 552(c).

<sup>44</sup> *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317 & 17-105, Report & Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 11518, 11520-25, paras. 7-15 (2018).

<sup>45</sup> *Id.* at 11525, n.61.

<sup>46</sup> We define channel slates in our rules to encompass any on-screen written message that replaces the cable operator's video feed in the event of a programming blackout and provides subscribers with information about the blackout. See *infra* Appendix A. See also *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12716, para. 14 (defining channel slates as "notices that would replace the video feed in the event of a blackout").

<sup>47</sup> See ACA Comments at 6; Altice Comments at 8; NCTA Comments at 6; Verizon Comments at 5.

<sup>48</sup> Joint LFA Comments at 11-12. LFAs suggest that instead of channel slates, notice should comply with the standards adopted for the electronic delivery of notices in section 76.1600 of our rules. *Id.* Given the unique time constraints posed by the specific situation of program carriage or retransmission consent renewal negotiations that fail within the final 30 days of an existing contract, we decline to mandate such notice here. While we agree with Joint LFAs that electronic notice delivered consistent with section 76.1600 would certainly be a sufficient means of notice, this type of notice is not required. 47 CFR § 76.1603(c).

contract, as they would communicate time-sensitive notice about service changes to subscribers via the quickest means possible. Accordingly, we revise section 76.1603 to provide that cable operators shall provide notice of service changes outside of their control “as soon as possible using any reasonable written means at the operator’s sole discretion, including channel slates.”<sup>49</sup> We note that there may be situations in which a channel slate may not satisfy the “as soon as possible” standard despite the service change resulting from program carriage or retransmission consent negotiations that fail within the final 30 days of an existing contract. For example, if carriage negotiations between a cable operator and a programmer fail well in advance of the expiration of the contract, and the cable operator does not intend to continue negotiating, we would expect such operator to deliver notice through other means—such as email—before the channel goes dark. Similarly, to the extent possible, we expect and encourage cable operators to inform subscribers through multiple types of “written means” to ensure that subscribers are adequately informed about any changes to their cable service.<sup>50</sup>

14. In addition, we agree with Verizon that newspaper notice is not a reasonable written means of notice in this context. Notably, no commenter suggested that newspaper notice in this context should be deemed reasonable. As Verizon asserts, newspaper notices “may not reach all customers and may be delayed, inaccurate by the time they are published, or unread altogether, [and do] not provide timely notice to allow customers to make informed decisions about potential service changes.”<sup>51</sup> Given this, we conclude that such notice is insufficient to satisfy the reasonable written means standard in the context of failed program carriage or retransmission consent negotiations.

#### **B. Notices of Service or Other Changes to Local Franchise Authorities**

15. We conclude that in areas that are no longer subject to rate regulation the substantial costs to cable operators of complying with the LFA rate and service change notice requirements outweigh any potential benefits that could accrue to consumers as a result of these notices.<sup>52</sup> Accordingly, rather than adopting our initial proposal,<sup>53</sup> we eliminate the LFA notice requirement for cable systems subject to effective competition under the Commission’s rules and adopt a requirement that rate regulated systems provide LFAs with 30 days’ advance notice of any proposed increase in the price to be charged for the basic service tier.<sup>54</sup>

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<sup>49</sup> See *infra* Appendix A.

<sup>50</sup> Specifically, we encourage cable operators to provide another form of timely notice, such as an email notification, that would enable subscribers to make an informed choice about their cable service. See 47 CFR § 76.1600.

<sup>51</sup> Verizon Comments at 5.

<sup>52</sup> Commission regulations currently require cable operators to provide notice to LFAs of any changes in rates, programming services, or channel positions 30 days in advance of the change. 47 CFR § 76.1603(c). Notably, this subsection does not contain language found in the preceding subsection applicable to subscriber notices that distinguishes between changes that are within a cable operator’s control and those that are not. Compare 47 CFR § 76.1603(b) with 47 CFR § 76.1603(c).

<sup>53</sup> In the *NPRM*, we proposed to make the LFA notice obligations more consistent with the consumer notice obligations by adding language that would clarify that in instances where the change occurs due to circumstances outside the cable operator’s control, notice must be provided “as soon as possible” rather than 30 days in advance. *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12716, para. 15. The *NPRM* further proposed that this new language also would include the language explicitly providing that changes that occur due to program carriage or retransmission consent renewal negotiations that fail within the final 30 days of an existing contract would be deemed outside the cable operator’s control. *Id.* Second, we proposed to add language that would require notice to be delivered to LFAs only if they explicitly required it of the cable operators operating in their jurisdictions. *Id.* We also sought comment in the *NPRM* on whether to revise or “eliminate section 76.1603(c) altogether and allow LFAs to require this information under their own authority.” *Id.* at 12717, para. 17.

<sup>54</sup> See 47 CFR § 76.905. Cable commenters generally support both LFA notice proposals in the *NPRM*. See ACA Comments at 7-8; Altice Comments at 4-6; NCTA Comments at 7. However, as explained fully below, several

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16. We are not persuaded that we should preserve the current requirements that cable operators notify LFAs before implementing any rate or service change with respect to those cable operators that face effective competition. First, in the absence of rate regulation, LFAs have little practical use for this information because changes in rates or services are no longer subject to an LFA's authority. And the cable operator is in fact better positioned to address subscriber inquiries concerning rate or service changes than LFAs because LFAs receive only the same information that subscribers already receive under the notice requirements in section 76.1603(b).<sup>55</sup> Second, those LFAs that do rely on these notices to address subscriber inquiries or complaints can implement their own notice requirements, consistent with the Act.<sup>56</sup> Given that there is evidence that cable operators incur significant costs to comply with the current requirements and little evidence that there is widespread use of these LFA notices to benefit subscribers, we eliminate the LFA notice requirement for most cable operators.<sup>57</sup>

17. We are persuaded to eliminate the LFA rate and service change notice requirements on cable operators subject to effective competition by the multiple commenters who contend that the costs to cable operators of complying with these LFA notice requirements outweigh any benefit to consumers from retaining the requirements.<sup>58</sup> Contradicting NATOA's assertion that notifying LFAs is a *de minimis* additional expense,<sup>59</sup> cable operators present evidence in the record that they expend significant resources to comply with the LFA notice requirements.<sup>60</sup> Specifically, NCTA highlights several examples from its members' experiences, including one cable operator who budgets \$85,000 annually to deliver LFA notices, in addition to the internal resources devoted to ensure compliance.<sup>61</sup> Further, NCTA points out that in some instances changes that affect only a handful of subscribers nationwide require that notice be delivered to all of the hundreds, if not thousands, of LFAs within a cable operator's service area.<sup>62</sup> Altice suggests that it has added difficulties complying with the LFA notice requirements, particularly in more rural and sparsely populated jurisdictions where it has had difficulty ascertaining the relevant contact information.<sup>63</sup> We conclude that any benefit that may accrue to consumers from the LFA notice requirements does not outweigh the costs identified in the record. We disagree with those commenters

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commenters persuasively contend that the Commission should go further and eliminate the LFA notice requirements entirely. See ACA Comments at 7; NCTA Reply at 4; Letter from Mary Beth Murphy, Vice President and Deputy General Counsel, NCTA – The Internet and Television Association, to Marlene H. Dortch, Secretary, FCC, MB Docket 19-347, at 2 (filed Aug. 10, 2020) (NCTA *Ex Parte*).

<sup>55</sup> See ACA Comments at 7-8; Altice Comments at 6; NCTA Comments at 7.

<sup>56</sup> See *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12717, para. 17. We acknowledge NATOA's assertion that LFAs will incur costs to amend their franchise agreements to incorporate their own notice requirements. NATOA Comments at 5. However, we are not persuaded that collectively the burden on those LFAs that will seek to amend their agreements outweighs the current burden on cable operators of sending notices to every LFA in its service area every time it changes any service or rate.

<sup>57</sup> As ACA Connects argues, "LFAs should be encouraged to periodically re-evaluate the obligations they impose on cable franchisees to determine whether and to what extent they continue to serve their intended purpose." ACA Comments at 8. We agree and believe that this rule change will provide LFAs with such an opportunity.

<sup>58</sup> See ACA Comments at 7; NCTA Reply at 4; NCTA *Ex Parte* at 2.

<sup>59</sup> NATOA Comments at 5.

<sup>60</sup> Altice Comments at 4-5; NCTA *Ex Parte* at 2.

<sup>61</sup> NCTA *Ex Parte* at 2.

<sup>62</sup> See NCTA *Ex Parte* at 2. ("[O]ne operator reports that it had to provide notice to *all* of its LFAs when a cable network with only a few thousand subscribers stopped providing a signal.").

<sup>63</sup> Altice Comments at 4-5 (noting that for many of the "very small LFA's operating in Altice USA's Western footprint" there is not readily available contact information "making it a challenge to determine where notices even should be sent or whether they are being received by the appropriate individuals").

that maintain that we should preserve the LFA notice requirement in its current form to enable LFAs to address inquiries and complaints from subscribers.<sup>64</sup> Although NATOA argues that their LFA members rely on these notices to address inquiries and complaints,<sup>65</sup> Altice asserts that LFAs rarely follow up with inquiries regarding these notices and that subscribers can obtain such information directly from the cable operator.<sup>66</sup> Moreover, cable operators contend that the LFA notice requirements are the relic of an era of widespread rate regulation of cable systems and are no longer necessary now that there is effective competition nearly nationwide such that LFAs do not need the rate information to field consumer calls.<sup>67</sup>

18. Although we disagree that the current notice requirement is necessary in areas that are subject to effective competition, we are persuaded that notice of certain rate changes is critical to LFAs certified to regulate cable operator rates because they must be made aware of those rate changes before they take effect to fully exercise their rate regulation authority.<sup>68</sup> Thus, we retain the requirement to provide notice of certain rate changes only with respect to those cable operators in areas where they are not subject to effective competition.<sup>69</sup> Specifically, we adopt a rule, consistent with the language of section 623(b)(6),<sup>70</sup> that such operators must provide LFAs with 30 days' advance notice of any increase proposed in the price to be charged for the basic service tier.<sup>71</sup> This requirement will ensure that relevant

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<sup>64</sup> NATOA Comments at 4. NATOA suggests that many LFAs incorporate the Commission's rules by reference into their franchise agreements and therefore do not have their own independent notice requirements. *Id.* NATOA does not, however, dispute the Commission's conclusion in the *NPRM* that the Act confers sufficient independent authority on LFAs to require this type of notice from cable operators, though it does contend that imposing such notice requirements would be inefficient for LFAs and confusing for cable operators. *Id.* at 3-4.

<sup>65</sup> NATOA Comments at 3.

<sup>66</sup> See Altice Comments at 5 (noting that during the period from mid-2016 to 2020 the "tens of thousands" of mandatory LFA notices delivered by Altice to LFAs "generated fewer than 10 responses or inquiries from local regulators"). See also NCTA *Ex Parte* at 2, n.5 (disputing NATOA's assertion that subscribers are likely to call their LFAs in response to changes in cable service and positing that the cable operators are in the best position to address those inquiries). *But see* NATOA Comments at 3 (asserting that LFAs rely on these notices to assist subscribers with inquiries regarding their cable service).

<sup>67</sup> See ACA Comments at 7; NCTA Comments at 7. These commenters further suggest that in the absence of rate regulation authority these notices have little practical effect, as consumers can receive the same information directly from cable operators and the LFA has no authority over rate changes. ACA Comments at 7; NCTA Comments at 7.

<sup>68</sup> As we acknowledged in the *NPRM*, the Commission previously has said that the purpose of section 76.1603(c) is also "to protect subscribers," and that "[p]roviding advance notice to LFAs furthers this objective by enabling LFAs to respond to any questions or complaints from subscribers in an informed manner." *Oceanic Time Warner Cable*, Order on Review, 24 FCC Rcd 8716, 8724-25, para. 19 (2009). See also Joint LFA Comments at 7. However, as we find above, cable operators are better positioned to respond to consumer inquiries concerning rate or service changes, see *supra* para. 16, and based on the evidence in the record, the limited benefits accruing to consumers from this rule simply do not justify the considerable costs to cable operators that are demonstrated in the record.

<sup>69</sup> We note that only a few communities nationwide currently retain rate regulation authority. See *Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI (HI0011)*, MB Docket No. 18-283, CSR No. 89-E, Memorandum Opinion and Order, 34 FCC Rcd 10229, 10230, para. 2 (2019).

<sup>70</sup> Section 623(b)(6) provides that the Commission "shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic tier." 47 U.S.C. § 543(b)(6).

<sup>71</sup> See, e.g., 47 U.S.C. § 543(b)(6). We note, however, that commenters disagree on the ability of the Commission to revise the rules adopted pursuant to section 623(b)(6) of the Act. NCTA points to a related provision, section 623(b)(2), instructing the Commission to revise the rate regulation rules periodically as evidence that Congress contemplated a future where the Commission might eliminate the LFA notice requirement entirely. NCTA Reply at 5. Conversely, NATOA suggests that the LFA notice requirement in section 623(b)(6) is an express mandate that the Commission has no statutory authority to revise. NATOA Comments at 5-6. We need not resolve this issue as

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LFAs receive notice of any proposed increase in the rates they have the authority to regulate. We specifically do not require cable operators in areas where they are subject to rate regulation to provide advance notice of service changes or of rate changes other than the type described above.<sup>72</sup> This type of notice is not contemplated by section 623(b)(6), and we find that the information gathered from such notices is of little if any use to LFAs, even in areas subject to rate regulation.

### C. Technical and Other Rule Changes

19. *Readability and Redundancy.* We adopt as proposed in the *NPRM* three technical changes to sections 76.1601 and 76.1603 to clean up the rules.<sup>73</sup> Commenters who addressed these proposals— representing both cable providers and LFAs— expressed unanimous support for amending these provisions to eliminate redundancies, which resulted from previous streamlining efforts that consolidated multiple, disparate notice provisions into one new subpart.<sup>74</sup> First, we amend section 76.1601 to delete the requirement that cable operators provide notice of the deletion or repositioning of a broadcast channel “to subscribers of the cable system,” as it is redundant of the subscriber notice requirements in 76.1603.<sup>75</sup> This action will consolidate all of the subscriber notice requirements into one provision, 76.1603(b). Second, we delete section 76.1603(d), which requires that cable operators notify subscribers about changes in rates for equipment that is provided without charge under section 76.630, because it is duplicative of language in section 76.630(a)(1)(vi).<sup>76</sup> Finally, we delete section 76.1603(e), which provides that a cable operator “may provide such notice using any reasonable written means at its sole discretion.”<sup>77</sup> This provision is duplicative of language in section 632(c) of the Act and language in section 76.1603(b).<sup>78</sup>

20. *Other Proposals.* We also adopt our proposal to eliminate the language regarding the carriage of multiplexed broadcast signals in section 76.1603(c),<sup>79</sup> which was supported by NCTA and

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we have decided for the reasons stated above to retain the LFA notice requirement with respect to those cable operators in areas where they are not subject to effective competition.

<sup>72</sup> As noted previously, the elimination of the broader LFA notice requirement in our rules does not preclude LFAs from adopting their own notice requirements for cable operators in their franchise areas. *See Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12717, para. 17. Although LFAs retain some authority to establish requirements above the baseline customer service standards established in the Commission’s rules, we encourage LFAs to ensure that any such requirements are consistent with the purpose of our rules and other applicable legal principles. NCTA asserts that “some LFAs refuse to receive notice electronically and [cable] operators therefore have to send LFA notices through various other means, including certified mail return receipt requested, overnight carrier service, and U.S. first class mail.” NCTA *Ex Parte* at 2, n.6. To the extent that is true, we encourage those LFAs that intend to require notice of service or rate changes to accommodate reasonable electronic means of notice. *See Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12716-17, para. 15. We also note that the authority of LFAs to establish and enforce customer service standards cannot be used to attempt to regulate other areas of cable operations beyond the scope of those provisions.

<sup>73</sup> *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12718, paras. 18-21. The *NPRM* contained a fourth technical proposal to revise sections 76.1603(b) and 76.1603(c) to clarify the notice obligations owed to subscribers and LFAs respectively. *Id.* However, as explained above, we have instead eliminated the LFA notice requirements in most contexts and retained a narrower requirement for rate-regulated cable systems in section 76.1603(c). *See* Appendix A.

<sup>74</sup> *See* ACA Comments at 8; Joint LFA Comments at 2; NCTA Comments at 2-3.

<sup>75</sup> Compare 47 CFR § 76.1601 with 47 CFR § 76.1603(b).

<sup>76</sup> Compare 47 CFR § 76.1603(d) with 47 CFR § 76.630(a)(1)(vi).

<sup>77</sup> 47 CFR § 76.1603(e).

<sup>78</sup> Compare 47 CFR § 76.1603(e) with 47 CFR § 76.1603(b) and 47 U.S.C. § 552(c).

<sup>79</sup> *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12719, para. 25.

unopposed by all other commenters.<sup>80</sup> This requirement was added at the advent of digital broadcast television and does not reflect the standard practices of cable operators with regard to multiplexed broadcast signals.<sup>81</sup>

21. We decline to adopt NCTA's proposal to eliminate the requirement in section 76.1603(b) that cable operators deliver notice 30 days in advance of any significant change to the information required by the section 76.1602 annual notices.<sup>82</sup> While we acknowledge that many subscribers would likely turn to the Internet to seek the information contained in those notices, we find that cable operators should inform their subscribers of significant changes to those policies proactively, consistent with the goal of ensuring that consumers receive the information they need to make informed choices about their cable service.

22. We similarly decline to adopt Joint LFAs' proposal that we eliminate the requirement in sections 76.1602(a) and 76.1603(a) that an LFA provide cable operators with 90 days' written notice of its intent to enforce the customer service standards found in sections 76.1602 and 76.1603.<sup>83</sup> We agree with NCTA that these LFA notices of intent to enforce requirements "are a necessary and appropriate mechanism for alerting cable operators of an LFA's enforcement plans."<sup>84</sup> Further, given that Joint LFAs' appear to have misunderstood these rules, their arguments for their removal are not persuasive.<sup>85</sup>

#### IV. PROCEDURAL MATTERS

23. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>86</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

24. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for

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<sup>80</sup> See NCTA Comments at 7.

<sup>81</sup> See NCTA Comments at 7 ("As the Commission notes, this sentence was adopted many years before the full-power digital transition, and it does not accurately reflect the provision of digital broadcast programming over cable systems today.").

<sup>82</sup> See NCTA Comments at 8. We acknowledge that the proposed rules appendix in the *NPRM* inadvertently did not include the word "significant" and instead provided that cable operators would be required to provide notice of "any change" to the information required in the section 76.1602 annual notices. *Cable Service Change Notifications NPRM*, 34 FCC Rcd at 12723, Appendix A. We did not propose any such change in the actual text of the item, and no commenter raised any objection to or support for this unintentional proposed expansion of this notice requirement. Accordingly, we have reinserted "significantly" into the final rule, consistent with the current notice obligations.

<sup>83</sup> Joint LFA Comments at 9-10.

<sup>84</sup> NCTA Reply at 6.

<sup>85</sup> As NCTA points out, the Joint LFAs appear to misinterpret or misunderstand this requirement. See NCTA Reply at 6. Joint LFAs appear to believe that sections 76.1602(a) and 76.1603(a) require LFAs to deliver a notice to cable operators 90 days in advance of receiving notices from the cable operator about service or rate changes. Joint LFA Reply at 9. However, that is neither the intent of these provisions, nor their function. Rather, these provisions require an LFA to provide 90 days' advance written notice to an affected cable operator of its intent to enforce the customer service standards set forth in sections 76.1602(b) and 76.1603(b) of our rules. See 47 CFR §§ 76.1602(a), 76.1603(a).

<sup>86</sup> 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).

small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

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

## V. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 543, 544, and 552, the Report and Order **IS ADOPTED**.

27. **IT IS FURTHER ORDERED** that the Commission’s rules **ARE HEREBY AMENDED** as set forth in Appendix A, effective as of the date of publication of a summary in the Federal Register.<sup>87</sup>

28. **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.

29. **IT IS FURTHER ORDERED** that the Commission will send a copy of the Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

30. **IT IS FURTHER ORDERED** that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19-347 **SHALL BE TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>87</sup> These rules serve to “reliev[e] a restriction.” 5 U.S.C. § 553(d)(1).



## 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 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. Amend § 76.5 to read as follows:

§ 76.5 Definitions.

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**(rr) Channel Slates. A written notice that appears on screen in place of a dropped video feed.**

3. Amend § 76.1600(a) to read as follows:

**(a) Except as provided in § 76.1603 for changes that occur due to circumstances outside a cable operator's control, which also may be provided as set forth in 76.1603(b)**, written information provided by cable operators to subscribers or customers pursuant to §§ 76.1601, 76.1602, 76.1603, 76.1604, 76.1618, and 76.1620 of this Subpart T, as well as subscriber privacy notifications required by cable operators, satellite providers, and open video systems pursuant to sections 631, 338(i), and 653 of the Communications Act, may be delivered electronically by email to any subscriber who has not opted out of electronic delivery under paragraph (a)(3) of this section if the entity:

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4. Amend § 76.1601 to read as follows:

A cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station.

5. Amend § 76.1603(b) and (c) to read as follows, delete paragraphs (d) and (e), and renumber paragraph (f) as paragraph (d):

**(b) Cable operators shall provide written notice to subscribers of any changes in rates or services, or of any significant change to any of the other information required to be provided to subscribers by § 76.1602. Notice shall be provided to subscribers at least 30 days in advance of the change, unless the change results from circumstances outside of the cable operator's control (including failed retransmission consent or program carriage negotiations during the last 30 days of a contract), in which case notice shall be provided as soon as possible using any reasonable written means at the operator's sole discretion, including Channel Slates. Notice of rate changes shall include the precise amount of the rate change and explain the reason for the change in readily understandable terms. Notice of changes involving the addition or deletion of channels shall individually identify each channel affected. Customers will be notified of any changes in rates,**

programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by §76.1602.

**(c) A cable operator not subject to effective competition shall provide 30 days' advance notice to its local franchising authority of any increase proposed in the price to be charged for the basic service tier.** In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

~~(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. If the equipment is provided to the consumer without charge pursuant to §76.630, the cable operator shall provide written notice to the subscriber no more than 60 days before the increase is effective. The notice should include the price to be charged, and the date that the new charge will be effective, and the name and address of the local franchising authority.~~

~~(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.~~

~~(f)~~ **(d)** Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

## APPENDIX B

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in this proceeding.<sup>2</sup> The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objective of, the Report and Order**

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

3. This Report and Order modifies our rules concerning notices that cable operators must provide to subscribers and local franchise authorities (LFAs) regarding service or rate changes. First, we clarify that cable operators must provide notice as soon as possible in the event of service changes that occur due to retransmission consent or program carriage that fail in the final 30 days of a contract, rather than 30 days in advance. We are persuaded that requiring cable operators to provide notice to subscribers that a channel may be dropped anytime a program carriage or retransmission consent renewal negotiation extends into the final 30 days of an existing contract would cause substantial consumer confusion and thus would not further the goal of facilitating informed choices. In all other circumstances, however, the subscriber notice requirements will continue to operate as they have previously. That is, rate and service changes must otherwise be provided 30 days in advance of any change, unless the change is outside the cable operators' control, in which case it must be provided as soon as possible.

4. Second, we amend our rule to eliminate the requirement that cable operators not subject to rate regulation provide 30 days' advance notice to LFAs for rate or service changes, and instead retain a narrower requirement that rate-regulated cable systems continue to provide 30 days' advance notice to the relevant LFA of any increase proposed in the price to be charged for the basic service tier. Finally, we adopt several technical edits to make the rules more readable and remove duplicative requirements.<sup>4</sup>

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<sup>1</sup> 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).

<sup>2</sup> See *Cable Service Change Notifications; Modernization of Media Regulation Initiative; Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket Nos. 19-347, 17-105, and 10-71, Notice of Proposed Rulemaking, 34 FCC Rcd 12709, 12724, Appendix B (2019).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See *Report and Order* at para. 19 (describing three technical edits that eliminate redundancies in the rules).

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

5. There were no comments filed in 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 Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>5</sup>

7. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

8. 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.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> 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.<sup>9</sup> Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

9. *Small Governmental Jurisdictions.* A “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>10</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>11</sup> indicates that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>12</sup> Of this number there were

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<sup>5</sup> 5 U.S.C. § 604(a)(3).

<sup>6</sup> 5 U.S.C. § 603(b)(3).

<sup>7</sup> 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 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.”

<sup>9</sup> 15 U.S.C. § 632.

<sup>10</sup> 5 U.S.C. § 601(5).

<sup>11</sup> See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also *Census of Governments*, [https://www.census.gov/history/www/programs/governments/census\\_of\\_governments.html](https://www.census.gov/history/www/programs/governments/census_of_governments.html) (last visited Jul. 23, 2020).

<sup>12</sup> See *2017 Census of Governments – Organization, Local Governments by Type and State: 2017*, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html> (last visited Jul. 23, 2020). Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

36,431 General purpose governments (county,<sup>13</sup> municipal and town or township<sup>14</sup>) with populations of less than 50,000 and 12,040 Special purpose governments (independent school districts<sup>15</sup> and special districts<sup>16</sup>) with populations of less than 50,000. The 2017 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000.<sup>17</sup> Based on this data we estimate that at least 48,471 local government jurisdictions fall in the category of “small governmental jurisdictions.”<sup>18</sup>

10. *Cable Companies and Systems (Rate Regulation Standard)*. The Commission has 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.<sup>19</sup> Industry data indicate that, of 4,200 cable operators nationwide, all but 9 are small under this size standard.<sup>20</sup> In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>21</sup> Industry data indicate that, of 4,200 systems nationwide, 3,900 have fewer than 15,000 subscribers, based on the same records.<sup>22</sup> Thus, under this second size standard, the Commission believes that most cable systems are small.

11. *Cable System Operators*. The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer

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<sup>13</sup> See *2017 Census of Governments – Organization, County Governments by Population-Size Group and State: 2017*, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html> (last visited Jul. 23, 2020). There were 2,105 county governments with populations less than 50,000.

<sup>14</sup> See *2017 Census of Governments – Organization, Subcounty General-Purpose Governments by Population-Size Group and State: 2017*, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html> (last visited Jul. 23, 2020). There were 18,229 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>15</sup> See *2017 Census of Governments – Organization, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017*, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html> (last visited Jul. 23, 2020). There were 12,040 independent school districts with enrollment populations less than 50,000.

<sup>16</sup> See *2017 Census of Governments – Organization, Special District Governments by Function and State: 2017*, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html> (last visited Jul. 23, 2020). The U.S. Census Bureau data did not provide a population breakout for special district governments.

<sup>17</sup> See *2017 Census of Governments – Organization, County Governments by Population-Size Group and State: 2017*, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>; *Subcounty General-Purpose Governments by Population-Size Group and State: 2017*, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>; and *Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017*, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38,266 special district governments have populations of less than 50,000.

<sup>18</sup> *Id.*

<sup>19</sup> 47 CFR § 76.901(e). 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 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

<sup>20</sup> The number of active, registered cable systems comes from the Commission’s Cable Operations and Licensing System (COALS) database on November 16, 2018. See FCC, Cable Operations and Licensing Systems (COALS), [www.fcc.gov/coals](http://www.fcc.gov/coals) (last visited Nov. 16, 2018).

<sup>21</sup> 47 CFR § 76.901(c).

<sup>22</sup> See *supra* note 20.

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.”<sup>23</sup> There are approximately 45,073,297 cable subscribers in the United States today.<sup>24</sup> Accordingly, an operator serving fewer than 450,733 subscribers shall be deemed a small operator if its annual revenues, when combined with the total revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>25</sup> Based on the available data, we find that all but five independent cable operators serve fewer than 450,733 subscribers.<sup>26</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, 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,<sup>27</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under the definition in the Communications Act.

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

12. This Report and Order modifies two requirements for cable operators pertaining to the notices they must deliver to subscribers and LFAs in advance of service changes. First, the rule that requires cable operators to notify subscribers about changes to rates, programming services, or channel positions with 30 days’ advance notice will be clarified to instead require that cable operators notify subscribers “as soon as possible” in the case of retransmission consent or program carriage negotiations that fail during the last 30 days of a contract. This will reverse the Commission’s past position that negotiations are “within the control of the cable operator,” eliminating the need to notify customers of an impending change in programming 30 days in advance when carriage negotiations have not yet concluded. Second, the requirement that cable operators to notify LFAs of any changes to rates, programming services, or channel positions will be eliminated entirely for cable operators that are subject to effective competition.<sup>28</sup>

#### **F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.**

13. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 or reporting requirements under the rule for such small entities; (3) the use of performance rather than

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<sup>23</sup> 47 U.S.C. § 543(m)(2). *See also* 47 CFR § 76.901(e) & nn.1–3.

<sup>24</sup> *See* S&P Global Market Intelligence, *U.S. Multichannel Industry Benchmarks*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/multichannelIndustryBenchmarks> (last visited Jul. 24, 2020).

<sup>25</sup> 47 CFR § 76.901(e); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bur. 2001).

<sup>26</sup> *See* S&P Global Market Intelligence, *Top Cable MSOs*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/topCableMSOs>, (last visited Jul. 24, 2020).

<sup>27</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules.

<sup>28</sup> Consistent with section 623(b)(6) of the Act, we will retain a requirement that cable operators not subject to effective competition provide 30 days’ advance notice to LFAs of any proposed increase in the price to be charged for the basic service tier. *See* 47 U.S.C. § 543(b)(6).

design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>29</sup>

14. The Report and Order, as stated in Section A of this FRFA, modifies two rules to reduce the burden on all cable operators, including small operators, as they will not be required to provide as many notices. Likewise, this may reduce the burdens on small local governments, which would not have to review as many filings. As a part of the Commission’s Media Modernization Initiative, the intent of changing these requirements is to reduce the costs of compliance with the Commission’s rules, including any related managerial, administrative, legal, and operational costs. We anticipate that small entities, as well as larger entities, will benefit from this modification.

**G. Report to Congress**

15. 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.<sup>30</sup> 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.

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<sup>29</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

<sup>30</sup> 5 U.S.C. § 801(a)(1)(A).