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 Retransmission Consent	)	MB Docket No. 10-71
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: December 12, 2019 **Released: December 12, 2019**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairman Pai and Commissioners O'Rielly, Carr, Rosenworcel, and Starks issuing separate statements.

I. INTRODUCTION

1. 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 raises 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.

2. This Notice of Proposed Rulemaking (NPRM) seeks comment on whether to update our rules concerning notices that cable operators must provide to subscribers and local franchise authorities (LFAs) regarding service or rate changes. Specifically, in order to eliminate the potential for consumer confusion, we seek comment on whether to amend sections 76.1601 and 76.1603 of our rules to make clear that cable operators must provide subscriber 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.[1] We also seek comment on whether to amend section 76.1603 to require notice to LFAs (for any service change) only if required by the LFA and whether to adopt other minor streamlining changes to the rule discussed below. In reviewing these rules, we seek to make consumer notices more meaningful and accurate, reduce consumer confusion, and ensure that subscribers receive the information

[1] 47 CFR § 76.1603. *See* Letter from Elizabeth Andrion, Senior Vice President, Regulatory Affairs, Charter Communications, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, at 3-6 (Feb. 6, 2018) (Charter Letter) (requesting 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.").

they need to make informed choices about their service options. With this proceeding, we continue our efforts to modernize our regulations to better reflect today's media marketplace.[2]

II. BACKGROUND

3. Several provisions of the Communications Act of 1934, as amended (the Act) address the notices that cable operators must provide to their subscribers and local franchise authorities regarding service or rate changes. Section 632 directs the Commission to adopt "standards by which cable operators may fulfill their customer service requirements," that govern, among other things, "communications between the cable operator and the subscriber"[3] 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."[4] In addition, section 623(b) of the Act, which directs the Commission to adopt regulations governing the rates for the basic service tier for cable systems not subject to effective competition, specifies that the standards must "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 service tier."[5] Further, section 624(h) grants LFAs the authority 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."[6]

4. The Commission adopted regulations implementing these notice and customer service requirements through several decisions issued in 1993.[7] In 1999, the Commission revised and streamlined the cable television notice requirements contained throughout Part 76 of the Commission's rules and consolidated them into a newly created Subpart T.[8] As part of that reorganization, the Commission moved to section 76.1601 a requirement that cable operators provide written notice to any broadcast television station and all of the system's subscribers at least 30 days prior to either deleting from carriage or repositioning that station. In addition, the Commission consolidated three other notice requirements into section 76.1603.[9] Currently, section 76.1603 requires cable operators to: (1) notify customers "of any changes in rates, programming services, or channel positions as soon as possible in writing," and "a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator;" (2) "notify subscribers 30 days in advance of any significant changes in the

[2] *See Commission Launches Modernization of Media Regulation Initiative*, 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).

[3] 47 U.S.C. § 552(b).

[4] 47 U.S.C. § 552(c).

[5] 47 U.S.C. § 543(b)(6).

[6] 47 U.S.C. § 544(h)(1).

[7] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5712-14, paras. 123-124 (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*, 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*, Report and Order, 8 FCC Rcd 2965, 2991-2, paras. 105-110 (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).

[8] *See 1998 Biennial Regulatory Review - Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, Report and Order, 14 FCC Rcd 4653, 4655-58, paras. 7-11 (1999).

[9] The requirements overlap slightly due to the consolidation.

other information required by Section 76.1602"[10]; (3) "give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change," stating the precise amount of any rate change and a brief explanation in readily understandable fashion of the cause of the rate change[11]; and (4) "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" and no more than 60 days if the equipment is provided to the consumer without charge under section 76.630 because the operator encrypts the basic service tier.[12] Notably, these rules only apply to cable operators and not to other MVPDs.

5. 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."[13] 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]."[14] The Commission also sought comment on whether to expand the section 76.1601 consumer notice requirements in various ways, including whether they should apply to all MVPDs.[15] Notably, the *Retransmission Consent NPRM* focused only on notice related to changes that resulted from broadcast retransmission consent negotiations and only on revisions to section 76.1601.[16]

[10] 47 CFR § 76.1603(b). Section 76.1602 requires cable operators to notify subscribers 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 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) and (c).

[11] 47 CFR § 76.1603(c).

[12] 47 CFR § 76.1603(d). To the extent the cable 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. 47 CFR § 76.1603(e).

[13] *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 this proceeding only addressed 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).

[14] *Id.* at 2738, para. 34.

[15] *Id.* at 2737-38, paras. 35-36. We will address the comments submitted in response to the *Retrans NPRM* on this issue to the extent they are not superseded. Because of the length of time that has elapsed since the previous rulemaking and intervening regulatory developments, we are providing interested parties an opportunity to refresh the record on these issues in the context of considering other potential rule revisions.

[16] 47 CFR § 76.1603(b). In the *Retrans NPRM,* the Commission stated 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). *Retrans NPRM*, 26 FCC Rcd 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) ("given that Time Warner knew that it did not have a carriage deal with the NFL . . . the company could have easily

(continued….)

6. More recently, in response to a service notice change complaint that the Media Bureau ultimately dismissed at the complainant's request,[17] Charter filed a letter urging us not to adopt an interpretation of section 76.1603 that would require that cable operators "provide a 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."[18] Such an interpretation, they maintain, would "harm[] consumers and disserve[] the public interest in ensuring fair bargaining."[19] Charter explains that "[n]egotiations between cable operators and programmers or broadcasters usually come down to the final 30 days of an agreement—indeed, often down to the final day or hours."[20] And Charter notes that "[t]he vast majority of those negotiations—as many as 99 percent—end successfully, but a few do not."[21] Moreover, Charter contends any failed negotiations are not strictly within the cable operator's control.[22] Accordingly, "Charter proposes 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. If those negotiations fail and the channel goes dark as a result, the cable operator would be required to provide notice to subscribers 'as soon as possible.'"[23]

7. Earlier this year, the Commission, in response to parties' feedback to the *Media Modernization Public Notice*, amended our rules to clarify the mechanism by which cable operators must notify subscribers and LFAs about service and rate changes.[24] Specifically, the Commission modified our rules to allow certain notices required under Subpart T of the Commission's rules, including the notices required to be delivered to subscribers under sections 76.1601 and 76.1603, to be delivered electronically via a verified email address, so long as an opt out mechanism for the subscriber to receive paper notices instead is provided.[25] This flexibility applies to "general notices," that provide "a comprehensive catalog of information" as opposed to the notices that convey "targeted and immediate information about a single

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taken away from the NFL any 'unilateral right to dictate carriage terms' simply by providing customers with 30-days notice that the NFL Network might be dropped."). We acknowledge that we are revisiting the Commission's previous conclusion with the questions we ask regarding section 76.1603(b) in this NPRM.

[17] *Starz Entertainment, LLC's Petition for Declaratory Ruling, Enforcement Order, and Further Relief & Emergency Petition for Injunctive Relief against Altice USA, Inc., Cablevision Systems Corporation, and CSC Holdings, LLC*, MB Docket No. 18-9, Order, 33 FCC Rcd 1925 (MB 2018).

[18] Charter Letter at 3.

[19] *Id.*

[20] *Id*. at 2.

[21] *Id*. (citing Phil Kurz, *Alliance Cries Foul Over TV Retrans Blackouts*, TVNewsCheck (Jan. 9, 2018) http://www.tvtechnology.com/news/0002/alliance-cries-foul-over-tv-retrans-blackouts/282527).

[22] *Id*. at 2-3.

[23] *Id*. at 3. ACA Connects notes that "[w]hile larger cable operators typically negotiate retransmission consent and program carriage agreements on an individual basis, smaller cable operators generally negotiate program carriage agreements collectively through buying groups (such as the National Cable Television Cooperative), and have increasingly negotiated retransmission consent agreements with large station groups in the same manner." Letter from Brian Hurley, Vice President of Regulatory Affairs, ACA Connects–America's Communications Association. To Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-347, at 2 (Dec. 6, 2019).

[24] *See* NCTA – The Internet and Television Association Comments, MB Docket Nos. 17-105, 07-42, 02-144, GN Docket No. 17-142, at 6-7 (rec. July 5, 2017) (NCTA Comments); Frontier Communications Reply, MB Docket Nos. 17-105, 14-127, 12-217 10-71, 07-42, 05-311, at 8 (rec. Aug. 4, 2017) (Frontier Reply).

[25] *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317, 17-105, Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 11518, 11520-23, paras. 7-12 (2018).

event" at issue in this NPRM.[26] We seek to build on these reforms to ensure that our rules about the timing of service and rate change notices best reflect marketplace realities and minimize customer confusion

III. DISCUSSION

8. We seek comment on three specific issues related to the notice obligations in sections 76.1601 and 76.1603: (1) whether to make clear in section 76.1603(b) 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 but, in that situation, they must provide notice "as soon as possible"; (2) whether to modify section 76.1603(c) to require service and rate change notices to LFAs only if required by an LFA; and (3) whether to adopt several technical edits to sections 76.1601 and 76.1603 to make the rules more readable and remove duplicative requirements. Finally, we seek comment on whether there are any other changes to these rules or other notice rules that we should consider.

9. *Service Change Notice Due to Failed Carriage Negotiations.* First, we seek comment on whether to amend section 76.1603(b) to make clear that there is no obligation on a cable operator to provide notice to subscribers of changes 30 days in advance when retransmission consent or program carriage negotiations between a cable operator and a broadcaster or programmer fail during the last 30 days of a contract. Rather, in that situation, they must provide notice "as soon as possible" when service changes occur.[27] As noted above, section 632(b) of the Act directs the Commission to adopt "standards by which cable operators may fulfill their customer service requirements,"[28] 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."[29] These statutory provisions do not explicitly state that all notices must be provided in advance. In fact, Section 632(c) refers only to "notice," whereas various other provisions of the Act specifically require "advance notice."[30] We recognize, however, that 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."[31] Although cable operators must currently provide

[26] *Id*. at 11525, n.61.

[27] We note that the first sentence of section 76.1603(b) of our rules already requires cable operators to notify subscribers of "change in . . . programming services or channel positions as soon as possible in writing." 47 CFR § 76.1603(b). As described below, we also propose to modify section 76.1601 consistent with this approach. *See* para 18 and note 54. We do not intend to alter the requirement under section 76.1603(b) for a cable operator to provide at least 30 days advance written notice when it deletes or repositions a channel for reasons other than those outside of the cable operator's control. *See* Charter Letter at 4 ("Charter is also not proposing to eliminate the 30-day notice requirement in cases where a cable operator has decided in advance to drop a channel rather than extend the carriage contract, or if carriage negotiations have ceased by mutual agreement prior to the last 30 days before the expiration of a contract."). As discussed below, however, we seek comment on whether to require notice to LFAs only if required by an LFA. In paragraph 19 below, we also seek comment on moving all of section 76.1603(c)'s consumer notice requirements to section 76.1603(b), and all of 76.1603's LFA notice requirements to section 76.1603(c).

[28] 47 U.S.C. § 552(b).

[29] 47 U.S.C. § 552(c). Section 615(g)(3), which requires cable operators to notify subscribers 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).

[30] 47 U.S.C. § 534(b)(9); 535(e)(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.").

[31] H.R. REP. NO. 104-204(I), at 112 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 79.

notice of all channel lineup changes to subscribers, we recognize that providing 30-day advance notice in the context of carriage negotiations poses unique challenges to providers[32] and risks creating consumer confusion, particularly given that consumers usually do not experience service disruption as a result of retransmission consent or program carriage negotiation disputes.[33]

10. Charter asserts that providing 30-days' advance notice of a potential channel deletion is often impractical because "[n]egotiations between cable operators and programmers or broadcasters usually come down to the final 30 days of an agreement—indeed, often down to the final day or hours."[34] It maintains that requiring a cable operator to notify its subscribers and LFAs 30 days in advance "*any time* negotiations over the carriage of a channel enter the final month of an agreement solely because the channel *might* be dropped harms consumers and disserves the public interest in ensuring fair bargaining."[35] Charter proposes that if "negotiations fail and the channel goes dark as a result," a cable operator should be required to provide notice "as soon as possible."[36]

11. We seek comment on Charter's proposal and other ways we can make consumer notice more effective in the context of failed carriage negotiations. Specifically, if a channel is deleted because of a failure of negotiations in the last 30 days of a contract, should we require cable operators to provide notice of the deletion "as soon as possible" after the failure occurs, as Charter proposes? If so, how should we define "as soon as possible," and would this provide subscribers sufficient notice? How would we determine when negotiations have failed so as to trigger the requirement? Is there an alternative event that could be used to trigger the notice requirement short of a blackout? The Commission has previously said that retransmission consent negotiations are under 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."[37] 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.[38] Accordingly, we seek comment on whether the better interpretation is that a single party to a negotiation cannot control the ultimate outcome of the negotiation and therefore cannot be

[32] *See*, *e.g.*, Petition of Starz Entertainment, LLC for Declaratory Ruling, Enforcement Order, and Further Relief, MB Docket No. 18-9, at 4-6 (filed Jan. 9, 2018), https://ecfsapi.fcc.gov/file/10112075658270/Starz_Entertainment__LLC_Petition_for_Declaratory_Relief__Enforcement_Order_and_Further_Relief.pdf; Petition of the City of Yuma, Arizona et al. for Declaratory Ruling, Enforcement Order, and Further Relief, MB Docket No. 18-91, at 5-7 (filed March 15. 2018) (both complaining of improper consumer and LFA notice in cases where cable operators discontinued carriage of networks due to failed carriage negotiations).

[33] S&P Global Market Intelligence reports 17 service disruptions out of 243 reported retransmission consent negotiations in 2018, which means that in 90% of cases subscribers could receive a notice of a possible service disruption that ultimately does not result in a service disruption. *See 2018 Retrans Roundup*, S&P Global Market Intelligence Tech Media & Telecoms, https://platform.marketintelligence.spglobal.com/web/client?auth=inherit#news/docviewer?KeyProductLinkType=2&mid=102652263 (Jan. 17, 2019). The report notes that those numbers include only publicized blackouts and deals; we invite commenters to provide additional data on this topic.

[34] Charter Letter at 2.

[35] *Id*. at 3.

[36] *Id*.

[37] *Retrans NPRM* at 2738, n.109.

[38] *See id*.

required to give advance notice of a potential loss of a channel.[39] If so, should we provide clarity to interested parties by codifying in our rules that failed retransmission consent or program carriage negotiations are not within the control of the cable operator for purposes of the advanced notice requirement of Section 76.1603?

12. We seek comment on the impact to subscribers to the extent that we make clear that cable operators must provide channel deletions notices to subscribers "as soon as possible" in the case of retransmission consent and program carriage negotiations that fail during the last 30 days of a contract. We seek comment on whether requiring notice "as soon as possible" in these circumstances, rather than 30 days in advance, would be beneficial to subscribers because the notice they would receive would be clearer and more meaningful. As Charter points out, premature notices "could create significant subscriber confusion, leading subscribers to unnecessarily change their cable provider, which could be costly for consumers."[40] Assuming negotiations usually come down to the final 30 days, as Charter maintains, does requiring 30-days' notice anytime an agreement could not be reached create unnecessary subscriber confusion? Does the practice of agreeing to short-term extensions of carriage agreements while negotiations are ongoing add to this confusion? Or, is there a benefit to consumers in receiving 30-day advance notices even if such notices turn out not to be accurate that outweighs any harms? [41] If the rules are revised to allow notice to be given to consumers only after a negotiation has failed and a channel has been deleted, could this practice cause other unintended harms for consumers? Should cable operators be required to provide notice at a time other than 30 days before loss of service in the context of a retransmission consent negotiation, such as a week or 48 hours before expiration of a contract? Do the available online video programming alternatives to traditional MVPD services eliminate the need for subscribers to have advance notice of any potential blackouts, as Charter suggests?[42] Given that subscribers may have access to blacked out programming via online sources, does that reduce or eliminate the need to switch providers in order to continue receiving the blacked out content? Are there other factors that impact a consumer's ability to change providers in the event of a loss of programming? Is there a way to ensure that subscribers have sufficient warning that they may no longer have access to programming without unnecessarily alerting them every time carriage negotiations could result in an impasse? Are there ways for the Commission to track the use and effectiveness of these notices? Should cable operators be required to include these notices in their online public files?

13. How do cable operators comply with our notice rules today when faced with the prospect of failed retransmission consent and program carriage negotiations? Specifically, to what extent do cable operators currently provide notice 30 days in advance when negotiations may fail, and what mechanism do they use to provide notice in situations where it is unclear whether the channel in question will remain available? How often do those notices alert subscribers that they may lose a channel when the subscriber's service ultimately does not change because the cable operator and programmer negotiate a carriage agreement during the last 30 days of the expiring carriage agreement? How common is it for there to be multiple extensions of existing retransmission consent agreements, and do cable operators provide subscriber notice of each extension? Are there ways that cable operators currently keep

[39] *See* Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, Legal and Regulatory Affairs, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 19-347, 17-105, 10-71, at 4-5 (NAB December 6 Ex Parte).

[40] Charter Letter at 3.

[41] We recognize that in response to the *Retrans NPRM*, some commenters argued that 30-day advance notice was necessary for the benefit of subscribers. *See, e.g.*, Named State Broadcasters Association (Docket 10-71) at 8 https://ecfsapi.fcc.gov/file/7021673323.pdf ; Lin Television (Docket 10-71) at 23 https://ecfsapi.fcc.gov/file/7021673818.pdf; NAB December 6 Ex Parte at 1-3 (maintaining that there are potential benefits to consumers of the current 30-day notice requirements).

[42] *Id*. at 5 ("Consumers today can view programming in a matter of minutes through a programmer's app; an online video distributor, such as Netflix, Apple's iTunes, Amazon Prime, or Hulu; or potentially even an MVPD's online product. Obtaining access to these alternatives takes just minutes, not days or weeks.")

subscribers informed of ongoing negotiations with content providers or expiring contracts that could be used here? What type of notice, if any, do other non-cable MVPDs, that are not regulated under section 76.1603, provide to their subscribers in such instances?

14. As stated above, the statute allows cable operators to provide notice to subscribers using "any reasonable written means."[43] We seek comment on the "written means" by which the cable operator should give notice were we to adopt an approach requiring notice as soon as possible following failed negotiations. Are there any "reasonable written means" in the context of carriage negotiation failures that would not be reasonable in situations outside of the retransmission consent or program carriage context? For example, NCTA states that cable operators may use "channel slates"—notices that would replace the video feed in the event of a blackout—in order to quickly notify subscribers of a service change in the event of a negotiation failure.[44] We seek comment on whether this mechanism would constitute a "reasonable written means" for alerting subscribers of failed negotiations because it is the most targeted means to alert all affected subscribers as soon as possible. We also seek comment on whether newspaper notice is a reasonable written means in this context given the distinct possibility that the notice would not reach all, or many of, the affected subscribers in a timely manner. That is, even assuming that the affected cable subscriber actually subscribed to a newspaper, it is not clear whether that particular newspaper would contain the requisite notice or that the subscriber would read it in time to make an informed decision about potential service changes.

15. *Notice to LFAs for Service and Rate Changes*. Second, we seek comment on whether to modify section 76.1603(c) to require that notice of rate or service changes be provided by cable operators to LFAs only if required by an LFA.[45] We also seek comment on whether to amend section 76.1603(c) to direct cable operators to provide notice to LFAs 30 days in advance 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. This would change section 76.1603(c)'s current requirement that cable operators provide written notice to LFAs of any change in rates or services 30 days in advance regardless of the circumstance.[46] To what extent do LFAs rely on the current notice rules or the information about rate or other service changes provided to them pursuant to these rules?[47] How can LFAs use this information

[43] 47 U.S.C. § 552(c). We believe that whatever we adopt in this regard would satisfy section 76.1603(e), which tracks the statutory requirement. 47 CFR 76.1603(e). We note, however, that we seek comment on whether section 76.1603(e) is redundant of the statute and should be eliminated. *See* para. 20 below.

[44] Letter from Rick Chessen, Chief Legal Officer and Senior Vice President, Legal & Regulatory Affairs, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-at 1 n.3 ("As provided in Section 76.1603(e) and 47 U.S.C. § 552(c), cable operators have the flexibility to provide such notice 'using any reasonable written means at [their] sole discretion'—including, for example, channel slates.").

[45] Our proposed rule changes would not relieve any statutory obligation a cable operator might have to provide advanced notice under section 625(c)(1). 47 U.S.C. § 545(c)(1) ("Notwithstanding subsections (a) and (b), a cable operator may, *upon 30 days' advance notice* to the franchising authority, rearrange, replace, or remove a particular cable service required by the franchise if--(1) such service is no longer available to the operator; or (2) such service is available to the operator only upon the payment of a royalty . . . .") (emphasis added).

[46] 47 CFR § 76.1603(c).

[47] The City of Boston, Massachusetts is concerned that we "insufficiently address local government concerns and interests" and that rule changes "must involve input from, and consideration of the concerns of, local franchising authorities." Letter from Gerald Lavery Lederer, Counsel to Boston, to Marlene Dortch, Secretary, FCC, MB Docket No. 19-347, at 1 (Dec, 4, 2019); *see also* Letter from Nancy Werner, General Counsel, NATOA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-347, at 2 (Dec. 6, 2019). But we are seeking precisely such input regarding these concerns with these requests for comment. Commenters should offer specific examples of how they use this information and explain why this information would not be available if we change our rules as we propose.

given that almost no LFAs can regulate basic tier rates?[48] We acknowledge the Commission has said that the purpose of section 76.1603(c) is "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."[49] We seek comment on whether our contemplated modifications are consistent with this precedent as we contemplate that LFAs may still obtain service and rate change information to the extent they determine that they need and will require the information to protect subscribers. In light of the ability of LFAs to require rate and service change information from cable operators, we also seek comment on whether the notice requirements in section 76.1603(c) still remain necessary to enable LFAs to protect subscribers and, if so, why? Do LFAs receive similar information from non-cable MVPDs? Parties should discuss the costs and benefits of modifying this requirement.

16. We seek comment on whether the Commission has authority to revise its rule mandating 30-days advance notice to LFAs of any basic tier rate increase to instead require such notice only if required by an LFA. Section 623(b)(2) of the Act requires the Commission to "prescribe, and periodically thereafter revise, regulations to carry out its obligations" under Section 623(b)(1) to ensure that the rates for the basic service tier are reasonable.[50] And Section 623(b)(6), in turn, provides that such regulations "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 service tier."[51] But Congress directed the Commission to "prescribe, and periodically thereafter revise" its regulations adopted pursuant to Section 623(b). We seek comment on whether the Commission has authority to revise this rule as described given these statutory provisions.

17. We note that multiple provisions of the Communications Act give LFAs the authority to require this type of notice independent of the Commission's rules. Any individual LFA that wishes to be notified of rate or service changes may require such notices through the cable franchising process or pursuant to their authority under section 632(a) of the Act to "establish and enforce . . . customer service requirements of the cable operator."[52] Further, section 624(h) of the Act explicitly states that an LFA may require a cable operator to "provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel."[53] Given these statutory provisions, should we eliminate section 76.1603(c) altogether and allow LFAs to require this information under their own authority?[54] Would LFAs be unreasonably burdened by having to require explicitly that cable operators under their jurisdiction provide this information? Is such a notice requirement already typically included in local franchise agreements or State or local franchise requirements?

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[48] We recently found that 33 communities in Massachusetts and Hawaii are subject to effective competition under the Act. *Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI (HI0011)*, MB Docket No. 18-283, Memorandum Opinion and Order, FCC 19-110 (Oct. 25, 2019). As a result of this decision, very few communities are still authorized to regulate rates.

[49] *Oceanic Time Warner Cable,* Order on Review, 24 FCC Rcd 8716, 8724-25, para. 19 (2009).

[50] 47 U.S.C. § 543(b)(1).

[51] 47 U.S.C. § 543(b)(2).

[52] 47 U.S.C. § 552(a).

[53] 47 U.S.C. § 544(h).

[54] The Commission has previously observed that the "statute's explicit language makes clear that Commission standards are a floor for customer service requirements, rather than a ceiling, and thus do not preclude LFAs from adopting stricter customer service requirements." *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order, MB Docket No. 05-311, 22 FCC Rcd 19633, 19646, para. 27 (2007) (citing 47 U.S.C. §552(d)(2)).

18. *Readability and Redundancy*. Third, we seek comment on four technical changes to sections 76.1601 and 76.1603 that would clean up these rules. As noted above, Subpart T was the product of an effort to streamline the Commission's cable rules that consolidated multiple disparate notice provisions into one new subpart.[55] As a result, sections 76.1601 and 76.1603 contain several redundancies that we propose to eliminate. First, we propose to delete the requirement in the second sentence of section 76.1601 that cable operators provide notice of the deletion or repositioning of a broadcast channel "to subscribers of the cable system," a change that would not only delete a redundant provision but also consolidate all subscriber notice requirements regarding the deletion or repositioning of channels into section 76.1603(b).[56]

19. Second, we propose to revise sections 76.1603(b) and 76.1603(c) to clarify the notice obligations owed to subscribers and LFAs respectively. Currently, subsection (b) applies only to subscribers, while subsection (c) applies to both subscribers and LFAs.[57] Both sections require cable operators to give notice of any changes in rates, programming services, or channel positions. In order to eliminate the redundancies in the notice requirements applicable to subscribers in subsections (b) and (c), we propose to revise section 76.1603(b) to explain what notice must be given to subscribers and section 76.1603(c) to explain what notice must be given to LFAs.[58]

20. Third, we note that section 76.1603(d)'s requirement that cable operators notify subscribers about changes in rates for equipment that is provided without charge under section 76.630 was adopted pursuant to section 624A of the Act.[59] We seek comment on whether to delete this requirement from section 76.1603, because it is duplicative of language in section 76.630(a)(1)(vi).

21. Fourth, we seek comment on whether to delete section 76.1603(e) of our rules as redundant of the statutory requirement in section 632(c). That is, the language contained in section 76.1603(e), "any reasonable written means at its sole discretion" mirrors the statutory requirement. Moreover, currently both sections 76.1603(b) and (c) require written notifications of service and rate changes to subscribers. Thus, it is not clear what the requirement in section 76.1603(e) adds. We seek

[55] *See supra* notes 7-8 and accompanying text.

[56] We do not propose to eliminate the requirement altogether but only to delete the redundant language. *Compare* 47 CFR § 76.1601 *with* 47 CFR § 76.1603(b); *see* NAB December 6 Ex Parte at 1 (stating that we seek comment on whether to eliminate a "cable operator's obligation to provide advance notice to subscribers of the deletion or repositioning of broadcast signals (47 C.F.R. § 76.1601)," when we instead propose to move the requirement to section 76.1603(b)). Section 76.1603(b)'s notice requirement regarding service changes applies broadly to all channels, including broadcast channels, carried by a cable operator, while section 76.1601 applies only to broadcast signals. The concerns raised above regarding the difficulty of providing 30 days' advance notice in the context of retransmission consent and program carriage disputes apply equally to section 76.1601's subscriber notice requirement in its current form. Any proposed change to section 76.1603(b) to address the unique challenges caused by failed retransmission consent or program carriage negotiations would be undercut if we do not amend the second sentence of section 76.1601 to reflect that change. We do not propose to change section 76.1601's requirement that cable operators provide written notice to a broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station, because it is required by statute. *See* 47 U.S.C. § 534(b)(9) ("A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station."); 47 U.S.C. § 535(g)(3) ("The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the cable operator, at least 30 days in advance of such repositioning, has provided written notice to the station.").

[57] 47 CFR § 76.1603(b) and (c).

[58] *See infra* Appendix A.

[59] *Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, PP Docket No. 00-67, Report and Order, 27 FCC Rcd 12786, 12809-12811, paras. 34-36 (2012).

comment on the extent to which we need to elaborate in section 76.1603(b) or elsewhere what constitutes "reasonable written means" under the Act.[60]

22. *Other Proposals*. Finally, we seek comment on whether the Commission should consider other modifications to sections 76.1601 or 76.1603 unrelated to failed carriage negotiations. Frontier asserts that the Commission should "shorten the 30-day timeframe to 5 or 15 days to better enable regulated providers [to] respond to competition."[61] Should the Commission consider shortening notice timeframes and, if so, to which notices covered by sections 76.1601 and 76.1603 should these timeframes apply? What is the appropriate timeframe that should be adopted for each rule under consideration? If the Commission were to shorten these notice periods, would subscribers still have adequate time to change service providers or make other changes in response to such notices?

23. Other stakeholders have suggested that the sections 76.1601 or 76.1603 notice requirements include much information that does not actually assist subscribers in making decisions about their cable service.[62] Does the volume of information required by these notice rules and the frequency with which notices must be given inundate subscribers with information that does not assist them in making decisions about their cable service? Would subscribers benefit more from more targeted notices? What information do subscribers actually require to make informed decisions about whether to continue or discontinue their cable service?[63]

24. For example, should we eliminate the requirement in section 76.1603(b) that cable operators notify subscribers 30 days in advance of any significant changes in the information reported in annual notices required by section 76.1602, as NCTA and Frontier request?[64] NCTA contends that this notice requirement "imposes unnecessary burdens on operators to provide change notices," and that "much of this information is of little value to customers and readily available on company websites."[65] Would consumers be able to obtain such information elsewhere if this requirement were eliminated? Should we consider a more targeted rule that requires 30-day notice of only certain specified changes, such as changes in channel position,[66] rather than notice of significant changes to any of the information delineated in section 76.1602?

25. We also seek comment on whether we should amend the notice requirements with respect to multiplexed broadcast signals. Specifically, we question the continued relevance of the language in section 76.1603(c) that states: "[f]or the purposes of the carriage of digital broadcast signals, the operator

[60] For example, as we note above in paragraph 14, newspaper publication is likely not reasonable written means in the context of service changes due to failed carriage negotiations.

[61] Frontier Reply at 8-9 (arguing that the 30-day advance notice requirements in section 76.1603 complicate even minor changes for cable operators, while competitors in the video market, particularly online video distributors (OVDs), remain relatively unregulated).

[62] NCTA Comments at 6-7 (arguing "much of this information is of little value to customer and readily available on company websites"); Frontier Reply at 8 (suggesting that "consumers are increasingly overexposed to information" in part due to the notice requirements).

[63] NAB requests that we seek specific comment on early termination fees and broadcast TV fees. NAB December 6 Ex Parte at 3-4. We decline to do so here because those issues are not sufficiently related to the main subject of this proceeding.

[64] 47 CFR § 76.1603. *See* NCTA Comments at 6-7; Frontier Reply at 8-9. *See supra* note 10 for a full list of the information required under section 76.1602.

[65] NCTA Comments at 6-7.

[66] Section 76.1603(b) as proposed in Appendix A does not mention a channel position change as a change that would require notice, even though that change is specified in the current iteration of the rule. *See* 47 CFR § 76.1603(b). We note, however, that the proposed rule would require notice of channel repositioning because it would represent a significant change of information required under section 76.1602 of our rules.

need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts."[67] The Commission originally adopted this rule eight years prior to the full-power digital transition.[68] Now that it has been more than 10 years since the digital transition, is this rule still relevant? This language, based on the Commission's predictive judgment regarding a nascent service, appears to exempt multicast programming streams that air only during certain dayparts from the subscriber notification requirements (to the extent such streams are carried by a cable operator). We seek comment on that interpretation and whether such a rule is necessary or appropriate today. Do cable operators even carry such streams (i.e., those that only air during certain dayparts) in their channel lineups? We seek comment on these issues.

IV. PROCEDURAL MATTERS

26. *Initial Regulatory Flexibility Act Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[69] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix B.

27. *Paperwork Reduction Act*. This document may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501 through 3520). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the *Federal Register* inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), the Commission will seek specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

28. *Ex Parte Rules—Permit-But-Disclose*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written

[67] 47 CFR § 76.1603(c).

[68] *See Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999; Local Broadcast Signal Carriage Issues; Application of Network Non-Duplication Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, First Report and Order and Notice of Proposed Rulemaking, CS Docket Nos. 98-120, 00-96, and 00-2, 16 FCC Rcd 2598, 2639, para. 89 (2001) (stating that "we will require a cable operator to notify subscribers whenever a digital television signal is added to the cable channel line-up or whenever such a signal is moved to another channel location. We will not require an operator to notify subscribers of the actual programming available on each possible SDTV digital stream, if such is carried under retransmission consent, because the mix of programs and services may change frequently.").

[69] *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).

comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

29. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

30. *People with Disabilities*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

31. *Availability of Documents*. Comments and reply comments will be publicly available online via ECFS.[70] These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

32. *Additional Information*. For additional information on this proceeding, contact Brendan Murray, Brendan.Murray@fcc.gov, or John Cobb, John.Cobb@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120.

[70] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

V. ORDERING CLAUSES

33. **IT IS ORDERED** that, pursuant to the authority found 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 this Notice of Proposed Rulemaking **IS ADOPTED.**

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

Part 76 of the Commission's rules is amended 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 § 76.1601 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.

3. 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, services, or any of the other information required to be provided to subscribers by § 76.1602 using any reasonable written means at the operator's sole discretion. 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. 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.

(c) Upon the request of the local franchising authority, cable operators shall provide written notice to local franchising authorities of any changes in rates or services using any reasonable written means at the operator's sole discretion. Notice shall be provided to local franchising authorities 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. 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.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

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 raises 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 Notice of Proposed Rulemaking (NPRM) seeks comment on whether to update our rules concerning notices that cable operators must provide to subscribers and local franchise authorities (LFAs) regarding service or rate changes. Specifically, in order to eliminate the potential for consumer confusion, we seek comment on whether to amend sections 76.1601 and 76.1603 of our rules to make clear that cable operators must provide subscriber 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.[4] We also seek comment on whether to amend section 76.1603 to require notice to LFAs (for any service change) only if required by the LFA and whether to adopt other minor streamlining changes to the rule discussed below. In reviewing these rules, we seek to make consumer 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.

B. Legal Basis

4. The proposed action is authorized pursuant to 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.

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

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] 47 CFR § 76.1603. *See* Letter from Elizabeth Andrion, Senior Vice President, Regulatory Affairs, Charter Communications, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, at 3-6 (Feb. 6, 2018) (Charter Letter) (requesting 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.").

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

5. *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."[5] U.S. Census Bureau data from the 2012 Census of Governments[6] indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[7] Of this number there were 37,132 General purpose governments (county,[8] municipal and town or township[9]) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts[10] and special districts[11]) with populations of less than 50,000. The 2012 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.[12] Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."[13]

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[5] 5 U.S.C. § 601(5).

[6] *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* Program Description Census of Government https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#

[7] *See* U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. 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).

[8] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. There were 2,114 county governments with populations less than 50,000.

[9] *See* U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

[10] *See* U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. There were 12,184 independent school districts with enrollment populations less than 50,000.

[11] *See* U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. The U.S. Census Bureau data did not provide a population breakout for special district governments.

[12] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. 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.

[13] *Id.*

6. *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.[14] Industry data indicate that, of 4,200 cable operators nationwide, all but 9 are small under this size standard.[15] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[16] Industry data indicate that, of 4,200 systems nationwide, 3,900 have fewer than 15,000 subscribers, based on the same records.[17] Thus, under this second size standard, the Commission believes that most cable systems are small.

7. *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 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."[18] There are approximately 49,011,210 cable subscribers in the United States today.[19] Accordingly, an operator serving fewer than 490,112 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.[20] Based on the available data, we find that all but five independent cable operators are affiliated with entities whose gross annual revenues exceed $250 million.[21] 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,[22] 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.

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

8. Today, cable operators must provide notice to subscribers and LFAs at least 30 days prior to any service or rate change if the change is within the control of the cable operator and explain the reason for any rate change. If we were to adopt the rule changes upon which we seek comment, two reporting requirements would change. First, cable operators would not need to provide notice to subscribers 30 days in advance of channel lineup changes when the change is due to unsuccessful carriage

[14] 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 (1995).

[15] 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 (last visited Nov. 16, 2018).

[16] 47 CFR § 76.901(c).

[17] *See supra* note 15.

[18] 47 U.S.C. § 543(m)(2); *see also* 47 CFR § 76.901(e) & nn.1–3.

[19] *See* SNL Kagan at https://platform.mi.spglobal.com/web/client?auth=inherit#industry/multichannelIndustryBenchmarks.

[20] 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).

[21] *See* SNL Kagan at http//:www.snl.com/interactivex/TopCableMSOs.aspx.

[22] 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.

negotiations, but rather the cable operator would need to provide notice "as soon as possible" to its subscribers and LFAs. Second, cable operators would only need to notify LFAs of any relevant rate or service changes if the LFA requires such notice.

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

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[23]

10. We do not propose any specific steps to treat small entities differently from other entities because we see no statutory authority for such treatment. We seek comment on this analysis. The NPRM's proposals would reduce the burdens on all cable operators, including small operators, because the operators would not need to provide as many notices. Likewise, they could reduce the burdens on small local governments, which would not have to review as many filings. We believe, however, that some subscriber and LFA notice is necessary to effectuate the requirements of the Communications Act and provide subscribers and LFAs with information they need to make reasoned decisions.

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

11. None.

[23] 5 U.S.C. § 603(c)(1)-(c)(4).

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *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 Retransmission Consent*, MB Docket No. 10-71.

If you've ever experienced a Washington, DC winter, you know of our area's strange relationship with snow. The forecasts almost always overestimate the amount of snow we actually get, snowfall of more than three inches paralyzes the city, and a snowflake or two is enough to close the Montgomery County Public Schools. And although we often speak of the great blizzards that kept us trapped at home with our children for a week—Snowzilla, Snowpocalypse, Snowmageddon—we never seem to remember those blizzards that didn't come to pass.

Likewise, although consumers remember the television blackouts that denied them their favorite shows or live sports, they generally don't remember the blackouts that never happened. And the fact is that most contentious retransmission consent and program carriage disputes between broadcasters and cable programmers, on the one hand, and cable operators, on the other, are resolved shortly before existing agreements expire—sometimes hours before the existing agreement ends. Perhaps that's because, as Professor Moriarty said in an episode of *Star Trek: The Next Generation*, "A deadline has a wonderful way of concentrating the mind."

But our rules don't reflect this marketplace reality. They require at least 30-days' notice of a channel deletion if that deletion is within the control of the cable operator. And the Commission many years ago suggested that blackouts that result from failed retransmission consent or program carriage negotiations are within the control of a cable operator. But it doesn't make sense to require cable operators to send out a notice that programming will be dropped whenever carriage negotiations carry into the last 30 days of a contract. That's because the vast majority of these potential channel deletions never come to pass, as the impasse is resolved within that 30-day period. So these notices mainly serve to confuse consumers and desensitize them to notices of channel deletions that are actually going to occur. It would be as if during the winter, weather forecasters were required to notify the public each day that it might snow in 30 days.

The NPRM we adopt today, however, proposes to make our notification requirements more meaningful and accurate for consumers by requiring them to be sent as soon as possible after retransmission consent or program carriage negotiations have failed and a channel deletion is in the cards. In my view, this change would reduce consumer confusion and provide subscribers with the information they need to make informed choices about their service options. This item also proposes revisions to other rules to eliminate redundancies and make some technical tweaks to make rules a bit more readable. Anyone who's enjoyed the simple pleasure of reading Part 76 of the FCC's rules by a fireplace during a holiday blizzard will know that some of our rules aren't quite models of clarity.

I'd like to thank the dedicated Commission staff that worked on this item. From the Media Bureau: Michelle Carey, John Cobb, Maria Mullarkey, Brendan Murray, and Sarah Whitesell. And from the Office of General Counsel, Susan Aaron and David Konczal. I hope your holidays are filled with reading far more interesting than Part 76.

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *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 Retransmission Consent*, MB Docket No. 10-71.

As is our great monthly custom for this Commission, we consider another important way to update our media regulations by acknowledging the reality that retransmission consent negotiations often continue well within the 30-day window contemplated by the existing rules at issue. Specifically, this item proposes to rightfully remove an FCC-mandate for traditional video providers that doesn't match up with real world practices. Appropriately, the item takes care to ask numerous questions about consumer costs and benefits as well, to ensure that we do not take steps that would confuse consumers or require certain businesses to make announcements about hypothetical outcomes prematurely. I recognize that in the retrans arena, even the slightest changes can have an impact on the bargaining power of one entity over another, so we proceed judiciously.

At the same time, these debates continually highlight the need for wholesale reform. If we confine every debate to the existing regulatory silos, we can easily miss the bigger picture, which reveals the existential threat that traditional broadcasters and multichannel video programming distributors (MVPD) alike face from virtually unregulated over-the-top and streaming video providers. This, of course, does not mean we should neglect our effort to reform existing regulations; quite the contrary. We should boldly advance more aggressive reforms in this arena to allow traditional providers to compete more effectively with the rest of the marketplace.

I approve.

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *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 Retransmission Consent*, MB Docket No. 10-71.

Mind the gap. Cross traffic does not stop. Beware of dog.

There is no doubt that notice can be a good thing. It helps us to stay safe in unfamiliar circumstances and to make informed choices about our day-to-day lives. But not all notice is created equal. To be truly meaningful, notice must be relevant, timely, and actionable. And, most of all, accurate. If our subscriber notice requirements for cable service changes are not providing customers with meaningful information, then the notices may be doing more harm than good.

And there is every indication that this might be the case. For instance, our rules require cable providers to notify their customers 30 days before a channel goes dark, provided the change is within the provider's control. But here's the catch—a Catch-76.1603, if you will—in carriage negotiations, no single party controls the outcome. And as a practical matter, it is not always clear when a provider hits that 30-day mark. After all, retransmission consent and program carriage disputes are often resolved within the 30-day window before an agreement expires and both sides seem to agree that carriage disruptions are exceedingly rare. So it would be odd for the FCC's rules to require providers to send notices when there is no indication that negotiations have broken down. And that notice would not appear to advance the interests of consumers, either. Therefore, we ask the right questions today about ways we can create a more effective notice regime.

I want to thank the Media Bureau for its work on the item. It has my support.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *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 Retransmission Consent*, MB Docket No. 10-71.

Few Americans have heard of the term "retransmission consent." It is one of those wonky and lawyerly things we bandy about in these halls and in this town. Fewer still know that a quarter of a century ago Congress prohibited retransmitting a broadcast television station's signal without the station's consent—and at the same time directed parties negotiating for this consent to do so in good faith.

But far too many Americans know what happens when retransmission consent negotiations go wrong. They turn on the television, hoping to watch the news, their favorite show, or the big game and instead are stuck with a dark screen. They may not know how and why retransmission consent negotiations between broadcasters and their cable or satellite company have failed, but they know a blackout means they are not getting the programming they paid for.

The Federal Communications Commission has long had rules that govern these negotiations. When they fail, our rules require cable providers to give their subscribers notice of a possible change in service 30 days in advance.

The purpose behind this rule is clear. We want consumers to have advance notice of any disruption in service. But we also need to ensure this rule works in the real world. Right now our approach is absolute, so it requires alerting subscribers to ongoing negotiations that often get resolved in the final week, days or hours of a retransmission consent carriage contract—and never even lead to a dark screen. So with the media marketplace evolving, it makes sense to take a fresh look at these rules. But I think when we do we need to ensure that consumers come first. Their voices need to be heard too—because they are the ones paying for this service. Let's not forget that. And to this end, I want to thank my colleagues for making some changes to today's decision, including removing heavy-handed tentative conclusions and including additional questions at Commissioner Starks' request. I look forward to the record that develops.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *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 Retransmission Consent*, MB Docket No. 10-71.

Chief among our responsibilities at the Commission is protecting consumers. This a responsibility that I take very seriously. The FCC, at its best, is an important referee on the field making sure that consumers receive the services that they pay for, aren't charged for services they don't want, and aren't otherwise taken advantage of in the marketplace.

Consumers are currently facing a challenging video marketplace with television blackouts becoming more frequent and lasting longer, and higher bills with increasing fees. Indeed, this year consumers across the country have experienced 276 television blackouts – up from only 8 in 2010 – with the very longest blackout lasting three-quarters of a year.[1] And according to Consumer Reports, cable customers now pay an average of 13 line item fees on each bill amounting to $450 per year on top of the cost of service.[2] In this complex and evolving environment, I firmly believe that transparency is key and our regulatees should communicate early and often with customers about any changes to their rates or service.

That is why I approach today's proceeding with some measure of caution. This NPRM proposes to amend our statutorily mandated cable consumer protection rules in a way that, I fear, could result in less information being shared with consumers and more unwelcome surprises in the form of blacked out channels and lost service. Indeed, under the proposed rules, it is possible that the first time a cable subscriber finds out that her favorite channel has gone dark will be the moment that she turns it on to watch her favorite show or a live event. This impacts consumers' pocketbooks, jeopardizes access to services that they pay for and, at the end of the day, is just plain frustrating.

With that in mind, I requested that additional questions be teed up in this item to further explore whether these proposals will work as intended, or whether they could lead to undue and unintended harm to consumers. Specifically, I asked about any consumer harms that could stem from a practice of providing notice to consumers for the first time after a blackout has already begun. In my mind, such a practice runs the real risk of resulting in consumers paying for services that that they haven't received and depriving them of a real opportunity to mitigate any service disruptions. I also asked whether there are factors that impact a consumer's ability to change providers in the event of a loss of programming. Often, consumers are locked into contracts with hefty early termination fees that make it more difficult switch providers in the face of an impending or ongoing blackout. I also sought questions about other ways to provide notice to consumers, whether it would be preferable to provide notice closer to the time that a channel is lost, and whether such notices should be included in cable operators' public files.

[1] Brad Adgate, *TV Station Blackouts Are Accelerating; Here's Why*, Variety (Nov. 12, 2019); Drew FitzGerald, *Dish and Univision End Nine-Month Channel Blackout*, Wall Street Journal (Mar. 26, 2019).

[2] Jonathan Schwantes, Consumer Reports, What the Fee?! How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service: CR Cable Bill Report 2019 (Oct. 2019).

I appreciate the willingness of the Chairman and my colleagues to add my questions to the item. I hope that answers to these questions will result in a more robust record, and for that reason I will vote to approve this NPRM. I will review the resulting record closely to make sure that our ultimate action here puts consumers front and center.

I appreciate the work of the Media Bureau staff on this item.