

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

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

NOTICE OF PROPOSED RULEMAKING

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Comment Date: (30 days after date of publication in the Federal Register)
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By the Commission: Chairman Pai and Commissioners O’Rielly and Rosenworcel issuing separate statements.

1. In this Notice of Proposed Rulemaking (NPRM), we propose to take additional steps to modernize the notification requirements in part 76 of our rules governing cable television and other multichannel video programming services. Currently, these rules require that cable operators and other multichannel video programming distributors (MVPDs) provide certain written notices to broadcast stations by paper delivery, such as mail, certified mail, or, in some instances, hand delivery.1 As discussed below, we propose to require that cable operators instead distribute these notices to broadcast television stations electronically via e-mail to an address designated by the station in its online public inspection file (OPIF).2 In addition, we seek comment on whether to require that written notices from direct broadcast satellite (DBS) providers to broadcast television stations similarly be delivered electronically via e-mail to an address designated by the station in its OPIF. Through this NPRM, we continue our efforts to modernize our regulations and eliminate outdated requirements.3

I. BACKGROUND

2. When the Commission implemented the law establishing the mandatory carriage (must carry)/retransmission consent regime for the carriage of broadcast television stations on cable systems,4 it

1 47 CFR §§ 76.54(e), 76.64(k), 76.66(d)(1)(iv), (2)(i)-(ii), (v)-(vi), (3)(iv), (5)(i), (f)(3)-(4), (h)(5), 76.1601, 76.1607, 76.1608, 76.1609, 76.1617. Sections 76.64(k), 76.1601, 76.1607, 76.1608, 76.1609, and 76.1617 apply to cable operators, while sections 76.54(e) and 76.66 apply to direct broadcast satellite providers. Sections 76.54(e), 76.64(k), 76.66(d)(2)(i) through (d)(2)(ii), 76.1607, 76.1617(a), and 76.1617(c) specify that notices be delivered by certified mail. Id. §§ 76.54(e), 76.64(k), 76.66(d)(2)(i)-(ii), 76.1607, 76.1617(a), (c). Section 76.1609 requires that specified notices be served by mail or hand delivery. See id. §§ 1.47(d), 76.1609; infra note 49.

2 As discussed below, to the extent that these notices are required to be delivered to low-power television (LPTV) stations that are not Class A stations or to qualified noncommercial educational (NCE) translator stations, neither of which are subject to the OPIF rules, we seek comment on whether and how our proposal to require electronic delivery of the notices can be applied to such stations. See infra para. 12.

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

4 The Communications Act of 1934, as amended (Act), prohibits cable operators and other MVPDs from retransmitting broadcast signals without first obtaining the broadcaster’s consent. 47 U.S.C. § 325(b); 47 CFR

adopted rules requiring among other things that cable operators provide certain written information to broadcast stations.⁵ These written notices from cable operators to broadcast stations help enable the stations to exercise their signal carriage rights on cable systems. The Commission adopted similar notification requirements for DBS providers when it implemented the “carry one, carry all” regime for satellite television.⁶

3. Currently, the written notification requirements for cable operators are set forth in section 76.64(k) and subpart T of the Commission’s rules,⁷ and the written notification requirements for DBS providers are contained in sections 76.54(e) and 76.66 of the Commission’s rules.⁸ These rules direct cable operators and DBS providers, respectively, to give written notice to a local broadcast television station prior to deleting or repositioning the station, changing the location of the principal headend or local receive facility, or commencing service in a market, among other things. In addition to the required notices to broadcast television stations, the rules in subpart T also require that cable operators deliver written notices to their subscribers in certain circumstances.⁹ For example, cable operators must provide written notice to customers in the event of changes to the operator’s cable service, such as any changes in rates, programming services, or channel positions.¹⁰

4. In December 2017, in response to proposals in the Modernization of Media Regulation Initiative proceeding calling for the modernization of these various notice requirements, the Commission released the *Subscriber and Carriage Election Notices NPRM*, which proposed to allow electronic delivery of subpart T and privacy notices to subscribers if sent to a verified e-mail address and subject to certain safeguards.¹¹ In addition, the *Subscriber and Carriage Election Notices NPRM* sought comment on how to update the requirement in sections 76.64(h) and 76.66(d) of the Commission’s rules that local broadcast stations electing carriage on a cable system send such written election notices by certified mail.¹² The Commission subsequently adopted the proposals pertaining to electronic delivery of notices to subscribers¹³ and stated that the issue of carriage election notices made by broadcast television stations

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§ 76.64. This permission is commonly referred to as “retransmission consent” and may involve some compensation from the cable company to the broadcaster for the use of the signal. The retransmission consent requirement does not apply to noncommercial television broadcast stations. 47 U.S.C. § 325(b)(2)(A). Alternatively, local commercial and noncommercial broadcast television stations, including certain LPTV stations, may require a cable operator that serves the same market as the broadcaster to carry its signal. 47 U.S.C. §§ 325(b)(1)(B), 534, 535; 47 CFR §§ 76.55-76.62. A demand for carriage is commonly referred to as “must carry.” If the broadcast station asserts its must-carry rights, the broadcaster cannot demand compensation from the cable operator. Commercial broadcasters are required to choose once every three years, on a system-by-system basis, whether to obtain carriage or continue carriage by choosing between must carry and retransmission consent. *Electronic Delivery of MVPD Communications et al.*, MB Docket No. 17-317 et al., Notice of Proposed Rulemaking, 32 FCC Rcd 10755, 10758, n.18 (2017) (*Subscriber and Carriage Election Notices NPRM*).

⁵ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues et al.*, MM Docket No. 99-259 et al., Report and Order, 8 FCC Rcd 2965, 2968, 2972-74, 2990-92, 3001, 3003, paras. 10, 25, 31, 102-03, 105-10, 155, 163 & nn.31, 322-23 (1993) (*1993 Must Carry Order*); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Memorandum Opinion and Order, 9 FCC Rcd 6723, 6743, para. 95 (1994). In 1999, the Commission revised and streamlined these and other requirements contained throughout part 76 of the Commission’s rules, and as part of this reorganization, the Commission created a new subpart T for notice requirements. See *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Docket No. 98-132, Report and Order, 14 FCC Rcd 4653, 4655, paras. 7-8 (1999).

⁶ *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues et al.*, CS Docket No. 00-96 et al., Report and Order, 16 FCC Rcd 1918, 1932-33, 1943-44, 1950, paras. 31-33, 55-58, 78 (2000). “Carry one, carry all” refers to the fact that DBS providers are not required to carry any local broadcast

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would be addressed in a future order.¹⁴ In September 2018, the American Cable Association (ACA),¹⁵ National Association of Broadcasters (NAB), and NCTA–The Internet and Television Association (NCTA) met with Commission staff to discuss a proposal that contemplated requiring carriage election notices to be delivered via e-mail.¹⁶

5. In a separate filing submitted in the carriage election notices modernization proceeding on October 16, 2018, ACA proposed that the Commission take “comparable steps” with respect to the notices required by section 76.64(k) and subpart T if the Commission allows carriage election notices to be delivered by means other than certified mail.¹⁷ Specifically, ACA contended that cable operators be permitted to provide the following types of notices to broadcast stations electronically:

- *Intent to commence service (47 CFR § 76.64(k))*: Requires that a cable system commencing new operation notify all local commercial and noncommercial broadcast stations of its intent to commence service. The cable operator must send such notification, by certified mail, at least 60 days prior to commencing cable service.
- *Activation of a cable system (47 CFR § 76.1617)*: Requires that within 60 days of activation

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stations in a market, but must carry all of them upon request if any are carried (with certain narrow exceptions).

⁷ 47 CFR §§ 76.64(k), 76.1601, 76.1607, 76.1608, 76.1609, 76.1617.

⁸ *Id.* §§ 76.54(e), 76.66(d)(1)(iv), (2)(i)-(ii), (v)-(vi), (3)(iv), (5)(i), (f)(3)-(4), (h)(5).

⁹ *Id.* §§ 76.1601-76.1604, 76.1618, 76.1620.

¹⁰ *Id.* § 76.1603.

¹¹ *Subscriber and Carriage Election Notices NPRM*, 32 FCC Rcd at 10759, 10764, paras. 6, 18.

¹² *Id.* at 10767, para. 25.

¹³ *Electronic Delivery of MVPD Communications et al.*, MB Docket No. 17-317 et al., Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 11518, 11520, para. 6 (2018) (*Subscriber Notices Order and FNPRM*)

¹⁴ *Id.* at 11520, n.20.

¹⁵ On March 20, 2019, ACA announced that it had changed its name from “American Cable Association” to “America’s Communications Association.” Press Release, America’s Communications Association, ACA Connects Positions Itself For The Future As Technology And Consumers Change (Mar. 20, 2019), <https://www.americancable.org/american-cable-association-changes-name-to-aca-americas-communications-association/>.

¹⁶ Letter from Rick Chessen, Chief Legal Officer and Senior Vice President, Legal & Regulatory Affairs, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-317 et al. (filed Sept. 17, 2018). NAB and NCTA subsequently proposed that the Commission add a new field to both the OPIF and the Cable Operations and Licensing System (COALs) in order for commercial broadcast television stations and cable operators to provide carriage election contact information, including an e-mail address and phone number. Letter from Rick Kaplan, General Counsel and Executive Vice President, Legal & Regulatory Affairs, NAB, and Rick Chessen, Chief Legal Officer and Senior Vice President, Legal & Regulatory Affairs, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-317 et al., at 2 (filed Dec. 7, 2018). In a companion order adopted today, the Commission has addressed this proposal. *Electronic Delivery of MVPD Communications et al.*, MB Docket Nos. 17-317 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 19-XXX (July XX, 2019) (*Carriage Election Notice Modernization Order and FNPRM*).

¹⁷ Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-317 et al. (filed Oct. 16, 2018) (*ACA Ex Parte Letter*); *see also* Letter from Cathy Carpino, Assistant Vice President – Senior Legal Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-317 et al., at 3 (filed June 27, 2019) (*AT&T Ex Parte Letter*) (stating that if the Commission applies the electronic carriage election notice regime to DBS providers, DIRECTV and DISH “are supportive of the Commission seeking comment on whether MVPDs may send required notices to broadcasters via email”).

of a cable system, a cable operator must notify all qualified noncommercial educational (NCE) stations of the location of its designated principal headend by certified mail; notify all local commercial and NCE stations that may not be entitled to carriage because they either fail to meet the standards for delivery of a good quality signal to the cable system's principal headend or may cause increased copyright liability to the cable system; and send by certified mail a copy of a list of all broadcast television stations carried by the cable system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

- *Deletion or repositioning of broadcast signals (47 CFR § 76.1601)*: Requires that a cable operator provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station.
- *Principal headend (47 CFR § 76.1607)*: Requires that a cable operator provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of the location of the principal headend.
- *System technical integration requiring uniform election of must-carry or retransmission consent status (47 CFR § 76.1608)*: Requires a cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems to give 90 days' notice of its intention to do so to any television broadcast stations that have elected must carry with respect to one system and retransmission consent status with respect to the other.
- *Non-duplication and syndicated exclusivity (47 CFR § 76.1609)*: Requires that within 60 days following the provision of service to 1,000 subscribers, the operator of each such system must file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection or syndicated exclusivity protection against it.¹⁸

6. According to ACA, the arguments that have been made in support of modernizing the notice procedures related to carriage elections by broadcast television stations apply “equally” to the required notices from cable operators to broadcast stations.¹⁹ Namely, ACA asserts that electronic delivery for all types of written notices will make it easier for parties to keep track of such notices and “be consistent with rules applicable in other contexts.”²⁰ It also contends that moving from paper to electronic notification is consistent with “the Commission’s recent shift towards Internet-based solutions.”²¹

II. DISCUSSION

7. As discussed further below, we propose to revise our rules to require that cable operators deliver electronically to broadcast television stations the written notices required by section 76.64(k) and subpart T of our rules via e-mail to an e-mail address designated by the station in its OPIF. We believe that modernizing our rules to require electronic delivery of certain written notices in this manner is consistent with how companies do business in the marketplace and will result in quicker, more effective communication of necessary information.

8. Specifically, we propose that written notices from cable operators would be required to be delivered electronically to television stations in all the circumstances cited by ACA above: informing

¹⁸ ACA *Ex Parte* Letter at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

local broadcast stations that a new cable system intends to commence service (section 76.64(k));²² sending required information to local broadcast stations when a new cable system is activated (section 76.1617);²³ notifying a television station about the deletion or repositioning of its signal (section 76.1601);²⁴ informing stations of a change in the designation of the principal headend of a cable operator (section 76.1607);²⁵ informing stations that a cable operator intends to integrate two cable systems, requiring a uniform carriage election (section 76.1608);²⁶ and notifying stations that a cable system serves 1,000 or more subscribers and is no longer exempt from the Commission's network non-duplication and syndicated exclusivity rules (section 76.1609).²⁷ Consistent with the Commission's decision in a companion order adopted today to require electronic delivery of carriage election notices, we tentatively conclude that our rules should also require that the notices described above to television stations be delivered to the e-mail address designated by the television station in the OPIF.²⁸

9. We tentatively conclude that requiring cable operators to deliver such notices to broadcast television stations via e-mail would serve the public interest. As discussed above, the Commission has already decided in a companion order adopted today to require that carriage election notices from television stations be delivered to MVPDs electronically via e-mail.²⁹ Similarly, the Commission allows cable operators to use e-mail to deliver subpart T and privacy notices to subscribers if the cable operator complies with certain consumer safeguards, including the use of a verified e-mail address for each subscriber.³⁰ The Commission found that the benefits of permitting e-mail delivery of subscriber notices include increased efficiency and the positive environmental aspects of saving substantial amounts of paper annually, among other things.³¹ We tentatively conclude that similar policy considerations also favor the use of electronic delivery for notices from cable operators to broadcast television stations, such as decreasing the amount of paper used, reducing burdens on cable operators, and enabling television broadcasters and cable operators to more easily track the information they need to fulfill their obligations under the Commission's rules. We seek comment on our tentative conclusion that the public interest would be served by our proposal to require electronic delivery of notices mandated by section 76.64(k) and the rules in subpart T listed above.³² Alternatively, is there any reason why a cable operator should retain the option to deliver such notices to broadcast television stations in a non-electronic format, such as via certified mail?³³

10. We tentatively conclude that the Commission has authority under the Act to require the

²² 47 CFR § 76.64(k).

²³ *Id.* § 76.1617.

²⁴ *Id.* § 76.1601.

²⁵ *Id.* § 76.1607.

²⁶ *Id.* § 76.1608.

²⁷ *Id.* § 76.1609.

²⁸ *Carriage Election Notice Modernization Order and FNPRM* at 7, para. 11; *see infra* para. 12 (seeking comment on best approach for non-Class A LPTV stations and qualified NCE translator stations).

²⁹ *Carriage Election Notice Modernization Order and FNPRM* at 7, para. 11.

³⁰ *See supra* para. 4.

³¹ *National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling*, MB Docket No. 16-126, Declaratory Ruling, 32 FCC Rcd 5269, 5272-73, para. 6 (2017) (*2017 Declaratory Ruling*); *see Subscriber Notices Order and FNPRM*, 33 FCC Rcd at 11520-21, paras. 7-8.

³² *See supra* para. 8.

³³ As discussed above, sections 76.64(k), 76.1607, 76.1617(a), and 76.1617(c) specify that notices be delivered by certified mail. *Id.* §§ 76.64(k), 76.1607, 76.1617(a), (c); *see supra* note 1.

section 76.64(k) and subpart T notices from cable operators to broadcast stations to be delivered electronically via e-mail. Pursuant to sections 4 and 303 of the Act, the Commission may exercise broad authority to adopt rules and regulations as necessary to execute its functions and carry out the provisions of the Act.³⁴ In addition, section 614 of the Act provides the Commission with broad authority to issue regulations, including the notification requirements in section 76.64(k) and subpart T of our rules, implementing the must-carry requirements prescribed by the Act.³⁵ While sections 614(b)(9) and 615(g)(3) of the Act require that “written notice” be provided before repositioning or deleting a local television station on the cable system,³⁶ we tentatively conclude that electronic delivery of the notices via e-mail satisfies this “written notice” requirement. As the Commission has found previously, e-mails, by their very nature, convey information in writing.³⁷ We seek comment on these tentative conclusions.

11. To ensure that television stations continue to receive notices from cable operators as required by section 76.64(k) and subpart T, we tentatively conclude that after July 31, 2020, a cable operator should be required to distribute such notices to television stations electronically via e-mail to an e-mail address designated by the station. In the *Carriage Election Notice Modernization Order and FNPRM*, the Commission adopted new rules requiring that all broadcast stations subject to the rules must maintain in the OPIF an up-to-date e-mail address and phone number for carriage-related questions by July 31, 2020.³⁸ Similarly, with respect to the written notices that cable operators are required to provide to television stations pursuant to section 76.64(k) and subpart T, we propose to require that after July 31, 2020, all such notices must be delivered electronically to the carriage election e-mail address designated by the station in the OPIF.³⁹ We tentatively conclude that requiring the use of a designated e-mail address that the station posts to the OPIF will help ensure that cable operators are easily able to identify the correct e-mail address for delivering notices electronically to commercial and noncommercial full-power and Class A television stations and that such contact information is current.⁴⁰ We seek comment on these tentative conclusions.

³⁴ 47 U.S.C. § 154(i) (“The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.”); *id.* 303(r) (The Commission shall “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter.”).

³⁵ *Id.* § 534(f).

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

³⁷ *2017 Declaratory Ruling*, 32 FCC Rcd at 5272-73, para. 6 (“[W]e conclude that it is reasonable to interpret the term ‘written information’ . . . to include information delivered by e-mail.”).

³⁸ *Carriage Election Notice Modernization Order and FNPRM* at 10-11, para. 17.

³⁹ In some circumstances, a cable operator may be required to provide section 76.64(k) and subpart T notices to LPTV stations that are not Class A stations or to certain NCE translator stations, neither of which are subject to the OPIF rules. See, e.g., 47 CFR § 76.55(a)(3) (defining a “qualified NCE television station” for purposes of must carry as including certain translator stations); 47 CFR § 76.56(b)(3) (requiring that a cable operator carry one or two qualified LPTV stations if there is an insufficient number of full-power television stations to fill the required channel set-aside for local commercial television stations); see *WFXV-TV, Inc.*, Order on Reconsideration, 18 FCC Rcd 22782, 22783, para. 4 (2003) (*WFXV-TV Reconsideration Order*) (concluding that qualified LPTV station was entitled to receive deletion notice pursuant to section 76.1601). Because these stations would need to use alternative means to publicize a designated e-mail address for receiving notices electronically, we seek comment below on how our proposal to require electronic delivery of notices can be best applied to LPTV stations that are not Class A stations and to qualified NCE translator stations, to the extent they are entitled to receive the notices prescribed by section 76.64(k) and subpart T of our rules. See *infra* para. 12.

⁴⁰ Stations are expected to update the OPIF in a timely fashion and to maintain an orderly OPIF. See, e.g., *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* (continued....)

12. We seek comment on whether and how our proposal to require electronic delivery of section 76.64(k) and subpart T notices can be applied with respect to LPTV stations that are not Class A stations⁴¹ and to translator stations that meet the definition of a “qualified NCE television station” under section 615(l)(1) of the Act (qualified NCE translator stations).⁴² Unlike full-power and Class A television stations, non-Class A LPTV stations and qualified NCE translator stations are not subject to our OPIF rules.⁴³ Accordingly, LPTV stations without Class A status and qualified NCE translator stations may need to use an alternative means to publicize a designated e-mail address for receiving section 76.64(k) and subpart T notices if the notices are to be delivered to them electronically after July 31, 2020.⁴⁴ One potential approach, as discussed in the *Carriage Election Notice Modernization Order and FNPRM*, is to require that LPTV stations and qualified NCE translator stations post any required public-facing information on the first page of a company website.⁴⁵ We seek comment on this approach and whether we should adopt a rule requiring that on or before July 31, 2020, LPTV stations and qualified NCE translator stations that are entitled to receive section 76.64(k) and subpart T notices must designate an e-mail address for receiving such notices electronically.⁴⁶ Is it reasonable to expect that all LPTV

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et al., MM Docket Nos. 00-168 *et al.*, Second Report and Order, 27 FCC Rcd 4535, 4582, para. 102 (2012).

⁴¹ As discussed below, *see infra* note 44, the extent to which an LPTV station is entitled to receive notices pursuant to section 76.64(k) and subpart T of our rules depends on whether the station is a “qualified” LPTV station as defined in section 614 of the Act and section 76.55(d) of our rules. To be “qualified,” an LPTV station must satisfy certain criteria. 47 U.S.C. § 534(h)(2); 47 CFR § 76.55(d) (such a station must meet many of the obligations of a full power station, comply with interference restrictions, be close to and provide a good signal to the relevant cable headend, be in a less-populated area, and not have a full-power station nearby). A qualified LPTV station can be either a Class A television station or a non-Class A LPTV station under section 614 of the Act. *See* 47 U.S.C. § 534(h)(2); 47 CFR § 73.6001(a).

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

⁴³ 47 CFR §§ 73.3526(a)(2), 73.3527(a)(2). Because Class A stations, like full-power television stations, are subject to the OPIF rules, including the requirement to provide carriage election contact information in the OPIF, our proposal would require the use of the designated carriage election e-mail address for electronic delivery of section 76.64(k) and subpart T notices to Class A stations. *See supra* para. 11.

⁴⁴ For purposes of this paragraph, our focus is on those LPTV stations without Class A status. Unlike qualified LPTV stations, non-qualified LPTV stations do not have the option to elect must-carry status; however, like other broadcast stations, non-qualified LPTV stations are eligible to negotiate carriage pursuant to retransmission consent agreements. *See* 47 CFR §§ 76.56-76.57, 76.61-76.62; *1993 Must Carry Order*, 8 FCC Rcd at 2998, para. 140. The Commission has previously concluded that qualified LPTV stations are entitled to receive notice from a cable operator at least 30 days before the operator deletes or repositions the station, in accordance with section 76.1601 of our rules. *See WFXV-TV Reconsideration Order*, 18 FCC Rcd at 22783, para. 4; *1993 Must Carry Order*, 8 FCC Rcd at 2992, para. 110. To the extent that non-qualified LPTV stations are carried on a cable system pursuant to retransmission consent, however, such stations are also entitled to receive notices of deletion or repositioning pursuant to section 76.1601. *See 1993 Must Carry Order*, 8 FCC Rcd at 2992, para. 110. Similarly, qualified LPTV stations that elect must-carry are entitled to receive the notices required by sections 76.64(k), 76.1607, and 76.1617(b). *See* 47 CFR §§ 76.64(k), 76.1607, 76.1617(b). In contrast, LPTV stations are not entitled to receive non-duplication and syndicated exclusivity notices under section 76.1609, because our rules do not entitle these stations to exercise network non-duplication or syndicated exclusivity protection. *See id.* §§ 76.5(b), 76.93, 76.103(a). Similarly, LPTV stations are not entitled to receive notices under sections 76.1608 and 76.1617(c), because these rules require notice only to “television broadcast stations” or “television stations,” which, as defined in section 76.5(b) of our rules, excludes LPTV stations. *See id.* §§ 76.5(b), 76.1608, 76.1617(c). Finally, with respect to section 76.1617(a), which requires notices only to “qualified NCE stations,” LPTV stations are entitled to such notices only to the extent they meet the definition of qualified NCE television station set forth in section 76.55(a) of our rules. *See id.* §§ 76.55(a), 76.1617(a); *Reexamination of Comparative Standard for Noncommercial Educational Applicants et al.*, MM Docket No. 95-31, Second Report and Order, 18 FCC Rcd 6691, 6697, para. 15 (2003).

stations and qualified NCE translator stations will have an existing public-facing company website, i.e., one that is easily accessible for free by the general public, on which they could publicize a designated e-mail address for receiving the notices required by section 76.64(k) and subpart T? Would this approach ensure that cable operators are able to easily identify the designated e-mail address for delivering the required notices to such stations? Are there other alternatives that would provide similar access to this information at minimal cost and with minimal burden? For instance, to the extent that qualified NCE translator stations are co-owned with the primary station, should we simply require that section 76.64(k) and subpart T notices to these stations be delivered electronically to the carriage-election e-mail address designated by the primary station in its OPIF, rather than requiring that such translator stations post a designated e-mail address on the company website? We seek comment on these issues.

13. We seek comment on the specific benefits that would accrue from our proposals and whether they would pose any burdens on cable operators and broadcast television stations. Would our proposed approach reduce the time and money spent on delivering and/or receiving the required written notices while ensuring that stations continue to receive them in a timely manner? Are there any circumstances in which a television station, or subset of television stations such as LPTV stations or qualified NCE translator stations, should be allowed to opt out of electronic delivery and continue receiving the notices via certified mail or in a non-electronic format? Are there other alternative means of delivering these notices that would better serve the needs of broadcasters and cable operators but still be less burdensome? How would such approaches work in practice? We seek comment on these issues.

14. We propose to add to section 76.1600 a new subsection requiring that the written information provided by cable operators to broadcast television stations under section 76.64(k) and subpart T must be delivered to the station electronically via e-mail to the e-mail address designated by the station in the OPIF.⁴⁷ To avoid potential discrepancies with our proposed revision to section 76.1600, we also propose minor amendments to sections 76.64(k), 76.1607, 76.1609, and 76.1617 of our rules. Currently, sections 76.64(k), 76.1607, and 76.1617 each require that certain written information be provided to broadcast stations “by certified mail.”⁴⁸ Similarly, section 76.1609 currently requires that certain notices be mailed to television stations or delivered to stations by hand.⁴⁹ We propose to add

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⁴⁵ *Carriage Election Notice Modernization Order* at 16, para. 30.

⁴⁶ As discussed above, this proposed timeframe is consistent with the timeframe in which commercial and noncommercial full-power television stations must add their carriage election contact information to the OPIF. *See supra* para. 11 & note 38.

⁴⁷ *See* Appendix A, Proposed Rules. New section 76.1600 was adopted by the Commission in the *Subscriber Notices Order and FNPRM*, and the rule allows MVPDs to deliver subscriber privacy notifications and other written information electronically to subscribers and customers via e-mail so long as the MVPD complies with certain consumer safeguards. *See Subscriber Notices Order and FNPRM*, 33 FCC Rcd at 11534-35 (Appx. A, Final Rules). As discussed above, we seek comment on whether non-Class A LPTV stations and qualified NCE translator stations should be required to post an e-mail address on the first page of their websites. *See supra* para. 12.

⁴⁸ 47 CFR §§ 76.64(k), 76.1607, 76.1617.

⁴⁹ These notifications inform television stations that are entitled to exercise network non-duplication and/or syndicated exclusivity protection(s) that a cable operator’s subscriber base has increased to at least 1,000 subscribers and that as a result, the operator is no longer exempt from the Commission’s network non-duplication and syndicated exclusivity rules. In addition to serving copies of the notice on the relevant television stations, the cable operator must also file the original copy of the notice with the Commission within 60 days following the provision of service to 1,000 subscribers. *Id.* § 76.1609. We are not proposing to change this aspect of the rule, which, unlike the requirements discussed above, does not require notices from cable operators to broadcast stations. With respect to the rule’s requirement that the operator “serve a copy” of the notice on television stations, while section 76.1609 does not specify the manner of service, the Commission’s general rules state that documents that are required to be served “must be served in paper” by “delivering a copy or by mailing a copy to the last known address,” unless the party to be served “agrees to accept service in some other form.” *See id.* § 1.47(d).

language to sections 76.64(k), 76.1607, 76.1609, and 76.1617 to reflect our proposal that cable operators be required to deliver the notices electronically to broadcast television stations via e-mail in accordance with our proposed revision to section 76.1600.⁵⁰ Finally, we also propose to make a minor correction to our rules in part 74 by moving our existing channel sharing rule for LPTV and TV translator stations from subpart H (Low Power Auxiliary Stations) to subpart G (Low Power TV, TV Translator, and TV Booster Stations).⁵¹ We seek comment on the proposed rule amendments discussed above and any other rule changes that are necessary to implement the proposals discussed herein.

15. Sections 76.54(e) and 76.66 of our rules contain notification requirements for DBS providers that are similar to the notification requirements for cable operators discussed above.⁵² We seek comment on whether the Commission should also require that DBS providers deliver such notices to broadcast television stations electronically after July 31, 2020, if the Commission adopts such a requirement for cable operators.⁵³ The Satellite Home Viewer Extension and Reauthorization Act of 2004 added section 338(h)(2) of the Act and directed the Commission to revise its rules requiring that DBS providers notify local television stations prior to launching local-into-local service in a market.⁵⁴ Section 338(h)(2)(C) of the Act states that “[s]uch regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.”⁵⁵ We seek comment on whether the statute creates an ongoing obligation for the Commission to maintain this certified mail notice requirement by regulation, or whether, once having revised our rules to satisfy section 338(h)(2)(A),⁵⁶ we have the ability to change our notification rules pursuant to the standard notice-and-comment rulemaking process. Does section 338(h)(2) of the Act currently limit the Commission’s authority to require electronic delivery of the notices that DBS providers must send to local television stations prior to launching local-into-local service in the local market? Are all the DBS notice rules

⁵⁰ See Appendix A, Proposed Rules.

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

⁵² These written notices from DBS providers must be delivered to television stations in the following circumstances: notifying all television stations in a market prior to retransmitting a significantly viewed station into that market (section 76.54(e)); notifying local television stations of the provider’s intent to launch new local-into-local service in the local market (section 76.66(d)(2)(i)-(ii)); notifying local television stations of the provider’s intent to launch HD carry-one, carry-all in the local market (section 76.66(d)(2)(vi)); informing each local television station of the provider’s intent to fulfil or deny the station’s carriage request and the reasons for declining (section 76.66(d)(1)(iv), (d)(2)(v), (d)(3)(iv)); identifying each affiliate of the same television network that the DBS provider reserves the right to retransmit into a station’s local market during the next carriage election cycle (section 76.66(d)(5)(i)); informing local television stations of the location of the DBS provider’s local receive facility or its intent to relocate such facility (section 76.66(f)(3)-(4)); notifying local television stations when deleting a station that substantially duplicates another or adding a station that no longer duplicates another (section 76.66(h)(5)). 47 CFR §§ 76.54(e), 76.66(d)(1)(iv), (2), (3)(iv), (5)(i), (f)(3)-(4), (h)(5).

⁵³ See AT&T *Ex Parte* Letter at 3 (stating that if the Commission applies the electronic carriage election notice regime to DBS providers, DIRECTV and DISH “are supportive of the Commission seeking comment on whether MVPDs may send required notices to broadcasters via email”).

⁵⁴ The Satellite Home Viewer Extension and Reauthorization Act of 2004 was enacted as part of the Consolidated

(continued....)

subject to the restriction in section 338(h)(2), or are there some that fall outside that provision?⁵⁷ What are the specific benefits and burdens of electronic delivery of the notices required by sections 76.54(e) and 76.66 for both broadcasters and DBS providers? If the Commission decides to require that certain such notices be delivered via e-mail, how should the Commission revise sections 76.54(e) and 76.66 to implement such a requirement?⁵⁸ We seek comment on these issues.

III. PROCEDURAL MATTERS

16. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁵⁹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix B.

17. *Initial Paperwork Reduction Act Analysis.* 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 seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

18. *Ex Parte Rules – Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁶⁰ 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. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) 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

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Appropriations Act of 2005, Pub. L. No. 108-447, Division J, Title IX, § 205, 118 Stat. 2809, 3424-25 (2004).

⁵⁵ 47 U.S.C. § 338(h)(2)(C).

⁵⁶ *Id.* § 338(h)(2)(A) (“Within 180 days after December 8, 2004, the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph.”).

⁵⁷ *See supra* note 52.

⁵⁸ *See* Appendix A, Proposed Rules.

⁵⁹ *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).

⁶⁰ 47 CFR §§ 1.1200 *et seq.*

familiarize themselves with the Commission's *ex parte* rules.

19. *Filing 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://apps.fcc.gov/ecfs/>.
- 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 St., SW, Room 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.

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 Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

20. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

21. *Additional Information.* For additional information on this proceeding, contact Christopher Clark, Christopher.Clark@fcc.gov, of the Industry Analysis Division, Media Bureau, (202) 418-2609.

IV. ORDERING CLAUSES

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

23. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking in MB Docket Nos. 19-165 and 17-105 on or before thirty (30) days after publication in the *Federal Register* and reply comments on or before forty five (45) days after publication in the *Federal Register*.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules**

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

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

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

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

2. Add § 74.779 to read as follows:

§ 74.779 Electronic Delivery of Notices to LPTV stations.

Beginning July 31, 2020, each licensee of a low power television station or translator station that is entitled to receive notices pursuant to section 76.64(k), 76.1601, 76.1607, or 76.1617 of this title shall post publicly on the main page of station's Web site an e-mail address for electronic receipt of such notices by the station. This section does not apply to Class A television stations.

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

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 § 76.54 by revising the last sentence of paragraph (e) to read as follows:

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

* * * * *

(e) * * * Such written notice must be delivered to stations electronically in accordance with section 76.66(d)(2)(ii) of this subpart D.

* * * * *

3. Amend § 76.64 by revising the second sentence of paragraph (k) to read as follows:

§ 76.64 Retransmission consent.

* * * * *

(k) * * * The cable operator must send such notification by electronic delivery, in accordance with § 76.1600, at least 60 days prior to commencing cable service. * * *

* * * * *

4. Amend Section 76.66 by revising paragraphs (d)(1)(iv), (d)(2)(ii), (d)(2)(v), (d)(2)(vi), (d)(3)(iv), (d)(5)(i), (f)(3), (f)(4), and (h)(5) to read as follows:

§ 76.66 – Satellite broadcast signal carriage.

* * * * *

(d) * * *

(1) * * *

(iv) Within 30 days of receiving a television station’s carriage request, a satellite carrier shall notify in writing electronically in accordance with paragraph (d)(2)(ii) of this section:

* * * * *

(2) * * *

(ii) * * * The written notices required by paragraphs (d)(1)(iv), (d)(2)(v), (d)(2)(vi), (d)(3)(iv), (d)(5)(i), (f)(3), (f)(4), and (h)(5) of this section shall be delivered electronically via e-mail to the e-mail address for carriage-related questions that the station lists in its public file in accordance with sections 73.3626 and 73.3527 of part 73 of this title.

* * * * *

(v) * * * The written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

(vi) * * * The written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

* * * * *

(3) * * *

(iv) * * * The written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

(5) * * *

(i) * * * The written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

* * * * *

(f) * * *

(3) * * * The written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

(4) * * * The written notices required by this paragraph shall be delivered to stations electronically in accordance with paragraph (d)(2)(ii) of this section.

* * * * *

(h) * * *

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

* * * * *

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

§ 76.1600 Electronic delivery of notices.

* * * * *

(e) Written information provided by cable operators to broadcast stations pursuant to Sections 76.64(k), 76.1601, 76.1607, 76.1608, 76.1609, and 76.1617 of this Part 76 must be delivered electronically to a station via e-mail to the e-mail address for carriage-related questions that the television broadcast station lists in its public file in accordance with Sections 73.3626 and 73.3527 of Part 73 of this title, or in the case of low power television stations or translator stations, to the e-mail address that the station posts on its Web site in accordance with Section 74.779 of Part 74 of this title.

6. Amend § 76.1607 to read as follows:

§ 76.1607 Principal headend.

A cable operator shall provide written notice by electronic delivery, in accordance with § 76.1600, to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend.

7. Amend § 76.1609 to read as follows:

§ 76.1609 Non-duplication and syndicated exclusivity.

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

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

§ 76.1617 Initial must-carry notice.

(a) Within 60 days of activation of a cable system, a cable operator must notify all qualified NCE stations of its designated principal headend by electronic delivery in accordance with § 76.1600.

* * * * *

(c) Within 60 days of activation of a cable system, a cable operator must send, by electronic delivery in accordance with § 76.1600, a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

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. This NPRM proposes additional steps to modernize certain notice provisions in part 76 of the Commission's rules governing multichannel video and cable television service. Currently, these rules require that cable operators and other multichannel video programming distributors (MVPDs) provide certain written notices to broadcast stations by paper delivery, such as mail, certified mail, or, in some instances, hand delivery.⁴ Section 76.64(k) and subpart T of the Commission's rules contain written notification requirements for cable operators,⁵ and sections 76.54(e) and 76.66 of the Commission's rules contain written notification requirements for DBS providers.⁶ These rules require written notice to a local broadcast television station prior to deleting or repositioning the station, changing the location of the principal headend or local receive facility, or commencing service in a market, among other things.

3. The NPRM proposes to revise the Commission's rules to require that cable operators distribute these notices to broadcast television stations electronically via e-mail to the e-mail address designated by the station as carriage election contact information in the online public file (OPIF).⁷ These notices include the following: informing local broadcast stations that a new cable system intends to commence service (section 76.64(k)); sending required information to local broadcast stations when a new cable system is activated (section 76.1617); notifying a television station about the deletion or repositioning of its signal (section 76.1601); informing stations of a change in the designation of the principal headend of a cable operator (section 76.1607); informing stations that a cable operator intends to integrate two cable systems, requiring a uniform carriage election (section 76.1608); and notifying stations that a cable system serves 1,000 or more subscribers and is no longer exempt from the Commission's network non-duplication and syndicated exclusivity rules (section 76.1609).⁸

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

⁵ *Id.* §§ 76.64(k), 76.1601, 76.1607, 76.1608, 76.1609, 76.1617.

⁶ *Id.* §§ 76.54(e), 76.66(d)(1)(iv), (2)(i)-(ii), (v)-(vi), (3)(iv), (5)(i), (f)(3)-(4), (h)(5).

⁷ NPRM at 4-6, paras. 7-11.

⁸ *Id.* at 4-5, para. 8.

4. The NPRM seeks comment on whether and how the proposal to require electronic delivery of the section 76.64(k) and subpart T notices can be applied with respect to LPTV stations without Class A status and to qualified NCE translator stations.⁹ Unlike full-power and Class A television stations, non-Class A LPTV stations and qualified NCE translator stations are not subject to our OPIF rules.¹⁰ Accordingly, LPTV stations without Class A status and qualified NCE translator stations may need to use an alternative means to publicize a designated e-mail address for receiving section 76.64(k) and subpart T notices if the notices are to be delivered to them electronically. The NPRM seeks comment on whether to adopt a rule requiring non-Class A LPTV and qualified NCE translator stations that are entitled to receive section 76.64(k) and subpart T notices to designate an e-mail address for receiving such notices electronically on the first page of the company website.¹¹

5. In addition, the NPRM also seeks comment on whether to similarly require electronic delivery of the following written notices from direct broadcast satellite (DBS) carriers to broadcast television stations: notifying all television stations in a market prior to retransmitting a significantly viewed station into that market (section 76.54(e)); notifying local television stations of the provider's intent to launch new local-into-local service in the local market (section 76.66(d)(2)(i)); notifying local television stations of the provider's intent to launch HD carry-one, carry-all in the local market (section 76.66(d)(2)(vi)); informing each local television station of the provider's intent to fulfil or deny the station's carriage request and the reasons for declining (section 76.66(d)(1)(iv), (d)(2)(v), (d)(3)(iv)); identifying each affiliate of the same television network that the DBS provider reserves the right to retransmit into a station's local market during the next carriage election cycle (section 76.66(d)(5)(i)); informing local television stations of the location of the DBS provider's local receive facility or its intent to relocate such facility (section 76.66(f)(3)-(4)); notifying local television stations when deleting a station that substantially duplicates another or adding a station that no longer duplicates another (section 76.66(h)(5)).¹² Through this NPRM, the Commission continues its efforts to modernize its regulations and eliminate outdated requirements .

B. Legal Basis

6. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 303(r), 338, 340, 614, and 615 of the Communications Act of 1934, as amended (Act), 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 338, 340, 534, and 535.

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

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁵ A small business

⁹ *Id.* at 7-8, para. 12.

¹⁰ 47 CFR § 73.3526(a)(2). Because Class A stations, like full-power television stations, are subject to the OPIF rules, including the requirement to provide carriage election contact information in the OPIF, the NPRM's proposal would require the use of the designated carriage election e-mail address for electronic delivery of section 76.64(k) and subpart T notices to Class A stations. NPRM at 7, n.43.

¹¹ NPRM at 7-8, para. 12.

¹² *Id.* at 9, para. 15 & n.52.

¹³ 5 U.S.C. § 603(b)(3).

¹⁴ *Id.* § 601(6).

¹⁵ *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant (continued....)

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.¹⁶ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

8. *Cable Companies and Systems (Rate Regulation Standard)*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹⁷ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁸ Industry data indicate that there are currently 4,300 active cable systems in the United States.¹⁹ Of this total, 3,550 cable systems have fewer than 15,000 subscribers, and 750 systems have 15,000 or more.²⁰ Thus, we estimate that most cable systems are small entities.

9. *Cable System Operators (Telecommunications Act Standard)*. The Act also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²¹ There are approximately 50,504,624 cable video subscribers in the United States today.²² Accordingly, an operator serving fewer than 505,046 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²³ Based on available data, we find that all but six incumbent cable operators are small entities under this size standard.²⁴ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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

¹⁶ 15 U.S.C. § 632.

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

¹⁸ 47 CFR § 76.901(c).

¹⁹ August 24, 2017 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS), www.fcc.gov/coals.

²⁰ *Id.*

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

²² *See* SNL Kagan, *Multichannel Industry Benchmarks*, <https://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx> (last visited Apr. 29, 2019).

²³ *See* 47 CFR § 76.901(e).

²⁴ *See* SNL Kagan, *Top Cable MSOs*, <https://platform.mi.spglobal.com/web/client?auth=inherit&ignoreIDMContext=1#industry/topCableMSOs> (last visited Apr. 29, 2019).

10. We also note that there currently are 182 cable antenna relay service (CARS) licensees.²⁵ The Commission, however, neither requests nor collects information on whether CARS licensees are affiliated with entities whose gross annual revenues exceed \$250 million. Although some CARS licensees may be affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of CARS licensees that would qualify as small cable operators under the definition in the Communications Act.

11. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁶ The SBA determines that a wireline business is small if it has fewer than 1,500 employees.²⁷ Economic census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.²⁸ Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.²⁹ DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that, in general, DBS service is provided only by large firms.

12. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."³⁰ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.³¹ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.³² The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of less than \$25 million, 25 had annual

²⁵ August 24, 2017, report from Media Bureau staff based on data contained in COALS, www.fcc.gov/coals.

²⁶ See U.S. Census Bureau, *2017 North American Industry Classifications System (NAICS) Definitions*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (2012 NAICS Definitions) (NAICS Code 517110).

²⁷ 13 CFR § 121.201 (2012) (NAICS Code 517110).

²⁸ See U.S. Census Bureau, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012; 2012 Economic Census of the United States* (Jan. 8, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

²⁹ See *Communications Marketplace Report et al.*, GN Docket No. 18-231 et al., Report, FCC 18-131, 2018 WL 6839365, at *20, paras. 50-51 (Dec. 26, 2018).

³⁰ [2012 NAICS Definitions](#) (NAICS Code 515120).

³¹ *Id.*

³² 13 CFR § 121.201 (2012) (NAICS Code 515120).

receipts ranging from \$25 million to \$49,999,999, and 70 had annual receipts of \$50 million or more.³³ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

13. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,383.³⁴ Of this total, 1,282 stations (or 94.2%) had revenues of \$38.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 15, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 378.³⁵ The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

14. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³⁶ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

15. There are also 387 Class A stations.³⁷ Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,908 LPTV stations and 3,647 TV translator stations.³⁸ Given the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

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

16. As discussed above, this NPRM proposes additional steps to modernize certain notice provisions in part 76 of the Commission’s rules governing multichannel video and cable television service. Currently, these rules require that cable operators and other MVPDs provide certain written notices to broadcast stations by paper delivery, such as mail, certified mail, or, in some instances, hand delivery.³⁹ The NPRM proposes to revise the Commission’s rules to require that cable operators and DBS providers distribute these notices to broadcast television stations electronically via e-mail to an e-mail address designated by the station in the OPIF.

³³ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (Jan. 8, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

³⁴ Press Release, FCC, Broadcast Station Totals as of March 31, 2019 (Apr. 2, 2019), <https://www.fcc.gov/document/broadcast-station-totals-march-31-2019>.

³⁵ *Id.*

³⁶ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

³⁷ *See supra* note 34.

³⁸ *See supra* note 34.

³⁹ *See supra* note 4..

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

17. 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.”⁴⁰

18. Through this NPRM, the Commission seeks to minimize the administrative burden on MVPDs, including small entities, by allowing electronic delivery of certain notices to broadcast television stations, which will reduce the costs and burdens of providing such notices. The Commission has found that electronic delivery of notices would greatly ease the burden of complying with notification requirements for cable operators and DBS providers, including small entities. The NPRM seeks comment on other alternative means of delivering the notices that would better serve the needs of broadcasters and MVPDs, including small entities, but still be less burdensome than sending the notices by paper delivery, such as mail, certified mail, or, in some instances, hand delivery. The Commission’s evaluation of the comments filed on these topics as well as on other questions in the NPRM that seek to reduce the burdens placed on MVPDs will shape the final conclusions it reaches, the final significant alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

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

19. None.

⁴⁰ 5 U.S.C. § 603(c)(1)-(c)(4).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Electronic Delivery of Notices to Broadcast Stations, Modernization of Media Regulation Initiative*, MB Docket Nos. 19-165 and 17-105, Notice of Proposed Rulemaking

Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17-317 and 17-105, Report and Order and Further Notice of Proposed Rulemaking

The term “death by a thousand cuts” derives from *Lingchi*, an ancient form of Chinese torture and execution, in which a person was slowly and repeatedly cut until death. But it has become a figure of speech that is relevant to the modern regulatory state. Each individual rule imposed by government might not be oppressively burdensome when considered in isolation, but taken together, the regulatory impact can be substantial, if not fatal.

That is in part why the FCC has undertaken our initiative to modernize our media regulations. In today’s iteration, we address figurative cuts that can produce literal paper cuts: our outdated requirements for paper notifications that broadcasters and multichannel video programming distributors—MVPDs—must send each other.

In our first item, we modernize our rules by requiring broadcasters to only send MVPDs carriage election notices when changing their prior status, and even then to convey them by e-mail instead of on paper. In our second, we propose to modernize our notification rules by requiring cable and satellite providers to send notices to broadcast television stations via e-mail instead of by paper mail. These arcane requirements aren’t without cost. For example, the current carriage election notification rules mandate that a broadcast station send paper letters to every single cable system in its market every three years. The National Association of Broadcasters estimated that station groups are spending more than \$1,000 per station, per carriage election cycle, on these mundane notifications.

I’m particularly pleased that our carriage election *Report and Order* reflects a compromise proposal that almost every commenter supported. I hope that our proposal to update our MVPD notice rules will be similarly received.

Today’s actions will cut red tape, save trees, and bring our notice requirements more in line with current business practices. They also reflect our finding in an earlier *Report and Order* in the *Modernization of Media Regulation Initiative* that consumers and businesses increasingly prefer and rely on electronic notifications over paper ones.

My gratitude to the many Commission staffers working to modernize our media rules. I’d like to thank Michelle Carey, Chris Clark, Lyle Elder, Martha Heller, Brendan Holland, Varsha Mangal, and Sarah Whitesell from the Media Bureau, as well as Susan Aaron, David Konczal, Bill Richardson, and Royce Sherlock from the Office of General Counsel. They are steadily ensuring that any incisions our rules require are necessary and (hence) fewer—no small feat.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Electronic Delivery of Notices to Broadcast Stations, Modernization of Media Regulation Initiative*, MB Docket Nos. 19-165 and 17-105, Notice of Proposed Rulemaking

Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17-317 and 17-105, Report and Order and Further Notice of Proposed Rulemaking

The two electronic notification items we are considering today proceed from our ongoing Modernization of Media Regulation Initiative, and frankly, reflect common sense. Recognizing the extent to which Commission business is now conducted online through email and electronic filing, these items transform our notification and carriage election processes to reflect how the modern world operates. Our actions also echo my endorsement of the broadcaster retransmission notification change when it was first proposed in the media modernization comment cycle. Some criticized this proposal, arguing that doing so would be unfair and too disruptive, but it was the right policy position at the time and this certainly remains the case after all the parties have come to common agreement. The old gotcha game using certified mail was a waste of time and we can do better.

Under this new process, modern technology can still achieve the underlying purpose for providing necessary notifications. With respect to the notices at issue in the NPRM, those cable companies provide to broadcasters, these documents can also be effectively delivered electronically, and we should quickly move to order on this piece. On a side note, as much as I like these items, we probably could have done without relying on phantom auxiliary authority provisions of section 4 and 303 to justify our overall statutory authority, especially when we have sufficient direct authority provided by sections 614 and 615.

In the end, thanks to the Chairman for continuing the Commission's media modernization efforts this month, and kudos to the stakeholders for working together to find mutually agreeable solutions to both items as we continue to drag our sometimes-reluctant media regulations into the Twenty First Century.

I approve.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Electronic Delivery of Notices to Broadcast Stations, Modernization of Media Regulation Initiative*, MB Docket Nos. 19-165 and 17-105, Notice of Proposed Rulemaking

Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17-317 and 17-105, Report and Order and Further Notice of Proposed Rulemaking

The Federal Communications Commission has issued more than two dozen rulemakings and orders in a two-year long effort to modernize our media policies. Today we continue that work with two more rulemakings and one additional order, all focused on how we adopt updated notification systems that apply to a mix of broadcasting, cable, and satellite interests. This is a positive development and it has my support.

But I don't think it is right for this agency to keep plowing ahead with our media modernization initiative without acknowledging we have done nothing to update the least modern aspect of our media policies—and that's the public file system.

For decades, the FCC has required that broadcast stations keep a public file with information about the station's operation and service to the community. These filings include station authorizations, contour maps, and materials related to investigations, as well as joint sales agreements. They also include a political file that features sponsorship information concerning political advertisements paid for by candidates, groups, and individuals. Over time, this requirement to keep a public file was extended to others, including cable systems and satellite providers.

A little less than a decade ago, the FCC decided it was time to begin uploading the contents of these public inspection files online. In other words, these files, which had been kept in dusty cabinets, finally were posted on an online portal. This was good—for starters. But now this system is dated. These filings are not machine readable. They cannot be processed by a computer. They are not built for the era we live in now—where data is all. That means journalists, researchers, advocates, and the public do not have the ability to download, sort, aggregate, or search our files in any effective way. That means it is all but impossible to use this FCC system to study trends in everything from media ownership to political advertising.

We should update the public file system for the digital age. It should be searchable, sortable, and downloadable. It should be transparent and useful for the public. So if we want to be truly modern in our media modernization initiative, working on a machine-readable format for the public file needs to come next.