

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

In the Matter of)
Electronic Delivery of MVPD Communications) MB Docket No. 17-317
Modernization of Media Regulation Initiative) MB Docket No. 17-105

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: July 10, 2019

Released: July 11, 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 and Rosenworcel issuing separate statements.

I. INTRODUCTION

1. In this Report and Order, we modernize the Commission’s carriage election notice rules by permitting broadcasters to post their carriage elections online, and to send notices to covered multichannel video programming distributors (MVPDs) by e-mail only when changing their carriage election status. This approach will replace our current regulatory framework, under which a broadcast station typically must send a paper notice via certified mail to covered MVPDs¹ every three years, regardless of whether its carriage election changes or not. To make our new approach workable, we also will require covered MVPDs to upload e-mail and phone contact information to either the COALS database or to the online public inspection file. In addition, in the attached Further Notice of Proposed Rulemaking, we seek comment on whether and how the modernized framework described in this Order should be extended to certain broadcasters and covered MVPDs that do not use the Commission databases referenced in this Order. Through this proceeding, the Commission continues its efforts to modernize regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.²

II. BACKGROUND

2. Under the Communications Act of 1934, as amended (the Act), full power television broadcast stations, and certain low power stations and translator stations, are entitled to mandatory carriage of their signal (also known as “must carry”)³ on any cable system located within their local

¹ For the purposes of this Order, a covered MVPD is a cable operator, Direct Broadcast Satellite (DBS) provider, or any other MVPD for which broadcasters currently elect or request carriage and which uses the online public file and/or Cable Operations and Licensing System (COALS).

² See Commission Launches Modernization of Media Regulation Initiative, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

³ See 47 U.S.C. § 534(a) (“Each cable operator shall carry on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section.”); 47 U.S.C. § 534(c) (stating that if there are not sufficient signals of full power commercial television stations to fill the cable operator’s channel set aside, the cable operator shall be required to carry one or two qualified low power stations, which may include a Class A television station or a low power television station, depending on the operator’s channel

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market.⁴ Full power stations also have carriage rights on any DBS provider providing local service into the market.⁵ If a broadcast station asserts its must-carry rights, the MVPD may not accept or request any compensation whatsoever from the broadcaster in exchange for carriage of its signal.⁶ Alternatively, commercial broadcast stations with carriage rights may elect “retransmission consent.”⁷ The terms of retransmission consent frequently include, among other negotiated terms, compensation from the MVPD to the broadcaster in exchange for the right to carry the station’s signal.⁸ If the broadcaster and MVPD cannot reach a retransmission consent agreement, however, the MVPD is prohibited from carrying the broadcaster’s signal.⁹ Thus, commercial broadcasters are presented with a carriage choice -- elect mandatory carriage and forego compensation while assuring carriage, or elect retransmission consent and forego assured carriage while retaining the possibility of compensation for carriage. Noncommercial educational stations (NCEs) are entitled to must carry, but not to elect retransmission consent.¹⁰ When the Commission implemented the statutory provisions establishing the must-carry/retransmission consent regime, it adopted a requirement that each commercial television broadcast station provide notice to every cable operator every three years electing either mandatory carriage or retransmission consent.¹¹ A similar triennial notice requirement, applying to both commercial and noncommercial television broadcast stations, later was adopted as part of the carry one, carry all regime for DBS providers.¹² Failure by a broadcaster to provide timely notice of its chosen election results in a default election of must carry with respect to cable operators, but a default of retransmission consent with respect to DBS providers.¹³

3. Currently, the rules direct each commercial television broadcast station to send a triennial carriage election notice, via certified mail, to each cable system or DBS provider serving its market,¹⁴ and each NCE station to send such notices to DBS providers.¹⁵ In addition, the rules generally also require stations to place triennial carriage election statements in their online inspection files.¹⁶ The notice must state whether the station has elected mandatory carriage or retransmission consent.¹⁷ The rules applicable to DBS provider notices also require that the certified mail letter be “return receipt requested.”¹⁸

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capacity.); 47 U.S.C. § 534(h)(2) (defining what constitutes a qualified low power station); 47 U.S.C. § 535 (carriage of qualified NCE television stations); 47 U.S.C. § 535(l)(1) (defining a qualified NCE television station for purposes of must carry as including certain translator stations); *see also In Re Carriage of Digital Television Broad. Signals Amendments to Part 76 of Commission’s Rules*, CS Docket No. 98-120 et al, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2601 (2001); *Implementation of the Cable Television Consumer Protection and Competition Act, Broadcast Signal Carriage Issues*, MM Docket No. 92-259 et al., Report and Order, 8 FCC Rcd 2965 (1993). *See also* 47 U.S.C. § 573 (extending carriage rules to open video systems (OVS)).

⁴ A station’s local market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research. 47 CFR §§ 76.55(e)(2) (cable), 76.66(e)(2) (DBS).

⁵ *See* 47 U.S.C. § 338(a)(1) (“Each satellite carrier providing . . . secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all other television broadcast stations located within that local market.”). This type of carriage is commonly known as “carry one, carry all.” Carry one, carry all refers to the fact that DBS providers are not required to carry any local broadcast stations in a market, but must carry all stations with carriage rights upon request if any local station is carried (with certain narrow exceptions). The DBS must-carry/retransmission consent regime otherwise functions in a manner very similar to the cable regime. *But see* 47 U.S.C. § 338(a)(3) (“No low power station . . . shall be entitled to insist on carriage under this section [on DBS providers].”).

⁶ 47 U.S.C. § 534(b)(10).

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

⁸ Federal Communications Commission, *Retransmission Consent*, <https://www.fcc.gov/media/policy/retransmission-consent> (last visited June 12, 2019) (“money or other consideration is generally exchanged between the parties in these private negotiations”).

4. In response to the initial Public Notice in the Media Modernization proceeding, a number of commenters expressed concerns about, and proposed changes to, the carriage election notification process.¹⁹ In response to these concerns, the Commission adopted a *Notice of Proposed Rulemaking* (NPRM) and opened this docket in December 2017.²⁰ The NPRM sought comment on alternative means of notifying covered MVPDs about broadcaster carriage elections that would “satisfy the needs of broadcasters and MVPDs.”²¹ Almost every commenter responding to the NPRM maintained that there are flaws in the current election notification system.²² For example, NAB estimates that station groups are spending more than \$1,000 per station, per carriage election cycle, on carriage elections, between searching for MVPD contact information, outside law firm expenses, and certified mail costs.²³ Despite this time and expense, broadcasters claim that they are often still not certain whether they have correctly identified and verified cable operators’ contact information, and “send duplicative notices to avoid the severe consequences of making a defective retransmission consent election.”²⁴ To avoid the significant legal and financial consequences that arise from the failure to make timely elections, and to reduce the costs and resources incurred while making the election,²⁵ some commenters suggested ways to modernize the carriage election process.²⁶

5. On December 7, 2018, the National Association of Broadcasters (NAB) and NCTA -- the Internet and Television Association (NCTA) jointly submitted a proposal setting forth a recommendation of how to modernize the election notification process (Joint Proposal) for commercial broadcasters and cable operators.²⁷ Specifically, the Joint Proposal seeks to “alleviate the burdens associated with the current notification process” by revising our rules as necessary so that

a commercial broadcast TV station would be required to send notice of its must carry or retransmission consent election to a cable operator only if the station changed its election status from its previous election. In those cases, the broadcaster would send its notice to an email address listed in the cable operator’s online public file or in the FCC’s Cable Operations and Licensing System (COALS) database, for cable operators that do not have an online public file.²⁸

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⁹ 47 U.S.C. § 325(b)(1)(a).

¹⁰ 47 U.S.C. § 535(a) (“In addition to the carriage requirements set forth in section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.”); 47 CFR § 76.56(a)(1) (Explaining that, subject to certain conditions, cable operators are required to carry every qualified noncommercial educational station “requesting carriage.”). Any requests NCE stations make, including those made at the outset of their or a cable system’s operation, must be included in their public file “for the duration of any period to which the request applies.” See 47 CFR § 73.3527(e)(12).

¹¹ 47 CFR § 76.64(f) (stating that carriage elections by commercial television stations must be made by October 1 every three years, for the three-year period beginning the following January). This three-year election cycle is required by statute. 47 U.S.C. §§ 325(b)(3)(B), (b)(3)(C)(i).

¹² 47 CFR § 76.66(c).

¹³ 47 CFR §§ 76.64(f)(3) (cable), 76.66(d)(1)(v) (DBS).

¹⁴ 47 CFR § 76.64(h).

¹⁵ 47 CFR §§ 76.66(a),(d) (requiring all “television broadcast stations” to make DBS carriage elections and defining “television broadcast station” to include commercial and noncommercial stations).

¹⁶ As discussed herein, NCE stations are not required to make triennial cable carriage elections, *see supra* note 6, and are not required to include DBS or other MVPD carriage elections in their public files. *Infra* para. 13. In addition, as explained in the *Further Notice of Proposed Rulemaking*, neither qualified low power television stations nor TV translator stations are required under our rules to maintain public inspection files.

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

¹⁸ 47 CFR § 76.66(d)(1)(ii).

The Joint Proposal suggests that this change be in effect for the 2021-2023 carriage election cycle.²⁹ Broadcasters would “continue to include copies of their election statements in their online public files.”³⁰

6. In order to make this process work, NAB and NCTA propose that a broadcaster e-mail a notice to a cable operator whenever changing its election with respect to one or more of that operator’s systems. Each such change notice must “identify [the broadcast] station call sign(s), the DMA and the specific change being made in election status,” and include an e-mail address and phone number “in case cable operators have additional questions.”³¹ If an operator has multiple systems within a DMA, the notice must identify them individually only if the broadcaster “changes its election for some systems ... but not all.”³² If a broadcaster is unable to deliver a “change of election” notice to a listed e-mail address due to a problem with the e-mail address or the operator’s ability to receive the e-mail, and is unable to contact the operator using a provided phone number, then the notice will still be considered to have been properly delivered if it is timely placed in the broadcaster’s public file and e-mailed to the Commission.³³

7. NAB and NCTA suggest that each cable operator “provide a general carriage elections email address, where broadcasters will send their election notices” and a phone number to be used only “in the event of questions as to whether” a notice was received.³⁴ They propose that this contact information would be on the “first page” of each cable system’s public file, “or in the FCC’s Cable Operations and Licensing System (COALS) database, for cable operators that do not have an online public file.”³⁵ The proposal contemplates that the contact information must be kept current by the cable operator, and should always be “up-to-date within 60 days of the next carriage election deadline.”³⁶ In addition, cable operators would be required to “generate a response to the broadcaster’s notification e-mail so that the broadcaster knows its election notice was received,” but this response would “not be considered the cable operator’s affirmation that the broadcast station fully satisfied its notice obligation.”³⁷

8. The Joint Proposal suggests updates to the Commission’s online file and COALS databases to implement these proposed changes.³⁸ Finally, it proposes the creation of a Commission

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¹⁹ In this Order, we identify comments and replies filed in MB docket number 17-105, the Modernization of Media Regulation docket, with “Media Mod.” Comments and replies filed in the Electronic Delivery of MVPD Communications docket, MB docket number 17-317, are identified with “NPRM” if filed in the first round of comments in this proceeding, or “PN” if filed in the second round. *See, e.g.*, NAB Media Mod Comments at 22-23; CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc., and Univision Communications Inc. Media Mod Comments at 10-12 (Content Companies)(a single broadcaster might be required to “send more than 1,000 [certified] letters”); Nexstar Broadcasting, Inc. Media Mod Comments at 16-17 (Nexstar); America’s Public Television Stations et al. Media Mod Comments at 15 (APTS); Meredith Corporation Media Mod Comments at 2; ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association Media Mod Reply at 10-11 (Affiliates Associations) (the current “requirement burdens television stations because there is no central repository for the information necessary” to send election notices); Named State Broadcasters Associations Media Mod Reply at 7-8; AT&T Services, Inc. Media Mod Reply at 5-6 (AT&T). Many of these commenters proposed that broadcasters should be able to satisfy their carriage election requirement by sending an e-mail to an MVPD or simply uploading the carriage election into their public file. *See, e.g.*, Nexstar Media Mod Comments at 16-17 (proposing “broadcasters to make their triennial elections by e-mail or other electronic means,” arguing that “e-mail is ubiquitous” and “[e]lections by e-mail would be faster, more efficient, and more easily verifiable” than certified mail.); Content Companies Media Mod Comments at 11 (proposing eliminating the requirement to “send” notices at all, instead allowing broadcasters to “provide notice of elections online – on their website, in their online public file, or through some other widely available posting mechanism”); Affiliate Association Media Mod Comments at 11; Named State Broadcasters Associations Media Mod Reply at 6-7 (proposing to change “the current default election for cable and satellite systems to the station’s prior election if no new election is made” and to “permit stations to send their election to MVPDs via e-mail”). *But see* American Cable Association Media Mod Reply at 13 (ACA) (arguing that continued reliance on certified mail is essential); AT&T Media Mod Reply at 5-6 (proposing allowing notice to be sent via any express mail service, rather than only by certified mail, return receipt requested). Although some commenters in the Media Modernization

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“email address that broadcasters will [carbon copy] when sending election notices to cable operators.”³⁹ The Joint Proposal specifically does not propose to change the current default election provisions,⁴⁰ and recommends maintaining the status quo with respect to any situation not expressly contemplated in the proposal.⁴¹

9. On December 13, 2018, the Media Bureau issued a Public Notice seeking comment on the Joint Proposal.⁴² Specifically, the Public Notice asked whether, and to what extent, the Commission should adopt the recommendations set forth in the proposal.⁴³ Commenters generally support the substance of the Joint Proposal,⁴⁴ although DISH and AT&T oppose its application to DBS providers and claim that they have a greater need for triennial notices than other covered MVPDs.⁴⁵

III. DISCUSSION

10. We adopt the Joint Proposal and expand upon it in two significant ways. Specifically, although the Joint Proposal relates to commercial broadcasters and cable operators, we also will apply certain elements of the rules implementing the proposal to NCE stations. We will also apply the new rules to DBS providers. Thus, our new framework will be relevant to all broadcasters with mandatory carriage rights, and all MVPDs responsible for that carriage, except in those narrow cases we separately address below in the *Further Notice of Proposed Rulemaking*.⁴⁶ We conclude that it will serve the public interest and enhance administrative efficiency to have a unified approach for carriage election notices.

11. Almost all commenters support the Joint Proposal, and we find that it addresses many of the concerns raised throughout this proceeding by broadcasters and MVPDs alike.⁴⁷ Under our new approach, broadcasters will make their carriage elections by placing them into their online public files, and they will be required to provide a separate electronic notice of those elections to relevant MVPDs only when and if they change their election from the previous election period.⁴⁸ Thus, only a limited

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docket proposed even broader changes to the must-carry/retransmission consent system, in this proceeding we are focused exclusively on the way broadcasters communicate carriage elections and requests.

²⁰ *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket No. 17-317, Notice of Proposed Rulemaking, 32 FCC Rcd 10755 (2017) (*NPRM*).

²¹ *NPRM*, 32 FCC Rcd at 10767-68, paras. 25-27. The instant item adopts changes to sections 76.64(h) and 76.66(d), as proposed in the *NPRM*, as well as conforming edits to other related rules. See *infra* Appendix A (Final Rules).

²² See, e.g., NAB *NPRM* Comments; America’s Public Television Stations et al Comments (*APTS NPRM* Comments); ION Media Networks, Inc. (*ION NPRM* Comments); CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc., Univision Communications Inc., ABC Television Affiliate Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association and NBC Television Affiliates Comments at 5 (Joint Broadcast *NPRM* Commenters); LESEA Broadcasting Corporation Reply Comments; NCTA *NPRM* Comments; Nexstar Broadcasting, Inc. *NPRM* Comments; Northwest Broadcasting, Inc. *Ex Parte* Comments; NRJ TV LLC *Ex Parte* Comments; Meredith Corporation *NPRM* Comments; Verizon *NPRM* Comments; WBNA TV 21 Comments.

²³ See NAB *NPRM* Comments at 4.

²⁴ NAB *NPRM* Comments at 5

²⁵ See *supra* para. 4.

²⁶ For example, ION supported “a simple requirement that stations post their elections in their online public inspection files.” ION *NPRM* Reply Comment at 6. *APTS* proposed that the “obligation to re-file satellite carriage

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number of notices will need to be sent to MVPDs and these will be sent via e-mail instead of via paper mail. In addition, we require broadcasters and DBS providers to upload to their online public files both an e-mail address and a phone number for purposes of carriage related inquiries, and we require cable operators to upload the same information in COALS. This contact information must be uploaded no later than July 31, 2020 and must be kept up-to-date thereafter.

A. Application of Joint Proposal to Broadcasters

1. Commercial Television Stations

12. We largely adopt the election notification framework suggested in the Joint Proposal with respect to commercial broadcasters. The first component of our new framework for commercial broadcast TV stations is that they will upload a single triennial carriage election statement to their online public files, a streamlining of their current obligation to post and retain separate election statements for each MVPD by which they are carried.⁴⁹ To the extent a commercial broadcaster makes different elections with respect to different MVPDs, the election statement included in the public file must reflect those differences.⁵⁰ Election statements must be uploaded to a station's public file by the triennial deadline currently specified in our rules.⁵¹

13. The second component of our new approach is that, if a commercial broadcaster changes its carriage election for a specific covered MVPD, an election change notice must be sent to that MVPD's carriage election-specific e-mail address and attached to the station's election statement in its public file by the carriage election deadline. Such change notices must include, with respect to each station covered by the notice: the station's call sign, the station's community of license, the DMA where the station is located, the specific change being made in election status, and an e-mail address and phone number for carriage-related questions.⁵² Consistent with the Joint Proposal, if the notice is sent to a cable operator, the broadcaster "would need to identify specific cable systems for which a carriage election applies [only] if the broadcaster changes its election for some systems of the cable operator but not all."⁵³ In addition,

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requests every three years for NCE-TVs should be eliminated." APTS NPRM Comments at 5-6. NCTA proposed that broadcasters submit their carriage election notification via e-mail to a single point of contact for each operator. NCTA NPRM Comments at 13-14. DISH, though favoring the status quo, proposed the creation of a Commission-hosted website through which broadcasters can elect carriage, a proposal endorsed by AT&T. DISH NPRM Comments at 4-5; AT&T NPRM Reply at 7. AT&T itself proposed to "permit broadcasters to use express delivery mail with tracking instead of certified mail." AT&T Comments at 6. With the exception of the DBS providers, commenters generally now support the Joint Proposal, which synthesizes various aspects of this wide array of proposals. *See infra* section III.

²⁷ *Supra* note 2.

²⁸ Joint Proposal at 2. While the proposal's terms are limited to commercial broadcast stations and cable operators, the types of entities that are members of NAB and NCTA, NAB "believes these rules should apply uniformly to all MVPDs." Joint Proposal at n.3. NAB also has stated that "There is no reason to limit the proposal's application to only commercial broadcasters, and no one in the record has suggested doing so. The FCC should allow noncommercial broadcasters to benefit from a modernized notice regime, including by no longer requiring them to 'elect' mandatory carriage every three years for satellite providers." NAB PN Comments at 3.

²⁹ *Id.* at 2. The next carriage election deadline is October 1, 2020. 47 CFR § 76.64(f) (requiring elections at three-year intervals starting in 1996, with deadlines of October 1).

³⁰ Joint Proposal at 2.

³¹ *Id.* at 3-4. This e-mail address and phone number must also be on the "first page of each of [a broadcaster's] stations' public files," and must be updated if they change. *Id.* at 2, 3.

³² *Id.* at 3.

³³ *Id.* (*see also infra* para 8).

the broadcaster must carbon copy ElectionNotices@FCC.gov when sending its carriage elections to MVPDs.⁵⁴ A single notice may cover all of a broadcaster's stations, as well as all of a cable operator's systems or all of a DBS provider's served DMAs.⁵⁵ In this regard, the record in this proceeding suggests that election status changes are the exception rather than the rule.⁵⁶

14. If a broadcaster does not receive a response verifying receipt of its change notice,⁵⁷ or gets an indication that the message was not delivered, it must contact the MVPD via the provided phone number to confirm that the notice was received or arrange for it to be redelivered.⁵⁸ If the e-mail is timely and properly sent to the MVPD's listed address, but the broadcaster receives no verification and is unable to reach anyone at the provided phone number, the notice still will be considered to have been properly delivered if it was properly copied to the Commission's election notice mailbox⁵⁹ and is timely placed in the broadcaster's public file.⁶⁰

2. NCE Stations

15. Although the Joint Proposal applies only to commercial broadcast stations, we also apply certain elements of it to NCE stations, as suggested by Public Broadcasting.⁶¹ Because NCE stations, unlike commercial stations, cannot elect retransmission consent, we find it appropriate to apply different notice requirements to NCE stations to ensure that they are not unduly burdened. Our current rules require NCE stations to send written election notices to DBS providers every three years, even though these stations only may request mandatory carriage, and are not permitted to "elect" retransmission consent on any MVPD.⁶² We agree with Public Broadcasting (and NAB) that "re-notify[ing] satellite carriers" every three years of their request for carriage via "the antiquated method of certified mail" is unnecessary.⁶³

16. Just like commercial stations seeking mandatory satellite carriage, NCE stations are required pursuant to section 338 of the Act to "request" carriage from DBS providers.⁶⁴ DISH/AT&T assert that "[t]his is [] the reason why noncommercial educational stations must file carriage election

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³⁴ *Id.* at 2.

³⁵ *Id.*

³⁶ *Id.* at 3.

³⁷ *Id.* at 4.

³⁸ *Id.* at 2-3.

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at n.7.

⁴² *Media Bureau Seeks Comment on Joint Proposal for Carriage Election Notice Modernization*, MB Docket No. 17-317, Public Notice, 33 FCC Rcd 11784 (MB Dec. 13, 2018) (*Joint Proposal PN*); *see also Media Bureau Extends Comment and Reply Dates for Industry Proposal on Carriage Election Notice Modernization*, MB Docket No. 17-317, Public Notice, 84 Fed. Reg. 4039 (MB Jan. 29, 2019); *Media Bureau Announces Comment and Reply Comment Dates for Industry Proposal for Carriage Election Notice Modernization*, MB Docket No. 17-317, Public Notice, DA 19-83 (MB Feb. 14, 2019).

⁴³ *Joint Proposal PN* at 2.

⁴⁴ *Infra* note 48 and accompanying text.

⁴⁵ *Infra* paras. 20-23.

⁴⁶ In the *Further Notice of Proposed Rulemaking*, we seek comment on whether and how to apply these new rules to broadcast stations and covered MVPDs that do not have access to the online public file and/or COALS. *Infra* section IV.

letters every election cycle with DBS providers, but not with cable systems.”⁶⁵ We disagree, because the statute does not require that NCEs repeatedly re-notify DBS providers about their carriage request. We find, instead, that by uploading and retaining a carriage request in their online public files, an NCE station will have satisfied the statutory requirement in section 338(a) to “request” carriage.⁶⁶ Although DISH/AT&T claim that “there is a real and practical need” for every broadcast station asserting its must-carry rights (including NCE stations) to send a triennial election notice to DBS providers,⁶⁷ we do not agree for the reasons discussed below.⁶⁸ As the Commission found when first implementing the DBS carriage rules, however, “carriers need some measure of control in configuring their satellite systems to meet their statutory obligations,” and as a result both commercial and NCE stations were required to make carriage requests by consistent deadlines.⁶⁹ This need for “some measure of control” persists. Therefore, we will require each NCE station to make a request for DBS carriage via the placement of a carriage statement into its public file no later than the next carriage election deadline of October 1, 2020.⁷⁰ Each such statement must list the station’s call sign, the station’s community of license, and the DMA where the station is located and for which is it requesting carriage.⁷¹ The statement must be retained in the NCE station’s public file. These requirements will constitute new obligations for NCE stations.⁷² However, because we are relieving NCE stations of repeated triennial notice obligations, including the obligation to send carriage requests via certified mail to DBS providers, this limited application of the Joint Proposal framework to these stations will result in a significant and meaningful reduction in their overall regulatory burdens.

3. Broadcaster Contact Information

17. All broadcasters subject to our new rules must provide an e-mail address and phone number in their public files for carriage-related questions no later than July 31, 2020, approximately 60 days prior to the 2020 carriage election deadline, and maintain up-to-date contact information at all times thereafter.⁷³ The Commission will ensure that this information appears on the first page of the station’s online public file.⁷⁴ This proposed requirement has been roundly endorsed by the broadcasters

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⁴⁷ For example, ION and the Affiliates and Networks urge us to “adopt the proposal without” revision. ION PN Comments at 1; The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates, together with the CBS Corporation, 21st Century Fox, Inc., NBCUniversal Media LLC, and the Walt Disney Company (Affiliates and Networks) PN Comments at 1. *See also* Meredith PN Comments at 1 (stating that the proposal “reduces the opportunity for ‘gotcha’ gamesmanship” and it supports “this common sense, easily applied, Twenty First Century proposal”); Affiliates and Networks PN Comments at 1-2; Nexstar PN Comments at 2, 3; America’s Public Television Stations, the Corporation for Public Broadcasting, and Public Broadcasting Service (Public Broadcasting) October 22, 2018 *Ex Parte* at 1. *But see*, as noted above and discussed further below, DISH and AT&T, the two existing DBS providers, object to being subject to the Joint Proposal. DISH/AT&T PN Comments at 1. In addition, AT&T suggests that we change the election deadline and the timeline for MVPD responses. AT&T Media Mod Comments at 7-8. As emphasized in note 19 above, in this proceeding we are focused exclusively on the way broadcasters communicate carriage elections and requests. We did not seek comment on, and we do not make, any other changes to the carriage election process or the responsibilities and rights of the parties involved. The “unanswered questions” identified by DISH/AT&T, such as the question of which carriage election controls if a broadcaster files multiple requests or sends multiple notices, are not specific to this proceeding. That is, issues such as these would be handled just as they always have been. For example, our precedent generally holds that in the case where a broadcaster files multiple inconsistent carriage election notices, the first valid election is binding. *See Radio Perry, Inc. (WPGA-TV, Perry, Georgia)*, Memorandum Opinion and Order, 26 FCC Rcd 16392, 16395, para. 6 (2011) (citing *Cablevision Systems Corp.*, CSR-4666-M, Memorandum Opinion and Order, 12 FCC Rcd 13121, 13128, para. 12 (CSB 1996)). ACA also proposed revisions to our rules “with respect to notices that cable operators are required to deliver to broadcast stations.” ACA PN *Ex Parte* at 1 (rec. Dec. 20, 2019). After filing comments, but before filing *ex partes*, the American Cable Association changed its name to ACA Connects – America’s Communications Association. Although they are outside the scope of this proceeding, the Commission separately is seeking comment on the proposals raised by ACA, and related efforts to “extend[] the benefits of electronic delivery” to MVPD notices. *Electronic Delivery of Notices to Broadcast Television Stations, Modernization of Media Regulation Initiative*, MB Docket Nos. 19-165, 17-105, Notice of Proposed Rulemaking, FCC 19-___ (July 10, 2019). Pine Belt

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themselves, and no commenter opposes it.⁷⁵ DISH/AT&T “estimate that during the three-year election period they may each contact about a quarter of their must-carry stations regarding technical and/or programming related issues,” and it is “thus essential that DBS providers have updated information for these stations,” provided via the triennial election notices.⁷⁶ A centralized electronic repository of contact information that is readily accessible through the Commission’s online public file should make it at least as easy, if not easier than it is today, for an MVPD to find a specific phone number or e-mail address. We agree with the suggestion in the Joint Proposal that both an e-mail address and a phone number should be provided for each station, so that there is an alternative means of communication if the other one fails. Broadcasters will be required to respond as soon as is reasonably possible to carriage questions from MVPDs.

B. Application of Joint Proposal to MVPDs

18. Under our new rules, each covered MVPD⁷⁷ will be required to provide a designated carriage election e-mail address, where broadcasters will send election change notices, and a phone number for broadcasters to use in the event of questions as to whether the MVPD received the station’s election notice.⁷⁸ Covered MVPDs will be required to respond as soon as is reasonably possible to carriage questions from broadcasters. Each covered MVPD must have a single e-mail address and phone number for carriage issues, regardless of the number of systems operated or markets served. All cable operators will provide this contact information via COALS, and the Commission will ensure that the information provided in COALS is automatically transferred to the online files of cable operators that also have an online public file, while the DBS providers will input the information directly into their online public files.⁷⁹ As with broadcasters, the Commission will ensure that this information appears on the first page of the MVPD’s online public file.⁸⁰ Covered MVPDs must provide their contact information by July 31, 2020, and maintain up-to-date contact information at all times thereafter.⁸¹ Because covered MVPDs are already required to provide some contact information to the public,⁸² this additional carriage

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Communications (Pine Belt) asks us to “review the extreme increases in broadcast retransmission rates.” Pine Belt Reply at 2. This subject is beyond the scope of this proceeding and is therefore not addressed in this Order.

⁴⁸ This includes not only stations that are already being carried on the MVPD, but also stations announcing their intent to be carried by new systems or a new provider under sections 76.64(k) and 76.66(d)(2) of our rules, or new broadcast television stations electing carriage under sections 76.64(f)(4) or 76.66(d)(3)(ii). *See* 47 CFR §§ 76.64(k); 76.64(f); 76.66(d). NCE stations that are currently being carried will place only a one-time DBS carriage request in their public file. *See infra* section III.A.2.

⁴⁹ 47 CFR § 73.3526(e)(15) (requiring the inclusion in the public file of “[s]tatements of a commercial television or Class A television station’s election with respect to either must-carry or re-transmission consent”); 47 CFR § 76.64(h) (“each television broadcast station shall place copies of all of its election statements in the station’s public file”). This filing will constitute the formal carriage election of the station that is required by the statute. Thus, a failure to timely upload the statement will result in a default election, as well as a violation of the broadcast public file rule. 47 CFR §§ 76.64(f)(3), 76.66(d)(1)(v); *see also infra* Appendix A (Final Rules).

⁵⁰ If a station makes a uniform election, a blanket election statement for the relevant DMA will suffice. For example, its statement could be as simple as “[INSERT CALL SIGN] elects [must-carry/retransmission consent] on all MVPDs in the [INSERT DMA NAME] Designated Market Area for the 2021-2023 carriage cycle.” If the station is making different elections with respect to different MVPDs, however, its statement must reflect those differences. Furthermore, any change notices sent to MVPDs must be attached to this election statement. *Infra* para. 14.

⁵¹ 47 CFR § 76.64(f).

⁵² Joint Proposal at 2, 4. This contact information must be the same carriage-related contact information posted in the online public file at the time the election notice is sent. *See infra* section III.A.3.

contact obligation, and the requirement to keep this information up to date, should pose virtually no burden on covered MVPDs.

19. As suggested in the Joint Proposal, we also will require covered MVPDs to verify receipt of an e-mailed election change notice, via e-mail sent back to the originating address, as soon as is reasonably possible.⁸³ This will not constitute a statement that “the broadcast station fully satisfied its notice obligation,” but rather simply will indicate that the notice e-mail was received.⁸⁴ Although we anticipate that these verification e-mails will be generated automatically in most cases, we require only that they be sent expeditiously. A timely and correct notice of a change in election that is sent to the e-mail address provided by the MVPD, carbon copied to ElectionNotices@FCC.gov, and placed in the station’s public file, must be honored by the MVPD.

20. Though the Joint Proposal related to cable election notices, we are extending the rules to DBS providers as well. We are persuaded by NAB that having different sets of rules for cable and DBS “will only confuse the carriage election process and make it more difficult for broadcasters to ensure they have provided proper notice to all relevant MVPDs.”⁸⁵ We disagree with DISH/AT&T that there are compelling reasons not to apply this updated process to them. They claim that “no party has explained – or even attempted to explain – how mailing, at most, two letters once every three years. . . is burdensome.”⁸⁶ DISH/AT&T observe that we “need not have identical carriage election” notice procedures for DBS and cable, and that, “for example, the carriage election defaults are different.”⁸⁷ Even granting that mailing these triennial letters imposes only a minimal burden on mandatory carriage stations, the fact that they do not send these letters to cable operators⁸⁸ shows that it is an unnecessary burden. Indeed, the different carriage election defaults emphasized by DISH/AT&T increase the importance of modernizing the process for cable and DBS in a consistent way. As some small independent and noncommercial stations have learned, simply “mailing a letter” to a DBS provider is not, in fact, enough to ensure carriage under the current rules because carriage rights have been denied based on violations of the current mailing requirement.⁸⁹ We believe that adopting a simplified and uniform

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⁵³ Joint Proposal at 3.

⁵⁴ *Id.* at 4; *see also infra* section III.C.

⁵⁵ Joint Proposal at 3-4. Copies of a change notice must be included in the public file of every station affected by that change notice.

⁵⁶ DISH/AT&T May 7, 2019 *Ex Parte* at 1 (estimating “approximately 15% of its must-carry stations change election status or ownership and/or network affiliation from cycle to cycle”).

⁵⁷ *See infra* para. 22.

⁵⁸ The verification e-mail from the MVPD is meant to confirm receipt of the e-mail in a manner similar to a return receipt when sending certified mail. As under the current rules, it is the responsibility of the broadcaster who is sending the notice to ensure that the notice is timely sent and contains all of the required, accurate, information. *See supra* Appendix A, “Final Rules.”

⁵⁹ *See infra* para. 24.

⁶⁰ Similarly, if an MVPD does not maintain a required COALS account or public file, or fails to provide any carriage contact information at all, a broadcaster’s election change notice still will be considered to have been properly delivered if it is timely sent to the Commission’s election notice mailbox and is timely placed in the broadcaster’s public file.

⁶¹ Public Broadcasting PN Comments at 1-2; NAB PN Comments at 3. *See also* Public Broadcasting May 30, 2019 *Ex Parte* at 1.

⁶² 47 CFR §76.66(d). Public Broadcasting states that “once an NCE-TV station requests mandatory carriage from a cable operator, the carriage request continues, absent a change in circumstances. Thus, there is no requirement that NCE-TV stations ‘reelect’ mandatory carriage on cable for every three-year cycle.” Public Broadcasting NPRM

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election notification process will decrease the possibility that broadcasters, particularly small broadcasters, will fail to qualify for carriage based on technical noncompliance with our rules.

21. We also disagree that DBS providers have a greater need for the triennial notices than their cable counterparts and therefore that the methodology in the Joint Proposal should not apply to them.⁹⁰ DISH/AT&T note that “stations may change content, ownership, and sometimes locations” between elections,⁹¹ and claim that unlike the cable operators that “have a local or, at least, a regional presence and are thus more aware of and familiar with these station changes . . . DBS providers may never have any contact with” stations that do not actively negotiate carriage agreements.⁹² According to DISH/AT&T, they therefore have a greater need for “triennial election notices [from mandatory carriage stations specifically] to update records and determine carriage obligations for the next three years,”⁹³ because sometimes the changes mean the station is “not always eligible for continued carriage.”⁹⁴ Information about content, ownership, and tower location, however, is not required to be provided to the DBS providers by broadcasters in triennial election notices.⁹⁵ If broadcasters are voluntarily supplying this information to the providers today, nothing in our new rules will prohibit their continuing to do so in the future.

22. We note that our updated election notification process specifically addresses a significant concern raised by DISH earlier in this proceeding. The NPRM asked whether the Commission should revise our rules such that broadcasters would be required to place election notices in the public file instead of mailing them.⁹⁶ DISH contended in response that this would be “unworkable for MVPDs” unless notices were also sent directly to them, because MVPDs would have to “search hundreds of public files for new election requests.”⁹⁷ Our revised rules ameliorate that potential problem by ensuring that

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Comments at 5. The record provides no justification for modifying this process. Nor do any commenters suggest that we do so.

⁶³ Public Broadcasting PN Comments at 1-2 (citing the earlier comments and *ex parte* filings by the group in MB Docket 17-317). NAB agrees “[t]here is no reason to limit the proposal’s application to only commercial broadcasters,” and that we “should allow noncommercial broadcasters to benefit from a modernized notice regime.” NAB PN Reply at 3. As Public Broadcasting also notes, the current “outdated” notice requirements have recently resulted in “[h]undreds of thousands of members of the public” losing access to some “noncommercial educational public television service” in the *Minority Television Project* case. Public Broadcasting PN Comments at 2; *see also Minority Television Project, Inc., KMTP-TV, Channel *32 San Francisco, California v. DISH Network L.L.C.*, MB Docket No. 17-313, Memorandum Opinion and Order, 33 FCC Rcd 216 (MB 2018) (*Minority Television Project*), *petition for reconsideration pending*. In that case, the Media Bureau denied a must carry complaint because the broadcaster failed to follow the current election notice rules. *Minority Television Project, Inc.*, is the licensee of independent non-commercial television station KMTP-TV, San Francisco, California (KMTP). KMTP sent a letter to DISH Network L.L.C. (DISH), electing mandatory carriage on DISH throughout the San Francisco-San Jose-Oakland DMA for the 2018-2020 election cycle. The Bureau stated that the “letter included all of the information that is required by [s]ection 76.66(d)(1) of the Commission’s rules,” and was timely mailed. *Minority Television Project* at 217. It was sent, however, via the United States Postal Service’s Priority Express Mail service. Because section 76.66(d)(1)(ii) of our rules required that it be sent through the United States Postal Service as first-class certified mail, return receipt requested, the Bureau determined that KMTP did not comply with the rules and that KMTP is thus not entitled to carriage on DISH anywhere in their market during the current three -year election cycle. *Id.* at 218

⁶⁴ DBS providers must retransmit eligible stations only “upon request.” 47 U.S.C. § 338(a)(1) (“Each satellite carrier providing, under section 122 of title 17, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of this title.”); *see also Implementation of the Satellite Home Viewer Improvement Act of 1999, Broadcast Signal Carriage Issues, Retransmission Consent Issues*, CS Docket Nos. 99-363 and 00-96, Report and Order, 16 FCC Rcd 1918, 1922, 1931 (2000) (*SHVIA Order*) (explaining that television stations “request carriage by making an election,” and “an election made by the television broadcast station shall be treated as the request for carriage”).

notice of any new or changed carriage request is sent via e-mail directly to any affected MVPD. By eliminating the “clutter” of hundreds of election notices that simply reaffirm an existing election, these rules will aid DBS providers in recognizing and focusing on stations whose election status has changed.

23. Indeed, the fact that election change notices will be e-mailed directly to MVPDs significantly undercuts the DBS providers’ contention that the new rules will impose a large administrative burden. DISH/AT&T note that they each carry more than 1,300 broadcast stations nationwide and maintain that it “is not feasible for DISH and DIRECTV to manage that number of carriage election notifications through e-mails and phone calls.”⁹⁸ Under our new rules, however, the DBS providers will have to manage notices from only the small fraction of stations changing their carriage election status in any given cycle. Although DISH and AT&T have claimed throughout this proceeding that e-mail “does not provide the necessary level of certainty for the carriage election process,”⁹⁹ other commenters disagree. Nexstar notes that given “the pervasive use of the internet and e-mail communications. . . e-mail distribution is not a big ask or an unreliable delivery method.”¹⁰⁰ Furthermore, although DISH accurately notes that e-mail messages can introduce new complexities and challenges, such as navigating through spam filters that might prevent notices from being received,¹⁰¹ we note that it alleviates others, like the danger of physical mail being lost within a mailroom. Moreover, as the Joint Proposal suggests, we are requiring that both broadcasters and MVPDs also post phone numbers, so there will always be an alternative means for stations and MVPDs to contact each other and resolve carriage issues.

C. Commission Responsibilities

24. As suggested in the Joint Proposal, the Commission must do its part to implement this new carriage election process. Specifically, we will update COALS, providing fields for cable operators to enter their carriage election notice e-mail address and phone numbers.¹⁰² The information entered will be displayed on the first page of COALS, and we will also transfer this information as necessary so that,

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⁶⁵ DISH/AT&T PN Comments at 8.

⁶⁶ 47 U.S.C. § 338(a). Although we recognize that the *SHVIA Order* required NCE broadcasters to make requests anew every three years, we find no bar in the statute to permitting NCE broadcasters to make a single notification to DBS providers. *SHVIA Order*, 16 FCC Rcd at 1929, para.9.

⁶⁷ *Id.* They argue that this need arises because DBS providers have a more limited ability than cable operators to gather information about mandatory carriage stations and need the triennial notices in order to find out about stations’ content, ownership, and tower location. DISH/AT&T April 3, 2019 *Ex Parte* at 2. We note, however, that none of this information is required to be provided in triennial carriage election notices. 47 CFR § 76.66(d)(iii).

⁶⁸ See *infra* para. 22.

⁶⁹ *SHVIA Order*, 16 FCC Rcd at 1929, para. 22.

⁷⁰ New requests for carriage by NCE stations must be sent to an MVPD’s “carriage election-specific” e-mail address and retained in the station’s public file “for the duration of any period to which the request applies.” Appendix A (*Final Rules*); 47 CFR §§ 76.56(a), 76.64(k); see also *supra* note 49. When the new request is from an existing NCE station that is not being carried by an existing MVPD, the NCE must e-mail a copy of its request by the next carriage election deadline, and must be carried by the MVPD beginning with the next carriage cycle. Appendix A (*Final Rules*, revising 47 CFR § 76.66(d)); 47 CFR § 76.56(a).

⁷¹ For example, such a request statement could be as simple as “[INSERT CALL SIGN] requests carriage on DBS providers serving the [INSERT DMA NAME] Designated Market Area.”

⁷² NCE stations are required to place requests for mandatory carriage on a cable system in their public files, but there is no triennial carriage election requirement for NCE stations with respect to cable systems. 47 CFR § 73.3527(e)(12).

⁷³ Joint Proposal at 2. This e-mail address and phone number need not be dedicated exclusively to carriage issues, so long as the individuals answering them are prepared to address carriage issues.

for operators with an online public file, the contact information appears on the front pages of those public files.¹⁰³ We also will update the online public file so that broadcasters and DBS providers can enter this information directly into their public files, where again it will be displayed on the first page.¹⁰⁴

25. In addition, the Commission will create an “election notice verification” e-mail inbox that broadcasters must carbon copy when notifying an MVPD of a changed election, located at ElectionNotices@FCC.gov.¹⁰⁵ Like the MVPD e-mail address, this Commission address will provide a verification response to assure broadcasters that the e-mail has been received. In the case of a dispute between a broadcaster and MVPD about an election change notice, the Commission will make available a copy of any e-mail that was received in the inbox.

D. Timing

26. We adopt the Joint Proposal suggestion that “this new framework tak[e] effect in the 2020 election” for the 2021-2023 carriage election cycle.¹⁰⁶ Therefore, broadcasters must upload their carriage elections into their public files and e-mail required notifications to covered MVPDs by October 1, 2020. This suggestion received widespread support in the record.¹⁰⁷ Though smaller cable operators say that they should be exempt from the new rules until 2023, we conclude that it will be feasible for the cable operators, including small operators, to comply in a timely way with the limited requirements imposed on covered MVPDs under our new rules.¹⁰⁸

27. ACA, with Pine Belt’s support, “opposes the proposal’s timeline as unrealistic for those small providers that would rely on COALS to make their contact information available online to broadcasters.”¹⁰⁹ ACA “does not believe that the Commission will be able to implement the proposal quickly enough to give these operators sufficient time to meet their new obligations.”¹¹⁰ They cite the need to publish this Report and Order, seek and receive approval from the Office of Management and Budget under the Paperwork Reduction Act, and make technical updates to Commission databases,

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⁷⁴ *Infra* section III.C.

⁷⁵ Joint Proposal at 3. As ION compellingly argues, “creating better, more certain lines of communication between broadcasters and cable operators concerning election issues will inevitably lead to a more cooperative process.” ION PN Comments at 1. The Affiliates and Networks are “particularly pleased” with this reciprocal contact information requirement, cheering the “spirit of cooperation” it embodies. Affiliates and Networks PN Comments at 1-2. *See infra* paras. 21-22.

⁷⁶ DISH/AT&T May 7, 2019 *Ex Parte* at 1.

⁷⁷ *See supra* note 1.

⁷⁸ Joint Proposal at 2. We anticipate, but do not mandate, that the e-mail address will be dedicated exclusively to election change notices, but the individuals answering e-mails and phone calls to the designated contacts must be prepared to address carriage issues.

⁷⁹ *See infra* section C, para. 23. Cable systems with fewer than 1,000 subscribers are not required to maintain an online public file. *See* 47 CFR § 76.1700(a)(4) (requiring that cable operators with 1,000 or more subscribers maintain in the online public file “a current listing of the cable television channels which that system delivers to its subscribers...”); *see also* Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, Report and Order, 31 FCC Rcd 526, 546, para. 50 (2016) (specifically exempting cable systems with fewer than 1,000 subscribers from all online public file requirements).

⁸⁰ *Infra* section III.C.

⁸¹ Joint Proposal at 3. MVPDs are responsible for the accuracy and availability of this contact information, and broadcasters may rely on its accuracy at any time.

⁸² *See, e.g.*, 47 CFR §§ 25.701(f)(6)(C)(4) (DBS public file contact); 76.1700(f) (cable public file contact).

⁸³ Joint Proposal at 4.

claiming that these efforts will “leav[e] small cable operators with just a few months at most to update their information in COALS.”¹¹¹ Accordingly, ACA proposes an exception to the electronic notice aspect of these rules for small cable operators.¹¹² NAB replies that “it is absurd to think that businesses, even smaller ones, would not be able to add an email address and phone number to a single electronic file within a few months,” and that “nothing prohibits ACA from starting immediately to alert its members about upcoming regulatory changes.”¹¹³ It also expresses concern that the ACA proposal “would significantly complicate the 2020 election cycle.”¹¹⁴

28. Although we recognize ACA’s concerns, we find that the burdens of our new rules will be minimal for small cable operators and that it will not take any entity a great amount of time to come into compliance. We note that, although this is a new obligation, small cable operators are familiar with COALS, which they are already required to keep up-to-date.¹¹⁵ There should be ample time for broadcasters and MVPDs to prepare for the new process and update their existing database entries with a single e-mail address and phone number. We therefore adopt the Joint Proposal’s suggested timing and plan to update our databases so that broadcasters and MVPDs will be able to add their carriage election contact information no later than July 31, 2020, in their public files or COALS, as appropriate.¹¹⁶

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

29. In this *Further Notice of Proposed Rulemaking*, we seek comment on whether and how to apply the new carriage election notification rules adopted above in the *Report and Order* to certain broadcast stations and covered MVPDs. As discussed in the Order, the rules we adopt today require the use of the online public file and/or COALS. These Commission-maintained databases are accessible to the public and used by most, but not all, broadcasters and MVPDs.¹¹⁷ We seek comment on how to extend the modernization of our rules to reach the entities that do not use these databases (the Excluded Entities), which no commenters have addressed to date in this proceeding.¹¹⁸ Pending the resolution of these open questions, the existing carriage election rules will continue to apply to these Excluded

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⁸⁴ *Id.* at 4. In other words, the verification e-mail is meant to confirm receipt of the email in a manner similar to a return receipt when sending certified mail. As under the current rules, it is the responsibility of the broadcaster who is sending the notice to ensure that the notice is timely sent and contains all of the required, accurate, information. See *supra* Appendix A, “Final Rules.”

⁸⁵ NAB PN Reply at 4. See also NAB June 27, 2019 *Ex Parte* at 1 (“by extending the proposed rules to satellite providers, the Commission will meaningfully decrease the risk of confusion without increasing any burden on any stakeholder”) (*internal citations omitted*).

⁸⁶ DISH/AT&T PN Comments at 5.

⁸⁷ DISH/AT&T PN Comments at 7.

⁸⁸ *Supra* note 62 and accompanying text.

⁸⁹ *Supra* note 63.

⁹⁰ DISH/AT&T PN Comments at 4.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ DISH/AT&T April 3, 2019 *Ex Parte* at 2. AT&T also “estimates that approximately 15% of its must-carry stations change election status or ownership and/or network affiliation from cycle to cycle.” DISH/AT&T May 7, 2019 *Ex Parte* at 1. However, broadcasters are not required to provide either “ownership” or “network affiliation” information in carriage election notices. Therefore, the number of stations that change election status is only a subset of the 15% of stations that AT&T references in its filing. Moreover, because the evidence in this proceeding shows that only a minority of stations elect must carry, there likely would be a very small number of stations that

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Entities.¹¹⁹

30. As with other broadcasters and MVPDs, we believe that Excluded Entities would have no difficulty establishing an e-mail address and phone number to use for carriage-related communications. Given that they do not currently maintain accounts in either COALS or the online public file system, however, they would need to establish a means to publicize this contact information. For example, we could require Excluded Entities to establish and maintain a very narrow online public file solely for carriage-related information. Excluded Entities also could simply post any required public-facing information (i.e., any information that would otherwise be provided on COALS or the online public file system) on the “first page” of a company website. We seek comment on these options. Are there other options that would provide the public and other parties similar access to this important information at minimal cost and with minimal burden? Or, should we simply maintain the status quo with respect to this small class of broadcasters and MVPDs?

V. PROCEDURAL MATTERS

31. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),¹²⁰ an Initial Regulatory Flexibility Certification was incorporated into the *NPRM*.¹²¹ Pursuant to the Regulatory Flexibility Act of 1980, as amended,¹²² the Commission’s Final Regulatory Flexibility Certification relating to this Report and Order is attached as Appendix B.

32. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹²³ the Commission has prepared an Initial Regulatory Flexibility Analysis

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would change either to or from must-carry status in any given election cycle. *See, e.g.*, NAB NPRM Comments at 5.

⁹⁵ 47 CFR § 76.66(d)(iii).

⁹⁶ *NPRM*, 32 FCC Rcd at 10768-69, para. 27.

⁹⁷ DISH NPRM Comments at 6-7.

⁹⁸ DISH/AT&T PN Comments at 6.

⁹⁹ *See, e.g.*, DISH NPRM Comments at 6; DISH/AT&T PN Comments at 6; DISH/AT&T April 3, 2019 *Ex Parte* at 2.

¹⁰⁰ *See* Nexstar PN Comments at 4. *See also* NAB PN Reply at 4-5 (“It also strains credulity for [AT&T and DISH] to claim that they are unable to manage one e-mail address and one phone number.”).

¹⁰¹ DISH/AT&T PN Comments at 6.

¹⁰² Joint Proposal at 2.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

(IRFA) relating to this FNPRM. The IRFA is set forth in Appendix C.

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

34. *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.”

35. *Congressional Review Act.* The Commission will send a copy of this Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

36. *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.¹²⁴ Persons making *ex parte*

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¹⁰⁵ *Id.* at 4 (“The Commission should have an email address that broadcasters will cc: when sending election notices to cable operators.”). DISH/AT&T propose that, every three years, “the Commission [] publish a list of all broadcaster carriage election [change] notices that it receive[s] via its ElectionNotices@fcc.gov email inbox.” DISH/AT&T June 27, 2019 *Ex Parte* at 2. The DBS providers contend that “the Commission publishing this list shortly after October 1” will “ensure that MVPDs are aware of all elections the Commission considers valid.” The process we adopt today places minimal burden on DBS providers. We reject DISH/AT&T’s proposal; it introduces significant and unnecessary administrative complexity given that any relevant emails sent to ElectionNotices@fcc.gov will be provided to the parties in the event of a dispute.

¹⁰⁶ *Id.* at 2.

¹⁰⁷ ION and the Affiliates and Networks urge us to “adopt the proposal” without change. ION PN Comments at 1; Affiliates and Networks PN Comments at 1. Meredith “hopes it can be put into place for the 2020 election.” Meredith PN Comments at 1. Nexstar endorses the idea that “all 2017 carriage elections would carry forward” beginning with the 2020 election. Nexstar PN Comments at 3.

¹⁰⁸ *See supra* section III.B.

¹⁰⁹ ACA PN Comments at 4-5; Pine Belt Reply at 1. ACA notes that it is not opposing the Joint Proposal, “despite the fact that doing so means imposing new requirements on its members,” and observes that it would be “irresponsible” and “cause significant confusion” to begin educating its members about a regulatory change that has not yet been adopted and a recordkeeping obligation that “cannot even be met until the FCC has updated COALS.” ACA April 11, 2019 *Ex Parte* at 5 and 4, n.15. After filing comments, but before filing *ex partes*, the American Cable Association changed its name to ACA Connects – America’s Communications Association.

¹¹⁰ ACA PN Comments at 5.

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 familiarize

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¹¹¹ *Id.* at 5-6.

¹¹² Under ACA's proposal, if a "broadcaster cannot identify an e-mail address for an operator with a system serving fewer than 1,000 subscribers in its market, or if it does not receive an e-mail from such an operator confirming receipt of its notice, the broadcaster must send the notice to that system operator via certified mail." ACA PN Comments at 4.

¹¹³ NAB PN Reply at 8.

¹¹⁴ *Id.* at 7, n.31. *But see* ACA April 11, 2019 *Ex Parte* at 4, n.13 ("Allowing broadcasters to do what they have been doing for nearly two decades cannot possibly be considered complicated").

¹¹⁵ 47 CFR § 76.1610.

¹¹⁶ The Commission will announce the completion of these system updates via public notice.

¹¹⁷ For example, certain qualified low power TV broadcasters are eligible to demand carriage on local cable systems (though not on DBS providers), but are not required to maintain online public files. *See* 47 CFR §§ 73.3526(a)(2); 47 U.S.C. § 534(h)(2); 47 § CFR 76.55(d). Similarly, OVS providers are subject to mandatory carriage obligations but are not required to maintain public inspection files or to use COALS. *See* 47 U.S.C. § 573.

¹¹⁸ Some entities that are not required to use COALS or maintain an online public file nonetheless do so voluntarily. We expect, and permit, any entity voluntarily using these systems to voluntarily comply with the new election notice process adopted today.

¹¹⁹ This means that TV stations that do not have an online public file will continue to send carriage election notices to covered MVPDs via certified mail in the manner required under our current rules. *See* 47 CFR §§ 76.64(h), 76.55(d). In addition, all broadcasters must continue to send their carriage elections via certified mail to any Excluded Entity MVPD for which they are unable to locate a public file or COALS account.

¹²⁰ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601, *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹²¹ *NPRM* at Appendix B.

¹²² *See* 5 U.S.C. § 604.

¹²³ *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).

¹²⁴ 47 CFR §§ 1.1200 *et seq.*

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

37. *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://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.

38. 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.

39. *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.

40. *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).

41. *Additional Information.* For additional information on this proceeding, contact Lyle Elder, Lyle.Elder@fcc.gov or 202-418-2120, or Varsha Mangal, Varsha.Mangal@fcc.gov or 202-418-0073.

VI. ORDERING CLAUSES

42. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 325, 338, 614, 615, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 325, 338, 534, 535, and 573, this Report and Order **IS ADOPTED** and **WILL BECOME EFFECTIVE** 60 days after publication in the Federal Register.

43. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 325, 338, 614, 615, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 325, 338, 534, 535, and 573 this Notice of Proposed Rulemaking **IS ADOPTED**.

44. **IT IS FURTHER ORDERED** that Parts 73 and 76 of the Commission's Rules **ARE**

AMENDED as set forth in Appendix A. These rules contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act and **WILL BECOME EFFECTIVE** after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Part 25 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 25 – SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

2. Add new paragraph to Section 25.701 to read as follows:

(e) *****

(6) *****

(D) Each satellite carrier shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions and an up-to-date phone number for carriage-related questions. Each satellite carrier is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

2. Revise Section 73.3526 to read as follows:

(e) *****

(15) Must-carry or retransmission consent election. Statements of a commercial television or Class A television station's election with respect to either must-carry or re-transmission consent, as defined in §§76.64 and 76.1608 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies. Commercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from MVPDs. Each commercial television station is responsible for the continuing accuracy and completeness of the information furnished.

3. Revise Section 73.3527 to read as follows:

(e) *****

(12) *Must-carry requests.* Noncommercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from MVPDs. Each noncommercial television station is responsible for the continuing accuracy and completeness of the information furnished. Any such station requesting mandatory carriage pursuant to Part 76 of this chapter shall place a copy of such request in its public file and shall retain both the request and relevant correspondence for the duration of any period to which the request applies.

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

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

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

2. Revise Section 76.64 to read as follows:

§ 76.64 – Retransmission Consent.

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

(2) Each cable operator shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions with respect to its systems and an up-to-date phone number for carriage-related questions. Each cable operator is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

(3) A station shall send a notice of its election to a cable operator only if changing its election with respect to one or more of that operator's systems. Such notice shall be sent to the email address provided by the cable system and carbon copied to ElectionNotices@FCC.gov. A notice must include, with respect to each station referenced in the notice, the:

- (A) call sign;
- (B) community of license;
- (C) DMA where the station is located;
- (D) specific change being made in election status;
- (E) email address for carriage-related questions;

- (F) phone number for carriage-related questions;
- (G) name of the appropriate station contact person; and,
- (H) if the station changes its election for some systems of the cable operator but not all, the specific cable systems for which a carriage election applies.

(4) Cable operators must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.

3. Section 76.66(c)(5) is removed and reserved.

4. Revise Section 76.66 to read as follows:

§ 76.66 – Satellite broadcast signal carriage.

(d) ***

(1) Carriage requests.

(i) An election for mandatory carriage made by a television broadcast station shall be treated as a request for carriage. For purposes of this paragraph concerning carriage procedures, the term election request includes an election of retransmission consent or mandatory carriage.

(ii) Each satellite carrier shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions and an up-to-date phone number for carriage-related questions. Each satellite carrier is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

(iii) A station shall send a notice of its election to a satellite carrier only if changing its election with respect to one or more of the markets served by that carrier. Such notice shall be sent to the email address provided by the satellite carrier and carbon copied to ElectionNotices@FCC.gov.

(iv) A television station's written notification shall include with respect to each station referenced in the notice, the:

- (A) call sign;
- (B) community of license;
- (C) DMA where the station is located;
- (D) specific change being made in election status;
- (E) email address for carriage-related questions;
- (F) phone number for carriage-related questions; and
- (G) name of the appropriate station contact person.

(v) A satellite carrier must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.

(vi) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing:

(A) those local television stations it will not carry, along with the reasons for such a decision; and

(B) those local television stations it intends to carry.

(vii) A satellite carrier is not required to carry a television station, for the duration of the election cycle, if the station fails to assert its carriage rights by the deadlines established in this section.

(3) *****

(ii) A new television station shall make its election request, in writing, sent to the satellite carrier's email address provided by the satellite carrier and carbon copied to ElectionNotices@FCC.gov, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iv) of this section.

APPENDIX B

Final Regulatory Flexibility Analysis

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

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

2. In this *Report and Order*, we modernize our rules requiring broadcasters to submit their triennial carriage election notification via certified mail. First, to provide notice, commercial broadcasters will upload an election notice to their public files every election cycle, and noncommercial educational stations must upload to their public files no later than October 1, 2020 their notice to DBS operators requesting carriage. Additionally, commercial broadcasters will now email MVPDs a carriage election notification only if they are changing their election from the previous cycle or if they are submitting their election for the first time. Second, MVPDs must respond to the broadcasters as soon as reasonably possible, acknowledging receipt of the notification. Third, both broadcasters and MVPDs must maintain an up-to-date phone number and email address on the Commission's public database. We conclude that these requirements will relieve burdens and inefficiencies endured by broadcasters and MVPDs caused by the cost and time required to comply with these rules. Through this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.⁴

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

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

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷ A small business

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

² *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 10755 at 10755 (2017) (*NPRM*).

³ See 5 U.S.C. § 604.

⁴ See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (MB 2017) (*Media Modernization PN*) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

⁵ 5 U.S.C. § 603(b)(3).

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with

(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.⁸ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *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.⁹ Industry data indicate that all but nine of the 4,600 cable operators active nationwide are small under the 400,000 subscriber size standard.¹⁰ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹¹ Of the 4,600 active cable systems nationwide,¹² we estimate that approximately 3,900 percent have 15,000 or fewer subscribers, and 700 have more than 15,000 subscribers. Thus, under this standard as well, we estimate that most cable systems are small entities.

6. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, 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 one 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."¹³ There are approximately 52,403,705 cable video subscribers in the United States today.¹⁴ Accordingly, an operator serving fewer than 524,037 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. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.¹⁵ 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.¹⁶ Although it seems certain that some of these cable systems 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.

7. *Open Video Services*. Open Video Service (OVS) systems provide subscription services.¹⁷ The open video system framework was established in 1996, and is one of four statutorily

(Continued from previous page) _____

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).

⁸ 15 U.S.C. § 632.

⁹ 47 CFR § 76.901(e).

¹⁰ See SNL KAGAN, Top Cable MSOs, <https://www.snl.com/Interactivex/TopCableMSOs.aspx>.

¹¹ 47 CFR § 76.901(c).

¹² See FCC, Cable Operations and Licensing System (COALS), www.fcc.gov/coals.

¹³ 47 CFR § 76.901(f) & nn. 1-3.

¹⁴ See SNL KAGAN at <http://www.snl.com/Interactivex/MultichannelIndustryBenchmarks.aspx>.

¹⁵ See SNL KAGAN, Top Cable MSOs, <https://www.snl.com/Interactivex/TopCableMSOs.aspx>.

¹⁶ 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(f) of the Commission's rules. See 47 CFR § 76.901(f).

¹⁷ See 47 U.S.C. § 573.

recognized options for the provision of video programming services by local exchange carriers.¹⁸ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹⁹ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”²⁰ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.²¹ To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small.²² In addition, we note that the Commission has certified some OVS operators, with some now providing service.²³ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.²⁴ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service.²⁵ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

8. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”²⁶ which was developed for small wireline firms.²⁷ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.²⁸ Census data for 2012

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

¹⁹ See 47 U.S.C. § 573.

²⁰ U.S. Census Bureau, 2012 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2012/def/ND517110.HTM#N517110>.

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

²² See U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

²³ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

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

²⁵ See <http://www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems> (current as of July 2012).

²⁶ See 13 CFR § 121.201, NAICS code 517110 (2012).

²⁷ Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in section 340’s definition of “satellite carrier.” See 47 U.S.C. §§ 340(i)(1) and 338(k)(3); 17 U.S.C. § 119(d)(6).

²⁸ 13 CFR § 121.201, NAICS code 517110 (2012).

indicate that in that year there were 3,117 firms operating businesses as wired telecommunications carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.²⁹

9. *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.³⁰ The SBA determines that a wireline business is small if it has fewer than 1500 employees.³¹ 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.³² Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.³³ DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

10. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."³⁴ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.³⁵ 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.³⁶ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual

²⁹ U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

³⁰ See U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³¹ NAICS Code 517110; 13 CFR § 121.201.

³² See U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012; 2012 Economic Census of the United States*, http://factfinder.census.gov/faces/tableservices.jsf/pages/productview.xhtml?pid+ECN_2012_US_51SSSZ4&prodTtype=table.

³³ See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10507, para. 27 (2013).

³⁴ U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, "515120 Television Broadcasting," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁵ *Id.*

³⁶ 13 CFR § 121.201; 2012 NAICS Code 515120.

receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more.³⁷ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

11. The Commission has estimated the number of licensed commercial television stations to be 1,384.³⁸ Of this total, 1,264 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.³⁹ The Commission, however, does not compile and otherwise 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.

12. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations⁴⁰ 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.

13. There are also 417 Class A stations.⁴¹ Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations thus restricting their ability to generate similar levels of revenue, we will presume that these licensees qualify as small entities under the SBA definition. In addition, there are 1,968 LPTV stations and 3,776 TV translator stations. 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

14. The Commission anticipates that the rule changes adopted in this *Report and Order* will lead to an overall immediate, long-term reduction in reporting, recordkeeping, and other compliance requirements for all broadcasters and MVPDs, including small entities. Specifically, commercial broadcasters will no longer need to produce and mail several letters to MVPDs, many of which are duplicative to ensure that they are received by the MVPD. Likewise, noncommercial broadcasters will be relieved of the burden of mailing their election notices to DBS providers every three years and will only have to upload a one-time notice of their carriage request to their public files. Although MVPDs now have the obligation of maintaining an up-to-date phone number and email on Commission-hosted

³⁷ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

³⁸ *Broadcast Station Totals as of December 31, 2016*, FCC News Release (rel. Jan. 5, 2017), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

³⁹ *Id.*

⁴⁰ “[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).

⁴¹ *Broadcast Station Totals as of June 30, 2017*, FCC News Release (rel. July 11, 2017).

databases, this is a de minimis burden. Alternatively, this burden is outweighed by the reduction of letters and duplicative notices that MVPDs previously had to review.

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

15. 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.”⁴²

16. The Commission considered but ultimately declined to extend the timeline for smaller cable operators so that they would only need to come into compliance by the 2023 election cycle. Although there was some concern that smaller cable operators may not have enough time to enter an updated telephone number and email address in the public database, the Commission believes that this can be done very quickly once the system is up, and small cable operators will have enough time to comply with this requirement. To ease the burden on smaller cable operators who may not be listed on the public files, we adopted rules so that they will only need to enter their contact information in COALS. Accordingly, the Commission concludes that no extension is necessary to ensure that the smaller cable operator’s contact information is available within 60 days of the 2020 election cycle.

17. There are no small DBS providers that need to be considered in this rulemaking. Overall, we believe the *Report and Order* appropriately balances the interests of the public against the interests of the entities who are subject to the rules, including those that are small entities.

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

18. None.

⁴² 5 U.S.C. § 603(c)(1)-(c)(4).

APPENDIX C

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 Further Notice of Proposed Rulemaking (FNPRM). 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 FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. The Report and Order modernizes the triennial election notification process for broadcasters and MVPDs that maintain public files or a COALS account. However, some cable operators and broadcasters (Excluded Entities) are not required to maintain public files or a COALS account and are therefore unable to benefit from the new rules in this rulemaking. The FNPRM's objective is to modernize the carriage election for these Excluded Entities so that they can be relieved of the same burdens caused by sending election notifications via certified mail as discussed in the Report and Order.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 325, 338, 614, 615, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 325, 338, 534, 535, and 573.

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷ Below, we provide a

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 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

⁷ 15 U.S.C. § 632.

description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *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.⁸ Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard.⁹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁰ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.¹¹ Thus, under this second size standard, the Commission believes that most cable systems are small.

6. *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."¹² The Commission has determined that an operator serving fewer than 677,000 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.¹³ Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard.¹⁴ 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,¹⁵ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

7. *Open Video Services*. Open Video Service (OVS) systems provide subscription services.¹⁶ The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.¹⁷ The OVS framework provides opportunities for the distribution of video programming other than through

⁸ 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).

⁹ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹⁰ 47 CFR § 76.901(c).

¹¹ Warren Communications News, *Television & Cable Factbook 2008*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

¹² 47 U.S.C. § 543(m)(2); *see also* 47 CFR § 76.901(f) & nn.1-3.

¹³ 47 CFR § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

¹⁴ These data are derived from R.R. BOWKER, *BROADCASTING & CABLE YEARBOOK 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, *TELEVISION & CABLE FACTBOOK 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹⁵ 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(f) of the Commission's rules.

¹⁶ *See* 47 U.S.C. § 573.

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

cable systems. Because OVS operators provide subscription services,¹⁸ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”¹⁹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.²⁰ To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small.²¹ In addition, we note that the Commission has certified some OVS operators, with some now providing service.²² Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.²³ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service.²⁴ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

8. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”²⁵ which was developed for small wireline firms.²⁶ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.²⁷ Census data for 2012 indicate that in that year there were 3,117 firms operating businesses as wired telecommunications

¹⁸ See 47 U.S.C. § 573.

¹⁹ U.S. Census Bureau, 2012 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2012/def/ND517110.HTM#N517110>.

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

²¹ See U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

²² A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

²³ See *13th Annual Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

²⁴ See <http://www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems> (current as of July 2012).

²⁵ See 13 CFR § 121.201, NAICS code 517110 (2012).

²⁶ Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in section 340’s definition of “satellite carrier.” See 47 U.S.C. §§ 340(i)(1) and 338(k)(3); 17 U.S.C. § 119(d)(6).

²⁷ 13 CFR § 121.201, NAICS code 517110 (2012).

carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.²⁸

9. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”²⁹ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.³⁰ 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.³¹ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more.³² Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

10. The Commission has estimated the number of licensed commercial television stations to be 1,384.³³ Of this total, 1,264 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.³⁴ The Commission, however, does not compile and otherwise 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.

11. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³⁵ 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.

²⁸ U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

²⁹ U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁰ *Id.*

³¹ 13 CFR § 121.201; 2012 NAICS Code 515120.

³² U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

³³ *Broadcast Station Totals as of December 31, 2016*, FCC News Release (rel. Jan. 5, 2017), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

³⁴ *Id.*

³⁵ “[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).

12. There are also 417 Class A stations.³⁶ Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations thus restricting their ability to generate similar levels of revenue, we will presume that these licensees qualify as small entities under the SBA definition. In addition, there are 1,968 LPTV stations and 3,776 TV translator stations. 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

13. This Report and Order significantly reduces the reporting and recordkeeping obligations for broadcasters and MVPDs that maintain a public file. The FNPRM seeks to find a method to similarly reduce these burdens for certain broadcasters and cable operators that do not maintain a public file (Excluded Entities). We believe we can lessen the burden on the Excluded Entities by perhaps requiring them to maintain a very narrow public file to post their contact information or to simply post the information on the “first page” of a company website.

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

14. 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.”³⁷

15. The majority of the Excluded Entities are small entities. We are considering a variety of possibilities to minimize the economic impact on small entities, as the FNPRM is specifically seeking proposals and information to understand what will be easiest and most convenient for these small entities. For example, small broadcasters and cable operators may already have a website and therefore posting an email address and phone number on the front page of an already existing website might impose a negligible burden. Furthermore, the proposed rules will relieve them of the much more onerous burden of searching for the contact information of several MVPDs and mailing their carriage election notice to the MVPDs via certified mail.

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

16. None.

³⁶ *Broadcast Station Totals as of June 30, 2017*, FCC News Release (rel. July 11, 2017).

³⁷ 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.