

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF AT&T

AT&T¹ is pleased to submit these comments in response to the Commission’s Notice of Proposed Rulemaking on modernizing several of its media rules related to notifications.² AT&T commends the Commission for its continued efforts to identify and eliminate outdated or unnecessarily burdensome regulatory requirements. In these brief comments, AT&T focuses on two Commission proposals: permitting certain video providers to deliver privacy notifications to their subscribers using a verified email address and allowing a broadcaster to post its triennial satellite carriage elections to its website or to its online public file on the Commission’s website in lieu of mailing its election notices to satellite providers. AT&T strongly supports the first proposal, which recognizes that consumers increasingly prefer the ease and effectiveness of communicating electronically with their service providers, and opposes the second, which would inappropriately force the nation’s two direct broadcast satellite (DBS) providers to scour over

¹ As used herein, “AT&T” refers collectively to AT&T Services, Inc.’s multichannel video programming distributor (MVPD) affiliates, including DIRECTV.

² *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317, 17-105, Notice of Proposed Rulemaking, 32 FCC Rcd 10755 (2017) (*NPRM*).

1,700³ broadcaster websites or online public files to determine whether these broadcasters have elected mandatory carriage. We also discuss several ways the Commission could further reduce burdens related to these election notices and DBS providers' responses.

Permit Electronic Delivery of Subscriber Privacy Notifications. AT&T urges the Commission to adopt its tentative conclusion that cable operators, DBS providers, and Open Video System (OVS) providers should be permitted to deliver privacy notifications to subscribers via verified email addresses.⁴ Sections 631, 338, and 653 of the Communications Act of 1934, as amended (Act), require these entities to “provide notice in the form of a separate, written statement” to their subscribers about certain privacy-related information. These notices must be provided at the time “of entering into an agreement to provide any [cable or satellite] service or other service to a subscriber and at least once a year thereafter.”⁵ Nothing in sections 631, 338 or 653 limits the Commission’s authority to specify the manner by which these classes of providers may deliver such notices to their subscribers. Clarifying that the covered entities may provide their privacy notifications in writing via email is a reasonable interpretation of these statutory provisions and consistent with the federal government’s overall objective of reducing paper consumption and associated expenses.⁶

³ *Id.*, Appendix B at ¶ 11 (estimating the number of commercial and noncommercial broadcasters to be approximately 1,778).

⁴ *NPRM* at ¶ 18.

⁵ *See* 47 U.S.C. §§ 338(i)(1), 551(a)(1). *See also* 47 U.S.C. § 573(c)(1)(A) (applying the requirements contained in section 551 to OVS providers).

⁶ *See, e.g.*, Government Paperwork Elimination Act, Pub. L. No. 105-277, 112 Stat 2681 (1998); Ed O’Keefe, *Social Security, other benefits checks to go paperless in May*, Wash. Post, Dec. 21, 2010 (Treasury Department estimating a savings of about \$48 million in government postage in first five years), available at http://voices.washingtonpost.com/federal-eye/2010/12/social_security_other_benefits.html; *Social Security checks going paperless*, UPI, April 26,

In its *2017 Declaratory Ruling*, the Commission adopted several safeguards when it clarified that cable operators could provide electronically certain “written information” to their subscribers and it now requests comment on whether to extend those same safeguards to privacy notifications.⁷ First, the provider must have verified email contact information for the subscriber.⁸ Second, the provider must give subscribers the ability to opt out of email delivery so that they may receive the required notification on paper.⁹ In its *2017 Declaratory Ruling*, the Commission required cable operators to provide an opt-out telephone number that is clearly and prominently presented in the body of the email.¹⁰ In recognition of widespread consumer familiarity with using links to modify email preferences (*e.g.*, to unsubscribe to emails), the Commission’s *NPRM* proposes permitting providers to supply subscribers with an opt-out link in lieu of or in addition to an opt-out telephone number.¹¹ AT&T supports the Commission’s proposed safeguards, including giving entities the option to use an opt-out electronic link instead of an opt-out telephone number, and urges the Commission to adopt proposed section 76.1600. There can be no question that enabling a subscriber to opt out of email notifications by clicking a

2011 (Treasury Departments estimates a \$1 billion dollar savings over 10 years when federal benefit payments go paperless), available at <https://www.upi.com/Social-Security-checks-going-paperless/76441303861536/>.

⁷ *National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269 (2017) (*2017 Declaratory Ruling*); *NPRM* at ¶ 18.

⁸ See *2017 Declaratory Ruling* at ¶ 9 and *NPRM* at ¶ 11 (defining what constitutes a verified email address).

⁹ *2017 Declaratory Ruling* at ¶ 10.

¹⁰ *Id.*

¹¹ See *NPRM* at ¶ 12 & Appendix A (proposed section 76.1600(d)).

link prominently displayed in the very email that provides the privacy information is the simplest and most efficient way for that subscriber to request paper notifications of such information.

The *NPRM* also requests comment on whether to apply an opt-in or an opt-out framework to the privacy notifications required by sections 631, 338, and 653.¹² AT&T urges the Commission to extend the opt-out framework adopted in the *2017 Declaratory Ruling* to these notices. In last year's ruling, the Commission concluded that the benefits of electronic notifications simply could not be achieved if cable providers are required to obtain permission from each of the tens of millions of cable subscribers.¹³ Nothing about the content of these generic notices themselves – from the channel positions of programming carried on a cable system and instructions on how to use the cable service addressed in the *2017 Declaratory Ruling* to privacy information discussed in the *NPRM* – changes that finding. For some providers, the cost of tracking and managing individual permissions obtained from subscribers could approach the cost of continuing to mail these notices. All the benefits of electronic notifications, including customer convenience and significant reductions in paper consumption, thus could be thwarted if the Commission adopts an opt-in requirement for these notices. Moreover, using an opt-out mechanism will not result in any risk of harm to consumers because, as the Commission noted in its *2017 Declaratory Ruling*, such annual notifications are generic in nature and contain no confidential information specific to an individual subscriber.¹⁴ This is equally true for the privacy notifications required by sections 631, 338, and 653 and the

¹² *Id.* at ¶ 18.

¹³ *2017 Declaratory Ruling* at ¶ 10 & n.40.

¹⁴ *Id.*

Commission should similarly confirm that it is exempting these notices from the consent requirements of the E-Sign Act.¹⁵

Updating Carriage Election Notification Requirements. The Commission requests comment on whether it should adopt alternative delivery methods for broadcasters to provide triennial election notices to MVPDs.¹⁶ Today, broadcasters must notify DIRECTV and DISH (the only DBS providers in the market) in writing once every three years if, and only if, they are electing mandatory carriage (*i.e.*, must carry).¹⁷ If a broadcaster does not make a must carry election by the due date, it defaults to retransmission consent.¹⁸ Under the Commission's current satellite carriage rules, broadcasters' mandatory carriage election notices must be sent using certified mail, return receipt request.¹⁹

The Commission asks whether allowing express mail delivery with tracking instead of certified mail would "meaningfully reduce burdens on broadcasters."²⁰ But, the Commission's current satellite carriage rules simply do not impose any meaningful burden on broadcasters. And, as AT&T explained in comments filed last year, DIRECTV has already accepted hundreds

¹⁵ *Id.* As the Commission explains in this ruling, the E-Sign Act "allows federal agencies to interpret the E-Sign Act with respect to a statute that it implements, and allows a federal agency to exempt a specified category or type of record from the consent requirements in the E-Sign Act 'if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.'" *Id.*

¹⁶ *NPRM* at ¶¶ 25-27.

¹⁷ *See* 47 C.F.R. § 76.66(d).

¹⁸ *Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, 16 FCC Rcd 1918, ¶ 22 (2000) (*DBS Carriage Order*).

¹⁹ 47 C.F.R. § 76.66(d)(1)(ii).

²⁰ *NPRM* at ¶ 26.

of mandatory carriage election letters from broadcasters over the years sent via express delivery mail, not certified mail, and it certainly has no objection to the Commission modifying its rules to expressly permit this.²¹ Again, a broadcaster has, at most, just two DBS providers – each with a single point of contact – to send its election notice to once every three years. And, this election letter is only necessary if the broadcaster is seeking mandatory carriage on DIRECTV and DISH. Furthermore, AT&T has suggested one way to make the mandatory carriage election process even simpler: permit broadcasters to use express delivery mail with tracking instead of certified mail. In our experience, not only is express delivery mail more convenient to use, it can be less expensive than mailing certified letters, with return receipt requested.

One alternative election notification method proposed by several parties in last year’s proceeding is to permit broadcasters to post their elections online (*e.g.*, to their websites or to their public files maintained on the Commission’s website).²² AT&T opposes any proposal that would require its affiliate DIRECTV to search over 1,700 broadcaster websites or public files on the Commission’s website to determine which broadcaster has elected must carry. Clearly, such burden shifting is unwarranted and inequitable for national providers like DIRECTV and DISH. It also is arguably inconsistent with section 338 of the Act, which places an affirmative burden on broadcasters to “request” carriage on the DBS provider’s system.²³ As the beneficiary of a

²¹ Reply Comments of AT&T, MB Docket No. 17-105, at 6 (filed Aug. 4, 2017) (Reply Comments). The Commission also should clarify that DBS providers may use express mail with tracking for their significantly viewed notices. 47 C.F.R. § 76.54(e).

²² See *NPRM* at ¶ 27 (citing comments from NAB and joint comments from CBS, Disney, Fox, and Univision).

²³ See also *DBS Carriage Order* at ¶ 28 (finding that television stations have the “burden of initiating satellite carriage”).

government granted right, the burden should remain on broadcasters to ensure that DBS providers receive their notices. DBS providers should not have to hunt for them.

The Commission could significantly reduce the burden related to satellite carriage election notices by moving the satellite election deadline to July 1, from the current October 1, to accommodate “the distinctive aspects of retransmission consent/mandatory carriage elections for the satellite industry.”²⁴ As AT&T explained previously, 90 days is simply not enough advance notice to prepare to retransmit a new station, and, where required, for a station to make alternate preparations to deliver a good quality signal to DIRECTV’s designated local receive facility.²⁵ With the vast majority of its spot beams currently full, it is difficult for DIRECTV to add a station to one of the spot beams without removing one of the stations already on that beam.²⁶ For a DBS provider, accommodating a new mandatory carriage request does not begin and end with receiving a good quality signal from the station. Rather, DIRECTV may have to make significant upgrades to its equipment in the relevant market, and because of dependencies between markets, DIRECTV also may have to make similar significant equipment upgrades in other markets. Trying to accomplish this work with just 90 days’ notice creates an undue burden on DBS providers. For that reason, AT&T recommends that the Commission require stations

²⁴ *Id.* at ¶ 20.

²⁵ Reply Comments at 6-8.

²⁶ See, e.g., *Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*, 30 FCC Rcd 10406, ¶ 32 & n.178 (2015) (noting that most of DIRECTV’s spot beams already are full); *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999; Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, 23 FCC Rcd 5351, ¶¶ 7-14 (2008) (detailing satellite carriers’ capacity and technological constraints and finding that such constraints justify phasing in the so-called HD carry-one, carry-all requirement for DBS providers).

that elect mandatory carriage to give DBS providers six months' notice prior to the commencement of a new election cycle.²⁷ Because the next election cycle commences January 1, 2021, this change would not be implemented for several years, which provides stations with ample notice.

Finally, under today's rules, DBS providers must respond within 30 days of receipt of a broadcaster's request for carriage.²⁸ Because these nationwide providers respond to literally hundreds of requests, AT&T asks the Commission to modify this rule to permit DBS providers to respond to broadcaster requests within 60 days of receipt of the broadcaster's July 1 request.²⁹ It is DIRECTV's experience that most broadcasters wait until the last minute to mail their election letters and DIRECTV frequently does not receive these letters for a week or so after the October 1 deadline, thus leaving both parties with much less than 90 days prior to the start of the new election cycle. If DIRECTV determines that it does not receive a good quality signal from a station that has requested must carry for the first time, the parties have little time to make alternative arrangements prior to January 1. The combination of the sheer volume of letters and the compressed period prior to the commencement of the new election cycle imposes a significant burden on DIRECTV. For example, during the past election cycle, AT&T had to pull three employees from their regular jobs to work full-time on tracking, preparing responses, and mailing all of DIRECTV's election notification response letters to meet its 30-day deadline.

²⁷ If the Commission adopts this recommendation, which it should, we also ask the Commission to make a corresponding adjustment to its deadline for significantly viewed notices (47 C.F.R. § 76.54(e)).

²⁸ 47 C.F.R. § 76.66(d)(1)(iv).

²⁹ See discussion immediately above concerning moving the election deadline to July 1, from the current October 1.

Giving DBS providers up to 60 days from July 1 to evaluate, which often includes performing a signal quality test, and respond to mandatory carriage letters will mitigate this burden.

For the foregoing reasons, AT&T respectfully requests the Commission to adopt its proposed rule section 76.1600 that clarifies cable operators, DBS and OVS providers may deliver electronically subscriber notices required by sections 631, 338, and 573 on an opt-out basis. We also ask the Commission to reject requests that would require the nation's two DBS providers to scour over 1,700 broadcaster websites or public files to determine whether these broadcasters have elected must carry. Instead, the Commission should modify its satellite carriage rules to permit broadcasters to send their must carry election notices via express mail with tracking. Finally, we request the Commission to adjust several election carriage-related dates in its satellite carriage rules to ease the burden of these notices on DBS providers.

Respectfully Submitted,

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