

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF DISH NETWORK L.L.C.**

DISH Network L.L.C. (“DISH”) respectfully submits these comments in response to the Commission’s *Notice of Proposed Rulemaking* (“NPRM” or “Notice”) seeking ways to modernize certain notice provisions impacting multichannel video programming distributors (“MVPDs”).<sup>1</sup> DISH supports updates to the Commission’s rules to modernize methods of providing certain customer communications. In particular, DISH supports the Commission’s proposal to allow subscriber privacy notifications required pursuant to Section 338(i) of the Communications Act of 1934, as amended, (the “Act”) to be delivered electronically to a verified e-mail address, subject to consumer safeguards.<sup>2</sup> Electronic delivery will increase customer convenience and access to this information, and is consistent with how certain other relevant customer communications are delivered.

The *Notice* also proposes revising Section 76.66(d) of the FCC’s rules to permit television broadcast stations to use alternative means of notifying DBS providers about their

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<sup>1</sup> Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, *Notice of Proposed Rulemaking*, MB Docket Nos. 17-317, 17-105 (rel. Dec. 14, 2017).

<sup>2</sup> *Id.* ¶ 18.

triennial carriage elections.<sup>3</sup> DISH does not believe that any changes to the current carriage election process are necessary. But, if the Commission nonetheless makes any changes, it must not increase burdens that fall to MVPDs during the election cycle, and should ensure that any new rules facilitate the same level of certainty that the current process provides. Thus, if the Commission revises Section 76.66(d) of its rules, DISH believes that a mechanism for providing notice of carriage election online, subject to certain safeguards outlined below, could provide an effective way to update the carriage election process.

#### **I. THE COMMISSION SHOULD ALLOW ELECTRONIC DELIVERY OF SUBSCRIBER PRIVACY NOTIFICATIONS**

The Commission proposes to add a provision in Subpart T of its rules specifying that subscriber privacy notifications required pursuant to Sections 631, 338(i), and 653 of the Act may be delivered electronically to a verified e-mail address, subject to certain consumer safeguards.<sup>4</sup> Section 338(i) of the Commission’s rules requires satellite providers to provide notice “in the form of a separate written statement”<sup>5</sup> to subscribers that informs them of certain privacy protections.<sup>6</sup> The Commission tentatively concludes that the term “separate, written statement” in this statutory provision can include notices “delivered electronically to a verified e-mail address.”<sup>7</sup> DISH supports this conclusion. Electronic delivery of these notices is consistent

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<sup>3</sup> *Id.* ¶ 25.

<sup>4</sup> *Id.* ¶ 18.

<sup>5</sup> 47 U.S.C. § 338(i).

<sup>6</sup> As the Commission notes, Sections 631 and 653 provide corresponding obligations for cable operators and Open Video System (“OVS”) providers. DISH supports conforming changes for these provisions.

<sup>7</sup> *Notice* ¶ 18.

with how certain other relevant customer communications are delivered and therefore would provide consumers convenient access to this information.

The Commission also seeks comment on whether consumers should be required to opt in to these notices, or if they should be treated like other ones in Subpart T “such that MVPDs should be permitted to deliver them electronically, if they allow consumers to opt out of e-mail delivery and continue to receive paper notices[.]”<sup>8</sup> DISH supports the latter approach. Allowing a consumer to opt out of electronic delivery is consistent with how other relevant customer communications are delivered, and would be operationally less burdensome for MVPDs than an opt-in system, while providing consumers the convenience they have come to expect.

## **II. ANY CHANGES TO CARRIAGE ELECTION PROCEDURES SHOULD FACILITATE THE SAME LEVEL OF CERTAINTY PROVIDED BY THE CURRENT PROCESS**

The Commission’s rules require broadcasters seeking to elect mandatory carriage to notify DBS providers every three years via “certified mail, return receipt requested.”<sup>9</sup> Among other things, the *Notice* seeks comment on revising this requirement to permit broadcast stations to use alternative means of notifying MVPDs about their carriage elections.<sup>10</sup> DISH does not believe any changes to the current election process are necessary. To the extent that the FCC makes any changes, however, it must continue to “ensure that broadcast stations are able to

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<sup>8</sup> *Id.*

<sup>9</sup> 47 C.F.R. § 76.66(d)(1)(ii).

<sup>10</sup> *Notice* ¶ 25. The Commission proposes corresponding changes to 47 C.F.R. § 76.64(h), which provides procedures for broadcasters seeking carriage on cable systems. To the extent any changes to the process are made, DISH supports conforming changes for broadcasters seeking to elect on cable systems.

demonstrate that they submitted their elections by the required deadline, and that they were received by the satellite carrier.”<sup>11</sup>

**A. If the Commission Chooses to Update its Carriage Election Procedures, An Online Portal Could Present an Effective Way to Modernize the Election Process.**

If the Commission chooses to update its carriage election procedures (which DISH does not believe is necessary), then DISH agrees with commenters that establishing a “mechanism for providing notice of carriage election online”<sup>12</sup> could create efficiencies in the carriage election process, but only if accompanied with sufficient safeguards. In particular, if the FCC moves forward with implementing changes to the carriage election process, DISH supports the creation of a “new [] website that is publicly accessible”<sup>13</sup> and hosted by the Commission through which broadcasters elect carriage. Such a website should require broadcasters to elect, via a standardized form or drop-down menu, the requirements for a valid carriage election. In particular, any online portal should include fields to allow a broadcaster seeking to elect carriage to provide the following information, as required by 76.66 of the Commission’s rules:

- (A) Station’s call sign;
- (B) Name of the appropriate station contact person;
- (C) Station’s address for purposes of receiving official correspondence;
- (D) Station’s community of license;
- (E) Station’s DMA assignment; and
- (F) For commercial television stations, its election of mandatory carriage or retransmission consent.<sup>14</sup>

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<sup>11</sup> Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, *Order on Reconsideration*, 16 FCC Rcd. 16544, 16576 ¶ 65 (2001).

<sup>12</sup> *Notice* ¶ 27.

<sup>13</sup> *Id.*

<sup>14</sup> 47 C.F.R. § 76.66(d)(1)(iii).

Each broadcaster should be required to provide a distinct online election for each MVPD on which it seeks carriage, consistent with the current rules.<sup>15</sup> In order to facilitate an MVPD's ability to track, catalog, and respond to each broadcaster's carriage election, each MVPD must have its own unique login to the FCC-hosted website, such that it is able to access the broadcaster elections applicable to its system. In the absence of a unique, authenticated portal for each MVPD, the Commission should ensure that any portal includes a function that allows elections to be searchable by MVPD.

In addition, any FCC-hosted website should become inaccessible for additional broadcaster carriage elections after the October 1 deadline during each election cycle.<sup>16</sup> A hard deadline for the availability of the portal will ensure that all impacted stakeholders are able to easily determine whether the elections were submitted on time. Section 76.66(d)(iv) of the Commission's rules requires satellite carriers to respond to a broadcaster's request in writing within 30 days of receiving it. Given that the online portal would become inaccessible for broadcasters after October 1 of the relevant election year, the Commission should also formulate any such rule to require MVPDs to respond to a broadcaster election no later than October 31 of the relevant election year (30 days after the election deadline). Revising 76.66(d)(iv) to provide a date certain for responses would alleviate burdens on both parties to track when the election was submitted and will provide certainty for both broadcasters and MVPDs during the election process.

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<sup>15</sup> See 47 C.F.R. 76.66(d) and 76.64(h).

<sup>16</sup> 47 C.F.R. § 76.66(c)(4) and 76.64(f)(2).

**B. The FCC Should Reject Proposals that Increase the Complexity of the Election Process.**

Specifically, the Commission should reject proposals that fail to modernize the election process, or that increase the burdens on parties involved, including:

***Express Delivery Service.*** The *Notice* seeks comment on allowing carriage election notice delivery via an express delivery service.<sup>17</sup> Such a change would do nothing to modernize the carriage election process, as it would still require postal delivery of election preferences and thus would not “meaningfully reduce burdens on broadcasters.”<sup>18</sup>

***E-Mail Delivery.*** The Commission also proposes allowing the delivery of carriage election notices to a “verified” e-mail address, consistent with how certain customer notices are delivered.<sup>19</sup> DISH opposes this approach, because it does not provide the necessary level of certainty for the carriage election process. Among other things, e-mail delivery introduces several complexities that could impact the receipt of the notices (for example, corporate spam filters or typos in the delivery addresses). There is no way to both ensure that such notices are sent and received on time when using e-mail delivery. Given the “significant legal and financial consequences”<sup>20</sup> that arise from failing to make a timely election notice, e-mail delivery introduces too many vulnerabilities in to the system that could disadvantage both parties, making it an insufficient method to modernize the carriage election process.

***Public File.*** The Commission also asks whether online carriage elections should be placed in a broadcaster’s online public file.<sup>21</sup> DISH takes no issue with broadcasters placing

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<sup>17</sup> *Notice* ¶ 26.

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

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* ¶ 27.

elections in their public file, so long as such a requirement is *in addition to* the required form of notice. Notice of a broadcaster election via public file upload alone would be unworkable for MVPDs, as it would require MVPDs to search hundreds of public files for new election requests. It would also not provide safeguards to ensure that the election procedures were followed, and that notice was provided and received in a timely manner.

### **III. CONCLUSION**

DISH supports updates to the Commission's rules to modernize methods of providing certain communications, consistent with the proposals discussed herein.

Respectfully submitted,

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