

**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)	

REPLY COMMENTS OF AT&T

There is broad agreement in the record that the Commission should continue its efforts to modernize its media rules by adopting its proposal to clarify that certain video providers may deliver required notifications, including privacy notifications, to subscribers using a verified email address.¹ For reasons explained in our comments, AT&T supports this commonsense proposal.² AT&T also agrees with commenters that the Commission should permit MVPDs to respond to consumer complaints, requests or billing disputes by email when the consumer uses email or agrees to use email to communicate with its MVPD.³ No commenter opposes these proposals and we urge the Commission to adopt them.

¹ *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, ¶ 18 (2017) (*NPRM*). *See also* NCTA – The Internet & Television Association Comments, MB Docket Nos. 17-317, 17-105, at 3-6 (filed Feb. 15, 2018); DISH Network L.L.C. Comments, MB Docket Nos. 17-317, 17-105, at 2-3 (filed Feb. 15, 2018); Verizon Comments, MB Docket Nos. 17-317, 17-105, at 4-5 (filed Feb. 15, 2018); American Cable Association Comments, MB Docket Nos. 17-317, 17-105, at 5-6 (filed Feb. 15, 2018).

² AT&T Comments, MB Docket Nos. 17-317, 17-105, at 2-5 (filed Feb. 15, 2018). As used herein, “AT&T” refers collectively to AT&T Services, Inc.’s multichannel video programming distributor (MVPD) affiliates, including DIRECTV.

³ *See, e.g.*, Verizon Comments at 10; NCTA Comments at 10-11; ACA Comments at 7-8.

On the other hand, there is no consensus among the parties on the broadcasters' proposal to dispense with triennial carriage election letters.⁴ In its comments, AT&T explained how the Commission's current satellite carriage election rules impose little burden on broadcasters.⁵ There are only two direct broadcast satellite (DBS) providers in the market – DIRECTV and DISH. This means a station has, at most, two satellite carriage election letters to send once every three years. And, of course, a station only has that obligation if it is seeking mandatory carriage on a DBS provider's system.⁶ AT&T suggested one way the Commission could further simplify this process for broadcasters: explicitly permit broadcasters to use express mail delivery with tracking in lieu of the more cumbersome certified mail, with return receipt requested. As it considers the record, AT&T asks the Commission to remain mindful that the two nationwide DBS providers each carry over a thousand broadcasters and the burdens described by the National Association of Broadcasters (NAB) and individual broadcasters are animated by the *cable* carriage requirements.⁷ AT&T is supportive of the cable and broadcaster industries reaching consensus on modifications to cable election carriage requirements. However, these broadcaster concerns simply do not support radical change to the *satellite* carriage rules.

⁴ *NPRM* at ¶¶ 25-27.

⁵ AT&T Comments at 5-6.

⁶ 47 C.F.R. § 76.66(d); *Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, 16 FCC Rcd 1918, ¶ 22 (2000).

⁷ See, e.g., National Association of Broadcasters Comments, MB Docket Nos. 17-317, 17-105, at 3-6 (filed Feb. 15, 2018); Nexstar Broadcasting, Inc. Comments, MB Docket Nos. 17-317, 17-105, at 2-3 (filed Feb. 15, 2018).

DISH shares AT&T's view regarding the lack of burden on broadcasters to comply with the Commission's satellite carriage rules.⁸ However, if the Commission is determined to update its election carriage rules, something neither DISH nor AT&T believes is necessary for the satellite carriage rules, DISH suggests that the Commission create an online portal on its website.⁹ Of the options presented in the record, DISH's portal proposal is the most reasonable. Broadcasters would use this Commission-hosted portal to make their carriage elections by MVPD. Under DISH's proposal, broadcasters will make their elections using a standardized form or drop-down menu that contains all the elements of the Commission's current rule (*e.g.*, call sign, contact information, community of license).¹⁰ A station will complete one election form or entry per MVPD, and each MVPD will obtain unique login credentials to enable it to access all the elections applicable to its system.¹¹ After the filing deadline, broadcasters will be unable to submit tardy carriage elections.¹² DISH also asks the Commission to modify its rule that requires DBS providers to respond to a station's carriage request within 30 days of receipt of the request, to permit DBS providers to respond to all requests by a date certain, regardless of when they received the request.¹³

⁸ DISH Comments at 3 ("DISH does not believe any changes to the current election process are necessary.").

⁹ *Id.* at 4-5.

¹⁰ *See* 47 C.F.R. § 76.66(d)(1)(iii).

¹¹ DISH Comments at 5.

¹² *Id.*

¹³ *Id.* (requesting the Commission to amend § 76.66(d)(1)(iv)).

In addition to the functionality proposed by DISH, which we support, AT&T suggests that the Commission design the portal to create a filing window and notify automatically an MVPD when a broadcaster makes a carriage election on its system. AT&T agrees with DISH that the Commission's portal should be designed to prevent a broadcaster from submitting a tardy carriage election. However, it also would be helpful for the Commission to create a filing window so that broadcasters could not submit their notices more than a few months before the filing deadline. Using the current October 1 deadline as the example,¹⁴ the filing window would open on, say, August 1 and close on October 1. A broadcaster would be unable to file its election notices prior to August 1. This will allow all parties to better manage these notices. Moreover, regardless of when the broadcaster filed during that window (August 1 or October 1), the Commission should modify its rules, as requested by DISH, to permit DBS providers to respond by one date (November 1, using the example provided above). Establishing both a filing window and a single due date for responses will ease the tracking burden of all parties.

Not only should the Commission's portal enable broadcasters to submit a single election per station¹⁵ and per MVPD, the portal also should automatically notify an MVPD each time a

¹⁴ For reasons provided in AT&T's comments, which we do not repeat here, AT&T urges the Commission to move the satellite carriage election deadline from October 1 to July 1. We also request that the Commission permit DBS providers to have 60 days to respond to a broadcaster's election request. If the Commission adopts AT&T's proposal, the filing window would open on May 1, for example, and close on July 1, and DIRECTV's and DISH's responses would be due no later than September 1. *See* AT&T Comments at 7-8.

¹⁵ It is important that station groups make their elections on a per station basis. In the past election cycle, DIRECTV received multiple election notices at the station group level. These large station groups attached exhibits of the covered stations, presumably used with all MVPDs in that market. It was DIRECTV's experience that some of the stations included on the exhibits were not eligible for satellite carriage (*e.g.*, low-power television stations). Having to work through such exhibits is unnecessarily time consuming for DBS providers. Requiring station groups to submit their elections on a per station basis will eliminate this burden.

broadcaster elects carriage on its system. Such a notification system will dramatically simplify the tracking process for MVPDs. AT&T recognizes that it will take the Commission time to establish an online portal as described herein. However, the Commission has over two years – an ample amount of time – to implement this portal prior to the next carriage election deadline.

Like ACA and DISH, AT&T has concerns about requiring MVPDs to accept carriage elections made using email.¹⁶ Even with an automated return receipt,¹⁷ AT&T remains concerned that broadcasters and MVPDs will have disputes over which election request controls if the broadcaster submits multiple requests (something that is not uncommon in DIRECTV’s experience) and the timeliness of the requests. Under the current rules, DBS providers have 30 days to respond to a broadcaster’s election request. It is DIRECTV’s experience that many broadcasters submit follow-up election requests during that 30-day review period, most of which are identical to their original submissions, but some follow-up requests do contain differences from the original. Identical or not, DIRECTV personnel must nonetheless review every broadcaster submission. As NAB acknowledges, its members “routinely” file multiple copies of their election notices to ensure that the MVPD receives at least one copy.¹⁸ This results in unnecessary busy work for MVPDs like DIRECTV and AT&T is concerned that this practice will only worsen with email.¹⁹ Furthermore, we reiterate our strong opposition to the

¹⁶ ACA Comments at 11-12, DISH Comments at 5. To be sure, AT&T has no objection to the Commission *permitting* MVPDs to accept emailed carriage elections on a voluntary basis. *See* Verizon Comments at 14 (supporting giving MVPDs the discretion to accept emailed election requests).

¹⁷ *See* Verizon Comments at 14.

¹⁸ NAB Comments at 6 (also acknowledging that this broadcaster practice is burdensome to MVPDs).

¹⁹ Nexstar alleges that AT&T is being disingenuous for supporting electronic delivery of generic notices to subscribers while opposing email delivery of mandatory carriage election notices. Nexstar Comments at 7 (expressing uncertainty as to why AT&T wants to subject broadcasters to the “labor intensive, physical delivery notice requirement” for triennial mandatory carriage elections). Nexstar cannot credibly

Commission adopting any proposal that would require DBS providers to hunt through over 1,700 broadcaster websites or public files on the Commission’s website to determine which broadcasters elected mandatory carriage.²⁰ Such significant burden shifting cannot be supported by any reasonable cost-benefit analysis.

Finally, we respectfully disagree with Public Broadcasting’s request for the Commission to eliminate the requirement that noncommercial educational (NCE) broadcasters file carriage letters once every three years with DBS providers.²¹ To DIRECTV, this requirement is not a regulatory “gotcha,” designed to reduce the number of NCE stations it must carry.²² Stations change content, ownership, and sometimes locations during an election cycle, and do not always want and are not always eligible for continued carriage on DIRECTV’s platform. These triennial notices provide the means for DIRECTV to update its records, determine its carriage obligations for the next three years, and, importantly, help manage the scarce space on its capacity-constrained spot beams. Moreover, as we have explained above, having to make a triennial election to a small number of providers (two), particularly if those providers have a single point

complain that requiring a station to send – at most – two letters once every three years to the nation’s two DBS providers is “labor intensive.” Moreover, as Nexstar concedes, these letters are only necessary if Nexstar elects must carry on DIRECTV’s and DISH’s systems, something it states is counter to “the ordinary course of business in the broadcast industry.” *Id.* at 8 (“few commercial broadcasters are likely to actively elect must carry rights in the current market”). Moreover, we agree with ACA that there is a material difference between a communication intended to provide generic information that has no legal impact on the recipient (*e.g.*, electronic delivery of the annual privacy notice to subscribers) versus mandatory carriage election notices, which do have significant legal consequences. ACA Comments at 12-13.

²⁰ See AT&T Comments at 6-7.

²¹ America’s Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service Comments, MB Docket Nos. 17-317, 17-105 (filed Feb. 15, 2018) (Public Broadcasting Comments).

²² *Id.* at 3.

of contact, imposes little burden on broadcasters, including NCE broadcasters. In our view, the benefit of triennial carriage letters from NCE stations to DIRECTV far outweighs any small cost to the NCE broadcasters.

For the reasons discussed above and in our comments, AT&T urges the Commission to adopt its proposals to permit MVPDs to deliver electronically privacy notifications to subscribers using a verified email address and respond to consumer complaints, billing disputes or requests by email when the consumer uses email or agrees to communicate with its MVPD via email. We also ask the Commission to reject any requests to modify its satellite carriage election rules that would result in the two nationwide DBS providers having to hunt through about 1,700 broadcasters' websites or online public files looking for election letters. If the Commission is going to make any significant change to the satellite rules, AT&T recommends it adopt DISH's suggestion to create a Commission-hosted online portal.

Respectfully Submitted,

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