

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

REPLY COMMENTS OF ION MEDIA NETWORKS, INC.

ION Media Networks, Inc. (“ION”) hereby files these Reply Comments regarding changes to the mandatory carriage/retransmission consent rules as proposed in the above-captioned proceeding.¹

I. INTRODUCTION

ION applauds the Commission’s efforts to modernize the rules and regulations governing broadcast television companies and specifically the rules governing television stations’ triennial election of mandatory carriage or retransmission consent. Those rules were adopted more than a quarter century ago, at a time when important business correspondence was delivered by courier, the U.S. Mail, and fax machines. In the years since, the Internet and related technologies have developed dependable, efficient and reliable means for delivering communications between parties.

The current rules are a classic example of bureaucratic complexity with features like: The lack of any centralized database providing broadcasters with the addresses and contact information they need to send election letters; the lack of any responsibility for MVPDs to provide those addresses; a requirement for use of certified mail only without consideration of

¹ Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative, *Notice of Proposed Rulemaking*, 32 FCC Rcd 10755 (2017) (“*NPRM*”).

other faster and more convenient forms of communication;² And, as the industry recently learned, even in cases where an MVPD gains clear notice of a station's election, the Commission will enforce the most strict interpretation of the rules, forcing a broadcaster into a default carriage election, based on a minor technicality in execution.³ And for cable elections, a combination of the current system-by-system election process, the Commission's rule against inconsistent elections, and the fact that cable operators' systems overlap in unpredictable ways, means that the potential repercussions of a single, minor error affect not just carriage by a single cable operator, but most or all operators in a station's DMA. It would be irresponsible for the Commission to allow this outdated and inefficient election process to persist until the next election deadline in 2020.

ION agrees with the cross-industry consensus that the current MVPD carriage election system is inconsistent, antiquated, unduly burdensome and ripe for change.⁴ Obviously, any update to the carriage election process should appropriately reflect the vast changes in communications technology that have occurred since 1992. The Commission's focus should be on making the election process simpler, more certain, and absolutely more cost effective. The Internet has created a number of alternatives for achieving these objectives, and the Commission

² See 47 C.F.R. §§ 76.64(h), 76.66(d) (the "Carriage Election Rules"). Under the rules in effect today, even the most diligent broadcaster can make a typographical error in the address for the operator, which could delay delivery of the election letter by weeks. Even worse, the U.S. Postal Service could mis-deliver an election letter or lose it entirely.

³ See also *Minority Television Project, Inc. Licensee of Noncommercial Television Station KMTP, Channel *32 San Francisco, California, Memorandum Opinion and Order*, DA 18-63, MB Docket No. 18-63 (rel. Jan. 23, 2018).

⁴ See, e.g., NAB Comments at 1-2; Joint Broadcaster Comments at 1-3; Meredith Comments at 1; Nexstar Comments at 1-3; Comments of NCTA – The Internet & Television Association, MB Docket Nos. 17-317 and 17-105 at 13-14 (Feb. 15, 2018) ("NCTA Comments"); Comments of Verizon, MB Docket Nos. 17-317 and 17-105 at 13-14 (Feb. 15, 2018).

should use these standard business technologies to reduce the burdens of the election process on any broadcaster with the affirmative obligation to notify MVPDs of their elections.

At the same time, the FCC must ensure that any changes it makes to the election rules do not disadvantage independent broadcasters like ION that continue to rely on mandatory carriage to ensure that viewers are able to receive their signals from MVPDs. Unlike stations that elect retransmission, who already have agreements in place with the large majority of MVPDs, and because of their election are approached by every MVPD, ION and other must carry broadcasters are not provided a list of MVPDs carrying their signal, and often do not have a reliable means for obtaining complete carriage information. Unlike for DBS, which has only two operators, cable has literally thousands of operators across the country. As such, a requirement that must-carry stations now must determine the precise mailing address of every cable system, coupled with a risk of loss of carriage should one be missed, is unreasonably burdensome. Only if the Commission has settled on a simple, streamlined election approach, which allows the broadcaster to make its election once per DMA (thus replacing the current operator-by-operator, system-by-system election), should the Commission even consider implementing the proposals of several broadcasters to reverse the existing default presumption of must-carry for station carriage on cable systems absent an affirmative station election of retransmission consent.⁵ In summary, if the Commission changes the MVPD default election, then it must revise its election rules and remove the substantial economic burdens and uncertainty that the election process today imposes on broadcasters, especially on those who elect mandatory carriage. 2018) (“Nexstar Comments”).

⁵ See Comments of the National Association of Broadcasters, MB Docket Nos. 17-317 and 17-105 at 2-11 (Feb. 15, 2018) (“NAB Comments”); Comments of Meredith Corporation, MB Docket Nos. 17-317 and 17-105 at 1 (Feb. 15, 2018) (“Meredith Comments”); Joint Comments of CBS Corporation, *et al*, MB Docket Nos. 17-317 and 17-105 at 3-8 (Feb. 15, 2018) (“Joint Broadcaster Comments”); Comments of Nexstar Corporation, MB Docket Nos. 17-317 and 17-105 at 8 (Feb. 15, 2018) (“Nexstar Comments”).

II. The Commission Should Simplify and Reform the Election Process.

ION is the nation's largest independent, over-the-air television broadcast company, owning or operating 63 stations reaching approximately 100 million U.S. households. ION's stations are the backbone for its three owned and operated television networks – ION Television, ION Life, and Qubo. While ION owns dozens of television stations and three networks, it remains a small, independent player in a media marketplace dominated by multi-platform conglomerates. Unlike most broadcasters with a large audience reach, ION relies on its must carry rights for MVPD carriage. Due to its reliance on must-carry, ION is keenly interested in the outcome of this proceeding.

Several commenters in this proceeding have requested that the FCC reverse the default rules for cable carriage so that stations will be deemed to have elected retransmission consent unless the station affirmatively informs cable operators that it is electing mandatory carriage.⁶ Without changes in the notification process, this change would create unreasonable burdens upon broadcasters like ION that rely on mandatory carriage.

The current election rules require each station to identify the cable operators in their markets, locate the correct address for each operator, and send a system-by-system election letter (*via* certified mail) to each operator. The record shows that these burdens place excessive and unfair costs on broadcasters.⁷ Under the current rules, however, at least those costs are being imposed on stations that are electing retransmission consent, which already have agreements and know the addresses of the large majority of operators, which are at least approached by almost

⁶ *See id.* This change would make the default rules the same for cable as they currently are for satellite.

⁷ NAB comments at 3-5; Joint Broadcaster Comments at 5-7; *see also* Reply Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association, MB Docket No. 17-105 at 10 (Aug 4, 2017); NAB Comments at 4-5 (Feb. 15, 2018).

every MVPD with which it does not have an agreement, and which in most cases are paid substantial retransmission fees by cable operators that help defray those costs. Mandatory carriage stations like ION's, on the other hand, do not have a list of MVPDs which carry its signal, in many cases are not notified by every MVPD taking its signal, receive no retransmission payments from cable operators, and are in no position to absorb those costs. While ION typically has elected mandatory carriage for all MVPDs for each of its stations under the current default rules, ION has calculated that any scenario which required ION to affirmatively elect must-carry under the current certified mail letter requirement, would force ION to prepare and deliver approximately 1,400 certified letters to the MVPDs. ION estimates that the costs of attempting to identify every local MVPDs and their contact addresses, preparing a letter for each, and sending that letter by Certified Mail likely would run in the hundreds of thousands of dollars, and still not guarantee that each MVPD would be identified and notified.⁸ Imposing these costs on ION and other must-carry broadcasters would be a perverse and unacceptable result, with no corresponding public interest benefit.

Furthermore, the Commission's practice of strict interpretation and enforcement of the rules places a substantial risk that a must carry station would lose carriage with multiple cable operators should it fail to elect must-carry for a cable system and default to retransmission consent. With such a change, if a must-carry broadcaster were to miss a cable system, it would risk an inconsistent election, potentially resulting in the loss of cable carriage on most or all cable systems serving that DMA. These risks do not exist for DBS elections, since they only apply individually to two operators. For these reasons, as part of considering any change to the

⁸ ION has not identified any database with the addresses of every cable operator, and would need to hire expensive consulting resources to do so; furthermore, ION estimates that the postage costs alone for sending these letters would exceed \$9,000.

cable carriage default rule, which until now has, except in the rare instance, not resulted in foregone revenue to any broadcaster, the Commission must settle on a more streamlined process, which ensures that must-carry stations can make DMA-wide elections simply and without the risk of loss of carriage.

III. ION Supports Proposals To Modernize and Simplify the Carriage Election Process.

Every commenter in this proceeding agrees that at least some reform of the carriage election process is warranted. The only real question is what mechanism should replace the current system.

ION supports a simple requirement that stations post their election notices in their online public inspection files.⁹ Each broadcaster should be permitted to file a single notice that elects mandatory carriage or retransmission consent on a DMA-wide basis for each operator in the DMA. If the broadcaster needs to make a more detailed system-by-system election for one or more cable operators, that could be included in the notice.

Using the online public file as a repository for stations' carriage elections would all but eliminate the massive costs associated with the election process described above and by other commenters in this proceeding. Such a system also would ensure that MVPDs receive timely, more efficient access to stations' election notices. Rather than receiving and tracking a multitude of letters and return receipts, MVPDs would simply access the public file of each broadcaster in each of their markets on or after the election deadline and respond accordingly. The FCC has recognized in other contexts the ease of using stations' online public files to gain access to

⁹ See NAB Comments at 2-11; Joint Broadcaster Comments at 8-9; Meredith Comments at 1.

important station information.¹⁰ The Commission also has recognized the value of having a “one stop shop” for information about each broadcast television station.¹¹ Allowing MVPDs to use this “one stop shop” would simplify MVPDs’ receipt of carriage elections, reduce their costs, and guarantee that they have actual notice of each stations’ election.¹²

IV. CONCLUSION

For the foregoing reasons, ION supports the FCC’s efforts to modernize the carriage election process as described herein.

Respectfully submitted,

ION MEDIA NETWORKS, INC.

/s/

John R. Feore
Jason E. Rademacher
COOLEY LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004

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Its attorneys

¹⁰ See, e.g., Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, *Second Report and Order*, 27 FCC Rcd 4535, 4542 ¶ 13 (2012) (“The Internet is an effective and low-cost method of maintain contact with, and distributing information to, broadcast viewers . . . [t]he public benefits of posting this information online, while difficult to quantify with exactitude, are unquestionably substantial.”).

¹¹ *Id.* at ¶ 14. (“We further conclude that it will be efficient for the public and ultimately less burdensome for stations to have their public files available in a centralized location . . . making the Commission’s website a one-stop shop for information about all broadcast television stations in a viewer’s market and eliminating the need to access multiple stations’ websites.”).

¹² All MVPDs will have become familiar with the online public file before the next election letters must be provided during the fall of 2020 since all MVPDs will have to have transitioned to the FCC’s online public file no later than March 1, 2018. See Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, *Report and Order*, 21 FCC Rcd 526 (2016). Cable systems with 1,000 or more subscribers and DBS providers had to transition to using the online public file by June 24, 2016. Effective Date Announced for Expanded Online Public File Inspection, *Public Notice*, MB Docket No. 14-127, DA 16-536 (rel. May 12, 2016).