

**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

**COMMENTS OF
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”)¹ submits these comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned docket.²

INTRODUCTION

Building on its 2017 *Declaratory Ruling*,³ the Commission took a welcome step last year to expand the types of FCC-required notices that cable operators can deliver by e-mail, in recognition that consumers increasingly receive information digitally. In so doing, the Commission allowed a cable operator to provide notices electronically via verified e-mail addresses, so long as the operator complies with certain consumer safeguards. The Commission

¹ NCTA is the principal trade association of the cable television industry in the United States, which is a leading provider of residential broadband service to U.S. households. Its members include owners and operators of cable television systems serving nearly 80 percent of the nation’s cable television customers, as well as more than 200 cable program networks. Cable service providers have invested more than \$290 billion over the last two decades to deploy and continually upgrade networks and other infrastructure—including building some of the nation’s largest Wi-Fi networks.

² See *In re Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Report & Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd. 11581 (2018) (“*Order*” and “*FNRPM*”); see also *In re Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Erratum, MB Dkt. Nos. 17-317 & 17-105 (rel. Dec. 4, 2018); 45 Fed. Reg. 8278 (Mar. 7, 2019) (establishing the docket comment date).

³ *National Cable & Telecommunications Association and America Cable Association Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd. 5269 (2017) (“*Declaratory Ruling*”).

now seeks additional comment on whether it should permit notices to be delivered using a broader range of electronic delivery mechanisms.⁴

We appreciate the Commission’s consideration of ways to further modernize and future-proof its notice rules. The Commission should allow operators to use alternative methods of electronic communication that can be equally if not more effective in reaching individual customers than paper and e-mail notices. Today, cable’s competitors can quickly adapt to contact their customers in ways that best meet customer needs. The FCC’s notice rules should grant cable operators similar flexibility to notify their customers in a timely, effective, and convenient manner. Regulations should not freeze cable operators into modes of communication with their subscribers that can and do become outdated over time.

DISCUSSION

Cable operators now may send by e-mail certain FCC-required notices if they follow specific safeguards. Delivery of e-mail notices must be to a “verified” e-mail address, *i.e.*, one that the customer (1) has provided to the cable operator (and not *vice versa*) for purposes of receiving communication; (2) regularly uses to communicate with the operator; or (3) has confirmed as an appropriate address for delivery of notices.⁵ E-mail notices must also include a telephone number, clearly and prominently presented to customers in the body of the notice, that it is readily identifiable as an opt-out option for those customers who wish to receive paper

⁴ See *Order*, at Statement of Chairman Ajit Pai (“[W]e’d like to learn whether cable operators and subscribers could take advantage of a broader range of electronic delivery options in the future, so we seek comment on additional avenues for receiving notices, such as texts and smartphone apps.”); *id.*, at Statement of Commissioner Michael O’Rielly (“As I raised earlier in this proceeding, many consumers have moved past emails – especially given the high level of spam – and actually prefer different notification mechanisms for billing, customer care issues, and other purposes. We must recognize this and adapt, and I am pleased to see our work will continue to modernize our rules even further.”).

⁵ 47 C.F.R. § 76.1600(b).

copies of the notice.⁶ The change embraced by the Commission just last year was a welcome relief, but even then perhaps lagged somewhat behind the communications market. As described below, text messaging and other forms of electronic messaging can be equally effective as e-mails for providing notice to customers, and the Commission should use its “broad authority”⁷ to permit additional methods of electronic delivery of notices.

I. The Commission Should Permit Cable Operators to Send Notices Via Text Messages

The e-mail rules can be safely adapted to apply to texting to provide the same consumer protections. Specifically, they can be modified to permit delivery of text messages if sent to a “verified” mobile phone number, *i.e.*, one that the customer (1) has provided to the operator (and not *vice versa*) for purposes of receiving communication; (2) regularly uses to communicate with the operator; or (3) has confirmed as an appropriate telephone number for the delivery of notices. And so long as operators also make customers aware that they can request a paper copy of the notice, there is no policy reason to restrict the use of texting.⁸

In fact, there are substantial policy reasons to permit texting. The Commission previously acknowledged the benefits of substituting e-mail delivery for delivery of paper copies to customers. These include “[t]he positive environmental aspects of saving substantial amounts of paper annually, increased efficiency and enabling customers to more readily access accurate

⁶ *Id.* § 76.1600(a).

⁷ *Order* ¶ 10 n.40 (noting that the Commission has “broad authority to establish standards relating to ‘communications between the cable operator and the subscriber’” under Section 552(b), and that Section 552(c) “gives the operator the choice of ‘any reasonable written means at its sole discretion’”).

⁸ Other agencies permit regulated industries to provide disclosures to customers through text messages as well as other modes. *See, e.g.*, 12 C.F.R. § 1005.31(a)(5) (CFPB regulation that gives regulated entities flexibility to provide required disclosure orally or via mobile application or text message under certain circumstances); 16 C.F.R. § 1115.26 (CPSC regulation that permits entities to deliver product recall notices via “letter, Website posting, electronic mail, RSS feed, or text message,” among other modes).

information regarding their service options.”⁹ These same positive effects will accrue from permitting the use of text messages for these purposes. Operators anticipate that many customers that may not have provided a “verified” e-mail address *have* supplied a “verified” mobile telephone number, growing the potential overall customer base that could benefit from electronic notices.

Many consumers prefer receiving texts over e-mails, and, like many businesses, cable operators in response are using this electronic means to communicate with customers.¹⁰ As we explained in earlier comments, “[m]illions of cable customers today prefer, and are accustomed to interacting with their cable operators in a variety of ways beyond telephone calls and e-mails.”¹¹ Cable operators collectively send millions of texts each month to their customers on a wide variety of matters. Among other things, cable operators use text messages to alert customers to service outages, remind them of upcoming appointments, and provide notice of various billing and payment issues. Thus, a significant percentage of cable customers already are accustomed to receiving and viewing important information from their cable operator on their smartphone.¹²

For these reasons, sending FCC-required notices via text would benefit both customers and cable operators, without sacrificing any of the safeguards attendant to paper or e-mail notices already permitted under the rules.

⁹ *Declaratory Ruling* ¶ 6.

¹⁰ Operators also take steps to comply with the Telephone Consumer Protection Act of 1990.

¹¹ NCTA Comments at 6.

¹² The *FNPRM* also seeks comments on some of the practical aspects of providing these notices, some of which may be lengthy, via a text message to customers. *FNPRM* ¶ 28. Given the character limits on SMS texting, we anticipate that cable operators will ordinarily provide a link to a longer message that customers can access from their mobile phone.

II. The Rules Should Allow Other Forms of Electronic Messaging, Such as Through Mobile Applications

Cable customers today communicate with cable operators through a variety of other electronic means. For example, many cable customers choose to download a mobile app through which they can contact their operator and receive important updates, among other things.

An increasing number of customers are communicating with their operators in this fashion. When the app is downloaded, a customer typically receives an alert that its cable company wishes to send notifications through the app, including alerts, sounds, and icon badges. In these cases, the initial alert provides customers the choice between allowing and disallowing those notices. There are various ways to push notices to those app users.

The FCC should embrace this newer form of electronic messaging for notices.¹³ These messages remain in the app for an extended period and give control to the customer to read later or remove, as desired. Operators should be allowed to send mandatory FCC notices through mobile apps and other analogous electronic means if they have a method of verification comparable to that used to establish that an e-mail address or mobile phone number is acceptable for sending messages, and so long as operators provide customers an option to receive a printed copy of the notice.

¹³ See 12 C.F.R. § 1005.31 (CFPB regulation authorizing disclosure by mobile application).

CONCLUSION

Consistent with the foregoing, the Commission should expand the permissible methods of electronic delivery to include text messaging and other forms of electronic messaging such as mobile apps, so long as appropriate consumer safeguards apply.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen
Diane B. Burstein
NCTA – The Internet & Television
Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

April 8, 2019