

**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

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS AND ADVISORS**

**I. INTRODUCTION**

The National Association of Telecommunications Officers and Advisors (“NATOA”)<sup>1</sup> submits these comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) released by the Federal Communications Commission (“Commission”) on November 16, 2018, in the above-captioned proceedings.<sup>2</sup> The Commission seeks comment on whether to allow cable operators to provide certain notices to subscribers via electronic means other than the email notification the Commission authorized in the Report and Order released with the FNPRM.

NATOA supports efforts to modernize the delivery of certain notices, provided that the delivery mechanism ensures subscribers not only receive the notices, but can access and retain the notices without incurring extra costs or unnecessary inconveniences. The record does not demonstrate that notices sent by text, on televisions screens or by other electronic means are

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<sup>1</sup> NATOA’s membership includes local government officials and staff from across the nation whose responsibility is to develop and administer communications policy and the provision of such services for the nation’s local governments. NATOA’s members include local franchising authorities tasked with administering cable franchise agreements and the related customer service obligations, including notices to subscribers.

<sup>2</sup> *In re Electronic Delivery of MVPD Communications*, MB Docket No. 17-317; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 18-166 (Nov. 16, 2018).

reasonably likely to meet this basic standard. We encourage the Commission to reject requests to permit alternative electronic notices except where subscribers voluntarily opt in to a notice delivery mechanism that allows subscribers to readily access and retain the notice for later reference.

## **II. DISCUSSION**

### ***A. Notices Must Meet Statutory Obligations and Commission Standards***

In the Report and Order, and in a 2017 Declaratory Ruling,<sup>3</sup> the Commission rejected the suggestion that any means of notification “reasonably calculated” to reach subscribers would be sufficient. The Commission expressed concern that such a standard would “create an undue risk that subscribers will not receive the required notices.”<sup>4</sup> We agree that this standard is inadequate and applaud the Commission for maintaining a standard that does more to ensure subscribers not only receive, but can easily access and retain, these notices. The very sparse record in this proceeding does not demonstrate that the proposed alternative electronic means of notification would meet the Commission’s standard without significant safeguards, as discussed below.

Further, we question whether notices delivered via an electronic means that cannot be easily printed or retained by the subscriber, such as the cable set-top box, could be considered adequate notice or a “reasonable written means” pursuant to Section 632(c) of the Communications Act (47 U.S.C. § 552(c)). Unlike Section 632(b), which provides authority for the Commission to set many customer service standards, Section 632(c) expressly requires written notice of service and rate changes. This distinction reflects Congress’s intent to ensure that subscribers not only are made aware of changes to the services they purchased and the rates they thought they would pay,

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<sup>3</sup> See *National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269, FCC 17-73 (2017) (“2017 Declaratory Ruling”).

<sup>4</sup> *Id.*

but also have a written record of those changes. “Notices” of service and rate changes that are buried in an on-screen menu, require installation of a cable operator’s app on a smartphone, or otherwise cannot be preserved by the subscriber do not meet the intent or letter of the Act.

***B. The Record Does Not Support Rules Permitting Alternative Electronic Notice***

The record does not adequately address a host of issues subscribers would face if notices were permitted via alternative electronic means. For example, as acknowledged in the FNPRM, subscribers may have data caps that impair their ability to receive and access notices on their smartphones without facing additional charges. Some subscribers do not have smartphones and will not be able to easily use a texted link to find the notice online. The record does not address how these subscribers could access these notices, or how cable operators would track which subscribers have text-enabled smartphones and which do not.

While it may be the case, as NCTA asserts, that cable operators currently send “millions of texts each month to their customers on a wide variety of matters,”<sup>5</sup> this does not support the idea that mandatory written notices should be one of those texts. NCTA’s examples of the current use of texting—notification of outages, appointment reminders—might reasonably be circumstances where subscribers prefer texting due to the immediacy of the issues the texts address. This does not mean subscribers would be amenable to text-delivered Subpart T notices. A short text message notifying a subscriber when an outage will be resolved is entirely different from a text requiring a subscriber to link to and read potentially lengthy notices on the (relatively small) smartphone screen, all while using data that counts toward monthly caps.

These same concerns apply to notices provided through smartphone apps. In addition, subscribers may not want to be required to download a cable operator’s app in order to receive

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<sup>5</sup> Comments of NCTA – The Internet & Television Association, p. 4.

notices. Subscribers presumably would be required to authorize push notifications to ensure they are aware of new notices. This may result in subscribers receiving many other notifications, such as advertisements or offers to upgrade service, that they may not wish to receive. Some subscribers may not want to dedicate storage capacity on their device to these apps, and may have privacy concerns regarding the use of information gleaned from the app. These issues are not adequately addressed in the record.

Verizon suggests notices should be permitted via subscribers' televisions. This, too, fails to meet the applicable standards. Verizon suggests that it could notify subscribers by email or paper that the subscriber must go to a certain menu on their television in order to access these notices.<sup>6</sup> Verizon does not offer any evidence to support the notion that customers would see the email or paper notice and take the additional step of going to their television to access the notice.

Even with on-screen notifications to subscribers of a message, there is no evidence subscribers would click through the menus and links described in Verizon's Comments to get to the notice.<sup>7</sup> Verizon offers no means to ensure that the person who sees the alert or accesses the notice actually is the subscriber (as opposed to a child or tenant who may or may not share the notice with the person paying the cable bill). Nor does Verizon provide data on how often subscribers currently access this on-screen menu. Similarly, it is unclear how many messages subscribers receive and what types of information they typically convey. A subscriber who has previously gone through the process of accessing messages only to find marketing materials about upgrading services or upcoming pay-per-view events may ignore new messages without realizing they could be missing important notices of rate changes or channel lineup revisions.

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<sup>6</sup> Comments of Verizon, p. 2.

<sup>7</sup> *Id.* at p. 2-3.

Finally, the record does not indicate that subscribers could readily save or print notices provided by any of the suggested methods. As noted above, a minimum standard for written notice should be that the subscriber can retain the notice for future reference. Notices that cannot be easily preserved will make it significantly more difficult for subscribers to retain a record of rate or service changes or to address these changes or other notifications with their cable provider.

***C. Opting In to Alternative Delivery Methods That Allow Preservation of the Notice may be Consistent with the Standards***

While the record does not support the assertion that the proposed alternative electronic notifications would provide adequate notice to all subscribers, we recognize that some subscribers may prefer alternative delivery methods. NATOA supports allowing subscribers to opt in to an alternative method of receiving notices provided that, in addition to protections akin to those adopted in the Report and Order for email delivery, (i) subscribers affirmatively select this delivery option after notice of available alternatives and (ii) the delivery method allows the subscriber to easily save, print or otherwise preserve the notice if desired without incurring any additional costs. Such an opt-in delivery option would address some subscribers' preferences while ensuring that a minimum standard of notice—and the ability to preserve the record—remains in place.<sup>8</sup>

**III. CONCLUSION**

The record in this proceeding does not demonstrate that text, television or other types of electronic notices would meet cable operators' statutory obligation or the Commission's notice standards. While NATOA does not oppose allowing customers to voluntarily opt in to electronic delivery via a method that allows for easy and cost-free access and preservation of notices, we

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<sup>8</sup> Further, an opt-in system may, over time, show that subscribers clearly prefer some alternative electronic delivery methods and that these methods provide notices that are easily accessible and retainable, which may enable the Commission to permit such notices on an opt-out basis in a future rulemaking.

urge the Commission to reject other means of delivery without a considerably stronger record demonstrating the efficacy and desirability of these methods.

Respectfully submitted,

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