

May 21, 2018

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Written Ex Parte Communication, MB Docket Nos. 17-317, 17-105

Dear Ms. Dortch:

At its meeting with Commission staff on April 26, 2018¹, NCTA – the Internet & Television Association reiterated its proposal that the Commission should update the carriage election rules so that broadcasters would be required to file one election notice per cable operator using an email address provided by the operator.² The National Association of Broadcasters (NAB) again urges the Commission to reject NCTA's proposal, and instead adopt NAB's proposal to change the cable default election to retransmission consent and allow broadcasters to satisfy the notice requirement by placing election notices in their online public files.³

NCTA claims that the proposal would be a “massive increase” in the burdens on cable operators.⁴ This is simply false. It is easy for MVPDs both to access broadcasters' public files and to identify the broadcasters in their markets. On the other hand, NCTA's proposal would

¹ See Letter of Rick Chessen to Marlene H. Dortch, at 2 (April 30, 2018) (NCTA Letter).

² See *Id.*; Comments of NCTA – The Internet & Television Association, MB Docket Nos. 17-317, 17-105, at 13-14 (Feb. 15, 2018).

³ See Comments of the National Association of Broadcasters, MB Docket Nos. 17-317, 17-105 (Feb. 15, 2018) (NAB Comments); see also Joint Comments of CBS Corp., The Walt Disney Co., 21st Century Fox, Inc., Univision Comms. Inc., ABC Television Affiliates Assoc., CBS Television Network Affiliates Assoc., FBC Television Affiliates Assoc. and NBC Television Affiliates, MB Docket Nos. 17-317, 17-105, at 8-9 (Feb. 15, 2018); Reply Comments of Ion Media Networks, Inc., MB Docket Nos. 17-317, 17-105, at 6-7 (March 5, 2018).

⁴ See NCTA Letter at 2.

do little to reduce the actually significant burden and associated risk broadcasters face when making their elections under today's system.

It would be helpful first to review the burdens broadcasters face when making their elections. The Commission requires broadcasters to send carriage elections notices to all MVPDs, including all cable systems, in their "defined market."⁵ As illustrated by the Commission, this goes beyond the effort needed to identify cable operators in the area.⁶ Broadcasters, moreover, make these elections based on their Nielsen Designated Market Area (DMA), yet there are no Commission resources that reliably allow broadcasters to search for cable systems by DMA. That information can only be found by paying Nielsen for the data each election cycle or by extensive research. After that process, broadcasters must find the correct mailing address for each system, which is frequently difficult to find; mail certified letters to each system; and send follow-up inquiries as needed to be (somewhat) sure their letters were received by the correct entity. The consequences for failing to successfully complete these steps are substantial.

While NCTA's proposal would allow broadcasters to make one election per operator rather than for each cable system, it still does not address two key burdens that broadcasters face: (1) having to independently research and/or pay for DMA data, and (2) the risk that a cable system (or operator) in the market does not receive their election notice. These are heavy burdens with enormous consequences: either three years without being able to negotiate for retransmission consent or the loss of cable channel placement rights. While NCTA would have the Commission believe broadcasters' proposal will impose undue burdens upon them, that is not true.

NAB's proposal would, in fact, have a limited impact on MVPDs. Today, cable companies receive certified letters from broadcasters. Frequently, they receive multiple letters to different locations with the same election. They have to sort through those letters,⁷ and figure out which ones are duplicates and which ones require a response. And the consequence for erring and failing to carry a must-carry station (the current cable default) is merely that the Commission may order it to begin carriage of the station's signal within 45 days – and to continue carriage for at least one year. While this is a small consequence for MVPDs, the time lag in carriage is devastating for those seeking carriage.⁸

⁵ 47 C.F.R. § 76.64(h).

⁶ "Large cable MVPDs that serve millions of homes in multiple geographic areas operate many cable systems. . . Small cable MVPDs that serve very few homes in one geographic area often operate only one cable system in that particular area, and may similarly operate other small cable systems in other geographic areas." *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, MB Docket No. 16-247, at ¶ 39, n.108 (Jan. 17, 2017) (Video Competition Report).

⁷ See Reply Comments of AT&T, MB Docket Nos. 17-317, 17-105, at 5 (March 5, 2018) (lamenting that the duplicate letters "result[] in unnecessary busy work for MVPDs").

⁸ Moreover, the time lag may extend far longer than 45 days because the onus is on the broadcaster to affirmatively notify the cable system within 60 days of the refusal to carry, wait up to 30 days, but no more than 60 days, for an unsatisfactory response or no

In fact, very little will be different if the Commission adopts NAB's proposal.⁹ Instead of sorting through mounds of paper mail, cable companies will look in digital public files. MVPDs' claim that they do not know which broadcasters are in their markets is specious. For the few cases where that might even be plausible, that challenge is easily solved. Not only can MVPDs search broadcasters by DMA using the Commission's website, but also TVNewsCheck has an online database that lists broadcasters by DMA.¹⁰ There are also far fewer broadcasters than there are cable systems: roughly 4,413 cable systems¹¹ compared to 1,765 full-power, commercial and non-commercial broadcasters.¹²

While MVPDs benefit greatly from the current system that assigns all of the burden and risk to broadcasters, the net effect of the current regime is to impose unnecessary burdens and to do so squarely on broadcasters' shoulders. There is no clearer example of rules that need to be modernized. And in this instance, burdens are reduced overall in a system where MVPDs simply check the public files of the broadcasters in their areas. The Commission should change the default election to retransmission consent and allow broadcasters to satisfy the notice requirement by putting the elections in their online public files.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
General Counsel and Executive Vice President,
Legal and Regulatory Affairs
National Association of Broadcasters

response, and then file a complaint with the FCC. See 47 C.F.R. § 76.61(a). The Commission's rules for satellite are similar, and merely state that the Commission can "order the satellite carrier to take appropriate remedial action." 47 C.F.R. § 76.66(m)(5).

⁹ For instance, granting NAB's current proposal would not change the Commission's carriage dispute remedies.

¹⁰ See *TV Station Directory*, TVNewsCheck (available at <http://www.tvnewscheck.com/tv-station-directory/dma>) (last accessed May 4, 2018) (TV Station Directory).

¹¹ See Reply Comments of NTCA-The Rural Broadband Association, MB Docket Nos. 17-317, 17-105, at 2 (March 5, 2018) (citing Video Competition Report at ¶ 39).

¹² See Broadcast Station Totals As of March 31, 2018 (released April 9, 2018). What's more, broadcasters' public files in the largest DMAs show that broadcasters routinely send dozens, or even hundreds, of letters to different cable operators and identify dozens of cable systems per the largest cable operators in their markets. For instance, one broadcaster identified more than 90 Charter Communications cable headends in the Los Angeles DMA and 60 Cablevision Systems Corp. headends in the New York City DMA. In contrast, very few DMAs have more than 20 full-power TV stations, and most have far fewer: of the 210 DMAs, 127 DMAs have 10 or fewer broadcast stations, representing 60 percent of all DMAs. See TV Station Directory.