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**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Ex Parte Communication of the American Cable Association: Electronic Delivery of MVPD Communications, MB Docket No. 17-317; Modernization of Media Regulation Initiative, MB Docket No. 17-105.**

Dear Ms. Dortch:

On June 4, 2018, Ross Lieberman, Sr. Vice President of Government Affairs, American Cable Association, and the undersigned met with Michelle Carey, Martha Heller, Steven Broeckaert, Lyle Elder, and Sarah Whitesell of the Media Bureau to discuss issues raised in the Commission's Notice of Proposed Rulemaking on the Electronic Delivery of MVPD Communications ("NPRM"),<sup>1</sup> including proposals to streamline the broadcast carriage election process and to modernize the Commission's MVPD subscriber notice rules.

**Broadcast Carriage Election Notices**

With respect to broadcast carriage election notices, ACA expressed support for reducing the burdens of the election process, but urged that any changes should: 1) allow for no uncertainty as to whether a broadcast station has sent its election notice in a timely manner, and 2) impose no regulatory burdens on MVPDs. ACA believes that the Commission can substantially reduce the burdens of the carriage election process by allowing broadcast stations to send a single email notice to each cable operator with whom it seeks carriage, as proposed by NCTA,<sup>2</sup> with two modifications. Under NCTA's proposal, cable operators would identify in their online public inspection file a dedicated email address to which broadcast stations should send their election notices. Because systems with fewer than 1,000 subscribers do not maintain an online public file, ACA proposes to modify NCTA's proposal by allowing cable providers who only operate such systems to post their designated email address in their COALS

<sup>1</sup> *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 10755 (2017).

<sup>2</sup> *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317, Comments of NCTA – the Internet and Television Association at 13-14 (filed Feb. 15, 2018).

profile. This proposal would eliminate the need for broadcast stations to spend time researching contact information for individual systems, and would eliminate the cost of sending notices via certified mail.

To resolve potential conflicts over whether an email notice was sent in a timely manner, ACA proposes to modify NCTA's proposal by requiring broadcasters to copy a Commission-hosted email address that would generate an automatic response to confirm receipt. As ACA explained in its reply comments in this proceeding, one of the benefits of the current election procedure, in which broadcast stations send their election notice via certified mail, is that an independent party – the United States Postal Service – provides a record of the specific date on which the broadcast station sent the carriage election notice.<sup>3</sup> Copying a Commission-hosted email address that generates an automated response to the sender indicating that the email was received, would serve this same purpose, and in fact improves on the current process. ACA's proposal provides broadcasters a record that such notice was delivered to the Commission – thus addressing broadcasters' concerns regarding the risk of a cable operator not receiving a notice that was properly sent by the broadcaster<sup>4</sup> – while still relieving broadcasters of the significant costs associated with delivering notices via certified mail.

To the extent that the Commission also requires MVPDs to acknowledge receipt of a broadcaster's notice, such as by providing an email response, ACA believes that such acknowledgment alone should not be considered proof that a broadcast station has met its notice obligations, as the notice may be defective in other ways. ACA also suggests that cable operators not be required to provide an automated confirmation of receipt to account for both the capabilities and preferences of smaller entities.

ACA urged the Commission to reject broadcasters' calls to allow broadcast stations to satisfy their notice requirements solely by posting notice in their online public file. As ACA explained in its reply comments, this proposal unfairly shifts the burden of providing notice from broadcasters to MVPDs, who would be forced to search through the Commission's online public file database to identify their carriage obligations with respect to each station.<sup>5</sup> In contrast, allowing broadcast stations to send a single carriage election notice to each MVPD on which it seeks carriage significantly reduces burdens for all parties involved.

ACA also discussed a proposal, set forth by the National Association for Broadcasters,<sup>6</sup> to reverse the current election default from must carry to retransmission consent. ACA stated that the issue was not properly noticed in the NPRM, and it would therefore be improper for the Commission to consider it at this time. As for the merits of the proposal, ACA expressed the belief that changing the default would create unnecessary uncertainty and confusion that could harm small cable operators and small broadcast stations. Specifically, the Commission would be shifting the burden of providing notice from large, resource-rich broadcasters to small, resource-constrained ones. This is likely to result in more failed elections. In the event a small broadcast station that previously elected "must carry" fails to properly give notice of such designation during the next carriage election opportunity, for a small cable operator to continue carrying the station, which would commonly be there interest, the two parties would need to enter into a retransmission consent agreement that would be very costly and time consuming for the parties to execute for the first time.

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<sup>3</sup> *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317, Reply Comments of the American Cable Association at 11 (filed Mar. 5, 2018) ("ACA Reply Comments").

<sup>4</sup> Letter from Rick Kaplan to Marlene Dortch, MB Docket No. 17-317, at 2 (filed May 21, 2018).

<sup>5</sup> As ACA explained in its comments, sorting through the online public file database to identify broadcast carriage election notices is cumbersome and time consuming. See ACA Reply Comments at 15-16.

<sup>6</sup> See generally, *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317, Comments of the National Association of Broadcasters (filed Feb. 15, 2018).

### **Subscriber Notices**

With respect to MVPD subscriber notices, ACA reiterated its support for the Commission's proposal to adopt a rule that would allow various types of generic written communications from cable operators to subscribers to be delivered electronically on an "Opt Out" basis, if (1) they are sent to a verified e-mail address and (2) the cable operator provides a telephone number to allow subscribers to opt out of email delivery, and urged the Commission to treat all subscriber notices required by Subpart T of Part 76 of the rules the same, rather than creating a separate "opt-in" system for notices required by Sections 16.1603 (rate and service changes), 16.1604 (charges for customer service changes), 16.1618 (basic tier availability), and Section 631 of the Act (privacy). ACA also suggested that the Commission permit cable operators to comply with all subscriber notice requirements by posting written material on their website, as long as cable operators inform subscribers in their electronic communication that the notices exist and direct them to where the material can be found.

Finally, ACA reiterated its support for allowing cable operators to respond to consumer requests and complaints via email if a customer has indicated that they prefer to communicate via email, either by stating so explicitly or by sending their complaint via email, and urged the Commission to eliminate two outdated rules related to equipment compatibility issues that have been made obsolete by changes in technology.<sup>7</sup>

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Mary C. Lovejoy

cc: Michelle Carey  
Martha Heller  
Steven Broeckaert  
Lyle Elder  
Sarah Whitesell

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<sup>7</sup> See 47 C.F.R. §§ 76.1621; 76.1622. If the Commission opts not to eliminate Section 76.1622 entirely, it can nonetheless alleviate some unnecessary regulatory burdens by adopting a single rule that tracks closely with the actual language of Section 624A of the Communications Act (47 USC § 544), as opposed to retaining the prescriptive requirements contained in the rule that are not expressly required by the text of the statute. This would allow cable operators to determine how best to inform their subscribers of any potential equipment compatibility issues while still fulfilling arguably textual requirements of the statute, including by providing notices only upon installation, rather than on annual basis as required by the existing regulation.