

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Modernization of Media Regulation)	MB Docket No. 17-105
Initiative)	

REPLY COMMENTS OF AT&T

AT&T¹ welcomes the Commission’s common sense decision to review its media regulations to identify rules that have outlived their utility or that require updating in light of marketplace changes. We agree with Chairman Pai that too many rules remain in Title 47 of the Code of Federal Regulations due to regulatory inertia.² That is particularly so with respect to the Commission’s recordkeeping and information disclosure requirements for video services. When the Commission adopted those requirements twenty-five or more years ago, it plainly did not (and indeed could not) contemplate the degree to which parties interact with one another and with the Commission online. In recent years, the Commission has made some progress to bring several of its media rules into the 21st Century when it adopted, for example, its online public filing requirements and its declaratory ruling that cable operators may notify customers with certain information via email.³ But, as several commenters note, more work remains.

¹ As used herein, “AT&T” refers collectively to AT&T Services, Inc.’s multichannel video programming distributor (MVPD) affiliates, including DIRECTV.

² *Statement of Chairman Ajit Pai Re: Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, FCC 17-58 (rel. May 18, 2017) (*Public Notice*).

³ *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-127, Report and Order, 31 FCC Rcd 526 (2016) (*Online Public File Order*); *National Cable & Telecommunications Association and American Cable Association*

AT&T supports a number of suggested modifications contained in the comments and, when it considers the record, we urge the Commission to apply the same framework it used a few months ago when it granted a broadcaster's request for regulatory relief and extended, on its own, that holding to MVPDs.⁴ Namely, we ask that the Commission consider both the statutory basis and policy rationale of any regulation it intends to modify as a result of this review to determine whether to extend such regulatory relief industrywide, as opposed to just one segment of the industry. For example, cable operator trade associations request that the Commission modify its requirements related to certificates of compliance with commercial limits on children's television programming.⁵ We support this request and encourage the Commission to adopt the proposed modification for both cable operators and direct broadcast satellite (DBS) providers.

Today, the Commission requires cable operators and DBS providers to obtain quarterly certificates from programmers stating that the programmer complies with the advertising requirements contained in the Children's Television Act of 1990 and file those certificates in the

Petition for Declaratory Ruling, MB Docket No. 16-126, Declaratory Ruling, FCC 17-73 (rel. June 21, 2017).

⁴ See *Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, MB Docket No. 16-410, Declaratory Ruling, FCC 17-47 (rel. April 21, 2017) (holding that broadcasters and MVPDs may use online job postings as the sole recruitment source). In this ruling, the Commission found that "[t]he broadcast and MVPD EEO rules contain identical language, and we thus find it appropriate to maintain a consistent policy in implementing these rules. Although the Petition focused on the rule that applies to broadcasters, we find that our updated policy should be applied uniformly to broadcasters and MVPDs alike." *Id.* at ¶ 14 (footnotes omitted).

⁵ See American Cable Association Comments, MB Docket No. 17-105, at 16-18 (filed July 5, 2017); NCTA Comments, MB Docket No. 17-105, at 28 (filed July 5, 2017). See also CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc., and Univision Communications Inc. Comments, MB Docket No. 17-105, at 13 (filed July 5, 2017) (Content Companies Comments).

company's online public file within 10 days of the end of each quarter.⁶ The Children's Television Act applies on its face only to cable operators but in 2004 the Commission concluded, *sua sponte*, that it should extend its certification requirements to DBS providers, like DIRECTV.⁷ In that decision, the Commission found that the policy rationale of the Children's Television Act – protecting children from excessive commercialization –applied both to cable operators and DBS providers, and therefore extended its certification requirements also to DBS providers.

Given that both cable operators and DBS providers are subject to the same regulatory requirement based on the same underlying policy, in the event the Commission decides to modify its requirements to permit cable operators to provide programmer certificates of compliance with the children's programming commercial limits only in the event of a complaint, the Commission should extend this relief to DBS providers too. AT&T supports this request and urges the Commission to adopt it. If the Commission declines to grant this relief, at a minimum, it should permit cable operators and DBS providers to file these third-party certifications annually, not quarterly. There is no statutory requirement that cable operators file these certificates quarterly; thus, the Commission has the authority to modify its requirements to

⁶ 47 C.F.R. §§ 25.701(e)(3), 76.1703; *Policies and Rules Concerning Children's Television Programming, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, MM Docket Nos. 90-570, 83-670, Memorandum Opinion and Order, 6 FCC Rcd 5093, ¶ 23 (1991); *Online Public File Order* at ¶¶ 62, 69.

⁷ *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations, Sua Sponte Reconsideration*, MM Docket No. 93-25, Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647, ¶¶ 44 (“Although Section 335(a) does not require commercialization guidelines for children's programming on DBS, such guidelines are consistent with our public interest programming authority in this section.”), 49 (“Many of the programming services carried by DBS providers are the same as carried by cable systems around the country and thus this programming already complies with the commercial restrictions.”).

permit cable operators and DBS providers to make annual submissions to their online public files.

Similarly, NCTA asks the Commission to “extend the benefits [of] delivery by e-mail or other electronic means to both initial and annual privacy notices” required by 47 U.S.C. § 551(a)(1).⁸ Section 338(i) of the Act contains identical privacy notification requirements for DBS providers. AT&T agrees with NCTA that these statutory provisions are broad enough to permit cable operators and DBS carriers to provide the required notices electronically, and encourages the Commission to allow both to do so.⁹

On the other hand, a few commenters ask the Commission to modify election carriage procedures to permit broadcasters to notify cable operators of their carriage elections online. The Content Companies and the National Association of Broadcasters both argue that requiring broadcasters to mail their carriage elections by certified mail to each cable system is unnecessarily burdensome.¹⁰ These comments focus on the burden of identifying and verifying all of an operator’s cable systems and addresses, of which there are hundreds.¹¹ With respect to a DBS provider, however, broadcasters do not have to mail hundreds (or even dozens) of carriage elections letters to it. Rather, each broadcaster only must mail a single letter to AT&T’s affiliate DIRECTV once every three years. DIRECTV carries over 1,400 television stations and

⁸ NCTA Comments at 9.

⁹ We also support NCTA’s request to permit MVPDs to respond via email to customer complaints if the customer provided an email address on the Commission’s complaint form. *Id.* at 10-11.

¹⁰ Content Companies Comments at 10-12; National Association of Broadcasters Comments, MB Docket No. 17-105, at 22-23 (filed July 5, 2017).

¹¹ *See, e.g.*, Content Companies Comments at 11.

it would be highly burdensome and unfair to require it to track down this number of carriage elections on as many websites. AT&T opposes any proposal to shift this burden.

Public broadcasting commenters request that the Commission modify its rules to permit noncommercial educational (NCE) television stations to notify DBS providers of their carriage election just once, not every three years.¹² According to these commenters, having to send a letter once every three years to a DBS provider is a “rote process.”¹³ Instead, these commenters propose permitting NCE stations to maintain the same carriage status “indefinitely unless and until something transpires that modifies the must-carry arrangement.”¹⁴ AT&T opposes this request. The Public Broadcasting Commenters do not – and cannot – argue that requiring a NCE station to notify in writing, at most, two DBS providers once every three years that they desire mandatory carriage is burdensome. These notices, moreover, are important to DIRECTV as it attempts to manage must-carry elections with its significant capacity constraints, and are an essential means for it to receive updated contact information for these stations.

One way the Commission could make the current carriage election rules less burdensome is to clarify that broadcasters may mail their election notifications to MVPDs via express mail delivery service. Currently, broadcasters are required to make their carriage elections via certified mail.¹⁵ AT&T supports permitting broadcasters to send these elections to it via any

¹² America’s Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service, MB Docket No. 17-105, at 14-15 (filed July 5, 2017) (Public Broadcasting Commenters).

¹³ *Id.* at 15.

¹⁴ *Id.*

¹⁵ *See, e.g.*, 47 C.F.R. § 76.66(d)(1)(ii).

express delivery service. Indeed, over the years, DIRECTV has received and accepted hundreds of carriage elections from broadcasters via non-certified express delivery. As DIRECTV has explained previously to the Commission, Federal Express and other express delivery services offer more reliable, timely, and less expensive service than certified mail.¹⁶ Moreover, these express delivery services provide evidence of delivery and, unlike certified mail, permit the sender to track individual correspondence in the unlikely event the notice is not delivered. The Commission should take the opportunity to clarify that entities are permitted to send required notices via certified mail *or* express delivery services. Not only should such a clarification apply to carriage election notices but to DBS providers' significantly viewed notices.¹⁷

AT&T also supports giving DBS providers additional notice of broadcasters' carriage elections. Under the current rules, commercial television broadcast stations must inform DBS providers of their retransmission-mandatory carriage election by October 1st of the year preceding a new election cycle.¹⁸ When the Commission adopted this rule in 2000, it noted the desire to synchronize the satellite election cycles with the existing cable election cycles.¹⁹ The cable rules require commercial television stations to notify cable operators of their retransmission consent-mandatory carriage election by October 1st of the year preceding a new

¹⁶ See Opposition of DIRECTV, Inc. to *Petition for Declaratory Ruling of Saga Quad States Communications, LLC and Saga Broadcasting LLC*, CSR-8546-M (filed Dec. 29, 2011); Answer of DIRECTV, LLC. to *Saga Quad States Communications, LLC v. DIRECTV, LLC* (filed April 25, 2012).

¹⁷ 47 C.F.R. § 76.54(e). The Commission also should take this opportunity to dismiss the pending complaint against DIRECTV referenced in n.16, *supra*.

¹⁸ 47 C.F.R. § 76.66(c)(4). Similarly, noncommercial television stations must renew carriage requests using this same due date. *Id.*, § 76.66(c)(5).

¹⁹ *Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, 16 FCC Rcd 1918, ¶ 21 (2000) (*DBS Carriage Order*).

election cycle.²⁰ For the first election cycle beginning January 1, 2002, the Commission recognized that a DBS provider “needs ample time to commence carriage . . . because of the logistics of adding hundreds of local television stations to its channel line-up.”²¹ As a result, the Commission gave DBS providers six months, not 90 days, to complete the carriage process.²² However, there was no discussion about accommodating “the distinct aspects of retransmission consent/mandatory carriage elections for the satellite industry” in subsequent elections.²³

With four election cycles under its belt, DIRECTV can say from experience that 90 days is simply not enough advance notice to prepare to retransmit a new station, and, where required, for a station to make alternate preparations to deliver a good quality signal to DIRECTV’s designated local receive facility. With the vast majority of its spot beams currently full, it is difficult for DIRECTV to add a station to one of the spot beams without removing one of the stations already on that beam.²⁴ For a DBS provider, accommodating a new mandatory carriage request does not begin and end with receiving a good quality signal from the station. Rather, DIRECTV may have to make significant upgrades to its equipment in the relevant market, and

²⁰ 47 C.F.R. § 76.64(f)(2).

²¹ *DBS Carriage Order*, ¶ 20.

²² *Id.*

²³ *Id.*

²⁴ See, e.g., *Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*, 30 FCC Rcd 10406 ¶ 32 & n.178 (2015) (noting that most of DIRECTV’s spot beams already are full); *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999; Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, 23 FCC Rcd 5351 ¶¶ 7-14 (2008) (detailing satellite carriers’ capacity and technological constraints and finding that such constraints justify phasing in the so-called HD carry-one, carry-all requirement for DBS providers).

because of dependencies between markets, DIRECTV also may have to make similar significant equipment upgrades in other markets. Trying to accomplish this work with just 90 days' notice creates an undue burden on DBS providers. For that reason, AT&T recommends that the Commission require stations that elect mandatory carriage to give DBS providers six months' notice prior to the commencement of a new election cycle. We also ask that the Commission give DBS providers 60 days, not the current 30 days, to respond to a station's carriage request.²⁵ Because the next election cycle commences January 1, 2018, as a practical matter, this change would not be implemented for several years, thus providing stations with ample notice.

AT&T commends the Commission for initiating this long overdue review of its media regulations and we ask that the Commission consider our suggestions provided above for modernizing these regulations.

Respectfully Submitted,

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²⁵ See 47 C.F.R. § 76.66(d)(1)(iv).