

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Electronic Delivery of Notices to Broadcast Television Stations)	MB Docket No. 19-165
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
)	

JOINT COMMENTS OF DISH NETWORK L.L.C. AND DIRECTV, LLC

DISH Network L.L.C. (“DISH”) and AT&T Services Inc., on behalf of its affiliate DIRECTV, LLC (“DIRECTV”), submit these joint comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*” or “*Notice*”) in the above-captioned proceeding.¹ DIRECTV and DISH support updates to the Commission’s rules to modernize methods of providing certain communications to broadcasters, including requiring direct broadcast satellite (“DBS”) providers to deliver the notifications required under Sections 76.54(e) and 76.66 of the Commission’s rules by e-mail.² Among other reasons, such changes will harmonize the rules applicable to DBS providers with the updates the Commission recently implemented for broadcasters as part of its ongoing media modernization efforts.³ In addition, failure to allow e-

¹ See Electronic Delivery of Notices to Broadcast Television Stations, *Notice of Proposed Rulemaking*, MB Docket Nos. 19-165 and 17-105 (rel. Jul. 10, 2019).

² *Id.* at ¶ 15.

³ See Electronic Delivery of MVPD Communications, *Report and Order and Further Notice of Proposed Rulemaking*, MB Docket Nos. 17-317 and 17-107 (Nov. 16, 2018) (“*Subscriber Notices Order*”); Electronic Delivery of MVPD Communications, *Report and Order and Further Notice of Proposed Rulemaking*, MB Docket Nos. 17-317 and 17-107 (Jul. 11, 2019) (“*Carriage Election Order*”).

mail delivery of certain notices will result in disproportionate burdens on DBS providers and broadcasters, and raise logistical and operational challenges.

I. THE COMMISSION SHOULD ALLOW ELECTRONIC DELIVERY OF NOTICES TO BROADCASTERS, CONSISTENT WITH RECENT MEDIA MODERNIZATION EFFORTS

As the *Notice* recognizes, the Commission’s proposals to allow e-mail delivery of certain communications by MVPDs to broadcasters are the latest in a multi-year effort to modernize media regulations.⁴ For example, in November 2018, the Commission updated its rules to allow electronic delivery of numerous subscriber notifications under Subpart T of its rules.⁵ In July 2019, the Commission adopted a joint proposal put forward by NAB and NCTA “permitting broadcasters to post their carriage elections online, and to send notices to covered multichannel video programming distributors (MVPDs) by e-mail only when changing their carriage election status.”⁶

The instant *NPRM* was spurred by a request from ACA asking the Commission to take “comparable steps” with respect to certain other notices required of cable operators.⁷ Among other reasons, ACA argued that “notice procedures related to carriage elections by broadcast television stations apply ‘equally’ to the required notices from cable operators to broadcast stations” and that electronic delivery of notices will “make it easier for parties to keep track of such notices and ‘be consistent with rules applicable in other contexts.’”⁸

⁴ See *Notice* at ¶ 4.

⁵ See *Subscriber Notices Order* at ¶ 1.

⁶ *Carriage Election Order* at ¶ 1.

⁷ See *Notice* at ¶ 5.

⁸ *Id.* at ¶ 6, citing Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-317 et al. (filed Oct. 16, 2018).

DISH and DIRECTV agree: while the DBS providers raised concerns about the Commission's decision to allow broadcasters to elect carriage via e-mail, given the operational complexities such a construct introduced, we noted that we nonetheless supported the "Commission seeking comment on whether MVPDs may send required notices to broadcasters via email" if such procedures were adopted.⁹ Accordingly, DISH and DIRECTV support adopting rules that would enable DBS providers to deliver notices required by Sections 76.54(e) and 76.66 of the Commission's rules via e-mail.¹⁰ Such changes will ensure that the Commission's rules are harmonized and consistent among the various stakeholders, and will further the Commission's goal of modernizing media regulations.

In addition, failure to allow e-mail delivery of certain notices to broadcasters will result in disproportionate burdens between DBS providers and broadcasters, raising logistical and operational challenges. Among other things, this could lead to a construct in which a broadcaster elects carriage on a DBS system via e-mail, but written responses from the DBS provider regarding that election must be sent via postal mail. Not only would such a process impose burdens on DBS providers that broadcasters no longer face, but it would likely lead to a breakdown in communication among the entities involved, given that each would be required to utilize a different contact method.

⁹ Letter from Cathy Carpino, Assistant Vice President – Senior Legal Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-317 et al., at 3 (filed June 27, 2019) (AT&T Ex Parte Letter) (stating that if the Commission applies the electronic carriage election notice regime to DBS providers, DIRECTV and DISH "are supportive of the Commission seeking comment on whether MVPDs may send required notices to broadcasters via email").

¹⁰ DISH and DIRECTV also support the Commission's proposals to adopt corresponding changes to notice provisions applicable to cable operators. *See Notice* at ¶ 7.

II. THE COMMISSION HAS THE AUTHORITY TO REQUIRE E-MAIL DELIVERY

The Commission has the authority to implement the proposed e-mail delivery requirements. The *NPRM* notes that Section 338(h)(2) of Communications Act of 1934, as amended (the “Act”), requires DBS operators to provide notice via certified mail prior to launching local-into-local service in a market.¹¹ As the Commission recognized,¹² this provision only applies to the notice procedures laid out in 47 CFR § 76.66(d)(2)(i)-(ii), which specifically govern launching new local-into-local service. Consequently, there can be no argument that Section 338(h)(2) somehow limits the Commission’s ability to allow electronic delivery of the remaining notice provisions identified in the *NPRM*, as those fall outside the scope of this subsection.¹³

For example, Section 340(g) of the Act is the statutory basis for the significantly viewed-related notices required in Section 76.54(e) of the Commission’s rules and Section 340(g)(1) simply provides that satellite carriers are to provide “written notice” to broadcasters. Other rules cited in footnote 52 of the *Notice* require satellite carriers to “provide notice to,” “notify” or “notify in writing” broadcasters of certain information but those rules do not expressly require

¹¹ See *Notice* at ¶ 15, citing 47 U.S.C. § 338(h)(2)(C).

¹² *Id.* at ¶ 15.

¹³ *Id.* at ¶ 15, FN 52 (These written notices include: notifying all television stations in a market prior to retransmitting a significantly viewed station into that market (section 76.54(e)); notifying local television stations of the provider’s intent to launch HD carry-one, carry-all in the local market (section 76.66(d)(2)(vi)); informing each local television station of the provider’s intent to fulfil or deny the station’s carriage request and the reasons for declining (section 76.66(d)(1)(iv), (d)(2)(v), (d)(3)(iv)); identifying each affiliate of the same television network that the DBS provider reserves the right to retransmit into a station’s local market during the next carriage election cycle (section 76.66(d)(5)(i)); informing local television stations of the location of the DBS provider’s local receive facility or its intent to relocate such facility (section 76.66(f)(3)-(4)); notifying local television stations when deleting a station that substantially duplicates another or adding a station that no longer duplicates another (section 76.66(h)(5)). 47 CFR §§ 76.54(e), 76.66(d)(1)(iv), (2), (3)(iv), (5)(i), (f)(3)-(4), (h)(5)).

such notice to be made via certified mail. Moreover, the underlying legal authority cited by the Commission for such rules does not compel a different result. The Commission's HD carry one, carry all rule, implemented in Section 76.66(d)(2)(vi), for example, requires satellite carriers to "notify" local broadcasters and was based on Section 338(j)'s directive to the Commission to issue satellite rules that are comparable to certain rules applicable to cable system operators. Nothing in Section 338(j) or the cable statutory provisions referenced therein precludes the Commission from permitting satellite carriers to provide any required notifications to broadcasters via e-mail. The Commission has previously and correctly concluded that a party may satisfy a "written notice" requirement via e-mail and it should do so again here.

III. CONCLUSION

DISH and DIRECTV support updates to the Commission's rules to modernize methods of providing certain communications to broadcasters, consistent with the proposals in the *Notice* discussed herein.

Respectfully submitted,

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